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CHAIRPERSON: Good morning. Mr Zikode, can you confirm that you are still under oath?

MR ZIKODE: I do.

CHAIRPERSON: Thank you. Advocate Skinner before, or
5 maybe you should first finish and then, only then will we come to this document that was distributed this morning.

ADV SKINNER: As the Chair pleases, we can deal with it whenever the Chair is, feels it's convenient.

CHAIRPERSON: Maybe you can continue, then I'll deal with
10 this document later.

ADV SKINNER: Mr Chairman and Commissioner Musi, I'm going to refer the witness fairly briefly to two projects of Agusta, the first is the project known as Flexida. In my notes that is at page 73 paragraph 1(a)ii, and it appears also in
15 Annexure "F" at page 113. I'm going to commence by asking the witness to look at the Annexures File at page 341. Mr Zikode, the document at 341 starts on the previous page which indicates it is the 11th Agusta NIP report for the DTI dated 23 November 2005. At page 341 it then sets out a description of
20 the project relating to Flexida and as is set out in the second paragraph:

"Flexida SRL was a supplier of flexible couplings and expansion joints for automotive and industrial applications".

25 And as I understand it from the next paragraph the purpose of

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this project was to establish a manufacturing base in South Africa, is that correct?

MR ZIKODE: That is correct.

ADV SKINNER: The third paragraph on page 341 indicates
5 that Agusta have assisted Flexida SRL to establish a manufacturing base in South Africa by recommending the Eastern Cape as an ideal location for their new operation and arranging meetings with the key local authorities and then it continues that:

10 *“Flexida has been provided with assistance by Agusta to establish their new operation in Port Elizabeth”.*

MR ZIKODE: Correct.

ADV SKINNER: Finally on that page it indicates in two
15 paragraphs below that, that:

“Flexida continued to be a key supplier to Agusta and have been proposed as a supplier to (indistinct) Helicopters”.

MR ZIKODE: Correct.

20 ADV SKINNER: If you then turn over to the next page 342 is the start of the minutes of the IPCC meeting on 18 August 2005 and this particular project is dealt with on the next page, page 343 where it records:

25 *“The project involves the setting up of a manufacturing plant for flexible couplings for*

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automotive application in Port Elizabeth. Flexida SRL of Romania would supply the equipment and machinery to the South African plant as well as the technology transfer”.

5 Now as I understand it then this was not going to be an investment by Agusta itself, but would be a transfer of equipment and machinery and technology from Flexida of Romania, is that right?

MR ZIKODE: Yes that’s right, that’s very correct, this is
10 one of the examples where you will find that because of causality the offset company can claim the credits for investment costs by its own partners. As the document is saying that Flexida in Romania was a very important supplier to Agusta, so it’s a partner of Agusta generally in business, so as
15 we have said many times here that the offsets, the offset programme, the objectives of the offset programme is to use these suppliers to South Africa to get their partners all over the world to come and invest here, so it doesn’t matter whether Agusta itself was investing money, as long as the economy is
20 benefiting from Agusta’s partners to come and invest in South Africa, then they will get the credit, so this fits very well with the principle of causality.

ADV SKINNER: If you then turn over to page 344, this is the IPCC Credit Claim Sheet and at the top right hand corner it
25 indicates that it is for Claim 2 relating to this particular

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project, is that correct?

MR ZIKODE: Correct.

ADV SKINNER: In the middle of the page it records that:

5

*“This claim is for capital expenditure for the period
July 2005 to April 2006”.*

And it further indicates that:

*“Amongst the supporting documents was a list of
machinery transferred from Italy as well as Bill of
Entry ...”.*

10

And certain other documents including an auditor’s report, so
this again would relate to the transfer of the machinery and
equipment from Italy or from Romania to South Africa.

MR ZIKODE: That’s correct.

15

ADV SKINNER: Finally on that page, the paragraph after
the one I’ve referred to, it indicates that this is the first
investment claim for this project.

MR ZIKODE: Correct.

20

ADV SKINNER: It would appear that there were some
problems with this claim if you have regard to page 346. You
will see that this is a letter or an email from Ms Mouton of the
DTI and in the subject it refers to Claim 2 and I don’t propose
to read it but essentially as I understand it, it’s indicating that
there had to be actual proof of the machinery imported and the
value of it rather than just putting up a balance sheet, have I

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understood it correctly?

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MR ZIKODE: Correct, this shows really that this proves that you know people couldn't get credits by submitting what is said here, what is it, ... Sorry, one moment. Yes, you couldn't just submit a balance sheet and hope to get the credit, the full credit, we had to submit the list of equipment that was transferred, any proof of technology transfers, we had to submit that, so this shows really the diligence in terms of managing the programme.

ADV SKINNER: The investigators apparently were unable to find the necessary documents that Ms Mouton refers to at page 346, are you able to shed any light on that?

MR ZIKODE: Well, unfortunately the investigators couldn't find the document but if you look at the document that was submitted to the Committee it shows clearly that the supporting document were provided by the company exactly like Ms Mouton requested, hence then the reason for her to submit the project to the Committee for final approval in July of that year. I think ... I think we can provide that sheet Ramon? We can provide that sheet that proves that the additional information she requested was indeed submitted on a particular date and then thereafter she submitted the recommendation to the IPCC to give a final approval.

ADV SKINNER: Well, what appears from page 344 where I drew your attention to the fact that this was the first investment claim is that this Claim number 2 formed the bulk of

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the investment claims in relation to this particular project, is that correct?

MR ZIKODE: Correct.

5 ADV SKINNER: If you look at the last page of Annexure "F", page 113, it reflects under the column "Actual Obligor Investments" an amount of US\$7.9 million which is the same figure appearing as "Total Actual Investments".

10 MR ZIKODE: Yes, you are right but I was intending to make an apology right at the beginning but I didn't when I heard the Chairperson saying we were going to go back to this sheet, I think there was a small typo there on that number, the US\$7.9 million is supposed to be US\$7.09 million. There was that small typo which we have to correct on the actual investment by the obligor but then that doesn't affect the total credits that were awarded, the total credits, sorry, it doesn't affect the total investment credits if I'm not mistaken, but yes, there was a small typo that we intend to correct on the actual obligor investment.

20 ADV SKINNER: Yes, I was more interested in just trying to clarify my own mind what is being reflected in this particular project for actual obligor investments because as I understand it then this wasn't an investment by Agusta itself, it was an investment by way of transfer of machinery and equipment from Flexida, not Agusta.

25 MR ZIKODE: Yes, that we can explain. Agusta is wholly

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owned by the Italian Government, so by Italian law Agusta is not allowed to invest in foreign countries, so right at the beginning during the contracting period it was agreed with the South African parties that the investment Agusta will cause will be classified as Agusta's investment because by law it is not allowed to invest in foreign countries, by Italian law you he's not allowed to invest in foreign countries because it's a wholly owned Italian company, so that is, that was an agreement with the contracting parties right at the beginning of the SDPP's.

10 So, that's why under Agusta, although with time things changed a bit because Agusta bought a company called "GK Westland", that's why now we have the name change to Agusta Westland, so after buying GK Westland they could then use the Westland part of the company to invest. As you can see, you will see in the next project where Agusta itself now could invest directly into the project but they were just using the, sorry, the UK Westland part of Agusta to invest, but at the beginning during the contracting period it was just Agusta, the wholly owned company by the Italian Government which was not by law you know, allowed to invest in foreign countries.

ADV SKINNER: I then want to move on to the last project I'm going to refer to and if I can ask you to return to the Annexures Bundle at page 347 going on to page 348 and 349, at page 347 is the commencement of the 16th Agusta Westland Report and at page 348 is the start of the discussion

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concerning the particular project set out there of (Indistinct) Energy Solutions. It continues on to page 349 and the paragraph I'm asking you to comment on is the first paragraph on 349 where it says that:

5 *"The DTI has indicated that the project is of strategic importance to South Africa".*

And confirmed that:

10 *" Eskom, the DTI and Department of Minerals and Energy have been tasked by the Office of the President to find a short term solution to the energy crisis".*

Can you comment further on that?

MR ZIKODE: Yes. This project came during the period of the blackouts at night, what you call the ... Yes, the ...

15 ADV SKINNER: Load shedding.

MR ZIKODE: Load shedding, yes. Thanks Senior Counsel. It came during that time when there was a problem with load shedding, the electricity generated by Eskom could withstand the demand in the country, so the DTI was one of the departments that were tasked by the President like it's saying here to find a solution to the problem, so this project was submitted by the promoters exactly during that time and this project, the objective of the project is really to reduce the, to manage the use of electricity and reduce demand, so I think
20
25 that refers to what was happening those years.

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ADV SKINNER: And that is reflected if you turn over a page to page 350 which is the commencement of the business plan for this particular project and the last paragraph on that page indicates that it concerned certain products designed to
5 reduce the demand for electricity and they were designed using South African labour and materials, it records that South Africa was facing unprecedented levels of energy shortage and the products were designed to bring quick relief to the overstretched grid by making existing electrical installations
10 far less consumptive.

MR ZIKODE: That's correct.

ADV SKINNER: The actual contribution that was to be forthcoming is also contained in the business plan at page 355 under the heading "Project Description", the second paragraph
15 indicates that:

"Agusta Westland has assisted the commercial relationship between Kgwanyape and Agusta's asset managers which will result in a R170 million loan being made available for a period of 7 years".

20 And it continues in the next paragraph that:

*"In addition to facilitating the relationship between the company and the overseas investor Agusta Westland has indicated that providing the appropriate number of NIP credits as approved by
25 the DTI it will provide Kgwanyape with a non-*

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resident loan of R12.32 million interest free for 12 months”.

So that was the basis of this project, was the R170 million loan and the R12.32 million loan, is that right?

5 MR ZIKODE: That’s correct.

ADV SKINNER: If I can then ask you to turn to page 368 of the Annexures File, this is a letter from Agusta Westland to the DTI and the first few paragraphs again reflect what we’ve considered of the two loans, but the fifth paragraph down
10 commences:

*“Agusta Westland has considered the social and economic benefits of the Kgwanyape Project and is prepared to make the R12.4 million loan available on condition that it is suitably rewarded for the risk it will be taking. With this in mind I should be grateful if you would recommend that a multiplier of
15 10 be approved by the IPCC applicable to the total investment in the project by Agusta Westland and Agusta”.*

20 So, as I understand it they were asking for a multiplier of 10 on both loans, would that be right?

MR ZIKODE: That’s correct.

