BAE SYSTEMS/SAAB

1.

In terms of the contracts concluded the BAE Systems/SAAB commitments in respect of NIP were USD 7 200 000 000 which was divided into USD 2 billion for investment, USD 3.64 billion for export sales and USD 1.56 billion for domestic sales. Because of the size of the commitments, the contractual period within which it had to discharge the obligations was set at 11 years where the other obligors had a period of seven years. As far as this obligor is concerned, from the records available to the Department, it invested a total of USD 252 232 821. It was awarded investment credits of USD 2 012 407 678. In addition it received a total of USD 5 644 650 287 credits in respect of sales, totalling USD7 457 057 965. The total actual investment from other sources excluding BAE was USD413 053 464.

2.

In terms of the NIP agreements, BAE Systems/SAAB was contracted for 24 projects. Of those in fact only four were actually implemented. A further 40 projects were implemented as substitutes for the original specified projects.

DUNLOP TYRES

3.

(a) This project was for the capital expansion, to a total of R192 million, of two factories of Dunlop Tyres, one in Ladysmith and one in Durban. It must be noted that the criteria for accepting companies to participate in the NIP programme were not limited to any particular size of company so long as the objectives of the programme were met. The focus was on the merits of the project rather than on the size of the company participating in it.

(b) According to the project description the funding from the obligor was towards the total costs of upgrading and expansion of the factories. After investigating and considering the matter, the DTI formed the view that "upgrading" referred to the improvement in the manufacturing technological processes in order to increase the competitiveness of the company. This increase in competitiveness resulted in the company being able to access additional markets in which it could not previously compete. A distinction was drawn between the costs of upgrading and the costs of expansion but it was considered by the DTI that the technology upgrading would result in the company making more products than it was previously making which would therefore satisfy the concept of additionality.

(c) In assessing the export and local sales a baseline of the 2001 export and local sales was used. An assumption was made that any increase from such baseline was assumed to be as a result of the expansion or upgrading.

(d) Reference is had to a letter dated 12 February 2004 from SANIP to the DTI setting out the turnover for Dunlop for the years 1999 to 2001 from which it would appear that there were annual increases in sales over this period even prior to the expansion/upgrading. The view of the Department was that factors such as price increases, marketing and advertising campaigns and the like would well have had a bearing on the amount generated from sales but that it would be difficult to quantify the contribution of these other factors. The view of the DTI was further that without the upgrading, sales would have decreased over the long run and this would accordingly negate the other factors.

(e) In respect of Claim C105/63/C1 BAE claimed investment credits of USD 11 174 016.99 for the period August 2001 to July 2002. The claim was based on a schedule of components purchased during the period 1 January 2002 to 30 June 2002. The payment of R40 million from BAE was made on 26 July 2002 – in other words after all the components had been purchased. The DTI accepted however that the purchase of such components prior to the payment from BAE still fell within the definition of causality because the purchase by Dunlop was made on the basis of BAE having committed itself to provide the loan.

(f) In terms of the prevailing rate of exchange as at 25 July 2002, R40 million equated to approximately USD 3.9 million but credits of approximately USD 11.17 million were awarded.

4.

The credits awarded were much higher than the loan because it was deemed by the Department that the funding by BAE had caused all the investments in the project and that therefore BAE was entitled to claim as investments the total invested in the project by all entities.

5.

In total BAE/SAAB invested R65 million in the project which at the exchange rate previously referred to together with an exchange rate as at 13 October 2003 (for the second payment) of 6.993 rand to the dollar equated to a total of USD 7 547 001. It was awarded credits equating to USD 29 972 804.03. This was because of the principle of causality.

<u>PACKAGE TOURISM</u>

6.

SANIP submitted an application for package tourism approval. According to the application which is annexed "the first chosen hub in South Africa is Port Elizabeth". It was stipulated that there were three related activities to the project that were pre-requisites to launch it namely :-

(a) a heated swimming pool system had to be established on the beach in order to compensate for relatively cold water temperatures in comparison to other global destinations competing with Port Elizabeth;

(b) a professional PR campaign was to be initiated with the objective of improving the image of South Africa in Scandinavia;

(c) the runway at the Port Elizabeth airport was to be extended so that it could accommodate wide-body aircraft used by tour operators for long haul charters.

7.

Annexed is the Investment Business Plan for the upgrade to the McArthur Baths in Port Elizabeth. This was presented to the DTI as a supplementary part of the already approved Package Tourism Project. According to the plan "the objective for the overall project is to grow the project to a level where on average (taken over 9 years) 38 000 European package tourists will visit South Africa annually".

8.

R15 million was required for the upgrading of the swimming pool all of which was to be funded by SANIP. The swimming pool was an added benefit to market the facilities in Port Elizabeth and not “the causal effect”. Causality was on the basis of the marketing campaign by Scandinavian Tour Operators.

9.

The minutes of the IPCC meeting of 12 August 2002 reflect that “the investment for the swimming pool was presented to the committee as a separate business proposal from the package tourism”.

10.

Claim A105/44/CO2 was lodged on 28 February 2003. The minutes of the IPCC meeting held on 2 October 2003 reflect that the credits were approved “on the basis of receiving a letter confirming that these are all new tourists”. This was repeated in the minutes of 2 December 2003 and 1 March 2004. No such confirmation letter can be found but it is assumed it was submitted as the credits were granted.

11.

In support of the claim two letters dated 17 December 2002 were furnished, both of which are annexed. Save for the number of tourists they are identical in wording and format. They purport to confirm the total number of tourists booked on package tours to South Africa for the period up to 31 May 2003, some five months after the date of the letter.

12.

No proof was supplied by the obligor as to whether South Africa had ever been marketed in any of the Scandinavian countries by SA Tourism. Enquiries were made by DTI to SA Tourism but the results thereof are unknown.

13.

It would have been an impossible task to establish how many tourists utilised the swimming pool. It was not known whether the marketing campaign in Scandinavia had referred to the heated swimming pool.

14.

The average amount estimated to have been spent per tourist per day and utilised in the claims was based on a formula confirmed by the consultant used by BAE/SAAB.

15.

The DTI was unaware of what amount was spent on the marketing campaign because information in respect thereof was never required from BAE.

16.

Claim A105/44/CO1 was for investment for the upgrading of the McArthur Baths. A letter was furnished confirming receipt of payments totalling R15 177 960 from SANIP to Grinaker-LTA. A schedule of purchases was provided reflecting purchases in the amount of USD 1 481 373.57. Investment credits in that amount were approved. This equated to approximately R15 million.

17.

Thereafter 26 claims were lodged totalling USD 627 330 031.72 in respect of "export sales" credits – these claims were not in respect of the upgrade to the McArthur Baths but related solely to the "package tourism" itself. These claims did not actually refer to "export sales" in the strict sense but to the number of tourists from Scandinavia visiting South Africa and spending money (for daily living etc.) in South Africa. The claims (other than the first one of these - Claim A105/44/CO2) are not based on the sales of package tourist trips to persons in Scandinavia by particular entities.

18.

Other than the first such claim to which reference has already been made in respect of the letters furnished by the tour operators, the remaining claims were based on a differential increase in the number of tourists from various Scandinavian countries (Denmark, Finland, Norway and Sweden) visiting South Africa.

19.

The claims were made on the basis of establishing first the incremental number of tourist arrivals and then applying a percentage as to how many of those tourists were visiting for holiday purposes. This percentage varied (for example in Claim A105/44/C03 it was 70% for Denmark, 66% for Norway and 57% for Sweden). It was then accepted that such number of tourists were visiting as a result of the marketing campaign and that therefore causality had been satisfied.

20.

In this regard reference is had to an email dated 23 February 2003 from SANIP to the DTI in which it is stated :-

> **"From the reports given to you with the claim you can see that there has been no effort from South Africa into marketing South Africa as a tourist destination in these regions, and Scandinavia has not been acknowledged as a market for SA. The growth as a whole therefore can only be credited to our PR activities".**

21.

It was not established how many tourists actually visited Port Elizabeth or how many tourists were aware of or visited as a result of the marketing campaign.

22.

The percentages which were employed were based on extracts from the South African Tourism Index which reflected the total tourist arrivals to South Africa from various countries and the purpose of visit expressed as a percentage per country of origin. This was despite the IPCC minutes of 19 September 2005 reflecting that the project "involves promotion of tourists from Scandinavia to Eastern Cape". Such minute also reflects that R10 million had apparently been spent promoting the project. That particular claim (105/44/C09) was provisionally approved "subject to confirmation from SATOUR on the number of tourists for that period."

23.

The minutes of the IPCC meeting of 12 December 2006 reflect that Claim 105/44/C12

> **"was approved at the previous meeting [**14 November 2006**] but due to the high number of tourists they were claiming for, the committee requested that the project manager does a follow up on the trend to ensure that indeed the number of tourists were [sic] high for that particular season. Through investigations the project manager did confirm that indeed the number given was correct according to the places visited by the tourists."**

This is misleading as there was no direct evidence of tourists visiting Port Elizabeth.

24.

The marketing campaign was undertaken during the period 2002 to 2003. Claims were lodged reflecting tourists up to December 2011. The view of the DTI was that based on the principles of causality and sustainability the marketing campaign was still the effective cause of tourists from Scandinavia visiting South Africa some seven or eight years after the campaign.

