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CHAIRPERSON: Good morning everyone I must say Commissioner Musi that the next witness, his testimony remain in the respect is Mr Peter Daniel Burger and his evidence will be led by Ms Sello.

5 ADV SELLO: Morning Chair, Commission Musi, the witness is ready to be sworn in.

CHAIRPERSON: Please state your full names.

MR BURGER: Pieter Daniel Burger.

10 CHAIRPERSON: Do you have any objection in taking the oath?

MR BURGER: No.

CHAIRPERSON: Do you swear that the evidence you are about to give is the truth, the whole truth and nothing but the truth, if so, raise your right hand and say so help me God.

15 MR BURGER: So help me God.

ADV SELLO: Thank you chair, commissioner Musi. Mr Burger, before I address Mr Burger, chair and Commissioner Musi, we have a statement, a prepared statement and a file of annexures and all these have managed to fit in one arch level file. The evidence of Mr Burger will be led on the basis of that file. We do not intend to go to any other document. I just want to confirm that the chair and commissioner Musi has got the file as I describe.

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CHAIRPERSON: Thanks a lot, I do have the file. Maybe you might just assist me on I think on (Indistinct) I've got a

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draft of the statement. Which really help me to understand the issue. Now it seems to me you added an additional pack are you in a position to find out where the additional paragraph is?

ADV SELLO: Chair, we tried desperately to keep it within the number of pages that the chair and Commissioner Musi addressed it on Friday. And we would like to believe that we by in large succeeded maybe by one paragraph or two. It is it might not be very easy for me to point out precisely which paragraph was added.

What has transpired though is the statement remains largely the same, the content remains unchanged. Some of the issues and concepts that were set out in the draft statement, we were of the collective view that they could be better explained in the statement and in some instances that is what has happened.

Secondly, a rearranging of paragraphs has taken place and maybe an additional one, or three sentences. So all in all, as we go through the witness of Mr Burger it shall become apparent that what the commissioner has read from the initial draft remains the same.

The order of delivering might be slightly different, but at the end of the day the context remains the same chair. Thank you chair. Mr Burger, from the file I have just described to the commissioner, the first document in that file is a statement and the timelines it suggests that it is a statement, it

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is your statement, statement of Pieter Daniel Burger, do you have it?

MR BURGER: Chair commissioner, I do.

ADV SELLO: It is an 18 page statement, and I would like you to please refer to page 18 thereof. The statement is dated 11 March 2014 and signed, is that your signature?

MR BURGER: Chair that is my signature.

ADV SELLO: Do you for record purposes confirm that you stand by the contents of the statement?

MR BURGER: I stand by the content on this statement.

ADV SELLO: Thank you Mr Burger. I apologise, for record purposes, apparently I read the date as 14 March, it is 11 March 2014. I got the 14 wrong, my apologies chair. Mr Burger, could you state where you are currently employed and what your job description is?

MR BURGER: Chair, I am currently employed at ARMSCOR and I am the acting senior manager DIP.

ADV SELLO: Please refer to tab one in your file. There is an abridged CV in there. Is that a copy of your abridged CV?

MR BURGER: It is indeed a copy of my abridged CV.

ADV SELLO: Anything in particular you would like to draw the commission's attention to?

MR BURGER: Chair maybe just that I have been in the employ of ARMSCOR close on 25 years now and the division

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that I am in at the moment for the last 11 years or so.

ADV SELLO: In your statement at page 1 and in particular at ...(intervene)

CHAIRPERSON: Sorry, just before we move away from his
5 CV, can I just find out from Mr Burger the qualification (Indistinct) is there a diploma, anything at all or what sort of qualifications?

MR BURGER: Chair that is a certificate, a one year course, with the certificate.

10 ADV SELLO: Thank you chair. At paragraph 1.3 of your statement you referred to a time period from May 2003 and you qualify the basis on which you give the evidence you are about to give, could you please read that into the record?

MR BURGER: Chair:
15 *"I was in ARMSCOR's employment during the acquisition of the strategic defence procurement packages, referred to herein as the SDPP. However, I was not involved in the acquisition process itself as I only joined the division in May*
20 *2003 as a DIP manager responsible for the maritime related acquisition projects, which is three years after the conclusion of the acquisition process."*

ADV SELLO: Thank you, if we could move to paragraph two. In that paragraph you deal with applicable DIP policies,
25 procedures and directives, do you see that?

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MR BURGER: Indeed I do.

ADV SELLO: You have however annexed two documents and that is ANNEXURES PB2 and PB3. Could you state what is the position with the rest of the policies?

5 MR BURGER: Chair, the annexures referred to on page 20 and 31, first 2.2.1 in my statement, that is the delegated authorisation powers applicable in ARMSCOR as delegated by the board of directors, which is the highest authority within ARMSCOR. So that annexure refers to that document, which
10 govern the decision making processes also with regard to DIP, and also in regard to all other matters within ARMSCOR.

The second document referred to in annexure 3 page 31 is a DIP division internal document to describe the way in which we deal with claims when such claims are received
15 obligors.

ADV SELLO: Thank you Mr Burger. At subparagraphs 2.1.1 to 2.1.3 you referred to certain policies but you do not annexe them to your statement. Is it correct that you do not
20 annexe them because they have been tendered to this commission by the previous witness Mr Billie De Beer?

MR BURGER: Chair, commission that is correct.

ADV SELLO: And it is your contention that those policies read with the directives and the procedure you have just referred to and annexed to your statement are prescripts
25 that were applicable to the DIP discharge management

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processes at the time.

MR BURGER: Chair that is correct.

ADV SELLO: At paragraph 3 you begin to deal with umbrella agreement, supply terms, DIP terms and DIP contracts, would you take the commission through paragraph 3?

MR BURGER: Chair, Commissioner Musi, also as stated by Mr De Beer previously the SDPP's were governed by a number of agreements, of which the umbrella agreement is the highest level document. And as subsets to that there were supply terms, which governed the acquisition and technical aspects of the acquisition.

The DIP terms, what is not referenced here at the NIP terms, which were also a subset to the umbrella agreement. The DIP contracts refer to the actual agreements between obligors and the local beneficiary funding companies in the defence industry.

And they are relevant because they speak to the discharge of the obligations. Could you explain briefly to the commission, which aspects if any of the umbrella agreement of the supply terms DIP terms and DIP contracts your evidence will cover this morning?

MR BURGER: Chair on page 3 of my statement 3.2 is a summary of the clauses within the umbrella agreement which has reference to DIP as well, in addition to many other things. So, those would be the items, 3.2.1 – 3.2.7 in my statement,

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which would apply to DIP.

The supply terms do not specifically relate or refer to the DIP in anyway because those are the technical terms for the delivery of the equipment that was acquired. And the DIP terms would be those documents that contained all the instructions and conditions applicable to managing the DIP obligations and they are listed in 3.4 the headings as contained in the DIP terms.

ADV SELLO: At paragraph 3.5 you have referred to a document you describe as a table of generic provisions contained in the Corvette DIP terms. And you attach a copy thereof, could you just give a brief description of what that document is, what its relevance is and how it relates to the rest of the programs?

MR BURGER: Chair that document referred to in annexure 4 on page 34 is not the actual signed DIP terms, that is just a working document that we, was typed up within the DIP division for ease of reference. But it does contain the exact conditions but it could not be used as an official document but it does explain the DIP terms that apply. Those, the examples used there, refer to the Corvette Program and the platform DIP terms as well as the Combat Suite DIP terms.

ADV SELLO: Now at paragraph 3.6 and 2.7 you deal specifically only with clause 5, which in the previous paragraph you described as DIP completion. And annexure C1 and C2

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sheets, which is described as DIP activity worksheet and progress report, and DIP discharge target planning Schedule respectively. Firstly, why do you specifically mention those three in that list and leave out the rest?

5 MR BURGER: Chair, as I mentioned with regard to the DIP terms, for the most part those were generic to all the agreements across the board for the Hawks the Gripens, LUH and all the others. But for paragraph or clause 5 and the annexures C1 and C2 because those contain the specifics of
10 each obligation and how that would be discharged.

In other words that contained the detail of the figures and the activities and they were different and specific to each of the obligations. And the, my evidence is very much based on those sections of the agreement, clause 5 as well as
15 the C1 and C2 because they were the source of our managing the discharge of the obligations.

ADV SELLO: Referring back to annexure BP4, can you please turn to page 34 of your file under tab 4. Is that the table of the generic provisions?

20 MR BURGER: Chair that is the table, the comparative table of the generic terms.

ADV SELLO: On that document please turn to page 51. You will find at page 51 in the middle of the document the heading clause 5 DIP completion. Is the commission to
25 understand that this is the actual clause 5 as it related to the

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Corvettes?

MR BURGER: Chair that is correct, clause 5 although we have now presented this as the generic terms, except for clause 5 which is now specific to the platform, and to the
5 Combat Suite. So those are the specific terms in those two agreements.

ADV SELLO: Overleaf, in fact no, starting at page 51 at the bottom, 5.1.2, overleaf, listed milestones. Can you briefly explain what those are, give the specifics insofar as they
10 related to the Corvettes?

MR BURGER: Chair those milestones were contracted as management milestones on a 6 monthly basis to track and monitor the progress. Those were specific points, on the calendar where we would look at the performance of the
15 obligors and that is contained in the agreement in that section of the DIP terms. So it relates specifically to when discharge would happen for the event.

ADV SELLO: So for the Corvettes they were 14 contracted for milestones.

20 MR BURGER: Chair that is correct, initially there were 14 contracted milestones.

ADV SELLO: And it is your testimony that each agreement at clause 5 contained the specifics of the particular program as a result, clause, the respective clause 5's of the
25 various contracts would differ from contract to contract.

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MR BURGER: That is correct.

ADV SELLO: At both 3.6 and 3.7 you referred to C1's and C'2, if you could explain that to the commission and particularly how they relate back to clause 5 if at all.

5 MR BURGER: Chair, my apologies, can you please just repeat the question, I assume you are referring back to the statement.

ADV SELLO: I do apologise I am now back at the, I meant your paragraph 3.6 and 3.7, thanks.

10 MR BURGER: Thank you chair. Again my apologies, the question.

ADV SELLO: Sorry, I apologise chair and Commissioner Musi for the confusion, if I may restart. Having explained the content of clause 5 and in particular in relation to the Corvette,
15 I would like you to refer now to your paragraph, 3.6 and 3.7 of your statement and talk us through the annexures C1 and C2 and to explain to the commission, how, if at all they relate to the clause 5.

MR BURGER: Chair, Commissioner Musi, this is, I think
20 where we start to delve into some of the detail of the agreements, because the C1 annexures do have quite a significant portion of detail related to the discharge. And I would like to take you to annexure, can I just have a moment just to (Indistinct) the annexures.

25 Chair my apologies, annexure 8, annexure 7 and

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annexure 8, specifically starting with annexure 7 and we will refer to this later on but I just want to take you to that to give you an idea of what such an annexure looks like, and we will discuss this in more detail. But those annexures contain the detail with regard to the activity the description of the activity, the local company involved, the specific milestones at which the discharge would take place. And those are the important items in the C1 annexure. That figure that is shown in the annexure, and as I said I will explain that in more detail a little bit later on is something that is transferred to, in my bundle annexure 8, which refers to the C2 annexure of the DIP terms which is just a summary of the C1 annexures.