ADV SKINNER: If you will then turn to the other volume, the IPCC Minutes Volume page 266. This is an extract from the
25 minutes of the IPCC meeting on 8 April 2008 and at page 266 it

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records in the bold print that:

“The Committee recommend that the project be approved with a multiplier of 65 on the R12.4 million loan and a multiplier of 1 on the R170 million loan”.

5

Now can I deal with the latter part first, a multiplier of 1, if my arithmetic is correct, is the Committee actually saying that there will not be a multiplier of a R170 million and the loan will be credited for a R170 million?

10 MR ZIKODE: That is correct.

ADV SKINNER: As regards the R12.4 million loan the multiplier has now increased from the 10 that Agusta were requesting to 65. Can you explain why there was such a big increase above what Agusta themselves were asking for?

15 MR ZIKODE: Yes but if you look at the project in totality, let's go back to what you read before this:

“Agusta had requested that they be given a multiplier of 10 on the total investment which meant a multiplier of 10 on the R12.4 million and

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R170 million”.

Okay? But then obviously in between there were discussions and then the Committee decided that they will give him 65 multiplier on the 12, nothing on the R170 million. The issue is if you compare the credits they got far less than what they were proposing because we can do the numbers quickly. The

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170 x 10, that R170 million and then R124 million, that's what they were proposing, but we said no, we can give you only a 65 multiplier on the smaller amount and the overall total of that was a multiplier of 5, I did the calculations. The overall total
5 was a multiplier of 5, not a multiplier of 10, so the Committee gave them far less than what they were requesting, in fact half of it, they were requesting 10 on the total, you said no, we gave them 65 on the small amount, that the effect of that was a multiplier of 5 on the total, not 10.

10 ADV SKINNER: As further appears at page 266 this project was going to entail, apart from the manufacturer of the equipment but also the sales and the Committee decided that sales credits are subject to performance, so was there to be a multiplier or the sales credit simply to be one for one as per
15 the actual sales?

MR ZIKODE: Well, on the sales they were going to get the sales credit as and when they happened out there in the market, but as you can see on the Annexure "F", there were no sales credit claimed, zero credit.

20 ADV SKINNER: Yes that was what I was going to ask you, why were there no sales, does that mean that the project did not succeed or what is the reason why there were no sales?

MR ZIKODE: Yes, I think that this project in any way came right at the end of their obligation and I would guess the
25 reason why they didn't even negotiate the upfront credits was

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because they had already achieved the invest..., sorry, the sales credits in terms of the obligations they had to meet but after that, because if I'm not mistaken they also have what is called the Strategic Partnership Agreement, they could then

5 claim those credits for future obligations they would incur if they win any tenders in South Africa, but for these purposes they couldn't, they didn't claim anything, it might be either because they already achieved the sales, what you call it, the sales milestone or maybe they had a very bad negotiator or

10 didn't negotiate for upfront credits.

ADV SKINNER: All the documents that I've referred you to in relation to this project indicates that it's an Agusta Westland Project, but the credits go to Agusta, can you explain why that is?

15 MR ZIKODE: Yes. Again Chair I think this is a very good example of the project that came after Agusta purchased GKN Westland, like I explained that Agusta, initially they were not allowed to invest in foreign countries because they were wholly owned by Italian Government, but then with time they

20 purchased GKN Westland and they could then use the Westland part of the company to invest in foreign countries. That's why in this project you have R12.4 million now coming from Agusta Westland and it tries to confirm what I said in the beginning, but the contract itself was signed by Agusta, so we never

25 changed to Agusta Westland after the merging of the two

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companies but the original contracts, the supply agreement, the NIP terms and the umbrella agreement was signed by Agusta, so we just kept that name.

5 ADV SKINNER: Thank you Mr Chair, that concludes the evidence in chief of this witness.

CHAIRPERSON: Mr Zikode, I think yesterday I did as you to do an exercise where you were supposed to take into account the figures relating to GSC in order to determine what is the average multiplier that was utilised in all the projects. I think
10 yesterday during your evidence you gave me a rough figure of 3.5 or 3.4, that's what you thought it might be, I then requested you to do a detailed document for us, we have been given that document and do you confirm that is the document that you have prepared?

15 MR ZIKODE: Yes Sir, this is the document we prepared with the assistance of the Secretariat.

CHAIRPERSON: Thank you. We will then accept this document as Annexure "G" to your statement.

ADV SKINNER: Chair sorry to interrupt, I'm wondering
20 whether, because the Annexure "F" in fact relates to Mr Zimela's statement, whether this should just be added as a last page to Annexure "F" and numbered consequently which would then make it page 114.

CHAIRPERSON: Well, I'm sure that is a better suggestion.
25 114. So in other words it will, this document goes on from

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page 114 to 118, it will be part of Annexure "F".

ADV SKINNER: As the Chair pleases.

CHAIRPERSON: Thanks a lot for the calculations. Is there any person who wants to cross-examine Mr Zimela? Mr Zikode,
5 I'm sorry.

ADV SNYMAN: Yes, thank you Chairperson. I'm Gina Snyman from the Lawyers for Human Rights on behalf of our clients Mr Feinstein, Mr Holden and Mr Van Vuuren, we do wish to cross-examine this witness. May I proceed?

10 CHAIRPERSON: You can proceed Ma'am.

ADV SNYMAN: At the start Chairperson, Commissioner Musi I would like to hand up the document which we wish to refer to during our cross-examination. It is quite a lengthy document, it's in excess of a 100 pages, there is only one page
15 that we wish to refer to. I have a full set of the document for the Commissioners and just the relevant page and the title pages for everyone else. It is a document that, it is a report that was requested by the DTI ...

CHAIRPERSON: I'm sorry, can you repeat that, you're
20 saying that 100 page document, where does it come from and what is the purpose of giving us a 100 page document if you are only going to use one page?

ADV SNYMAN: If I can just explain, it's the audit of the Denel SAAB Aerostructures transaction, it was completed by
25 NAD Auditors at the request of the Department of Trade and

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Industry. The audit was provided to the DTI in February 2010 and was addressed to Teresa de Risi, the next DTI witness. The audit was intended to establish whether or not SAAB had met its agreement under the terms of this package deal and this document was subsequently released to the public following a successful higher request by the media house Media 24. It's only one page which we will be referring to now during our cross-examination, two paragraphs up, but I have the whole report for the benefit of the Commissioners as we are of the view that this is a report which either is already in the Commission's possession or ought to have been brought into evidence by DTI.

CHAIRPERSON: I'm not quite sure if it's in the possession of the Commission, but then let me hear what DTI has got to say about that before we, I make a ruling about that document.

ADV CHOWE: Thank you Mr Chairperson. Chairperson, unfortunately it might be so that the report might have been requested by the DTI. The only problem is that during the preparation we might not have gone through the report itself and like the Chairperson says we are not sure whether that document is with the Commission, but what I suggest we do Mr Chairperson with your permission is that maybe one have a look at that one page and take the witness through that particular page and see what stands there before we could even comment about the report itself. Thank you Mr

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Chairperson.

CHAIRPERSON: Advocate Snyman, would that not be a better way of dealing with that document because I also don't want to burden the record unnecessarily you know if at all it's
5 a 100 page document and we are going to use only one page, maybe discuss it with the DTI legal representative and see if we can make some type of arrangement where we'll only you know, submit only that one page instead of the whole 100 page document.

10 ADV SNYMAN: Thank you Chairperson. Can I request then that this is probably a good time to break for tea so that we can discuss this page with DTI?

CHAIRPERSON: Yes, I think maybe that might be a good idea. Let's take, we'll take a tea adjournment now and during
15 the tea break the two parties will come together. Thank you. We'll adjourn now.

(Commission adjourns.)

(Commission reopens.)

CHAIRPERSON: Thank you. Mr Zikode, can you confirm
20 that you are still under oath?

MR ZIKODE: I do.

CHAIRPERSON: Thank you. Mr Chowe, what are the arrangements?

ADV CHOWE: Thank you Mr Chairperson for the
25 opportunity. We, I was able to consult with the client and also

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talk to my colleague Ms Snyman regarding the matter. The DTI has confirmed that indeed this report was a report which they commissioned as an impact assessment on this particular project and on that basis as my colleague Ms Snyman have said
5 that this particular report might have come in possession of Media 24 through the prior request and what we are not sure of Mr Chairperson is whether the Commission is in possession of this particular document. I will suggest that maybe through the interaction I had with the client is that this report should, in
10 itself it was a document which was supposed to have been in possession of the Commission because it was already in the media as my colleague has already said, so in any event Mr Zikode would not have any problems in attending to any question fielded by Ms Snyman regarding the report and he
15 might also maybe, would like to expand in as far as his knowledge about the existence of the report, we have no objection Mr Chairperson, thanks.

CHAIRPERSON: Thank you. The document might be in the possession of the Commission but then what follows is
20 thousands of documents, I'm not sure if this specific one, whether do we have it in our possession or not, whether if at all Mr Zikode is prepared to answer questions based on this document and admit that this is a report which was prepared for and on behalf of DTI, and I suppose it makes things much
25 easier for us to proceed under cross-examination.

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ADV CHOWE: Thanks Chairperson, it's indeed so.

CHAIRPERSON: Advocate Snyman.

ADV SNYMAN: Thank you Chairperson. We have made a number of the relevant pages available to the other party but
5 can I request that whether the Commissioners would like the full report now or just the relevant page?

CHAIRPERSON: I think we will do with that relevant pages.

ADV SNYMAN: Do you have them in front of you? And I'm going to start with that report though that, and I'm ready to
10 proceed with the cross-examination.

CROSS-EXAMINATION:

ADV SNYMAN: Mr Zikode, we have heard a great deal during your testimony and (indistinct) about the use of package deals to implement the NIP agreements flowing from the SDPP.
15 To confirm the testimony so far the DTI made use of a discretion following approval from the Minister of the DTI to negotiate the award of packages of NIP credits to SDPP obligors for investment in specifically identified projects. Is this correct?

20 MR ZIKODE: Yes, correct.

ADV SNYMAN: And these packages usually involved granting the SDPP obligors investment in sales credits that based on the use of pre-approved multipliers were larger than the actual investments and sales that took place, is this
25 correct?

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MR ZIKODE: No that's wrong.

ADV SNYMAN: I'm sorry?

MR ZIKODE: You are wrong.

ADV SNYMAN: (Indistinct).

5 CHAIRPERSON: I'm sorry, there seems to be some confusion. The witness says that that proposition that you are putting to him is incorrect.

ADV SNYMAN: Can the witness state on what basis it's incorrect?