25.

Throughout the period of claims a daily spend of USD 150 was applied.

26.

Initially it was accepted by the DTI that the average stay for tourists should be no more than 17 days per tourist. Accordingly Claim A105/44/CO7 covering the period July 2004 to September 2004 was reduced from 21 days to an average of 17 days per tourist. The minutes of the IPCC meeting held on 18 March 2005 reflect that “the committee decided to reject the claim [105/44/C08] as it was a package formula that was agreed upon at the outset of the project.” This figure of 17 days was then applied in the next 14 claims until Claim A105/44/C17 where a claim for 18.7 days was accepted. The three subsequent claims were for an average of less than 17 days per tourist but thereafter the DTI allowed claims of 25.2 days (Claim A105/44/C21), 20.2 days (Claim A105/44/C22), 19.4 days (Claim A105/44/C23), 19.4 days (Claim A105/44/C24), 15.7 days (Claim A105/44/C25), 18.1 days (Claim A105/44/C26) and 14.8 days (Claim A105/44/C27). No supporting documentation was attached to various of these claims but it may well be that due to the lapse of time, any supporting documentation has become lost or misfiled.

FERROCHROME MINING AND BENEFICIATION (Referred to in Annexure F as IFM)

27.

This claim involved the re-establishment of mining operations in the North West Province and the construction of a chromite smelter to further beneficiate the graded ore.

28.

BAE/SAAB requested the DTI to consider a multiplier of 10 given that :-

(a) BAE/SAAB were the sole financiers at this early stage;

(b) there was a risk of not benefitting from the full investment credits should the project fail;

(c) the total commitment from BAE/SAAB was to be R150 million of which the remaining R125 million was to be invested in subsequent phases of the project with an initial funding from the obligor of R25 million.

29.

A letter dated 12 November 2004 from the Minister of Trade & Industry to SANIP reflects that approval for such multiplier was given. Ultimately however BAE/SAAB invested USD 24 328 390.04 into the project for which they were awarded USD 267 000 001.84 in investment credits being an investment multiplier of 11 together with USD 690 532 533.11 in export sales and USD 29 980 688.71 in export credits. It was accepted by the DTI that the decision by the Minister was sufficient authority for using a multiplier.

SAAB-DENEL AEROSTRUCTURES

30.

This project related to an agreement reached between SAAB and Denel in terms of which the business of Denel Aerostructures was to be restructured. The restructuring entailed forming a new aerostructures entity, SAAB Denel Aerostructures and transferring the business and operations of Denel Aerostructures into this new entity. SAAB were to acquire an initial shareholding of 20% in the new entity.

31.

At the time Denel was making annual losses. It approached the DTI for this project to be accepted as an NIP programme so that SAAB could invest in Denel to enable it to access markets, be able to provide guarantees by strengthening the balance sheet and to increase management skills. The SAAB investment was approximately R66 million (approximately USD 6.6 million).

32.

Sales would be taking place after the period for fulfilment of the obligation by BAE/SAAB (the business plan was approved in November 2006) and accordingly there would have been no incentive for SAAB to invest in Denel if it was not going to benefit from sales and export credits.

33.

SAAB further was not interested in investing in the project if there was a risk of losing credits which they could otherwise have obtained by investing in other projects. Accordingly it was agreed that the credits would be irrevocable "upon completion of the initial element of the transfer of skills, technologies, management and marketing expertise from SAAB".

34.

A memorandum of understanding was concluded on 15 June 2006 between Denel, SAAB and the government of South Africa represented by the Minister of Public Enterprises, Mr Alec Erwin.

35.

In its proposal SAAB had suggested a multiplier of 10.

36.

After discussions with the Director of Public Enterprises and the Minister of Trade & Industry, it is recorded in an undated letter but telefaxed on 18 May 2006 that :-

> **"With the Minister's guidance, we have decided to increase our already generous offer of upfront credits to the following :**
>
> **Invesment NIP credits – USD 600 million**
> **Sales NIP credits – USD 900 million**
> ***Total NIP credits USD 1.5 billion***
>
> **In addition SAAB will be eligible to claim, with a multiplier of 3, all future sales revenues up to 2011".**

37.

In a letter dated 17 July 2006 from SANIP to the DTI it was recorded that the credits of USD 1.5 billion would be upfront "upon closure of the SAAB-Denel Aerostructures transaction". It was further recorded that :-

> **"The 'sales' element of the upfront portion of the credits ($900m) and the Ongoing Sales element will be initially allocated as 'exports', with SANIP having the option to reallocate a proportion of these to 'local sales' should it so require".**

38.

The NIP terms allowed for transfer of excess credits from exports to local sales and vice versa. As it happened however this option to transfer was not exercised.

39.

The multiplier of 3 was to be applied to actual sales realised and not to the upfront credits of USD 900 million in respect of sales. The view of the DTI was that this did not constitute a duplication of credits as although the upfront credits included an amount for sales, this had no bearing on whether sales were actually achieved.

40.

The amount invested by SAAB was approximately USD 6.6 million (R66 million) for which SAAB were awarded credits of USD 1 704 935 945 being USD 600 million for investments and USD 204 935 945.23 for exports. In effect this was a multiplier of 192. The DTI regarded this as an extremely important project justifying the very large multiplier.

SILMAR PLATINUM JEWELLERY

41.

This project related to the establishment of a platinum jewellery manufacturing business (Silplat (Pty) Ltd) in Cape Town in collaboration with Silmar S.P.A. (an

Italian jewellery manufacturer), SA Link Company (Pty) Ltd (a gold jewellery manufacturer based in Cape Town) and Impala Platinum Holdings Limited.

42.

According to the business plan, SANIP would make a USD 2 million equity investment into Silplat and a USD 4 million loan to facilitate export sales working capital.

43.

A total of six claims were made in respect of an investment by SANIP of USD 2 016 991.

44.

Total investment credits were awarded of USD 29 112 583 based on the investment from BAE together with other investments from its partners Silmar, SA Link and Impala Platinum. In addition the investment credits reflected USD 5 459 042 for goodwill and USD 5 376 million for the existing customer base.

45.

The DTI considered that the investment from SANIP (BAE) was the effective cause of the entire transaction and that accordingly the obligor was entitled to receive credit for the full amount invested (even though the investment constituted an equity interest of 12%) as well as credit for the total export and local sales made by Silplats.

GOLD BENEFICIATION (Referred to in Annexure F as "Harmony Gold")

46.

BAE was to make an investment in machinery and equipment for the Harmony Gold Beneficiation Centre in Virginia, Free State, by providing a loan of up to USD 9 million to finance the project and by way of working capital.

47.

The project comprised three elements. The first being the installation of a new world class and state of the art manufacturing facility to produce value-added gold products. The second was the establishment of a "Gold Technology Industrialisation Fund" to commercialise high value-added opportunities for gold while the third was the sponsorship of additional students at the Harmony Jewellery School.

48.

It was recorded in a letter dated 18 December 2000 that the DTI approved the investment portion of the proposal and that the credits related to investment were acceptable but the exports would still be subject to a final decision after further investigation.

49.

On 15 February 2001 it was confirmed to the obligor that the DTI had approved the project after considering the findings of a consultant and after further internal investigation. The approved investment credits would be up to USD 70 million and export credits of USD 1 245 million.

50.

The approval letter did not exclude local sales but merely placed a limit on credits for export sales. Ultimately local sales credits of USD 18 583 115.89 were granted. Credits of a higher value than the actual amounts invested were awarded based on the concept of causality.

GLOBAL FOREST PRODUCTS

51.

This project related to the establishment of a new entity Global Forest Products (Pty) Ltd (“GFP”) to house and manage the sawmilling, forestry and plywood business previously owned by Mondi Limited.

52.

Ownership of this new entity would be 51% by Global Environmental Fund Group (an equity fund manager based in Washington which would hold its equity in GFP through a company known as GFP Holdings) and Mondi at 49%.

53.

BAE/SAAB would invest USD 6 million into GFP Holdings for a 50% share in that company. Queries were raised at an IPCC meeting held on 15 May 2001 as to causality, additionality and the very large number of credits being contemplated. At the IPCC meeting on 21 August 2001 a further query was raised as to whether the obligor was entitled to the large number of credits "even though they only bringing 10% to table" [sic].

54.

The Industrial Development Corporation would also provide USD 30 million by way of a loan funding to GFP towards capital expenditure as well as possibly funding a further USD 30 million for the total USD 60 million capital expenditure programme which GFP was to embark upon to improve capability and efficiency of the mills and plants.

55.

BAE/SAAB invested a total of USD 6 million.

56.

Notwithstanding the queries referred to above, it received total investment credits of USD 68 222 435.

57.

These credits were based on the capital expenditure by or on behalf of GFP – in other words BAE/SAAB was considered to be the effective cause of all the investments and accordingly entitled to credits for the entire investments made by other parties as well.

58.

BAE/SAAB was awarded credits totalling USD 544 288 069 including USD 68 848 062 in respect of export sales and USD 407 217 573 in respect of local sales.

59.