And in this example you may have noticed that there are 25 C1 annexures related to the Corvette Platform, because that is the example that we are using. So, the C2 form basically adds up and summarises all the C1 information. That is the function of the C2.

And that information finds its way into clause 5 when we deal with the scheduling because that shows the detail of when that will happen. And that information is contained in the clause 5 of the dip terms.

ADV SELLO: And Mr Burger, do I understand you correctly therefore that annexure C1 and C2 are best read in conjunction with clause 5?

MR BURGER: Chair that is correct, there is a direct link

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between what happens on the C1/C2 annexures and what is stated in clause 5 of the DIP terms.

ADV SELLO: Before we leave annexure PB4, if you could just clarify something, you call this a table of generic provisions contained in the Corvette DIP Terms. You have
5 there a table under one heading it is GFCB1 under another heading Thompson B2. Could you explain to the commission what those mean?

MR BURGER: Chair, yes I can, the acquisition of the
10 Corvettes, and I am talking about eh acquisition side, the supplier side of the Corvettes was dealt with under one umbrella agreement. But because the Corvette consisted of two distinct parts, the one was the platform or the vessel part, and the other was the Combat Suite part. And there were
15 different companies involved distinctly in these two parts.

There were two separate sets of DIP terms which related the one to the platform and the other to the Combat Suite specifically and they were managed and suspected DIP terms and because they did involve different companies or
20 entities when dealing with them.

ADV SELLO: Is it so that the first part of the table, the GFC being in (B1) dealt with the platform?

MR BURGER: That is correct.

ADV SELLO: And the second part thereof then
25 Thompson B2 dealt with the Combat Suite?

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MR BURGER: That is correct, and then they are referred to in the DIP terms as Schedule B1 and Schedule B2 respectively.

ADV SELLO: So therefore moving to page 52 where we have milestones, the milestones we spoke of earlier on the left side are milestones relating to the platform and the milestones on the right relate to the Combat Suite.

MR BURGER: Chair that is correct, that reflects in this table the originally contracted milestones and milestone values, yes.

ADV SELLO: And you noted paragraph 3.8 of your statement that the DIP terms are appendices to the relevant umbrella agreement, so we are to understand that each umbrella agreement had its own either DIP terms or set of DIP terms depending on whether it covered two aspects of the program one.

MR BURGER: Chair that is correct. Another example of where there were two sets of almost DIP terms is the Hawk and Gripen which from a DIP perspective were managed, there was one DIP agreement but there were two separate sets of C1 annexures for the Hawk and for the Gripen.

So similarly that is another example of where one, although there were two different programs BAE systems was responsible for both the Hawk and Gripen DIP. And, but we manage those two programs from a DIP perspective as two

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separate programs.

ADV SELLO: At page 4 of your statement towards the bottom, you have a subheading DIP contract. Could you take the commission through these DIP contracts?

5 MR BURGER: Chair the DIP contracts are also defined in the DIP terms and they relate to the agreements conclude between the obligors, the foreign companies, in other words the local beneficiary companies under the DIP program. As I stated there, ARMSCOR was not a party to any of those
10 agreements.

And the only relationship or the only link to those agreements was that that provided the information that was included in the C1 annexures as the obligations that would be managed. But we did not have any direct influence over those
15 agreements. They were strictly agreements between obligor and the local company.

ADV SELLO: You state at 3.10 of your paragraph that the DIP contract between the obligor and the local beneficiary company was relevant to ARMSCOR in terms of 3.3.1 of the DIP
20 terms only insofar as it may be required by ARMSCOR for purposes of substantiating a DIP credit claim. Would you like to expand on that, and perhaps for each of reference have regard to page 47 under annexure PB4?

MR BURGER: Chair yes, I can respond to that. Of
25 course the DIP contract is a critical document and as I have

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mentioned although ARMSCOR is not a party to that agreement
I does and can provide information with regard to the discharge
of the obligation, and therefore if ARMSCOR needed to look at
those agreements for purposes of granting credit, ARMSCOR
5 was in a position to do so and to request that either by asking
for copies of those documents or at least perusing those
documents by visiting the local company or by getting such a
copy from the obligor itself.

ADV SELLO: If you refer to PB4 at page 47 towards the
10 bottom, in fact the last entry, it is clause 3.3 DIP credit claims.
Would you like to read 3.3.1 into the record with particular
reference to the DIP contracts?

MR BURGER: Chair I will do so.

15 *“DIP credits must, at all times, be claimed
by the GFC as part of the credit claim form
attached hereto as annexure A. All claims
shall be accompanied by documentary
proof to substantial the claim. This
documentary proof shall include but not be
20 limited to...”*

On the next page, page 48:

*“...a copy of DIP contracts to the extent
that they are reasonably required to
substantiate the claim.”*

25 ADV SELLO: And is that what the commission is to

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understand you mean by saying the contract is relevant only insofar as it may be required by ARMSCOR for purposes of substantiating a claim.

MR BURGER: Chair that is correct.

5 ADV SELLO: You have already touched slightly on the contents of your paragraph 3.11 but maybe you should speak to that in detail about the role ARMSCOR plays and the DIP contract if at all.

MR BURGER: Chair, yes, the position that ARMSCOR
10 took as far as my knowledge and understanding goes, is that if you consider ARMSCOR's role in the acquisition program or on the, its main function of acquisition for the defence force, it must remain unbiased and therefore cannot influence any subcontract because it would, it could maybe imply favouritism
15 towards certain companies etcetera. So ARMSCOR would therefore not be involved in the conclusion of those DIP agreements or in any way in the conditions that would apply in those agreements.

ADV SELLO: At the end of that paragraph 3.11 you
20 introduced the notion of a substitution in respect of these contracts can you talk to that?

MR BURGER: Chair yes, it is so that at the conclusion of the DIP terms in 1999/2000 one must understand that in some instances the activities proposed were estimated and planned
25 activities and involved maybe identified companies, but it is

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possible that for various reasons that a specific local South African beneficiary company could not comply to the conditions of a DIP contract and therefore it is also possible to substitute the identified company, local company with a different company
5 would could actually execute the work.

And but the obligor will at all times be held responsible still to discharge the obligation. And if not obviously the conditions of the DIP terms in terms of non-performance and related to penalties and such would then
10 apply if necessary.

But, the just of that statement is that yes it was possible for the obligors to substitute activities and even change the local company that was involved.

ADV SELLO: To your knowledge after the various DIP
15 contracts were concluded, did ARMSCOR even have to invoke the right to substitute a local beneficiary?

MR BURGER: To my knowledge, ARMSCOR did not necessarily, no, did not have the right to prescribe to an obligor to use a specific local company. That would be the
20 obligor who would approach ARMSCOR with a request to substitute that company because of reason it could not conclude or complete the activity with the identified company at the conclusion of the DIP terms.

ADV SELLO: Thank you for that clarification so it is
25 your evidence that there has been no substitution in respect of

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the DIP obligations that you speak of in your statement. Chair there have been substitutions, they have missed not, just being initiated by ARMSCOR. As far as I know, and given that I have only been involved with the DIP from 2003 but ARMSCOR would not initiate a substitution of an activity specifically with regard to the companies, the local beneficiary companies that are involved.

ADV SELLO: And now turning to the issue of penalties, and in the context of penalties as you speak in paragraph 3.1 are you aware of ARMSCOR having, are you aware of any penalties having been made as against either the obligor or any other party in this regard?

MR BURGER: Chair with regard to the DIP terms, the programs that were managed, there has never been an application of a penalty to date with regards to the SDPP DIP.

ADV SELLO: Thank you. Now moving on to paragraph 4 of your statement, which has the heading DIP terms contracted for under the SDPP. You state there that DIP terms were concluded under the SDPP submarines 1, the Corvettes or frigates as they may be, Gripen Alfa and LUH without necessarily reading what is contained in your statement into the record, would you highlight some key aspects that you think the commission should have regard to?

MR BURGER: Chair, as I have mentioned before, I think the explanation with regard to why under the Corvettes there

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are actually two separate sets of DIP terms which were managed separately as well as on page 6, 4.1.3, the similar situation with the Hawk and the Gripen where although one set of generic DIP terms was concluded there were two separate sets of C1's for the Hawk and for the Gripen because they had different activities. But they were managed as such.

ADV SELLO: You attach your statement, a copy of the platform DIP terms as annexure PF5, which you referred to at paragraph 4.1.2.1. Now, please turn to page 56 is that your PD5?

MR BURGER: Chair, yes that is the copy of the Corvette Platform DIP terms.

ADV SELLO: And PB6 would be the same entity except or in relation to the Combat Suite?

MR BURGER: Chair that is correct

ADV SELLO: To assist the commissioners, would it be correct to say then the DIP terms that contained the various clauses including clause 5 would be what is contained from pages 51 to 93.

MR BURGER: Chair, I think it is contained in page 56 to ...(intervene)

ADV SELLO: 91, 93.

MR BURGER: 91, that would be the generic terms and then after that up until page 120 would the specifics of C1's and C2's for the platform, if I understood the question

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correctly.

ADV SELLO: Just so we are accurate, you are quite correct, the copy you have is marked page 56 to 90 in respect of the platform. At 92, we have a pro forma DIP credit claim form at 94 would be the C1 and at 107 would be the C2 and that is how, my apologies chair at 117, I was correct, would be the C2. And that is how they should be read, the DIP terms, the C1's and the C2 as you have in annexure PB5.

MR BURGER: Chair that is correct, this is now a copy of the actual DIP terms with all those annexures included, which were signed at the time of the conclusion of the STPP contracts.

ADV SELLO: At paragraph 4.2 you have a note there, of your statement, could you read that note into the record and explain the relevance of why you point it out.

MR BURGER: Chair I will do so, paragraph 4.2 on page 6 of my statement.

"It should be noted that although the DIP terms were concluded in i.e. US Dollar, for the Hawk, Gipen and LUH, or Euro (Corvette and Submarine) for reporting purposes the values are converted to South African Rand at the fixed base exchange rates for the period 1999 of R6.2 to the Dollar and R6.4 to the Euro."

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The relevance of that statement is because we will refer (Indistinct) in my statement look at the actual figures and some of them will be in Rand values and some of them will be in the contracted currency of the DIP terms. And I think when we get
5 there I will explain the, why it is so.

ADV SELLO: Mr Burger, at paragraph 5 you deal with key concepts for discharge and performance. And at paragraph 5.1 and 5.2 you deal with the detail, in particular, of annexure C1 and C2. As you go through your testimony as set out in
10 those subparagraphs, could you do so with particular reference to annexure PB7 at page 181 and PB8 at 209 and explain to the best of your abilities how those documents are to be understood by the commission.

MR BURGER: Go to annexure 7 on page 181 and as I
15 have mentioned there are in this particular example 25 such annexures. Each of those annexures on page 181, if we start with that as an example to try and explain the C1 annexure. You will note that from the top there down to the bottom there are different categories of information provided on that C1 and
20 it basically starts just with identifying this as the GFC Corvette platform program with a short description of the actual activity that is relevant here.

If you look at the right hand side of the page, there is a reference to DIP1. That identifies this activity as DIP1
25 and there are 25 of them. And below that in the description of

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the DIP activity, slightly more details description of the activity, although it may be to the unformed it might not make much sense.

