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CHAIRPERSON: Good morning everybody. Advocate Skinner.

ADV SKINNER: Thank you Mr Chair and Commissioner Musi, just on matters of housekeeping for the moment you should have before you a signed statement by Mr Siphos Zikode which runs to 17 pages together with an annexure from page 18 to page 27. Thank you Mr Chair. In addition there are two files of documents, one is a file containing the minutes of the IPCC and for record purposes I would propose we simply refer to it as the IPCC file. The second is a file of annexures and they are paginated from 1 in sequence and maybe we should just refer to that as the annexures to Mr Zikode. He does have an annexure, as I've indicated, to his signed statement as Annexure "A", so there won't be any confusion between Annexure "A" and the numbered pages.

The position as regards the contracts is that they have still not been declassified and what I propose to do today is take Mr Zikode through his signed statement and then through various matters that I had given him a draft of what I proposed to cover, that will deal with each obligor in turn, focusing on certain contracts of the obligor. Should we reach that stage, however, I will not be able to finish the first obligor which will be BAE and SAAB because there are questions arising from the contracts which I would need to put, so if we reach that stage I may then have to ask the Commission to

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adjourn until we can resume with the declassified contracts, but hopefully that won't arise and we'd be able to occupy the entire day. I then call Mr Zikode.

CHAIRPERSON: Advocate Skinner, the chance of the contracts that you want to refer to, is there any dispute about them and two; if the witness is aware of those terms is it necessary to see the actual contracts?

ADV SKINNER: Mr Chair, certainly I don't believe there is a dispute because it's never been indicated there is a dispute as to what is contained in the written contract, the witness has indicated in his signed statement that one of the areas that he will cover in his evidence is the SDPP contract, so I intend to ask him the extent to which he is familiar with those provisions and I may be able to get sufficient to escape having to avoid, escape having to prove the actual contract.

CHAIRPERSON: If my understanding of the evidence that has been presented so far, it appears to me that the terms of the contract which are, of the NIP contracts which are relevant to this inquiry is the methodology of appointing credits as contained in those NIP contracts and to me it doesn't seem as if there is any dispute about that. I think the previous witnesses have conceded that the methodology that they used differs to some extent with the methodology of appointing of credits as contained in the NIP agreements and if that is the position I'm not quite certain whether one needs to see those

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contracts or not. If my summary of the evidence is correct then I fail to understand why is the NIP agreements important to you.

ADV SKINNER: As the Chair pleases. A lot of it will focus
5 on the methodology and how that was applied. There are several provisions in relation to the definitions which I may need to refer to but I will certainly do my best to make sure that the witness is able to deal with it, it's only if a need arises that I may have to ask the Commission.

10 CHAIRPERSON: Thank you. Can we ask the witness to take the oath? Sorry, just hold on.

ADV CHOWE: My apologies Mr Chairperson, Commissioner Musi, good morning. Mr Chairperson I was just trying to follow up on Mr Skinner's housekeeping rules in as far
15 as the annexures to Mr Zikode's documents. The Commission will remember that Mr Zimela introduced a document which was then referred to as Annexure "F" to his statement. That particular document is intended to replace Annexure "A" of Mr Zikode's document which I understand is from page 18 to 27, so
20 I just wanted to hear from Mr Skinner whether if he refers to the annexure will he be referring to Annexure "F" which we will beg leave of the Commission that it be incorporated in Mr Zikode's statement and be Annexure "A". So, Annexure "F" of Mr Zimela's statement is actually now Annexure "A" to Mr
25 Zikode's statement. I just wanted to hear whether Mr Skinner

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is in agreement with me in that and also to enlighten the Commission about that fact. Thanks Chair.

CHAIRPERSON: Just hold on. You are saying that the document that was marked Annexure "F" when Mr Zimela gives evidence is going to replace Annexure "A" as contained in Mr Zikode's statement.

ADV CHOWE: That's correct Chairperson.

ADV SKINNER: Chair I'm somewhat surprised because my learned friend raised this with me before and I suggested to him that since the evidence had already dealt with fairly extensively with Annexure "F" it would become very confusing in a transcript if Annexure "F" is now referred to by another title, I also indicated to him that the annexure which had been supplied with Mr Zikode's statement and which is presently Annexure "A", there are one or two aspects I may want to ask questions on arising from that document, so I had proposed simply that the existing Annexure "A" to Mr Zikode's statement be left as is and we continue to refer to Annexure "F" as Annexure "F" to Mr Zimela's statement.

ADV CHOWE: The difficulty with that Mr Chairperson, I hear Mr Skinner, the difficulty is that the Annexure "F" is actually a correct and updated version of Annexure "A" to Mr Zikode's statement and one other issue, I hear Mr Skinner says he would like to clarify a few issues in the current Annexure "A" of Mr Zikode. The biggest difficulty we would have is that

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that was the evidence in Mr Zimela's evidence, so I don't know whether maybe I shouldn't say it but I'm not sure whether Mr Zikode would be able to deal with those issues which were supposed to have been put to Mr Zimela when he was giving
5 evidence.

CHAIRPERSON: I think maybe let me make a ruling when we come to that. If it all you say to me you know that Annexure "F" is an improved portion or a document that contains almost the same information as the one which is Mr
10 Zikode's statements let's deal with the differences as and when we come to them.

ADV CHOWE: Thank you Mr Chair.

CHAIRPERSON: Thank you. Can you take the oath?

(Witness is sworn in.)

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**WITNESS NUMBER 5 (DTI) : MR SIPHO ZIKODE (Hereinafter referred to as "MR ZIKODE"), GIVES EVIDENCE UNDER OATH
EXAMINATION IN CHIEF:**

ADV SKINNER: Mr Zikode, you have signed a statement
20 prepared for you by the legal advisors at the Department of Trade and Industry, is that correct?

MR ZIKODE: Yes, this is a statement that I prepared together with the legal advisors.

ADV SKINNER: The copy I have has your signature but it
25 doesn't have a date, can you give any indication as to when

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you signed that statement?

MR ZIKODE: That is correct, the date is not here but I will say I signed this statement roughly two weeks ago.

ADV SKINNER: Thank you. I want to take you through and
5 discuss with you certain aspects arising from this statement but if we start with the basics in paragraph 1 you record that you are presently the deputy director general Broadening Participation Division in the DTI.

MR ZIKODE: Yes, that's correct although there has
10 been some new developments in my career. I've been asked by the DTI or I've been seconded by the DTI to be the acting CEO of SIDA, an organisation of DTI but yes, officially I'm still the deputy director general Broadening Participation Division until the chief executive officer of SIDA is appointed.

ADV SKINNER: Just for clarity what is the Broadening
15 Participation Division?

MR ZIKODE: The Broadening Participation Division is a
division of the DTI that deals with the policies and programmes that are aimed at developing small enterprises and the
20 cooperatives, we are also responsible for BEE programmes, women empowerment, also responsible for technology and innovation promotion, also the infrastructure and logistics in the economy amongst many other things that you are responsible for.

ADV SKINNER: In paragraph 3 of your statement you
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record that you joined the DTI as a techno economist at the Technology Promotion Unit in 1997 and as I understand it you were there for some months before you resigned and then joined the Department of Arts, Culture, Science and
5 Technology.

MR ZIKODE: That is correct.

ADV SKINNER: You then re-joined DTI as deputy director in the Industrial Participation Secretariat in 1999.

MR ZIKODE: That's correct.

10 ADV SKINNER: And other than your most recent secondment you've been uninterruptedly at the DTI from when you re-joined in 1999 until the present.

MR ZIKODE: That's correct.

15 ADV SKINNER: Could you tell the Commission what qualifications you hold?

MR ZIKODE: Yes, apologies that we didn't put the qualifications here but I hold the National Diploma in Chemical Engineering from Mangosuthu Technikon, the Post Graduate Diploma in Marketing Management from the University of South
20 Africa, a B.Com Degree in Economics from Witwatersrand University, the MBA degree from the University of Pretoria.

ADV SKINNER: Thank you. You then set out various committees that you have been a member of and I don't think we need go through them other than I just want to raise with
25 you in paragraph 6.b of your statement you say you've served

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on the Industrial Participation Control Committee, the IPCC.
As I understand it you did more than serve, you in fact chaired
that Committee, would that be right?

MR ZIKODE: That's correct.

5 ADV SKINNER: In paragraph 7 you set out the areas that
your evidence will cover and in subparagraph (b) it refers to
the SDPP contracts and NIP obligation values. Can I take it
then that you are familiar with the contents of the SDPP
contracts?

10 MR ZIKODE: Yes that's correct, more especially the NIP
obligation values, those I'm very familiar with.

ADV SKINNER: While I'm considering paragraph 7 you say
in subparagraph (e) that you would deal with package deals and
you refer there to multipliers and the multiplier effect. Now
15 later on in your statement in paragraph 26 you again in the
heading refer to multiplier effect, but unless I had missed it
nowhere in your statement do you discuss the multiplier effect.
Can you, just to clarify for us, explain what you are referring to
by the multiplier effect?

20 MR ZIKODE: Can I ask for permission to deal with the
multiplier effect when we are dealing with the multipliers and
upfront credits?

ADV SKINNER: Yes I've no difficulty with that; I'll come
back to that. You then in paragraphs 8 and following set out
25 the basic areas where the need for a NIP obligation on the part

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of an obligor occurs and I don't believe there is any dispute about that, so I want to take you to paragraph 13 of your statement where you say in practice the IPCC assumed the functions of the NIP implementing mechanism. Now what I understand you to be saying is that the SDPP contract had provided for an entity to be established called the NIP implementing mechanism, is that correct?

MR ZIKODE: That is correct.

ADV SKINNER: And what was to be the purpose of this NIP implementing mechanism?

MR ZIKODE: The purpose of the NIP implementing mechanism was going to assist the Department to administer, monitor the NIP obligations that arise from the SDPP's.

ADV SKINNER: And as I understand it further no NIP implementing mechanism was ever formally created, is that correct?

MR ZIKODE: Yes that's correct, there was no NIP implementing mechanism that was established but the DTI just followed exactly what the NIP contracts were saying that in case there was no NIP implementing mechanism the DTI will assume the role of a NIP implementing mechanism and that's what we did.

ADV SKINNER: That's why your statement in paragraph 13 says the IPCC in practice assumed the functions. Was there, as far as you know any formal appointed of the IPCC to take

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over the role of the NIP implementing mechanism or not?

MR ZIKODE: The IPCC is a committee that was established as a result of Cabinet approval of the CAB Memo of 1996 if I remember well, and the IPCC was responsible for
5 administering the offset in South Africa, so as far as I know and remember there was no formal approval after that, we just assumed the role of the NIP implementing mechanism because in any way the IPCC as a result of the CAB Memo had that role to play in the offsets programme.

10 ADV SKINNER: So can we take it then that should it become necessary to refer to the contracts wherever there is a mention of the NIP implementing mechanism we can assume that that was a role and function carried out by the IPCC?

MR ZIKODE: Yes, the IPCC together with the IPS, the
15 Industrial Participation Secretariat.

ADV SKINNER: In paragraph 16 you set out from the contracts the various commitments of the obligors in respect of the NIP credits to be achieved, is that correct?

MR ZIKODE: That's correct.

