

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 12 AUGUST 2014

CHAIRPERSON: Good morning everybody. Can we just let the witness confirm that he is still under oath?

MR MAYNIER: I do.

5 **DAVID MAYNIER** : (s.u.o.)

CHAIRPERSON: Thank you. I think yesterday we heard two or three people say they want to cross examine. Maybe let me start with Advocate Cane and then we will start on Advocate Cilliers.

10 ADV CANE: Thank you learned Commissioner. The Department of Defence may want to tackle one issue, that it wants to determine as to [indistinct] It will be after the other cross examiners have finished.

CHAIRPERSON: Thank you, Advocate Cilliers?

ADV CILLIERS: Thank you, Chairman. I have recently started [indistinct] cross examination.

15 **CROSS EXAMINATION BY ADVOCATE CILLIERS**: Mr Maynier, it was established quite clearly yesterday that you had no personal knowledge of the facts contained in your submission, and or in your testimony yesterday, am I correct?

MR MAYNIER: Yes.

20 ADV CILLIERS: You, to some extent will [indistinct] in the affidavit that forms part of your submission, signed on the 4th of July 2013, I am referring to paragraph 4 thereof, page 1 of the bundle. Where you stated that:

"It will be apparent that I do not have personal knowledge regarding any of the topics which appear on the list and I will in main rely on the listed documents to substantiate my views."

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That is how you expressed your position in your affidavit?

MR MAYNIER: That is correct.

ADV CILLIERS: So do I understand the position correct that actually you are here to ... only to provide some views that you personally have based on
5 certain information that you obtained through a period of time?

MR MAYNIER: Advocate, my objective was simply to draw the Commission's attention to the matter to which you refer, which I had obviously taken certain action steps over the years in respect of the matter to which you refer, and my objective was to ask the Commission to take the
10 matter forward. I do not have powers to investigate the matter and that is why I referred the matter to the authorities. My objective was simply to hand over the material in my possession and ask the Commission to take that forward.

ADV CILLIERS: Yes, but it appears to be then that your contribution is only
15 to hand over whatever documents and or other information you had to the Commission, you personally did not make any contribution from any knowledge that you had?

MR MAYNIER: Advocate that is correct. Information was brought to my attention and I referred that information as you are aware, to the authorities
20 to investigate. My objective in respect of the Commission was to hand over that material to the Commission. I obviously do not have personal knowledge. I cannot investigate the matter and my objective was simply for the Commission to take this matter forward. The Commission has powers to presumably approach the owners of the report, the authors of the report and

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they have powers to take the matter forward and that was simply my objective.

ADV CILLIERS: Yes, but I want to establish whether I should in fact deal with factual issues with you and it appears to me that actually on the level of
5 a factual contribution, there is no contribution from your part?

MR MAYNIER: Advocate, if your position... if your position is do I have personal knowledge of the matters contained in the documents, the answer to that question is must be no and it is for that reason that I have handed the documents to the Commission.

10 ADV CILLIERS: You do not and you cannot stand in for the reliability and or truth of any of the allegations contained in any of the documents that you presented?

MR MAYNIER: Advocate, with respect, at the time that I received the documents and I now take you back to June 2011, I received not only the
15 press statement, but then the various consultancy agreements. I obviously am not able to determine whether the allegations in those documents are correct or not and for that reason I handed them to the authorities in this case, the Hawks. Again in respect of the Commission the same documents; I do not have personal knowledge of those documents. I am not able to
20 attest to whether those allegations are true or not and it is precisely for that reason that I have handed the documents to the Commission and the Commission will take this matter forward in the way that the Commission deems fit.

ADV CILLIERS: Must I take that as a long yes, to my question? You can
25 carry on [intervenes]

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MR MAYNIER: If your [intervenes]

ADV CILLIERS: You will not stand in for the reliability or truthfulness of any of the allegations contained in any of the documents, presented to the Commission?

5 MR MAYNIER: The answer to that question Advocate is yes and that is why I have handed over the documents to not only the investigative authorities, but the Commission.

ADV CILLIERS: Well in that event Mr Maynier, it is very clear that it will be a complete waste of time to cross examines you on the reliability of the
10 allegations contained in the documentation and or the submissions that you have made, because you do not stand in for the reliability thereof?

MR MAYNIER: Advocate, I am not able to determine the reliability of those documents that is why I have a public duty to hand them to authorities, the Hawks or the Commission that do have those powers. The matter was
15 sufficiently serious in my view to take action and I did that. But I can confirm that I do not have personal knowledge and I am not able to determine the reliability of the facts in the documents that is why the proper authorities should take the matter forward, not me. I am not qualified to do so.

ADV CILLIERS: Well, let us briefly look at the sources that you rely on.
20 First of all what I see from your submission, you relied on newspaper articles, am I correct?

MR MAYNIER: I relied on two principle sources of documents. One, if you recall is a press statement released by SAARB and the other is a set of consultancy agreements.