5 It does say that for this activity it refers to the steering gears of the Corvettes and insofar as it is related to design and even hardware production, the logistics, once those gears are installed, the labour associated with that and spare parts. And, the capstone is also a piece of equipment that goes onto the platform, one again designed in the hardware
10 production.

And the two, the SA Supplier is identified, which in this case was Optima Hydraulics, it is a local South African Company who would execute the work described just above that. What follows is some other information that is obligatory
15 or required.

I think the next important point to look at is point 5 which starts to differentiate between whether this activity was directly related to the acquisition of our Corvettes or whether it was an indirect activity and I think Mr De Beer did mention that
20 in his statement and his testimony and explained that.

In this instance, this activity was a direct activity which meant those steering gears and capstones were produced in South Africa, were built into our Corvettes. And the value of that activity was £502 748.00. Chair if you then move further
25 down to the section where there are a number of Cons and you

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will see that they are identified as the 6th monthly milestones.

And referred to as section 6, you will see there that the values are shown as planned values, horizontally across the page, and those values, if you look at month 12, which in this case would be 28 April 2001, this activity would produce at that time a value of 8227 Euros. You will see just below that figure it is the actual achievement value, in other words the credits that were approved to discharge the obligation and you will see that it is 6538. And then there are a number of values first of all again under the planned values and also under the achieved values for that activity.

You will see that they do not necessarily correlate to the actual scheduling, but as I mentioned those milestones were what we refer to as management milestones. And they did not necessarily have to coincide, it just gave us a benchmark against which we could measure the progress for that activity.

You will see that in month 30, the date of that milestone 28 October 2002, credits to the value of 407 863 was credited. So the majority of that activity happened there and then there is a smaller value of 88 347. Chair, that would indicate when the credits were granted and that the activity was then complete for the total value of 502 748 Euros in the total column right at the, on the right hand side on that table.

ADV SELLO: With reference to your paragraph 5.2 and in particular the subparagraphs thereto 5.2.1.5, 5.2.2 and

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following, would you please explain what you have there and direct us to how it finds reflection at page 181.

MR BURGER: Chair, just for clarification, I will be referring to 5.2 of the statement because on this on page 181
5 there is also a 5.5 I just want to put you at ease.

ADV SELLO: Once again I apologise, I keep forgetting to say 5.2 of your statement, but please do not close page 181 because I would like you to explain what you have in paragraph 5.2 of your statement and in particular the subparagraph, what
10 you call subcategories and refer us back to page 181 to see how the two correlate.

MR BURGER: Chair, I will do so. So, in other words on page 6 of my statement paragraph 5.2, chair that paragraph shows that first of all there is a distinction between DDIP
15 activities and IDIP but subcategories to those were also identified in other words, the type of activity that would actually take place.

And if you look at 5.2.1 it identified exports as an acceptable activity under the DIP program. In brackets I say
20 (IDIP sales) because experts can only relate to IDIP. 5.2.2 talks about investment. And I believe Mr De Beer also did explain that.

5.2.3 talks about local industry participation and in brackets I show (DDIP sales). That is to differentiate between
25 the sales related to the direct activities because they were not

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experts because whatever was done was built into the ship and actually came back to South Africa.

So we could not view that as an export, and therefore there is a difference in identifying it as local industrial industry participation. And therefore it can also only be DDIP, direct DIP. Loan interest benefit is another subcategory, 5.2.4, and there again I believe Mr De Beer did explain. Then maybe just a comment, when we talk about experts and hopeful industry participation we would, if we talk about sales in general that would make up those two elements.

So in future maybe when I do refer to sales, it would involve both the experts and the LIP. On the next page on page 7, we identified technology transfer as an activity and then also other activities.

ADV SELLO: Thank you, now go back to page 181, the activities set out therein, in the context of what is in your 5.2 under what subcategory would it fall and where is that indicated?

MR BURGER: Chair on page 181, in the section in section 5 of that C1 annexure, first of all the fact that the figure is indicated under the direct column, first, in other words, differentiates between whether it is direct or indirect, this means this activity did involve work that went into our own Corvettes.

And 5.1.1 there would then identify it as local

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industry participation in other words it was actual work for the delivery of actual subsystems or components. And that is where it is identified.

ADV SELLO: For purposes of comparison and just to make
5 sure we understand what you have just explained to us, would we be correct to understand page 182 thus that this particular activity set out therein involved both DDIP and IDIP and in particular in respect of technology transfer?

MR BURGER: Chair that is correct that is an example of
10 where there is similar activities but that they might in nature be either be DDIP or IDIP and in this case it refers to technology transfer. And is identified as such, and there is also a portion 5.1.4 which shows investment under the direct side and that most likely and I do not recall the specifics but
15 most likely refers to items such as tooling and other equipment that may have been given to the local company, procured diesel services at the time to execute the work.

ADV SELLO: Thank you, the remainder of the annexure as you have pointed out from page 182 to 208 as similar
20 activity reports. The difference is the identification number at the top right hand corner, identifying a document in as relating to DIP1, DIP2, DIP25 as the case may be, is that correct?

MR BURGER: That is correct chair.

ADV SELLO: And each of these documents will contain a
25 specific activity, indicate whether it is direct or indirect and

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what subcategory, what you call subcategories as 5.2 are involved with that kind, with that activity and the value attaching thereto, is that correct?

MR BURGER: Chair that is correct.

5 ADV SELLO: How then do these relate to your annexure PB8 at page 209?

MR BURGER: Chair, yes, annexure PB8 on page 209 is the so-called annexure C2 to the DIP terms, this represents a summary of the information that is contained in the C1's. And
10 is in a sense replicates the format of the C1 but just to show to you where the link between the C1 and the C2 form is, I would like to just take you back to page 181 where we discuss the C1
DIP1 activity.

And at the bottom of section 6, under 6.10 you will
15 notice a heading total plan and below that total achieved running horizontally across that page with the totals. Now, if there were other activities on this page as well they would obviously then add up to that total.

But in this instance there is just the one activity.
20 Now, chair if you then go back to page 209, which is the C2 form, annexure, you will note in the 3rd section of that page with the heading DIP discharge planning with the 6 monthly milestones over 9 years, and on the left hand side you will note
DIP number, and you will see DIP1.

25 The information portrayed horizontally across that

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page is the exact same information and it is pulled from the C1
by means of an electronic program and it relates directly to
those totals that I just mentioned on page 181. So it pulls that
information across to the C2 and it does so for all the DIP
5 activities.

You will see a list of all the DIP activities on the
left hand side right down to DIP25 and it then adds all of that
together and that gives us a (Indistinct) at the bottom the
scheduling which is also described in clause 5 of the DIP
10 terms.

ADV SELLO: Thank you Mr Burger. You make the point
at 5.4 that DIP obligations are merely estimated monetary
values as stated in annexure C1 sheets and then you speak to
that. Could you unpack what you have at 5.4 for the
15 commissioners?

MR BURGER: Chair, yes the statement is made because
that at the time of contracting these DIP terms the values all
the activities may not have been exactly identified. So in many
instances they were budgeted figures they were planned
20 values, expectation of what could happen.

And through the process of managing the discharge
circumstances changed, which necessitated us to, and we will
also discuss amendments later on but to apply amendments as
prescribed in the DIP terms and so on. So, that just refers to
25 the fact that although they were identified as values they were

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planned values and the actual values would materialise over time as we manage these programs.

And there are reasons why the value may not be the same at the end of the program as it was right at the beginning, it may be more or it may be less for a specific activity, because of circumstances that might affect that.

ADV SELLO: And do you suggest it is for that reason that at C2 at C1 and C2 would always see a planned value and an achieved value?

10 MR BURGER: That is correct chair, and as to maybe reiterate that through the process of management over a period of time amendments would attempt to bring the two in line but obviously that is not always possible because you are looking into the future with regards to some of these activities that are
15 stated in the DIP terms.

ADV SELLO: Now, if we turn to your paragraph 5.5 you talk of DIP credits. What you have set out there is, I guess, fairly clear, would you like to speak to that is there anything you would like to add to what is in 5.5?

20 MR BURGER: Chair, maybe just to state that the claim and the approval of the claim eventually that determined the actual value of the activity once it is credited and used to discharge the obligation.

ADV SELLO: In the computation of credits to be
25 awarded, were factors such as multipliers used within the DIP

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environment?

MR BURGER: Chair within the DIP environment we did not use any multipliers.

ADV SELLO: So not using any multipliers it means one
5 credit was awarded, was it a 141 kind of award?

MR BURGER: That is correct chair for each Euro or Dollar spent in South Africa you, the obligor would get a credit for that exact value. And may I just add that it would be for the local added value.

10 ADV SELLO: from paragraph 6 you begin to deal with the detail of the process for claiming these DIP credits. Would you like to take us through that?

MR BURGER: Chair yes, once you go in, this is now where we are getting into some of the detail of what the DIP
15 division was responsible for in managing. My statement just indicates that there was a formal process to deal with this credits that were claimed by the obligors for activities executed and if the question is that we go through that in detail now, I can do so.

20 ADV SELLO: Would you go through the detail that is required to make sure that what you seek to communicate in your paragraph 6.1 to 6.3 has been carried through.

MR BURGER: Chair, thank you. I think chair the easiest way maybe to deal with this would be to go to my annexure PB9
25 on page 211. Chair what I have presented there is a synopsis

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of the main steps within this process, each of them involve certain detailed steps which I will refer to as we go through them.

5 Chair that slide starts with one in the top left hand side of course the basis for all of this is the DIP terms and I mentioned business plans, it is nothing else under the C1 schedules, those are, let us say the source documents for this. Once in terms of these DIP terms and all the conditions have been met the obligor in step two will submit a claim.

10 There is a prescribed format we mentioned that and referred to that earlier. And once we receive such a claim we would confirm receipt of that to the obligor and the process within the DIP division starts.

ADV SELLO: Apologies for that interruption, as you take us through PB9 and the steps set out therein, are you able to link this with the procedure for the management of sip claims if there is a link at all at page 31, which is PB3, and take us through the steps with reference to both 9 and 3 so we can understand the relationship between the two.

20 MR BURGER: Chair, yes on page 31 is what we refer to as the instruction on the DIP claim process instruction, which was an internal divisional document to govern how we dealt with these claims. And for the use of the functionaries involved with dealing with these claims, and it just contains I think at a more detailed level than my synopses the steps.

25

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So, in going through my synopses on page 211, I will fill those in with some of the detail that is referred to on page 31. I think that would be, instead of going through of them, I think I will deal with that in that manner with, if that is
5 in order.

ADV SELLO: That is quite acceptable thanks.

MR BURGER: Back to page 211, the claims process, I think I got to step 3 identified there, the registration of the claim on our system. And that involved putting a date stamp on
10 this claim physically reading the claim into the system to start tracking the progress made with eventually approving that claim. And that is then captured on the system.

Step 4, is a process whereby the function (Indistinct) including the DIP manager would make sure that the
15 documentation, supporting documentation and anything else that may be required from the obligor is part of the claim. At that point once that is done, on the DIP division, would send out what we call a claim confirmation to the local company.

And the purpose of that document is exactly that,
20 the local company will then confirm to ARMSCOR that the information on the claim is valid and that those activities as described took place. And that is the purpose of that document.