10 MR ZIKODE: If you say the credits given were usually smaller than the actual project, I think you said something like that, that is wrong. What we used to do is to look at the business plan itself and the projections of the sales that's going to take place over a number of years and then based on
15 that the Committee will recommend to the Minister a package of credits, more especially the sales credits that has to be approved by the Minister. But you look at the business plan, it's not just a matter of guessing numbers, no, the business plan was always a guide to the Committee in terms of the
20 credits that must be awarded, more especially the sales credit because those are estimates running into the future.

ADV SNYMAN: If I understand your testimony correctly you suggest that the credits that were awarded were based on projected estimates of the performance of the project,
25 especially in relation to sales credits. Is that correct?

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MR ZIKODE: Yes, you will look at the magnitude of the benefit the project is bringing to South Africa, so if it's a pure investment project where you invest money and produce a product you'll sell over a number of years, if there was a need
5 for us to bring forward those sales in terms of credits because of the issues I've raised here, then you look at the potential sales that's going to be generated by the project, if everything goes well obviously, because a business plan is always an estimate, the best you can do, and then we'll recommend
10 credits to the Minister based on that, but then obviously there will be projects like a training project where you don't have any sales, we have students being produced over the years, then there you negotiate with the offset that because the crediting methodology, again you have to be clear that the crediting
15 methodology was only based on three criteria, investment, local sales and export sales, there was no training credit that was in the NIP terms, so we then have to say this is the project that is important to develop the skills base in South Africa for the industrialisation purposes, so we'll accept it but then how do
20 we then credit the company according to the NIP terms, then you will agree on the number of credits from those intense discussions because that, we don't have, like I've said we don't have sales like in the case where you are producing products and selling locally and overseas.

25 ADV SNYMAN: So you would say that the number of offset

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credits awarded in relation to investment was based on evaluation of the estimated economic impacts that such investment would have on the economy?

MR ZIKODE: Usually with the investment there's no
5 problem, you will give a credit when the investment happens,
but there was always a challenge on the sales because the
sales run over a number of years and we have a time limit in
terms of the obligation period, so we always had a challenge
like I've said, in fact I've said it many times, we always had a
10 challenge that the NIP terms didn't provide of what do you do
when you implement a new project in place of a failed one,
what you do now to realise those sales that will run over the
obligation, the end of the obligation period.

So then in that situation you then negotiate to bring
15 forward those credits that will accrue to South Africa as a
result of the investment that was done, so you always had a
challenge only with the sales credit, if it's just a normal
investment project but as I've said then you, there were
instances where you will have a training related project which
20 doesn't have any sales and all these things, so there you
negotiate a package.

ADV SNYMAN: Mr Zikode, it has also been clarified that
the NIP SDPP Programme is now concluded as the main
obligors excluding BAE had 7 years to fulfil their obligations, is
25 that correct?

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MR ZIKODE: Yes. All with the exception of BAE Systems 7 years, BAE Systems, it was 11 years.

ADV SNYMAN: Sorry I didn't catch that, could you repeat that please?

5 MR ZIKODE: All obligors under SDPP's had 7 years to offset their obligation with the exception of BAE Systems SAAB Group that had 11 years to do that.

ADV SNYMAN: So, the NIP SDPP Programme is now concluded as the main obligors have had their time to fulfil that
10 obligation?

MR ZIKODE: Well, I think the Secretariat can confirm that but as far as I know they have been concluded.

ADV SNYMAN: As far as you know had the DTI officially confirmed to the SDPP obligors that the NIP programme is now
15 concluded and that their obligations had been fulfilled?

MR ZIKODE: Yes, as far as I know it has been confirmed for almost all of them but I was told that there is an obligor that had to prove the actual sales that resulted from the project that was approved initially as a package deal, I don't
20 know whether they have completed what they were requested to do but as I've said you know, I'm no longer running the offsets, the Secretariat can confirm all those things.

ADV SNYMAN: So, apart from that one obligor this would suggest that it is unlikely that the offset credits awarded to
25 date will be reviewed by the DTI either to increase or decrease

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their number?

MR ZIKODE: No, if the offset company has been released from the obligation, unless if there is something that comes up really that happened, but I don't see any company
5 being recalled. According to the programme and how I know it I don't see any company being recalled to further do the offset, or further perform on the offset obligations.

ADV SNYMAN: So the offset credits awarded as per Annexure "A" to your statement is then a final and irrevocable
10 statement on offset credits awarded to the SDPP obligors?

MR ZIKODE: Sorry, there are so many annexures and confusion between my annexures and Masizakhe's. Which one are you referring to?

ADV SNYMAN: The Annexure "A" that is attached to your
15 17 page statement, to your signed statement.

CHAIRPERSON: Excuse me, (indistinct) evidence that annexure, Annexure "A" to his statement, it has been replaced by Annexure "M". This is what the evidence is before me.

ADV SNYMAN: Thank you Chair, that is Annexure "F" to
20 Mr Zimela's statement.

CHAIRPERSON: That is Annexure "F" from Mr Zimela's statement, it has replaced Annexure "A" to Mr Zikhode's statement because the evidence is that Annexure "F" is an updated document.

ADV SNYMAN: Thank you Chairperson.
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MR ZIKODE: Now that I'm clear where we are, can you repeat your question?

ADV SNYMAN: Yes, Mr Zikode. The question then is the offset credits awarded as per Annexure "F", is this then the
5 final irrevocable statement of offset credits awarded to the SDPP obligors?

MR ZIKODE: Well, with the correction of one or two projects in terms of the typos that I identified this morning I will guess the Annexure "F" that's a final credit that has been awarded to
10 SDPP's.

ADV SNYMAN: Thank you. Then we're turning to the issue of multipliers. You have acknowledged that at best in reference to sales credit the package deals involved the awarding of credits based on projections and estimates of
15 future economic performance. When these credits have been awarded as per Annexure "F" they formed and final irrevocable award at offset credits. Mr Zikode, as you are aware one of the APC's Terms of Reference is to determine the extent to which offsets growing from the SDPP materialised, so my
20 question is if the offset credits awarded package deals were based on estimates of actual performance rather than on the audited financial figures, can the Commission rely on the offset credit figures referred to in Annexure "F" to determine the actual economic impact of the offset agreements entered into
25 as package deals?

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CHAIRPERSON: I'm sorry Advocate Snyman, to be honest with you it's such a long question I also don't quite understand it. Maybe let me first understand it before the witness can answer. Can we make them short and more understandable?

5 Thank you.

ADV SNYMAN: The question that I wish to put to the witness is if the offset credits awarded in package deals were based on estimates of actual performance rather than on audited financial figures in his opinion can the Commission rely
10 on the offset credit figures in the annexure to determine the actual economic impact of the offset agreements?

MR ZIKODE: In my opinion they will have to rely on this spreadsheet, why, because if you take the investment credits, the investment credits, or let me say the investment that
15 happened here were the actual investment. There is a proof at the Secretariat, proof submitted to the Commission which proved that the investments did happen, but obviously if you look at the projects that were approved as package deals, when it comes to the sales we relied on the business plan to
20 determine the number okay? But some of those projects we put an obligation on the offset obligated company to report to us from time to time on the performance on the sales. That's why I said even recently there was still an obligor which was submitting proof of evidence that the sales are indeed
25 happening on the project that was approved as a package deal.

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So yes, to a very large extent the Commission can rely on this Annexure "F" because a lot of the information that is here, more especially on the investment and even on the sales, there is evidence that the activities did happen.

5 ADV SNYMAN: Mr Zikode, it is our client's submission that in the instances where credits were awarded based on package deals and estimates of performance, those instances, they cannot be relied upon as a direct statement of the actual economic impact of the offset agreements. Would you like to
10 comment?

CHAIRPERSON: Advocate Snyman that question has been answered, can we get to the next one?

ADV SNYMAN: Thank you Chairperson. Mr Zikode, I'd now like to move your attention towards a particular package
15 deal, the Denel SAAB Aerostructures contract. As we have heard previously the Denel Aerostructures agreement constituted a package deal, could you please describe how this package deal was initiated?

MR ZIKODE: Well, by "initiated" I wouldn't know what
20 you mean, but let me just tell you what I know and what was presented to the DTI.

CHAIRPERSON: Mr Zikode if you are not sure what she means by a particular word, maybe rather let's ask Advocate Snyman to explain because I don't want you to answer a thing
25 which you will later claim that you didn't quite understand the

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question. Advocate Snyman, can you perhaps rephrase your question?

ADV SNYMAN: Mr Zikode, could you describe how the package deal came about for the Denel Aerostructures agreement?

5
MR ZIKODE: Like I presented to the Committee on this project here was a company owned by Government, a company in the Defence sector, a company which had a few contracts to deliver those years, but it faced some difficulties. The one
10 project, the one contract I remember very well that they couldn't deliver was the so-called A400M whereby they were component suppliers into the contract. This company as far as I remember, it faced challenges in terms of the cash flow, that's why from year to year it has to get a bailout from the
15 Government.

They then approached SAAB. In terms of approach I have to say I'm not sure whether SAAB approached them or they approached SAAB but they, both of them brought the project to the DTI whereby SAAB was going to invest in Denel
20 and then also bring a know-how, this know-how was going to be brought in terms of bringing in the expertise from Sweden who will be working with the people within Denel to turn around Denel Aerostructures.

So, they submitted a business plan that showed
25 what will happen if all what is in the business plan

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materialises. They were also going to bring in the reputation of SAAB all over the world, the big balance sheet of SAAB, SAAB as part of a bigger group which is called the Investor Group in Sweden. SAAB was going to use its own channels to ensure that Denel is able to sell its products all over the world, so there were many benefits, some of them were quantify, some very difficult to quantify, hence then the package of credits that we negotiated.

Again we have to negotiate a package because there was no way the contract would have allowed SAAB to invest in the project and then wait for all those sales that they were going to generate and wait for all those big contracts that they promised to bring for Denel to be realised because a company had to meet a milestone by a certain year, hence then the need to negotiate a package of credits based on the business plan that was submitted.

ADV SNYMAN: Thank you. Can I now refer you to page 6 of the Supplementary Index Bundle. To confirm, this is the proposal submitted by SAAB to get access to the, on the 6th of May 2006 regarding the restructuring of Denel Aerostructures and the awarding of NIP credits, is this correct?

MR ZIKODE: Correct.