20 ADV SKINNER: From your knowledge of the SDPP contracts would I be correct that investment is defined very widely, it's not purely a monetary investment, it extends to things such as share capital, share holders' loans and technology transfer.

25 MR ZIKODE: That's correct.

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ADV SKINNER: The way in which the contracts are set out seems to indicate that the various obligors have to achieve the aggregate referred to in the individual contracts in respect of investment credits.

5 MR ZIKODE: That's correct.

ADV SKINNER: And that should then be read with the section on Credit Methodology which we know says 1 credit per unit invested, would that be right?

MR ZIKODE: That's correct.

10 ADV SKINNER: So, in effect when the individual NIP contracts of the obligors specify the amounts that they are required to achieve by way of investment credits that should be read as they must achieve that amount of investment?

MR ZIKODE: They had to achieve the amount of the investment credits as they appear in the NIP contracts.

ADV SKINNER: Sir, I don't think you've quite answered. What I'm putting to you is that accepting for the moment that the credit methodology in the contracts say 1 credit per unit of investment, does that not mean that where a contract says that an obligor must achieve a certain number of investment credits it similarly means that that obligor must achieve that amount of investment?

20 MR ZIKODE: Well, according to my knowledge it doesn't mean ...

25 CHAIRPERSON: Just hold on, just hold on. Advocate

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Skinner, please just be specific with your question, the witness talks about investment credits which can be accumulated as I understand the evidence up to now through investments, sales and local sales and exports. What they have looked at, at the end of the day is the investment credits, that's what I understand the evidence to be, not that the investment credits must be accumulated only by investments. If you can just be explicit in your question please.

ADV SKINNER: Mr Chair, I understand it somewhat differently. If I can refer the Commission to Mr Zikode's statement at page 6, paragraph 16 you will see that what is set out there is the commitments for investment, a separate one for export sales and a separate one for domestic sales. I was asking the witness solely in respect of the investment portion which is allocated as investment credits.

CHAIRPERSON: Advocate Skinner, that's exactly what I understand. Put it to the witness, as I understand the evidence at the end of the day what is important is the credits and not only investment credits because the obligors were getting credits either for investments or for exports or for local sales, but then just try and clarify with the witness, put it to him as a question and then let's hear what he says.

ADV SKINNER: Certainly Mr Chairman. Mr Zikode, would I be right that as the contracts were expressed there were three categories in which each obligor had to achieve the necessary

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credits, that is investment, export sales and domestic sales?

MR ZIKODE: That is correct.

ADV SKINNER: And those are separate categories, for instance if an obligor achieved certain credits by way of export sales that would go into the category of export sales, not to investment credits?

MR ZIKODE: That's correct.

ADV SKINNER: That's why I was putting to you that in relation to the category of investment credits it is specified that there would be the need to obtain a certain number of credits for investment and investment only.

MR ZIKODE: That is correct.

ADV SKINNER: And that if the Commission were to find that the credit methodology of 1 credit per unit invested is to apply then in effect that means in the investment credit category the obligor has to achieve the amount of investment set out as the investment credits.

MR ZIKODE: Chairperson, with your permission can I take off my jacket? Thank you Sir. The offsets programme all over the world are measured in terms of in credits where they are talking about investments, exports, local sales, technology promotion you are talking about credits in order to measure the performance of the offset obligated company. At the end of the day it doesn't meant that for instance if you take investments that the NIP obligation in terms of investment will equate to the

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exact investment in terms of Rand and cents that went into the economy, it just doesn't mean that. For whatever reasons this animal called credits is in the monetary value. If you look exactly at paragraph 16.1 BAE SAAB NIP commitments was
5 US\$7.2bn. Out of that ..., these are credits, NIP credits, out of that we have US\$2bn which was classified as investment NIP credits but at the end of the day it doesn't mean that in terms of Rand and cent that goes into the economy, as far as investments are concerned that's the number we're going to
10 get, it just doesn't mean that, so I'm trying to clarify to the Commission that the number that is there, US\$2bn credit does not equate to US\$2bn that will go into the economy in terms of the monetary, physical money, because unfortunately this programme all over the world, it's not a South African
15 phenomenon, all over the world the performance is measured in terms of credits.

Why? Because as government you have to use this bag of credits to influence the direction of the investments, that is why Commissioners you will see when it comes to the
20 issues of multipliers as government we have a prerogative and a discretion to use these multipliers to influence the direction now of the investment because an offset obligated company can choose to invest in any sector, even if that sector really as a country you don't make any investments because the locals are
25 investing in (indistinct), so you always choose to use this

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programme which is an industrialisation tool, you always use it to direct investments in the areas where really you need multinationals, overseas partners to assist you, invest into.

5 So, the credits, that's why they have these multiplier, multiplier effect, whatever you call it, why, for the reasons of directing the flow of investment, so at the end of the day there is just no way you can go anywhere else in the world, there's just nowhere you will have investment credits as a NIP obligation equalling the actual investment that you would
10 roll into the economy.

ADV SKINNER: I'm going to return to the question of multipliers in due course but I want to put this to you. If you have in front of you a copy of Annexure "F" to Mr Zimela's statement, do you have that?

15 MR ZIKODE: I do.

ADV SKINNER: If you turn to the second page of that it's the page numbered 111.

MR ZIKODE: Unfortunately mine is not paginated.

CHAIRPERSON: I'm sorry Advocate Skinner, you said which
20 page?

ADV SKINNER: It's the second page, page 111. Mr Zikode, you will see on the second page immediately above the blue area demarcating the credits that were now applicable to the GFC there is a line saying "Totals". Do you see that?

25 MR ZIKODE: I see it.

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ADV SKINNER: We know from what you've said in your evidence that to use the first obligor BAE, they had to achieve US\$2bn by way of investments.

MR ZIKODE: Correct.

5 ADV SKINNER: And the point I'm making here is that if you look at Annexure "F" at the totals under total actual investments and actual obligor investments one can see that the actual amount that BAE invested was US\$252 232 821 and the total actual investments that were invested on behalf of
10 BAE was US\$665 286 285, do you see that?

MR ZIKODE: I do.

ADV SKINNER: So would I be correct that what Annexure "F" is indicating is that without the use of multipliers if one looks purely at the amount that was invested either by BAE or
15 by other entities on its behalf it would not have reached the investment credits of US\$2bn.

MR ZIKODE: If you look at column "Investment Credit", those are exactly the credits BAE and its partners achieved as a result of those investments Senior Counsel Skinner is talking
20 about. This is what I was saying ...

CHAIRPERSON: I'm sorry, can you start again with your answer, I think we missed some of your words.

MR ZIKODE: What I'm trying to say Commissioners is that this confirms what I said previously that the NIP
25 commitments in terms of credits when it comes to investment in

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many cases it doesn't equate to the actual investments. If you look at it, the "Total Actual Investments", that column, BAE Systems and its partners invested US\$665 286 285 actual investments, these are actual monetary or money that came
5 into our economy. Now that in terms of credits, because the offset is based on measuring performance is based on credits, the credits that they obtained equalled US\$2 012 407 678.

ADV SKINNER: What I'm suggesting to you Mr Zikode is that the reason that BAE were able to achieve that target as
10 the amount reflected under investment credits is because of the use of package deals and multipliers if one has regard to the actual sum that was invested.

MR ZIKODE: That's correct.

ADV SKINNER: So, the use of the multipliers and package
15 deals was a crucial part of the obligor achieving its target of investment credits?

MR ZIKODE: The use of multipliers was a crucial tool for South Africa to direct investments into the areas where as South Africa we couldn't invest.

ADV SKINNER: Mr Zikode you haven't quite answered the
20 question, I was putting to you that it was a crucial aspect of the obligor being able to achieve the investment credit target.

MR ZIKODE: Previously there have been witnesses that came before me here that confirmed that these NIP
25 commitments in terms of credits, these NIP commitments in

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terms of credits were arrived at using multipliers in any way, so the commitments, when they put together, when they were negotiating the NIP commitments they used as it was clearly shown here, they used the NIP guidelines, the NIP guidelines of which you have multipliers in any way. So, these commitments in terms of NIP credits, they have multipliers in any way, that's why it confirms the point that the NIP obligations, they are based on the credits which you can use as multiplier or you can use the factor of multipliers to achieve whatever NIP credit commitment that your offset obligor have. Yes, just to answer the question directly the multipliers yes, were used to achieve those NIP investment credit.

ADV SKINNER: Well, I was suggesting to you that in fact it was crucial to the obligors and that you had agreed earlier that without the multipliers the obligors would not have achieved the necessary target of investment credits.

MR ZIKODE: What I know it was crucial to us to direct investment into the areas that were priority to us as South Africa.

ADV SKINNER: Alright, let's move on. You then set out from paragraph 18 of your statement under the heading "SDPP NIP Credit Claims" and "The Earning of Credits" a summary of the procedure and in paragraph 22 you indicate that the IPCC would be required to respond to the NIP claim in writing within 90 days of the date of the claim being submitted to it.

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MR ZIKODE: Correct.

ADV SKINNER: Was there a prescribed procedure for any appeal if the obligor was dissatisfied with the credit determination?

5 MR ZIKODE: I'll guess there was an appeal procedure in the NIP terms, I haven't checked the (indistinct) for that kind of question.

ADV SKINNER: Let me put it this way, in your time on the IPCC and particularly as chair of the IPCC were there
10 occasions when there were any appeals that were made against determinations?

MR ZIKODE: Oh yes, there were many of those.

ADV SKINNER: So, is it just that you cannot recall whether there was a prescribed procedure relating to the
15 appeals?

MR ZIKODE: What I'm saying I would have to check the NIP terms whether the appeal procedure was specified there but yes, as we were managing this programme there would be decisions that the obligors were not happy with and then they
20 will appeal against those decisions.

ADV SKINNER: And from your practical knowledge of how matters occur if an obligor was dissatisfied with the determination and wish to appeal against it, would that have still been dealt with by the IPCC or would it have gone to
25 another body?

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MR ZIKODE: It will come straight to the IPCC.

ADV SKINNER: You then in paragraph 25 refer to attaching a full list of all the projects undertaken by obligors in the SDPP and that is set out at pages 18 to 27 of your statement, is that correct?

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MR ZIKODE: Sorry, I didn't get the last part of your question?

ADV SKINNER: I was simply asking you to confirm that what in paragraph 25 is referred to as a full list of all the projects undertaken by obligors in the SDPP is the document that appears at pages 18 to 27 of your statement.

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MR ZIKODE: First of all Commissioner I want to put it clearly that the document referred to page 18 to 27 was not prepared by me, it was prepared by the industrial participation secretariat and from my understanding the people who prepared this document found some mistakes in it, hence the need for them to correct the mistakes and they came up with what is called Annexure "F" in Mr Zimela's statement which today there's an issue whether that Annexure "F" is Annexure "A" or what, so this I didn't prepare, it was prepared by the Industrial Participation Secretariat. Unfortunately I'm no longer part of the Industrial Participation Secretariat, effectively I left it in 2007 but I'm prepared to answer any question if I could, but I just want to make sure that the Commission is aware that this was prepared by the Industrial Participation Secretariat led by

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Mr Zimela and Mr Zimela has correct the mistakes that appeared in this document.