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ADV CILLIERS: Let us go through it briefly, Mr Maynier and you also relied on press articles, newspaper articles, am I wrong if I infer that from your submission?

MR MAYNIER: Could you point me to where you infer that?

5 ADV CILLIERS: Well, I do not want to waste time Mr Maynier, have you not relied in any way on a newspaper article in your submissions? Have you not attached any newspaper articles to your submission?

MR MAYNIER: Advocate, could you point me to the newspaper article to which you refer?

10 ADV CILLIERS: I am not going to waste time, Mr Maynier. So are you saying that you have not relied... as far as you sit there and recall your submission, you did not rely in any way on any press article, newspaper article?

MR MAYNIER: Advocate, you will recall that in ...as far as I am aware I
15 have not submitted a newspaper article, but I did rely on the stories in the media which alleged that the South African consultant in this case, was your client.

ADV CILLIERS: So you did rely on 'some' as you referred to it 'stories in the media'?

20 MR MAYNIER: I can confirm that is correct.

ADV CILLIERS: You further relied on a press statement as you have already referred to?

MR MAYNIER: That is correct,

ADV CILLIERS: You further relied inter alia on what was titled "a draft report
25 marked for review purposes only"? That is the audit report?

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MR MAYNIER: I am not following you Advocate, can you just refer me to the report that you are referring to?

ADV CILLIERS: [indistinct] the draft report.

MR MAYNIER: No, Advocate. I did not rely on the KPMG report in this case. I relied on a couple of sets of documents. Let me take you through them. I relied on a statement, issued by BAE SAARB, if I recall correctly that statement was dated the 16th of June 2011. I relied on a set of so-called consultancy agreements and schedule of payments and I also did make reference to newspaper articles which at the time, alleged that the South African consultant mentioned in the press statement, was your client.

ADV CILLIERS: The draft report I am referring to was the one on President Zuma, you relied on that and did you not provide... annex that to your submission?

MR MAYNIER: I did annex it to my submission, but I did not use it in this matter.

ADV CILLIERS: Why would you then burden your submission with a document that appears to have been irrelevant?

MR MAYNIER: Well, the document to which you refer which is the KPMG report was used in respect of a different person, not your client.

ADV CILLIERS: I am not referring to my client, Mr Maynier. I am referring to your submission to this Commission that you rely on a draft report, clearly marked for review purposes only, or did you not rely on such report?

MR MAYNIER: I evidently misunderstood your question. If your question is did I rely on a draft report from KPMG in respect of a different person who is not your client, the answer to that question is, yes.

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ADV CILLIERS: Mr Maynier, please listen to the questions. I never referred to my client only. I am working in general what the sources of your submission are and one of the sources is the... a draft report clearly marked for review purposes only, am I correct?

5 MR MAYNIER: That is correct.

ADV CILLIERS: We do not know... the Commission do not know what the final report in fact states, because you only provided a draft for review purposes only?

MR MAYNIER: That is correct and again in respect of that report, Advocate,
10 my intention was to submit that document to the Commission because the Commission has powers to take that matter forward and presumably, approach the authors of that report, the owners of the report or the people who drafted that report. But I confirm that is... as part of my submission I submitted the KPMG report which is a draft report for review purposes only.

15 ADV CILLIERS: The probative value of such a draft report, you will agree with me, is almost naught? Because we do not know what amendments after further investigations were made to such report? Many of the facts contained in such a draft report could have been retracted and or rephrased, not so?

MR MAYNIER: That is correct and that is precisely why the Commission is
20 the right body to take this matter forward, to determine what the facts are and what the final report does in fact say.

ADV CILLIERS: But what assistance will that draft report then be to the Commission? It runs into many pages, it will take the Commission if it has to study that report, I suppose a day or two, why should we burden the

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Commission through your evidence and your testimony and your submission, with documents that has clearly no probative value whatsoever?

ADV LEBALA: Chairperson, I know that I might be out of place, I have led the witness... the evidence of this witness and with respect, esteemed
5 Commissioners, I am entitled to object. I have left this cross examination to go on unfairly and here I am not defending this witness as my client, I have led this witness' testimony. For instance my learned friend puts it to the witness that he does not have personal knowledge regarding almost all issues. The witness' statement says many of the issues. We have heard
10 that this witness debated utilisation and he could talk authoritatively on utilisation. It is on record. He even asked the Minister questions in Parliament. He even said, I assumed an oversight function. Where these issues are debated, I am responsible in a Committee wherein as far as the Military and Veterans' interests are concerned. I focussed on the Strategic
15 Defence Procurement Packages issues. Now we left our learned friend to go on. My learned friend wants to generalise this report without the Commission having given this witness an opportunity to explain whether it is relevant to the issues, in as far as this particular term of reference is concerned. Now he generalises this question with a view to even arguing with the witness. He is
20 starting to argue with the witness, he is not putting positive assertions. Now the purpose of cross examination comes to light as to whether are these questions fair. Firstly, the first question is [indistinct]. This witness can ... does not have personal knowledge regarding many of the issues, not all of the issues. On utilisation he demonstrated to this Commission that he can
25 talk authoritatively and we have heard why, esteemed Commissioners and

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they went on and we left it to happen. Now they generalise questions which even go to the level of debate comes in, we object. We object, Chair on the basis that we led the testimony of this witness. [indistinct] no interest in as far as the issues before the Commission are concerned, but we have a duty, 5 because we have brought the testimony of this witness before the Commission.

