FLOW OF FUNDS

EXHIBIT VV 6

JEAN-CHRISTOPHE
MIESZALA

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

STATEMENT OF JEAN-CHRISTOPHE MIESZALA

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1 Introduction

1.1 This statement is submitted to the Judicial Commission of Inquiry Into Allegations of State Capture (the "**Commission**") on behalf of McKinsey & Company at the request of the Commission.

1.2 I am a French national and Senior Partner at McKinsey & Company based in Paris, France. I have served as the Chief Risk Officer ("**CRO**") of McKinsey & Company since January 2018, and prior to that I was the Managing Partner for France. As the CRO, I oversee our firm risk, audit, compliance, security, and legal functions.

1.3 While I have never been based in South Africa, since becoming McKinsey & Company's CRO in 2018 (after the events at issue), I have been deeply involved in our efforts to understand what happened here, to review our work for the clients at issue, to determine where the firm fell short, and to put in place new measures to guard against the risk that this could happen again. I was, for instance, involved in our voluntary commitment to repay our fees to Eskom on the Turnaround Programme and supported our Global Managing Partner's decision to come in person to South Africa to set out the status of our investigation and express our deep regrets and apologies.

1.4 The facts contained in this statement are informed by the extensive investigation that McKinsey & Company has undertaken and by new information that has come to light in the Commission's proceedings. Where indicated, certain information that is referred to was not available to McKinsey & Company's investigation, but is evidence which the Commission has very recently shown to McKinsey & Company to enable me to make this statement. To add further context, I have annexed excerpts from Mr Safroadu Yeboah-Amankwah's ("**Mr Yeboah-Amankwah**") statement that was submitted to the Commission in April 2019 and that provides further details on many important areas. Mr. Yeboah-Amankwah served as the Managing Partner of McKinsey & Company's Johannesburg office during much of the relevant time period, but he currently resides in the United States and (to our regret) recently chose to leave McKinsey & Company for another highly regarded professional opportunity.

1.5 As the CRO, I have closely followed the important role the Commission is playing in getting to the bottom of State Capture allegations that have shaken South Africans' trust in their government and private sector firms. These events have cast serious doubts on the ability of state-owned enterprises (SOEs) and private sector firms to meet their fundamental obligations to the South African people. On behalf of McKinsey & Company, I want to recognise the critical contributions made by civil society, journalists, and individuals of integrity who have brought to light many of these issues, often at great personal sacrifice. I also want to acknowledge to the Commission that our firm appreciates that the efforts of these patriotic individuals is, and will continue to be, immensely important to the future of South Africa.

1.6 I also want to echo the sentiments of other global leaders at McKinsey & Company and of our colleagues based in Johannesburg when I say that this situation is a source of great regret to our firm. I can say with certainty that it deeply troubles our partners and colleagues that our firm is associated with allegations of State Capture. As a firm, we aspire to serve our clients in ways that both improve performance and make a positive difference in the world. I therefore appear before you as a representative of McKinsey & Company and as an adherent to responsible corporate citizenship. As such, I intend, in all honesty, to put before the Commission, McKinsey & Company's best understanding of these events and to accept responsibility for the errors of judgement we have made. In the aftermath of the events at issue, our firm continues to work hard to make amends. We have taken very seriously the lessons we have learnt from being associated with these unwelcome allegations.

2 Overview

2.1 Before we go into the details, I also wanted to thank the Commission for its important role in addressing these matters and provide a high-level overview of the statement that follows.

2.2 For more than three years, we have undertaken an extensive and thorough investigation with the help of two global law firms. This involved numerous attorneys and included the collection of nine million documents, the review of more than one million emails, financial records, and other documents, and over 100 interviews of relevant individuals.

2.3 This statement is not the first time we have addressed these events and allegations. We have made a series of public statements over the years, from as far back as 2017. We have cooperated with a number of reviews looking into these matters including those launched by Parliament, National Treasury, Eskom, and Transnet. As new information has emerged, we have taken additional responsible actions both within South Africa and as a global organisation to right our mistakes and put in place more robust safeguards for the future. As a part of this, where we found violations of our professional standards, we both disciplined individuals in line with our procedures and made improvements to our governance processes to avoid any such violations in the future.

2.4 McKinsey & Company has now voluntarily committed to repaying the entirety of the fees that we earned on projects with Regiments Capital ("**Regiments**") at both Transnet and South African Airways ("**SAA**"), following the same principles that led us to repay what we earned at Eskom more than two years ago. We stand ready to make this repayment as soon as an appropriate legal framework is established that allows us to do so lawfully and with finality for the full benefit of the respective SOEs and South Africa's people. As we did with the Eskom matter, we do so voluntarily, out of principle rather than legal obligation.

2.5 McKinsey & Company is motivated to make this commitment in response to the growing body of evidence provided by the Commission that suggests a pattern of misconduct by Regiments at these entities. This includes in particular Regiments having entered into an agreement—with Mr Salim Essa ("**Mr Essa**") and other individuals linked publicly to State Capture—to engage in a pattern of troubling payments that we were unaware of at the time the work was being conducted. (I leave open here and in the next paragraph the possible exception of Mr Vikas Sagar ("**Mr Sagar**"), a former partner of our firm whose circumstances are discussed more fully below.)

2.6 While we deeply regret being associated with Regiments and those connected to their actions, we take some consolation in the following: Now, more than four years after the events in question, neither our investigation nor (to our understanding) the Commission's investigation has uncovered evidence that our firm secured business through corruption or bribery at Eskom, Transnet, or SAA.

2.7 We have endeavoured to learn from the mistakes that caused us to fall short of what was rightly expected from our values, our clients, and the people of South Africa. We acknowledge that the firm failed to meet our own professional standards. We have made a number of changes, both in South Africa and globally, to our personnel, our procedures, and our policies in an effort to guard against making the same mistakes again and to take this as an opportunity to strengthen our firm as a whole.

3 McKinsey & Company: the Global Firm and the South African Subsidiary

3.1 McKinsey & Company is a global management consulting firm with over 90 years of experience servicing a broad range of private, public, and social sector institutions. We are present in more than 130 cities and 65 countries and support more than 2,000 client institutions globally. McKinsey & Company teams help clients shape bold strategies to improve the way they work, embed technology where it unlocks value, and build capabilities to sustain enduring, positive change for their organisations, their people, and in turn society at large. McKinsey & Company invests in cutting-edge knowledge development and works on all levels of organisations, helping members of the organisations build their capabilities and execute their strategies.

3.2 Despite its global footprint, McKinsey & Company made a principled decision not to open an office in South Africa until 1995 because of a strong belief that any activity that might have aided the Apartheid regime would have been incompatible with the values our firm holds dear. The South African entity was incorporated as McKinsey and Company Africa Proprietary Limited, and I shall refer to it as "McKinsey". Since opening with five consultants in 1995, McKinsey has worked to grow its service to South Africa through a particular focus on hiring local talent and offering local apprenticeship and mentoring. McKinsey currently employs over 150 people in Johannesburg and is proud that more than 60% are black South Africans. To put our service here in some context, in its 25 years in operation, McKinsey has delivered in the order of 1,000 projects in South Africa. In particular, we have served South Africa's SOEs for over two decades, working with them on more than 350 engagements. In all of these engagements we sought to add value to their operating performance and to contribute to solving some of the most challenging and complex problems they faced. We did so because we recognised the importance of these SOEs to the overall health and growth of the South African economy. We pride ourselves on the depth, quality, and impact of our work.

3.3 Social responsibility is a core value to our firm. We are not perfect. We sometimes fail. But our purpose and our aspirations are clear. McKinsey remains unwavering in its commitment to do more to tackle societal challenges and has sought to invest in South Africa through providing pro bono consulting support to organisations and projects that help support South Africa's transformation and social equality agenda. Some of these efforts include publishing insights on Reimagining South Africa, the McKinsey Leadership Program, the McKinsey Leadership Academy, the Social Advancement Foundation, and the Tirelo program which has the specific goal of helping South Africa address some of its unemployment challenges. Through this program we have been able to serve 44 small and medium enterprises in more than 12 industries through collaboration with a network of private equity firms, non-governmental organisations, and government institutions.

3.4 It is therefore with deep concern that McKinsey appears before the Commission associated with those believed to be involved in State Capture. I submit without hesitation that this is not who we are, this is not the way we conduct our business, and this is not the way we would like to be perceived.

4 McKinsey's Investigation

4.1 Beginning in 2017, McKinsey publicly committed to assisting the authorities in getting to the bottom of allegations related to State Capture, cooperating with ongoing investigations, and helping to ensure responsible parties are held accountable. We continue to honour that commitment today.

4.2 McKinsey has undertaken an extensive and wide ranging effort for more than three years to get to the bottom of these events after allegations were raised in regard to McKinsey's work with SOEs in South Africa. McKinsey hired two global law firms, Norton Rose Fulbright and Morrison & Foerster, to independently lead this effort. McKinsey and these two firms have conducted an extensive and thorough review of the information available to us. This has informed our public statements and our submissions to numerous authorities.

4.2.1 Norton Rose Fulbright is a highly reputable global law firm with offices in Africa, Asia, Australia, Europe (including in the United Kingdom), Latin America, the Middle East, and North America. The Norton Rose Fulbright team is led by senior director Mr Jeffrey Kron ("**Mr Kron**"). For over 40 years, Mr Kron has acted for major multi-national as well as local corporations, government-owned organisations, banks and financial institutions, and mining houses, amongst others, and has received wide-ranging recognitions. Mr Kron has been involved in significant commissions of inquiry as well as some of the largest investigations, arbitration, litigation, and class action cases in South Africa.

4.2.2 Morrison & Foerster is a highly reputable global law firm with offices located in the United States, Asia, and Europe. The Morrison & Foerster team is led by partner Mr Charles Duross ("**Mr Duross**"), the global co-leader of Morrison & Foerster's Foreign Corrupt Practices Act (FCPA) and Global Anti-Corruption practice. Prior to coming to Morrison & Foerster, Mr Duross served as Deputy Chief in the Fraud Section of the U.S. Department of Justice (DOJ) Criminal Division, in which role he led DOJ's FCPA Unit. In this role he oversaw more than 150 investigations into corruption throughout the world, including in South Africa. Mr Duross also served as DOJ's principal representative to the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery, including serving as the US representative on the OECD team that conducted the Phase 2 review of South Africa's implementation of the OECD Anti-Bribery Convention.

4.3 These two firms have had full and unfettered access to all documents and information within McKinsey's control as well as to current and former McKinsey personnel, where they were willing to cooperate. Under my direction, they were given all of the resources and support they have requested to pursue this matter.

4.4 As a part of the investigation, Norton Rose Fulbright and Morrison & Foerster conducted a thorough internal investigation which included the collection of more than nine million documents and the review of more than one million emails, financial records, and other documents. The review of these documents was undertaken by a group of as many as 65 full-time attorneys. The two firms have conducted more than 115 interviews of current and former McKinsey employees and have sought to discuss these events with others with relevant information, including Regiments who refused to speak with us about these issues.

4.5 McKinsey also hired a third-party forensics firm to conduct a thorough forensic review of phone records, devices, financial information, and expense records to further inform our review.

4.6 Our firm has committed significant resources to this investigation. Yet, obviously, we could only investigate what we had access to. Unlike the government authorities looking into these matters, we could not access personal emails nor could we interview people who refused to cooperate, as was the case, for instance, with the Regiments executives.

4.7 Having said that, to date, our own investigation has identified no suspicious payments to individuals or companies made or directed by McKinsey or any of its personnel. At the time of this writing, we are not aware of any external investigation that has found any such confirmed payments either.

4.8 As a part of our investigation, we also cooperated with numerous reviews in South Africa, participated in public forums to present what we had found, and cooperated with relevant enforcement agencies. We took seriously all information and documents from these investigations related to McKinsey and incorporated them into our review so that we could rely on both our internal sources as well as information compiled by others from sources not available to us.

4.9 The following is a high level summary of our cooperation with these investigations and I have attached documents describing our responses to some of those inquiries.

4.9.1 **Parliamentary Portfolio Committee on Public Enterprises' Inquiry into Governance, Procurement, and the Financial Sustainability of Eskom (Parliamentary Inquiry)**: In November 2017, Dr David Fine ("Dr Fine"), a senior partner at McKinsey who leads McKinsey's Global Public and Social Sector Practice, testified for several hours in front of Parliament. In addition, he submitted a detailed written statement with close to 200 pages of supporting annexures. **Annexure JCM1 – Dr David Fine Submission to Parliament, 11 November 2017.** Even as we do not agree with all of the findings of the Parliamentary Inquiry, we recognise the important role it played and hope that our perspective helped inform its work.

4.9.2 **Eskom Review Proceedings:** In March 2018, Eskom initiated review proceedings in the High Court as a part of the process to determine the appropriate avenue for McKinsey to return the money earned on the Turnaround Program at Eskom as McKinsey had voluntarily committed to do in October 2017. As a part of these court proceedings, McKinsey submitted detailed affidavits and other filings recounting in detail our work on the Turnaround Programme and the Corporate Plan, the value these programs delivered, as well as our interactions with Trillian Management Consulting ("**Trillian**"). This process resulted in the July 2018 settlement as detailed further below.

4.9.3 **Question and Answer Session at the Gordon Institute of Business Science**: In July 2018, our newly elected Global Managing Partner, Mr Kevin Sneader ("**Mr Sneader**"), made significant public remarks about these matters, apologised on behalf of the firm, and participated in a question and answer session at the Gordon Institute of Business Science. This event was open to the public and provided an opportunity for any and all stakeholders including business leaders, industry bodies, the public at large, civil society representatives, and the media to pose questions to the most senior leader of McKinsey & Company. **Annexure JCM2 – Speech by Kevin Sneader at the Gordon Institute of Business Science Seminar, 9 July 2018.**

4.9.4 **National Treasury Investigation**: In 2018, National Treasury appointed Fundudzi Forensic Services ("**Fundudzi**") to conduct an investigation into allegations related to Eskom and Transnet. McKinsey provided numerous detailed submissions totalling more than 80 pages (with hundreds of pages of annexures) to Fundudzi in furtherance of – and in reaction to – their draft and final reports. These submissions included an extensive summary of relevant contracts and events. After the final Fundudzi report was released in November 2018, McKinsey sent a letter to National Treasury identifying the specific areas in which McKinsey disagreed with the final report findings and recommendations. **Annexure JCM3 - Letter from McKinsey to National Treasury, 10 January 2019.**

4.9.5 **Mncedisi Ndlovu & Sedumedi ("MNS") Attorneys Transnet Review**: In February 2018, Transnet hired MNS to look into the 1064 Locomotives Project. In response to inquiries from MNS, McKinsey cooperated fully and submitted detailed statements and numerous documents. **Annexure JCM4 - Letter from McKinsey to MNS, 30 October 2018.** While we generally accept their conclusions, we raised limited issues with some of the findings contained in their March 2019 preliminary report. **Annexure JCM5 - Correspondence with MNS, May 2019**. As a part of our dialogue in May 2019, MNS indicated to McKinsey that its findings of wrongdoing were "largely in respect of Transnet's conduct and are not an indictment on McKinsey." **Annexure JCM5 - Correspondence with MNS, May 2019.**

4.9.6 **Transnet Review**: Since our work with Transnet ended in 2016, we have engaged with Transnet's management on a number of occasions to review the impact and value of our work there. Starting in May 2019, we engaged with Transnet's management, including the acting CEO at that time, to review the 11 engagements that McKinsey worked on at Transnet between 2012 and 2016. McKinsey provided numerous files including final deliverables and reports for Transnet's review. As a part of this review, Transnet acknowledged that McKinsey delivered value and impact on all of the projects. More precisely, the review confirmed that:

- McKinsey's deliverables on these projects were clearly defined and Transnet had a supervisory role on the work, including through steering committees.
- On projects where McKinsey and Regiments were both involved, Transnet paid Regiments separately (which, I should note, is in keeping with how

McKinsey has structured our supplier development partner arrangements in the past).

- McKinsey did not introduce Regiments to Transnet and McKinsey never worked with Trillian at Transnet. While former Transnet executives ceded McKinsey contracts to Regiments or Trillian after February 2016 (when McKinsey stopped work at Transnet), these executives did so without approval by McKinsey and evidently without a legal basis.
- The aggregate benefits derived by Transnet from McKinsey's work from 2012 to 2016 substantially exceeded the professional fees.
- In the case of the 1064 locomotive contract, McKinsey withdrew before the price of the R38.6 billion locomotive tender was escalated to R54 billion (as other investigations have determined).

4.9.6.1 Those undertaking this review submitted a memorandum regarding the above findings to Transnet's leadership, but within Transnet this process was never finalised.

4.9.6.2 As noted above, and in keeping with the voluntary approach McKinsey said it would take three years ago in relation to Eskom, we welcome the opportunity to now be able to take further steps to completely settle all of these issues, as they relate to our work with Regiments, as a part of our commitment before the Commission. We will make repayment as soon as an appropriate legal framework is established with the involvement of the SOEs at issue and the support of the relevant authorities.

4.9.7 **The Commission**: Since its establishment in August 2018, McKinsey has extensively cooperated with the Commission including by providing extensive documents, information, and briefings when requested. In addition to this statement, three other McKinsey & Company partners have submitted or will be submitting statements to the Commission: Mr Yeboah-Amankwah (submitted in his capacity as the former Managing Partner of the Johannesburg office), Dr Alexander Weiss ("**Dr Weiss**") (who worked extensively at Eskom for many years), and Dr Fine (who worked extensively at Transnet for many years). We welcome this opportunity to testify at the Commission.