ADV SKINNER: You see, as I recall the evidence Mr Zimela he said that when the schedule was, which he was referring to was being compiled it was then discovered that certain figures had not been captured correctly but I understood him to be talking about the amounts for investments and credits, whether investment credits or sales credits, was he, as you understand it referring to the figures on Annexure “F” for jobs as well?

CHAIRPERSON: Advocate Skinner, can you just repeat the question?

ADV SKINNER: Certainly Chair. I’m just trying to clarify as you understood what Mr Zimela was dealing with, was he correcting by the compilation of Annexure “F” the amounts that are reflected there for investments and credits or was he also correcting the figures that are reflected for the jobs?

MR ZIKODE: I really don’t know what he was correcting, I wasn’t there when he was correcting this document.

CHAIRPERSON: Advocate Skinner if I’m not wrong Mr Zimela never said exactly what was corrected and the extent of the corrections, he just said that certain information was incorrectly captured, he never told us exactly what was completed.

ADV SKINNER: As the Chair please, that’s what I was

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wanting to clarify with the witness. So, you wouldn't then be able to explain why in Annexure "A" to your statement the "Job Column" differs from the "Jobs Created" in Annexure "F"?

MR ZIKODE: Not at all.

5 ADV SKINNER: You see, even the very first project that is reflected under BAE says: "ABB Pinetown" and at Annexure "A" it says: "Jobs Created or Retained – Zero" whereas in Annexure "F" under the heading "Jobs Saved or Retained" it says 600, but as I understand it you can't help us with that?

10 MR ZIKODE: No, I can't help you Sir.

ADV SKINNER: So, to all intents we should simply ignore what has been put up as Annexure "A" to your statement, would that be right?

MR ZIKODE: Mr Zimela, I think he testified that Annex
15 ..., what is called Annexure "A" into my statement is the correct version of what happened the numbers that are in the so-called Annexure "A" are correct because he said they went back into each and every claim and each and every file and they compiled these numbers, so I'll guess according to Mr Zimela
20 this is a correct version, so I intend to use it.

ADV SKINNER: Turning to the section in paragraph 26 of your statement headed "Package Deals - (Multipliers, Multiplier Effect and Upfront Credits)", before we deal with what you are saying here it seems to be accepted that in the
25 SDPP contract and in particular in the NIP terms there is no

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express mention of the use of multipliers, would that be right?

MR ZIKODE: Well, in the NIP terms I don't remember seeing any sentence or paragraph that stops the DTI or the Minister of the DTI for using multipliers, I don't remember that.

5 ADV SKINNER: No Mr Zikode, you haven't answered the question. The question to you was do you agree that in the SDPP contracts and in particular in the NIP agreements there is no express mention that multipliers can be used?

10 MR ZIKODE: Well, again I don't remember saying such a paragraph.

ADV SKINNER: Are you aware from your knowledge of the contracts that you've previously testified to that there is a provision in the contract which stipulates that the NIP terms constitute the whole agreement on the subject of NIP?

15 MR ZIKODE: No, I'm not aware of that.

ADV SKINNER: Alright well, when we get to the stage of the contracts being declassified I'll refer you to the provisions in question. You indicate in paragraph 26 that:

20 *"Packaged deals arose in order to increase and spread the NIP uptake across all sectors of the economy and to deal with substitute projects".*

And you say:

"Packaged deals comprised both upfront credits and multipliers".

25 So, am I correct that in every package deal there was both

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upfront credits and multipliers or could there be a situation where there would only be the one but not the other?

MR ZIKODE: Well, the second part of your question is correct, we've got a situation where you only get multipliers
5 but no upfront credits and *vice versa*, it depended on the situation of the project.

ADV SKINNER: Can you explain what you mean by the phrase "upfront credits"?

MR ZIKODE: Okay, as we managed the implementation
10 now of the projects with time we realised that there was a flaw in the NIP terms with regards to what do you do with the substitute project that comes right at the end of the obligation period. As you know under the offset programme the companies were given seven years to offset their obligation
15 and within these seven years they could benefit from the sales that the projects were generating, so you had a situation where an offset company invest in a project right at the beginning and it has seven years to benefit from the sales that this project will generate but then the problem was what happens if these
20 projects are not generating enough sales, these companies had an obligation to bring in new projects that will generate more sales credit for them in order for them to meet the obligation at the end of seven years but now the flaw was the NIP terms themselves, they didn't specifically say if a person invests in a
25 project in the sixth year it's a good project, South Africa likes

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the project, it's going to generate employment, it's going to generate export sales for us as a country but what happens now when it comes to the sales that will happen after the obligation period. So, the Minister together with the officials
5 decided that to be fair to the offset company which has invested into our country, which is what we want, into a project that generates a lot of export sales and local sales you had to find a way of giving them a credit for the work they have done, so how was it done?

10 You look at the business plan itself, the potential it has in terms of sales over many years into the future well after the obligation period is over and try to come to an agreed upon figure in terms of sales credit that you have to give to the offset company because the offset company has done its job, it
15 has invested in a project that you all agree that is very strategic into the development of our industrial base development of the economy of this county generating jobs, so we have to be fair, it's just a fair process that this project, at times it takes one two years just to build the project and that,
20 we will go over the obligation period, what do you do, we have to negotiate now intensely with the offset company that look yes, you have brought my investment and the investment by the way are never upfront, you get your investment as and when you put money in the ground.

25 Then you have to say but there's also another

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milestone that they have to meet which is the exports credit and local sales credit, then you negotiate, you come to an agreement and then the Minister gives that approval. So, that's the reason why really we have this thing of upfront

5 credits because really unfortunately in the NIP terms they didn't talk about what will happen in those circumstances towards the end of the obligation company was still investing but now those investments take time to realise the sales credit and that goes beyond their obligation period and at the end of

10 the obligation period the secretariat, the DTI will have to say well, you have met your obligations or not and you couldn't punish, it was going to be unfair, you couldn't punish the companies for the reason that the projects are being developed, they take time and we have agreed as DTI that you

15 want that particular project, otherwise for them to meet their sales credit they could have gone into the economy itself and just buy whatever they want to buy even if we don't need their assistance and when it comes to whatever products they are buying in order to meet their obligations.

20 So, that is why it is important for the Commissioners to understand that this was a special tool, the offsets are a special tool that you use to direct investment into a specific area of the economy where it is not easy for the local, even for the international investors who do not have

25 obligations to invest in.

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ADV SKINNER: From your answer I understand you to be saying that upfront credits were only granted in respect of the sales credits because the investment had to take place first before any investments credits could be granted.

5 MR ZIKODE: Yes as far as I remember that's how it happened that for investment credit you get them when you invest, you don't get investment, upfront investment credit because there is nothing at that moment but when you invest or your partners invest it is allowed by the NIP ..., by the offset
10 programme and then you get the investment credit. The only snag, the only problem that we were facing with is what happens to the sales credit that has to be accrued to the offset company but these sales credits are being generated well after the obligation period.

15 ADV SKINNER: Wouldn't the answer to that have been to extend the period of time in respect of which the obligors had to achieve their targets?

MR ZIKODE: Look well, I'm not an expert when it comes to contracts really, I wouldn't give you an answer on that one.

20 ADV SKINNER: You see, as I recall, as I understand the contracts ...

CHAIRPERSON: Just hold on, just hold on.

NOTE: Caucus.

CHAIRPERSON: Okay, you can continue.

25 ADV SKINNER: Thank you Chair. What I was putting to

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you is that as I recall the provisions in the contracts there was a provision that the DTI with the obligors could extend the period of time for the obligors to achieve their required commitments.

5 MR ZIKODE: Well I won't deny that, I think that must have been there.

ADV SKINNER: Because if that is so are you able to say whether the DTI considered that as an option in preference to granting upfront credits?

10 MR ZIKODE: Oh yes, it did, and as far as I remember there were some milestones that were postponed by 12 months, 18 months or so but you see, there was no way that the postponement will take years, otherwise even today we will still be monitoring that programme. That is why you could only
15 extend by 12 months or so for a particular obligor to achieve that particular milestone, whether they are talking about first milestone or second milestone or the last milestone but there was no way as far as I know that you could extend the contracts by many years just to allow the sales credit to come
20 in. We have to find a way of ensuring that you manage this programme and you know, you are done with it in a reasonable time.

ADV SKINNER: You also say in paragraph 26 that:

*"Credits for investment and sales are awarded
25 simultaneously".*

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Was that award of credits irrevocable in the sense that it would remain irrespective of whether the obligor actually achieved sales for that project or not?

MR ZIKODE: As far as I remember, and I stand to be
5 corrected, whenever we give an upfront credits in many cases
we'll still put it on the company to ensure that they report back
to the DTI about the actual realisation of the sales. There is
even one company I know, I was told that they haven't released
its performance guarantee because it was a requirement that
10 before the performance guarantee is released you have to
prove that those things that were given upfront did really
happen with the passage of time, so yes, there was always that
condition that the DTI will monitor the performance of the sales
that were supposed to be generated and I think that company is
15 still doing that even now where the performance guarantee has
not yet been released because the company still has to report
that yes, for those upfront credits that you gave us the sales
really did happen and here is the proof.

ADV SKINNER: Does it follow then that if the sales were
20 not achieved that the upfront credits would subsequently be
reduced?

MR ZIKODE: I think yes, if the sales would have been
achieved they would have to find a solution going forward.

ADV SKINNER: Mr Chair I note the time is 11h30, does the
25 Commission wish to take a short adjournment or not?

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CHAIRPERSON: We'll take a short adjournment, let's say until 11h45. Thank you.

ADV SKINNER: As the Chair please.

(Commission adjourns.)

5 **(Commission reopens.)**

CHAIRPERSON: Can the witness confirm that he is still under oath?

MR ZIKODE: I do.

CHAIRPERSON: Thank you.

10 ADV SKINNER: Thank you Mr Chair. Mr Zikode, we were at paragraph 26 of your signed statement and you set out there the reasons for introducing this strategy as you referred to it. Is there anything you wish to add to what is set out in subparagraphs (a) and (b)?

15 MR ZIKODE: No, I think I've covered all this.

ADV SKINNER: In paragraph 27 you refer to some of the package deals making provision for upfront credits which is what you testified to earlier. Can I ask you is there a list of all the projects which had package deals?

20 MR ZIKODE: Well, I didn't prepare a list of all the projects that I had package deals but I can refer to them as we go along.

ADV SKINNER: Mr Zimela in his evidence referred to the Internal Audit Report and in particular page 93. Do you have a
25 copy of that in front of you?

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MR ZIKODE: Sorry, you mean the Internal Audit Report?

No, I don't.

ADV SKINNER: Chair will just bear with me, the witness has been given a copy. You will see at page 93 the report says
5 that:

"The table below indicates the NIP ...".

CHAIRPERSON: Advocate Skinner, we are still trying to locate that document.

ADV SKINNER: You will see at page 93 the Internal Audit
10 Report indicates that:

"The table set out below indicates the NIP projects where the negotiated package deals were applied in awarding credits to the defence obligors".

You see the table that is reflected there?

15 MR ZIKODE: Yes I see the table but I just want to raise the fact that when this internal audit was done I had left the Secretariat a long time ago but I see what you are talking about.

ADV SKINNER: What I want to ask you is from your
20 knowledge is the table that appears at page 93 correct and full, in other words are these the only projects where there were negotiated package deals?