ADV DE WAAL: May I just add one thing to that Mr Chairman and that is that we... well, personally I fail to understand why the position in respect of the draft report pertaining to President Zuma is comparable to the 10 documents submitted in respect of my learned friend's client, Mr Hlongwane of Hlongwane Consulting. Because there appears to be now a suggestion that there is a situation which is comparable that is the only relevance that I can see in this line of cross examination and I fail to see that there is any similarity whatsoever between the situations, so it is just going down the line 15 which I find is completely unhelpful and unfair.

COMMISSIONER MUSI: We confirm it is simple, why burden the Commission with [indistinct]

ADV CILLIERS: Mr Chairman, if I can respond, with the greatest of respect [intervenes]

20 CHAIRPERSON: I am not sure whether there is a need for you to respond. Because I think the objection is baseless. The witness has given us this document which runs into several hundreds of pages and I think it is only fair for you to try and find out from him what was the purpose of burdening the Commission with these documents and I am going to allow you to proceed 25 with that line of cross examination.

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ADV CILLIERS: Thank you Mr Chairperson.

ADV LEBALA: Chair, with respect, chair, with respect and [indistinct]

CHAIRPERSON: Advocate Lebala, I have made a ruling.

ADV LEBALA: Thank you.

5 CHAIRPERSON: Thank you.

ADV CILLIERS: Mr Maynier, a next appears to be important source of the views that you formulated and expressed in your submission, is based on a document that is clearly improperly obtained and improperly put before the Commission and I will refer you to the attorney client communications that
10 have been first presented to the Hawks and then subsequently it appears to be used in Parliament by yourself, and now also that forms part of your submission to this Commission. Do you know what I am referring to?

MR MAYNIER: I presume you are referring to the report compiled by Devoir & Clinton in respect of the allegations in respect of [indistinct] is that correct?

15 ADV CILLIERS: Correct so and the police document BM25 page 387, where the police already informed you they cannot use that document, because it was clearly and absolutely inadmissible.

MR MAYNIER: Advocate, I would put it to you that that report was furnished to me and I have a public duty to take it forward. Now I am not able to
20 determine the validity of the allegations in the report, and it is precisely for that reason that in my position as a Member of Parliament, I took the... I did the responsible thing and handed that report to authorities, in this case the Hawks, who are... who I thought were able to take the report forward. Equally I have handed that document to the Commission which I believe the
25 Commission are able to take forward and the... both the investigative

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authority and the Commission are presumably capable of approaching the owners of this ... of the report and indeed the individuals who may be implicated in those reports. More than that, as a public representative, I cannot do.

5 ADV CILLIERS: Mr Maynier, you have been at least by the police correctly advised that this document is absolutely inadmissible to be used. It is a clear violation of one of the most basic principles of most countries' laws, definitely the evidential laws of South Africa, a violation of the attorney client privilege, you have been aware of that? Been made aware of that by a General in the
10 South African Police Services, am I correct?

MR MAYNIER: That is correct, but I stand by my statement. As a public representative I have a duty to take these matters forward and that is why I have handed them to the relevant authorities because those authorities do have the capacity to take those matters forward.

15 ADV CILLIERS: Mr Maynier, repetition does not make an answer strong. You have said that, I have heard that and the Commission has heard it, it is on record. The fact is you know and you have always known, and you definitely knew before you submitted this document, that it was a totally inadmissible document? It would be inadmissible in any proceedings relating
20 to the subject.

MR MAYNIER: That may be so Advocate, but if the responsible authorities in this case the Hawks or the Commission, were able to legitimately access the final copy of the report with the permission of the owners, they would be able to take the matter forward.

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ADV DE WAAL: May I just object here as well, Mr Chair? Advocate Cilliers is in effect asking my client for a legal opinion. He has now said he was advised about the law by a police General he should have followed the legal advice given by the police General, and should have known from that, that

5 the outcome must be that this document is inadmissible in any legal proceedings. I cannot see what the opinion of my client or the concession of my client on a legal issue, will help.

ADV LEBALA: Chair, I would like to add to that objection too. That was the opinion of the police, besides the terms of reference of the Commission are

10 very clear as far as this document is concerned.

ADV CILLIERS: With great respect, Mr Chairman, I am not interested in his opinion. I am interested in his conduct subsequent to his clear understanding that it is an inadmissible document. So I am not interested in his opinion, we all know what his [indistinct] opinion is.