Claim A105/46/CO4 for USD 5 176 146 was based on incremental exports and sales for the sawmills and plywood divisions for the period January to December 2001. In a letter dated 27 February 2003 from Ken Fenner of GFP it was stated that "the increase turnover was mainly due to improved local demand and consequent higher selling prices. The significant increase in exports came about only in 2002 due to recapitalisation in the sawmills".

60.

Accordingly the increase in sales in 2001 was in fact not due to the recapitalisation. Nevertheless claims in respect of this period were approved because credits were granted based on an agreed baseline at the time of the business plan approval. No analysis was made thereafter of the causes of the turnover increase or decrease.

61.

The business plan which was approved did not contain approval for credits for local sales but only for investments and exports. The local sales reflected a “zero projection”. As the business progressed however local sales were indeed realised and accordingly such sales became eligible for credits – no amendment of the business plan was required by DTI to include credits for local sales.

62.

Although BAE/SAAB was not investing in the USD 60 million capital expenditure program (which was to be funded by the Industrial Development Corporation) its investment of 6 million equity in GFP Holdings for a 50% share in the company was accepted by the DTI as satisfying the requirement of causality because the obligor waived receiving market related returns on its investment to allow the Global Environmental Fund Group to attract the remaining foreign investment needed for the project. It was accepted by the DTI that the Global Environmental Fund Group would not be able to meet the risk/return profile demanded by foreign investors without the concessionary financing provided by BAE/SAAB. It was also considered to be irrelevant that the USD 6 million was invested in GFP Holdings rather than in GFP itself. These credits were based on the capital expenditure by or on behalf of GFP – in other words BAE/SAAB was considered to be the effective cause of all the investments and accordingly entitled to credits for the entire investments made by other parties as well.

GEMCO

63.

This project involved the licensing of the manufacture, sale and use of advanced dental prosthesis manufacturing technology from an existing company operating in Canada to a new South African Company, Gemco. The project also included the manufacture of dental prosthesis equipment.

64.

In a letter addressed to the DTI dated 14 June 2004 from Mr Bernard Collier, the general manager at SAAB the following was noted:-

(a) New high technology ventures which require a large amount of capital to roll out internationally have significant risks to any investor.

(b) BAE/SAAB was to be the sole funder and would carry 100% of the project risk.

(c) BAE were of the view that the investment of USD35 million into a single project fell outside normal investment criteria and therefore requested that a multiplier of ten times the BAE investment.

(d) It was also considered that funding was urgently required in order to avoid the sale of the business to competitors.

65.

At the IPCC meeting on 1 July 2004 it was noted that

> **"given the urgency of the project, BAE/SAAB are providing 100% of the funding, normally BAE/SAAB provides only 10% of the funding and have requested for a multiplier of ten on the investment. BAE/SAAB have also requested discussions at a later stage on multipliers for the sales targets during the ramp up phase. The period for the project is 2004-2011 for investment to the value of USD35 million, exports to the value of USD 1 881 000 000 and local sales to the value of USD 99 250 000.00. BAE/SAAB have requested that investment credits fall into milestone one."**

66.

The IPCC at their meeting on 1 July 2004 endorsed the recommendation that the project be approved and further stated that the investment value of the project was to be USD 90 million and that therefore investment credits of USD 90 million be approved with sales credits to be based on actual performance. The obligor was not satisfied with this decision and on 10 November 2004 a letter was addressed by Mr Seth Phalatse (the chairman of Global Eagle Strategic Empowerment Systems) to Dr Alistair Ruiters, the director general at the time of the DTI. In it the following was stated :-

> **"As we are all aware, BAE Systems has agreed to provide USD20M as sole funder of the project, taking 100% of the project risk and requires that credit multiplier be granted in acknowledgment of the significant level of support which falls outside their normal investment criteria. The reason why we requested this urgent action from BAE Systems is that there exists a real risk that this project will be lost for South Africa, should current owners not receive a significant financial commitment in the immediate future. Your urgent support is required to approve the credit award to BAE Systems and facilitate the capture of this world-beating technology and project for South Africa".**

67.

The initial business proposal which was approved and granted had contained a multiplier of two based on investment by BAE of USD 20 million and an 80 million investment from other partners. On this proposal BAE would have received USD 200 million investment credits. BAE subsequently submitted a revised (scaled down) business plan with investment funding of USD 20 million from BAE only, due to the inability of the other proposed partners to raise the required funding.

68.

On 1 December 2005 the DTI addressed a letter to Mr Bernard Collier, the general manager at SAAB confirming that the DTI had been advised by Global

Eagle that the project implementation phase had already commenced and that production would commence in 2006. The letter further stated:-

> **"Considering all the transfers made by BAE Systems to the project and considering all agreements in relation to subsequent transfers, the DTI hereby confirms the accreditation of USD 350 million of investment credits to the SANIP first investment milestone. In essence, SANIP has achieved its overall first milestone requirements and, unless conditions change, will not face any penalties relating to milestone."**

69.

Accordingly for the investment of USD 20 million, the DTI agreed that BAE would have been entitled to receive USD 350 million investment credits. This was a multiplier of 17.5.

GRINTEK

70.

Grintek Limited is a manufacturer and supplier of electronics related products and services to the telecommunications, defence, mining, avionics, air traffic management, security and power utilities markets in South Africa and with selected export markets. The project entailed SAAB increasing its investment in Grintek to become a majority shareholder (70%) of Grintek. The remaining shares were to be held by a BEE company, Kunene Bros Holdings (Pty) Limited.

71.

SAAB invested USD69.8 million in order to acquire the additional shareholding. It received NIP investment credits in the same amount.

72.

Following this investment SAAB claimed and were awarded sales credits of USD 183 306 619 arising from additional sales made by Grintek after the additional investment into the shares. These additional sales were calculated in relation to baseline sales of the period 2002/2003. Credit was given for the total increase irrespective of factors such as normal annual increases in quantities and prices. The view of DTI was that factors such as price increases and advertising would have had a bearing on the increase in sales but besides inflation increases, it would be difficult to quantify the contribution of these other factors. To nullify these effects an average over a two year period was used as a baseline figure.

73.

DTI was also cogniscent of the fact that SAAB by becoming an active shareholder would be providing business development support, international marketing support, transfer of management skills, technology transfer and assistance to obtain financing for larger contracts in order to assist the Grintek Group to grow its turnover and profitability. (This was set out in the business plan). DTI was therefore cogniscent that without the upgrading involved in this process, sales by Grintek would have gone down over the long run.

KARBOTEK CARBON TECHNOLOGIES

74.

This project entailed the establishment of a facility to manufacture high purity carbon for the export and local markets. BAE granted Karbotek, a facility of R85 million (USD 10 404 336) for the project. BAE claimed and were awarded investment credits of USD 110 404 336 which translates to a multiplier of 10,6.

75.

Three claims were submitted by BAE for this project. The first two claims were for one drawdown of R28 million and three drawdowns totalling R57 million, thus constituting the entire facility of R85 million. For these, BAE were awarded investment credits totalling USD 10 404 336. This was the rand equivalent at the prevailing exchange rates for the various drawdowns.

76.

In addition BAE lodged Claim 105/52/C3 which was for NIP credits of USD 100 million. According to the minutes of the IPCC meeting held on 11 June 2009, Karbotek had defaulted on the loan resulting in the debt to BAE/SAAB increasing to R100 million with accrued interest. BAE had an option to foreclose but instead opted to forfeit the loan amount and assign its equity to a BEE partner in return for obtaining the investment credits of USD 100 million. These were approved of in the meeting.

77.

Although the effect of the aforegoing was to give a multiplier, in reality the position was that the initial drawdown received investment credits on a 1:1 basis but investment credits were granted for forfeiting the loan since the view of the DTI was that this would maintain the sustainability of the project.

ISTD

78.

According to the business plan, IST Dynamics ("ISTD") was engaged in the development and provision of ballistic fire direction and control systems for air and ground platforms. It also provided light turrets and marksmanship systems as well as optical technologies in the commercial sector. This company was unbundled from the larger IST group before the balance of the group was sold to other purchasers in 2007. The shareholders in ISTD wished to dispose of their investment and preferred to sell the business as a whole. BAE proposed to acquire all the ordinary shares of ISTD and its shareholder loans. It was anticipated that the total investment would be approximately R100 million.

79.

The ISTD business plan was approved by the IPCC on 9 September 2008. In the business plan approval letter dated 15 September 2008, it was set out that the IPCC had recommended that the project be approved with a multiplier of 10 for investments. The motivation for the approval of such multiplier is contained in a letter dated 15 October 2008 from BAE Land Systems Dynamics to the DTI indicating that had BAE not acquired ISTD there could have been a possibility that the critical skills and competencies found within ISTD would have been lost not only to the company but also possibly to South Africa.

THALES

80.

The total funding/investment from Thales was USD 15 236 681. In return for this they were awarded investment credits totalling USD 199 279 454.

Invensil – Silicone Smelter

(a) Silicone Smelters was a subsidiary of Pechiney/Invesil (France). Pechiney embarked on two projects which were funded by it through non-withdrawal of dividends. Thales through Thomson Compensation Internationale (its NIP company in South Africa) concluded a co-operation agreement with Invensil (France) whereby it was agreed that

Thomson was to be the Invensil (France) NIP partner for investment projects and specifically for the Silicone-Smelter's investment.