Once we receive that confirmation back from the
25 local company as indicated in step five that is also registered

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on the system to make sure that we can trace and keep track of the process. And then in step 6 there is a verification of the values and the calculations associated with a claim.

And I might just pause there for a moment to
5 explain why it is necessary to do that, in some instances the claim value may not have been in the currency of the DIP terms because of the origins of the order that was placed on the local company, but it needed to be converted then into the currency of the DIP terms. So it needs to be a verification that it is
10 done correctly.

It is also possible that the local company in confirming the claim may, not may, must indicate to ARMSCOR whether there, in execution of the work done under that activity, whether the local company needed to import anything
15 to build or make or produce whatever they were doing under that activity.

Components, raw materials even, and if so, they needed to indicate to us, either by means of a percentage or the actual value of that imported content, because that would
20 be deducted from the claim value, because as I mentioned earlier we only granted the credit for the local added value.

And the local company needed to provide us with that information. So, in step 6 there would be a verification of that in making sure that the calculations were done correctly.
25 In step 7, we do a check to make sure that the activity specific

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activity was not claimed before.

And we do that when we receive the claim the documentation for example invoices which are part of the claim, would be listen invoice number, there would be a register for that, and we will go and check against that register whether that invoice may have been claimed previously or for, under a different claim, so that was just to verify that we were not going to grant double credits for the same activities. Once that is done the claim prepared for submission to the DIPCOM and I think we will still also refer to the DIPCOM in our approval process, but that is the body that considered all claims for approval.

And that committee convened once a month, those claims would be considered by the DIP committee and would then approve and I stated in step 9 approval. But obviously it would mean that it could also be rejected or it could be referred back for whatever reason for further motivation or clarification and so forth.

So, it would either be approved, rejected, it could also be partially approved because of what I explained about the imported contents. So, that would happen there. In step ten if the claim is approved, the value of that claim would then be registered again on the DIP system to indicate the completion of the process of approval and that value is then the actual value as we have indicated in the annexures C1.

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The system is as I said updated and then in step eleven the DIP manager has the responsibility to ensure that the information was captured correctly on the system because the system is audited annually, we need to be very sure that the facts and figures are correct.

We then send a written confirmation to the obligor, to say that the claim has been approved under the assumption that we are dealing with an approved claim and if it is rejected obviously the same. And once that is done the whole set of documents is filed on the relevant file.

Chair I would like to just take you to page 2012, where we included just an example of what such a claim would look like. And the filing works, the latest document finds itself at the top of the set of documents there. You will see there the confirmation to the obligor that of claims that were approved, my reference as an example is to the second claim listen in that table, claim 226 and if you turn the page you will see on that page is the claim form, and at the bottom you would see there are two signatures.

The one signature is my signature as the DIP manager recommending this claim for approval to the DIPCOM, and the second signature is the chairperson of the DIPCOM who signs it when it is approved. The value is just to the left of my signature at the bottom, you will see that this was a partial approval.

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Because of imported content that was deducted from the claim. On page 214, you will just find that is a document added by the DIP division to do its own calculations, write comments and so forth. So that is not provided by the obligor that is our document to do all the verifications and indicate as such. Page 215 is a summary of the invoices that were involved for this activity. It is followed by page 216, 217 and 218 which are copies of the actual invoices. And 219, which is a copy of the front page of the actual order that was placed which relates to these invoices.

And it effectively, that would constitute a DIP, the DIP contract as explained earlier. So there is an indication of what the contract is. And then page 220 is just to see one annexure which deals with that specific activity as a reference document.

ADV SELLO: Thank you Mr Burger, chair, I noticed that we overlooked the tea adjournment. May I just finish this aspect it will take literally half a second, and if the chair is inclined to do so then maybe we may break for tea.

CHAIRPERSON: If you make sure it will take half a second.

ADV SELLO: Indeed chair.

CHAIRPERSON: Okay, let us see (Indistinct)

ADV SELLO: Thank you chair. Mr Burger please refer to your PB, to page 32, your annexure, my apologies, 302, annexure 3, and in particular page 32, on pages 32 and 33

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detailed steps to follow claims administrations as set out. My question to you is, are the steps as described therein consistent with the synopses as you have given in annexure eleven sorry annexure 9.

5 MR BURGER: Chair that is correct, that was some of the explanation that I added to the synopses, it comes from that document.

ADV SELLO: The list of person responsible for the various steps is clear I believe CFO and DIP manager, would you explain to us what CTO is?
10

MR BURGER: Chair, I would do so, a CTO is what we call a counter trade officer, so that is an administrative person who deals with the registration of claims and so forth. I just maybe to avoid confusion the CFO does not refer to the chief financial officer of ARMSCOR, it is the counter trade financial officer in the DIP division.
15

ADV SELLO: Thank you very much for that clarification it shows we can never assume anything. Chair that was my 30 second question with two subs, and I thank the commission for the opportunity.
20

CHAIRPERSON: Let us adjourn for tea for 15 minutes, thank you.

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

25 CHAIRPERSON: Can the witness confirm that he is still

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under oath.

ADV SELLO: Do you confirm that you are still under oath, say I do.

MR BURGER: I do.

5 ADV SELLO: Thank you chair. Just to finish off on the point we had been discussion Mr Burger, with particular reference to annexure 9. Would it be correct to conclude that the document numbered pages 212 to 220 of annexure 9 as the paper trail that can be expected to be found at ARMSCOR in
10 respect of each DIP credit claimed and awarded?

MR BURGER: Chair I can confirm that, obviously except for the specifics to each of the claims and maybe with reference to technology transfer claims, which required different documentation than what is presented here, but we
15 will deal with that when we discuss tech transfer.

ADV SELLO: Thank you, in fact from paragraph 7 at page 8 of your statement you begin to deal with technology transfer. You perhaps would like to take us through that. And explain to us what exactly we are expected to understand by
20 technology transfer.

MR BURGER: Chair, Commissioner Musi, technology transfer as we have seen earlier in my testimony is an activity, a subcategory of activity within the DIP program which relates to the transfer of capabilities to our local industry, firstly to
25 create capabilities to manufacture a certain component,

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subsystems and secondly also to create capabilities for future maintenance and support of such subsystems and components related to the acquisition. Than in short is why technology transfer is identified as a specific subcategory and activity.

5 ADV SELLO: Could you for record purposes read the quotation in italics safe for what is contained under the bullets, as from your statement we understand that is the definition of technology transfer as set out in clause 3.1.1.2(f).

MR BURGER: Chair, I will do so, page 8, 7.2:

10 *“TT, that refers to technology transfer, is described in the Corvette DIP terms as technology (including know-how, training, and technical aid and/or license agreement) which increase the capability*
15 *of a company, that refer to a local beneficiary company or help develop goods and/or services not previously produced in South Africa or contribute in substantial*
20 *improvement of such goods and/or services or production or provision thereof will be considered by ARMSCOR for crediting in an amount equal to the predetermined*
25 *value of the technology, knowhow, training and/or technical aid as approved by ARMSCOR inter alia taking into*

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consideration the value of the technology or knowhow to South Africa with special reference to but not necessarily limited to.”

5 And then the list, well it follows.

ADV SELLO: Thank you, and at paragraph 7.3, you seek to draw a distinction between technology transfer and investment or sales, could you explain to the commission the distinction you seek to draw here?

10 MR BURGER: Chair, with the investments and sales it is relatively easily to confirm the actual values, because they will relate to a specific documents such as orders and bank statements and so forth, with technology transfer and capability transfer there is an element of an intangible quantity, because
15 of the fact that intellectual property rights are involved as well.

And therefore there is not in advance of concluding the DIP terms, a mechanism really also to determine what the actual value is. There needs to be some sort of a process to determine the value of the technology transfer because those
20 records would not necessarily exist as far as they, in comparison let us say to an investments and sale where you have statements and audible figures and values.

ADV SELLO: And, sorry, you introduce from paragraph 7.4 the concept of technology transfer activity plan (TTAP) now
25 as you discuss what you set out in paragraph 74 perhaps you

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might want to do so with reference to your annexure PB10.

MR BURGER: Chair, annexure BP10 on page 221 is the process described for determining the value of the technology transfer associated with the activity as well as the discharging of obligation through granting credits. The TTAP that is referred to in my statement on page 9 paragraph 74 technology transfer activity plan (TTAP) is the document that is generated in this process to exactly determine the value of the technology transfer that was going to be transferred. I will take you then through my annexure BO10 on page 221 and that will provide and explanation of the technology transfer process.

And similarly with the explanation under the claims process, I will add to those highlighted steps. These steps are very specifically contained in the DIP terms under paragraph or clause 3112(f) of the DIP terms and this is a synopsis of that process and I would describe it as such.

Once again starting off with the with step one which is always the DIP terms, and the associate claims, the first thing that needs to happen is that the obligor needs to initiate the process by giving notice to ARMSCOR that it wishes to register the technology transfer activity formally.

At this point I would just like to make the comment that although at the conclusion of the DIP terms there is already reference to Technology Transfer Activities (TTAP) with values attached to that, those values were however still

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subject to this process post the DIP terms, and is specifically provided for in the DIP terms.

Step there is (Indistinct) just a singular step, that is where there is a lot of discussion, negotiation, with regard to reaching agreement between the parties which would include ARMSCOR the obligor and the local beneficiary company on what the value is, what the specific types of activities are that would be dealt with under the technology transfer. And that could take some time to get through that part of the process. But once that is done, the next step is then to establish the Technology Transfer Activities (TTAP) which captures all the information related to that plan in terms of exactly what the activity is broken down into line items almost.

And each of those line items then having a specific value. When that will take place, and also how that will take place. And that technology transfer plan is drafted and established to serve as the document that will be submitted for approval and acceptance later on in the process.

A crucial part of that document, as I have said is the determination of the value that is associated with the tech transfer. That part of the process was manager independently from the DIP division, a specific technology transfer manager was appointed within ARMSCOR, who resided in the technology management and analyses division within ARMSCOR, because of the specific and expert abilities required to look at the

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values of these items.

Once the value is then determined through discussions negotiations and so forth, the TTAP is finalised as a final document. And that would include the preparation of the document in the submission format, the document itself
5 would be co-signed by the obligor the recipient company and ARMSCOR. That is before it is submitted for acceptance by the DIPCOM. It is then submitted to the DIP committee, which is duly authorised to look and consider and determine the
10 approval of such a document.

Of course it can also reject or refer it back, and on the assumption the DIP come approves such a TTAP the obligor will then have to execute the activities as contained in that document. The TTAP could be likened to sometime like an
15 order which contains as I said line items, values, dates and so forth.

The transfer takes place to the local company and it could be training into licensing arrangements, it could include hardware, this needs to take place in accordance with the TTAP
20 once that has happened, the activity has happened, the obligor will present to ARMSCOR a certificate of acceptance, which will also be co-signed by all the signatories to the TTAP.

That document is a statement that those activities took place, the local company received the capability or the
25 technology that it was related to the TTAP, and when that is

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done the obligor can submit a claim to the value of the related technology.

Part of the process of signing the certificate of acceptance in many instances as well, ARMSCOR's quality assurance division was also involved in signing the certificate of acceptance. Step ten then, the obligor will submit a claim with the necessary documentation of which the certificate of acceptance is the most important because that will indicate to the DIP committee that the transfer has taken place.