5 McKinsey's Work With Relevant State Owned Enterprises

5.1 McKinsey has long worked with South Africa's SOEs—including Eskom, Transnet, and SAA—and understands that this work is particularly important for the South African people and economy. While I did not personally work on any projects with the relevant SOEs, I have been closely involved with the review of this work, and I wanted to provide a high level overview of our work with them as context for my submission and this settlement. (Mr Yeboah-Amankwah's statement goes into greater depth on many of these matters.)

5.2 <u>Eskom:</u> McKinsey worked on projects at Eskom from 2005 to 2017. Our consultants spent several hundreds of thousands of hours on these projects, which covered a wide range of areas including logistics; generation support including outage management; group commercial and IT support; leadership and capability building; and portfolio optimisation and support for Group Capital. My colleagues' statements go into greater detail about the impact of this work.

5.2.1 McKinsey saw itself as well equipped to help Eskom confront its challenges. From 2010 to 2017, McKinsey & Company worked on more than 2,250 projects at over 600 energy companies around the world. In 2016, when the most relevant projects occurred, McKinsey & Company had over 340 people who specialised in energy-related topics across the world.

5.2.2 Two of McKinsey's projects at Eskom have garnered particular attention: the Corporate Plan and the Turnaround Programme (sometimes referred to as the Master Services Agreement or "MSA"). I attach an excerpt from my colleague Mr Yeboah-Amankwah's detailed submission to the Commission on these contracts. **Annexure JCM6 - Excerpts from Yeboah-Amankwah Statement, Corporate Plan and MSA**. Dr Weiss, who is scheduled to testify, can provide more detail regarding this work.

5.3 Transnet: McKinsey worked at Transnet from 2005 to 2016. Over 140 partners and 700 consultants spent hundreds of thousands of hours on these projects which were designed to help Transnet overcome the serious challenges it faced, including becoming a commodities bottleneck that could have vast implications for the South African economy.

5.3.1 McKinsey & Company has extensive experience working with transportation and logistics companies around the world that well positioned it to aid Transnet in overcoming its most significant challenges. Since 2010, McKinsey & Company has conducted over 4,000 projects for over 580 clients in this sector globally, including for six of the top-ten companies in the sector.

5.3.2 McKinsey has detailed its work with Transnet on a number of occasions. I attach Dr Fine's testimony to Parliament as well as excerpts from Mr Yeboah Amankwah's statement to the Commission that discuss these projects in detail. **Annexure JCM1 - David Fine Statement to Parliament; Annexure JCM7 - Excerpts from Yeboah-Amankwah Statement, Transnet Projects**. Dr Fine, who is scheduled to testify, can provide more detail regarding this work.

5.4 South African Airways (SAA): McKinsey worked periodically at SAA from 1999 to 2014 with a focus on projects seeking to help SAA confront its longstanding challenges including by unlocking its working capital and redesigning its organisational structure. McKinsey's work at SAA was far less extensive than its work at Eskom and Transnet.

5.4.1 As described previously, McKinsey & Company has extensive experience with transportation and logistics companies. In regards to air and travel companies in particular, from 2014 to 2018 McKinsey & Company worked on over 960 projects at 190 clients in more than 50 countries in this sector.

5.4.2 I understand that one project in particular is relevant to the Commission's work. In 2014, McKinsey worked with Regiments on GSM/085/13, the Working Capital Optimisation project. As the name would suggest, the project focused on unlocking working capital at SAA. We now understand from the Commission that Regiments appears to have had an inappropriate relationship with an SAA executive. The Commission has furnished evidence that this individual provided Regiments—not McKinsey—with insider information regarding the proposal phase of the project in exchange for bribes.

6 McKinsey's Work With Supplier Development Partners

6.1 As a part of its commitment to supplier development and localisation efforts including through economic transformation and skills development, McKinsey has long been dedicated to working with local supplier development partners on contracts with SOEs, even before such partnerships were required.

6.2 There are three Black Economic Empowerment entities that are relevant to our work at Transnet, Eskom, and SAA: Letsema Consulting and Advisory ("**Letsema**"), Regiments, and Trillian. As I will describe in further detail below, Letsema and Regiments served as McKinsey's supplier development partners over many years. While such a relationship with Trillian was contemplated, Trillian never served as a supplier development partner to McKinsey. Like other parts of this statement, much of what I know about this area has come after the fact, and I rely out of necessity on descriptions by others who worked with these entities.

6.3 Letsema: Most of McKinsey's work with Letsema occurred from 2005 to 2012. I have attached an excerpt from Mr Yeboah-Amankwah's statement to the Commission that covers our work with this entity in more detail. **Annexure JCM8 - Excerpts from Yeboah-Amankwah Statement, Letsema**. Despite certain challenges with this relationship, McKinsey is proud of its work with Letsema and its role in helping to develop and grow Letsema as a consulting business.

6.4 Regiments: McKinsey first began working with Regiments in 2012. I have attached an excerpt from Mr Yeboah-Amankwah's statement to the Commission that covers this entity in more detail. **Annexure JCM9 - Excerpts from Yeboah-Amankwah Statement, Regiments**. While the media has reported on allegations related to Regiments and the Commission has now presented evidence related to concerning behaviour by Regiments, we have not found evidence that anyone at McKinsey knew of this activity at the time it was occurring. (I leave open here the possible exception of Mr Sagar whose circumstances are discussed more fully below.) McKinsey notified Transnet of its decision to stop working with Regiments on 23 February 2016 and the separation was made final in March 2016, long before such evidence was made public.

6.5 Trillian: In late 2015, Mr Eric Wood ("**Mr Wood**") notified McKinsey that he would be spinning off Regiments' consulting business into a new entity called Trillian. McKinsey's potential relationship with Trillian has caused significant confusion and I would like to clarify this point. McKinsey worked alongside Trillian at Eskom for a short period of time while our due diligence on Trillian was being carried out. But McKinsey never had a contract with Trillian and decided in March 2016 not to work with Trillian, after our diligence process raised sufficient concern to call a halt to the planned contractual relationship. I have attached an excerpt from Mr. Yeboah-Amankwah's statement to the Commission that covers the diligence process in more detail. **Annexure JCM10 - Excerpts from Yeboah-Amankwah Statement, Trillian**. I participated in the risk review of Trillian in early 2016 and while, as our Global Managing Partner Mr Sneader has noted publicly, the due diligence process should have been completed before any work was started, the due diligence we carried out was effective and resulted in the correct decision not to work with Trillian (a decision which was promptly communicated to Eskom).

7 Areas of Concern Identified in Our Review

7.1 Where McKinsey has found issues of concern, McKinsey has shared them with appropriate authorities. I will provide a high level overview of these issues below. Where McKinsey has identified mistakes and errors of judgement, we have acted swiftly to address them and have acknowledged them publicly with contrition at the firm's highest levels. **Annexure JCM11 - McKinsey & Company Statement on Eskom, 17 October 2017; Annexure JCM2 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018**.

7.2 These issues include:

7.2.1 **MBA Assistance**: In July 2017, McKinsey was first provided information that indicated that Mr Sagar, whilst with McKinsey, may have helped coordinate research support and draft course work for the MBA studies of Transnet's then CEO Mr Siyabonga Gama in late 2015 and early 2016. In December 2017, out of an abundance of caution, McKinsey made a Section 34 report in terms of the Prevention and Combatting of Corrupt Activities Act, 2004. This report later became public through media reporting. I have attached Mr Yeboah-Amankwah's further description on this issue to this statement as well as the Section 34 report we filed. **Annexure JCM12 - Excerpts from Yeboah-Amankwah Statement, MBA Issue; Annexure JCM13 - Section 34 Report**.

7.2.2 **9 February 2016 Letter:** A letter sent by Mr Sagar to Eskom on 9 February 2016 has garnered significant attention over the years because it inaccurately referred to Trillian as a subcontractor of McKinsey on the Corporate Plan contract at a time when Trillian was still undergoing McKinsey's diligence process. I attach the relevant portion of Mr Yeboah-Amankwah's statement that provides a detailed overview of this letter. **Annexure JCM14 - Excerpts from Yeboah-Amankwah Statement, 9 February 2016 Letter.** The bottom line of our investigation into this letter's transmission is that while the letter should not have been sent containing such inaccurate information, as is further detailed in Mr Yeboah-Amankwah's statement, we have not found support for the more far-reaching allegations and conclusions drawn from the letter. Indeed, Eskom has confirmed on a number of occasions, including in its review application, that it neither relied on nor made payments to Trillian based on the 9 February 2016 letter. (This is not to ignore legitimate questions about Mr Sagar whose role in these events is discussed below in more detail.) Even so, as we stated back then, we also wish to share today how deeply we regret having not been more responsive to Advocate Geoff Budlender SC when he initially inquired about the status of McKinsey's relationship with Trillian and the 9 February 2016 letter. **Annexure JCM14 - Excerpts from Yeboah-Amankwah Statement, 9 February 2016 Letter.** Learning from this experience, McKinsey has endeavoured to be responsive to and extensively cooperate with other investigators, as further described above.

7.2.3 **Allegations Relayed By Mr Ian Sinton to the Commission:** As I have discussed previously, McKinsey has always welcomed additional information from other sources with access to documents outside of our visibility and when such information has come to light we have incorporated it into our investigation. This was true with Mr Ian Sinton's ("**Mr Sinton**") testimony to the Commission in March 2019, where he conveyed information told to him by Regiments representatives that included allegations about McKinsey and Mr Sagar. We have no doubt that Mr Sinton faithfully recounted what he was told by Regiments and we took the allegations contained in Mr Sinton's testimony very seriously. However, given past inconsistent statements by Regiments, clear errors in the account, and other documents that have come to light, we, and others, have significant doubts about the information he was told by Regiments. Mr Yeboah-Amankwah covered our observations in detail in his statement and I attach the relevant excerpts of that statement here. **Annexure JCM15 - Excerpts from Yeboah-Amankwah Statement, Allegations Relayed by Ian Sinton.**

7.2.4 **Actions of Mr Sagar:** In the wake of media reporting and the release of Advocate Budlender's report, in July 2017, Mr Sagar was placed on leave. Over the next few months, while Mr Sagar remained on leave, McKinsey & Company's disciplinary committee reviewed Mr Sagar's behaviour and ultimately recommended that Mr Sagar be terminated due to his violations of McKinsey's professional standards. While Mr Sagar initially sought to appeal this determination, he instead dropped his appeal and accepted a separation from the firm in October 2017. Mr Sagar departed pursuant to an agreement with the firm that requires him to cooperate with subsequent investigations. McKinsey has made Mr Sagar's counsel aware of this requirement on a number of occasions, but we lack the ability to compel his appearance before the Commission. While it is clear to me that Mr Sagar violated our professional standards in a number of ways, it is not our place to assess the legal implications of Mr Sagar's conduct. What McKinsey has tried to do is ensure that what we know is shared with appropriate authorities. Where McKinsey has found potential issues of concern in relation to Mr Sagar, we have reported them to the appropriate law enforcement authorities in order to allow the authorities to pursue them. We detail some of these concerns below:

7.2.4.1 In addition to the MBA assistance and the 9 February 2016 letter (both discussed in more detail above), our issues of concern with Mr Sagar also stem from the forensic analysis conducted on his computer and phone after collection in 2017 as a part of the investigation. In the course of the forensic review, we detected that Mr Sagar had installed and run on his work laptop a program called CCleaner, which is used to "clean" a computer by permanently removing unwanted files. Within days, our external counsel notified law enforcement of Mr Sagar's use of wiping software and of the explanation proffered by Mr Sagar for its use. (Mainly, he asserted it was an effort to free up space and address performance issues on his computer.) We then had experts conduct a forensic review on his computer. We have since shared our forensic findings on these matters with law enforcement authorities so that they may evaluate these matters further. We also provided an overview of these matters to the Commission.

7.2.4.2 As part of our ongoing cooperation with the Commission, we were recently provided with documents that we understand the Commission has obtained from the Regiments server. These include potentially significant documents that we did not have access to during our investigation.

7.2.4.2.1 Of particular importance, the document set includes an email dated 16 November 2015 from Mr Clive Angel ("**Mr Angel**") to Mr Sagar and Mr Wood, copying Mr Essa. We immediately took note that no McKinsey personnel besides Mr Sagar are on this email. Assuming it is authentic (we have no reason to believe it is not), the email suggests at the very least that Mr Sagar would have been aware that Mr Essa was involved in Trillian and had some connection to the project under discussion at that time. While we see that this email was sent to Mr Sagar's McKinsey email address, it was not present on McKinsey's systems for us to collect by the time of the investigation and is not among the nine million documents that form our investigative record. While Mr Sagar is the only one who can confirm exactly what happened to this email, it appears that Mr Sagar deleted it, thus making it unavailable to our review.

7.2.4.2.2 The document set also includes an email response dated 18 November 2015 from Mr Sagar to Mr Angel and Mr Essa that was sent from Mr Sagar's personal email address. Assuming it is authentic, which we have no reason to believe it is not, the email suggests that Mr Sagar chose to move his communications with Mr Essa off of McKinsey's systems and to a personal email account (which would violate McKinsey's policy that does not allow McKinsey personnel to use personal email accounts for business). McKinsey does not have access to Mr Sagar's personal email account and we are not in a position to see correspondence sent or received from this email (apart from the 2014 email from Mr Sagar to Mr Essa that came out in the Gupta leaks regarding the uranium mine valuation, which we saw when it surfaced publicly). Our external counsel brought this personal email address of Mr Sagar to the attention of law enforcement authorities over three years ago so that they would be in position to take appropriate action.

7.2.4.3 The Commission will draw its own inferences about what these documents mean in respect of State Capture, but from our perspective they reinforce longstanding concerns that Mr Sagar has been untruthful and deceptive in his dealings with us, further validating our decision to part ways with him in October 2017. Among other things, Mr Sagar maintained to us that he was unaware of Mr Essa's involvement in Trillian until the February/March 2016 time period when that association was revealed through McKinsey's due diligence process. In addition, Mr Sagar has asserted that he was transparent about his relationship with Mr Essa (which he previously told us was not connected with his McKinsey work) and that he had diarised all of his meetings with Mr Essa, which the Commission's documents suggest may not be the case.

7.2.5 **Issues Raised By Individuals at McKinsey**: We are a private firm that is not accustomed to speaking publicly about matters concerning our clients that are the subject of investigations (and, indeed, have a policy that generally commits us to not talk publicly about our clients or our work for clients). Consequently, we struggled with the right way to publicly address the concerns raised in South Africa about McKinsey in 2017. However, I want to assure the Commission and the South African public that throughout this process, individuals at McKinsey were encouraged to raise any issues that they saw related to these events—and that we took these matters very seriously. In particular, while McKinsey was conducting due diligence on Trillian and assessing the status of its relationship with Regiments during the February/March 2016 time period, individuals, including Dr Fine, came forward and advocated for the firm to stop working with Regiments and Trillian due to the results of the due diligence the firm conducted, a decision the firm ultimately took and stands by. Other individuals raised concerns about potential procurement irregularities related to the award of sole sourced contracts at Transnet. We have reported these disclosures to relevant authorities and have utilised such concerns as an opportunity to further look into these issues and improve and strengthen our policies and procedures as a direct response to the shortcomings identified.

7.3 All in all, these errors and mistakes in judgement have caused us to learn many hard lessons (and in turn to revise our policies and procedures as further elaborated on below). Among other things, as our Global Managing Partner Mr Sneader noted two years ago, "our governance processes failed," our commercial approach with Eskom "led to a fee that was too large," "we did not admit where we were wrong," and "we did not say sorry quickly enough and clearly enough." **Annexure JCM2 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018.** We should have been more vigilant about risks presented by our commitment to supplier development efforts and our work with SOEs. In hindsight, we were naive and too trusting. We should have asked more questions. We should have held our clients and consortium partners to a higher standard of due diligence, and we should have been more cautious. As we identified, we ultimately acted decisively to separate from both Regiments and Trillian in early 2016, but we should have acted with greater urgency. With the benefit of hindsight, I certainly wish we had done it sooner. As Mr Sneader said in July 2018, "We were so focused on delivering our work that we did not focus enough on the broader risks. That was wrong. We deeply regret that mistake". **Annexure JCM2 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018.**

8 McKinsey's Commitment to Strong Corporate Citizenship

8.1 For the past three years, McKinsey has felt acutely the pain and damage that this period has caused South Africa and its people. Our own staff and alumni, the vast majority of whom are South African, and our clients have also conveyed forcibly their anger and disappointment. As our Global Managing Partner Mr Sneader has made clear, "[t]he stories written about us in South Africa hurt deeply as they strike at what we value more than anything else – the trust we have built with our clients through the judgment, character, and reputation of our people. Indeed, the events of the last 12 months have meant that we have lost the confidence and trust of many South Africans". **Annexure JCM2 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018**.