15 ADV DE WAAL: Yes, Mr Chair, with respect [intervenes]

ADV CILLIERS: What I am testing is his conduct subsequent to him realising and obtaining the information that it is an inadmissible document.

ADV DE WAAL: Mr Chair, he can only reach an opinion or a view on the document based on a legal analysis thereof, which he has not been advised

20 on and my learned friend, with respect, is asking him to admit that he realised what the legal position was.

CHAIRPERSON: Advocate Cilliers, as I understand your question, you are trying to deal with his conduct, after being advised by the police that there might be problems with this document?

25 ADV CILLIERS: Absolutely so, Mr Chairman.

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CHAIRPERSON: You can proceed with that question. I think it is a fair question.

ADV CILLIERS: Mr Maynier, apart from receiving that knowledge that it is an inadmissible document, you will agree with me your understanding was
5 clearly that this document contained privileged information disclosed by a client to his attorney, not so?

MR MAYNIER: Advocate, at the time I certainly... given the nature of the report knew that the information contained in there, did ... or was confidential and probably did not have any evidentiary value. But I mean I am not a
10 lawyer. I realised that there were limits to the document. So let us ... you want to determine my conduct after I realised that. Well, let us look at my conduct. What did I do? I did two things. I handed a copy... I wrote back to the Hawks and I said surely you would be able to approach the owners of this report, in this case Ferro Star and I said that as far as I was aware, there was
15 a newspaper article where Ferro Star had said that they would be prepared to co-operate with the South African authorities. That was one leg. The other ... so my conduct after receiving that knowledge was to re-approach the Hawks. That was the first leg. The second leg was to hand the document to the Commission. I would argue that in both those cases, that was the
20 responsible thing to do because I cannot take the allegations forward.

ADV LEBALA: Chair, with respect, let us demonstrate how unfair this question is by looking at DM25, 387 [intervenes]

CHAIRPERSON: Advocate Lebala, I have already made a ruling. We cannot visit one issue four times and I have made a ruling and I think it is a

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fair question. I think it is [indistinct]. Proceed. I do not want to go back to that point.

ADV CILLIERS: Thank you, Mr Chair. Mr Maynier, obviously it was clear that the client did not waive his privilege in this regard, relating to the
5 information contained in the document, that you realised, not so?

ADV LEBALA: Chair, this question is misleading. With your permission. There is a basis for this objection and with respect, Chair; you can take it to the letter that shows that this question is misleading. It is totally misleading Chair and there is a reason why. We led this witness on the report. My
10 learned friend wants to suggest that we are misleading the Commission; we did not apply our mind in leading this witness on this report to introduce it. He is relying on a letter that gives an opinion. The police are not even certain as to whether this privilege still exists. Hence we say DM25 will provide an answer to you. Then we have defeated the purpose of bringing this report,
15 we misled you. We have not ...we have applied our mind why we wanted this witness to talk about this report, to [indistinct] because if we knew certainly that it is privileged and confidential, it still stands as attorney and client communication, we would not have led this witness on it and our learned friend mischaracterises this, hence we say this question is unfair. The letter
20 provides an answer. General [indistinct] is giving an opinion. It is a legal opinion and he is not talking as if he is authoritative and certain that this privilege still exists and that is all that we are saying, Chair and he is exposing us this question that we are misleading this Commission, and we are not.

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ADV CILLIERS: I have not made, with respect, any allegations against my learned colleagues. All I want to put before the Commission is the following: this witness on his own version does not have any knowledge of the facts. He is here to express views based on certain information and all I am
5 indicating to the Commission with respect, is that apart from the fact that his opinions and views are irrelevant, secondly is based on information untested, completely unreliable and in instances like this, I will indicate him now and show it to the Commission, illegally obtained and that is all I am doing at this stage. Is to provide you with insight of how you should regard and how you
10 should evaluate the views and opinions expressed by this witness. I cannot understand why there is so many objections to these objective facts.

CHAIRPERSON: Advocate Cilliers, you can proceed. There is nothing wrong with your questions.

ADV CILLIERS: Thank you, Mr Chair. In fact on page ... on the first page of
15 the document page 219 of your submission, it is clearly marked 'privileged and confidential attorney work product' an attorney client communication. How much clearer can an attorney indicate on a document that it is absolutely privileged, than that, Mr Maynier?

MR MAYNIER: I think it is ... the point that you are making does not appear
20 to me to be in dispute. I confirm that at the time I received this document, I knew that it was likely to be confi... that it was confidential information and that the info... that these were findings. That is why I had to and I had an obligation to hand the report to an investigative authority to take forward. I cannot go beyond that.

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ADV CILLIERS: And clearly you knew Mr Maynier, that this document was improperly obtained, from whom ever your undisclosed source was?

MR MAYNIER: Of course and even if I ... even if the information was confidential and even if the information was provided to me by a source at
5 the time I had to make a judgment call, and the judgment call I made in respect of this report, was that the allegations were so serious that I needed to act on them and therefore I took the responsible action and handed them to an investigative authority.