If approved by ARMSCOR, of course the credit will be granted to the obligor and that will lead to a discharge of that part of the obligation. But we have already discussed the claims process, and it is not different for technology transfer in terms of the process.

ADV SELLO: At paragraph 7.5 you state:

"If the value of the accepted TTAP differs from the proposal in the related annexure C1 sheets, this annexure C1 sheets would be amended to reflect the accepted value."

Would we be correct, with reference to page 182 which we have dealt with previously, to accept that the values reflected therein relating to tech transfer must be read in conjunction with the determined TT value as approved by DIPCOM and not necessarily in relation to the original C1 values as proposed by the obligor.

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MR BURGER: Chair that is correct, page 182 will at this point show the actual value which was eventually the value of the tech transfer because this is an amended version which would contain that information.

5 ADV SELLO: Thank you, if we move on then to your paragraph 8, where we introduced the concept of amendment and you deal with the process of amendment and if you take us through that process, at paragraph 8.

MR BURGER: Chair, in paragraph 8 in my statement
10 itself, I am actually set out the process and then some detail, right throughout. I will once again on, with the use of a synopsis, which is contained in my annexure PB12 on page 261, go through that process.

Thank you chair, once again the amendment process
15 as on page 261 stats with the DIP terms which provides for such amendments. There is obligor in step 2 is once again the initiator of the process by informing ARMSCOR of such amendment and requesting formally that such an amendment be effected.

20 ADV SELLO: Apologies for the interruption, as Commissioner Musi found the page which the witness is speaking to, it is page 261, thanks commissioner thanks Mr Burger.

MR BURGER: Thank you chair, as I said the obligor
25 needs to initiate this process by formally requesting ARMSCOR

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to, the DIP division to amend the terms or the activity or whatever it might be, and also provide the necessary motivation for that.

5 Once received by ARMSCOR the DIP manger will consider that request against the DIP terms and the conditions contained therein to make sure that it is a valid request. And by example we would certainly want to make sure that the proposed amendment is still at the activity level at the (Indistinct) related matter that might be introduced or used to
10 substitute an activity.

Once the manager has done that he needs to prepare a submission to the DIPCOM and as the manager needs to recommend that amendment. The DIPCOM considers in step 5 again as duly authorised the amendment and will approve and
15 again also either or reject or refer it back for further discussion.

If approved the relevant clauses, clause 5 of the DIP terms and the C1, C2 of the DIP terms are updated accordingly, chair and if you recall, earlier in my testimony we
20 said that amendments were directed at those clauses and annexures in the DIP terms.

Those documents would then be co-signed by the obligor and ARMSCOR as the amendment documents and that then becomes the new version as amended, and we update the
25 system with that information.

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ADV SELLO: At page 261 under the heading of that document, is it correct that we had to understand that the steps the synopses of the steps, amendment steps you have set out here at page 261 are to be found in clauses 2.3.4. 2.3.5 and
5 2.3.6 of the DIP terms?

MR BURGER: Chair those clauses in the DIP terms just refer to the amendments, it does not necessarily explain the exact steps that need to be taken. For that reason I included those steps in detail in my statement under paragraph 8.

10 ADV SELLO: You have, at paragraph 8.4.6 provided us with an example of an amendment regarding the covert platform DIP terms against the explanation you have given us, would you like to take us through annexure BP11 so that we see this process and requirement as you explained at play?

15 MR BURGER: Chair, on page 222 that is where annexure BP11 is located, and once again we start with the latest document that is an example of such an amendment, you will see at page 222 is a note to the obligor with regard to the amendment.

20 Page 223 is the letter that goes to the obligor once the amendment is approved. Page 234 is the submission that goes to the DIPCOM, which explains and motivates the changes. And you will see on page 226, the table that starts at
25 2.1.1, contains the effected items or DIP activities with the motivation and explanation for that and what those changes

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are.

And that continues in this example right up until page 230, and you will see my signature at the bottom of that page, which means that I recommended the submission to the
5 DIPCOM and I would like to just take you back then to page 234, it is not that clear but right at the bottom there is the decision by the DIP committee as signed by the chairperson of the DIP committee to show that this amendment was approved.

COMMISSIONER: Sorry Mr Burger, I think you made a
10 mistake with reference to the page thanks, would you like to correct that?

MR BURGER: My apologies chair it is page 224.

COMMISSIONER: Thank you, you may proceed.

MR BURGER: Chair the other documents then further on
15 in that annexure starting at page 231, 2234 is then the amended clause 5 of the DIP terms and you will see at the bottom there are initials which confirm that all parties have now signed the amended documents.

And then chair on page 235 to 260, those would be
20 the C1's and also the C2 which form part of the mandate. It would then constitute the new amended values. Chair, I would just like to point out that although there was movement between activities in terms of values and changes to maybe companies or even activities, the total value of the obligation
25 as stated and contracted in the DIP terms never changed. That

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was a constant and we did not change that. It was always within the total value of the DIP obligation that these amendments occurred.

ADV SELLO: And in light of what you have stated about
5 the total DIP value not changing, is that what is contained from page 225 and in particular on 226 (Indistinct) under clause 5 and annexure 2?

MR BURGER: That is correct.

ADV SELLO: And could you read what is stated therein
10 and the first bullet into the record?

MR BURGER: Can you just please point me to the correct bullet?

ADV SELLO: Apologies, page 226, the very first bullet after the list is DIP's from 1 to 24.

15 MR BURGER: I will read:

*“Clause 5 and Annexure C2; The total Dip Commitment remains unchanged although the ratio between DDIP, IDIP and TDIP is amended. (Technology transfer, that is was TDIP refers to).
20 The original DIP milestones are also rescheduled to correspond to the amended planning. Clause 5 and Annexure C2 are adjusted accordingly.”*

ADV SELLO: Now just to close up this point this document from which you have just read it is a document as
25 would be generated by ARMSCOR and in particular by the DIP

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manager?

MR BURGER: Chair that is correct, that is the submission that is generated by the DIP manager.

ADV SELLO: Thank you, if we could move on then to
5 page 11 of your statement and deal with the approval process set out in paragraph 9.

MR BURGER: Chair the processes that we have discussed up till now this part of the statement marked
10 paragraph 9 on page 11 just adds to that and I will once again with your permission take you through the synopsis that I've provided as annexure "PB13" on page 262. Chair similarly to the others the starting point for this process in this case would not just only be the DIP terms but all other relevant documents in ARMSCOR associated with the possible approval of any of
15 the DIP matters.

The most importance one being reference to the document called A-CORP-001 which was the delegated powers from the board for the DIP committee to deal with approvals, and step 2 just refers to the preparations of submissions as
20 contained in the other processes which we have discussed.

The DIP division, when I say in step 3 the DIP division verification for correction be the administrative personnel together with the DIP manager ensure that whatever is presented is presentable in terms of its correctness and the
25 facts contained in that submission would be the Technology

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Transfer activity plan (TTAP), a claim or an amendment.

5 These documents are as I mentioned the DIP committee convenes once a month, these documents are distributor to the CIP Committee members a week before the meeting, one week. They are the presented at the DIP Committee by the DIP manager for consideration, and at the meetings there would be discussions about the content of those document, submissions.

10 The DIP committee then considers these submissions in terms of the relevant documentation policies, practices, procedures, DIP terms and then the most important one A-CORP 001, and the members are required to obviously apply their minds and to consider the submissions.

15 The DIP committee has the authority to approve, reject or refer it back, and if approved or whatever the decision is the decision needs to be implemented as instructed by the DIP committee.

20 ADV SELLO: The approval process you discuss at paragraph 9 does it relate only to amendment or to amendments and credit claims?

MR BURGER: Chair this refers to all forms of approvals required by the DIP division for claims, Technology Transfer activity plans (TTAP), amendments and possibly other related matters. It must be dealt with by the DIP committee.

25 ADV SELLO: At paragraph 9.1 towards the end of, I

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think it is the last sentence of that paragraph you introduce the ARMSCOR Acquisition Authorisation Committee. Can you discuss a bit on that?

MR BURGER: Chair the ARMSCOR Acquisition
5 Authorisation Committee (AAAC) is a higher level authorisation committee within ARMSCOR which would consider changes to the total obligation value, in terms of A-CORP-001 that decision needs to be made at that committee, it is a higher level committee than the DIP committee.

10 ADV SELLO: And at paragraph 9.2 you state the following:

*“To the best of my knowledge and as far as the processes are applicable to the discharge of the DIP obligations in respect of the DIP terms since my
15 appointment in 2003 are concerned all approvals related to the TTAP claims amendments and performance guarantee reductions amongst others, were considered by the DIP committee.”*

That statement, you made that statement to demonstrate that
20 the amendment as can only be authorised by AAAC was not sought or affected in that time?

MR BURGER: Chair in the time that I was involved for the SDPP's there was never such an instance where he required to amend the total value of the obligation and
25 therefore did not deal with such a matter.

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ADV SELLO: Thank you, if you could then move on to paragraph 10 and we discuss the Monitoring and Management Processes that were in place for the management and monitoring of the discharge of DIP obligations.

5 MR BURGER: Chair, the point that I wish to make with this paragraph is that there were as I described, there are formal processes involved which were managed by the DIP managers and the whole of the DIP division, and as such the most important role of the DIP manager was to ensure that the
10 obligations were discharged in accordance with the DIP terms.

ADV SELLO: You draw a distinction between formal processes and informal processes, would you like to explain what you mean by that?

MR BURGER: Chair I would just like to include that in my
15 statement although I have described now the most important formal processes that were followed, there were also informal processes and management actions taking place on a day to day basis, and these activities let's call them that, primarily dealt with the decisions made at the official forums and in the
20 formal processes, and that we on a day-to-day basis had various liaisons with Obligors local companies, the project teams as such in assisting us to get to the point where we, the formal processes were applicable.

25 So that was basically to, just to describe that there was this day-to-day management and interaction at

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different levels to manage the discharge.

ADV SELLO: If I may take you back one step I think it would be useful if you would turn to page 263, you have a set of minutes there of the DIP committee and a letter from a company, if you have a set of minutes of the DIP committee and a letter from a company, if you could just explain to us the purpose of providing those document?

And secondly to take us very quickly to the minutes starting at 263 so we can understand what's contained in there and what decisions were taken in respect of what matters?

MR BURGER: Chair on page 263 is an example of the minutes from a DIP committee meeting, and as you can see it relates to a meeting held on 21 June 2005 and you will see that it relates to claims mostly and the decisions made with regard to those claims, and the purpose of this was just to show the commission what such a set of minutes looks like.

ADV SELLO: And at 270 you have a document informing ARMSCOR of a change of name, was it a requirement, help us understand why we have it as part of the annexures?

MR BURGER: Chair a document like that would be introduced to the DIP committee just to give notice that such a name change has taken place with regard to a company that is listed as a beneficiary under the DIP terms.

ADV SELLO: So until and unless ARMSCOR was notified of the change of name ARMSCOR continued to refer to the

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beneficiary company by the name that was originally provided to it?

MR BURGER: That would be correct Chair.