(b) Although there does not appear to be evidence that Thales caused the investments or export sales for the two projects, these projects were a continuation of the original project approved as part of the bid. It was accordingly not required that DTI decide on the causality aspect of the projects.

(c) Further as is recorded in the IPCC minutes of 31 January 2002 "the IPCC regards company profits, which [are] supposed to be repatriated overseas as dividends, but are allocated towards offsetting capital expansion, as foreign investment".

Evertrade Medical

(a) A memorandum of understanding was concluded between Thomson Compensation Internationale and Evertrade Medical. In terms of this Thales would provide a non-refundable grant of USD 2 million to Evertrade on condition that the DTI irrevocably awarded Thales NIP credits of USD 116 202 203.

(b) Irrevocable credits were granted in pursuant to a decision by the Minister dated 7 December 2001.

(c) Thales was mistakenly awarded upfront credits of USD 171.1 million (USD 63.6 million for investments) based on its investment of USD 3.1 million. Thales was requested to invest a further USD 1 million (because Evertrade Medical needed another USD 1 million to continue operations) and accordingly an agreement was reached that the mistakenly awarded credits would not be reversed. The total investment by Thales in this project was accordingly USD 4.1 million.

(d) The memorandum of understanding indicates that to allow urgent implementation of the project, the DTI was to be requested to apply exceptional procedures in approving the credits. The DTI did not however apply exceptional procedures in approving the project. The memorandum was between the obligor and the company and had no bearing on the decision of the DTI.

(e) The amount of credits awarded (which was in effect a multiplier of 42.80) was as a result of a negotiated process.

IDC Credit Facility – Tranche 1

(a) Credits were granted on the basis of an upfront payment of R12 million by Thales to a French bank Calyon as an “interest cover” the benefit of which was passed on to IDC. The DTI granted approval of this project based on IDC confirming the establishment of the fund.

(b) The IDC Fund was established to support/fund small businesses that would otherwise not get loans from the banks due to their inability to provide security. In order to simplify the process of requiring claim form documents from all the companies that IDC would eventually invest in, an estimate was made of the sales that would materialise from the total funding. Accordingly an estimate of USD 50 million was arrived at in respect of the value of sales. The investment credits were based on the actual value of the fund that was set up (not on the amount paid by Thales) pursuant to the principle of causality. Accordingly for the payment of R12 million, Thales received investment credits of USD 100 million.

IDC Credit Facility – Tranche 2

(a) A similar approach was adopted in this instance. Thales made a payment of USD 943 120 which was paid to a French bank Calyon as an interest cover and the benefit passed on to the IDC. The value of the fund which was created was USD 30 million and accordingly that number of investment credits were approved.

<u>GERMAN FRIGATE CONSORTIUM ("GFC")</u>

81.

The German Frigate Consortium (or "GFC") comprised Blohm and Voss GmbH, Howaldtswerke-Deutsche Werft AG and Thyssen Rheinstahl Tecknik GmbH.

82.

The only project that was contracted for by the GFC as per the NIP terms was the Mini Steel Mill phase 1 to 3. This project was never implemented and ultimately sixteen new substitute projects were implemented.

83.

On 14 November 2002 a letter was addressed to the DTI by Thyssen Rheinstahl Technik ("Thyssen") setting out that in their view the mini steel mill project could no longer be executed "on account of prevailing market conditions". The prime reason for this was that in the pre-feasibility study undertaken by GFC it was assumed that another obligor would establish a speciality steel plant in close vicinity to Coega. The non-materialisation of this plant made the construction of the mini steel mill "insecure". It was further submitted that "the decrease in demand for new automotives, worldwide, does not support the investment decision to construct a steel mill in South Africa while new plants have recently opened in China and Latin America".

84.

Thyssen suggested that a replacement project would be the low cost Titanium Project.

85.

The DTI accepted the reasons put forward by Thyssen and further accepted the low cost Titanium Poject.

86.

This project in turn was not implemented but instead sixteen new substitute projects were introduced. The reason why the Titanium Project was not implemented was that Thyssen was unable to secure a guaranteed source of supply of raw material locally. As a result it was a further challenge to get all the necessary business partners to buy into the business plan.

87.

GFC itself invested USD 44 433 395 and was awarded investment credits of USD 516 724 126.

FERROCHROME

88.

This project concerned Thyssen investing R 10 million in SA Chrome and signing an "off-take" agreement to purchase 100% of the ferrochrome produced by SA Chrome (up to a maximum of 300 000 tonnes) to market and sell to the rest of the world. The project did not fall within the NIP programme because ferrochrome projects especially export of low vaue addition ferrochrome had been excluded from the Industrial Participation Programme in terms of "restriction of SIC code 3532 for export of ferrochrome" (EXCO submission dated 23 March 2001 signed by Bahle Sibisi). This submission however recommended approval of the project stating "the project has a significant level of investment both local and foreign direct investment, with significant Black Economic Empowerment". It further stated that the project contributed significantly to job creation and "if not supported by NIP may not be started".

89.

Reference is had to an undated and unsigned submission whose principal responsibility was indicated as Mr Lionel October, addressed to the Minister for approval of credits for the Ferrochrome project. It stated that "the project was approved by the DTI for IP credits on the basis that Black Economic Empowerment was being furthered by Thyssen Krupp's support of this project and only the BEE investment facilitated by ThyssenKrupp will be credited for investments".

90.

A document establishing approval by the Minister had not been located but the granting of credits must have been approved because credits were granted. Reference is however had to an email from Dr Alistair Ruiters addressed to the then Minister Mr Alec Erwin and to Bahle Sibisi on 3 May 2001 in which the following was stated :-

> **"As I indicated in an earlier email as long as we get some real performance commitments on the smme and don't open the principle of alienating the performance bonds then I think a good quality project like this that brings in a good partner and what would seem like a significant market opportunity is okay. The programme is a facilitator and provide [sic] we're not too lax it should be used for some flexibility. It will maybe also help build a link with Thyssen who will be involved with other projects. However, it needs to be clear that they have now used up their goodwill component and have to perform elsewhere.**
>
> **Alec, this matter was raised at EXBO [sic]. All members felt that we might be setting a precedent here and that we needed your guidance on this matter. We need to consider we [sic] this action is a precursor for a more comprehensive review of the IP credits framework so as to prtotect [sic] us from fiurther [sic] applications for exceptions."**

This email merely bears an indication of "okay" without stating who the approval is by. It would appear however that the first paragraph quoted above is the response from the Minister to the second paragraph in the quotation which is a comment from Dr Ruiters.

91.

The EXCO submission of 23 March 2001 referred to previously had recommended that the investment by Thyssen of R70 million (which may be in the form of loan or equity), be accepted as investment credits worth R140 million.

92.

As far as the DTI was concerned :-

(a) Thyssen invested R10 million in the issued ordinary share capital of SA Chrome. Thyssen undertook to provide a subsidy of R6 million to the Royal Bafokeng Nation for the latter to acquire shares in SA Chrome for R60 million.

(b) The loan of R6 million by Thyssen to Royal Bafokeng enabled Royal Bafokeng to raise further funding. Thus Thyssen caused the further investment of R54 million by Royal Bafokeng and hence were entitled to credits in terms of the NIP terms.

(c) Causality was satisfied in respect of the R6 million subsidy because it was to directly pay for shares in SA Chrome.

(d) SA Chrome was bought by Merafe Resources which subsequently entered into a joint venture with Xstrata. As a result of the joint venture, it was not possible to verify the source of chrome that Thyssen was buying as it might have come from any production site of the joint venture partners. Credits were however based on the total production volumes from the SA Chrome plant. Accordingly even though exports had not in fact been caused by investment in SA Chrome, credits would be granted as set out above.

93.

Reference is had to a letter from Thyssen to Mr Lionel October dated 27 November 2002 recording that it had been agreed that if the feasibility studies showed that the project was not viable, the expenses would nevertheless be accepted as NIP credits. The reason for this is that Thyssen would not have funded the feasibility study if it was not going to earn credits. The feasibility study was important for the South African economy to determine whether the project was viable. According to the information available to DTI the actual costs of the feasibility study were Euro 1 million and in Claim 101/07/C03 Thyssen were awarded investment credits of Euro 1 million.

94.

Thyssen supplied R16 million (comprising a subsidy of R6 million to the Royal Bafokeng Nation for the latter to acquire shares in SA Chrome for R60 million and R10 million to acquire shares itself.) Thyssen was granted exclusive rights by SA

Chrome to purchase Ferrochrome produced by SA Chrome. This agreement subsequently lost effect both because SA Chrome entered into a joint venture with Xstrata as well as the fact that SA Chrome was purchased by Merafe Resources. SA Chrome and Xstrata entered into a joint venture and transferred the marketing to Xstrata's trading house Glencore.

95.

As a result of the joint venture between Merafe Resources and Xstrata, it was not possible to verify the source of chrome that Thyssen was buying. Credits were based on the total production volumes from the SA Chrome plant.

96.

Although the project was originally designed for export, after the joint venture between SA Chrome and Xstrata, the credit methodology was changed to award credits based on the production output of the SA Chrome plant.