8.2 McKinsey is committed to being an example of good and strong corporate citizenship and to helping play its part in moving South Africa forward, stronger. To that end, when Eskom's legal counsel acknowledged in October 2017 that McKinsey was misled by

Eskom regarding National Treasury approvals in connection with the Turnaround Programme, McKinsey announced it did not want to benefit from a contract that may be invalid. **Annexure JCM11 - McKinsey & Company Statement on Eskom, 17 October 2017**. We made this announcement and commitment of our own accord without waiting for a full investigation and a legal adjudication of rights. McKinsey initiated a process to repay the money in a legally appropriate manner. In accordance with that process, McKinsey repaid that money in July 2018. The settlement agreement provides that the return of the funds was made "[w]ithout any admission of liability or wrongdoing by McKinsey". **Annexure JCM16 - Settlement Agreement: Chapter 6/Eskom Review Proceedings, 6 July 2018**. I have attached the relevant excerpt from Mr Yeboah-Amakwah's statement, who was deeply involved in this process, here. **Annexure JCM17 - Excerpts from Yeboah-Amankwah Statement, Turnaround Programme Settlement**.

8.3 As discussed above, the Commission recently disclosed new information to us of which McKinsey was not aware. While this information does not demonstrate McKinsey was itself involved in corrupt activities, it does corroborate previous allegations that Regiments engaged in a pattern of misconduct. McKinsey has decided, in keeping with its previous commitment in October 2017, that it does not want to benefit from work that is tainted by the misconduct of others. We make this commitment even at a time when Regiments continues to contest its own role in these events and the authority of the State to seize its assets. We are committed to engaging in a process with the relevant entities to return the fees earned on projects where we worked with Regiments at Transnet (as well as the single project on which we worked with Regiments at SAA - the Working Capital Optimisation project).

8.4 We have come to this decision after careful reflection on the role we wish to play and impact we wish to make in South Africa, and our commitment to its future. The decision to repay voluntarily is notwithstanding that McKinsey delivered value to the SOEs. While some of the allegations have previously been the subject of press reports, we thought it important to review the actual evidence, whether circumstantial or direct, to make a proper determination. Our ongoing engagement with the Commission helped provide us with the additional understanding necessary to now take this step. We are able to take this decision with higher confidence now that we have the support and process to do so.

9 Changes McKinsey Has Made

9.1 We take our role as a global corporate citizen and our commitment to South Africa very seriously. Beyond the repayment of the fees we earned on the Turnaround Programme at Eskom and the commitment to repay the fees earned at Transnet and SAA on projects where we worked with Regiments, we have made broader changes to our systems and policies in the wake of these matters. Where we found gaps and weaknesses in our own policies as a result of our review, we have made changes to how we operate in South Africa and around the world. Our firm has put in significant work to ensure that we take the lessons we have learnt to heart.

9.2 Some of the measures we have undertaken, both globally and in South Africa, include:

9.2.1 South Africa-specific updates

- We have made changes to the way we will select our supplier development partners in the future. In particular, supplier development partners have to pass a rigorous pre-screening before being placed on a list of approved partners. In addition, a contract must be in place before work begins and all potential partners must undergo due diligence, regardless of whether they are highly recommended by clients.
- We have strengthened our local finance, legal, and compliance staff to help implement our new and enhanced processes.
- We have added a new regional risk committee to review any potential partnerships, which is made up of local partners who better understand the local context and requirements.
- We have conducted additional anti-corruption training for all of our people in South Africa and Africa as a whole.

9.2.2 Reform of how we serve and select clients

- I personally oversaw a global reform of how we select and serve clients. This reform has included revising our public sector policies to include a stricter and more systematic process for ensuring compliance with procurement rules and requiring further thought about fees with public sector clients such as through placing caps on any risk-based fee arrangements.
- In addition, partners are required to obtain approval to serve any new client or clients that have not been served for over two years, all public sector work must be registered with our Risk function before proposals are submitted, all sole sourced public sector work must be reviewed by our Legal department, and annual risk assessments will be conducted for state-owned clients.
- Our client selection policy calls for a more precise and systematic diligence of client institutions and individuals.
- In working with public sector organisations and SOEs, we have set a cap on our approach of "fees at risk", and require any engagement to be properly concluded with a formal statement.

9.2.3 Rebuilding of diligence capability

- We have built out our diligence capability at the firm level, under our Compliance function, to support an independent and thorough diligence of clients and third parties.

9.2.4 Additions and enhancements of personnel and policies related to anti-corruption efforts

- We have further strengthened our anti-corruption safeguards and our compliance teams including through the addition of new, experienced team members focused on anti-corruption compliance in both our Legal and Compliance functions.
- We have made enhancements to our anti-corruption policy and have incorporated anti-corruption risk-related language into a number of other policies.

9.2.5 Addition of a global hotline

- We have set up and communicated widely about a worldwide, independent hot line for anyone to report concerns or raise issues internally. This mechanism guarantees the anonymity and protection of whistle blowers.

9.2.6 Updates to our training programs

- We have updated our global training programs to reflect the lessons we learnt and additional training on the new policies and procedures globally.

9.2.7 Enhanced consequence management

- In holding our colleagues responsible for the professional standards and values that we collectively stand for, we have also raised the bar as to the standards our colleagues are expected to meet and have increased the speed we apply in reviewing professional conduct and behaviour.

9.3 While we understand that it will take continued work and vigilance, McKinsey is committed to heeding the lessons we have learnt from what has happened in South Africa and to keep improving our processes. We are also committed to continuing to support South Africa's progress. McKinsey places on record its willingness to continue to cooperate with the Commission and to assist in its efforts to promote accountability and good cooperate citizenship. We have been humbled and shocked by this experience and hope that this testimony, the lessons that we have learnt, and the measures we have taken will prove of some assistance to the Commission and other organisations.

Jean-Christophe Mieszala
21 November 2020

November 11, 2017 – Statement of David Robert Fine

STATEMENT OF DAVID ROBERT FINE

Introduction:

My name is David Robert Fine, and I am a Senior Partner at McKinsey & Company ("McKinsey") based in London.

I appreciate the opportunity to appear before you today and answer your questions. These issues are of immense importance to all of us at McKinsey, including in a very real sense the more than 250 people employed in our South Africa office. As a South African who has dedicated a large part of my career to improving the functioning of South African businesses and government so that they work better for all of the people in this country, I have felt deeply the allegations that have been made in recent months involving McKinsey and state-owned entities that I and others at McKinsey have served.

As I will go into in greater detail in a moment, I have worked with Transnet since 2005 and was the Senior Partner responsible for that relationship between 2007 and 2013. It was and is my strong belief that the extensive work McKinsey performed at Transnet over the years delivered great value and made significant contributions to Transnet's operations, and I would be grateful for the opportunity to discuss some of that with you today.

While I have not served Eskom and so am not able to discuss that relationship with the same degree of personal knowledge, I am obviously aware of the allegations made relating to our firm's contracts with Eskom. McKinsey recently released a statement that clarified the nature of our work alongside Trillian and noted, among other things, that our extensive review to date found that McKinsey never made payments directly or indirectly to secure contracts, nor did we aid others in doing so. I have not seen anything that would contradict this.

Before turning to the substance of my remarks, let me say at the outset that I am fully committed to seeing that your inquiry into these matters is thorough and complete and to cooperating fully with you throughout this process. Even as your work and the work of other governmental authorities remains ongoing, McKinsey has made clear that we are currently reviewing our own actions in this matter to ensure that we promptly identify areas in which we should improve our risk policies and practices and will make any necessary improvements without compromise or delay.

Background:

McKinsey & Company is a global management consulting firm committed to helping institutions in the private, public, and social sectors achieve lasting success. McKinsey was founded in Chicago in the 1920s and has grown, almost entirely organically, into a truly global firm. Today, we have over 30,000 employees from 122 countries who speak 136 languages. Despite that scale, we remain a privately-owned partnership, owned and governed by our partners worldwide.

For 90 years, our primary objective has been to serve as our clients' most trusted external advisor. With consultants in over 120 cities in over 60 countries, across industries and functions, we believe that we bring unparalleled expertise to clients anywhere in the world. Our focus is on forming long-lasting relationships of trust with our clients. The vast majority of our work involves repeat business for existing clients.

McKinsey has had a continuous presence in South Africa for more than 21 years. Despite significant local demand, our firm took a principled decision not to work in South Africa prior to 1994 on the belief that any activity that might have aided the Apartheid regime would have been incompatible with our values.

In late 1995, soon after South Africa held its first democratic elections, a group of five consultants established our office in Johannesburg. I first joined McKinsey and that office later that year in September 1995, which made me the very first South African consultant to work for McKinsey in South Africa. After being elected a Partner in 2002 and then Senior Partner in 2008, I was selected to lead the Johannesburg office from 2010 to 2014.

In 2014, I was offered a promotion in the form of an opportunity to lead McKinsey's Public and Social Practice in the CIS, Eastern Europe, Middle East and Africa regions. In 2016, I was further promoted to global leader of McKinsey's Public and Social Sector Practice, my current position, which required relocating from South Africa. In this current position, I advise clients in a range of industries including the public sector, banking, transport and logistics, mining, utilities, and oil and gas.

Today, McKinsey's presence in South Africa has grown so that it employs over 250 people in our South Africa office, more than 60% of whom are black South Africans. We invest heavily in our people and their development. 39 nationalities are represented among our consultants in South Africa. We have delivered over 1,000 projects in South Africa, and a further 1,400 across Africa.

As part of its work in South Africa, McKinsey has a long history of providing pro bono consulting support to organisations and projects that both develop black South African talent and give back to black South Africans. To give some examples of which I am particularly proud:

- In 2012, we established the Social Advancement Foundation (SAF), a non-profit organisation that supports disadvantaged communities by providing consulting services and financial donations in healthcare, education and welfare. McKinsey's Johannesburg office contributes 26% of its annual profits to the SAF.
- The two-year McKinsey Leadership Programme (MLP) was created as an unrivalled springboard to a high-impact career for exceptional black South Africans with strong leadership profiles and distinctive academic and professional experience. Since January 2016, 28 future young black South African leaders were part of the programme. Those who have participated have gone on to establish successful careers in leading South African organisations.
- Additionally, the McKinsey Leadership Academy (MLA) supports and trains previously disadvantaged individuals, many of whom have disabilities. In 2016, 15 learners graduated with a Higher certificate in Business Management (NQF level 5), of which two took up permanent positions within McKinsey.
- McKinsey was awarded the Top Empowered Socio-Economic Development Award in 2015 at the annual Oliver Empowerment Awards. In 2016, we received the Legends of Empowerment and Transformation award.

Having spent nearly 20 years growing this office, I have a tremendous stake in its accomplishments and the team we have built and a great deal of concern for how certain of McKinsey's actions have been portrayed. I hope to spend the balance of my statement giving an overview of some of the work we performed and to give context for the topics that I understand we will be discussing today.

McKinsey's Work for Transnet (2005-2016):

McKinsey began working for Transnet in 2005 and worked continuously for Transnet for four CEOs and over thirty senior executives until 2016. As you know, Transnet is South Africa's state-owned rail and ports company, whose primary shareholder is the Department of Public Enterprises. As stated in public figures, Transnet employs on the order of 60,000 people (as of March 2017), and its activities create or sustain some 200,000 to 300,000 jobs in the wider South African economy, making it one of the most important employers in South Africa. Additionally, the role it plays with respect to rail and port infrastructure makes it a critical actor in the country's overall economy.

All McKinsey projects with Transnet followed a typical governance process which served to ensure accountability of delivery. This included weekly progress reviews with Group Finance executives. In addition, a steering committee for each project was typically set up with relevant line executives. We also supported our clients with documentation to ensure relevant approvals were obtained from relevant board and executive committees e.g., Group capital and investment committee (CAPIC) and Board Acquisition and Disposals Committee (BADC). Finally, we provided documentation when necessary to ensure the relevant approvals were obtained from the Department of Public Enterprises and National Treasury.

2005-2011: Vulindlela Project and Other Smaller Projects

McKinsey's relationship with Transnet began when McKinsey won a tender in 2005 to work on turnaround project known as the "Vulindlela" project. Drawing on McKinsey's considerable rail and port experience, the project focused on ways to reduce Transnet's central costs, increase divisional revenue, and improve operational performance. Through our work on this project – a four-year program that involved nearly 100 South African McKinsey consultants, 94 international consultants and over 140 full-time Transnet employees – we were able to make a significant positive impact on Transnet. As confirmed by Transnet's internal (Ernst & Young), these impacts included:

- Improving Transnet's annual operating profit by R5.6b per annum
- Increasing the availability of locomotives from 83% to 87%
- Increasing the availability of wagons from 85% to 95%
- Improving throughput in Durban harbour by 36%
- Successful partnership with Letsema Consulting as our supplier development partner (more details to follow)

Between 2008 and 2011, McKinsey also began working on a series of smaller projects for Transnet, including: a Ports Regulatory Strategy, an Enterprise Performance Management project, some smaller strategies for the Commercial and Strategy Organisation, and some senior leadership workshops for several operating divisions including Transnet Port Authority and Transnet Freight Rail. But up until 2011, McKinsey did not work on so-called "capital projects" (that is, the purchase, construction, expansion or maintenance of infrastructure or other assets) for Transnet.

2012: McKinsey Support for Transnet's New "Market Demand Strategy"

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Beginning in 2012, McKinsey began undertaking new and additional types of projects for Transnet. These projects were intended to address weaknesses of Transnet that were causing reverberations for the broader economy. As you will recall, as of 2011 South Africa's economic growth had remained strong and infrastructure was seen to be essential to continued GDP growth. South Africa, however, had not fully benefitted from the commodity boom due to under-capacity in rail and port infrastructure – essentially Transnet was unable to transport South Africa's commodities to market.

Upon examination, it became clear these challenges had their origins in the fact that the pace, quality and cost effectiveness of Transnet's capital projects had declined. Up until this point, Transnet had developed and invested in capital projects only when customers first confirmed their demand. This led to delays in project delivery as customers generally prefer not to commit up front to financing large infrastructure projects.

Following a change in Government policy towards the objectives of the 'Developmental State'- and under the leadership of the new CEO at the time, Brian Molefe -- Transnet decided to embark on a new strategy (known as the "Market Demand Strategy" or "MDS") to stimulate demand by investing in infrastructure projects without confirmed orders from customers. Such a strategy requires detailed projections of freight demand based on realistic assumptions of global growth and demand.

In 2011-2012, McKinsey helped Transnet launch the Market Demand Strategy. In the years that followed, McKinsey supported Transnet on key pillars of the MDS until March 2016. Among other changes required by the strategy, McKinsey's work included: developing projections for the amount of commodities Transnet might need to transport (based on McKinsey's understanding of the global commodities markets and proprietary models); improving Transnet's capital project expenditure; and increasing Transnet's operational performance. Amongst others, the impact of our work in this period includes saving Transnet of over R100bn in capital expenditure. This was reflected directly in the annual budgets. Additional performance monitoring activities, a new pricing strategy and operational efficiency initiatives all contributed to greater volume and accountability for delivery.

The MDS also required Transnet to procure new locomotives and improve its rail capacity in other ways to meet expected demand. At the time, long-term projections for freight capacity required in South Africa were looking promising for a number of reasons. These included opportunities to export additional coal, manganese and chrome to Asia; strong growth expected in domestic freight sectors like iron ore, coal and cement; and the fact that significant number of containers then transported on South Africa's roads could be transported by rail.

Because I understand that Transnet's acquisition of locomotives in March 2014 ("the 1064 locomotive transaction") is of particular interest to you, I have included a detailed summary of that transaction as an appendix to this statement. A key point to highlight is that McKinsey ceased advising Transnet on locomotives in February 2014 and had no involvement in advising Transnet in relation to the awarding of the tender in March 2014, the selection of the suppliers, or in how the locomotive prices were determined.

Unfortunately, in 2015, several years after the MDS was developed, the economic situation in South Africa and abroad changed. Demand for commodities fell significantly due to unexpected external factors. In particular, the Chinese economy experienced an unprecedented slow-down in 2015, and because China accounts for 45-55% of steel and coal consumption, this slow-down had a substantial effect on global commodity demand, commodity prices, and ultimately on the demand for South Africa mining export that help drive demand for freight capacity. In addition, several external factors negatively impacted Transnet's performance including community unrest in the Phalaborwa channel, flash flooding due to unseasonal rains, and massive failure of the tippler at Majuba.

These changes had major implications for Transnet in that it posed significant balance-sheet risks, required the company to rapidly reduce its capital spending and improve operating profit. This meant that McKinsey's work for Transnet over this latter period focused predominantly on reducing spend on capital projects, improving volume delivery and reducing non-essential operating costs. McKinsey's last engagement with Transnet ended on 8 April 2016.

<u>McKinsey's Work with Supplier Development Partners at Transnet</u>

McKinsey's presence in South Africa is based on a commitment to supporting the development of the country and its people, including developing the skills and capabilities of the next generation of leaders. McKinsey & Company South Africa has achieved B-BBEE Level 1 contributor status under the latest Codes of Good Practice and invests 26% of its annual South African profits for the direct benefit of historically disadvantaged South Africans. Before describing our work with development partners at Transnet, it is important to make three framing points at the outset:

- First, on all the projects where we worked with Supplier-Development partners at Transnet, in line with our B-BBEE commitments, we supported the development of these organisations through working on joint or parallel teams, providing on-the-job training, formal training workshops, dedicated coaching and feedback sessions, and having joint leadership structures.

- Second, all of our Supplier-Development partners were paid by Transnet directly and not by McKinsey. This was to ensure that Transnet and not McKinsey benefited from B-BBEE supplier spend. As a prime contractor, McKinsey was expected to review the work completed by our sub-contractors and provide assurance to Transnet that the work had been adequately completed. But the payments went directly to the Supplier-Development partner.