ADV CILLIERS: You said that many times, Mr Maynier. You heard... in fact
10 is what you conceded, you realised that this document, a privileged document violating one of the most basic principles of our law, was improperly obtained by your source, or somebody that handed the document to him or her.

MR MAYNIER: Advocate, this document was leaked to me. I know and
15 knew at the time that the information in the document was confidential. I considered the information so serious that I handed it to an investigative authority to take the matter forward that is what happened.

ADV CILLIERS: And what happened now is that you did not answer my question. You realised that this document was improperly obtained?

MR MAYNIER: The document was leaked to me. It is entirely possible that
20 it was improperly obtained, but I cannot speak to how it was obtained. But nevertheless there is another test, and that is the public interest and I in this matter acted I believe in the public interest and in bringing this document to the attention of the Commission, I continue I believe to act in the public
25 interest.

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ADV CILLIERS: The document was probably illegally obtained. Probably stolen from the attorneys' files and or in some way illegally obtained according to your understanding, not so, Mr Maynier?

MR MAYNIER: Advocate, I cannot speculate on how the document was
5 obtained. So I cannot answer your question.

ADV DE WAAL: Mr Chair, just again. As I understand this line of cross examination it is on the premise that a document that is illegally or unlawfully obtained, is always inevitably inadmissible. Number two, a document which is subject to legal professional privilege and privilege in that sense, is always
10 inadmissible. Now if my learned friend wants to debate the law on that ... those two aspects, especially when it comes to the implementation of a government contract of the nature we are talking about in this case, especially in the light of the latest judgment of the Constitutional Court in the *Olchrane Social Security* matter, then we can do it. But he is trying to get the
15 witness to concede a legal issue, which is that an improperly, unlawfully, stolen document is not admissible in any legal proceedings in South Africa and that a legally privileged document is never admissible. Both of which, are wrong.

ADV LEBALA: Chair, [indistinct] objection by saying counsel is speculating.
20 He is not putting this as a fact. He is speculating that the document has been stolen. I challenge my learned friend to put it to this witness that the document has been stolen.

ADV CILLIERS: Mr Chairman, maybe my learned colleagues misunderstand cross examination. I am not debating the law with the
25 witness. I am attempting to put the facts surrounding the sources of his

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information on which he based his opinions and views before you. That is all I want to do.

ADV DE WAAL: Yes, but the only purpose [intervenes]

ADV CILLIERS: It is for you, with respect, to decide in the end, what value
5 you can attach to any document and or whether you should rely on it, whether it is admissible or not. What we owe you as counsel is to present you with all the facts in order to enable you to come to a proper decision in the end, and that is all I am doing. I am not arguing the law. That is for you to decide in the end.

10 ADV LEBALA: Chair, my learned friend is being challenged to tell this witness as a factual proposition, that the document has been stolen. He must not speculate.

ADV CILLIERS: I do not think the challenge is... it is so valueless that I will not even respond to it. I do not know what my learned friend tries to do. I do
15 not understand his conduct at this stage.

ADV LEBALA: Chair, my learned friend cannot go on this fishing expedition in cross examination, we object to this question.

CHAIRPERSON: I do not think that question is unfair. The document is clearly [indistinct] it is privileged and so on and so on, and I think Advocate
20 Cilliers is perfectly entitled to try and find out from the witness whether this document was legally obtained or not, and I do not see anything wrong with that line of cross examination. Advocate Cilliers, you can proceed with your question.

ADV CILLIERS: Thank you, Mr Chair. Mr Maynier, I want to put to you with
25 respect, that I can understand your position and I can understand that you

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have reservations that has to be investigated, but what I want to put to you with the greatest of respect to you, is that your testimony in this regard made no contribution to this Commission, because of the fact that this Commission is clearly here to establish the facts, and you on your own version have no
5 facts available that you can present to the Commission, apart from presenting documents, we have gone through the sources with you. I want to put to you that actually your testimony made no contribution to the terms that this Commission has to investigate.

MR MAYNIER: Advocate, ultimately what contribution that I make or do not
10 make, will be decided by the Commissioners, but in my view I made a contribution in drawing the Commission's attention to these documents. It will now be up to the Commission as to how they deal with these documents, and I look forward to seeing their final report.

ADV CILLIERS: I have no further questions.

15 CHAIRPERSON: Thank you. Advocate Chowe?

ADV CHOWE: Thank you, Mr Chairperson. Mr Maynier, I am so sorry that I am behind you, maybe I should [indistinct] maybe I must change positions?

CHAIRPERSON: Advocate Chowe, maybe change your position. Maybe come and sit somewhere this side.

20 CROSS EXAMINATION BY ADV CHOWE: Thank you, Mr Chair. Thank you, Chairperson. Morning Mr Maynier.

MR MAYNIER: Morning, sir.

ADV CHOWE: I do not have a lot of questions. It is just [intervenes]

MR MAYNIE: Good.