97.

In respect of investment credits, Thyssen was awarded investment credits of USD 18 500 000 (as well as the Euro 1 million already referred to) for an investment of R10 million into SA Chrome and R6 million subsidy towards an investment of R60 million by Royal Bafokeng into SA Chrome. Thyssen was given full credit of the R60 million to which a multiplier of 2 was applied resulting in a credit of R120 million being granted to Thyssen. With the R10 million investment that was made this resulted in a credit of R130 million which equated to USD 18 500 000.

PHYTO ENERGY BIO DIESEL

98.

This project entailed the establishment of a bio diesel refinery by Phyto Energy Group, PhytoAmandla (Pty) Ltd in South Africa. Thyssen had recorded in a letter dated 10 June 2008 that the bio diesel refinery project was not feasible "without a secured feedstock supply". The letter continued **"in order to proceed and obtain financing from international institutions, Phyto Energy has to present 'bankable' feasibility studies, prepared by independent entities. Due to the long development phase and the inclusions of the 'Agrarian Model', the financial resources of Phyto Energy are exhausted and Phyto has asked ThyssenKrupp Marine System to fund the field trials and the feasibility studies".**

99.

The letter indicated that the budget was just over Euro 2 million and sought "offset credits in a range of investment : Euro 60 million, sales (know how transfer) Euro 75 million".

100.

In an undated letter from the DTI to Thyssen it is recorded that following the meeting of the IPCC on 5 July 2008 and subsequent discussions and negotiations with IP secretariat "**the business plan and the associated credits is approved. A**

package agreed to is Euro 50 million investment credits and Euro 70 million in sales credits. To reconfirm, this approval is subject to ThyssenKrupp contributing a Euro 2 million non-refundable amount to the project to fund the feasibility, that the Intellectual Property and findings of the feasibility study remaining the property of the South African government, and that ThyssenKrupp ensure that the funds are used as per the budget submitted".

101.

This project was promoted by the Presidency. According to the Presidency (Ms Makgetla) the feasibility study was needed in order to confirm the viability of the project which would then trigger investment of R1.6 billion by National Government to support the project. The credits were granted on the basis of a negotiated agreement between the parties.

<u>SOUTH AFRICAN MICRO ELECTRONIC SYSTEM ("SAMES")</u>

102.

South African Micro Electronic System (Pty) Ltd intended to upgrade their integrated circuits manufacturing capacity which called for a minimum investment of Euro 9 million. SAMES had already secured Euro 4.5 million and needed an additional Euro 4.5 million which it requested Thyssen to fund by way of a grant with Euro 2 million to be paid on receipt of offset credits of Euro 100 million for investments and with the Euro 2.5 million to be paid on receipt of offset credits of

360 million for sales. This is in terms of an agreement between SAMES and Thyssen in November 2006. The DTI in an email of 10 October 2006 agreed to recommend “a package of credits, based on a Euro 4.5 million grant, of Euro 100 million investment credits and Euro 360 million sales credits”. At the IPCC meeting on 14 November 2006 the committee noted that a “package of credits amounting to EURO 100 million for investment and EURO 360 million for sales has been agreed to” and approved the project.

103.

Since this was a “package deal” and the granting of sales credits was upfront with no reliance upon the actual sales, it amounts to a multiplier of 22.22 if only the investment credits are taken into account but considerably more if the “export sales” are included. Claim 101/29/C01 was approved at the IPCC meeting on 12 December 2006 noting that the claim is “for the period 2006 -2010”.Subsequently Thyssen provided an additional Euro 3 million. The minutes of the IPCC meeting held on 24 November 2008 reflect that the committee recommended investment credits of Euro 66 666 666 and export sales credits of Euro 240 000 000 , totalling Euro 306 666 666 NIP credits be awarded.

<u>SAMES PHASE 2</u>

104.

According to the minutes of the IPCC meeting held on 5 October 2007 it was recommended that this project (which was aimed at incorporating technology linked businesses into its current business and which required an investment of R79 million of which Thyssen was requested to provide Euro 3 million) be approved "with the same multiplier" as the previous project.

105.

Thyssen accordingly received Euro 66 666 666 investment credits and Euro 240 000 000 sales credits.

URI VEHICLE MANUFACTURING (PTY) LTD

106.

This project involved the manufacturing 4x4 vehicles mainly for mining, leisure and security industries. It was not known to the DTI at the time that Mr Fana Hlongwane was a director of the company. Even if it had, this would not have influenced the decision on approval of the project, the approval being based on the projected contribution to the economy of South Africa.

107.

The IPCC minutes of 13 November 2007 reflect that Thyssen would loan R20 million and receive an upfront package deal of USD 50 million investment credits and USD 40 million (of which USD 30 million would be upfront) sales credits. These credits were granted on the basis of a negotiated agreement between the parties.

108.

At the meeting of the IPCC on 13 November 2007 the committee approved the project on the basis of Thyssen providing a loan for R20 million in return for investment credits of USD 50 million and export credits of USD 40 million with 30 million of the sales credits to be upfront.

MECHATRONICS

109.

This project involved technology transfer to equip three South African universities with the machinery and know-how needed to train students in the field of mechatronics.. The DTI considered that technology transfer was one of the criteria in the adjudication of NIPP projects and accordingly the project was approved on that basis. The Technology Transfer Activity Plan which was submitted by GFC (Thyssen) suggested a structure of 1 890 students X contribution to economy X local enhancement factor of 3. This equated to Euro 80 162 069 credits. The IPCC minutes of 1 August 2006 however approved credits in the amount of Euro 100 million. The award of these credits was based on a package which consisted of Euro 20 million for investments, Euro 25 million for technology transfer and Euro 55 million for sales. The credits were in return for Thyssen contributing EURO 81.5 million by way of a non-refundable loan for start up costs of approximately Euro 2 million.

110.

According to the Technology Transfer Plan the "the local-enhancement factor of 1:3 was applied to take into account the benefits for the industry being able to employ qualified local personnel rather than foreigners".

111.

Significantly in the Technology Transfer Plan, GFC had sought credits of Euro 80 million but, as indicated, after discussion at IPCC credits of Euro 100 million were approved.

112.

Although the awarding of credits for technology transfer is not provided for in the NIP terms relating to the SDPP contracts, the DTI approved this project because of its importance. The minutes of the IPCC held on 11 March 2008 reflect that "**the credits requested are in the same proportion as the original business plan : Investment credits with a multiplier of 10, technology transfer multiplier of 12.5 and a sales multiplier of 27.5, a total multiplier of 50"** and that the project was approved.

113.

GFC submitted claims and were awarded credits totalling Euro 133 million being Euro 26 666 667 in investment credits, Euro 33 333 333 in technology transfer and Euro 73 000 000 in local credits.

GLASS BOTTLE MANUFACTURING

114.

Wiegand Glas a German entity, embarked on a 50% equity investment into Nampak Glass (Pty) Ltd which resulted in the formation of a new entity Nampak Wiegand Glass (Pty) Ltd equally owned by Wiegand Glas and Nampak Products (Pty) Ltd.

115.

According to a loan agreement between Wiegand Glass and Thyssen signed on 6 February 2006, Thyssen would grant a loan of R15,4 million to Wiegand Glass which would be repaid by offsetting it with “offset credits” and which the parties agreed would be R462 million and sales credits of R1 billion. The investment by Wiegand Glass was aimed at upgrading and enhancing current production facilities and capacity expansion and the finance was needed for the start up phase of this. Thyssen’s obligation to pay the loan would only come into force if DTI declared “its principle consent to grant offset credits”.

116.

The IPCC minutes of 11 May 2010 reflect that the IPCC agreed to cap the credits that the project would qualify for at investment credits of Euro 68 070 346 and sales credits of Euro 130 000 000. The credits as per the IPCC minutes were duly granted. Calculated on the investment credits alone, this translated to a multiplier of 43, the actual rand investment amounting to Euro 1 579 082.29.

117.

The business plan had estimated that 50 jobs would be created but these were not confirmed in the claims submitted.

118.

The loan by Thyssen to Wiegand Glass to purchase the 50% equity in Nampak Glass (Pty) Ltd amounted to approximately 6% of the transaction as the overall purchase price for the 50% shares was approximately Euro 25 million. As far as DTI was concerned the loan from Thyssen to Wiegand Glass was for working capital. Wiegand Glass had funds for the equity stake but there was a need for investment into working capital of the refurbished facility which Wiegand Glass did not have and would not have proceeded with the investment without the loan from Thyssen. Accordingly it was considered that the requirement of causality had been met. DTI were of the view that there was no multiplier because in terms of the

SDPP contracts, Thyssen was entitled to receive credits for investments by other partners although it is acknowledged that the credits that were awarded did exceed the purchase price of the 50% equity being Euro 25 million.

EC BIOMASS

119.

This project related to a new business for the production of biomass fuel pellets. The manufacturing plant was to be located at the new Coega IDZ Zone.

120.

According to the minutes of the IPCC meeting held on 13 November 2007, the IPCC approved the project on the basis of Euro 16 million investment credits and Euro 80 million export credits.

121.