- Third, in addition to typical Supplier Development requirements of B-BBEE, in 2011 Transnet required at least 30% of its spend with consultants to be allocated to South African Black owned companies. This was based on the Department of Public Enterprises directives related to the Preferential Procurement Policy Framework Act (5/2000).

All of the Supplier Development partnerships with which I was involved reflected a genuine commitment and effort by McKinsey to meet and exceed the B-BBEE requirements in South Africa and to do so in the spirit that these requirements were intended – to provide opportunities for historically disadvantaged South Africans to participate meaningfully in the economy. While I appreciate there are current allegations to the contrary (in particular, Bianca Goodson née Smith's testimony before this Committee), those allegations do not accord with what I observed during my more than two decades at McKinsey. In my experience, McKinsey always took our supplier development very seriously and were committed to building local black owned businesses. Bianca Goodson's testimony before this Committee, about McKinsey's approach to supplier development at Eskom, is inconsistent with my views and experiences. I have no personal knowledge of whether the statements made by Ms. Goodson, and attributed to Lorenz Jüngling (a former partner), occurred or not. However, such behaviour would be completely against our values and beliefs about Supplier Development.

McKinsey's Work with Letsema

Supplier development was a key objective for McKinsey from the very beginning of its relationship with Transnet, and a requirement for Transnet's procurement, during the Vulindlela Programme (2005-2008). At that time, McKinsey partnered with a small consulting company called Letsema Consulting. I managed the Letsema Relationship, alongside my Partner, Norbert Doerr.

Over the course of the Vulindlela Programme, McKinsey helped Letsema become a strong and vibrant company that could compete with McKinsey and conduct independent work at Transnet. The process of developing Letsema was not without its challenges (at times, McKinsey consultants needed to be reminded to be patient and in particular consultants from outside South Africa needed to be trained on the importance of supplier development) but, in my view, the challenges we faced in developing Letsema were normal for a Supplier Development partnership, where the aim is to help small, black-owned companies develop skills and capabilities they do not already possess.

McKinsey partnered with Letsema Consulting from 2005 until 2012. By 2012, Letsema's turnover had grown to a point that exceeded B-BBEE supplier development guidelines. In addition, Letsema had grown to a size whereby they were competing with McKinsey for work. While in many respects this was a success story given the goals of supplier development, it did give rise to conflict. In addition, a professional conflict issues arose in 2012 during the contract award to McKinsey (described in the appendix) when Letsema was identified as working with General Electric – a potential bidder for supplying locomotives to Transnet.

McKinsey's Decision to Partner with Regiments

From 2012 to 2016, Regiments Capital Partners ("Regiments") became our Supplier Development Partner at Transnet. It is important to stress that McKinsey did not introduce Regiments to Transnet. Rather, Regiments had been suggested to us by Transnet as a possible B-BBEE partner to consider in late 2012, based on: they were already a registered supplier for Transnet; and the positive regard for its prior work for Transnet's Treasury department (a prior engagement that Regiments highlighted in a company profile in July 2012 – see Annexure A).

In the course of deciding whether to work with Regiments in 2012, McKinsey conducted a basic level of due diligence that included the following:

- I personally reviewed documentation provided by Regiments on their work for a number of SOCs and Public Sector institutions in South Africa, including Transnet (for whom they were already an approved supplier).
- I personally reviewed the resumes of the owners, which I thought were impressive (Litha Nyhonyha was from at Ernst & Young and had established Thebe Investment Holdings, Niven Pillay had two degrees from Princeton, and Eric Wood had a Masters of Management from WITS cum laude).

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- I reached out to personal contacts in the business world about Regiments and received positive feedback about both Litha Nyhonyha and Eric Wood. In addition to this feedback, we took into account that Anoj Singh, then Transnet's CFO, had told us that Regiments' work at Transnet's Treasury Department had been well regarded.

Based on an internet search I conducted, I came across an article in which Regiments was discussed as having profited from a contentious deal with the City of Johannesburg. McKinsey raised this issue directly with Regiments, and we were told that Regiments' work had been conducted on an at-risk basis and that the City was contesting their fees.

I was the Senior Partner responsible for the Transnet relationship at the time we engaged Regiments, and I am not aware of any requirement -- stated or unstated -- for McKinsey to partner with Regiments in order to work at Transnet.

<u>McKinsey's Work with Regiments</u>

McKinsey first worked with Regiments in January 2013 on a project at Transnet to support the company in implementing the MDS strategy discussed above. Vikas Sagar led the original negotiation with Regiments and continued to be the primary point of contact between Regiments and McKinsey. Over the years of our work with Regiments, we developed a constructive working relationship, partnering on various projects. We often worked in integrated teams and held working sessions to jointly develop the solution for the client.

During this time period (2013 to early 2014) most projects were related to capital optimisation (in other words, helping Transnet ensure effectiveness and cost-effectiveness of its infrastructure spending). As with Letsema, the beginning of the relationship with Regiments was challenging and the McKinsey teams were initially unhappy with Regiment's performance and the day-to-day leadership. But as with Letsema, we took steps to improve our working relationship, including engaging external facilitators to work with the joint leadership teams to resolve our differences.

In my experience, Regiments added value to our engagements including by bringing capabilities in financial modelling and funding analysis, a core competency from their investment banking experience that was critical for a number of initiatives. Regiments also added consultants who performed well, including through their subsidiary Burlington Consultants.

<u>Ongoing Challenges and the End of McKinsey's Relationship with Regiments</u>

In addition to the diligence performed at the outset, McKinsey took steps over the course of the relationship to ensure that its work with Regiments accorded with our policies and standards.

- In July 2014, allegations were published in the Mail & Guardian (http://mg.co.za/article/2014-07-24-the-house-of-graft-and-lies) about alleged improper conduct by Niven Pillay (who had been our main Regiments contact up until that point). In response, McKinsey wrote to Regiments asking for Mr. Pillay to be separated from all projects with McKinsey and for written that Regiments is in compliance with regulations including the South Africa Prevention and Combatting of Corrupt Activities Act, US FCPA, and UK

Bribery Act. McKinsey ultimately decided to continue the relationship only after we received confirmation from Regiments on 28 August 2014 that: (1) "the allegations in the press are baseless," (2) Regiments had policies for "the promotion of honest and ethical behavior" and a "corporate governance framework specifically address[ing] issues such as bribery, corruption, conflict of interest and disclosure of interest"; and (3) Mr. Pillay "step down from the Executive Committee of the Consortium" and Eric Wood would "assume the lead role on the part of Regiments." Moreover, I consulted with the Transnet CFO and CPO and was advised by Anoj Singh that Transnet was also seeking confirmation from Regiments of its compliance with relevant anti-corruption regulations. In the wake of these discussions, Mr. Wood became our principal contact, and the relationship with Regiments and the quality of its work improved for a period of time (Annexure B).

- In the middle of 2015, there was rising concern about the Regiments working arrangements within McKinsey. The quality of Regiments employees being deployed declined, and there was a concern that they could not keep up with commitments. In one case the delivery was so poor that McKinsey needed to staff one of Regiments' projects with McKinsey personnel and claim payment from them. McKinsey Partners serving Transnet raised these issues regularly with Mr. Wood and frustration with their performance built up towards the end of 2015.

- In late 2015, at a meeting of the Transnet Client Service Team, the McKinsey leadership team agreed to look into other partnerships. McKinsey partners had raised additional questions about Regiments, including about: their beneficial ownership, their values, their impact orientation, their B-BBEE transformation credentials, given that their senior consultants and Mr. Wood did not reflect South African demographics. Around the same time, we heard from Mr. Sagar that Regiments had proposed splitting in two: Regiments Capital, with its financial advisory business, and Trillian, that would grow its management consultancy arm. My partners and I saw this as a potential solution to the capability concerns we had raised.

Nevertheless, the concerns only grew. In February 2016, our concerns were heightened after an article was published by London-based outlet Africa Confidential that alleged that Mohammed Bobat (a Regiments Director appointed as an advisor to the Minister of Finance in December 2015) was connected to the Gupta Family. On 15 February, McKinsey sought clarification of Mr Bobat's relationship with Regiments and Trillian and their relationship with politically exposed persons referenced in the article (Annexure E). While McKinsey received a letter from Bianca Goodson née Smith on 26 February (Annexure F) claiming that Mr Bobat had ceased to be employed by Regiments in December 2015, I noted at the time that Mr Bobat's LinkedIn profile described him as a Regiments Director.

On 23 February 2016, Vikas Sagar and I wrote to Transnet (Annexure C) confirming that we would end our relationship with Regiments, for reasons that included: questions about their performance, the rate of their transformation, and recurring issues raised in the media (which they declined to address with us). The letter was also explicit that we would not work with Trillian unless they pass a detailed due diligence. Within days, I initiated a review of our work at Transnet that involved external legal advisors, a process that was later handed over to the Africa Office Leadership and McKinsey's General Counsel. On 17 March 2016, Vikas Sagar and I met with Litha Nyhonyha and Niven Pillay and mutually agree to end our relationship with Regiments. This was confirmed in writing on 18 March 2016.

The above developments reflect that my McKinsey colleagues and I were put in the in position of having to respond in real time to new information that was coming to light about a firm with which we had worked for several years. In assessing the speed of our actions, it is important to separate what is known now from what was known then. In particular, certain claims currently being raised in the media relate to things that I simply had no knowledge of at the time:

- First, I am aware of recent media reports alleging that Regiments paid a portion of its fees received through work with McKinsey to companies including Albatime, Forsure and Fortime (companies the journalists suggest are linked to the Gupta family). At no time, however, was I aware of any such payments.

- Second, I am also aware from media reports that Mr Pillay has said "[Moodley's company] Albatime … took us into a relationship with McKinsey and got paid a commission for that ..." As far as I am aware, this is categorically incorrect. I note that Mr. Moodley himself is quoted in the same article confirming that "I don't know McKinsey, …" (http://amabhungane.co.za/article/2017-10-23-the-mckinsey-dossier-part-5-how-transnet-cash-stuffed-gupta-letterboxes)
- Third, during the preparation of this submission, I have recently been made aware of two 2014 responses to Transnet RFPs for a coal project and to support Transnet's New Multi-Product Pipeline project (NMPP) that include references to Albatime, Homix and Accompany Advisory as companies Regiments intended to sub-contract. It appears these sections of our proposals were copied and pasted from Regiments Capital. I had no knowledge of these documents at the time but can confirm that only Accompany Advisory were involved in any project with which McKinsey was involved.

<u>McKinsey's Due Diligence of Trillian</u>

McKinsey has previously explained in a public statement that although McKinsey worked alongside Trillian for a few months at Eskom, we never had a contract with Trillian. The statement further explained that Trillian failed our due diligence and we terminated discussions with them about a supplier development partnership in March 2016. We now believe that Trillian withheld information from us about its connections to a Gupta family associate.

As noted, I have not served Eskom and so cannot speak from personal knowledge of many of the events relevant to these matters. It should also be noted that at that time, unlike now, State Owned Entities were not considered McKinsey public sector clients and did not fall under Public-Sector Risk policies. Eskom and related projects were not within my formal mandate to review.

In early 2016 I became aware of a substantial working relationship between McKinsey and Trillian. When I enquired about Trillian with external contacts, they raised significant concerns. During a February 2016 Partner meeting, I and other McKinsey partners raised serious concerns about Trillian's B-BBEE status and their ultimate beneficial ownership. Consequently, the South African office initiated a due diligence of Trillian with an external party. I therefore engaged in McKinsey's due diligence process with respect to Trillian given my strong concerns about Trillian.

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McKinsey wrote to Trillian several times during February and March 2016, requesting details of Trillian's corporate structure and ultimate beneficial ownership. Trillian failed to provide this information. In addition, Mr. Sagar and I met with Eric Wood on 5 March 2016 to discuss the split of Trillian from Regiments and asked again who the shareholders/ board members of Trillian would be and received concerning answers. On 14 March 2016, I participated in a McKinsey Global Risk Committee discussion on the proposed Supplier-Development partnership with Trillian at Eskom as the Leader of the Public Sector in the EEMA region (the Commonwealth of Independent States (CIS), Eastern Europe, Middle East, Turkey, Pakistan and Africa). The committee reviewed the results of our due diligence process and decided that we should terminate discussions with Trillian. The next day, on 15 March 2016, McKinsey wrote to Mr. Wood informing him of this decision. McKinsey also wrote to Eskom on 30 March 2016 to inform Mr. Singh of this decision (Annexure G).

Lessons learned and personal reflections

These events have led to no shortage of self-reflection from McKinsey as a firm and for me personally. McKinsey holds itself to a higher standard than strict legalities, and as a firm we take great pride in the contributions we have made to the government and people of South Africa. It has been immensely difficult to be associated with companies and people who are now widely believed to be involved in State Capture.

In the interest of being as forthcoming as possible with the Committee, there a few points that I would like to emphasise before closing.

First, while with the benefit of hindsight I certainly wish we would have ended our association with Trillian sooner, I am heartened that our due diligence process prevented what could have been an even more serious matter for the firm. The decision to first consider working with Trillian and our subsequent decision to terminate our relationship with Trillian was the subject of a healthy and sometimes heated debate within our firm, especially in the South African office. Many partners believed very strongly that we should not associate McKinsey with Trillian and that by so doing we would risk bringing McKinsey into disrepute. There were others, however, who believed that the paramount consideration was that we not abandon Eskom, an important South African State-Owned Enterprise, in its hour of need because of suspicions and allegations that were unproven. Additionally, some colleagues were concerned about the size of the contract for McKinsey. There was genuinely felt discomfort and debate. In the end, McKinsey's governance processes took the decision to end our association with Trillian. That is a positive thing, but my view now is that we should have put clearer guidelines in place for the Partners managing the work at Eskom to ensure that we avoided the association risk while deliberations were happening.

Second, while our investigation found no evidence of illegality, McKinsey has previously acknowledged -- and I wholeheartedly agree -- we should have done some things differently.

In particular, we were not careful enough with whom we associated with. Had we known that Trillian was owned by Mr. Essa (who is widely believed to be a business associate of the Gupta family), which is now publicly reported, we would not have worked with them. It is my view now with the benefit of hindsight that Trillian deliberately withheld information about their ultimate beneficial ownership from McKinsey (Annexure Eric Wood email 14 March 2016). While we terminated the discussions with Trillian, I regret that we did not move even more quickly when media reported potential links between Trillian and the Gupta family in 2016. We should not have worked alongside Trillian, even for a few months, before completing our due diligence and without a contract. While our risk process ultimately worked, we should have completed it sooner.

Among other lessons learned from these events:

1. Some of our processes were inadequate. I and McKinsey's South African office leadership were not aware of the letter sent to Eskom on 9 February 2016. This letter inaccurately characterised our relationship with Trillian and was a mistake. My Partners should not have prepared such a letter authorising, even conditionally, payment for an entity with which we did not have a contract. Eskom has confirmed it did not rely on this letter to make any payment to Trillian.
2. We did not communicate appropriately to Advocate Budlender, a deeply respected advocate in South Africa. However, Advocate Budlender was acting on behalf of Trillian and requested confidential information about McKinsey's clients. This was of great concern internally in McKinsey given our legal agreements with our clients. While we terminated the discussions with Trillian, I regret that we did not proactively investigate in detail in 2016 when media reported potential links between Trillian and the Gupta family.
3. I was not party to negotiations with Eskom on the "at-risk" engagement on the Turnaround programme. It is public knowledge that McKinsey worked on the turnaround programme at its own risk. McKinsey invested substantial resources (at its peak 108 consultants plus an additional 16 specialists/experts and 13 members of the leadership team from around the world) with no guarantee of any payment by Eskom. In recent discussions with Partner colleagues who were involved in the negotiation process, I understand it was never the intention for McKinsey to profit excessively from the eleven months of work at Eskom. However, I wish to make my personal points of view clear:
    a. McKinsey provided value for money for Eskom on the Turnaround Programme. Based on my discussions with my colleagues I understand this was independently verified by Oliver Wyman which is consistent with an McKinsey's review.
    b. However, in my view, we should have capped our fee structure and the total fees in absolute terms. While we do big programmes around the world, in my view, it was unlikely that Eskom had the management capacity and depth to absorb this much change in a sustainable way. These are of course judgements of mine that may differ with my colleagues.
    c. Even though the fees were an agreed percentage of savings and the benefits to Eskom were large, uncapped fees would be perceived negatively. We should have been more sensitive to the country's and Eskom's economic situation.

    McKinsey's Public Sector practice is now reflecting deeply how we structure these engagements in future in terms of contractual terms and conditions.
4. It was Eskom's responsibility to secure National Treasury approval for the Turnaround Programme. It turns out Eskom failed to do this. We should have insisted that Eskom confirm in writing Treasury's approval for the project and we should not have begun the project without that written confirmation.
5. In this specific case, the Turnaround Programme used metrics agreed with Eskom to trigger performance-related payments to McKinsey. I understand these were negotiated at great length between McKinsey and Eskom and the implementation levels used were broadly in line with our standard approach for at-risk projects globally. I also understand that some colleagues

of mine were concerned about whether we would be paid. In hindsight, we are exploring ideas like very rigorous stage-gating for such risk-based arrangements to make sure that the organisation can absorb our work and have comfort that the benefits are sustainable. In the case of Eskom, this would have given the South African public greater comfort that McKinsey had delivered sustainable impact through our work.