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ADV CHOWE: Clarification of a few issues. Especially the issue of the statement of the late Minister Modise. In that statement there is an indication of the total investment which the country should expect and then it is projected to a certain amount. Are you aware that that particular projection

5 was based on the initial projects which were given to the Government at that time?

MR MAYNIER: I am ... I can confirm that obviously on a close reading of the [indistinct]. The statement is based on data from the DTI. On a reading of the evidence from various DTI witnesses, it is evident that the projections are

10 based on I think 1998 figures. It was unclear to me in reading the evidence what exactly those figures were.

ADV CHOWE: So in your mind it might be so that after those figures were given, some of the projects did change and therefore changed some of the figures?

15 MR MAYNIER: My evidence yesterday was simply to suggest that those figures created a public expectation. But I am sure it is true that they... that the figures were based on initial projections and may have changed over time and in fact it appears, did change. But my point yesterday was simply that those figures created a public expectation and in fact I was interested to read

20 that Advocate Aboobaker who led evidence before this Commission, on exactly this section, agreed with me and said look this is the logical point of departure.

ADV CHOWE: But taking that into consideration, what are facts before this Commission is that there were indeed changes to the projects and therefore

25 changes to the figures, and that is undisputed.

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MR MAYNIER: I do not dispute that and it is precisely for that reason in my evidence, I looked at a different benchmark and that is in respect of jobs, was the figures which arise from the audit of the various business plans and then the actual obligor investments, which I think are probably better benchmarks.

5 ADV CHOWE: In your evidence you also indicated certain percentages which according to that, there was under performance by certain obligors. Do you remember the percentages you provided?

MR MAYNIER: I do recall the percentages. My point was to simply point out the discrepancy, I will use that term, between the ... in respect of
10 investments, between the actual investment amount and the investment credit and the purpose of that was simply to illustrate the effect of the so called multipliers.

ADV CHOWE: It is a standing fact in this Commission that there was a use of a term known as 'causality' in that, if I may use an example where a
15 project would cost R100, the obligor will for instance contribute R5 and through his partnership contribute, those partnership contribute 95 for instance, which add up to 100. He will then take credit for 100. Are you aware of that particular policy?

MR MAYNIER: Yes, I am.

20 ADV CHOWE: So based on that particular practice, will you suggest that the investments were not calculated correctly?

MR MAYNIER: I am not suggesting that the investments were incorrectly calculated. I was just simply illustrating the difference between investment credit and actual obligor investment. To the extent that I questioned the
25 investment amounts, I pointed the Commission to a finding in the internal

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audit report, which found that some investments did not materialise. Now bearing in mind that that was based on an audit of 40 of... I stand under correction, 120 projects. So I raised the question about whether it is possible that some other investments or parts of investments may not have materialised.

ADV CHOWE: And in having regard to your concession in your evidence yesterday that you are not sure on the formula or the basis on which the DTI did its calculation to arrive to certain credits. Are you still going to maintain that?

10 MR MAYNIER: Could you just remind me of ... I am not exactly sure of what you... of what you are referring to.

ADV CHOWE: In your evidence when you were led by Advocate Lebala, you made it clear that you may not know how were the calculations made to arrive to certain amounts which the DTI gave to the Commission.

15 MR MAYNIER: I think the figures to which you refer are the figures of one of the witnesses, Mr Lionel October, where he sets out the achievements of the National Industrial Participation Programme under the SDP's. What I said yesterday was, I am not certain how those figures were arrived at, but because I was not able ... I have not been able to do an analysis, I cannot dispute those figures. Those figures may be correct. I am just now sure how the witness arrived at those figures. But I do not dispute those numbers.

ADV CHOWE: Thank you, Mr Maynier. Chairperson, thank you for the opportunity.

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ADV CANE: Thank you Commissioner. The Department of Defence has no cross examination for this witness.

CHAIRPERSON: I do not think there is any person again who wants to cross examine. Advocate de Waal, any re-examination?

5 ADV DE WAAL: Yes, Mr Chair, there is a few short questions I have for Mr Maynier. I think it is also best if I move up a bit so if we... if you can give me a few minutes to get my ducks in a row. Is it an appropriate time to take a short adjournment, perhaps of 10 minutes or five minutes?

CHAIRPERSON: You do not want to sit next to your client?

10 MR MAYNIER: It is the other way around, Chair.

CHAIRPERSON: Oh, okay, we will adjourn for five minutes.

ADV DE WAAL: Thank you, Mr Chair.

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PROCEEDINGS RESUME

15 CHAIRPERSON: Thank you. Can we first confirm that the witness is still under oath.

MR MAYNIER: I do.

DAVID MAYNIER: (s.u.o.)