MR ZIKODE: No I can't confirm that you know, I would
25 time a time to cross-reference with the full list of all the projects, so I cannot confirm that.

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ADV SKINNER: You see, as I understand it there are certain other projects and in particular I think of the Magwatee Project, was that a package deal as far as you recall?

5 MR ZIKODE: Yes, the Magwatee was a perfect example of a package deal.

ADV SKINNER: And Desmond Equipment, was that a package deal?

10 MR ZIKODE: Desmond Equipment I can't confirm because when this stage came of approving it, investing taking place I was no longer really directly responsible for administering the offsets.

ADV SKINNER: Alright, so I'm not going to belabour the point but we can take it certainly from the example of Magwatee that the list appearing at page 93 was not intended to be a full and comprehensive list of all package deals, would that be right?

MR ZIKODE: Well, I hope the Secretariat can answer the question, but as I'm quickly glancing through this I see some projects are missing.

20 ADV SKINNER: One other example that perhaps springs to mind, the Denel Aero Structures, was that a package deal?

MR ZIKODE: Yes, it was.

ADV SKINNER: And it's not mentioned at this page either.

25 MR ZIKODE: Yes, on that table page 93 Sir. I don't see it.

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ADV SKINNER: While I'm enquiring about lists is there a list in existence of the projects in which multipliers were used and the extent of such multipliers?

5 MR ZIKODE: I think the list can be prepared, there's no problem at all with that but yes, this here doesn't reflect all the projects, but my understanding, because I wasn't there, my understanding was they chose a number of projects, not all the projects were included in the internal auditing that was done, so they just chose a number of projects, but we can prepare
10 this, there is no problem with that.

ADV SKINNER: If you will look at the lever arch file which we've referred to as the annexures to your evidence, do you have that file?

MR ZIKODE: Sure.

15 ADV SKINNER: In particular I'm referring to page 6 of the Annexures File. This was a document supplied to the Commission by the attorneys who were then acting on behalf of Department Trade and Industry. Have you seen this document before?

20 MR ZIKODE: Yes, I've seen it.

ADV SKINNER: Is it an accurate reflection of multipliers or not?

MR ZIKODE: Again I was not involved in combining this report, that was supplied to you by the attorneys, so I wouldn't
25 know whether all these projects, the way they calculated

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multipliers, whether that's a true reflection of a multiplier as I know it.

ADV SKINNER: Because you will see that this document reflects under a column headed "Multiplier" various figures
5 which range from single figures all the way up on page 8 to a multiplier of a 192. You can't comment on that can you?

MR ZIKODE: As I've said I don't know what was the premise you know of their calculation but from my recollection I was told that at one time the IPS just wanted to show the
10 investment by an obligor *versus* the total investment credit they got. Then they showed, if you just consider only the investment by obligor then they showed the multiplier effect. But then that as far as I know is not the correct way of determining the multiplier because if you want to see the
15 multiplier *visa vie* the credit you have to take the total investment, not just the investment by obligor because that is wrong, the programme, the programme allows you, one of the principles of this programme is the causality principle which allows the offset company to claim the investments by its
20 partners into the project as its own investment.

So if you want to determine the multipliers you have to use total investment, not just the narrow way of doing it, looking at only the obligor's portion. So, I wouldn't know whether this spreadsheet reflects, I mean the multipliers,
25 whether it's a multiplier taking that total investment or just

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only the obligor's investment, but as I've said I wasn't there when it was compiled, I don't know the basis for calculating the multiplier because if you calculate it wrongly it gives you a wrong impression, you have to take that total investment into the project and say what was the credit that was given and then if there was a multiplier, what was the multiplier. You take the credit, total credit, you divide by total investment and then you get the multiplier.

ADV SKINNER: Mr Zikode, you said in your last answer that you weren't there when this was compiled, I assume you are referring to the document that I've asked you to look at which is page 6 and following of the annexures, was that what you were referring to when you said you weren't there at the time it was compiled?

MR ZIKODE: Correct.

ADV SKINNER: Now you will see that document bears in the top left hand corner, it says "ES3", now the reason for that is it was attached to the executive summary received in the course of last year from the attorneys who last year were acting for Trade and Industry, so we presume it was drawn up by them and that the information is correct. Would that be an incorrect presumption?

MR ZIKODE: Like I'm saying I was not there, I cannot comment on that because I was not there. Whether the information here is correct I will have to physically one-by-one

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calculate the multipliers, so I cannot comment, I was not there at all.

ADV SKINNER: Now I'm suggesting to you Mr Zikode that this document at page 6, the one that's marked "E3" was probably drawn up last year because it came from the attorneys. Do you know when it was drawn up because you say you weren't there when it was drawn up.

MR ZIKODE: It really doesn't matter for me because I was not there, so I cannot tell you exactly time and the date when it was drawn up, I was not there, I no longer managed the offsets.

ADV SKINNER: I see. When you say you weren't there you mean you weren't in the section managing offsets in the course of last year?

MR ZIKODE: When it was drawn up I was not there.

ADV SKINNER: In paragraph 29 of your statement you state that:

"In general, Obligors invest directly or indirectly in possibly commercially viable projects ..."

CHAIRPERSON: Advocate Skinner, if you move from one document to the other please give us a chance to find that document. You know in advance which document you are going to move to and you've got it in front of you. Give us an opportunity of going to that document.

ADV SKINNER: I apologise Mr Chairman. I'm referring

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back to the witness's statement at paragraph 29 and I was directing your attention Mr Zikode to the first line which says:

"In general obligors invest directly or indirectly in possibly commercially viable projects".

5 MR ZIKODE: Correct.

ADV SKINNER: I assume that in if not all projects, quite a few projects, there would have been a feasibility study done to determine whether the project was possibly commercially viable?

10 MR ZIKODE: Correct.

ADV SKINNER: Mr Chairman, I now want to refer the witness to the bundle of IPCC minutes. The document appearing at page 1 is the minute of a meeting held on 24 April 1997. As I understand the minute this was the
15 inaugural meeting of the IPCC, would that be right?

MR ZIKODE: Well, I joined the Industrial Participation Secretariat in 1999, so I'm not sure whether this was the inaugural meeting, I don't know.

ADV SKINNER: Right, we'll come back to that aspect with
20 another witness but why I say so is you will see in the first paragraph it talks about the objective of the meeting was for the Industrial Participation Secretariat to present and train the IPCC representatives, to inform the IPCC representatives of the progress made within the, with the IP Policy and to present
25 some IP projects received to date, there is no reflection in the

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minutes of any previous meeting held where they refer to confirming the minutes of that meeting, so that was why I inferred this was the first meeting, but you say you can't confirm or deny that.

5 MR ZIKODE: Yes, correct.

ADV SKINNER: You see, the relevance of this document is at page 2 where there is paragraph number 5 "Questions and Clarification Required", and you will see that the first question on subparagraph (a) was:

10 *"Clarity was required as to when credits are awarded, i.e. as per projected business plan or upon performance".*

And the answer was:

"Upon performance".

15 Do you agree with that statement that's reflected there?

MR ZIKODE: Well yes, we don't have the background and the context of the questioning but reading those words as I'm reading them now yes, upon performance.

ADV SKINNER: So, from it, it would seem that the approach of the IPCC was that credits would be granted once performance had taken place. That seems to be inconsistent with the idea of granting upfront credits.

MR ZIKODE: Like I said we don't know the context. In a normal situation where you invest in a project and you still have seven years or 10 years you know, to generate sales

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credit yes, it's according to performance, but as I've explained to the Commission there come times where the investment takes place towards the end of the obligation period and then you have to give upfront credits as a result.

5 ADV SKINNER: What I'm getting at is would the granting of the upfront credits in the circumstances you've described where it's getting towards the end of the period of time be a deviation from the normal procedure that was followed by the IPCC?

10 MR ZIKODE: There is no deviation, it's a prerogative and discretion of the Minister to grant upfront credits if and when required to do so, within the programme itself there's just no deviation.

ADV SKINNER: Were upfront credits granted only in respect of SDPP projects or also for non-SDPP projects?

MR ZIKODE: From my recollection I think there were non-SDPP projects that also received upfront credits but that I will have to check from the database.

ADV SKINNER: I had started this section by referring to where the feasibility studies were being done in projects. What was the approach of the IPCC as to whether credits could be awarded in respect of feasibility studies?

MR ZIKODE: Maybe just for me to follow you Senior Counsel, where are you now in terms of paragraphs?

25 ADV SKINNER: It flows from what you say in paragraph 29

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about investors in possibly commercially viable projects and I'm just ascertaining what the procedure was where a feasibility study was done to determine whether a project would be commercially viable or not.

5 MR ZIKODE: The way the offsets are, the offsets are not some kind of donations or you know gifts to the beneficiaries, they are purely based on commercial principles, like any other investment project you can get in an economy, pure commercial principles. So, if you are going to invest in a
10 project you have to do a feasibility study and the feasibility study itself is recognised by the funders, by the promoters as an investment into the project. When you apply for funding from the IDC you include, whether it's IDC or commercial banks you include the cost of the feasibility, that forms part of your
15 investment. When IDC assess your proposal they consider that, the feasibility, the pre-feasibility, the feasibility as part of the whole package. So, with the same thing with the offset project because these are commercial projects.

When a company invest in a feasibility study and
20 the feasibility study says yes, the results are positive, you can go on and invest and further invest into the project and they do that, the total investment we do credit but then there are instances where the company invest into a feasibility study, the feasibility study says no, there is no way you can carry on with
25 this project and the offset company loses there, it doesn't get

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any credit, but if the offset company comes to us as an IPCC and IPS and say look, I've been asked to invest in a feasibility study into this project and the DTI and the IPCC recognises that part of a sector as very crucial to the development of industry in that sector and the DTI wants that feasibility study to be done so that as DTI we can know whether this sector is feasible for us as a country the DTI will then negotiate with the offset company that yes, you can invest in that feasibility study, we will give you the credit for doing that because that kind of a feasibility study is important for us.

For instance like in the, you know the nuclear sector no one will invest in a feasibility for a nuclear programme, the banks won't give you money for that thing, I just want to see whether it's feasible or not, they won't give you that money, so here we have this lever of offset where we'll say to the offset obligated companies look, as South Africa we want to know whether we can invest our money in the future in this sector, for instance the nuclear sector, please invest in it, we'll give you credit, so that project will be recognised as a feasibility study project and then you will give the offset companies the credits because we as a country, we are benefiting from that particular feasibility that will be done as a result of investment cost or done by the obligor.

So, you see, we looked at different situations, what kind of a project is this, is it feasible for you to get feasibility,

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money from the banks to do feasibility study, well generally that is not, that is not feasible, that is why if you go to the IDC and an organ of state, if you go there and you want to borrow money to invest in a project they first ask you do you have
5 10%, 15% of your own money because your own money must go into this high risk part of the project, feasibility studies, pre-disability studies, that's why it goes in you see, so it's very important for the Commission to realise that yes, there were projects where it was only a feasibility, like the Phytoenergy
10 Project, a very important project for us as a country where we needed to know that as a country can we go into the area of bio-diesel with a very limited arable land in South Africa, can you take that risk of not using this land for food but use it for bio-diesel and getting to the issues of food security, we needed
15 a feasibility to be done there and the banks were, the banks can't give you the monies to do those feasibility.