5 ADV SELLO: At paragraph 10.4 of your statement on page 12 you speak of the DIP system, could you explain more on that?

MR BURGER: Chair underpinning all of the transactions and matters pertaining to the discharge of the obligations ARMSCOR had, or the DIP division had a system, and
10 electronic system which could be liken to a bookkeeping or a financial management system specifically designed to deal with the discharge.

The C1 annexures and C2 annexures that I have shown and other documents that we will look at are all products
15 of that system and that would provide the tool for us to keep track of that process, and it is a system that is audited annually both internally and externally.

ADV SELLO: So if the DIP manager was required to prepare a report or give a snapshot of state of affairs at any
20 given point would such DIP manager rely on a system as you describe?

MR BURGER: Yes Chair, the DIP system was a source for all reporting information and it would always be in line with the latest amendments where applicable.

25 ADV SELLO: From paragraph 10.5 you deal with the DIP

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review meetings and at 10.9 you deal with internal DIP reporting. Can you take us through the two as set out in the statement.

MR BURGER: Chair first page 12, 10.5 the DIP review
5 meetings, those meetings are provided for in the DIP terms and it is the meeting that takes place between ARMSCOR and the Obligor within correlation with a six-monthly milestones.

It is a formal meeting that is prescribed in the DIP terms and to take place every six months. At that meeting all
10 matters pertaining to that specific obligation and the discharge of it or any other issues that may arise during a six month period would be discussed and decisions would be made.

Those meetings took place per Obligor, and that was a vital part of our management of these obligations and the
15 discharge thereof, as it provided us with the opportunity to compare our notes and to make sure that decisions are made with regard to challenges that arise during this whole process, and that was our way of engaging the Obligors to keep them to discharging their obligations.

ADV SELLO: Please refer to page 271 where you
20 Annexure "PB14" you referred to in paragraph 10.7 of your statement and very quickly help us work through that document and understand it in the context of the evidence you have just given?

MR BURGER: Chair page 271 annexure "PB14" is an

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example of the minutes of such a meeting, and part of those minutes as an annexure to the minutes you will see from page 281 there is the, what we call the DIP review report, and that is the report that is provided by the Obligor and presented at the
5 DIP review meeting.

That report forms the basis of discussions at that meeting. That report is also provided to the DIP divisions prior to the meeting. That enables us to prepare for the meeting and to note anything that we need to address at the meeting, and
10 then also just serves as the report for that specific milestone at that specific time.

ADV SELLO: And what would be the conclusion of these review meetings?

MR BURGER: The conclusion of these review meetings
15 would be to execute the decisions made at that meeting by either ARMSCOR or the Obligor so that we can report back on those in six month's time and the, we would then have to deal with all the items as listen in the minutes.

ADV SELLO: If one has regard to the report by the
20 Obligor that you say starts at page 282 and that you mentioned was traditionally, or it traditionally furnished to the DIP divisions ahead of the review meeting, what would happen in the event that the responsible DIP manager would not be in full agreement with the contents therewith?

25 MR BURGER: Chair the DIP review meeting would then

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present the opportunity to discuss those differences and to try
and determine which version would be the correct version,
there would be a comparison of facts and figures as so that we
can determine what the issues are, but the DIP review meeting
5 would provide that opportunity to us to deal with that matter
and make the necessary decisions in that regard.

ADV SELLO: Are we to understand that following that
process the Obligor and the responsible DIP manager would
then be *ad idem* on whatever issue that probably previously
10 there had been a dispute?

MR BURGER: Yes Chair the purpose would be to get to
some sort of an agreement on how to move forward if there
were any issues.

ADV SELLO: And just finally, and that agreement such
15 as you described sought was it always obtained in all respects
to the best of your knowledge?

MR BURGER: Chair I think at the end we have the DIP
terms to fall back on, but by in large I would say yes there was
always an agreement on how to proceed when such issues
20 arose.

ADV SELLO: At paragraph 10.8 you speak of the Joint
Industrial Participation Monitoring Committee (JIPMC), can you
talk more on that please?

MR BURGER: Chair yes on page 13 paragraph 10.8 I just
25 included that in my statement, this is a committee that was

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established not as a prescript of the DIP terms, this was something that the UK government initiated and to specifically look at the UK related obligations, and that refers to the Hawk and in part also to the Gripen because BEA systems as a British or UK company was responsible for discharging the obligation.

The UK government and South African Government through the DTI constituted this meeting as a high level oversight meeting to look at the UK programs. ARMSCOR was not a member of that meeting or that committee, but we did attend the meetings. They had also coincided mostly with DIP review meetings in terms of scheduling and we also presented at such meetings, but we are not a member. And the function as I said was that the UK government wanted some oversight over its company, over the UK company BEA systems, and from my experience in that committee or from that committee it was very useful to have the UK government, and to have that oversight.

ADV SELLO: You refer to this monitoring committee as an oversight body, are we to understand that this body did not seek to influence ARMSCOR, did not interfere with the ARMSCOR processes as you have spoken to and/or did not attempt to alter any DIP obligations as we are contracted for, would that be correct?

MR BURGER: That is correct.

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ADV SELLO: So then this body was specifically to assist with the delivery of the DIP obligations?

MR BURGER: Chair that the correct, the UK government for lack of a better work applied pressure on BEA to comply to the DIP terms as contracted.

ADV SELLO: You then have a paragraph dealing with internal DIP reporting at paragraph 10.9 of page 13 of your statement would you deal with that please?

MR BURGER: Chair yes, with regard to internal reporting that does refer to reporting within ARMSCOR and it was part of the formal reporting structure within ARMSCOR and the information that was provided, that was required was provided by the DIP division in respect of the DIP obligations and the progress of such DIP obligations.

Chair on page 358 my Annexure "PB15" you will find a page which is the DIP division's input into ARMSCOR's quarterly report. The relevant section on that page is shown as 9.2 strategic defence packages, and that just provides a summarised view of the progress with regard to the obligations.

You will note that the Maritime Helicopter is included here but this is just to show that this is our input into the quarterly report, of course we are not dealing with the Maritime Helicopter in my statement.

ADV SELLO: On that same page at 9.1 first item strategic Defence Packages and the figures listed therein do

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they relate to what is contained in table at 9.2?

MR BURGER: Chair that is correct, the reference to Strategic Defence Packages is the SDPP's which we are dealing with, but that figure includes the Maritime Helicopter.

5 ADV SELLO: You then at paragraph 10.9 relate that "PB15" to the next Annexure "PB16" and could you please explain?

MR BURGER: Chair we as a DIP division were also required to provide input into ARMSCOR annual report, and on
10 page 359 my Annexure "PB16" is just an extract from the ARMSCOR annual report of the year 2012/13, just to show that that information also finds its way into the annual report, although maybe in a slightly different format it is still the same information that you see on the, as for the quarterly report, but
15 that is the DIP divisions input into the annual report of ARMSCOR.

ADV SELLO: If one has regard to page 358, that is Annexure "PB15" and the last line at the table at 9.2 indicating the total Rands, actual performance, R14,178111,050.00, is
20 that figure the same figure that appears at page 360 under actual performance but in a more abridged format of 14178?

MR BURGER: Chair that is correct.

ADV SELLO: So the point you're seeking to make is that as of 2002 the DIP division has provided reports on its
25 activities and which reports have found their way into all

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ARMSCOR's annual reports as of 2002?

MR BURGER: Chair my response to that would be that I assume that before 2002 there were also reports, but I was not there maybe to confirm that, but I have seen from records that
5 in 2002 that was the first time that the DIP information was introduced in ARMSCOR's annual report to the extent that we have shown here.

ADV SELLO: And just to be precise the information set out in Annexures "PB15" and "PB16" is as at 31 March 2013, is
10 that correct?

MR BURGER: Chair the, with reference to my Annexure "PB15" page 358 that actually reflects the status as at 31 December 2013 being the last quarter that we have reported on. The annual report in Annexure "16" however relates to 31
15 March 2013 being the last cycle for the annual report.

ADV SELLO: So in reading the two documents we are to understand that the actual performance of R14 Billion on 31 March 2013 remained unchanged, had remained unchanged as at 31 December 2013?

20 MR BURGER: For the SDPP's that is correct Chair.

ADV SELLO: Thank you Mr Burger, Chair and Commissioner Musi I do not know if this would be an appropriate time to take a lunch adjournment?

CHAIRPERSON: We will adjourn and we will come back at
25 13:45, thank you.

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

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

5 UNKNOWN: Do you confirm that you are still under oath, say I do?

MR BURGER: I do.

ADV SELLO: Thank you Chair and Commissioner Musi. Mr Burger we last left with paragraph 10.9 of the statement on
10 page 13, we are now moving on Performance and Discharge of the DIP Obligations, starting at paragraph 11 and you may explain what is set out therein, thank you?

MR BURGER: Chair at my page 13 at paragraph 11 what I will do now is show from a high level down to some detail
15 levels the progress and the performance of the obligations in terms of their obligations, of the Obligors in terms of their obligations, and the figures that we will look at from here on in will exclude the Maritime Helicopter and will be just specific to the SDPP's as dealt with at the commission.

20 ADV SELLO: At paragraph 11.2 you referred to Annexure "PB17" and you described that as a high level summarised overview, you proceed to contrast it with Annexure "PB18" and that you describe as a more detailed view of the DIP obligations.

25 Now if you could take us carefully through those two

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sets of annexures and explain what your evidence is in regard thereto?

MR BURGER: Chair thank you page my annexure "PB17" shows figures as at 31 December 2013 in relation to the SDPP contracts. Chair they are reflective in Rand Values, in other words have been converted from the currency in which they were contracted into Rands at the applicable rates.

ADV SELLO: Apologies for interrupting, earlier when you were dealing with paragraph 4.2 where you talk about the monetary values and the conversions you have explained that this will become apparent. What you have stated at 4.2 that is the conversion that has taken place at page 362, do you confirm that?

MR BURGER: Chair I confirm that, in other words for any dollar values that may be contained in DIP terms for the specifically the Hawk and Gripen and the LUH they have been converted at the rate of R6.25 to the dollar and the Euro values related to the Corvette Combat suite and the submarines were converted for the reporting purposes at a rate of R6.4 to the Euro.

ADV SELLO: I note though it is not referred to in your paragraph 4.2 that at page 362 Annexure "PB17" you also have a British Pound conversion?

MR BURGER: Chair my apologies that is a remnant of the Maritime Helicopter that was part of this report which was

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taken out and we neglected to remove that reference to DBP.

ADV SELLO: Thank you for that clarification, you can then walk us through "PB17" and "18".

MR BURGER: Thank you Chair, Chair as you can see this
5 page shows on the left hand side the projects which we have referred to on other occasions as well. Chair you will see that the first three lines are highlighted, those lines refer to the platform, Corvette platform, the corvette Combat Suite-TNF and the Combat suite-MBDA and will add up to the fourth line under
10 the heading CORVETTE, to show the full picture for the Corvettes in total.

Then the Submarine, the Light Utility Helicopter (LUH), the Hawk and the Gripen, you will see that in the second column the obligation value is stated and it all adds up
15 the obligation value as contracted at the bottom of R14,557,915532.00.