6. Recently the Shareholders Council of McKinsey met to review our risk policies related to SOE's. We resolved to subject SOE's to the Public Sector risk process in circumstances where SOE's are subject to public procurement laws. This means that today, Eskom would be subjected to McKinsey Public Sector risk review.

Lastly, I want to highlight one thing we are doing to move forward from these events by clarifying McKinsey's position on repaying the fees earned on the Turnaround Programme. Eskom has said that they acted without the required treasury approval and they contend that the contract was therefore invalid. McKinsey does not want to benefit from an invalid contract.

Therefore, McKinsey's Partners have agreed that the money paid by Eskom to us should be returned to South Africa. We avail ourselves to have any discussions with the appropriate authority, inclusive of Eskom and National Treasury, to find the appropriate mechanism to effect this commitment. I fully support McKinsey's decision to set aside the full amount with the intention to pay all of it back to South Africa.

Closing

Thank you for the work you are doing. I want to reiterate the importance of these matters and the seriousness with which they are being taken by McKinsey. I was born and raised in this country, my family still lives here, and I cannot overstate the significance of the inquiry in which you are engaged to the people of South Africa. Without belaboring the point, we all have a stake in understanding what happened and learning from these experiences. I look forward to answering your questions and hope that I am able to assist you in your inquiry.

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APPENDIX: SUMMARY OF 1064 LOCOMOTIVE TRANSACTION

1. A summary of McKinsey's work on this transaction is intended for clarity.
2. On 15 January 2013, a consortium led by McKinsey won a tender to provide advisory services to Transnet on their planned locomotives acquisition. The RFP was GSM/12/05/0447. The consortium had submitted the tender in May 2012.
3. The Consortium initially consisted of five parties: McKinsey (prime contractor), Letsema Consulting (Supplier Development Partner, with experience at Transnet in Locomotive component procurement), Utho/Nedbank (deal structure and funding), Advanced Railway Technologies (ART provided technical assessment of locomotive fleet and requirements). Transnet asked McKinsey to use Webber Wentzel as legal advisors.
4. The Letter of Intent from Transnet indicated that the total value of this tender would be R35.2 million, excluding VAT.
5. There were four primary workstreams, which were intended to start in March 2013 and conclude in October 2013. The workstreams were:
    1) McKinsey & Company would be responsible for validating the business case, to include projections for the volume of commodities Transnet could transport, validate that the procurement of 1064 locomotives was viable financially (Transnet had projected 1064 would be required), and conduct scenario planning to inform contracting.
    2) Letsema would be responsible for programme Management, to monitor overall progress against timelines and ensure proper governance.
    3) Utho/Nedbank, Webber Wentzel, and McKinsey would provide transaction advisory services and procurement execution, to minimise financial risk for Transnet and ensure suppliers deliver on their commitments.
    4) ART and McKinsey would provide technical evaluation and optimisation by assessing the lifecycle costs of suppliers short-listed by Transnet.
6. However, in 2012, Transnet raised a conflict issue about Letsema, who were serving General Electric Locomotives, Transnet felt this was a conflict of interest. In May 2013, shortly after awarding the tender to the consortium, Nedbank indicated it that it wanted to participate in the financing of the transaction and therefore no longer wanted to participate in the advisory part of the engagement.
7. Transnet suggested that Regiments Capital had the advisory skills of Nedbank, the programme management experience of Letsema (through their relationship with Burlington Consultants), and a strong track record at Transnet, should join the consortium in their place.
8. Mr Sagar raised this suggestion with the Transnet client-service team at McKinsey. After a discussion amongst our partners and some due-diligence (Annexure A), we decided to accept this suggestion as we thought that Regiments would bring the required skills and knew how to work with the Transnet. At no time did I feel compelled to use Regiments Capital
9. The work initially proceeded according to the agreed timelines.

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10. From early 2013 to the end of April 2013, McKinsey facilitated the development of the business case, to determine whether the acquisition of 1064 locomotives was financially viable. This was done by analysing commodity trends across the freight system and the corresponding locomotive requirements. The approach optimised delivery flexibility so that supply timing could reflect changes in the volumes of commodities Transnet transported.

11. The recommendations McKinsey made in the business case were explicit and signed off by Transnet's Executive Committee ('Exco') and Board in the first half of 2013, namely:

    a. Without locomotive procurement, the shortfall between locomotive capacity and market demand would rise to almost 112 million tons by 2021/2022, i.e. a 59% shortfall in capacity.

    b. The projections of the likely future volumes of commodities Transnet could transport were the most sensitive variable for the business case. Since the global financial crisis in 2008, McKinsey's standard practice is to advise our clients to ensure their capital investment plans are able to scale back or accelerate to better match volume movements. We included this advice to Transnet on its capital expenditure programme, including the 1064 Locomotive Transaction. Therefore, the procurement process proposed included flexibility in the contracts so that the number of locomotives could be adjusted downwards or upwards if necessary.

    c. Local supplier content was important and possible. Our calculations showed that 50% local supplier content would probably add only 2% to the price and create about R68 billion in economic impact for South Africa.

    d. The likely capital expenditure ('Capex') required for the 1064 locomotives would be R38.6 billion over a 7-year period, including the costs of hedging in the business case on page 38 of Annexure D, and South African and US inflation included in the business case of US 2.2.% per annum, SA 5.2% per annum. Locomotive cost estimates were provided by Transnet freight Rail based on recent locomotive acquisitions combined with expert input from Advanced Railway Technologies. They estimated each diesel locomotive would cost around R25 million and each electric locomotive, around R34 million).

    e. Using likely efficiency improvements and projecting past volume performance at Transnet, we recommended that Transnet might only require the 1064 locomotives beyond the business case timeframe of seven years. This was because Transnet would still require to procure between 60-80 locomotives per annum to maintain its locomotive fleet.

    f. Detailed recommendations on procurement security and governance, given the size of the transaction. This included a secure data room with controlled access

    g. McKinsey did not propose any locomotive costs.

12. After completing the validation of the business case in April 2013, McKinsey tried to start up our team to prepare for the procurement execution phase of the project. However, Transnet did not provide McKinsey with access to Transnet Freight Rail's ('TFR') data, which was essential for McKinsey to support Transnet on this element of the project. Mr Singh committed over the course of the second half of 2013to resolve the matter with TFR CEO Siyabonga Gama, but remained unsuccessful.

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13. Transnet also experienced serious delays in the second half of 2013 in terms of the work it had committed to perform as part of this project and only completed their work by the end of 2013. In particular:
    1) The Transnet RFP for potential locomotive suppliers was delayed
    2) Transnet did not secure the necessary internal approvals within agreed timelines
    3) DPE and National Treasury approvals were not submitted in time
14. McKinsey was not involved in the Technical, Financial or B-BBEE assessment of bidders. McKinsey played no role in identifying, scoring/assessing or awarding bidders.
15. As a result of these delays, and because McKinsey was not given access to essential data, we were unable to progress to the next step of the project – procurement execution.
16. In January 2014, Transnet told us it wanted to complete the locomotive procurement process more rapidly than originally intended so revised the scope of work for the project. McKinsey expressed concern about the revised scope and timing. The delays and proposed shortened procurement timing meant that there were few negotiation levers left, given the time available to Transnet. We therefore felt that our value-add would be very limited.
17. McKinsey took the following actions:
    a. 31 January 2014 - we wrote to Anoj Singh, describing what we would require in order to complete the work in the revised timing. The note set out the specific information and access to key personnel we would require in order to meet the deadlines.
    b. 4 February 2014 - after one week of work, a pattern of delays and lack of response thereto, we wrote to Transnet to withdraw from the project. (Annexure D)
18. On 5 February 2014 it was agreed in a meeting between Mr Singh and Mr Sagar that McKinsey would transfer the remaining contract to Regiments. According to Mr Singh, Regiments was required to provide the financial advice required as per the 'transaction advisory' workstream in order to complete the locomotive procurement.
19. After McKinsey withdrew from the project, I am aware that Transnet signed a three-year locomotive acquisition contracts with four manufacturers, for 1064 locomotives at a total cost of around R54 billion (including contingencies) on 17 March 2014, which compares with the original R38.6 billion. When McKinsey asked Transnet about these changes, Mr. Singh said that Transnet had done new calculations based on funding costs, exchange rates and inflation and had come to the conclusion that it was better to secure the deal they did.
20. McKinsey had no involvement in advising Transnet in relation to the awarding of this tender nor on how the locomotive prices were determined after 4 February 2014
21. McKinsey had no involvement in the currency hedging and interest rate derivatives, which Regiments Capital advised Transnet to purchase and which are discussed in (the OCCRP article of date 03 Nov 2017 – https://www.occrp.org/en/28-ccwatch/cc-watch-indepth/7215-guptas-nedbank-skillfully-extract-money-from-south-african-state-firm)
22. McKinsey & Company was paid R8.4 million (excluding VAT) for its work on the Locomotive Business Case.

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23. I have no knowledge of how the cost of the Locomotives Advisory Contract (RFP GSM/12/05/0447) increased to over R200 million as reported in the media (http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk).

24. As mentioned above, projections of the commodity volumes Transnet would transport decreased in 2015. As a result, in 2016, McKinsey supported Transnet for six weeks to identify options for how Transnet might engage with the locomotives manufacturers so that the timing of locomotive deliveries was better aligned with the new projections and financial constraints.

25. McKinsey provided these options to Transnet but were not part of any of the discussions with the OEM's and any subsequent agreements.

Speech by Kevin Sneader, global managing partner of McKinsey & Company, at Gordon Institute of Business Science Seminar, 9 July 2018

Let me begin with one word: Sorry.

It is the theme of this speech. It is the message I hope you take away.

I am very sorry personally and on behalf of McKinsey & Company for the fact that we have had anything to do with any of the issues surrounding State Capture.

State Capture has had a horrible effect on South Africa, its economy and its people.

As McKinsey's new global managing partner, I am here to talk frankly and publicly about how we handled this dreadful situation, what we got wrong and what we have learnt.

Thank you for being willing to come and listen this morning, I am grateful to for you doing so early on a Monday.

The stories written about us in South Africa hurt deeply as they strike at what we value more than anything else – the trust we have built with our clients through the judgment, character, and reputation of our people.

Indeed, the events of the last 12 months have meant that we have lost the confidence and trust of many South Africans, including many of you in the audience today.

I owe it to you, our clients and to all South Africans to confront our mistakes. To hold ourselves accountable. And to answer as best as I can for what went so badly wrong.

Let me start with a principle, a value, that we are taught to uphold the day we join McKinsey. Adherence to the 'highest professional standards'.

This means putting our clients' interests first, offering the best advice and having strong ethical values.

Day-in and day-out, our service to clients is based on this principle and on the resulting trust in our advice and support for our clients' most important problems.

I grew up in a Firm that sets out to safeguard that trust and independence, even when it meant telling clients things they do not want to hear.

Even if it meant walking away, rather than working in a manner incompatible with our values. That has been our calling card throughout our 92-year history. Yet that just did not happen here.

Let me start with the mistakes we made:

1. Our governance processes failed.
2. Our commercial approach led to a fee that was too large.
3. We did not admit where we were wrong. And worse, we did not say sorry quickly enough and clearly enough.

Our governance processes failed.

We are proud of our impact in South Africa, and our role supporting the localization of the economy through partnerships with smaller black-owned companies in keeping with the country's empowerment policies.

However, we now know there were issues with Trillian, and questions about Regiments, regarding State Capture.

Our involvement stemmed from two different mistakes.

First, when we started working with Regiments we did a quick, but insufficiently robust, due diligence.

It was inadequate. Second, with Trillian, we did a robust due diligence.

But it should have been done earlier. Some of our people had raised concerns about Trillian. The due diligence should have been completed before any work started.

We were so focused on delivering our work that we did not focus enough on the broader risks. That was wrong. We deeply regret that mistake.

This meant:

- We did not recognise soon enough how our focus on making a difference at Eskom, and our commitment towards supplier development partners, could be abused. We should have.
- We did not recognise soon enough that the governance structures of Eskom, and possibly Transnet, were compromised and some managers were not

working in good faith. We should have.

- In November 2015, before the project began, Regiments explained its consulting unit was to become Trillian. Some on our client team took Mr. Wood at his word that credible and respected black owners committed to supplier development aims were lined up. We should not have accepted this.
- Then, as we wound down at Eskom in mid-2016, our client team continued to interact with Trillian at Eskom even after they had failed our due diligence and no contract existed between McKinsey and Trillian. They should not have.
- Finally, our client team relied too much on their relationships at Eskom. They took Eskom's Board approval, Eskom's appointment letter and Eskom management's word at face value. They should not have done so.

My view is the attitude within our team was not right. They were not attentive enough to the fact that Trillian was a new entity or to the scale of the challenges facing Eskom.

Crucial administrative steps for our work at Eskom were also not followed correctly and our record keeping was inadequate.

There were additional errors of process that impacted our ability to make the right judgements at the right time.

Yes, the State Capture connections were hidden to us, the authorities and the public – only coming into full view in the middle of 2016 – we should have questioned Trillian with greater scepticism and greater urgency.

Our professional investigators – who conducted an extensive check on Trillian – did not uncover definitive evidence, but they did raise sufficient concerns for us to decide that Trillian had failed the due diligence. This stopped us moving forward with a potential partnership in March 2016.

So ultimately, our risk controls did work.

But, we should have done things correctly from the start, including establishing clear parameters for McKinsey partners managing the work at Eskom while our deliberations on Trillian were underway.

This all amounts to an unacceptable breakdown in our governance processes.

It should not have happened.

Our commercial approach led to a fee that was too large.

A large part of our global work entails supporting clients to deliver major turnarounds.

Performance based fees are far from unusual in management consulting.

They have benefits for both sides.

We are compensated based on the success of our work.

In other words, if the client does not achieve a saving or improvement it does not pay.

I could explain how the contract was negotiated, at length over 28 days using subject experts on both sides. I could say that, fully committed, we had more than 130 people on the project.

I could say we helped stop load shedding, did operational improvements, slashed costly diesel bills and put more Eskom plants online. I know all that rings hollow given Eskom was on a financial cliff edge.

Eskom's situation improved, but we hadn't come close to completing our work when it was cut short – less than a quarter of the way in.

We should have realised that sustainable long-term change in Eskom's performance would likely fail to materialise.

The fee was weighted towards recovering our investment rather than being in line with Eskom's situation. In that context the fee was too large.

Our values say, "put client interests ahead of the Firm's." We did not meet that standard. That is not how we treat any of our clients. It is at odds with the professionalism that has guided our firm all these years. This should not have happened.

We did not admit where we were wrong or say sorry.

It has taken us too long to understand what happened.

Events were complicated, facts took time to assemble, and we wanted to be accurate in our conclusions.

I can see, looking back, that we did not communicate well enough how seriously we are taking this, or how sorry we are for our involvement.

We came across as arrogant or unaccountable.

We were unduly reassured by having terminated our discussions with Trillian.

We failed to address legitimate questions.

We were not appropriately engaged or responsive with Advocate Budlender. We did not know about the letter he uncovered. It was not our intention to come across like that, but we did. We apologised to Advocate Budlender. We apologise again. And I am personally very sorry.

We did not deal with this in a frank enough way when it came to civic society, the press, academia, the public, our clients and our alumni. We did not fully appreciate the significance of what was happening.

We were too focused on ourselves and our legal obligations. To be brutally honest – we were too distant to understand the growing anger in South Africa. We understand now.

We welcome everything being done by campaigners, the press, public leaders and authorities—many of you are in this room today—to pursue justice and uncover the truth of State Capture.

The trust of our clients and the public in South Africa is now, understandably, very low. These mistakes should not have happened. On behalf of McKinsey & Company I sincerely apologise to the people of South Africa for our mistakes. We are deeply sorry. I am really sorry.

Let me now turn to how we are addressing the mistakes we made so that they do not happen again. I do recall feeling very proud of our new office in 1995.

I was excited that McKinsey could contribute to South Africa's future, after a principled decision not be here until Apartheid ended. Today, 23 years on, we have delivered over 1,000 projects.

Our economic prospectus for Africa, *'Lions on the Move'*, underlines the potential of this continent and its young population.

Our *'Big-5'* report sees big opportunities for South Africa's economic growth and we tell investors about the opportunities.

In recent months since I was elected to my current role, I have asked many South Africans for their views as to what we should do.

Their advice was, *'You need to fix things, and then be part of the solution.'*

As you can imagine, we have thought hard about how to put things right.

While we may do more later, I welcome suggestions on that front. We have identified five crucial actions that we will undertake now.

First, we acknowledge our mistakes.

I hope you feel that I have been open about our mistakes.

We have examined all the evidence we could find about our work for Eskom.

Nine million emails; hundreds of thousands of documents including telephone logs, personal emails, financial records. And we conducted over eighty interviews.

The facts are:

We found no evidence our firm engaged in corrupt activity. Let me repeat this as it is important. We found no evidence our firm engaged in corrupt activity.

Since we first published those findings last October we have kept our internal inquiry going to ensure that no stone was left unturned.

This enquiry has made clear three things.

First, McKinsey never made any payments directly or indirectly to secure any contracts, nor has it aided others in doing so.

Second, we did not give Eskom authorisation to pay Trillian. Eskom has acknowledged that when payments were made they were well aware of our decision not to partner with Trillian.

Third, the suggestion we got paid for no work is simply not accurate. If anything, our desire to deliver meant that we failed to appreciate the broader risks.