So, that was taken as the feasibility study project, so you then, if the offset come I said well, I can put money as long as you give me the credits, then you negotiate the
20 package of credit that you are going to give them, so it doesn't matter what the results are saying, results might say well South Africa, you cannot invest in this thing because you will be getting to the issues of security, food security and you would have a problem with the population, so it doesn't matter really,
25 as far as the offset company is concerned it stops when you

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negotiate with them that we need this money, we cannot get it from the banks, even from the institutions of Government, they will say no, this is risky but if it says no, then we have lost that money because that's the problem with the feasibility, if the feasibility study says no, we cannot continue investing then we have lost that money, so this was an easy money from the offset companies, that's why then it becomes a project where you have to fairly reward the offset company by giving them credits.

5
10 ADV SKINNER: I just want to clarify, where an obligor was about to embark on a feasibility study would the obligor have to ask in advance of getting credits for the feasibility study even if the recommendation was the project wasn't viable, or could it embark on the feasibility study, conclude it wasn't viable and then still ask for credits that had been, for expenses that had already been incurred?

15
20 MR ZIKODE: Remember in many cases these projects will be coming from the South Africans, they will approach the offset company and say look, we want money for investment into this project but we first have to start with the feasibility study just to see whether it's feasible or not okay? And together the South African and the offset company will approach DTI and say look, here is a project, is it fitting in the industrialisation strategy of the DTI, is it the important sector, if yes it is then you will negotiate with the offset company that

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yes, it is very important for our industrialisation purposes, please invest into the project and it doesn't matter whether the feasibility study says no or yes but at least we will know that as South Africa we mustn't go into that kind of an industry, so they will come to us first before the start of the feasibility. You see, that is why an offset company was taking a risk if they will just invest in a feasibility study and then with the hope that if it says no, they will rush to the DTI and say please give us the credits because we have done this, they first had to come to the DTI and the DTI assessed the project and then agree on whether they will be giving credits for the feasibility study or not.

ADV SKINNER: I still want you to look at the bundle of IPCC minutes, in particular at page 39 of that bundle. You will see at page 39 there's a heading under paragraph 5 "Cost of Feasibility Studies as part of Investment". Halfway down that paragraph it says:

"The IP Control Committee has decided that if the project is successful the obligor is entitled to claim for the feasibility costs. If the project fails the IP Secretariat would decide on allocate ..."

Presumably "allocating":

"... IP credits for feasibility studies on a case-by-case basis and depending on the reasons for failure".

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What I want to ask you is does that relate to SDPP projects or non-SDPP projects?

MR ZIKODE: When it comes to the determination of the IPCC on the policy and on the programme itself that will apply to all projects regardless of where they come from.

ADV SKINNER: Returning then to your statement, we were dealing with paragraph 29 of your statement. In paragraph 29 after the passage I've referred you to, you go on to say:

"Projects which are anticipated to produce reasonable rates of return and additional economic benefits to the country including investments, export, domestic sales, jobs, training, contracting to SMME's".

And so on. There you are referring to SDPP or non-SDPP projects?

MR ZIKODE: We refer to all projects.

ADV SKINNER: So even though we know that credits could not be granted for the other factors set out there such as subcontracting to SMME's, particularly BEE SMME's, that was still taken into account in assessing a project, was it?

MR ZIKODE: Correct.

ADV SKINNER: You then say in paragraph 30 that:

"Because projects had to be sustainable and markets fluctuated all the time not all the projects listed in the SDPP agreements could be carried

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out”.

In fact most of the projects that were originally specified in the contracts were not carried out, would that be correct?

MR ZIKODE: Yes, not all the projects listed in the SDPP
5 agreements could be carried out, that is very correct.

ADV SKINNER: Now I’m going further and suggesting that
to say not all the projects is actually understating the case, for
example of BAE four of the 24 contracts referred to in the
contracts were implemented, would that be right?

10 MR ZIKODE: That is right but again for the
Commissioners now the NIP obligations, the commitment is in
terms of credits, not projects you know, because when it’s a
project it becomes some kind of a battering. The NIP
commitments are in terms of credits, that is why if you take for
15 instance BAE SAAB, their NIP commitments where US\$7.2bn
worth of credits, not project listed in an annexure somewhere
in the contracts, those were the proposals that looked as you
are signing the contract these are the projects that you are
already looking at, some of these projects DTI has already said
20 yes, if you invest in this you will get credit, some they were
still going to go do the pre-feasibility and feasibility studies
just to assess whether the projects are commercially viable but
the appearance of the projects there in the annexures doesn’t
mean that those were the commitments they had to deliver
25 come rain or shine, no; what they had to deliver was the credit,

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not that list of projects.

This programme is based on commercially viable projects, it wouldn't have helped us as South Africa to force this company and say oh well, but it appears in the annexures, invest in it, even if the feasibility study says you know this project, there's no way you can invest, let this thing die you know in a few months down the line, it just doesn't help the country, it's not fair to the offset company to say no, but it appears in the annexures, you have to invest in it because first, and it's very important to understand the NIP commitments are in terms of credits, not the projects, the projects are just a mechanism to achieve your credits.

ADV SKINNER: I understand that Mr Zikode, I'm simply pointing out that this is a bit of an understatement to say not all the projects, in fact certainly in the case of BEE it was the overwhelming majority of projects referred to in the NIP agreement that weren't carried out.

MR ZIKODE: It doesn't matter, even if all of them were not implemented it just doesn't matter, as long as they gave us substitute projects that added up to their NIP obligation commitment which was in credit, so it's really, it doesn't matter as far as the programme is concerned whether the majority, even if it's not all of them, if all of them were commercially not viable there was no need we were going to carry on with those projects.

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CHAIRPERSON: Just hold on.

NOTE: **Caucus.**

CHAIRPERSON: Okay, thank you.

ADV SKINNER: As the Chair please. In paragraph 31 of
5 your statement you say that there arose instances where,
because of certain considerations obligors were asked to invest
in strategic projects. Now this is in the context under the
heading of "Multipliers" in your statement. What I want to ask
you is would it be the case that in every project where a
10 multiplier was granted the obligor was asked to invest or were
there instances where multipliers were granted at the obligor
asking to undertake a project?

MR ZIKODE: There were certain instances where the
projects will come directly from government, for instance if we
15 take the example of the Magwatee and the Limpopo Tea Estate,
this was a case where you find the provincial government
owning these tea estates and having no money to invest in
these tea estates any further. Then the provincial government
approached the DTI and said please can we invest into this
20 project from your normal DTI incentives and you will find that
from the incentives if you asses the tea estate it wouldn't
(indistinct) from normal DTI incentives and then the provincial
government would then ask the Minister of Trade and Industry
use the offset money to invest into this tea estate.

25 So yes, for saving jobs, for exactly like it happened

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in Magwa, about 2 500 people sitting under the trees and I went there, I saw that myself, not working because there was no money from government, provincial government for salaries, so they asked DTI to intervene using this programme, so that
5 was a strategic project as far as government is concerned to save jobs that were there.

So, if you look at this project and you say if you didn't provide upfront credits what was going to happen. For tea you invest and you wait for the tree plants to grow before
10 you can start picking the leaves, in fact they grow and then you have to wait for another period for them to dry and then you pick the leaves and that takes a number of years.

Then Ferro Staal, a company which in their lives the only thing they know is to make submarines, they say oh well,
15 yes, we are prepared to help you as government in this project but you need to give us credits, not only investment credits but also sales credits because with our money that we are going to put here we can put that money in another industrial project, we are going to get investment credits and sales credit, so
20 here we are going to get nothing within our period because these trees, they will take three, four years before they can grow, so we need our credits and then because the project is strategic to us as a country we say then invest in it, we'll give you the credits.

25 So yes, these are the strategic projects, it's just a

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good example of a strategic project to South Africans wherein we asked the offset to invest.

ADV SKINNER: I just want to try and clarify your answer, I'm referring specifically to projects where multipliers were
5 granted and what I'm asking is in those particular projects did the impetus always come from the DTI or the Government to initiate the project, or were there projects where the obligor would take the initiative and say here's a project which I want to do but on condition I get a multiplier?

10 MR ZIKODE: Remember, the beneficiaries, when you talk about this project the beneficiaries are us South Africans, we benefit. As I've said, in many cases the South African entrepreneurs will approach an offset company and say look, I have this project, can you invest in it okay, and then the
15 company will say look, we can but the issue now is we just don't have time to generate enough credits which would be good as a return for us to invest into this project.

First of all we can invest as the sole investors as long as we can get enough credits you know as a return for our
20 investment. So, the local entrepreneur will approach the DTI together with the offset company and say well, we are negotiating a partnership now, this company which has obligation with you is prepared to help us as South Africans to do this project but then there are these dynamics, they have to
25 achieve the certain milestones in terms of credits and if you

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follow normal procedures or processes they won't have enough time you know to realise those credits, then in that way an offset company together with the local entrepreneur, a person who will benefit, a South African who will benefit from the investment, they approach us and then we discuss the issues of a multiplier going forward if we as the DTI realised that this project is very good for our industrialisation purposes.

ADV SKINNER: So the short answer is that multipliers in certain projects could either be where the DTI or government had taken initiative to set the project in motion or where the obligor had approached DTI with the project?

MR ZIKODE: Well, in short you can put it like that yes.

ADV SKINNER: You then say in paragraph 31 that:
"In those instances the IPS negotiated multipliers with the obligors (subject to the approval of the executive), ..."

Who were you referring to by the reference to the "executive"?

MR ZIKODE: The Minister of Trade and Industry.

ADV SKINNER: So, without the approval of the executive would the IPS have authority to conclude an arrangement with an obligor for the grant of a multiplier?

MR ZIKODE: No.

ADV SKINNER: So, the consent of the Minister was paramount?

MR ZIKODE: Yes.

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ADV SKINNER: Do you know, and if you don't, please say so, where the Minister would have derived his power to approve the use of a multiplier?

5 CHAIRPERSON: Advocate sorry, I'm not going to allow that question, it's a legal question, this witness tells you that know as far as he is concerned once he's got authority from the Minister then they can do it.

10 ADV SKINNER: As the Chair pleases. Mr Zikode, you were present when both Dr Jourdan and Mr Pillay gave evidence, is that correct?

MR ZIKODE: Yes, I was.

15 ADV SKINNER: Both of them testified that the International Offers Negotiating Team had taken a decision that there should be no multipliers for the SDPP contracts. You heard that evidence?

MR ZIKODE: Yes, I think along those lines yes, I heard it.

ADV SKINNER: And the evidence was further that this was well-known to the DTI, did you hear that evidence?

20 MR ZIKODE: Yes.

25 ADV SKINNER: I accept that there was a period of approximately a year I think from 1999 when you were not at the DTI but talking about the period when you were there are you able to say whether that is correct that the decision of the IONT that there should be no multipliers was well-known

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amongst the DTI?

MR ZIKODE: Well, I wouldn't know whether it was well-known, you know amongst DTI.

ADV SKINNER: Well, let's confine it to you. Did you know
5 that the IONT had decided that there should be no multipliers for SDPP contracts?

MR ZIKODE: No, I didn't know that.