20 RE-EXAMINATION BY ADV DE WAAL: Thank you, Mr Chair. Mr Maynier, just three very quick aspects. The first one concerns your analysis which is, as I understand from your testimony yesterday, was to compare the amount of actual investment with the obligator's investment obligation and then you made a certain calculation which you arrived at percentages, actual investment versus the obligation in terms of the contracts. Now it was then suggested that the figures that you used which were given to you by
25 Parliament, might be not the correct ones or might be out-dated ones and

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that there is an annexure F submitted to the Commission, and that that annexure then contained different figures. Can you remember that?

MR MAYNIER: Yes, I can.

ADV DE WAAL: Have you subsequently compared annexure F to what was
5 given to you by DTI in Parliament and are there any differences between the two? That is ... I am talking about your DM6 now and annexure F.

MR MAYNIER: I have subsequently compared them and there are discrepancies. I have subsequently compared the documents and there are discrepancies.

10 ADV DE WAAL: Can you identify the main discrepancy between the two?

MR MAYNIER: The main discrepancy appears to be in respect of one of the obligors in this case, BAE SAAB, where the actual obligor investment appears to be lower in annexure F, than the figures provided to me. That is the first discrepancy and the total credit amount in annexure F appears to be
15 lower than in the documents provided to me. In summary the annexure F, if my analysis is correct, suggests that BAE SAAB has not discharged its full obligation of, if I recall, approximately 7.2 billion whereas the report provided to me and annexed in my bundle, suggests that they have.

ADV DE WAAL: So if I understand you correctly, all that the Commission
20 must do is to compare the actual investment amount for BAE SAARB with annexure F to what you submitted, and that they will find then that the actual investment amount given to Parliament is higher, than annexure F and this now results in BAE, if an assessment is done in terms of annexure F, not meeting the obligator's requirements.

25 MR MAYNIER: That is correct.

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ADV DE WAAL: If I can then move on to the next topic, again very briefly it was suggested in cross examination by DTI that the figure of 65,000 jobs and the investment figures, anticipated and mentioned by Minister Modise in the late 90's, were based on the business plans originally submitted and that
5 these plans were subsequently changed, presumably when the contracts were concluded and so on, can you remember that?

MR MAYNIER: Yes, I can.

ADV DE WAAL: Now in the evidence before the Commission, this aspect has been dealt with, i.e., the question of where Mr Modise derived his figures
10 from. Can you recall where this aspect has been dealt with and if I point you to it, can you speak to that part?

MR MAYNIER: If you point me to it, I can speak to it.

ADV DE WAAL: Mr Chairman, can I take the witness to Dr Gijon, I think one pronounces it like that; he was the first witness to testify on behalf of DTI, and
15 to his testimony at page 3948. Now perhaps it will be quickest if I just read [intervenues]

CHAIRPERSON: Just hold on, Mr de Waal. When you say page 3948, do we have it in front of us here?

ADV DE WAAL: Mr Chairman, this is page 3948 of the typed transcript of
20 Dr Gijon's testimony.

CHAIRPERSON: Do we have it in the documents that you have provided us with this morning or yesterday morning?

ADV DE WAAL: Chair, I believe you do not have it in front of you.

CHAIRPERSON: Okay, I just thought that maybe it is part of the documents
25 that we have.

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ADV DE WAAL: Mr Maynier, are you there at page 3948?

MR MAYNIER: Yes, I am.

ADV DE WAAL: If I can just read the question that Advocate Skinner has put to Dr Jordaan and then ask for your comment on that. He says to him :

5 *"In paragraph 13 of your statement, you indicate that you have been referred to the speech by the late Minister Modise in Parliament, when he announced the SDPP and you would have heard my colleague, Advocate Aboobaker SC refer to that this morning, as one of the indications of the starting point and the expectation as to what benefits would be*
10 *generated. You say in your statement you cannot say precisely what information had been supplied by the DTI, because this was shortly after you had become involved in the IRT but you do refer to certain spread sheets that you have annexed at page 33, page 31 (I am sorry) and following of your statement, that you believe would have contributed towards the expectation*
15 *of the investments and job creation, is that correct?"*

Then he answers:

20 *"That is correct. I cannot say for sure, I do not have what I said in Parliament but given the numbers that you gave me, they seem to correspond with the promises made by all of the bidders as per those spread sheets on the offsets and clearly it had nothing to do, we had only to start at our negotiating and it had nothing to do with what we finally then negotiated, because that was eight months later."*

Now the only question that I would like you to deal with, is the issue raised by Advocate Skinner which Dr Dijon then agrees with, which is that he has
25 annexed to his statement from page 31 onwards, a number of spread sheets

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which contains as we understand it, a summary of the jobs and investments to be created. Have you analysed those statements that he is referring to here, the spread sheets? Have you done a calculation on the numbers of jobs reflected in those spread sheets from page 31 onwards?

5 MR MAYNIER: Yes, we have looked at those figures.

ADV DE WAAL: And what was the conclusion you reached?

MR MAYNIER: The conclusion we reached was that they did not sum to the figures presented by Mr Modise in Parliament.