A package deal was negotiated whereby Thyssen would provide a loan of Euro 500 000 at 5% interest and a grant of Euro 500 000. In return for the Euro 1 million investment, Thyssen was awarded a package of Euro 16 million investment credits and Euro 80 million export sales credits. The sales credits were agreed in terms of the package deal and accordingly it was not necessary for proof of any actual exports to be submitted.

GERMAN SUBMARINE CONSORTIUM ("GSC")

122.

GSC invested an amount of Euro 69 795 413. It received investment credits of Euro 961 383 389.

123.

The only project that was contracted for GSC as per the NIP terms was the stainless flat steel production plant at Coega. This project was however never implemented instead 22 new substitute projects were implemented.

Saldahna/Cape Town Oil and Gas

124.

This project was a joint venture between MAN Ferrostaal and Atlantis Marine Projects (Pty) Ltd to establish an oil platform maintenance and service facility in Saldahna and a service hub for the oil and gas industry in Cape Town.

125.

According to the project proposal to the IPCC Ferrostaal would invest R225 million (Euro 28 million) in return for which Ferrostaal would receive Euro 280 million investment credits and Euro 375 million sales credits. The investment credits were to be granted when the project started and the sales credits were to be spread over the remaining offset period.

126.

At the meeting of the IPCC on 10 April 2007 the committee approved the project with a credit package of Euro 280 million for investment and Euro 375 million for sales “subject to Ferrostaal contributing Euro 28 million to this project”.

127.

The project proposal had suggested that Ferrostaal would invest R225 million (Euro 28 million) in return for receiving the credits previously set out. It also indicated that sales credits would be spread over the remaining offset period. The DTI however approved all the sales credits in Claim A102/47/C03 because the approval that had been granted by the IPCC had no condition that sales credits had to be spread over the remaining offset period.

128.

The business concept was approved in principle by the ICC on 2 March 2005 and by the IPCC on 10 April 2007.

129.

The minutes of the IPCC meeting on 15 October 2009 reflect that in respect of Claim 102/47/C03 “due to the time delays in the project, no sales have yet occurred. MAN Ferrostaal have submitted letters of support, sub-lease agreements and forecasts in substantiation of their claim. The committee recommended that a total of Euro 375 000 000 export sales NIP credits be awarded".

TRIMICA CALL CENTRE

130.

Trimica Limited was a UK based call centre outsourcing company. It had established a call centre in Randburg and the project was for MAN Ferrostaal to assist with financial and market support. Ferrostaal would lend Trimica South Africa an amount of Euro 3 625 000 towards capitalisation of the project of the total of Euro 5 800 000.

131.

On 8 October 2004 the DTI addressed a letter to Trimica wherein it was set out that the ICC had approved the project subject to submission of a bankable business plan, approval of the same by the IPCC within six months of acceptance of this concept and clarity on Ferrostaal's role as well as the causality of the project.

132.

The IPCC approved credits of Euro 60 769 588 for investments and Euro 112 857 808 for sales totalling Euro 173 627 396. This amount had been calculated on the following assumptions :-

(a) total seats – 1 225;

(b) a job factor of 1.63;

(c) a value of Euro 28 985 per seat;

(d) a project time line of three years.

133.

On 27 April 2005 Ferrostaal addressed an email to the DTI in which it was stated :-

"We note that IPCC did not consider the following :

1. **A further 1.5 jobs are created in the South African economy as a direct consequence of the call centre. This is a recognised multiplier.**

2. **The 1 225 seats used by IPCC as a basis of the credit calculation is from a flat line model and assumes that there will be no further contracts added by Trimica after year one. Based on current evidence these seats are projected to grow to over 3 000 by year three and over 4 565 by year five.**

3. **No recognition have [sic] been given for the risk taken by Ferrostaal in promoting and investing in the call centre in South Africa, without prior offset benefit to Ferrostaal.**

4. **No multipliers have been given or promised for BEE participation in the call centre".**

134.

The minutes of the IPCC meeting on 10 May 2005 reflect the following :-

> **"A letter of appeal from Ferrostaal was tabled. The objections and issues revolved around the following :**
>
> - **The split between investment and sales, Ferrostaal request that a split of 45/55 be considered instead of 35/65.**
>
> - **They requested that the approval be based on a per seat basis instead of 1 225 seats.**
>
> - **Request for recognition to be given for the BEE component of the project, and**
>
> - **Reconsider taking indirect jobs into account when enforcing the formula.**
>
> **After much deliberation the committee decided to approve a package of Euro 250 million, with the split between Investment and Sales to be negotiated with the company. The only requirements are that the percentage for Investments be between 35% and 45% and Ferrostaal's contribution be guaranteed."**

135.

In an email from the DTI to Mr Engels of Trimica dated 12 July 2005 it was recorded that Trimica had accepted the decision of the IPCC but that the DTI was concerned that the funding by Ferrostaal had decreased. The email stated "On 11 March 2005 you indicated that Ferrostaal would contribute Euro 5 800 000. This figure was the basis of the IPCC package discussion. Your letter now reflects a commitment of Euro 3 600 000. Please clarify."

136.

Ferrostaal invested an amount of Euro 3 625 000 and received credits of Euro 70 312 500 in respect of investment credits and Euro 42 968 750 in respect of local sales credits. The former amount was calculated on the basis that the investment was 62.5% of the amount originally agreed upon and with the agreed credit amount of Euro 250 000 000 being split as to 45% in this claim and with the remaining 55% claimed in Claim 102/36/2.

HASSO PLATTNER VCF

137.

This project related to the establishment of a Venture Capital Fund ("VCF") by Hasso Plattner Ventures Africa (Pty) Ltd to invest Venture Capital in South African companies. Hasso Plattner would invest Euro 25 million, Ferrostaal Euro 4 million and two other German entrepreneurs Euro 4 million for a combined total of Euro 33 million.

138.

The IPCC approved the business plan on 11 March 2008 subject to the following conditions :-

> **“(i) investment credits totalling Euro 50 000 000 will be a once-off at the initial investment into the fund and this [sic] credits are subject to MAN Ferrostaal contributing Euro 4 000 000 into the fund;**
>
> **(ii) …**
>
> **(iii) …**
>
> **(iv) sales credits of Euro 200 million is [sic] to be given up-front for the obligation under the submarine contract and the balance upon performance under the MAN Ferrostaal SPA;**
>
> **(v) …**
>
> **(vi) new and additional sales credits generated through existing business, will be calculated on the basis of agreed base-line;**
>
> **(vii) additional sales credits will only be awarded once the up front threshold of Euro 200 million has been exceeded;**
>
> **(viii) …**
>
> **(ix) …**
>
> **(x) MAN Ferrostaal ensures that government objectives are addressed including BEE, WEE, SME Development and job creation.”**

139.

Ferrostaal invested R630 000 and R32 500 000 into the project and were awarded investment credits of Euro 50 million and sales credits of Euro 200 million.

140.

The sales credits of Euro 200 million were based on the estimate of sales from companies to be supported by the fund. Estimates were used to simplify the administration process and it was not verified as to whether there were any export sales that occurred.

ABALONE

141.

This project entailed the expansion and acquisition of additional Abalone farms by Benguela Abalone Group (Pty) Ltd to enable it to serve international markets. The estimated total capital requirement for the expansion and establishment of new farms was R29 million.

142.

In return for investing this amount (which equated to Euro 3 500 000) as a loan, Ferrostaal received Euro 50 million investment credits and Euro 150 million export sales credits.

143.

This large package deal was agreed upon because there was a need to support agro-processing facilities especially in rural areas with very few options to provide for their livelihood. The amounts were negotiated between Ferrostaal and the DTI.

144.

Claim 102/50/C2 was in respect of the sales credits of Euro 150 000 000. This was approved at the IPCC meeting on 8 July 2008. The claim has no supporting documentation for the sales credits and accordingly it is accepted that the sales credits were awarded simply as part of the credit package originally approved.

ATLANTIS TRAINING CENTRE

145.

This project entailed the establishment of a training centre for young persons in the local community of Atlantis in the Western Cape. The training centre was to focus on the clothing and textile industry to create job opportunities in it.

146.

The project was to be run through the Atlantis Economic Development Trust which was a black empowerment organisation the chairperson of which was Mr Danny Oliphant MP.

147.

A submission dated 9 May 2003 was made by Mr Lionel October to Minister Erwin the title of which was :-

> **"Request for Approval of a National Industrial Participation Project, under the Strategic Defence Package, that requires the Minister's specific approval and in principle approval for similar cases".**

148.