ADV SKINNER: Dr Jourdan also testified that the approach
10 of the IONT was that it was not intended that the obligor should be the only investor in a project, he specifically referred to the fact that normally there would be other investors, is that correct, that portion of his evidence as far as you were concerned?

MR ZIKODE: Well, I don't want to comment now about
15 you know the testimony of others because when I joined the DTI I was given the NIP terms you know as part of the, well like any other offset agreement that will be managed by the DTI those days, so what I know exactly is what is in the NIP terms. I don't want to comment about the evidence of others but if I
20 may just go on to say something on this I think it's relevant to your question, as far as I know the IONT was a committee of government officials. I'm not sure about Mr Jayendra Naidoo, whether he was working for government or not but I know that many people there were just government officials, they were
25 given a mandate to negotiate the contracts obviously and

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together with the offsets, the projects, and they came up with that list of projects which then formed part of the contracts. But I don't think that the IONT was given any mandate to change the policy of government, all they were doing was under the policy as it was approved by Cabinet some years before them, this is what I know, they were not given any mandate at all to change the policy but they were given mandate to negotiate the contracts and do their best to come up with the good proposals as far as the offsets NIP commitments are concerned and I think as a bunch of government officials they did a very good job, but I want to comment from my experience now over the years being part of the IPCC and Industrial Participation Secretariat that the projects they came up with were not to be, were not to be so-called golden projects that couldn't be substituted by any means, they did their best to give us those concepts because they were still, all of them were still at the conceptual stage, then with time when it was obvious that they are not implementable, then they were substituted at times with even better projects because you know reading newspapers (indistinct) there is always this notion that the original list was some kind of a good project having been put together by you know intelligent beings.

No, it was a good effort of government officials negotiating with the offset companies, they came up with that list, many of them which were not feasible in any way as time

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told us. So, I think I just want to comment about that IONT group, they did their best but really theirs was not to amend any policy, no, not at all.

ADV SKINNER: Mr Zikode, no one is suggesting that the project couldn't be substituted from what was set out in the contract, all I was asking you is whether you dispute the evidence that's been given that the decision of the IONT that there should be no multipliers was well-known to the DTI and as I understand your answer you say you can't comment on that?

MR ZIKODE: Well, I can't comment on that but to me it was not well-known, to me.

ADV SKINNER: I want to refer you to the bundle of IPCC minutes, do you have that? Mr Chairman, the extract I'm referring to is from the foot of page 26 over to page 27 of that bundle. It's the minutes of a meeting of the IP Secretariat held on 22 November 2001. Do you have that Mr Zikode?

MR ZIKODE: Page 26? Yes.

ADV SKINNER: You will see at the foot of page 26 under item 3.3 it refers to Volvo being entitled to transfer credits from their SPA to SAAB/BAE. Can you just clarify what SPA is?

MR ZIKODE: Like I said that the Industrial Participation Programme is a tool that we use to industrialise our country. Within this programme we have allowed companies to invest in projects even if they are facing no offset obligations but we

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allowed these foreign companies to invest into the local economy and start generating credits even if they are not facing any offset obligation, and many of them will do that because they will know that in future South Africa might buy
5 aeroplanes, so as an aeroplane manufacturing company we will want to start now investing in projects, getting credits, and it's a good (indistinct) if you look at it because we get projects upfront even before we have a contract or a tender okay?

So these companies will invest in these projects but
10 then they won't just invest because if you are a company you invest into the local economy and then afterwards you come to us and say whoa, by the way I invested into that project, now I have an obligation, can you recognise that project as an offset project, we would have said no, so they first come to us and
15 say can I invest into that project because I want to get ready so that in future if it's happened, I win a tender and I face offset obligations, I can use that project to offset my obligation and then we'll say yes and sign the so-called strategic partnership agreement with that company.

20 It's different from the NIP agreement because the NIP agreement is the one that you sign when you incur an obligation, you have won a tender now, we have this obligation, we sign a NIP agreement with you, but if you are proactive you want to start investing and accumulating credits, then we sign
25 with you the Strategic Partnership Agreement which really

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confirm what I said that this programme is used for nothing else but to get the foreign companies, the multinationals to invest in our economy, whether through the Strategic Partnership Agreement or through the actual NIP agreements resulting from the procurement contracts. So, the SPA, the Strategic Partnership Agreement, the companies will sign with us as DTI for them to start investing in projects in anticipation of their NIP commitments in the future.

ADV SKINNER: So, this first sentence at the foot of page 26 of the IPCC bundle is indicating that in terms of that Strategic Partnership Agreement Volvo as a sub-supplier to BAE for the Gripen's could transfer NIP credits to BAE/SAAB?

MR ZIKODE: Correct, and this is, this was allowed as per the NIP terms.

ADV SKINNER: Then you will see over the page at page 27, the third line from the top says:

"Effectively US\$10 million NIP credits which is the actual export value excluding the multipliers, will be allocated to SAAB/BAE for the Gripen contract as their contract excludes multipliers".

In other words it's saying that the SAAB/BAE contract for the Gripen's excludes multipliers, do you see that?

MR ZIKODE: Again I need to give a little bit of a background for the Commissioners to understand. The SBA falls under the normal NIP guidelines, so when the company

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invest in a project they get credits for investment, they get credit for export, local sales, they also get credits for technology transfer, SMME development, BEE, all sorts of credits that they get, so the US\$1 they invested, it ends up
5 generating a lot of credits for them which is a huge multiplier okay?

So, we agreed that when these credits now are transferred from the SPA into the NIP contracts we will take away all these other facts, you know credits that came as a
10 result of their assisting the SMME somewhere or the BEE somewhere and leave only the credits without multipliers, but then this confirms our argument that the multipliers were given at ..., were not just given willy-nilly because there was no way the Minister was going to give or allow a multiplier on a project
15 that happened five, six years ago because this, remember these were bank, what we called banked credits, they are there in the SPA with multipliers and the projects happened a long time ago, so there is no problem when it comes to the issues of the time period is almost at the end of the obligation period,
20 you cannot get your sales credit like I explained, these are just credits that are there, the projects have been done, maybe it doesn't even exist now you know, but the credits are here.

Then we had to take away multiplier there because there is no need to give a multiplier on that particular project,
25 we only give multipliers when there is a strategic and very

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important reason why we must give multipliers. So this in fact agrees with us, our thinking that multiplier, you don't just give a multiplier, you give when there is a need, a reason.

ADV SKINNER: Mr Zikode, I'm asking you specifically
5 about the reference in that sentence to the fact that the BAE/SAAB contract for Gripen's excludes multipliers.

MR ZIKODE: Well, the way it's written there excludes multipliers. You can take the first value, that is what the minutes were saying, these are the Secretariat who wrote the
10 minutes, but the Minister of Trade and Industry has the authority to give multipliers under any programme, whether it's the SDP or Boeing or Telkom, he has the authority to give multipliers whenever there is a need.

ADV SKINNER: Mr Zikode, please try to confine your
15 answer to what's actually being asked. Is it correct that the BAE/SAAB contract for Gripen's excludes multipliers?

MR ZIKODE: The NIP terms, the way they are written, it says US\$1 investment, US\$1 credit, US\$1 export, US#\$1 credit, but the NIP terms as far as I know that, and I've said this, I
20 don't remember any sentence or paragraph where it says the multiplier can never be used in the NIP terms.

ADV SKINNER: So, this then must have been the general understanding of the IP Secretariat that multipliers were excluded?

25 MR ZIKODE: Well, I don't know whether that's the

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general understanding but what I'm saying as it appears here the way it was written by the Secretary of the Committee it says the multipliers are excluded.

5 ADV SKINNER: And you were present at this meeting according to these minutes?

MR ZIKODE: Yes, I was present.

ADV SKINNER: Mr Chairman, I'm about to move on to a different aspect, I see it is about 12h55, would this be a convenient time?

10 CHAIRPERSON: Thank you, we'll then adjourn for lunch.

(Commission adjourns.)

(Commission reopens.)

CHAIRPERSON: Thank you. Can the witness confirm that he is still under oath?

15 MR ZIKODE: Yes, I do.

CHAIRPERSON: Thank you.

ADV SKINNER: Mr Zikode, earlier in your evidence this morning I had asked you about what you meant by the reference to "multiplier effect" and you said you would prefer to deal with it under the topic of Multipliers, which is what we've been considering lately. Can you explain what you mean by "multiplier effect" and how that differs from a multiplier?

20 MR ZIKODE: From my understanding of multiplier effect, in fact we use this term just to explain you know, the causality principle, how it ties together with the issue of multipliers.

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The multiplier effect will happen where you just take the investment of the obligor and then you use it to divide the total credits that were achieved and also there will be a case where you take ... Yes, if you take the investment of the obligor alone and then you use it to divide the total credits, we were trying to explain that although that is not a multiplier per se, but it shows the effect it would have on the total credits if you only consider that the investment are by the obligor whereas the multiplier as far as the offsets is concerned, offset programme is concerned, you take that total obligation, total obligation, sorry, the total investments, you use that to divide the total NIP investment credits and then you get the multiplier, that's how I understand this, that the multiplier effect is something that doesn't appear anywhere in our programme, we were just trying to explain that if you look at the obligor itself alone what happened in relation to the total investment credits.

ADV SKINNER: So, looked at in another way by a multiplier effect you are talking about how it is that an obligor can invest a particular amount as a part of a project but then get credit for the entire investment into the project.

MR ZIKODE: In fact we don't even use it, we were just trying to explain for those people who were interested to know the multiple credits that happened as a result of just the offset obligor investment, but the multiplier as far as we are

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concerned will involve the total investment into a project compared to the total NIP credits when it comes to investment credits.

ADV SKINNER: Can I then return to your statement at
5 paragraph 34 of your signed statement. You deal here with the heading "Upfront Credits" and you say:

"It was a considered view that the NIP Terms had a pitfall".

Just that reference to a "considered view", was this DTI policy
10 or what were you referring to there?

MR ZIKODE: Sorry, I don't understand the question, but DTI policy what do you mean?

ADV SKINNER: In the first line of paragraph 34 you say:
"It was a considered view ...". I'm just trying to find out what
15 you mean by that, do you mean that the DTI had considered the question and informally adopted a policy or are you saying this is just a view that was held by some people or it was just a view held by you personally, what is the position?

MR ZIKODE: When you look at the NIP Terms, the NIP
20 Terms, although they allow offset obligated companies to substitute projects they don't provide of what will happen ...

CHAIRPERSON: I'm sorry to interrupt you Mr Zikode, the question is simple, when you say it was a considered view, was that your view, is it a group of you, is that the DTI's view? I
25 mean that is all what Advocate Skinner is trying to find out

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from you.

MR ZIKODE: It was the DTI's view.

ADV SKINNER: Thank you. If I can then ask you to turn over the page to paragraph 37 you have a topic there "Banked Credits" and you indicate in paragraph 37 that:

"This is a term denoting the accumulated NIP credits that an obligor would use to discharge other NIP obligations".

Can you just explain some more about that topic?

10 MR ZIKODE: Yes, like I explained the issue of the Strategic Partnership Agreement that we had that agreement so that companies could invest into projects in anticipation of their NIP obligations in future. So, those credits that will be sitting in the Strategic Partnership Agreement, we refer to them as banked credits.