ADV SNYMAN: Can you now turn to page 13 of the same bundle? I will read the relevant section:

"It is proposed that industrial participation credits

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*are defined according to the following timetable;
upon closing of the transaction whereby SAAB or
where designated subsidiary takes ownership of any
share in Aerostructures (indistinct), SAAB or a
5 designated industrial participation partner in South
Africa will irrevocably receive US\$2 000 million in
credits to be used for the NIP obligation
(Investment Export Sales/Local Sales) for DIP
obligation at our discretion”.*

10 Now Mr Zikode, for clarity’s sake this suggestion was rejected
by the DTI in favour of the offer of US\$1.5bn in offset credits,
an upfront award, is this correct?

MR ZIKODE: That is correct.

ADV SNYMAN: Then this arrangement allowed for SAAB to
15 receive offset credits upfront at the very moment SAAB took
ownership of shares in Denel Aerostructures. Correct?

MR ZIKODE: Yes, correct.

ADV SNYMAN: I’ll now ask you to turn to pages 91 and 92
of your Annexures Bundle. You confirm Mr Zikode the
20 signature appearing at the bottom of page 92 is your signature?

MR ZIKODE: Very correct.

ADV SNYMAN: And this document confirms the exact
terms under which SANAP as the agents of BAE SAAB would
receive offset credits a result of the Denel SAAB transaction?

25 MR ZIKODE: Correct.

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ADV SNYMAN: Turning to page 91 I will read the relevant section and I quote:

5 *“So that both SANAP and the DTI might have certainty concerning what is required by way of future project strategy going forward the upfront credits of US\$1.5bn would be awarded to SANAP upon closure of the SAAB Denel Aerostructures transaction and will be considered irrevocable upon completion of the initial element of the transfer of*
10 *skills, technology, management and marketing expertise from SAAB referred to in SAAB’s NIP credits proposal of 10th March 2006 as agreed between SAAB and Denel”.*

Now Mr Zikode, I’m sure you can see the misunderstanding that
15 arises as a result of these documents. In the SAAB proposal it is requested that the upfront credits be irrevocable on completion of the share transfer but in this letter which you have signed the credits would only become irrevocable upon transfer of skills and other benefits to SAAB. The question is,
20 is it correct that you and the DTI understood that the credits would only be granted irrevocably on the transfer of skill, technology and management experience to Denel SAAB Aerostructures?

MR ZIKODE: The shares, the buying of shares into
25 Denel was the primary requirement of the project. As you are

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seeing there are proposals, they were only talking about the buying of shares but on top of that we requested that they have to do other things that they were promising that are in the proposal, some, they were promising by word of mouth in the meetings, hence then the inclusion of those additional skills technology management and marketing expertise, the issue of shares was a given really, that was the primary objective that they have to buy into Denel because there was no way they were going to do any additional thing before buying the shareholding from Denel, so that was a given really, whether it was here or not, but we were putting pressure on them that on top of the buying of shares it was a given thing in any way, they have to do all these other things they promised that they will do.

15 ADV SNYMAN: Mr Zikode, are you aware of at what point the credits were then deemed to be irrevocable or in other words are you aware at what time SAAB was considered to have fulfilled its agreements to transfer skills and other benefits to Denel?

20 MR ZIKODE: Well, the shares were bought when they were transferring skills technologies, management and marketing expertise.

ADV SNYMAN: Based on the figures appearing at Annexure "F" SAAB was indeed granted the upfront offset credits. Considering that the NIP Programme has now

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concluded, is it fair to assume that SAAB was considered by the DTI and in particular by IPCC to have met its commitments such that the upfront credit award became irrevocable?

MR ZIKODE: Yes, we considered to have met their
5 commitments under those difficult circumstances.

ADV SNYMAN: And referring to Annexure "A", I apologise, referring to Annexure "F" once again would you agree that it is also clear that this was the NIP Project flowing from the SDPP that received the largest amount of offset credits?

10 MR ZIKODE: Well I'm not sure, I haven't compared project by project, but if you have done that I wouldn't disagree with you.

ADV SNYMAN: Then as is clear from the documents quoted there is no indication as to exact targets or key
15 performance indicators that would be used to assess SAAB's performance of its obligation and its arrangement or in simpler terms it was not stated that X-number of patented technologies would be transferred or that SAAB would commit to deploying a (indistinct) number of management staff, so my question is how
20 exactly was the promise on the parts of SAAB to transfer skills and technology to be assessed by the DTI?

MR ZIKODE: Where are you now, you are referring to documents, I don't know where you are now.

ADV SNYMAN: I'm not referring to any document, I'm
25 referring to ...

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CHAIRPERSON: Advocate Snyman I'll tell you what the difficulty is, it's because your questions are too long, at times you know I end up losing you also in the middle, if you can make your questions short so that the witness can understand then I'm sure he'll be, it will be much easier for him to answer them. You have made such a long statement now I'm not even sure what exactly what the question is. Just try and make your questions shorter.

ADV SNYMAN: Thank you Chairperson, I'll repeat my statement and then make it clear why I'm asking the question. We are averring that from the documents that we have read from now, that there is no indication as to the exact targets or key performance indicators that would be used to assess SAAB's fulfilment of its obligation in the arrangement. So, my question is how exactly was the promise on the part of SAAB for the transfer of skills and other benefits to be (indistinct) by the DTI?

MR ZIKODE: I'm asking which document are you reading from? You are referring to a document you are reading from, which document?

ADV SNYMAN: I'm referring to pages 91 and 92 that I have read from.

MR ZIKODE: Sorry, the issue of no targets are not appearing on page 91, you are talking about targets that were not met, that's not appearing on page 91.

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ADV SNYMAN: Perhaps if I just rephrase the question this way, can you explain how the promise on the part of SAAB for the transfer of skills and other benefits was to be assessed by the DTI?

5 MR ZIKODE: Like I've said there was a business plan, so if the project more or less achieved what the business plan was saying then we would have said yes, the project was successful.

ADV SNYMAN: Thank you. Mr Zikode, it appears clear
10 from the bundle of annexures that the ultimate goal of the Denel SAAB transaction was to assist Denel Aerostructures to perform a turnaround from a loss making to a profit making institution. My question is if this was the case why did the DTI not use turnover or profit or loss as a metric to assess SAAB's
15 performance of the offset obligations for this contract?

MR ZIKODE: Well, I don't know whether turnover, profit and loss, is the best way of assessing. But you see, there was a bigger picture here that we needed to turn the Aerostructures of Denel into a globally competitive company, not just within
20 the period of the obligation but many years into the future from the start of the project, so if you put blinkers and look at the projects just during the period of the obligation of SAAB and BAE Systems, then you'll lose the bigger picture. The bigger picture was to turn this company into a globally competitive
25 company that competes with other manufacturers of similar

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product and according to the DTI this is what the projects was intended to do and this is what the project has done.

ADV SNYMAN: If the DTI had found that SAAB had not met its obligations was it empowered to revoke the upfront granting of offset credits?
5

MR ZIKODE: I did mention here during my evidence that because these are commercial transactions a company risks its money by putting, by making investment into the South African economy. From our side when you negotiate credits yes indeed there were risks that we were taking because you will never know whether the business plan itself will materialise hundred percent to the T, you will never know, there is no one in this world who can give you those guarantees, so by giving you the upfront credits obviously we are also taking a risk, like you are taking a risk on you investment, you are investing in a foreign economy, most of that investment would be managed by the locals in that country, that's a huge risk to you that you are taking as an obligated company.
10
15

The company on its side is also taking a risk by giving you these upfront credits because no one in this world can give any assurance that, or will know that the business plan will materialise, so it's a give and take situation.
20

ADV SNYMAN: So then just to be clear, is your answer yes or no?

MR ZIKODE: Oh sorry, I suppose you have concluded.
25

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Hence then if you give upfront credits and the company invest in the project and the project for whatever reason fails you then look at the reason why the project failed, if it was outside of the company's control that the project failed there is no way you can go back and say look, although *bona fide* you invested in the project you did all that you could do as an offset company but this project failed, I'm still taking away the credits, you cannot do that. There is, we as a country, we are part of the World Trade Organisation, we respect the protocols of the World Trade Organisation, we have to treat foreigners like you treat the local companies, so there is no way you can go back and treat a company like that if they have done all they were supposed to have done but the project failed because of whatever reasons in that country.

15 ADV SNYMAN: Mr Zikode, are you aware the fact that Denel terminated its management agreement with SAAB in 2009?

MR ZIKODE: I don't remember the years but I know that management agreement was terminated because of the challenges that was in that partnership, like we will have in this world Mercedes Benz or Daimler Benz, they partnered with Chrysler, they formed Daimler Chrysler, but because of the clash of cultures they had to terminate such things, so these things happened in the world, but although the management agreement was terminated because there were many opposition

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even within Denel Aerostructures of these many foreigners that were there now, that were sent to come and turn around Denel Aerostructures there was opposition, you cannot hide that, from the locals who were seeing all these people from Sweden, expertise from Sweden who were sent now as part of the business plan to come and turn around and that was opposition, and then they decided to terminate that management contract, but what is good about it is that the investment they put in was never taken away by SAAB, so the investment remained into the company, SAAB continued to work with Denel to assist them with many other projects like the A400M and many others that today SAAB is winning as a result of that partnership, I mean Denel Aerostructures is winning as a result of partnership itself.

15 ADV SNYMAN: Can you comment on what the impact of the termination of this management agreement should it had been awarding (indistinct) offset credits?

MR ZIKODE: There was no impact at all because SAAB promised to continue assisting Denel Aerostructures to achieve other benefits, or many benefits they promised in their business plan.

ADV SNYMAN: Mr Zikode, can I now ask you to turn to page 95 of the document which we handed up, which is an extract of the Audit Report completed by the NAD Auditors.

25 COMMISSIONER MUSI: Page?

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ADV SNYMAN: Page 95. I will read from the page under the heading "Conclusion", and I'm quoting:

5

"In the absence of specific deliverables/outcomes/milestones and specific observable measures, indicators in the proposal, we were unable to ascertain the completeness of SAAB deliverables for as to whether it has fully delivered in terms of its NIP obligations".

10

Mr Zikode, as this quote indicates the external auditors employed by the DTI found that there were no specific deliverables indicated in the agreement by Denel and SAAB and that this made assessing SAAB's performance of this obligation impossible. My question then is if an auditing company with its attendant expertise could not determine how to assess SAAB's delivery on its obligations, how were members of the IPCC supposed to do so?

15

20

25

MR ZIKODE: You have to look at the business plan and tell me whether there were no deliverables. As far as I know there were deliverables in the business plan, there were projections even in terms of the sales that were going to accrue to SAAB Aerostructures over a number of years, so I don't know the meaning of your first paragraph there but suffice to say that this document was as a result of the initiative of the DTI and it proves really to this Commission the rigour in terms of how the programme was managed, we were

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not just giving credits and then sit and fold our hands, we made follow-ups.