The next column tiles planed performance, my apologies that should read, no that is correct in saying that that is the planned value for the end of this financial year
20 which is referred to as 31 March 2014. So it is just looking forward to the end of this year what it should be, and right at the bottom first of all you can see that for the platform there is a 100% completion, if you look at the fourth column in conjunction with that, the actual performance you will see that
25 there's a 100% completion. The Combat suite portion for TNF

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100% completion, and the Combat suite-MBDA in terms of the planned value 100%, but if you look at the far right column you will see that it is only 1.76% complete for the value of R947 million.

5 Add it together for a total for the Corvettes you will note that for a total obligation of R2,9 Billion, actual performance of just over R2 Billion, which shows a shortfall in the right hand column and shows that only 69.28% of the total Corvette obligation had been completed. Submarine total value
10 of the obligation R1.1 Billion and completed a 100%. The LUH also approximately R1.2 Billion, 100% complete. Hawk R4.2 Billion, 100% complete. The Gripen R5 Billion, 100% complete, and the total value at the bottom shows that out of the total of R14.5/R14.6 Billion, R13.6 Billion has been completed at a
15 percentage of 93.59%.

ADV SELLO: We would be correct on the basis of "PB17" to conclude from what you state that all obligations by the Combat Suite-MBDA have been discharged by the Obligors?

MR BURGER: That is correct Chair.

20 ADV SELLO: Thank you, you may proceed.

MR BURGER: Chair on page 363 my Annexure "18" we will now look at a slightly more detailed view per obligation.

ADV SELLO: Before you deal with the content of that Annexure could you explain how it is compiled, the first page is
25 titled GFC DIP Terms baseline: Platform. Could you indicate

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which document following there from refers to what program?

MR BURGER: Chair I am not sure that I understand that question fully, can you maybe repeat?

ADV SELLO: If one has regard to your "PB18" from
5 pages 363 to page 371 you have these various tables, if you could just indicate which pages refer to what program?

MR BURGER: Thank you Chair, I understand. As mentioned 363 refers to the obligation of the Corvette platform, on the next page 364 refers to the Corvette Combat suite in so
10 far as it deals with the Thalys Naval France (TNF) part of that obligation. The next page 365 deals with the Combat suite in relation to MBDA's portion of that obligation.

366, and together with 367 those two pages form one report, refers to the submarines, the German Submarine
15 consortium and to the obligation related to that, to that contract. 368 refers to the Hawk refers to the Hawk obligation, and 369 together with 370 is the report for the Gripen obligation, and 371 is the, refers to the obligation of the LUH as managed and discharged by AGUSTA.

ADV SELLO: Thank you Mr Burger, now going back to
20 page 363 and dealing then specifically with the GFC terms as they related to the platform could you explain the structure of the document before you discuss its contents so that we can all follow you and once we have understood that then you can go
25 on and unpack what is contained therein?

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MR BURGER: Chair first of all I would just like to mention that at this, these reports that we have now referred to come from the DIP system as is on the DIP system. They are therefore also in the currency of the DIP terms, that is the first
5 point to note.

Then the structure of this report you will see that it divides and it is the same for all the reports. If we look at 363 as an example, it divides the obligation into three sections, it talks about direct activities, indirect activities and then the
10 technology transfer activities. And it explained on a, it indicates and shows at an activity level the activities that were executed and the values attached to those activities and then the achieved values for those activities.

On the left hand side of the report DIP in that
15 column below that it refers to all the specific DIP activities and those relate the C1 schedules that we have discussed and the information on this report is electronically linked to the information that comes from the C1 schedules.

So this is just a summarised view of the C1 sheets,
20 to provide a complete picture for the obligations and they are the same in structure for all the reports that are shown there.

ADV SELLO: Thank you very much. Now if we take, we understand then the activities at least as far as the platform was concerned are divided into three Direct, Indirect and
25 Technology Transfer Activities, would you take us through the

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contents then of anyone of them, so that we understand how to read this document?

MR BURGER: Chair I will do so. Maybe for ease of reference I will deal with DIP 1 as that was also the example
5 that we used when we discussed the C1 sheets. You will see that it identifies the local recipient company of the benefit, it refers to the higher level description of the activity which was the Steering Gear and the Capstan which was manufactured and produced by Optima Hydraulics, the value of the commitment or
10 obligation for that specific activity was €502748.00. I think for purposes of this report the year to date plan is no longer really relevant, the achieved value is then €502748.00. That shows that the actual value at which that activity was completed.

ADV SELLO: If one has regard to the first item that you
15 just read out DIP 1 in respect of Optima Hydraulics that is the beneficiary company in South Africa, correct?

MR BURGER: Chair that is correct.

ADV SELLO: And the information contained therein must and does correlate to the C1 we discussed earlier which is
20 Annexure "PB7" at page 181 is that so?

MR BURGER: Chair that is correct.

ADV SELLO: So in essence we would be correct to accept this as a consolidated version of all C1's that we have previous spoken of?

MR BURGER: Chair that is correct.

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ADV SELLO: Against that background then we understand at 364 the same principle is applied and all the way to the LUH. I would like to refer you to page 365.

MR BURGER: Yes.

5 ADV SELLO: And if you could just explain that particular table with reference to Annexure "PB17"?

MR BURGER: Chair this specific page deals with the outstanding portion of the Combat Suite Obligation as contracted with MBDA Missile Systems and shows that they are
10 far from actually completing their obligation.

ADV SELLO: Must we read 365 as directly relating to line 3 at page 362 of "PB17"?

MR BURGER: Chair that is correct.

ADV SELLO: And it is only in respect of those DIP terms
15 that discharge is outstanding and that is the cause of the drop in actual versus obligation in "PB17" from what would otherwise be 100% to 93.59%?

MR BURGER: Chair that is correct.

ADV SELLO: Before I proceed is there anything else in
20 respect of the tables you have referred to up to page 371 that you would specifically like to point out?

MR BURGER: Chair I hope that this would be clear enough and that I do not need to comment any further unless there are specific questions.

25 ADV SELLO: Okay no that is fine, if there is nothing

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specific you want to point out I trust that it is clear, if not I am sure the commissioners would point out and seek clarification. At paragraph 11.5 of your statement now you make, you state:

5 *“The information shown reflects the status (as amended).”*

Would you like to clarify that?

MR BURGER: Chair that statement just highlights the fact that this is, the figures presented are in relation to the most recent amendments that applied and are no longer compared to the original contracted DIP terms in so far as it is in relation to specific items. On the totals they are still exactly the same as they were contracted originally.

ADV SELLO: If we could then just quickly go through pages 372 to 376 to the extent that they relate to the tables you have taken us through in annexure “PB18”?

MR BURGER: Chair the pages 372 to 376 are again a summarised view of what we have just discussed in terms of page 363 to 371, again already converted into a Rand Value the Purpose of this and you will see that is in a presentation formal is this is what we would present to various forums when required to demonstrate progress on the discharge of the obligations.

And although it does not contain all the detailed information the table there with the figures is a reflection of what we have seen up until now in the detailed reports. And

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with an indication if you look at the picture 372 again as an example for the DIP Corvettes, if you look at the picture there of the Corvette with reference to some of the activities which were directly related to our Corvettes and you will see things
5 such and the Communications And Commanding Control System on board, the Navigation Systems, there we see also the Capstan and there are a number of others. This is just for presentation purposes, we use this, but it reflects the actual values in Rand.

10 ADV SELLO: On the picture, left top corner is that intended to depict the specific areas of the Corvettes to which the local beneficiaries contributed?

MR BURGER: Chair that is correct, that is an indication of what our local industry contributed to the building of these
15 vessels.

ADV SELLO: Now if one may read, if one reads 372 with 363 both of these referring to the Corvettes and you state there that 31 companies participated at 372 and you by way of example just name a few, would one then be correct to say if
20 one were to take let's say Booyco Engineering which is the first that would correspond at page 363 with DIP 7, is that how we read the two documents together?

MR BURGER: Chair that is correct.

ADV SELLO: And the same would then apply to all the
25 companies listed, they have a specific DIP number on 363 that

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states exactly what role they played and the value attached thereto?

MR BURGER: That is correct Chair.

ADV SELLO: If then you could just quickly take us
5 through 373 to 376?

MR BURGER: Chair page 373 is a view of the submarines and you will note that over a period of time of discharge 22 companies were involved of which a few are listed there as Zeiss Optronics which was a Denel company seen in South
10 Africa. Denel OTR is a missile test range in the Western Cape near ...(Indistinct)... which did some testing for the German defence force, the CSIR benefited and Cybicom Atlas Defence is a company in the Cape which benefited, and the activity shown in the picture relate to those and to the other companies
15 mentioned in the detailed report.

Chair on 374 that is a view of the Hawk and similarly in the instance of the Hawk ten companies involved, ATE was one of them, Denel was one of them, Turbomeca Africa and then AMS; SAAB Tellumat IFS Defence South
20 Africa, Thoroughtec, Aerosud and OMC Land Systems, they all benefited under that program.

The next page 375, Gripen, also 10 companies, Denel Group of Companies, the Grintek Group, OMC Land system again and then there were a number of smaller
25 companies which are not identified specifically here for this

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purposes, and again with the activities related to the Gripen.

On page 376 the LUH AGUSTA, 8 companies, again Denel Aviation, or Denel featuring AMS, Trubomeca Africa, Grintek Group of companies ADS and Chelton.

5 ADV SELLO: Just to be clear, just to clarify this although in each instance you give examples of companies, the values that are depicted in the tables below are in respect of all companies not only those that you give examples of?

10 MR BURGER: Chair that is correct those are just the summarised values for the total obligation.

ADV SELLO: Now if we move to page 377 we have your "PB19" and I think this relates to the point you made earlier about status as amended am I correct?

15 MR BURGER: That is correct Chair. With reference to page 377 the information shown there you will see first of all that it is arranged by type of DIP activity, sales and exports, technology transfer and investment. The next column there, the initial committed value shows the value as contracted originally in the DIP terms and then the current achieved value
20 is shown in the last column.

ADV SELLO: And is it so that that the shortfall between the initial committed value and the current achieved value is attributable to the MBDA DIP terms that are not fully discharged?

25 MR BURGER: That is correct Chair.

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ADV SELLO: Where you complete "PB19" at page 378 with a table could you just quickly just assist us on how to navigate our way through that table?

MR BURGER: Chair the information provided on page 377
5 in the summarised format is taken from the tables presented on page 378 so they just reflect with a little bit more detail, but they are summarised into page 377 and they show a level of information per obligation, and you will see there as well it shows it in US dollars, it shows it in Euros as well as in Rands,
10 that is what the three tables are for.

ADV SELLO: And by foreign currency here we should specifically read Euros, so if one has regard to the three tables and takes sales for instance first line, that would be, the table that is sales expressed in US dollars, and second table is sales
15 expressed in Euros and the last table first line again its sales as converted into Rands, should we so understand that?

MR BURGER: Chair that is not exactly correct, I will try and explain, the first table shows all the values in US dollars, in other words looking at the Submarines and he Corvettes in
20 that table they would have been converted from their contracted Euro values to US dollars at the applicable rate 6.4 and 6.25 .

The second table shows the foreign currencies as contracted, so in other words you will see AGUSTA shows US
25 dollar in the heading, Gripen shows US dollar, Hawk shows US

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dollar and the submarine then shows Euro and Corvette shows Euro, and those values are then converted to US dollars in the table at the top, and from there then they are converted to Rand in the third table at the bottom.