ADV DE WAAL: Then the last aspect, Mr Maynier, DTI in their cross
10 examination referred you to a principle applied by them in the contracts called "causality" and it was suggested to you that one could obtain the full investment value for a project, even if one contributed I think my learned friend said as little as 5% thereto, provided that you are then responsible for that project, or that project materialising, I suppose. Can you remember
15 that?

MR MAYNIER: Yes, I can.

ADV DE WAAL: Now can you explain to the Commission and I can perhaps take you through the evidence of DTI again, but in your analysis of the evidence presented by DTI, the amount of actual investment does that refer
20 to the 10% contributed by the obligator, or does that refer to the full amount i.e., the 100% that the obligator then gets credited for?

MR MAYNIER: It is simply unclear to me and so it raises a question about how much was actually invested.

ADV DE WAAL: So Mr Maynier, if I understand you correctly, what you are
25 saying is, that the actual amount of investment reflected in annexure F, must

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either be 10% of that actual amount, or it must be 100% of the actual amount, but it is unclear what the position is?

MR MAYNIER: That is correct.

ADV LEBALA: Mr Chairperson [intervenes]

5 CHAIRPERSON: Just hold on. I think there is a bit of a difficulty with that last statement. Let me first hear Advocate Chowe, can you just switch off there.

ADV CHOWE: Thank you, Mr Chairperson. Without trying to invade into the space of my learned colleague I... there is no evidence before this
10 Commission that indeed the contribution of the obligor would be for instance 10% and others 90%. It differed with percentages. There was no obligation to say you must at least contribute this much, or not that much. So they would contribute any amount and ask their partners to contribute whatever amount, so it would be wrong for my learned colleague maybe to believe that
15 it might have been for instance 10%. That is incorrect, Commissioner and one other thing which I know that my [indistinct] is the issue of the DM6 comparison to annexure F. When you look at DM6 it actually includes even SDPS relating to for instance the supply of aeroplanes. It is totally different. It is a [indistinct] project. That is what I just wanted to bring to the attention of
20 the Commission. As the Commission pleases.

CHAIRPERSON: Thank you. Advocate de Waal?

ADV DE WAAL: Mr Chair, there is no further questions. The only point as I understand Mr Maynier to be making is to say that if you have a look at annexure F and the column which says 'actual investments', it is unclear to
25 us and the response of my learned friend, it did not take us any forward, any

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way further to clarity, as to what that reflects. Does it reflect the out of pocket investment from the obligator, or is it the full investment credited for including the parts that other parties contributed, i.e., the 90%? So in other words the full amount. That is the only point we raise.

5 **CHAIRPERSON:** Thank you. Although you can look at annexure F, you will see that there are two columns. The total actual investment and the obligors investment.

ADV DE WAAL: Yes, Mr Chair, I do not want to get into a debate with you, but let me just perhaps raise one other further aspect of that, which
10 Mr Maynier has testified. The full amount credited for is arrived at through the application of multipliers. So one starts with a situation where the actual investment is x, y, z, we do not know whether the out of pocket is 10% of the actual investment, but the full amount credited for is arrived at through the application of multipliers introduced later in the process. We do not
15 understand that the full amount has anything to do with the application of the causality principle.

CHAIRPERSON: Thank you [indistinct] evidence has been presented on those two issues. Just one question from me, Mr Maynier, just for my own understanding, the projections that you are talking about, the calculations
20 that you made, you made them on the basis of the initial quantities of equipment, or on the basis of the contracted quantities of equipment?

MR MAYNIER: The latter, the contracted.

CHAIRPERSON: The contracted quantities of equipment. Thank you.
Advocate Lebala?

25 **ADV LEBALA:** Nothing, Chair. Thank you.

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CHAIRPERSON: Thank you. Mr Maynier, thanks a lot. You are excused.
Thanks a lot for giving evidence.

NO FURTHER QUESTIONS

CHAIRPERSON: Then the next issue is where the next we move from here
5 is. When is the next witness coming?

ADV MDUMBE: Chairperson and Commissioner Musi, Mr Terry Crawford
Browne was supposed to be our next witness. We have received a letter
from his legal representatives requesting that his evidence be deferred to the
first week of September. He is currently outside the country. He is coming
10 back on the 16th of August and in terms of our programme, he is due to
appear on the 20th. They have expressed a concern that perhaps there
might be inadequate time to consult with our representatives. They are
concerned that three days might not be sufficient. So this is a matter that I
believe will be resolved in the coming few days and once that has been
15 resolved, Chairperson, we will then issue a press statement and as far as the
clients of the [indistinct], we have proposed tentative dates. Those dates will
be communicated to Mr Van Vuuren and once an agreement has been
reached, again we will revise our programme and we will publish the new
dates. Dr Woods will indeed appear on the 25th that has not changed. So
20 we will publish a press statement, Chair, towards the end of this week or
early next week, indicating who will appear when.

CHAIRPERSON: Thank you. We will now adjourn and we will reconvene
on the date to be announced at a later stage. Thank you.

(PROCEEDINGS ADJOURN)