I know questions about Regiments' actions at Transnet also exist.

Like Transnet's purchase of 1,064 locomotives, assisted by Regiments in 2014.

Our investigation verifies what we told Parliament—McKinsey withdrew from that work before the tender was awarded.

We did not help determine the locomotive prices. We did not help select the winning supplier. And, we did not work on the transaction advisory service.

When Regiments did work with us we closely monitored their output and performance.

Yes, we should have conducted a more thorough and professional due diligence of Regiments in 2012.

And yes, there were times in 2014/15 when our team sought and received the written and spoken word of Regiment's executives around compliance with anti-corruption laws.

We assumed those assurances were truthful.

The exact role of Regiments at Transnet is still unclear to us and we hope it is fully examined by the authorities.

Second, we have returned to Eskom the fee for our work on the Turnaround Programme.

This is something we committed to months ago when we found out Eskom had not followed the correct procedures for approving the contract.

This was a priority for us. We sought many times to repay—it proved less than easy. Late last week we signed an agreement. The change in leadership at Eskom and the engagement of the AFU have been important. I am grateful to them.

I can tell you that the money will be in Eskom's account today. As a firm, we have met our commitment voluntarily. It was the right thing to do.

Third, we have disciplined colleagues that have done wrong. Where we have been able to act on our investigation we have. We have dealt with the individuals who violated our professional standards.

One partner left the Firm, during a disciplinary appeal. Another partner was demoted along with other significant penalties.

We also found an instance where research assistance was provided that had nothing to do with our client service role. That is unacceptable to me.

I really wish that I could say more, but the terms of all those actions prevent me from doing so. I can say illegality or unethical behaviour, in any guise, has no home in McKinsey.

I welcome everything that has been done by public leaders and authorities to piece together and halt State Capture. We will continue to co-operate with all relevant authorities or investigations.

Should the Portfolio Committee on Public Enterprises' report contain any lessons or actions for us, we will act, and act with speed. If the Honourable Judge Zondo asks us before his Commission we will be willing. If he finds fault with any of our people we will address those faults.

We can only examine the facts we have access to. I encourage anyone with any new information or evidence to come to us – we will pursue it fully. If new failings should come out of any external processes we will act on them decisively and promptly.

Fourth, we have upgraded our internal processes

To prevent mistakes with our supplier development partners:

- We have revamped how we pick them. They must now pass a rigorous pre-screening to go onto a vetted list of approved partners.
- We have set up a new local risk committee so that assessments are made by partners who understand the local context.
- There will be no way for supplier development partners to start work without contracts.
- We will not accept recommendations solely on a client's say so. We will always check.
- We have replaced and upgraded our South African office's finance, legal, and compliance staff.

Globally we have undertaken a firm-wide policy review, to identify and close process gaps where we serve public sector and State-Owned Company clients and where we work with external partners.

As a result:

- We have strengthened our global compliance activities.
- Partners must now check proposals to serve all new clients, or clients we have not served for over 2 years, with Firm leaders.
- Partners must seek approval of new development partners from Firm leaders.
- All public-sector work must be registered with our Risk team before proposals are submitted.
- Annual risk assessments will be conducted for state-owned company clients.

- Our Legal department must review all public sector and state-owned company sole sourced work.

Fifth, we hope to contribute to the future of the country.

If we can find some way to be of value to South Africa we stand ready to assist.

We are willing to commit resources on a no cost basis to the country's priorities such as job creation, economic growth and attracting inward investment.

One area where we have already committed our expertise in other countries around the world is to building the skills of thousands of unemployed young people though our Generation programme.

All that said, we do not presume to know how we can help. We humbly ask that you help us understand how and where we can be of good service to South Africa.

As I said at the beginning, we owe the people of South Africa, civic society, our clients, our alumni and our colleagues an apology.

This situation should never have happened. The fact that it did, is a source of huge regret. With that in mind, let me repeat: we are deeply sorry as a Firm and I am truly sorry as its leader. More than this, we are committed to learning the lessons that will ensure it does not happen again.

Indeed, I hope you will allow us to earn back the trust we have lost and in doing so, regain our ability to contribute to the future development of South Africa.

Thank you for listening. And let me end as I began with one word: Sorry.

JCM03

McKinsey&Company

10 January 2019

Solly Tshitangano
National Treasury
Republic of South Africa
Private Bag X115, Pretoria 0001
10 January 2019

Dear Mr. Tshitangano:

I serve as the leader of McKinsey and Company's EEMA (Eastern Europe, Middle East and Africa) region. I moved to Johannesburg in April 2018, as part of our efforts to strengthen our leadership team serving South Africa.

As per your request, I am enclosing here a preliminary submission from Jean Molino, McKinsey's Global General Counsel, responding to the National Treasury forensic report that was released publicly on 16 November 2018.

McKinsey continues to fully support the Government's efforts to pursue justice regarding state capture. Ever since allegations were first raised relating to our work with State-Owned Enterprises ("SOE") in South Africa, we have made clear our commitment to cooperating with investigators—including the investigators who worked on behalf of National Treasury in generating this report. We also provided extensive material that we hoped would enhance the accuracy and rigor of this review.

The published report discusses issues that were simply never raised with us or that we had no reason to expect would be a focus of the investigation. We were also not provided an opportunity to review and comment on the final report until after it was published. Therefore, Ms. Molino's attached submission highlights a number of areas of factual clarifications, and in certain cases disagreements, with the description and analysis presented in the report. In particular, the report leaves the impression that McKinsey was responsible for procurement irregularities at Transnet based on events that are readily explainable or for which additional context is critical. For example:

- The report faults McKinsey for submitting proposals after Transnet's closing deadlines. But McKinsey records (including records we were never asked to provide to investigators) indicate that the closing deadlines had been extended in writing by Transnet.

- The report attributes to McKinsey actions that were actually taken by Regiments – including asserting that McKinsey was a party to agreements that were actually executed by Regiments without McKinsey involvement.

- The report's criticism of the way McKinsey invoiced expenses to Transnet does not acknowledge that McKinsey's actions comported with the relevant contractual agreements and reflected an approach that is standard in McKinsey engagements worldwide.

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- The report expresses concern that several of the contracts between McKinsey and Transnet were improperly awarded through a confined process. But the report does not address the fact that such determinations are committed to the judgment of Transnet, not to McKinsey, and were supported by extensive project-specific rationales that are not discussed.

Thank you for considering the issues raised in this submission. It is our sincere hope these can be corrected so that the report stands as an accurate record of these events.

I want to reiterate that McKinsey at the highest levels has acknowledged that we made mistakes as a firm and that we are committed to learning from them. Our firm has instituted several far-reaching reforms based on our own internal review. Even as we take issue with certain assertions in the report as currently drafted, please be assured that we are studying the report so that it can inform our own internal review and the actions we are taking to strengthen our processes.

Please do not hesitate to contact me should be useful to discuss these matters further.

Yours very truly,

Ozgur Tanriklu

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McKinsey&Company

Mr. Solly Tshitangano
National Treasury
Republic of South Africa
Private Bag X115, Pretoria 0001

10 January 2019

RE: Investigation at Eskom and Transnet

Dear Mr. Tshitangano:

1. **On behalf of McKinsey & Company ("McKinsey"), and in keeping with your request, we provide this letter by way of a preliminary response to the National Treasury forensic report ("the Report") released to the public on 16 November 2018.**
2. Our attitude throughout in our dealings with your investigators has been one of cooperation and transparency, recognizing that these are issues of the utmost importance. After allegations were raised relating to McKinsey's work with state-owned enterprises (SOEs) in South Africa, McKinsey has made clear its commitment to getting to the bottom of what happened. In addition, McKinsey at the highest levels has acknowledged mistakes and taken a series of actions in an effort to regain the trust of the people of South Africa.
    a. As you know from prior correspondence and our public statements, McKinsey's own extensive internal investigation has included the hiring of two global law firms who received unfettered access to the information available to us and a mandate to investigate fully what occurred.
    b. To date, these firms working together have reviewed more than 1 million emails, financial records, and other documents, have conducted more than 115 interviews of current and former McKinsey employees and others involved in these events, and have looked extensively into the allegations against us and the events related to the Report.
    c. While this extensive investigation has found no evidence to substantiate the allegations that our firm engaged in acts of corruption to secure business from SOEs, McKinsey has nevertheless taken significant and ongoing steps to learn from what happened and has acknowledged that actions taken did not comport with our standards, including actions of individuals no longer with the firm.
    d. Where McKinsey has found issues of concern, we have shared them with appropriate authorities. Where we have found gaps and weaknesses in our policies, we have made changes to how we operate both in South Africa and around the world. Where we have identified mistakes and errors of judgment, we have acted swiftly to address them and have acknowledged them publicly at the firm's highest levels.
3. McKinsey's review of the Report is ongoing. We provide these preliminary comments because we were invited to do so by you in a 21 November 2018 email and because we wish to maintain an ongoing dialogue on these issues. It remains our hope that the inaccuracies identified in

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this response can be corrected with urgency so that there is a full, accurate and reliable public account of what occurred.

4. **As a matter of process, and as discussed below in paragraph 10, an unverified draft version of the Report was released to the media prior to its completion and the final version was released to the public without sufficient verification and prior to affording McKinsey an opportunity to review and comment. Unfortunately, this has led to numerous inaccuracies and unsupported recommendations.**

   a. In particular, the Report includes inaccurate statements, material omissions, and unfounded allegations such as:

      i. Inaccurate and incomplete descriptions of events in the contracting process that are poorly cited as evidence of McKinsey's inattentiveness to procurement requirements in its work at Transnet;

      ii. Mischaracterisations of McKinsey's work under what is referred to as the "Top Engineers Program" at Eskom (about which there was extremely limited discussion and consultation with us);

      iii. Erroneous descriptions and unsupported assumptions about McKinsey's work with supplier development partners;

      iv. A highly misleading account of McKinsey's role in organising business travel in 2012 and 2013 outside South Africa for Anoj Singh; and

      v. Language and commentary that appears to fault McKinsey for failing to provide documents and information that were not in fact requested by National Treasury investigators.

   b. In addition, inaccurate statements in the draft report released to the media back in July 2018 were corrected or else were revised in the Report without acknowledgment of the prior errors.

5. **As a matter of substance, the Report includes inaccurate descriptions and flawed assumptions about the procurement and contracting processes relevant to McKinsey.**

   a. <u>Inaccurate Statements and Assumptions Related to Confinement:</u> The Report expresses concern that several of the contracts between McKinsey and Transnet should not have been awarded through a confined process. In its discussion of these issues, however, the Report inaccurately presents the grounds for confinement, fails to acknowledge relevant confinement documents, misstates McKinsey's role in one contract, and mischaracterises documents related to another contract. More fundamentally, the Report fails to acknowledge that Transnet, as the state-owned enterprise, bears principal responsibility for adherence to applicable procurement law and that McKinsey was entitled to rely in good faith on Transnet's compliance with the relevant rules.

      i. <u>Reasons for Confinement:</u> The Report suggests concern that similar reasons for confinement were used by Transnet for the following contracts: SWAT I, GFB, Coal, Manganese, Kumba Iron Ore, and NMPP. But this suggestion is problematic in at least two ways. First, the Report incorrectly states that the GFB contract was confined to McKinsey when it was confined to Regiments, as discussed further below. Second, while the Report emphasises that "the same

[two] grounds" were applied to four contracts confined to McKinsey, that fact does not bear the significance that the Report would suggest. Under the Procurement Procedure Manual Paragraph 15.1.2 there are only four potential grounds for confinement. Two were cited in support of the four projects discussed, and these were:

> "(a) Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning" and
>
> "(d) Goods and services being procured is highly specialised and largely identical to work previously performed; approaching the market would result in wasted money and time."

Of the remaining two potential grounds, one is not generally applicable to consulting services such as ours as it is limited to cases where "for reasons of standardisation or compatibility with existing products or services," a deviation from standardisation would cause a "major operational disruption."

(As an aside, the copy of the NMPP confinement memorandum included with the Report (Annexure D163) appears to only include the odd numbered pages of the document, leaving out a significant portion of the memo. It appears from this document that the specific reasons for confinement are contained on p. 4-5. Because Annexure D163 as provided only includes the odd pages, it did not include page 4 and the confinement reasoning contained therein. We note however, that the Transnet Internal Audit HVT report (Annexure D166), the only complete document discussing the NMPP confinement annexed to the Report, suggests that confinement grounds under three out of four of the available grounds would have justified confinement in the case of the NMPP contract.)

ii. Confinement Considerations: More fundamentally, the Report omits the specific confinement analysis applied to each project, as set out in the relevant Transnet approval memos, thereby making it appear as if the analysis was repetitive for each project. Contrary to the misimpression left by the Report, an examination of the actual memos (example demonstrated below) show that there were individualised reasons tailored to each specific project and contract that were cited in support of Transnet's confinement determinations.

1. To appreciate these omissions, by way of example, one should compare the charts in the Report relating to the Kumba Iron Ore Contract in Section 5.12.2 to the actual confinement considerations in Transnet's justification in Annexure D142 (*See also* the charts contained in Section 5.11.4 as compared to those contained in Annexure D130 as well as others). We have included the first section of these two charts below for comparison:

Section 5.12.2 of the Report

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5.12.2. Singh stated *inter alia* the following as grounds for confinement:

Grounds for Confinement per 15.1.2	Confinement considerations
c. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits

Actual Transnet Justification Memo (Annexure D142)

Ground for confinement per Par 15.1.2	Confinement considerations
a. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits. • These risks were presented to Transnet Group EXCO in March 2014. • If the mitigation plans are not put in place immediately the 2014/2015 Corporate plan, capital plan and funding pre-requisites will not be met placing the entire MDS at risk. • Mitigating the impact of lower than plan throughput tempo requires an urgent and immediate mitigation action which has an opportunity to deliver the required results in the 2014/15 Corporate Plan.

iii. GFB Confinement to Regiments: The Report states that a contract was confined to McKinsey when it was actually confined to Regiments as the prime contractor. At 5.10.6, the Report states "We noted that the reasons provided for confining the GFB breakthrough contract to *McKinsey* were the same reasons provided in terms of RFP GSM 12/10/0578 (SWAT I)" (emphasis added) (Chapter 2, Section 5.10.6, p. 92). At 5.10.105, the Report states "The reasons provided for confining the GFB breakthrough contract to *McKinsey* were the same reasons provided in terms of RFP GSM 12/10/0578 (SWAT I)" (emphasis added) (Chapter 2, Section 5.10.105, p. 106). Further statements about the confinement grounds similarly mislabel the GFB contract as a confinement to McKinsey (See e.g. 5.11.92 and 5.12.4). In fact, Regiments, not McKinsey, was the prime contractor on the GFB contract, and the confinement memo (Annexure D105) clearly states that the confinement would be to Regiments, not McKinsey.

iv. NMPP Memo: The Report asserts that "McKinsey prepared points for Singh to enable him to convince Molefe to approve McKinsey's appointment on the NMPP project." As support for this assertion, the Report cites to a 2012 email from McKinsey to Singh (Annexure D161) that attaches background points for Singh regarding the NMPP contract (Annexure D162). As is clear from these annexures, the points in question – which were generated a full two years before the NMPP confinement memo was signed (31 March 2014) – do not reference McKinsey by name at all, principally discuss various initiatives to accelerate then-ongoing work performed related to NMPP under the market demand strategy, and seek only a general endorsement to "appoint an appropriate partner" to assist in implementation of the work to be performed without any reference to confinement.

b. Erroneous RFP Closing Dates: Numerous sections of the Report allege irregularities premised on the claim that McKinsey's proposals were submitted after the RFPs closed. In fact, the records readily available show that this is not accurate. It is also important to emphasise that the National Treasury investigators at no point identified closing deadlines as a focus of their investigation. Nevertheless, McKinsey had already alerted National Treasury investigators that the investigators' understanding of closing dates on certain RFPs was inaccurate. Given their access to Transnet's files (or had they requested the information from McKinsey), the investigators would have been in a position to ascertain the accurate dates of the RFP processes and receipt of proposals before publication.

   i. Kumba: The Report states the Kumba RFP had a closing date of 10 June 2014 and that McKinsey submitted its proposal seven days late on 17 June 2014 (Chapter 2, Section 5.12.24-29, p. 125). The Report further states that "acceptance of McKinsey's proposal after the closing date of 10 June 2014 was irregular in that the proposal should not have been accepted for consideration" (Chapter 2, Section 5.12.62, p. 130). In fact, McKinsey alerted National Treasury investigators on 7 October 2018 that McKinsey had received an extension for its response from Transnet that extended the closing date for this proposal to 17 June 2014. McKinsey has found further evidence that the RFP was in fact extended by Transnet to 24 June 2014, which is when McKinsey's proposal was timely submitted. The records further indicate that these extensions were provided by Transnet in order for it to answer questions posed by McKinsey regarding the RFP in early June. Transnet provided its answers on Friday 20 June 2014. Had McKinsey been asked about this issue it could have corrected the Report prior to its publication.

   ii. Coal Line: The Report states the Coal Line RFP had a closing date of 10 June 2014 and that McKinsey submitted its proposal on 17 June 2014 (Chapter 2, Section 5.11.25-5.11.29, p. 120). The Report further states that "acceptance of McKinsey's proposal after the closing date of 10 June 2014 was irregular in that the proposal should not have been accepted for consideration" (Chapter 2, Section 5.11.29, p. 120). Here too, McKinsey records establish that Transnet first extended the closing date from 10 June 2014 to 17 June 2014 and then later extended the closing date a further week to 24 June 2014. Again, had McKinsey been given an opportunity it could have corrected the record.

   iii. Manganese: The Report states that the Manganese RFP had a closing date of 10 June 2014 and that McKinsey submitted its proposal on 17 June 2014 (5.13.24-5.13.25). The Report further states that in the "absence of an extension to the closing date, McKinsey's late submission should not have been accepted for consideration (Annexure D156)." However, as mentioned in reference to the Coal Line contract, McKinsey has evidence indicating express approval from Transnet to extend the date from 10 June 2014 to 17 June 2014 and then a further week to 24 June 2014. Annexure D156, the Transnet stamped proposal, reflects a 24 June 2014 closing date.

iv. NMPP: Unlike the other contracts above, the Report ultimately acknowledges that the NMPP RFP closing date was ultimately 24 June 2014, the date of McKinsey's submission. However, it does so after first stating that "the closing date of the RFP *was* 10 June 2014" (emphasis added) without explaining that the deadline changed because Transnet had expressly granted an extension. The pertinent section reads:

> 5.14.35. According to Luqmaan's email, the closing date of the RFP was 10 June 2014 at 12h00 (**Annexure D167**).
>
> **Proposal submitted by McKinsey dated 24 June 2014**
>
> 5.14.36. We determined that McKinsey submitted a proposal in respect of the NMPP project which indicated that the closing date of the proposal was 24 June 2014 at 12:00.
>
> 5.14.37. We further determined that on 24 June 2014, Transnet's Acquisition Council stamped the proposal as confirmation of receipt (**Annexure D168**).