ADV SKINNER: Thank you. In the next paragraph in the middle of the paragraph you give the example of Volvo transferring credits to BAE SAAB and you say:

20 *"When the credits are transferred to BAE SAAB the multipliers as per the normal IP Policy are excluded so as to conform to the BAE SAAB NIP contract".*

Do you see that?

MR ZIKODE: Yes.

ADV SKINNER: So would I be correct in concluding from this that the multipliers that we have seen in the ordinary NIP

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policy cannot be applied to the SDPP contracts?

MR ZIKODE: Well, I think we are repeating ourselves. I have explained the reason why the multipliers were applied on some projects, I've clearly given the reasons why the DTI and the Minister would look at the project and because of those reasons apply multiplier in any way because the NIP Terms, they did not stop the Minister from applying the multipliers. When you come to the banked credits, because these are credits that are in the Strategic Partnership Agreement and they are credits of projects that have been done, say 10 or 6 years before, it was prudent for the DTI to take away the multipliers and then allow the transfer without multipliers because there was no reason whatsoever to apply multiplier on the bank credits because those projects, they didn't face the problem we talked about, which the NIP Terms could not provide in terms, what you do with the project that has been implemented towards the end of the whole obligation, so the multipliers were only applied on such projects where there were problems really that were facing the DTI and the obligors. So, when the credits were transferred from the banked credits or from the SPA there was just no reason at all to use the multipliers, that's why we stripped off the multipliers from those credits.

ADV SKINNER: I just want to clarify what you are saying there. By the reference to the multipliers as per the normal IP

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Policy, are you referring to the list that we have seen where multipliers can be given for such factors as SMME or historically disadvantaged and the like?

MR ZIKODE: Yes, correct.

5 ADV SKINNER: And you say that those kind of multipliers were excluded when credits were transformed in order to conform with the BAE SAAB, NIP contract?

MR ZIKODE: Correct.

10 ADV SKINNER: In other words the BAE SAAB NIP contract did not provide for those kind of multipliers that were applicable in the ordinary non-SDPP contract?

MR ZIKODE: The crediting methodology of the NIP Terms did not provide for the other objectives like SMME's and BEE.

15 ADV SKINNER: Assuming for the moment that the DTI and/or the Minister was empowered to grant multipliers, does that power from your knowledge of what actually happened, extend to these kind of factors such as SMME's and historically disadvantaged or does it only refer to the straight figure
20 whereby the credits are multiplied?

MR ZIKODE: Yes, it extends to the others.

ADV SKINNER: So, what you are saying is that in an SDPP contract the DTI could still award a credit with a multiplier in terms of the non-SDPP Guidelines?

25 MR ZIKODE: I'm not sure whether I understand your

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question but let me just make an example, maybe it will answer you. Within the SDP we had ...

CHAIRPERSON: Just hold on a second, if you don't understand the question, don't answer. Can you, Advocate Skinner can you just try and simplify the question?

ADV SKINNER: Certainly Mr Chairman. We've been talking about multipliers in the sense of where an investment is then multiplied by a certain figure in order to give an investment credit. I'm drawing a distinction between that kind of instance and the instance where a multiplier was provided for in the ordinary NIP, non-SDPP contracts where we've seen that you could get credits and a built-in multiplier for things such as SMME and historically disadvantaged and the like, do you understand the distinction I'm drawing?

MR ZIKODE: Well, I understand. Under the NIP, let me say under the SDPP's the Minister didn't give credits on the SMME's and other things.

ADV SKINNER: And what I'm trying to find out is that the evidence that you've given so far is that in the SDPP contracts the Minister could grant authorisation for a multiplier and I'm asking does that extend to the Minister being able to grant credits for the other factors that were referred to in the non-SDPP contracts?

MR ZIKODE: Under the non-SDPP contracts he could but under the SDPP contracts he only gave multipliers for

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investments and sales.

ADV SKINNER: Thank you. If you will then look at paragraph 41 of your statement. You set out there a table which you say shows the original projects proposed by the obligors that were implemented. Now since this forms part of your statement can I ask you did you check the accuracy of this table?

MR ZIKODE: Yes, I checked the accuracy of the table and I found that it was missing one or two projects.

ADV SKINNER: Apart from missing one or two projects you say it also seems that the figures reflected in the table under paragraph 41 differ from the figures in Annexure "F", is that correct?

MR ZIKODE: Sorry, I forgot to add that I also checked the figures that some figures reflecting here were not accurate as per the Annexure "F".

ADV SKINNER: In fact I've tried to do that comparison and the conclusion I came to is that most of the figures in the Table 1 are different from the figures in Annexure "F".

MR ZIKODE: Yes, of course because Table 1, Table 1 was compiled using the old figures that were subsequently corrected by Mr Zimela in his Industrial Participation Secretariat. That's why I say if you check now the corrected figure as per the Annexure "F" they are not exactly the same with this one, so this one was used using the old numbers, but

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then the correct numbers are those appearing in Annexure "F".

ADV SKINNER: Then in paragraph 42 you then show Table 2 reflecting proposed projects that were withdrawn. Is this the complete list of proposed projects that were withdrawn or is it not a full list?

MR ZIKODE: Again I think there will be ..., this is not a full list, there will be one or two missing.

ADV SKINNER: You see, I ask that because as I understood it BAE had originally in the contract proposed 24 projects but only carried out four, so there were 20 projects that were withdrawn and substituted by others, would that be right?

MR ZIKODE: Correct.

ADV SKINNER: Mr Zikode I want to move on from your signed statement to raise other aspects with you because although your statement had indicated in paragraph 7 that you would be dealing with the SDPP projects and substitutions there's very little discussion, if at all, in your statement of the projects, so I want to move on to discuss certain particular projects and how they illustrate the approach of the DTI with regard to topics such as causality, additionality and multipliers, but can I start by asking you in relation to investments and investments only, did South Africa get in your view the benefits from the SDPP which they were expected to get?

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MR ZIKODE: Oh yes, as far as my views are concerned we got more than what we expected. I just want to find out from you Senior Counsel, are you still going to come back to my statement?

5 ADV SKINNER: Sorry Mr Zikode, I didn't hear your last sentence?

MR ZIKODE: Are you still going to come back to my statement? I hear you say you are moving on to something else.

10 ADV SKINNER: Well, before I move then are there aspects in your statement you would like the Commission to specifically have regard to?

MR ZIKODE: No.

15 ADV SKINNER: Very well, then I'm going to move on from there. Can I put another proposition to you, if the Commission were to conclude the multipliers should not have been used in respect of the SDPP contracts, does this not mean that there was a shortfall in the amount of investment that South Africa should have received?

20 MR ZIKODE: Well, like I'm saying in my view we've got more than what we expected and the projects that we managed, I would like to make an example of an investment fund because in any way you know these projects were like you know, managed exactly the same way the investment fund is managed,
25 commercially sensitive project, investments coming in, jobs

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created, export being made. In an investment fund there will be cases where the fund manager and his investment committee, they will put, depending on the riskiness of the project they will put high interest rate on the project. Because
5 this project is risky we put high interest rate because there is a likelihood that our money won't come back.

If the project is not risky they will put a very low interest rate but in the end when the investment fund assess the performance of the whole fund they don't look at each and
10 every specific project or what is it that it returned, they look at the whole portfolio, what did it return to us as an investment fund, it's exactly the same here. Risky projects were given more multipliers.

For the reasons that we talked about those that
15 were not risky, those that didn't need any multipliers nothing was given. If you look at the total performance of our portfolio you will see that South Africa when it comes to the investments that were brought by this offset companies and their partners, South Africa benefited. I want to refer to this document which
20 was Annexure "F" in Mr Zimela's statement which I think is Annexure "A" in my statement.

And with your permission Commissioners just to make one or two inferences from this document if you look at the last page in a row where it says "Grand Totals", well like
25 Mr Zimela explained there's grand totals for those obligations

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that were in Dollars and below that for GSC which was in Euros, but if you look at the totals and only taking the one for Dollars, that row for Dollars, if you take the total investment credit, the total investment credit will be US\$2.7bn and then
5 you divide that US\$2.7bn with the total actual investment which is US\$978 million, you get a multiplier of 2.7, I can say 2.8 because it's 2.79 you know from my calculator.

So, if you look at the whole portfolio you take the investment credits, you divide these investment credits with the
10 total investment, what you get is only a factor of 2.8 multiplier, exactly like an investment company will do looking at total portfolio. Yes, within individual projects inside there you will find high interest rates, low interest rates on others and so forth, but at the end we just look at the internal rate of return
15 that you achieved as the investment company. In our case here we look at the multiplier that was applied in total, if you look at investments credit and you look at the total investments by obligors together with their partners it was only 2.79, 2.8 roughly okay?

20 And you know Commissioners, the whole world was looking at our offset obligations. Remember to have indirect offset coming from the defence procurement is a unique thing, here in South Africa we were able to get some benefits from a defence procurement, benefits for civilian industry, something
25 that doesn't happen in many countries of the world, so the

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world was looking at us, looking at how South Africa has managed to draw benefits from a defence procurement and these are the benefits.

5 Countries like Brazil, they have invited South Africa to come and teach them how do you manage this from your defence procurement you are able to generate benefits for the civilian industry and develop your local economic other than just defence, which was the case before. We went to Brazil, we presented there, we were invited by Mauritius to present
10 because they were also looking at this kind of thing that you are able to get benefits for civilian industries out of the defence procurement, things that do not happen in other countries.

You see, that's why I say we benefited more than
15 what was expected if you look at the investments, if you look at the jobs that were created, if you look at exports that were generated and what is nice about exports and local sales is that even today we are still generating those exports and local sales, we are still generating those employment although the
20 offset obligations have been done with, the companies are no longer here but what is good is the investments and all these good things I'm talking about happened here, is still happening even today, so that's why I say for my own perspective we benefited a lot from this defence procurement.

25 ADV SKINNER: Mr Zikode, you are talking about general

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benefits to the country. My question was specifically related to the amount of investment which the country should have received in terms of the SDPP and let me put it to you again that if the Commission concludes that multipliers should not have been used does it not then follow that there was a shortfall in the amount of investment that should have been received in terms of the SDPP contracts?

MR ZIKODE: Well, I wouldn't want to comment about how the Commission is going to make its finding but what we are saying is that the NIP commitments, when it comes to the investment credits, can never equate to the actual investments on the ground because the programme is not designed like that, the programme is in terms of credits, is designed so that whoever is managing the programme can use these credits to direct and redirect investment into those sectors where it thinks it's important for the development of the industrial capability and the economy of the country, but the NIP credits themselves can never be equal to the actual investment that you would get at the end of the day, otherwise there is no need to specify the NIP obligations in terms of the so-called credits, you just say, then you will just say yours is just to invest so much in the economy and that's it.

It is in terms of the credits because this credit thing, you use it for industrialisation purpose. You see, that is why, if I can be allowed, that is why there are penalties to be

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paid and the penalties are not desirable to you as a government to force these companies to pay penalties, why, because you lose at the end of the day. It looks like it's a punishment yes, he was naughty [sic], but you lose at the end of the day because once they pay the penalty all these offset credits they were supposed to have achieved are gone. What you are left, you are left with these credits that you can't do anything with and the money just goes into the Treasury, it doesn't develop any jobs, investment, exports, that is why I'm trying to explain, that's why I'm bringing this issue that the credits, they are just used for a specific purpose as a tool but at the end of the day there is no way you can equate that exactly in terms of numbers to the investment that will come into the economy.