Where we didn't get all the information we even get the independent consultant to assist us, so this was
5 commissioned by us as part of the professional and diligent way of managing this programme and I can tell you now some of the things that came out we told the consultants that look, we won't be disagreeing with you, we cannot say change this but some of the things that you are saying here we don't agree
10 at all with what you are saying, but we accepted his conclusion because it was his personal views after interviewing few people within Denel and SAAB. So, this is not sacrosanct, there were many issues, we don't, I don't have time to read the whole document but I can pinpoint areas where we just couldn't agree
15 with the person who was doing this report.

ADV SNYMAN: Then perhaps this will be one of those areas, but returning to the report the third paragraph on the same page reads, and I quote:

20 *"If one utilises the turnaround of the DSA as the ultimate goal and measure barometer for all of SAAB's initiatives, then SAAB has not delivered on its obligations in terms of the NIP credits awarded to it, which is evidenced by the cancellation of the management agreement and subsequent initiation of*
25 *a new turnaround strategy".*

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Mr Zikode, do you have any comments on this conclusion?

MR ZIKODE: Yes, after receiving this document from the consultant we then said yes, maybe some of the things he came up with here we need to take up with SAAB and Denel, hence then a long list of meetings and discussions we had with SAAB and the letter that we gave to SAAB that they have to work on some of the issues and where they were not, we thought they were not performing according to the business plan, hence then we have this sentence where it says, where you talk about a new turnaround strategy, so yes, from the document there were good things that we identified, that we agreed upon and then we wrote back to SAAB to say look you are not, according to our report you are not performing to the letter of the business plan, so please come up with a new plan to make up for the shortfall.

But I also want to highlight to the Commission that this was done I think in 2010. There are no dates here. In 2010. You know, even within the obligation period of BAE Systems the obligation was ending in 2011, but what I want to highlight is the turnaround like I've said, the turnaround was a long term plan, not just the obligation period but then we said we have to see that there is actual benefit that are accruing already, even during the obligation period, but the bigger picture was many years going into the future, not just those few years after the starting of the implementation of the business

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plan.

ADV SNYMAN: Thank you Mr Zikode. I'm now moving to our final line of questioning. Mr Zikode, have you ever been made aware of any DTI official involved in the initiation, management and oversight of the NIP Programme related to the SDPP receiving an undue inducement benefit or advantage in monetary or any other form from any third party including but not limited to SDPP obligors and/or their appointed representatives?

5
10 MR ZIKODE: Wow, that's a long-winded question but the answer will be no. I just want to, sorry, I don't know whether your questioning from this document is over, are you still going to go back to it?

CHAIRPERSON: Mr Zikode, are you itching to answer more questions about this document?

15
20 MR ZIKODE: No, I just wanted to highlight one thing to you Chair and Commissioner Musi that if you turn to the following page of that conclusion, the following page the consultant was fair to the contribution made by SAAB into the Denel Aerostructures. He tries to clearly show what has been achieved in that short period of the partnership between SAAB and Denel. I just want to highlight that, that there are positive conclusions from the consultant, it was not all negative.

CHAIRPERSON: I suppose you are referring to the second paragraph which starts by the words "In general ..."?
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MR ZIKODE: Yes Sir, even the first one.

CHAIRPERSON: Advocate Snyman.

ADV SNYMAN: I have no further questions on this document. I'll then proceed with this line of questioning. Mr
5 Zikode, have you ever been made aware of any government official at any level of government who participated as a business partner, director, shareholder or any other form in a NIP project?

MR ZIKODE: No.

10 ADV SNYMAN: Mr Zikode, have you ever personally received any benefit in cash or kind from any of the SDPP obligors, their subsidiaries or appointed representatives?

MR ZIKODE: No.

ADV SNYMAN: Mr Zikode, can I now ask you to turn to
15 page 68 of the documents, of the Supplementary Index to the annexures. Mr Zikode, can you confirm that this is a NIP Status Report submitted to the DTI by the German Submarine Consortium?

MR ZIKODE: Yes, that's correct.

20 ADV SNYMAN: And that it's dated 14th of November 2005?

MR ZIKODE: That's correct.

ADV SNYMAN: Mr Zikode, were you present at the meeting where this document was presented or were you made aware of its contents?

25 MR ZIKODE: Well, there's no list of attendees but I'll

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guess I was present.

ADV SNYMAN: Can I now ask you to turn y our attention to the section headlined “Black Economic Empowerment” on the same page and I’ll read the relevant paragraph, and I quote:

5 *“The Black Empowerment Fund is a fund controlled by Ferrostaal and its co-investors which lends capital to PDI SMME on preferential terms in order to enable them to start up their own business. A significant part of it has been used to finance the*
10 *BEE partner in Ferroman and consequently to share in MDM Ferroman. R14 329 650 have been allocated to the BEE company South to South for active shareholding in Ferroman, 33.4% and MDM Ferroman 10%”.*

15 Now turning to page 73 of the same document may I direct your attention to the second paragraph and the relevant paragraph beginning with “Status” underlined and I’ll quote:

20 *“Ferroman (PTY) Ltd. was established in August 2006, it’s a joint venture between Ferriso, South to South and DEC. South to South, the black empowerment arm of the Joint Venture has the majority shareholding of 33.4% with Ferriso and DEC each having a 33.3% shareholding”.*

25 I apologise, it’s August 2002. My question is Mr Zikode, did you or the DTI at any stage enquire as to the shareholding and

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directorship of South to South?

MR ZIKODE: No, no, no, it was not our mandate to enquire about the shareholding just because the company now is a black company, we never did if it was a white company, we never did when it was a black company, so it was really not within our mandate to do that.

ADV SNYMAN: Did Ferrostaal at any stage provide any information as to who the beneficial owners and management of South to South were?

10 MR ZIKODE: Not to me and I will guess not to the programme manager.

ADV SNYMAN: Were you ever made aware that one of the directors of South to South was Mohammed Rafiq Vegas?

15 ADV CHOWE: Mr Chairperson, maybe before Mr Zikode takes that I would like to really object because Mr Zikode has already indicated that they had no mandate to enquire into the ownership of a company whether of a particular creed or not, so I will suggest that maybe this question should have been answered in the first place.

20 CHAIRPERSON: Advocate Snyman, the witness clearly says that it was not part of the mandate, they were never told who it is, whether it was a black or a white company, so I don't think we should mention anybody's name because that will not serve any purpose.

25 ADV SNYMAN: The question that I would like to put to him

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is if he was aware that one of the directors of South to South had served in the Department of Trade and Industry or in particular as a special advisor to the Minister, would it have made any difference to how these agreements were entered
5 into?

CHAIRPERSON: Up to now we don't have such evidence, so I think that you must refrain from mentioning people's names. We don't, I don't have any evidence that the person that you are referring to sat on any of these committees or worked for
10 DTI at all, and the witness clearly tells us that you know, no names were mentioned to them, they were not even concerned about who the shareholders of a particular company is, so I don't think it would be fair to mention anybody's name because you haven't given us any evidence that that person was an
15 employee of DTI and they end up being a shareholder of that company, there is no evidence before me now.

ADV SNYMAN: Thank you Chairperson. As far as the evidence that specific people were directors or shareholders of these companies, this is easily obtained from a simple CIPRO
20 search that I did ...

CHAIRPERSON: Advocate Snyman, there is no evidence before this Commission, I'm not saying that that information is not available somewhere in the public, in the public space, what I'm saying that there is no such evidence before this
25 Commission and I think in that case you should refrain from

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mentioning people's names, particularly if at all mentioned that particular name will not help us because the witness says that that was not part of their mandate to try and find out who owns what and who are the shareholders in those companies.

5 ADV SNYMAN: Thank you Chairperson. Then I would like to place on record that we would like to, we would like to come back to this point during Phase 2 of the hearings.

CHAIRPERSON: You can do that, you can come back to any point in Phase 2 of the hearings, I'm talking about the
10 witnesses before me, the witness says that he doesn't know who the shareholders were of those particular companies, whether it was a BEE company or a white company he says he doesn't know, that was not part of their mandate, so I'm not quite sure how mention of that name comes into the picture
15 when we have this particular witness before me. When we come to 1.5 or 1.6 you can lead any evidence that you think that might be helpful to the Commission but then I'm talking about the cross-examination of this particular witness that's before us now.

20 ADV SNYMAN: Thank you Chairperson. Just to clarify, the point that we're trying to establish here has no bearing on whether it was a BEE or a white-owned company or otherwise, it was merely to establish whether this witness had knowledge of particular people working at DTI having shareholding or
25 directorships within companies that were awarded contracts,

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but it's merely the extent to which we wish to push this line of questioning but we will revert here in Phase 2.

CHAIRPERSON: Is it possible to ask the same question, rephrase it without mentioning anybody's name?

5 ADV SNYMAN: I will endeavour to do so. Mr Zikode, were you ever made aware of any persons employed by the DTI having any directorships in South to South?

MR ZIKODE: No, not at all.

10 ADV SNYMAN: My final question is if you had been informed of this at the time the agreements were entered into, how would you have responded?

MR ZIKODE: If there was any official that has a shareholding in the companies that were applying for offset support I would have informed the IPCC and the senior managers of the DTI about that particular conflicted official of the DTI.

ADV SNYMAN: Thank you. I have no further question.

CHAIRPERSON: Mr Chowe, how long are you going to be?

20 ADV CHOWE: Mr Chairperson I think we will only be for around 10 minutes.

CHAIRPERSON: 10 minutes?

ADV CHOWE: Yes, 10 minutes only.

CHAIRPERSON: Okay.

ADV CHOWE: Thank you Mr Chairperson.

25 CHAIRPERSON: Not that I'm restricting you, I just needed

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to determine whether should I break for lunch now and you continue after 14h00 or whether should we continue, but then if you say only 10 minutes I think maybe let's continue until you, let's proceed until you finish.

5 ADV CHOWE: Thank you Mr Chairperson. Mr Zikode, just a few issues which originated from you main evidence, if we can start maybe with a document in the Supplementary Index to your evidence page, which is mainly on page 68, but the specific page I would like to refer to is page 72, the
10 Supplementary Index to the annexures, very small documents of them all. Page 72, it starts on page 68 Mr Chairperson but I will refer to page 72. Mr Zikode, in your evidence Mr Skinner took you through a paragraph in which there was investment of around R3 million in the Magwatee Project but then there was
15 an issue regarding the R1 million or should we say €1 million loan, and we could not clarify as to what happened to that amount. Can you, can I refer you in the very same page 72 towards the bottom of the page with a sentence or a paragraph starting with "Status" and may I be allowed just to read it to
20 the record Mr Chairperson, and it quotes:

"The loan agreement for €3 million has been concluded with ECDC. The funds have been transferred and the respective claim for investment and the first sales have been put forward to DTI.