(Chapter 2, Section 5.14.35-5.14.37, p. 146). The failure to acknowledge the intervening event of the extension leaves the Report open to speculation about why it was that the closing date had changed.

c. Inaccurate Recounting of Parties to Relevant Contracts: In the draft report, there was significant confusion about who was party to certain contract addendums. While some such errors were corrected in the Report, several of these errors regrettably remain.

i. Most notably, the Report fails to accurately note that an addendum to the 1064 advisory services contract (GSM/12/05/0447) was signed in February 2014 by Transnet through Anoj Singh and Regiments through Eric Wood in his capacity as a Regiments director. Contrary to the description in the Report, McKinsey was not a party to this addendum and had no involvement in it. Mr. Wood has never been a McKinsey employee and his signature does not in any way purport to be on behalf of McKinsey.

ii. The Report states the following about the parties to this addendum:

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Addendum to McKinsey Agreement – dated February 2014

5.7.118. We determined that Transnet and McKinsey represented by Singh and Wood concluded an addendum on 4 February 2014 (referred to as the third addendum), in respect of 1 064 advisory services. (**Annexure D24**).

5.7.119. We determined that Wood was a representative of Regiments and not McKinsey at the time of signing the addendum. We further determined that McKinsey's name was cancelled out and replaced by Regiments name next to Wood's signature. According to the addendum, the signature warranted that Wood was duly authorised to sign the third addendum. Singh and Wood initialled their signatures next to the said cancellation.

5.7.120. Based on the said findings, Wood signed McKinsey's addendum whilst he was a Regiments representative.

5.7.121. We were not provided with any evidence to support that Wood was authorised to sign the addendum on behalf of McKinsey.

5.7.122. We determined that at the time that Wood signed the third addendum in respect of RFP GSM/12/05/0447, McKinsey had not ceded the contract to Regiments as the cession was effective on 5 February 2014.

(Chapter 2, Sections 5.7.118-5.7.122, p. 29)

iii. Contrary to the suggestion of the Report, the document in question was not Transnet and McKinsey's "third addendum" at all—it was an addendum memorialising a new agreement between Regiments and Transnet following McKinsey's withdrawal. As McKinsey previously explained to National Treasury investigators (but is not acknowledged in the Report), McKinsey did not participate in the execution of this addendum and Mr. Wood was clearly signing the addendum in his capacity as a representative of Regiments, which was then in the process of assuming McKinsey's role on the project.

iv. Put another way, the Report's assertion that investigators "were not provided any evidence to support that Wood was authorised sign the addendum on behalf of McKinsey" is a non-sequitur. Wood <u>did not</u> "sign the addendum on behalf of McKinsey" but rather did so on behalf of Regiments who replaced McKinsey.

d. <u>Expenses:</u> The Report fundamentally misstates how the relevant contracts with McKinsey addressed expenses and in doing so implies impropriety and irregularity where none exists. McKinsey explained to the investigators that in keeping with the firm's standard practice around the world, the relevant contracts reflected an all-inclusive approach to fees that did not call for McKinsey to invoice and itemise actual expenses incurred to the client. Specifically, in one of its submissions, McKinsey explained as follows:

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Timesheets and Supporting Documentation for Expenses Incurred

20. As discussed in our 3 October 2018 meeting, in keeping with our dedication to achieving successful outcomes for our clients and to shift risk away from our clients, McKinsey's standard approach is to perform its work on a fixed and all-inclusive price basis (including at-risk engagements inclusive of expenses) for deliverables rather than to invoice clients on the basis of time spent on the project by our personnel. This gives the client clear line of sight into the total cost of the project from the outset.

21. Importantly, this is McKinsey's policy globally for both public and private sector clients around the world and is by no means limited to South Africa. This approach reflects McKinsey's commitment to meeting milestones and making the project successful regardless of the time, energy, hours or expenses needed. Accordingly, McKinsey did not generate the invoices about which you asked on the basis of time sheets and does not have such time sheets available.

i. Under an all-inclusive approach to fees, McKinsey is not required to provide supporting documentation to the client that identified actual expenses incurred. (Indeed, that the client receives certainty as to full cost of the contract, including expenses, at the outset of the contract is one of the chief advantages of this approach for the client.)

ii. Rather than measure McKinsey's invoicing against the governing contractual requirements, the Report substitutes its own standard. The Report finds fault with McKinsey for "not provid[ing] supporting documents" (Chapter 2, Section 5.11.64, p. 116) and for not "hav[ing] supporting documents, i.e., timesheets" (Chapter 2, Section 5.11.68), relying on language in pre-contract documents rather than in the actual contacts negotiated by the parties.

e. <u>Invoices</u>: The Report insinuates possible wrongdoing relating to the invoices for the Kumba Iron Ore project—when McKinsey provided a clear, innocuous explanation with supporting documentation that explained what had occurred.

i. The issue arose because National Treasury investigators identified two different monthly invoices among Transnet's records, each of which appeared to cover May 2014. While out of context, the existence for two different invoices that originally sought payment for May 2014 would raise concerns, McKinsey previously explained what occurred as follows:

18. We note from our meeting on Wednesday 3 October 2018 that Transnet appears to have received and paid invoice 5807 dated 3 July 2014 for services provided in May 2014. However, according to our internal records McKinsey did not generate two invoices for the period May 2014 relating to this project – and rather issued two separate invoices for two separate periods:

a. Invoice 5757 (dated 30 May 2014) relates to services provided during the period 16 April 2014 to 31 May 2014;[8] and

b. Invoice 5807 (dated 3 July 2014) relates to services provided from 1 June 2014 to 4 July 2014.[9]

19. While the version of Invoice 5807 that you provided states "professional fees: May 2014," a review of McKinsey internal records confirms that this invoice was generated in July 2014 and intended to cover June 2014 rather than May 2014. Specifically, from the screenshot below you will notice that the electronic version of invoice 5807 was last modified on 3 July 2014 and when opened states that the professional fees are for "June 2014" rather than "May 2014." It is possible that a near-final version of this document was errantly submitted in the first instance that included an incorrect date for the incursion of professional fees—and that this near-final version was what was retained by Transnet.

Name	Date modified	Type	Size
TRX079_5757.doc	04/07/2014 08:53	Microsoft Word 97 - ...	66 KB
TRX079_5757.pdf	01/10/2018 17:20	Adobe Acrobat Docu...	47 KB
TRX079_5807 - Iron Ore - 4 July_final.doc	03/07/2014 15:41	Microsoft Word 97 - ...	69 KB

i. Despite acknowledging this information, the Report appears to cast doubt on it, stating that "invoice numbered 5807 was amended to reflect that the professional fees rendered were for June" and that "5757 remained unchanged and reflected professional fees rendered were for May 2014" (Chapter 2, Section 5.12.44, p. 128). Additionally, the Report states that the invoices "did not bear [the] McKinsey logo" (Chapter 2, Section 5.12.45, p. 128).

ii. To the extent the Report thereby leaves the impression that the invoices were fabricated or illegitimate, that contention is groundless and belied by the records that McKinsey provided (which show that the invoices were last modified in 2014). Most importantly, McKinsey's position is concretely supported by the fact that over the course of the contract it invoiced Transnet the correct total amount for this contract. This fact is squarely within the fact base of the investigators. There is therefore no basis to contend that McKinsey invoiced beyond that which is was contractually due under this contract. Simply put, there is no reason for this invoicing issue to be questioned in the Report at all.

6. **The description of McKinsey's work under what is referred to as the "Top Engineers Program" contains several inaccuracies and misleading omissions.**

a. The Report extensively covers the Top Engineers project at Eskom, which is also referred to commonly as the Top Consultants Program or the MSA (Chapter 2, Section 7.1, p. 212-242).

b. Aside from questions related to McKinsey's recent settlement with Eskom and specific communications relating to Optimum mine, the investigators showed little interest in discussing the topic with McKinsey representatives and covered the MSA in its in-person consultation only very briefly and in a manner of minutes.

c. In part because the Report extensively discusses issues never covered in any depth with McKinsey, it reflects several inaccuracies and omissions that create a misimpression about McKinsey's role in this project.

d. For example, the Report states:

i. "We determined that Govender sent a letter dated 8 April 2016 to Khomola relating to a request from McKinsey that Trillian be paid directly. The purpose of the letter was to request Eskom Finance Department to add Trillian as a registered Eskom Vendor. According to the letter, McKinsey had sub contracted a portion of the services for contract number 4600059002 to Trillian (Annexure D258)." (Chapter 2, Section 7.1.67, p. 227)

1. This passage suggests that McKinsey had "sub contracted" work on the MSA to Trillian.
2. Trillian was never McKinsey's subcontractor. Rather, McKinsey worked alongside Trillian at Eskom, but Trillian failed McKinsey's due diligence process and was never made the subcontractor (a fact that Eskom has repeatedly acknowledged). This internal Eskom letter comes weeks after McKinsey informed Eskom in writing that it was no longer willing to partner with Trillian due to the fact Trillian failed McKinsey's due diligence process.

ii. "We noted that Eskom negotiated a settlement with McKinsey just six months after signing the SLA relating to the Top Consultant Programme." (Chapter 2, Section 7.1.104, p. 231)

1. The Report's suggestion in this passage appears to be that there was something anomalous about a fee settlement so soon after the MSA contract had begun and fails to explain that the settlement negotiations were because Eskom cancelled the MSA contract just six months into a 3-year contract. This settlement was thus for the six months of work that McKinsey had performed prior to the cancellation.

iii. "We determined that the invoices from McKinsey were issued following the cancellation of the MSA in June 2016." (Chapter 2, Section 7.1.107, p. 231)

1. The Report's suggestion in this passage appears to be that there is something anomalous about McKinsey having sent invoices after cancellation.
2. In fact, because the MSA contract was structured with fees "at risk," it was necessary for the parties to calculate the impact achieved as the basis for settlement before the invoices could be generated. In other words, these invoices were appropriately issued in accordance with the settlement process.

iv. "It is our understanding that the decision to return the R1 billion was made in July 2018 following a settlement agreement between the McKinsey, Eskom and the Asset Forfeiture Unit (AFU)." (Chapter 2, Section 7.1.109, p. 236)

1. The Report's suggestion that McKinsey came to the decision to return the funds as a result of the AFU action is incorrect
2. In fact, as is confirmed by public records, McKinsey first announced it would return the funds in October 2017 of its own accord—with the

AFU action being a vehicle by which to effectuate the return in a way that afforded a measure of transparency and finality to the parties.

7. **The discussion of McKinsey's relationship with SDPs contains significant inaccuracies.**

a. Letsema

i. The Report includes an extensive discussion about Letsema's conflict on the "1064 Locomotives" contract that appears designed to raise questions about whether the conflict was valid and to insinuate that McKinsey should be faulted for accepting the conflict as genuine.

ii. The Report's analysis and conclusions fail to address the fact that Transnet—and not McKinsey—identified the conflict and directed the removal of Letsema for reasons that appeared highly plausible at the time and that were ultimately borne out by subsequent events.

iii. In particular, the Report summarises responses given to investigators by Derek Thomas of Letsema who recalls being advised "verbally" by Garry Pita of Transnet at the time that the conflict with Letsema arose because:

> 5.7.64.1. Isaac Shongwe was at the time a senior executive at Barloworld (a major JSE listed entity) and a non-executive chairman and shareholder of Letsema;
>
> 5.7.64.2. Barloworld, a licenced distributor of Caterpillar products in South Africa and other regions had at the time recently purchased EMD (a USA based manufacturer of locomotives);
>
> 5.7.64.3. It was conceivable that Barloworld would potentially seek to represent EMD in South Africa and EMD would submit a tender to supply locomotives as part of the anticipated locomotive procurement by Transnet.

(Chapter 2, Sections 5.7.64.1-3, p. 21)

iv. Moreover, the Report establishes that it was more than "conceivable" (as Mr. Thomas suggests) that such a tender would be submitted. In fact, "EMD submitted a proposal [which was not successful] to Transnet for the supply of the 465 diesel locomotives" at issue in the project (Chapter 2, Section 5.7.66, p. 21). (Mr. Thomas's responses, as seen in Annexure D14, indicate that he remains unware of the fact that EMD submitted such a proposal.)

v. All told, the Report establishes that Letsema's <u>chairman</u> (who is also its founder) was at the time a senior executive at the South African distributor of one of the manufacturers that later bid on the locomotives project. We fail to see why this circumstance would not pose a valid conflict-of-interest in that it would call into serious question the ability of Letsema to provide independent advice to Transnet on subjects such as the number of locomotives to be purchased and the procurement process to be established for the tender.

1. The principal substantive objection that the Report raises regarding Transnet's decision to act on the conflict is that it was premature – that is, that "Letsema were removed prematurely from the McKinsey

consortium in that it was not known at the time whether EMD would submit a proposal for the 1064 locomotives tender" (Chapter 2, Section 5.7.67, p. 21).

2. But this suggestion in the Report is not persuasive. Surely, the fact that EMD did indeed submit such a tender strongly supports that Transnet's concern at the time that EMD may do so was well founded.

3. In light of the significant risk that Letsema's chairman and founder would also be a senior executive at a bidder on the other side of the transaction, Transnet appears to have been fully justified in its concerns about Letsema's continued involvement in the project.

4. To the extent the Report is suggesting that Transnet should have retained Letsema in the consortium and waited several months to find out if EMD actually bid on the project, we fail to see why such a course of action would have been in Transnet's interest. Taking this wait-and-see approach would have required Letsema to exit the consortium at precisely the time when their advice would have been most pressing, potentially squandering the work performed to date and delaying what was regarded as an urgent transaction.

vi. We fail to see why McKinsey should be faulted for accepting this conflict as bona fide – given the plausible nature of the conflict and given that Letsema apparently accepted Transnet's explanation as well. We note that Mr. Thomas in his responses acknowledges that when advised of the conflict, Letsema "accepted the bona fides of Garry Pita's argument at the time even though we respectfully disagreed with his position" (Annexure D14).

vii. Beyond this sigificant error, the Report suggests, without offering any supporting facts, that "[i]t is clear that Singh discussed the removal of Letsema with McKinsey before the LOI was issued," adding that "[i]t is unclear whether the discussion happened in London during Singh's trip to the CFO Forum or telephonically after returning from the London trip." (Chapter 2, 8.26.9.10, p. 250). However, the Report fails to provide any evidence for this assertion other than the existence of the LOI itself, which is a Transnet document—and the reference to Anoj Singh's London trip appears to be entirely speculative and without evidence to support it. The London trip for the CFO Forum was scheduled well in advance and Singh's memorandum raising the conflict was issued over two months after the trip occurred.

b. Regiments

i. The Report states the following: "During our consultation with McKinsey's representatives, they indicated that they only became aware of potential risks with Regiments in 2016 and a decision was then taken to cut ties with the entity during February 2016. It should be noted that McKinsey terminated their partnership with Regiments at the time that Wood had indicated his intention to resign as a shareholder and director of Regiments and move to Trillian" (Chapter 2, Section 5.15.27, p. 162).

ii. McKinsey terminated its relationships with both Regiments and Trillian within a month of each other in February and March 2016. Further, it is inaccurate to suggest that McKinsey did not take action previously when allegations were made concerning Regiments. McKinsey has been very open about the fact that it was aware of issues about Regiments, specifically about one of its directors Niven Pillay, when they emerged in July 2014. McKinsey responded quickly to these issues, gaining assurances from Regiments about its anticorruption policies and having Pillay excluded from all McKinsey work. McKinsey covered this in the 3 October 2018 consultation with the investigators, so there is no justification for the inaccuracy.

iii. After this incident, the specific issue was addressed with the result that Pillay was no longer involved in any McKinsey work. Thereafter, McKinsey became aware of new concerns about Regiments in February 2016, when news emerged about another Regiments director, Mohamed Bobat. It was this news that led McKinsey to terminate its partnership with Regiments, not Wood's decision to move to Trillian.

iv. In fact, as McKinsey has discussed with National Treasury investigators, it appeared to McKinsey that Wood was a part of Trillian much earlier than that, with a Trillian email address dating back to December 2015.

c. Trillian

i. The Report states that McKinsey was informed that Trillian was taking over the SWAT II contract from Regiments (Chapter 2, Sections 5.15.102-5.15-103, p. 174).

ii. In fact, what is not made clear in the Report is that McKinsey never worked on these projects with or alongside Trillian. By this point, McKinsey had already stopped working with Regiments at Transnet.