15 ADV SKINNER: Mr Zikode, what I'm suggesting to you is a simple proposition, let's refer to it in credits. If multipliers were not to have been used then all the obligors would have had to achieve more investment credits, does that not follow?

20 MR ZIKODE: No, but I don't agree with that proposition because there is no way the multipliers were not to have been used, so I don't agree with that.

ADV SKINNER: Mr Zikode, I was suggesting to you on the hypothesis that the Commission finds that multipliers were not to be used and I'm exploring what the consequence should the Commission reach such a view.

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MR ZIKODE: Commissioners, I'm not prepared to speculate on the hypothesis.

ADV SKINNER: Very well, we'll move on to address that in argument. You've referred several times to these multipliers.

5 In your view was the extent of the multiplier figures that were used excessive or not?

MR ZIKODE: If you look at the whole portfolio I will say they were not.

10 ADV SKINNER: And if one looks at the individual projects, were there projects were in your view there were excessive multipliers used?

15 MR ZIKODE: Well, as a person there will be one or two projects where I thought maybe the programme manager didn't negotiate hard enough or the IPCC was a bit soft. That's my view as a person but those were the decisions of the whole Commission, not just for me or (indistinct).

20 ADV SKINNER: Yes, your view goes further than just as a person, I'm asking you since we know you sat on the IPCC and were chairman of the IPCC at various stages but you've given your answer. Now I want to start looking at certain of the projects and the first project I want to look at is the BAE project which is referred to as Dunlop Tyres. Now Mr Chair and Commissioner Musi, that appears in Annexure "F", almost halfway down the first page of Annexure "F" page 110 you will see on the left hand side under "Project Name" it says "Dunlop

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Tyres”.

MR ZIKODE: Sorry, Annexure “F”?

ADV SKINNER: Mr Chairman, just bear with us, I think the witness is trying to locate Annexure “F”. And Mr Zikode while
5 you are doing that can I just clarify one aspect. You referred to in one of your answers to Annexure “F” now being Annexure “A” to your statement, that’s not quite correct, it still remains as Annexure “F” to Mr Zimela’s statement. Alright, you have Annexure “F”, do you? What Annexure “F” indicates is that the
10 actual obligor, in other words BAE, invested US\$7.5 million, it’s under the column “Actual Obligor Investments” and the total actual investments were some US\$29.9 million, is that correct?

MR ZIKODE: That is correct.

ADV SKINNER: Now ...

15 CHAIRPERSON: I’m sorry, can you repeat the question?

ADV SKINNER: Certainly Mr Chairman. I was asking the witness just to confirm that if one looks at Annexure “F” under the project name Dunlop Tyres one concludes that the actual amount invested by BAE in the column headed “Actual Obligor
20 Investments” is approximately US\$7.5 million and the total actual investments for the project was US\$29.9 million approximately. By way of background am I correct that this project was for the capital expansion of two factories of Dunlop Tyres, one in Ladysmith and one in Durban?

25 MR ZIKODE: Correct.

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ADV SKINNER: The one query that raises itself is you have indicated that in considering projects, even though credits were not to be granted for historically disadvantaged ownership and SMME's and the like, that was still a consideration. Why then, or what then was the approach of the DTI with regard to very large companies?

MR ZIKODE: Even today if you look at the DTI grounds, DTI incentives the big percentage of those incentives go to big companies, in fact there's an outcry out there that SMME's don't benefit from, or they benefit a little from the incentives of DTI, so this programme, more especially the SDPP programme benefited a lot of big companies, so there is nothing wrong with Dunlop benefiting from the SDP, nothing wrong at all.

ADV SKINNER: And that would be why two projects such as on the second page of Exhibit "F" page 111 there was a project for Electrolux, similarly what you are saying is that the size of the company was not of concern to the DTI as to whether it should be part of a project.

MR ZIKODE: Yes, the size didn't matter at all.

ADV SKINNER: As I understand it in this particular project the total capital expansion was to the value of some R192 million of which BAE were investing R65 million, is that correct?

MR ZIKODE: Yes, applying the correct ...

CHAIRPERSON: Sorry, where are you reading? Just try

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and take us to the line which you are reading.

ADV SKINNER: Mr Chairman, the difficulty comes is that the signed statement by the witness does not cover any of the projects in any detail, what then occurred was I drafted a statement dealing with ...

CHAIRPERSON: Maybe there is a misunderstanding. You are quoting figures, I thought you were quoting from this Annexure "F". My request was that tell us which page is it because you are talking about total figures.

10 ADV SKINNER: As far as that is concerned I wasn't referring to Annexure "F" Mr Chairman, I was referring to the project itself which is why I was having to ask the witness to confirm whether my understanding is correct. So just to recap that the project as a whole was for R192 million of which BAE
15 were contributing R65 million, do you confirm that's correct?

MR ZIKODE: Correct.

ADV SKINNER: As I've indicated this was a project for the upgrading of two factories, what was the approach of DTI as to how that upgrading fitted into the criteria for awarding credits
20 with regards to causality?

MR ZIKODE: When a company upgrades its manufacturing processes and the upgrade will result in a company producing more products that investment will be accepted as investment credit for that upgrade and when it
25 comes to sales we will then credit only the difference, we'll

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have a baseline and then the difference will be accredited according to the programme.

ADV SKINNER: In this particular project as I understand it a baseline of the 2001 export and local sales was used, is that
5 correct?

MR ZIKODE: If maybe you can refer to the paragraph now because it's very difficult to remember all these, I'm sure it must be somewhere in the document here.

ADV SKINNER: Mr Chairman what the witness is referring
10 to is because his signed statement didn't refer to any discussion in detail of projects I had drafted various notes relating to projects which were submitted to the DTI and to allow the witness an opportunity to familiarise himself with that and check the figures, but these are not a document that I can
15 place before the Commission because it's not signed by him, and I think the witness is asking me to refer to a particular paragraph of that draft document.

CHAIRPERSON: I'll tell you what my difficulty is, I don't
20 know what you are talking about, that is why I kept on trying to find out from Judge Musi which page is he referring to. You have made your own notes there, you have got your, and then you asking the witness questions arising from your notes without even giving us any documentation which will give us an indication of what you are talking about. Perusing those
25 companies that you are talking I was trying to see them here, I

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can't find them, and we're unable to follow your line of cross-examination.

ADV SKINNER: Mr Chairman, the difficulty is that there is no document, these are conclusions that are drawn from the projects. Short of taking the Commission through every single document that relates to particular projects from the business plan, the business concept, the claims and the like, to try and short-circuit that I had given the witness my notes as to what I was going to ask him about but because there were disputes that arose that is not in the form of a signed statement by the witness.

CHAIRPERSON: Okay you can continue but then we don't follow that line of cross-examination because we don't know exactly what you are referring to. If maybe you had given us your notes in order to try and to explain to us how you arrive at the figures that you are putting at the witness but then we don't have that. You know, I was trying to look at the papers that we have and trying to see exactly what you are referring to because (indistinct) what you are going to deal with, it doesn't appear anywhere in the statement of the witness.

ADV SKINNER: Mr Chairman I apologise. I understood that my draft notes had been forwarded to the Commission and I wasn't sure whether they had been forwarded to the Commissioners themselves.

CHAIRPERSON: Well, we are hearing of that for the first

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time.

ADV SKINNER: Mr Chairman, it's a fairly lengthy document, it runs to some 90 pages, but maybe it would then be appropriate if that was given to the Commissioners so they
5 could follow because almost all the points I intend to raise are set out in writing there. If it understood that it, I'm not saying that this is the witness's statement, these are purely notes in the form of conclusions that have been drawn from all the available documents but that can certainly be made available to
10 the Commissioners and to any interested parties.

CHAIRPERSON: I'm afraid we will have to try and get the notes so that we can follow. Up to now we don't follow your cross-examination at all.

ADV SKINNER: Certainly. Mr Chairman it will take some
15 time because I've indicated it's a fairly lengthy document. I see we are after 15h00 in the afternoon, by the time those documents have been copied and made available I anticipate we will be past the anticipated close for today, so I'm asking whether this would be a suitable opportunity to close.

CHAIRPERSON: Okay. Can we get those notes tomorrow
20 morning?

ADV SKINNER: Certainly Mr Chairman, they are available electronically immediately and they can simply be printed out and forwarded.

CHAIRPERSON: Okay.
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ADV CHOWE: Mr Chairperson with regards to the notes if I might come in here, with regards to the notes of Mr Skinner it's indeed correct that there were disputes in as far as some of the contents of the notes themselves which caused disputes, so I don't know in what form will the Commission accept the notes themselves because they have certain paragraphs which the witness and the legal team from the DTI would not agree with the views expressed there, so it is a bit of a problem as to how can, or how will the Commission approach those notes.

5
10 CHAIRPERSON: Thank you. We did expect that there will be some dispute as far as that is concerned and the notes, we are going to take them as notes, they will just enable us to follow the questioning. It's for the witness to agree with the propositions that are put to him and if he doesn't agree then the witness will say so. We are just going to use these notes for the purpose of us following the cross-examination and we are going to put no other version on those notes. Will that suffice?

ADV CHOWE: That will suffice.

20 CHAIRPERSON: Thank you.

ADV CHOWE: Thank you Mr Chairperson.

ADV SKINNER: Mr Chairman just to add to that, what I would then propose to do with the witness is to take him to certain paragraphs where there are factual statements made saying that in this project this is what it was about, that was

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the investment and get him to confirm the facts and not the paragraphs that relate to conclusions to be drawn, those he can disagree with he will have an opportunity to comment on.

CHAIRPERSON: Okay, I think you can do it that way and
5 what sort of timeframes are we talking about?

ADV SKINNER: Mr Chairman certainly as regards the Commissioners that can be, I would anticipate done in the course of this afternoon. How long it would take the Commission staff to run off copies for the interested parties I
10 don't know but certainly in the course of tomorrow morning that would be available because the document is available electronically, it's just a question of having it printed.

CHAIRPERSON: Oh I'm sorry, I thought when you said that you wanted to go through that document with the witness, I
15 thought you wanted to consult, or do you mean going through that document with the witness before the Commission?

ADV SKINNER: Mr Chairman we did attempted to carry out that exercise, it wasn't successful, so it's simply an instance of having that document available to the Commissioners, to the
20 witness and to the parties so that the questions being put to him can be followed.

NOTE: Caucus.

CHAIRPERSON: I think let's have those documents tomorrow morning, then apparently we'll have to adjourn now
25 until Friday, we'll not be in a position to sit tomorrow and

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Thursday as I understand that the venue is not available, the venue is not available, we can only come back on Friday. I'm correct the venue is not available tomorrow? So, I we can get those documents tomorrow morning and we resume with the hearing on Friday morning at the same time.

ADV SKINNER: As the Chair pleases, I'll undertake that the arrangements will be made for those documents to be available tomorrow morning.

CHAIRPERSON: Thank you. Any other comments before we adjourn?

ADV CHOWE: No comment Mr Chairperson, thank you.

CHAIRPERSON: Thank you. Then we adjourn until Friday morning. Thank you.

15 (COMMISSION ADJOURNS)