5 ADV SELLO: Thank you for that explanation, that is very helpful, we have a better understanding of that page 378, turning back to your statement then we are now at page 14, you have a heading there at paragraph 12 again it is paragraph 12, DIP Obligation Completion. Can you take us through paragraph
10 12.1 to 12.2, no 12.1.5 sorry.

MR BURGER: Chair yes, the DIP terms require of ARMSCOR to when the obligations are discharged freely to formally inform the Obligor that that is the case, and 12.1.1 to 12.1.5 shows first of all 12.1.1 shows a quote from the letter
15 that was sent to the GFC which was responsible for the platform that the obligation had been fully discharged. That was in November 2008.

12.1.2 refers to the AGUSTA or LUH obligation, the formal notification on 24 August 2009 confirming the successful
20 completion of the obligation, 12.1.3 refers to MAN Ferrostaal who under the GSC was also responsible for dealing with some of the DIP activities specifically indirect DIP and a letter to that effect, and 12.1.4 is also a letter to the GSC to inform them that the full obligation has been completed and contained
25 quotes.

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12.1.5 is a letter to BAE Systems which shows and confirms that the full discharge of the Hawk and Gripen obligations have taken place.

ADV SELLO: The dates on which confirmation was given set out in paragraph 12.1.1 to 12.1.5 must we understand those dates as correlating to the timing at which each Obligor fully discharged their obligations, such that the one GFC for instance would have fully discharged by November 2008 whereas BAE Systems only finally discharged in February 2012?

MR BURGER: Chair those dates just state the date at which the letter was sent and does not necessarily correlate to the exact date whether completion of the obligations took place. So that is just the date on which the letters were sent and not necessarily the date of completion.

ADV SELLO: From your experience and from the provisions of the DIP terms how long after completion of after complete discharge of obligations must these letters be forwarded to Obligors?

MR BURGER: Chair I am trying to recollect now but if I remember correctly it does not specifically say when that needs to happen.

ADV SELLO: Generally in terms of standard ARMSCOR procedure how soon thereafter are they forwarded, if there is such a general standard procedure that is followed?

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MR BURGER: Chair there isn't really a general standard procedure for that and I can say maybe that some of them certainly could have been sent earlier than they were sent.

5 ADV SELLO: One thing you do not point out in paragraph 12.1 is who specifically bears the responsibility of sending out these letters, is it the DIP manager, is it the DIP division, is it a specific body, a specific person, would you know that detail?

10 MR BURGER: Chair I can state that in as far as my knowledge goes and the letters that I was responsible for is that those letters were signed by the DIP manager, but it could only be done after the figures applicable had been audited in the normal auditing cycle of ARMSCOR. So the letter would be signed by the DIP manager at least.

15 ADV SELLO: Thank you, now if we move onto, from paragraph 12.2 until 12.4.6 you pick out a specific set of DIP obligations that you mention are outstanding and from 12.4 following you give an explanation of what transpired such that they are still outstanding to date. Could you take the
20 commissioners through those paragraphs?

MR BURGER: Chair yes I will do so. This paragraph 12.3 specifically starts to deal with the outstanding portion of the obligation first of all, as reflected in my annexure "PB17" and as discussed, and we just provided for completeness an
25 explanation of how that came about ...[intervene]

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CHAIRPERSON: Sorry, haven't we gone through this evidence?.

ADV SELLO: Chair?

CHAIRPERSON: Haven't we gone through this evidence?

5 ADV SELLO: Not in the detail provided at 12.4 as I understand it Chair, because at 12.4 the witness provides the reasons why, we know that there is a shortfall, 12.4 provides the reasons why and what ARMSCOR has done with that failure to discharge as to date.

10 CHAIRPERSON: I was merely saying that evidence has already been given, that explanation has been given already.

ADV SELLO: If the commissioners are satisfied with what is set out in 12.4 has already been given there is no need to go through it again and I am happy to go into the next point.
15 If I may one point before I do so and specifically in relation to 12.4.6 I would like the witness to address himself to that.

MR BURGER: Chair that paragraph on page 16 12.4.6 just states that the discharge of that part of the obligation is to take place by end of March 2016 as agreed to in 2009 and that
20 is what that paragraph states.

ADV SELLO: And that obligation to discharge by 2016 arises from what is set out in 12.4.5?

MR BURGER: That is correct Chair.

ADV SELLO: Moving on then to paragraph 13 of your
25 statement which deals with the impact of DIP jobs in the

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Defence Industry. Could you quickly walk us through what's contained in there with reference to Annexures "20" and "21"?

MR BURGER: Chair this part of my evidence I wish to testify to the impact of DIP on jobs in the Defence Industry as I understand it, and would like to indicate to the commission when we talk about the impact, how we arrive at that impact and that it does not necessarily involve the counting of actual jobs, either retained or created and I think in line also with Mr Barry De Beer's testimony in this regard to just show how we made this statement with regard to the impact of the DIP on the jobs and how we arrive at that, that is the purpose of this part of the statement.

ADV SELLO: At paragraph 13.5 page 17 you referred to source of information to arrive at a conclusion as to how many jobs were impacted upon by the discharge of the DIP obligations, could you just quickly talk to that?

MR BURGER: Chair yes this speaks to the way in which we determined the impact, on my arrival on the DIP division it didn't seem as though there was any formal process to measure anything with regard to jobs because it was not a specific requirement to do so in terms of the DIP terms.

But there was an attempt by the DIP division to at least show the effect that the DIP had on jobs in the industry, and the information that we use was determined to be information that we needed to get from the local industry

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themselves, as they would be the ones best positioned to tell us the DIP division what the impact on jobs was.

And for that purpose and we have briefly referred to the document in 379 when we dealt with the claim, page 379 of my Annexure "20" spoke about the claim confirmation that went to the local industry, and if I could take you to that page 379 which is a copy of an example of such a claim confirmation.

You will see close to the bottom just above the signature on the page line 13 as indicated there for the local company to provide some specific information, and that information refers to man hours that this claim represents or the activity related to this claim represents, and with a statement with regard to whether it was a job retained or a job created.

And that information was provided to us by the local defence industry as part of confirming the claim, it was not an obligatory requirement, it did not, if they did not complete that part did not invalidate any of the claims because it was just an attempt by the DIP division to do a survey to try and demonstrate what the impact on jobs in the defence industry was.

My understanding of the issue of jobs is that the DIP specifically was very much about retaining jobs within the industry, and the way by doing that was trying to generate as much income generating activities within the industry, and that

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would then imply that jobs would at least be retained in the industry and that information is what we had hoped to get from that 379.

5 Now that information was collated and finds it in a collated form on page 380, my Annexure "21" showing the total value of the responses that we got from the local industry listed in the company column, but you will see that there are, some of those companies who did not respond.

10 But as I have said that did not necessarily, no that did not disqualify or invalidate any claims. Mr De Beer did testify to this and said that approximately 80% response was received, and from that on the 2nd page 381 at the bottom the information is collated there and the man hours involved you will see as up to R9,544618 man hours.

15 People working on those programs for those number of hours and in terms of jobs either created or retained which we don't know what the distinction is, 11 916 jobs were affected by the DIP program. And as I have said that is based on a 805 response from the local industry.

20 ADV SELLO: Thank you, before we get to your conclusion with your permission Chair I would like to retrace our steps just to cover one aspect, at page 365 and this is the shortfall of DIP obligations by MBDA, I would like the witness to clarify the nature of obligations that are outstanding from
25 MBDA and the sense that are they DDIP's and IDIP's or how

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best are they described, and what impact the delay has had if any on the actual programs, the actual physical equipment that was to be delivered to the department of defence?

MR BURGER: Chair that is a difficult question to answer
5 in the sense that those activities currently listed on page 362 reflect activities that we today already know may not take place, or will not take place, and ARMSCOR is currently in discussion with MBDA as the contracted party in this specific instance to resolve this matter for them to come up with a
10 proposal. Those discussions are in progress, but they are not reflected here yet. So this in terms of the activities is not a true picture of what is currently the status, only the values. And I would say that we just for the purposes of this we are looking at the total value of the obligation.

15 And in discussions with MBDA between ARMSCOR and MBDA we hope to resolve the matter and come up then with something that will be acceptable.

ADV SELLO: Thank you. Moving then to the conclusions you draw at paragraph 14 generally am I correct to state that
20 your view is that the DIP portion of the SDPP was successful and beneficial to the local industry and if so if you may just set out very briefly the basis on which you so content?

MR BURGER: Chair yes that is my statement, except of course for the outstanding portion, the MBDA portion, and I
25 would base that statement on the fact that in the whole

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management of the discharge of these obligations we had processes in place, we had management structures in place to reasonably prove that these activities took place and that these values were delivered to the local industry, either in the form of sales or orders or Tech Transfer or investment and that our reports to that effect are a statement which supports that.

ADV SELLO: At 14.3 you state that from the SDPP's valuable lessons have been learned over the years. Could you give us examples of lessons learned and how they have benefitted or are benefitting ARMSCOR?

MR BURGER: Chair yes there have been various levels of managing this program, there have been lessons learned, ARMSCOR as I state there will continue to try and improve the program by making changes to its policy and practices and even the conditions stated in the DIP terms.

At a very specific detail level I may refer to DIP claims where the supporting documentation that we require today would include and actually be obligatory would be to provide proof of payment to the local company instead of just invoices or a copy of the order or other documentation that was provided for under the SDPP's which at that time seemed to be reasonable validation that these activities took place, but we did, we recognise that one could go further and say that it is probably more, a bit more efficient to say that if there is proof of payment to the local industry, there can be very little doubt

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that that activity took place and the valued accrued to the local company, as an example.

ADV SELLO: Thank you Mr Burger, now that brings us to the end of your statement, is there anything else you would like
5 the commissioners to hear from you that you believe we have not covered or we have not sufficiently covered in your evidence?

MR BURGER: Chair there is nothing that I would like to add, I would include that in my statement, this is the full body
10 of my statement, thank you Chair.

ADV SELLO: Thank you Mr Burger, Chair and Commissioner Musi that is the evidence of Mr Burger, we come to the conclusion thereof.

CHAIRPERSON: ...(Indistinct)... any person who wants to
15 cross-examine the witness, any re-examination?

ADV SIBEKO: Thank you Chairperson we have no re-examination.

CHAIRPERSON: Thank you. Thank you Mr Burger, thank you for giving evidence and you are now excused, thank you.

NO FURTHER QUESTION

ADV SELLO: Chair as far as witnesses were concerned for this block, that is the last of our witnesses, we are in the Chair's hands as to what happens next.

CHAIRPERSON: I suppose the last time when we were
25 supposed to hear the evidence of Mr Nortjè, we ended up

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saying that that issue would be discussed again on the 17th which is this coming Monday, so which means that we would have to adjourn now until Monday the 17th so that we can hear on Monday or the 17th the issue related to Mr Nortjè. Unless
5 ...(Indistinct)... with another witness?

ADV SELLO: Chair tempted as we may be we will resist the temptation, no Chair we shall come back on the 17th to find out what is the status with Mr Nortjè.

CHAIRPERSON: In that case let us adjourn, we will adjourn
10 until Monday the 17th, thank you.

(COMMISSION ADJOURNS)