25 *The loan agreement for the additional €1 million is*

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on hold due to the open agreements with JV (indistinct)".

Can you give us comment in as far as the €1 million regarding this, with regards to this particular paragraph?

5 MR ZIKODE: Yes. No, the report here is correctly stating you know what happened during that time. The money that was invested into the project is €3 million, that was it. The €1 million was pending on the agreement, the Ferrostaal was trying to establish with a huge tea processor which is
10 called a (indistinct), but as far as I know that agreement never, never happened, so the €1 million was never invested into the project hence then the credits related to the €3 million invested.

ADV CHOWE: Thank you Mr Zikode. Then can you then
15 turn to Annexure "F" at page 113, Annexure "F" page 113. Mr Chairperson, I'm just trying to reorganise ..., I think it should be 113, it relates to oil and gas projects under GSC, I hope I have the right page Mr Chairperson, page 112, I'm sorry Mr Chairperson, it's 112, 112, GSC and this relates to the issue of
20 the oil and gas project. Mr Chairperson, ag Mr Zikode, under this particular project there was an uncertainty regarding the €11 million which was invested in the project and you testified that in as far as you can remember only €28 million were invested. Can you clarify that issue regarding the €11 million?

25 MR ZIKODE: Yes. Like Mr Zimela did say when he was

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providing evidence that he went back to the claims and all the information that appears here was what was appearing in front of him in terms of claims, then he added all the claims per project and then put the numbers here, but on the, 5 unfortunately on the oil and gas, and this is the, one of the projects that we have to correct, on the oil and gas under the column "Actual Obligor Investment" the figure there is supposed to be €28 million because what happened here Ferrostaal was going to invest €28 million in both projects. 10 Remember the oil and gas projects were, these were two projects, a rig manufacturing project in Saldanha and ship repairs in Cape Town Harbour, so Ferrostaal was going to invest in these two projects, €28 million, and the credits as far as the investment is concerned was going to be a multiplier on 15 that investment although there were other investors like Greenacre, LTA all were part of the project, but Ferrostaal just, we just concentrated on the Ferrostaal's contribution which was €28 million. That €28 million in terms of Rand values, it was R225 million, R150 million for Saldanha Rig Manufacturing and 20 R60 million for A-Berth at the Cape Town port, but then the rest of that was going to be the feasibility study Ferrostaal was going to pay for, just before the start of the project.

So all in all Ferrostaal paid using the exchange rate those days 225 million, converting using the exchange rate, 25 comes to R28 million, sorry, €28 million. So, that column of

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“Actual Obligor Investment” is supposed to be €28 million. Masizakhe put that 11 million because that was the, I think Claim 1 or 2, I can’t remember, but that was just a portion of the investment, more investment was still going to come.

5 ADV CHOWE: Thanks Mr Zikode. Then can the Commission then take it that that 11 million should actually be €28 million as it stands on the spreadsheet?

MR ZIKODE: Correct.

ADV CHOWE: Mr Chairperson, can I just check one note?
10 Mr Chairperson, just one last issue. Mr Zikode, if you go to the Annexures page, or Annexures Bundle page 25 ...

CHAIRPERSON: Mr Chowe if you don’t mind whilst we’re still on that page, if at all that 11 million is supposed to be €28 million, dose that affect the totals and if so, to what extent?

15 MR ZIKODE: I think it will affect the ... Chairperson I would have to check that but if it affects the numbers it will increase the actual obligor investment by the difference between 28 and 11.

CHAIRPERSON: Okay, so basically if at all it does have
20 any impact on the total actual investment one must simply just add another €17 million on the total actual investment in order to come to the total figure?

MR ZIKODE: Yes, with your permission Sir I will have to
25 check that but if that’s so yes, it will affect the total actual obligor investment but I can quickly check that whether it was

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just a typo on that block or is it also affecting the total at the bottom.

CHAIRPERSON: Mr Chowe, in that case I'm going to suggest that we adjourn now to give the witness a chance to check in that area and then we'll resume at 14h00.

5

ADV CHOWE: Thank you Mr Chairperson.

CHAIRPERSON: Thank you, we'll adjourn.

(Commission adjourns.)

(Commission reopens.)

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

MR ZIKODE: I do.

CHAIRPERSON: Thank you.

15 ADV CHOWE: Thank you Mr Chairperson. Mr Zikode, just before we adjourned for the lunch break we were discussing the issue of the oil and gas on the figures. Have you reached the final assessment of those figures in and if so, can you please just enlighten the Commission?

20 MR ZIKODE: Yes, thank you very much. I'll refer to Annexure "F" page 116 and go straight to Project Oil and Gas Projects. Chairperson, as I've said before we closed that if you look at this project Oil and Gas and then you focus on the column "Actual Obligor Investment" you have a figure there of €11 million, that figure is understated, it's supposed to be
25 €28 million, why, because the offset company was the only

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investor that was recognised by us in this project, although I did mention that there were other investors but we didn't take them into account when we were dealing with this project. So, under "Actual Obligor Investment" in that Oil and Gas Project the figure there is supposed to be €28 million, not €11 million, because this was an investment in two projects that were making up one project, one project in Saldanha Bay, the other one in Cape Town at the harbour.

That change affects that column "Actual Obligor Investment", the total for that obligor, it moves from 67 660 159 to a new number which is 84 660 159. It increases by 17 million ...

CHAIRPERSON: Just hold on Mr Zikode, I'm a bit lost. Can you start all over again where you are talking about the changes now?

MR ZIKODE: Okay, we are on page 116 Chair, on the annexure. Yes, the GSC Submarine Portfolio and the Project Oil and Gas Projects. Yes. If you look under the "Actual Obligor Investment" the figure there is €11 million. What we are saying is that the figure is understated, it's supposed to be €28 million because in this project the obligor was the only investor as far as the NIP credits were concerned. So, the €28 million you see under "Total Actual Investment" must also be reflected in the column next door which is the "Actual Obligor Investment", €28 million, so that's the change that we

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are making Chairperson.

That change then affects the totals of the obligor investments, so that changes that figure of 67 660 159 into a new figure which is 84 660 159. Do you see that Chairperson?

5 Yes. So, ... Yes, so the exercise that we did about the credit, the multiplier effect is not affected Chairperson because calculating that exercise we used the total actual investment column which is not affected by this change and the investment credits which are also not affected by this change, so the
10 exercise that you requested us, the homework that you gave us is not affected by the change in that block. Thank you Sir.

ADV CHOWE: Thank you Mr Chairperson, we have no further re-examination questions. Thanks.

CHAIRPERSON: I guess we can excuse Mr Zikode. Mr
15 Zikode, thanks a lot for your time, thanks a lot for the evidence that you gave before this Commission, thank you.

MR ZIKODE: Thanks, thank you very much Chairperson.

CHAIRPERSON: Okay. Advocate Skinner.

ADV SKINNER: Chair, the next witness is Ms De Risi. We
20 asked the admin staff of the Commission to check whether the Chairman and Commissioner Musi had a copy of her statement. They weren't able to locate one in the Chairperson's file, I'm not sure whether there is one there, we are making arrangements if not, to have a copy made.

25 CHAIRPERSON: I suppose it's my fault, it's not your fault, I

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know they gave you one, I'm looking to find for it now, I couldn't find it, fortunately they have given me an additional copy.

5 ADV SKINNER: As the Chair pleases. I would then call Ms De Risi.

CHAIRPERSON: Ma'am do you have an objection to taking the oath?

MS DE RISI: No.

(Witness is sworn in.)

10

WITNESS NUMBER 6 : MS CARMELA MARIA TERESA DE RISI (Hereinafter referred to as "MS DE RISI"), GIVES EVIDENCE UNDER OATH

EXAMINATION IN CHIEF:

15 ADV SKINNER: Ms De Risi you signed a statement which is before Commission and from the date of the statement it appears you signed it on the 15th of January of this year, is that correct?

MS DE RISI: Yes, that's correct.

20 ADV SKINNER: And you confirm the correctness of the contents of that statement?

MS DE RISI: Yes, I do.

ADV SKINNER: The statement indicates that you are presently the offset manager for BAE Systems, LAN Systems
25 South Africa (PTY) Ltd. and have been in that post since

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1 October 2011.

MS DE RISI: Yes, that is correct.

ADV SKINNER: As I understand it you were headhunted by that company from the DTI?

5 MS DE RISI: Yes, that's correct.

ADV SKINNER: You set out in your statement that you joined the DTI in 1991 having graduated with a Bachelor of Commerce Degree in Marketing from the University of Pretoria.

MS DE RISI: Correct.

10 ADV SKINNER: Your statement further reflects that you were promoted through the various ranks. What I want to just clarify is comparing paragraph 3 and paragraph 4 of your statement, in paragraph 4 you indicate that you were promoted to one of the assistant directors and in that post you became
15 actively involved in the administration and management of the NIP Programme, is that correct?

MS DE RISI: Yes, that is correct.

ADV SKINNER: As I understand what is set out in paragraph 3 prior to that you were involved with GEIS and
20 therefore not with the offsets and the NIP Programme?

MS DE RISI: That's correct, I was with GEIS up until I started offsets in 1996.

ADV SKINNER: Yes, that's what I want to clarify. So you were involved with offsets from about 1996 you say?

25 MS DE RISI: Yes, from 1996.

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ADV SKINNER: And you remained involved with the NIP Programme and with offsets until you left the DTI, would that be right?

MS DE RISI: Yes, that is correct.

5 ADV SKINNER: You indicate in paragraph 5 of your statement that you were part of the team that evaluated the NIP bids forming part of the Arms Acquisition process and the SDPP. Now we haven't greatly focused on that aspect because the thrust of the evidence of this phase has been on the actual
10 offset programme, not so much on the award to the successful bidders, but since it is mentioned in your statement I want to deal with it briefly. You set out, as I understand it in paragraph 6 the extent to which you were involved, that is that the evaluation of the various bids was carried out by a
15 particular team of which you were part, do I have it correct?

MS DE RISI: Yes, I think you have it correct. And maybe valuations may be not hundred percent the correct term, it was more I was part of a team that summarised the proposals that were then evaluated by a Committee, so maybe valuation
20 in this term is a bit of a strong term. What we did is we were given the proposals that as they came in and we summarised them according to a pre-determined sheet that would reflect you know the ownership, the BEE, the level of investment and the like, and those are the sheets that we prepared for a
25 committee to evaluate.