The submission further stated :-

> **"…the area is in desperate need of skilled labour.**
>
> **The Director-General : Trade & Industry had requested one of the obligors under the SDP's to consider this training programme as a project to offset their NIP obligation. ….**
>
> **On the basis of present IP rules, very few credits will be generated as there are no co-investors and no sales and exports. Ferrostaal have, accordingly, done their calculations, being the projection of credits present in other investment projects i.e. the loss on return on investment as well as a value for sales based on the ratio of investments and exports. The value of credits they are requesting is Euro 324 million.**
>
> **The IPS is considering offering a less amount of credits but is aware that Ferrostaal could be reluctant to negotiate a lower figure as they are getting no returns on the money 'invested'.**
>
> **As it is out of the IPS and the NIP Implementing Mechanism's powers to approve such a project, the Minister is approached for approval.**

> **Many training related projects are received by the IPS for consideration. Because the IP policy does not make provision for such projects, they are turned down. Many have merit and need the support of the IP programme. An in principle approval by the Minister to accept such proposals, on a case-by-case basis and subject to the standard IP approval process, would allow the IPS to address this gap in the IP policy. ….**
>
> **It is requested that the Minister approve Ferrostaal's participation in the Atlantis Training Centre subject to negotiating a credit value acceptable to both parties.**
>
> **It is further requested that the Minister give an in principle approval for accepting training related proposals, on a case-by-case basis and subject to the standard IP approval process."**

149.

On the submission the then Director General, Dr Ruiters, wrote "Agreed, but subject to some intense negotiations to reduce the value of the credits they are requesting".

150.

The Minister's comment was :-

> **"Yes too large a credit ratio so we need to negotiate. This also came up with Motorola in the U.S. Do they have NIP credits for their training?"**

151.

On 12 September 2003 the DTI addressed a letter to Ferrostaal advising that the business plan "has been approved at a committee meeting held on the 8 September 2003 for Euro 80 million investment and Euro 120 million local sales".

152.

Reference is had to a letter from Mr Oliphant to Dr Ruiters dated 28 May 2003 as follows :-

> **"Dear Cde Alistair**
>
> **Since I spoke to you Lionel has sent me an sms, saying that they are experiencing problems as far as the allocation of points for Ferro Stahl is concerned. He thinks the Attorney General and Portfolio Committee would have difficulty in accepting this.**
>
> **By the looks of it our project could take months or even years to take off. We cannot afford this because there is a community that must be upgraded and developed. We know through AEDT that we are able to do this.**
>
> **We know we can bring substantial change to the development of our youth and we are sure you can help us, Alistair. I'm sure there must be money in your department, especially now with the new budget. Alec has told me at our launch that there were something like over R100 million and we hope that you can make some of it available to us instead of Ferro Sahl Road [sic]. We believe this process could be much speedier.**

> **We are already in dire straits and are experiencing heavy financial problems. You promised us an advance should we fall short of finances. We are still awaiting that. PLEASE, PLEASE, PLEASE help us, we are also taking the forthcoming elections into consideration and we are forced to show that we mean business and we can deliver since our spectacular launch in November last year."**

153.

This "political pressure" played no role in the decision of the DTI which decision was based solely on economic factors. The minutes of the IPCC meeting held on 2 December 2003 reflects that the committee "approved the award of USD 200,000,000.00 credits. USD 80 million for investment NIP credits and USD 120 million for Local Sales NIP credits."

154.

The late Mr Oliphant resigned from the Trust in July 2006 after he and two colleagues were accused of defrauding the Trust of nearly R3 million through their companies Quantum Leap and Global Dynamix.

155.

Although the package which was agreed upon contained Euro 120 million sales credits, it was a training project and no sales were ever expected. Consideration of the project was based on the number of jobs being lost in the Atlantis region of the Western Cape and as a result the number of factories that were closing at the time. There was therefore a need to re-train workers to increase job prospects.

156.

The matter was never referred back to the Minister for final approval of the package/multiplier because the Director General and Minister had given approval subject to a lower credit ratio being achieved which was achieved.

LONG WALK TO FREEDOM

157.

This project involved the production of a film version of former President Nelson Mandela's book Long Walk to Freedom. Ferrostaal had agreed to fund the project partly through a soft loan of R37 500 000 and a grant amount of R37 500 000.

158.

The minutes of the IPCC meeting of 24 November 2008 reflect that the committee decided that "the business plan be approved as well as a package of credits for the ZAR 75 million contributions by MAN Ferrostaal. The committee recommended Euro 120 million investment credits, Euro 90 million export credits, Euro 90 million local sales, a total of Euro 300 million".

159.

The total required funding for the film to be made was R250 million. The loan by Ferrostaal was at 5% interest. The investment credits were granted once the full R75 million had been transferred by Ferrostaal and the sales credits were granted once there was confirmation of production resources. The project was approved as a package and credits were granted upfront based on the understanding that the eventual completion and release of the film would be "way beyond" the discharge period.

DESMOND EQUIPMENT

160.

This project entailed expansion of the product range and facilities of Desmond Equipment SA CC. The business plan estimated a total capital requirement for the expansion of R24 million (Euro 2.4 million).

161.

The minutes of the IPCC meeting held on 9 December 2009 record that "funding for these phases have [sic] been sought from various sources and under various programmes of government. None have been successful. Funding is now critical and the impact on the industry is substantial. The grant will be used to expand the current facility and lead to the manufacture of a new product resulting in an increase of sales to new export markets. The committee recommended that the business plan be approved as well as a package of credits based on ZAR 24 million grant provided by MAN Ferrostaal. The committee recommended

Euro 60 million investment credits, Euro 80 million sales credits, a total of Euro 140 million credits."

MAGWA TEA

162.

This project related to the revitalisation of Magwa Enterprise Tea (Pty) Ltd which was involved in the production of high quality tea for the local and international market. The minutes of the IPCC meeting held on 4 February 2003 (**check the date?)** indicated that Ferrostaal were seeking approval "for the cost of an assessment study". The minutes further record that "the concerns raised by the committee were that one could be setting a precedent for standalone feasibility studies to qualify for IP which may not become sustainable IP projects. "

The decision of the ICC, taken at the meeting of 18 May 2005, was:

> **"It is recommended that the requested [sic] be approved under the following conditions:**
>
> 1. **If feasibility study results in further investment and marketing assistance, thereby causing the project to be sustainable and generate new/additional business, the DTI would credit the feasibility study subject to the submission and approval of a bankable business plan.**
> 2. **If the feasibility study does not result in subsequent business activity and assistance by Ferrostaal, then this would be viewed as a standalone feasibility study and would therefore disqualify for generating IP credits".**

The business plan was approved by the IPCC on 28 July 2003. The minutes of the IPCC meeting held on 5 July 2005 recommended that investment sales of Euro 90 million NIP credits be awarded “as part of an approved package deal”.

163.

The minutes of the eleventh Ferrostaal Progress Report dated 14 November 2005 records that the DTI had approved total NIP credits of Euro 220 000 000 comprising Euro 90 000 000 in respect of investment and Euro 130 000 000 in respect of sales. These were awarded for the Euro 3 000 000 non-refundable loan provided by Ferrostaal to Magwa Tea.

164.

The investment credits was arrived at after the application of a multiplier of 30 to the investment of Euro 3 million.

165.

Although a schedule of sales was furnished in respect of the claims, the sales were significantly less than the sales credits. The sales credits were awarded as part of the package deal of upfront sales credits and not in respect of the actual sales made. The reason for the multiplier was that it was approved as a package deal based on various strategic and economic reasons, especially the likelihood of the loss of many jobs being averted.

<u>PRECISION STRIP MILLS</u>

166.

This project related to the establishment of a cold rolling mill to produce metal sheets.

167.

The business plan estimated that a total capital requirement for the establishment of the mill was Euro 34 894 670 for phase one. Attached to it is an undated document entitled "Precision Strip Special Credit Approval". This reflects the following :-

> **"Equity into the project : Euro 9.3 million**
> **Long term loans : Euro 13.9 million**
> **Total investment : Euro 23.2 million**
>
> **Ferrostaal to contribute a grant of Euro 6.8 million to make the investment viable (i.e. to bring the IRR to 15%).**
>
> **The following credit package has been negotiated with Ferrostaal for their contribution :-**
>
> **Investment : Euro 180 million**
> **Sales : Euro 270 million**
> **Total : Euro 450 million**
>
> **Ferrostaal originally requested Euro 680 million and are prepared to accept our counter offer if we could please consider giving credits for their development costs for this project. This costs [sic] relate to**

> **feasibility studies and man hours spent on the project and total Euro 1.67 million.**
>
> **We propose a multiplier of 10 and thus credits worth Euro 16.7 million."**

168.

The minutes of the IPCC meeting held on 5 July 2005 record that the committee considered the claim for the costs of the feasibility study and man-hours spent on the project totalling EURO 1.67 million and "agreed to the special credit approval but still insisted on proof of contribution when the claim is submitted".

169.

The DTI supported that the feasibility study qualify for credits based on strategic value of this project. The subsequent feasibility studies in fact indicated that the project was no longer viable.

SAMES

170.

Ferrostaal granted an interest bearing loan of Euro 4.5 million to SAMES. In return it received a total package of NIP credits of Euro 200 million comprising Euro 50 million in respect of investment credits and Euro 150 million in respect of sales credits.

171.

Ferrostaal agreed to provides SAMES with a loan totalling Euro 4.5 million at an interest rate of prime minus two. In return the DTI by way of a fax dated 19 May 2005 proposed to award a package of Euro 200 million NIP credits as I have indicated. This was accepted by Ferrostaal.

172.

A letter dated 10 July 2008 from the chairman of SAMES to Ferrostaal recorded that the net effect of the failure of the MAS contract on which the proposal had been based was that the MAS contract cash flow had been severely impacted and in turn this had effected the ability of SAMES to repay the Ferrostaal loan from its cash flow.