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ADV SKINNER: Mr Chair, the witness is fairly soft-spoken, can I just enquire is she audible to the Commissioners?

CHAIRPERSON: Not quite, we are struggling to hear.

MS DE RISI: Would you like me to repeat that? Right, I'll just repeat that. I think maybe the term "Evaluation" maybe here was used a little bit too broadly. What we did on my level at that stage is we summarised the proposals that we received, the NIP Proposals only. There was a predetermined summary sheet that we had to fill in a project and that reflected obviously the name of the company, the investment, the jobs, the BEE, the technology transfer and the like, so we summarised the projects into one sheet for a committee then to do a grading and evaluation.

ADV SKINNER: Your statement in paragraph 6 talks about "The IPS unit summarised the offset projects ..." and the following sentence says:

"The name of the bidder was then blanked out before being evaluated".

So, I'm not altogether clear, was the name of the bidder apparent on the documents that you were dealing with or had it already been blanked out?

MS DE RISI: No, they were visible when we did the summary but when they went to the Committee for evaluation they were done fairly anonymously in the sense that the project was evaluated on merit irrespective of who the sponsor was,

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but we saw the name but that name was then blanked out before it was put through to Committee.

ADV SKINNER: Your last sentence in that paragraph says:

5 *“It is my understanding the bids were benchmarked on a predetermined set of criteria”.*

What are you saying there, that the bids were ranked in a particular order or ...

MS DE RISI: No, I think there was a certain set of criteria that the Committee looked at when they evaluated the bids. There was a matrix that was set up. I wasn't privy to that, so I'm not sure exactly what the criteria was but there was a scoring that was then done based on certain criteria that was predetermined and pre-identified.

10 ADV SKINNER: You then further indicate that once it had gone through that process the documents would then go to what you refer to in paragraph 7 as the Evaluation Committee made up of industry sector heads from the DTI.

MS DE RISI: Correct, that's the Committee I was referring to that did the evaluation.

20 ADV SKINNER: And you record that you, as far as you understand the matrix on which the bids were assessed at your level was developed by Mr Vassie Ponsamy who was the previous director in the IPS.

MS DE RISI: Yes, he had a role in it. I don't know if he was the sole one, I doubt it, but he had a role to play in that

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matrix.

ADV SKINNER: And you then further reflect that at the time of evaluation this Evaluation Committee was headed by Mr Vanan Pillay?

5 MS DE RISI: Correct.

ADV SKINNER: You had been asked in the course of consulting with you what had happened to the documents that formed part of the evaluation and your answer is reflected in paragraph 8 that as far as you recall it was on the
10 recommendations of the Joint Investigating Team that all the documentation be packaged and housed together.

MS DE RISI: That is correct, my understanding was that as one of the recommendations from the JIT was that all the evaluation documents should be housed together, so I was part
15 of the team responsible putting all those documents together and packaging them. I do not know if they were actually delivered anywhere, but from what our understanding were, they were, had to be delivered to either the DoD or ARMSCOR.

ADV SKINNER: And understandably since this was many
20 years ago you won't be able to take your evidence very much further in the evaluation process that you were involved in?

MS DE RISI: I don't think after that stage I was involved any more with the evaluation itself, neither with the negotiations of the bidders, it was just once the contract was

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CHAIRPERSON: Excuse me, we are still battling to hear.

MS DE RISI: I'm sorry. That is the extent of my role in the evaluation, we only got involved again once the preferred bidders were identified and we, and the contracts were signed, so it was an implementation of the contracts.

ADV SKINNER: You set out in paragraph 10 that in your view the NIP Guidelines were a framework and that the IPCC had flexibility as mandated in terms of those guidelines.

MS DE RISI: Yes, that is correct. The Cabinet approved the policy which set out the major parameters and it gave the flexibility to the IPCC to move within those parameters.

ADV SKINNER: As I understand it you are not completely familiar with the provisions in the contract, so I don't propose to take you through those at this stage. You record in paragraph 11 that you were not involved at the start of the SDPP projects but only became involved some two years down the line when you were managing the German Submarine Consortium projects and the German Frigate Consortium projects.

MS DE RISI: That is correct.

ADV SKINNER: You set out in paragraphs 12, 13 and 14 your views regarding multipliers and the role that they played as to how they came to be awarded, I think those paragraphs speak for themselves, so I don't propose to take you through them in any detail but you indicate in paragraph 15 of your

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statement that the first project you dealt with for which a multiplier was granted was the Atlantis Training Project. Now that project was referred to by Mr Zikode in his evidence yesterday, you were present when he gave evidence, is that correct?

MS DE RISI: Yes, I was.

ADV SKINNER: You indicate in your statement that the time you took over the project negotiations were fully advanced, I assume from that you were still managing the project at the time that the multiplier was agreed upon?

MS DE RISI: Yes, I was.

ADV SKINNER: My understanding of the Atlantis Training Project was that it was somewhat of an exceptional case and that is why the approval of the Minister was sought. Would you agree with that ?

MS DE RISI: Yes, I would agree.

ADV SKINNER: The reason I raise that is because when Mr Zikode gave evidence yesterday in relation to one of the other projects he suggested that he was not the appropriate person to deal with that and that we should question the project manager and that in particular was the project known as Desmond Equipment, you were the project manager for that project, is that correct?

MS DE RISI: That is correct, I was managing the GSC at the time.

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ADV SKINNER: Can I ask you to look at the bundle which is headed "Supplementary Index to Annexures" and particular at page 66 of that bundle. This is a letter from MAN Ferrostaal addressed to yourself and it would appear from page 67 that
5 the date of the letter is either the 2nd of December 2009 or the 12th of February 2009 depending on whether it's numbered on the continental system or not. Are you able to recall this?

MS DE RISI: Yes I do, I do recall this letter.

ADV SKINNER: You will see at the top of page 67
10 Ferrostaal was seeking credits by applying what they referred to as the multiples, but presumably the multipliers for the Atlantis Training Centre plus a 20% premium for both sales and investments. Now that appears to be rather high if one takes into account that Atlantis was itself an unusual and special
15 circumstance.

MS DE RISI: I don't have Annexure "F" in front of me, so I'm not sure if that was the actual values that we settled on, if somebody can just confirm that for me? I know the 2.2 was correct as far as the value of the investment, I just want to
20 know if that what we settled on has an investment credit value. You will see there we didn't agree to their 20% premium. On the 7 to 9.2 that they requested for investment we agreed to a 60, so I don't think that premium of 20. What we did agree to that we could give it the same strategic value if you would put
25 that way, or economic value as Atlantis. I think what was

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important about this project and maybe it hasn't come out, is that they're a capital goods company and they basically were one of only one I think in South Africa that did what they did and they would position themselves for a Transnet tender but
5 they needed a prototype and there was now the funding available within DTI that could help them with the prototype, so it was to position themselves as a local company bidding against foreign companies for a Transnet tender, so DTI regarded it as a fairly strategic reason to support it. Does that
10 answer your question? Sorry, thanks.

ADV SKINNER: And from what you say that was then the reason for the multiplier being granted?

MS DE RISI: Yes, that is correct. The other reason which is not maybe so prominently is this was one of the
15 projects that replaced the precision strip mill. Ferrostaal had tried to establish a precision strip mill in the Eastern Cape which was basically the most important project that we saw them doing and after years and years of trying to make it happen for various reasons it couldn't happen. That project
20 evolved from shareholding to a loan, to eventually that they would have put in a grant to make it feasible.

Now they got to the end of their obligation period, so they were prepared to invest in other projects for that same value but obviously they wanted the same kind of recognition
25 for it because there was no time to go look for other projects,

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so it was important that we found projects that were of strategic importance. Desi was the one, and the Long Walk To Freedom was the other that then replaced the precision strip mill.

5 ADV SKINNER: I had indicated that I wasn't going to take you in detail through what you said in your statement about multipliers other than the one aspect I must just mention in paragraph 13 of your statement. You refer to:

10 *"For the concept of causality to apply the rule of thumb was that the obligor must have contributed a minimum of 10% in order to be credited for a 100% of investment sales or revenue".*

Do I understand correctly that as a rule of thumb that wasn't an inflexible rule?

15 MS DE RISI: It was a rule of thumb, it was obviously, we as a Committee to decide because you have causality and the obligor was allowed to claim the full value of the project you know, what percentage do you put in a project to make it happen, and we came up with, after a lot of deliberation that
20 you know, you need to make it approximate a 10% investment to say you've caused a project but there are other factors that can make that 10% either higher or lower, so it was fairly flexible. I wouldn't say it was inflexible, it was just a very rough rule of thumb.

25 ADV SKINNER: Thank you Mr Chairman, that's the

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evidence of this witness in chief.

CHAIRPERSON: Any cross-examination?

ADV SNYMAN: Chairperson, we have just received this witness's statement, we would like to take instructions from our
5 clients whether there is any detail that they wish to cross-examine on. I appreciate that we would not then be in a position to proceed with cross-examination before tomorrow morning if we do intend to cross-examine this witness. I'm not sure if the Chair, if the Commission would be prepared to
10 adjourn or that purpose until tomorrow morning or whether this witness could be recalled tomorrow morning for that purpose if necessary and we continue with the next witness this afternoon.

CHAIRPERSON: To be honest with you (indistinct) I'm
15 reluctant always to be saying to the witness that go back, we'll see whether we want to recall you or not. You have been sitting there when this witness testified, the statement is only three pages, I'm not quite sure why you want this witness to go home and come back tomorrow morning, her statement is only
20 three pages. I think you must cross-examine now, the statement is only three pages, your client is sitting next to you, why should we always inconvenience witnesses by asking them to come and sit here, testify, you sit there, you take notes and from there after they testified instead of cross-examining ask
25 that you know, you should be given an opportunity of taking

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instructions? I don't think we can go on, on that basis, the witness is here, I'm prepared to give you 10 minutes, we can adjourn for 10 minutes and you take a decision whether you want to cross-examine or not. Her evidence is very short, it's only three pages.

ADV SNYMAN: Thank you Chairperson. If I can just, especially for the record purposes clarify two points. Our clients are not based at the Commission, two are in fact in London and one in Cape Town. We have been endeavouring in this phase and certainly this year to make every effort to proceed with cross-examination immediately upon a client finishing testifying but as our clients are the ones who (indistinct) all the knowledge considering the years that they have put into investigating this deal and the evidence that they were presenting before this Commission, they are the ones who we need to consult with in order to make an election whether it is necessary to cross-examine a particular witness. We have not had the opportunity to share this witness statement with our clients as we've only received it 10 minutes ago.

We will be doing so and over the course of an evening we will be preparing for cross-examination should they elect to do so, but there was no live streaming and the witness statements are not given to us in advance, is therefore impossible to come prepared to cross-examine immediately on that basis without getting instructions.

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CHAIRPERSON: Before I express an opinion do you want anything to say Advocate Skinner?

ADV SKINNER: Mr Chairman, I'll leave it in the discretion of the Commissioners.

5 CHAIRPERSON: Thank you.

ADV CHOWE: Mr Commissioner I will also reiterate what Mr Skinner is saying, we'll leave it to the discretion of the Commission.

CHAIRPERSON: Thank you. Ma'am unfortunately you'll
10 have to come back tomorrow morning, a situation which might be highly undesirable. Most of you come here at very great cost and you sacrifice time to come and give evidence. I think it's unfair that every now and then after a witness has testified we must stand the matter down to give one of the interested
15 parties an opportunity of looking at the statement, unfortunately you will have to come back. You are excused until tomorrow morning.

ADV SKINNER: Mr Chairman may I just raise one aspect? The next witness would have been Mr October, the director
20 general. We're not in a position to call him this afternoon because I pointed out to my learned friend Mr Chowe before we resumed after the adjournment that the draft statement by the director general contains certain figures which in the light of the ongoing situation of Annexure "F" being updated will
25 probably need to be reconsidered in relation to the actual

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figures for sales that were generated and so on, and my learned friend seems to be agreeable that the team should consider it this afternoon and check so that tomorrow morning the director general would be able to confirm what figures he is putting up before the Commission. What I, however, wish to raise is simply I don't want the same situation occurring tomorrow that the interested parties' teams indicate that they then need time to consider the director general's statement, whether that statement can be made available to them this afternoon on the basis that it may not be disclosed to anyone else other than their clients.

CHAIRPERSON: Yes. I think maybe they can make that statement available to them on one clear condition, they should not disclose that statement to anybody, not the media at all, and then secondly you are correct that seeing those figures and that are contained, the director general's statement, they slightly differ from the figures which are in "F", but then when I looked at them again I thought they were based on the former Annexure "A" of Mr Zimela's statement. It seems to be my observation, but then you are right that in the light of Annexure "F" he might want to have a look at those figures.

ADV SKINNER: Yes Mr Chairman, particularly because Annexure "F" doesn't give a breakdown between local sales and export sales whereas the director general's statement does and that's why I asked whether it would be advisable for them to

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reconsider the figures, see if there are any changes there.

CHAIRPERSON: Maybe let's do that, but then maybe as you said that you know, maybe a copy of the statement of the director general must be given to the Lawyers for Human Rights so that tomorrow after the director general has testified then they can proceed with their cross-examination.

ADV SKINNER: I'm indebted to the Chair.

CHAIRPERSON: Thank you.

ADV SNYMAN: Chairperson, if I may add, if it would suit the Commission to have an adjournment now for 10 minutes we can make contact with our client and get a clear instruction so we know today whether or not we wish to excuse this witness, if that would suit the Commission.

CHAIRPERSON: Thanks a lot, maybe let's adjourn for 10 minutes and then we'll come back after 10 minutes. Thank you.

(Commission adjourns.)

(Commission reopens.)

CHAIRPERSON: Advocate Snyman.

ADV SNYMAN: Thank you Chairperson. I do have two short questions to put to this witness.

CROSS-EXAMINATION:

ADV SNYMAN: Ms De Risi, you were present this morning when we were asking questions of your former colleague Mr Zikode and do you recall that we were referred to a document which we handed up which was the independent audit report

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which was addressed to you and from the auditors NAD. We referred on page 95 of that document to two conclusions drawn in that report. And the overarching conclusion that we see on page 95 is that the report found that SAAB had not delivered on its obligations in terms of the NIP credits awarded to it. My question then is if these were the findings of the Independent Audit Report why were the offset credits still awarded?

MS DE RISI: Firstly I think this is not an independent audit report, it's an impact assessment report alright? It was commissioned by the DTI to have a look if SAAB had delivered as per agreed, it interviewed both SAAB, it interviewed Denel alright, and the report doesn't say ... It partially did deliver on its commitments, so it wasn't that it didn't deliver in full. We commissioned the study, we looked at its findings and from my recollections these findings were presented to the IPCC and it was followed up after this to a letter to SAAB highlighting what we expect from them and I don't have the full brief of that letter but I do remember, and this is something that SAAB did commit to, is their investment was going to remain in South Africa.

Right, so not all is lost, there was a lot that was done, I mean A400m is only there because of SAAB, there was a lot of good done in the project and the Committee had to evaluate both, was there enough to overturn the credits and it felt that there wasn't, but there were conditions we put on

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SAAB such as that that investment that they then withdrew from Denel SAAB Aerostructures would remain in South Africa. So, and I don't believe that they didn't meet their objectives, I think there were certain parts, but that they didn't manage to
5 achieve. Thank you.

ADV SNYMAN: Thank you. Then my other question is, so they were subject to more negotiations and there was more discussion with them. Were the offsets that were awarded for their performance ever subjected to a review?

10 MS DE RISI: This, the actual award of the credits was before my time, before I took over as director of the whole programme and from what I understand from Mr Zikode's evidence obviously they were already awarded in advance and they were reviewed when SAAB withdrew and hence this impact
15 assessment and the Committee's feeling was that enough was done not to reverse the credits.

ADV SNYMAN: Thank you. No further questions for this witness.

CHAIRPERSON: Thank you. Any re?

20 ADV CHOWE: No re-examination.

CHAIRPERSON: Thank you. Ms Dr Risi, thanks a lot for coming, you are excused. Thank you.

ADV SKINNER: Mr Chairman, then at this stage I would request that the matter stand down until tomorrow. We have
25 been trying to clarify the figures but I would like an opportunity

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just to think about the figures that had been given to me. Secondly I don't know that we would finish the director general this afternoon and thirdly we have the problem about my learned friends for Lawyers for Human Rights wanting to consider the draft statement, so for all those reasons I would ask that the matter stand down until tomorrow morning.

CHAIRPERSON: Tomorrow morning if we deal with the evidence of the director general, who is your next witness?

ADV SKINNER: Mr Chairman, we anticipate then that we would need to call a further two witnesses, neither of whom we can deal with tomorrow, the one would be a formal witness simply to prove the NIP Terms and we would probably have to go into *in camera* for that because although there have been ongoing discussions there is no unanimity between all the interested parties regarding declassification. The second witness would be the former Minister of Trade and Industry.

There were difficulties in obtaining agreement as to his availability and that of his legal team and the secretariat of the Commission has managed to set up the consultation with him for Thursday morning. I've made enquiries as to when it is anticipated he would be available to give evidence, that is still being ascertained, we are hopeful that that would be in the course of next week but I couldn't give any assurance to that at this stage, we will obviously need to put up a draft summary of his evidence and give notice to anyone who wishes to attend,

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so once we have finished the director general tomorrow then I would have to ask the Commission to stand down until we're in a position to lead the evidence of the former Minister.

CHAIRPERSON: Advocate Skinner, my difficulty is that we
5 need to get some certainty because we must also try and make
sure that we stick to the programme. If at all the former
Minister is going to come and testify I don't think it should
depend on him when he wants to come, I really don't think
that's how we should operate. As soon as we have given a
10 subpoena, the day that he's supposed to be here, one would
expect him to be here, I really don't think that should depend
on him when he wants to come. Can I get some certainty by
the end of the day tomorrow when you want the Minister to
come here because I think he has already been served with a
15 subpoena. Can I get some certainty tomorrow morning, the
date on which the former Minister should appear?

ADV SKINNER: Yes, I don't anticipate any difficulty in that
regard Mr Chair, we are discussing through Advocate Ndombi
the precise days, but we anticipate it would be sometime next
20 week.

CHAIRPERSON: Yes, to say sometime next week, that is
not good enough. If at all you are you going to consult with
him over the weekend, his statement should not be that long,
one would expect him to testify on Monday if you still need him,
25 we can't just say sometime next week.

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ADV SKINNER: That's what I wish to clarify before the close of business tomorrow Mr Chairman.

CHAIRPERSON: And then I hope you will come back to me with an exact date.

5 ADV SKINNER: Yes, I will Mr Chairman.

CHAIRPERSON: Thank you. Then in that case we'll adjourn until tomorrow morning.

ADV CHOWE: Mr Chairperson my apologies, I would have liked Mr Skinner maybe just to inform us whether he would be
10 able to disclose the name of the first witness who needs to give evidence regarding the NIP issues.

ADV SKINNER: Mr Chairman, I can't at this stage. It would be a formal witness simply to identify that these are the contracts and these are the relevant provisions, but the
15 identity of such a person hasn't been made known to me as yet.

CHAIRPERSON: I don't quite understand you. You don't want to give your opponents the name of the witness, that I find a bit strange, how should they prepare if at all they don't even know which witness you are going to call? I think you
20 should disclose the name of the witness.

ADV SKINNER: Mr Chairman, maybe I didn't make myself clear. I don't know of the identity of the witness. I have asked the Secretariat to find out who an appropriate person would be who is able to say that these are the relevant contracts.
25 Because of the discussions that have been taking place about

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declassification they have not yet come back to me to say the witness will be Mr So and So, I don't know who that witness will be, as soon as I do know I can certainly let my learned friend know.

5 CHAIRPERSON: So, that unknown witness, when is he supposed to testify?

ADV SKINNER: Mr Chairman, simply to identify the contracts and the NIP terms and explain the structure of them with relevance to certain clauses so that the relevant
10 provisions are clear.

CHAIRPERSON: No, no I understand that, I'm saying when is he supposed to testify?

ADV SKINNER: Mr Chairman, we anticipated that whatever date we adjourn to for the evidence of the former minister
15 would start with that witness because I don't believe he would, he or she would take longer than half an hour at most, so it would not be a case of two adjournments, we will adjourn to a specific date, start with that person, have the contract approved and then continue straight onto the evidence of the
20 former Minister.

CHAIRPERSON: As soon as we get a statement from that unidentified witness up to now, can you please make sure that you know, all the interested parties get a copy of their statement so that at least they should know in advance who
25 that witness is and all that the witness is going to testify

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about?

ADV SKINNER: Certainly Mr Chairman.

CHAIRPERSON: Thank you, we'll adjourn until tomorrow.

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(COMMISSION ADJOURNS)