173.

A letter dated 21 August 2008 from Ferrostaal records that based on discussions between all the parties including DTI, Ferrostaal proposed to transform the existing soft loan structure into an interest free loan and therefore retroactively waive its right for interest payments of R27 million. In return Ferrostaal requested additional investment credits of Euro 30 million based on the same multiplier of 11.11 as had applied to the original investment of Euro 4.5 million.

174.

The factors motivating the grant of the multiplier is that there were no other investors besides the obligated company. The return on the investment credits would not have justified the investment had there been no multiplier.

175.

The actual sales by SAMES were significantly less than the sales credits awarded of Euro 150 000 000 – the sales credits were awarded based on the package deal and not on actual sales made.

176.

Subsequently matters "turned sour" as the minutes of the IPCC meeting held on 9 December 2009 reflect that the project manager concerned "**presented letters from MAN Ferrostaal to the dti and from MAN Ferostaal to SAMES, the former requesting the dti to consider a unilaterally amended contract to conclude this project and the letter [sic] persuading SAMES to sign the amended loan agreement. After much deliberation it was agreed that the IPCC should send a letter to SAMES, copy MAN Ferostaal, giving them sixty days to respond to the new terms presented by MAN Ferrostaal and there after [sic] the matter will be referred back to the IPCC and a decision will be made'.**

177.

The minutes of the IPCC meeting held on 9 February 2010 reflect that the 60 day period was about to lapse and that "**MAN Ferrostaal have asked for a conditional approval in the interim, pending the lapse of the 60 days. After much deliberation and taking into account that MAN Ferrostaal have done their utmost to reach finality in this matter, it was agreed that the committee endorse MAN Ferostaal's request to conclude this business plan with or without signature from SAMES. It was agreed that the package of credits for this business plan be approved but that both parties be encouraged to find an amicable solution to fulfil both their obligations. The dti is prepared to assist if so requested**."

<u>LIMPOPO TEA</u>

178.

This project concerned the revitalization of tea estates in the Limpopo Province during January to June 2008. Funds were needed for working capital, refurbishment and "value add". Ferrostaal agrees to advance a loan of R20 million (as at June 2008 approximately Euro 1.6 million) of the R33 million (approximately Euro 2.64 million) required. There was a pre-approved package deal in terms of which Euro 30 million investment credits and Euro 80 million sales NIP credits.

<u>YACHTPORT FACILITY</u>

179.

This project concerned the establishment of a dedicated yacht load out facility in the Small Craft Harbour in Saldanha. MAN Ferrostaal provided a grant of Euro 2 million for the capital for infrastructure expansion. A package deal was negotiated in terms of which MAN Ferrostaal received Euro 20 million Investment credits and Euro 430 million export sales credits according to the IPCC minutes of 11 June 2009.

180.

The minutes of the IPCC meeting held on 8 April 2008 record that :-

> **"The committee recommended that the project be approved with a multiplier of 65 on the value of ZAR 12.4 million loan from Agusta Westland and a multiplier of one on the ZAR 170 million to be provided by Agustas. This pertains only to the investment credits. Sales credits are subject to performance."**

181.

The rate of exchange on 9 May 2008 which was the date Agusta Westland transferred the R 12 320 000 loan was R1 = USD 0.13140. The dollar equivalent was accordingly USD 1 618 848. As at 25 June 2008 the dollar equivalent of the R170 million loan from Agustas Asset Managers was USD 21 100 817.22. This amount of credits was granted with no multiplier applied to it. The award was based on the facilitation of the commercial relationship between Nkon Japie and Agustas Asset Managers by Agusta Westland. There was no direct investment from Agusta itself.

CENERE

182.

This project entailed the setting up of a joint venture between Oro Africa (Pty) Ltd and Cenere 1948 to be called Cenere Italy (Pty) Ltd which was to be a new subsidiary of the Oro Africa Group. Mr Paulo Cenere was to be a 25% shareholder and Oro Africa was to own the remaining 75%. Cenere manufactured high value branded hollow and solid gold chains using a unique Italian technology.

183.

According to the Cenere business plan the Oro Africa Group needed to diversify the Group's products and hence the joint venture.

184.

The business plan states that **"Agusta identified, among various Italian companies, 'Cenere 1948' as an ideal candidate to meet all these objectives and introduce Cenere 1948 to Oro Africa with the aim also to develop a cooperation suitable to generate benefit to the South African economy."**

185.

The business plan indicated that Cenere 1948 would provide a cash outlay, technology transfer, machinery and training. The value of technology transfer was to be based on 5% of the total of the local sales and export sales.

186.

According to an email dated 29 June 2006 from Agusta to the DTI :-

> **"Agusta/Stemcor assisted Oro Africa, last year, in identifying 'Cenere 1948' as the ideal counterpart for the strategic objectives and needs of Oro Africa Group and then, thanks to the expertise of Agusta/Stemcor in the insurance-backed receivable financing field, we were able to assist Cenere Italy (Pty) Ltd to arrange an insurance programme to cover a high percentage of trade receivables. This will result in reduced credit risk and in a higher availability of working capital that generates additional business (investment in gold) along the years."**

187.

In an email dated 3 July 2006 from Agusta to the DTI, a brief explanation of the insurance-backed receivable financing scheme was given :-

> **"The arrangement for the 'credit enhancement' of Cenere Export Sales ledger is obtained by insuring the customer receivables with a global credit insurance company, which will pay claims in customer insolvency or protracted default. As a result of the additional credit protection, banks are not only able to provide funding, but also on more generous terms. Specifically, average cost of borrowing will be reduced while the prepayment will be greater, thereby providing increased liquidity and working capital to finance further growth of the business."**

188.

According to an email dated 29 June 2006 from the DTI to Agusta, an enquiry was made as to whether it was possible to place a value on the insurance programme arranged by Agusta and Stemcor. In the reply dated 29 June 2006 as well, it was stated that estimating the value was not easy but that an average of R20 million would be applicable per year. This email further stated :-

> **"In addition the financial benefit you have to consider as well the intangible benefit of the reduction in risk, which is a huge issue and it was worth considering the exposure on high value sold to certain customers and the impact that a bad debt would have on the Group. With the market so unstable this is a very real risk to company, but has been mitigated with the receivable financing support. The value of this is really difficult to estimate."**

189.

In the minutes of the IPCC meeting held on 4 July 2006 it was recorded that the committee approved of the project but required clarity on the technology transfer equating to 5% of the sales.

190.

Agusta lodged Claim 103/22/C01 which was for investment for the period September 2005 to February 2006. In an email from DTI to Agusta dated 10 October 2006 a concern is raised that both Claim 1 and Claim 2 were for a period prior to the project approval as the project was first introduced to the DTI on

23 November 2005, the business concept was submitted on 22 February 2006 and the business plan was approved by the IPCC on 15 March 2006.

191.

In reply in an email dated 6 November 2006 Agusta stated that :-

(a) Agusta Westland had held a meeting with the DTI in November 2006 and explained that the initial activities associated with Cenere commenced in the middle of 2005 being the initial investment carried out by Cenere to launch the project.

(b) At that time Agusta Westland had identified and introduced Cenere 1948 to Oro Africa.

(c) The Cenere project could not formally be presented to the DTI until sufficient confidence of success was available but in the meantime the joint venture was starting up its activities.

(d) The letter concluded :-

> **"In summary, I would like to suggest that when taking all the above activities into consideration that we withdraw those Cenere claims that relate to the investment transactions the date before 26 September 2005 with the exclusion of those relevant to the working capital (Debtors Finance**

> **and Gold) an investment for training, which specifically associated to Cenere claims."**

192.

Investment credits in the amount of USD 4 296 471 were awarded in respect of Claim 1 and USD 577 124.75 in respect of Claim 2 (together with export sales credits of USD 10 080 206 and local sales credits of USD 1 462 289 in respect of Claim 2).

193.

All the subsequent claims after Claim 1 included credits being sought for technology transfer calculated as previously mentioned. These were all approved.

194.

Reference is had to a letter from the Group Chief Financial Officer of Oro Africa to the DTI dated 23 February 2007 dealing with a concern by the IPCC about the possibility of fictitious sales being included in Oro Group Sales schedules.

195.

In respect of Claim 1 it does not appear that there was any importation supporting documentation reflecting that all the asset claims brought under Claim 1 were acquired from Cenere 1948. There also were no supporting documents pertaining to the involvement of Cenere 1948 in assets that appeared to have been acquired from other suppliers. Further there was no evidence of a valuation performed on assets received from Cenere 1948 in order to verify the asset values.

195.

It is not clear how sales emanating from Cenere and the Filk projects were monitored as both projects were housed at the same premises. Further no evidence can be found in respect of the clarity requested by the IPCC in this regard at the meeting held on 12 December 2006.

196.

As alluded to by Oro Africa in the documentation previously referred to, the majority of local sales were made to its holding company. There was accordingly no proof that these were “arms length” sales and genuine sales for the purpose of claiming NIP credits. The same applies to some of the export sales which ostensibly were made to Cenere Italy. Despite the difficulties in establishing clarity in this respect, the DTI nevertheless decided that the claims should be approved.