8. **The Report contains several errors regarding McKinsey's role in organising business travel in 2012 and 2013 for Anoj Singh.**

a. Timing of invites and travel

i. McKinsey previously explained that Anoj Singh traveled to London and other destinations outside South Africa in 2012 and 2013 in connection with his attendance at the McKinsey-organised CFO Forum in London and in order to meet with business executives and McKinsey personnel in other destinations.

ii. McKinsey has provided an extensive documentary record that shows that the CFO Forums are widely attended gatherings that have been operated for more than a decade, are planned months in advance, and Mr. Singh was one of numerous executives around the world invited to the event.

iii. McKinsey has further demonstrated that Transnet had extensive visibility into the planning of Mr. Singh's trips, that Transnet authorised and committed to pay for the flights and hotels associated with them, and that Mr. Singh contemporaneously documented the business justifications for his travel.

iv. In spite of this extensive record, the draft report suggested, and the Report continues to suggest, that the timing of invitations for Anoj Singh to attend CFO Forums correlates to work awarded to McKinsey and to insinuate that there was some element of impropriety by McKinsey related to this travel.

1. In one instance, the Report states, "We obtained documentation that reflects that a day after Pita signed the recommendation to increase McKinsey's fee from R25 million to R49 million, i.e. on 2 February 2012 at 12:09, an e-mail titled 2012 CFO Forum –Invitation, was sent from McKinsey e-mail address CFOForum2012@McKinsey.com to Singh" (Chapter 2, Section 8.4, p. 243).

2. In fact, as McKinsey has explained both in correspondence and in person, these invitations were sent from a McKinsey wide email and were sent en masse to numerous business executive invitees on the same day.

3. In short, the record is clear that the timing of this invitation was not in any way connected to the work McKinsey was doing at Transnet. Additionally, Mr. Singh, not Mr. Pita, was the one receiving the invitation to the 2012 CFO Forum, further undercutting whatever inference the Report is purporting to draw from this series of events.

4. As McKinsey demonstrated in its consultations, the invitation list for this event is developed over many months and was contemplated long before February 2012. Accordingly, the event organisers at McKinsey responsible for sending the invitations would have had no insight into what was happening contractually at Transnet.

5. Additionally, the Report states that "[Vikas] Sagar nominated Singh to be invited for the 2012 CFO Forum" (Chapter 2, Section 8.26.22, p. 253). In fact, while Mr. Sagar was the client contact and ensured that Singh was included on the invitee list, Mr. Sagar was not the only one at McKinsey with input into this decision, as demonstrated by the email correspondence that McKinsey previously submitted to the investigators.

b. <u>Inquiry into source of payment for travel</u>

i. It is regrettable that a draft report that reached the media in July 2018 contained numerous inaccuracies that led to a series of misleading news stories that indicated that Mr. Singh's flights and hotels were paid for by McKinsey when that was not the case.

ii. The Report belatedly acknowledges the real facts that Transnet – not McKinsey – paid for Mr. Singh's airfare associated with these 2012 and 2013 trips, which was far and away the largest expense associated with these trips.

iii. Nevertheless, rather than simply acknowledge the errors in the prior draft report, the Report strains to create ambiguity around whether Transnet paid for all (as opposed to nearly all) of Mr. Singh's hotel accommodations in connection with these 2012 and 2013 trips. The Report's basis for doing so fails to reflect the significance of records that Transnet itself provided to National Treasury investigators.

iv. In particular, the Report continues to assert that where National Treasury investigators could not find payment records within Transnet for reimbursement, "a possibility exists that Sagar, McKinsey, Regiments or any other role player may have paid for accommodation and related expenditure (Annexure D278)" (Chapter 2, Section 8.26.10.7, p. 250).

1. Left unaddressed in this assertion is any analysis or argument to explain why and to what improper end McKinsey would ultimately have paid for any of these accommodations when it is beyond dispute that Transnet had already agreed to pay for such accommodations.

2. Similarly unaddressed is the strongly suggestive fact that the annexures to the Report (which are notably absent in the Report itself) include a "TRANSNET PAID" stamp in connection with the approval by Transnet of Mr. Singh's hotels <u>and accommodations</u> as seen by way of example below.

FINANCIAL IMPLICATIONS

10. The cost of of approximately R93 500 is calculated as follows:

10.1. Cost of flight (return trip): R70 000

10.2. Cost of Accommodation: R15 000

10.3. Allowance: R8 500

TRANSNET PAID

APPROVAL TO MEET INVESTORS IN LONDON AND THE UNITED ARAB EMIRATES TO GAUGE THE MARKET'S APPETITE FOR TRANSNET DEBT

(Annexure D272, p. 3)

3. McKinsey has previously explained and documented that while a travel agency that works with McKinsey made certain hotel reservations for Mr. Singh, the relevant records contain notations such as "settle direct" that indicate that the room fee was to be paid by the traveler upon check in – and was not paid in advance by McKinsey. The Transnet record noted above corroborates that this was the arrangement.

4. Notably, the National Treasury Report's own annexures include contemporaneous emails in which a McKinsey executive assistant advises Theo Takane of Transnet that Mr. Singh would be responsible for these hotel charges, noting in bold "that Anoj will settle directly" in connection with his stay at the Langham hotel in London and at other hotels reserved by McKinsey's travel agency. See below example:

The hotels are the below - we have made these bookings and all these vouchers were sent to you , please note that Anoj will settle directly .

THE LANGHAM - LONDON (CFO CONFERENCE) a complete email was sent to Anoj on Friday from the CFO conferencing team , with all details regarding the conference .
1C PORTLAND PLACE
REGENT STREET

(Annexure D284)

5. In addition, National Treasury's own annexures establish that Transnet had visibility into and tracked internally the room rates and other costs associated with Mr. Singh's hotel stays, which only further reinforces the strong likelihood that Transnet ultimately paid for these hotels.

v. In the face of the overwhelming (and largely sidelined) evidence that Transnet committed to pay for Mr. Singh's hotel accommodations and paid for Mr. Singh's hotel accommodations, it strains credulity for the Report to continue to indulge in speculation that McKinsey may have paid for all of these charges – much less for the Report to give the impression that McKinsey may have done so for an improper purpose. The Report offers such speculation largely by presenting a misleading and in some cases demonstrably false account of the record.

vi. For example, the Report states that investigators "requested McKinsey to provide us with information/documentation relating to payments made for Sagar's travel in respect of the 2012 and 2013 CFO Forum. As at date of this report, McKinsey had not provided us with the said documentations" (Chapter 2, Section 8.26.78, p. 266). This is factually incorrect. On 7 October 2018, McKinsey provided the investigators with a response addressing the invoices from Sagar's London stay in June 2012, with screen shots of the relevant invoices.

vii. Similarly, the Report discusses at length the fee for a stay at the Radisson Blue-Bleorusskaya in Moscow in 2013 (Chapter 2, Section 8.26.88-8.26.91, p. 267). This discussion is misplaced. As was made clear in one of McKinsey's first letters to National Treasury investigators, and in all correspondence and consultation since, this reservation, along with a flight reservation, were made for the limited purpose of helping obtain a visa for Mr. Singh. These bookings were subsequently cancelled and not used for Mr. Singh's stay. As is clear in the rest of the Report, Mr. Singh did not travel to Moscow for ten days during this period. Instead, he was there for three days and stayed at the Ritz Carlton, which as evidenced by the Report was paid for by Transnet, not McKinsey.

viii. In the end, the Report's decision to retain any discussion of these travels appears designed to insinuate impropriety where no evidence of such impropriety exists. Beyond the question of payment, there is no evidence offered in the Report that these trips were other than legitimate business travel for which Mr. Singh sought and received approval from Transnet. The Report should be corrected to remove this discussion.

9. **Despite McKinsey's cooperation with National Treasury, the investigators failed to inform McKinsey of any interest in certain contracts or related records included in the Report and also continued to include errors that McKinsey had called to their attention.**

a. <u>New Contracts in the Report</u>: The Report contains lengthy discussions of the Top Engineers Program at Eskom, as discussed above, as well as the following contracts at Transnet.

i. Liquid Fuels and Gas Work at Transnet**:** The Report extensively discusses the Liquid Fuels and Gas contract (GSM 14/10/1067) at Transnet (Chapter 2, Section 5.17, p. 183-194). Yet McKinsey was never asked about its work on this contract. The Report criticises McKinsey's work on this contract and suggests that McKinsey was not cooperative in providing documents, stating "We were not provided with reports from McKinsey in terms of the deliverables for RFP GSM 14/10/1067" (Chapter 2, Section 5.17, p. 191). However, despite various detailed requests by the investigators this information was simply never requested from McKinsey. McKinsey would have been more than willing to provide further information on this contract if it had been asked. Had McKinsey been able to see the Report before it was finalised, McKinsey could have provided such documents as well as further insight into this contract.

ii. SWAT I**:** The Report extensively covers the SWAT 1 (GSM/12/05/0445) contract with Transnet (Chapter 2, Section 5.9, p. 75-90). McKinsey was not asked for any documentation related to this contract and was only briefly asked about any knowledge that McKinsey had about Deloitte's removal from the contract. McKinsey provided all the information it had about this question, which was limited to McKinsey's knowledge of it having raised a concern about the Intellectual Property implications of working closely with one of its global competitors, but was not given the opportunity of responding to further areas of the contract that are covered in the Report. Had McKinsey been engaged more extensively, McKinsey could have aided the investigators in obtaining more and accurate information about the contract.

b. Continued Mistakes: McKinsey's extensive cooperation did not prevent mistakes from being made. For instance, in relation to the Optimum Mine issue:

i. In questions posed to McKinsey in June 2018, National Treasury investigators asserted that a McKinsey partner had begun exchanging correspondence in 11 April 2016 related to a now-controversial decision taken by the Board Tender Committee with respect to Optimum Mine. After reviewing the definitive metadata of the relevant emails and discussing the matter with those involved, McKinsey confirmed to National Treasury investigators in writing that the premise of the question was erroneous and that correspondence in fact occurred beginning in May 2016 (one month later). This difference of a month was critical – as it meant that McKinsey was consulted a full month after the decision was taken by the Board Tender Committee, not in advance. Despite McKinsey's attempts to correct this inaccuracy, the draft report continued to assert that these emails were sent in April 2016, rather than the actual month of May 2016. The Report correctly states that one of the relevant emails was sent on 11 May 2016 (Chapter 3, Section 7.8.30.7, p. 157) instead of the April date given in the draft report, but it continues to improperly assert that a second email sent on 18 May was sent in 2015 rather than 2016 (Chapter 3, Section 7.8.30.3). This repeated error continues to misrepresent McKinsey's relation to the Board Tender Committee decision. While the Report notes that McKinsey confirmed that all interaction on the Optimum Mine deal occurred a month after the Eskom

Board Tender Committee made its decision, it continues to wrongly assert that the 18 May email was sent in 2015 rather than 2016.

10. Throughout this process, McKinsey made clear its commitment to cooperating with National Treasury and offered to review the relevant portions of the report prior to release and to meet again with investigators as necessary. Despite these overtures, McKinsey was not given any opportunity to review or assist with its factual accuracy before the Report was publicly released, which unfortunately led to these significant inaccuracies and omissions being contained.

    a. From the outset, McKinsey has been committed to working with National Treasury investigators on their work, to cooperating with their requests for information, and to ensuring that their report was informed by the work done previously by McKinsey to understand its role in these events.

    b. To that end, McKinsey extensively corresponded with the National Treasury investigators (and with National Treasury directly), providing numerous letters, detailed submissions, and hundreds of pages of documents.

    c. It was regrettable that a draft report from National Treasury – one with significant and serious allegations relating to McKinsey's role in these events – was reported on in the media in July 2018 before National Treasury investigators had obtained highly relevant information from both McKinsey and Transnet.

    d. The unfortunate leak of the draft report to the media, however, did not deter McKinsey from continuing to cooperate in this process and to working to give National Treasury a full understanding of these events. Following the release to the media of the draft forensic report, McKinsey provided significant additional documents and information highlighting the mistakes and inaccuracies in the draft report, several of which were promptly acknowledged by the National Treasury forensic investigators.

    e. After repeated requests in writing (and one trip from the United States to South Africa that did not result in a meeting), McKinsey representatives were given a single opportunity to meet with National Treasury investigators to address questions that had arisen during the investigation.

    f. This meeting occurred on 3 October 2018 in Johannesburg. The agenda focused on six-pages of detailed questions from National Treasury investigators that were provided to McKinsey on 1 October 2018, mere hours before McKinsey representatives from the United States were boarding the flight to attend the meeting.

    g. Both during that in-person consultation and thereafter in writing, McKinsey requested the opportunity to review the relevant portions of the final report to assist with factual accuracy before its public release and sought an opportunity to consult further to the extent new issues were to be included.

    h. Those requests were not granted and the report was released to the public with these significant inaccuracies and omissions being contained in it.

    i. While we are grateful that some of the serious inaccuracies in the leaked draft report that cast McKinsey's actions in a negative light were corrected in the final report, it is regrettable that no effort was made in the Report to highlight such instances.

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11. **The above-listed inaccurate and incomplete descriptions appear to have significantly informed the recommendations in the Report that pertain to McKinsey, including the recommendation that certain McKinsey actions and individuals be further investigated. McKinsey respectfully believes that these recommendations should be reconsidered in light of the issues identified in this submission and given the absence of any evidence in the Report that McKinsey personnel made improper payments or otherwise knowingly participated in corrupt activities. That having been said, McKinsey has cooperated extensively in numerous investigations and reviews that have examined its work with SOEs to date and will continue to do so going forward.**

12. In closing, McKinsey continues to cooperate with all investigations, including that mandated by National Treasury. We are providing these preliminary comments at the direction of National Treasury, but hope to engage in an ongoing dialogue on these issues. We hope that the inaccuracies contained in the Report as discussed above will be corrected for the following important reasons:

 1) To ensure full transparency of events and to provide South Africans with an accurate account of the information and facts available to the National Treasury investigators.

 2) To prevent negative inferences being drawn from these inaccuracies about McKinsey, its role and work delivered and the resultant reputational damage to McKinsey

 You have our commitment that we will continue to openly provide information through further consultations or otherwise.

Yours very truly,

Virginia L Molino

Virginia L. Molino
General Counsel

McKinsey&Company

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October 30, 2018

Dear Mr Mzinyathi:

Transnet's investigation relating to the procurement of 1064 locomotives

1 We refer to your letter to McKinsey dated 5 October 2018 (**your letter**).

2 We thought that it would be useful if we were to provide a comprehensive written response to the questions posed in your letter. If you need additional clarity, please identify what further information you need. We wish to reiterate that McKinsey remains fully committed to working with Transnet's advisers to assist with Transnet's various investigations; as evidenced by McKinsey's co-operation with both Werksmans and Fundudzi Forensic Services.

3 Even though we have not seen proof of your authority from Transnet, we accept that you have such authority, and we proceed on that basis.

4 **McKinsey's appointment by Transnet as preferred bidder (paragraph 2.1), and Regiments' appointment as McKinsey's supplier development partner (paragraph 2.2)**

4.1 As an initial matter, we refer you here to the appendix to David Fine's submission to Parliament. The appendix extensively recounts the work that McKinsey did on projects related to the 1064 Locomotives (GSM/12/05/0447) and makes clear that McKinsey's principal role in this matter involved advising Transnet on the narrow remit of a business case a full year before the tender was awarded, and after Transnet had issued the RFP for the locomotives acquisition. We understand the final award deviated significantly from McKinsey's work.

4.2 By way of background, on 15 January 2013, a McKinsey-led consortium won a tender to provide advisory services to Transnet on Transnet's planned locomotives acquisition. There were four primary work-streams, which were intended to start in March 2013 and conclude in October 2013. The work-streams were:

(1) McKinsey would be responsible for validating Transnet's business case, to include projections for the volume of commodities Transnet could transport, validate that the procurement of 1064 locomotives was financially viable, and conduct scenario planning to inform contracting;

(2) Letsema would be responsible for programme management, to monitor overall progress against timelines and ensure proper governance;

(3) Utho/Nedbank, Webber Wentzel, and McKinsey would provide transaction advisory services and procurement execution, to minimise financial risk for Transnet and ensure suppliers deliver on their commitments; and

(4) Advanced Railway Technologies and McKinsey would provide technical evaluation and optimisation by assessing the life-cycle costs of suppliers shortlisted by Transnet.

4.3 With respect to the specific questions that you pose in paragraphs 2.1 and 2.2 of your letter, Transnet issued a confined RFP to four entities (McKinsey, PWC, Webber Wentzel and KPMG). McKinsey's consortium scored the highest. The McKinsey-led consortium's proposal was accepted, and the consortium was awarded the work in a Letter of Intent sent on 30 November 2012, and which was signed on 4 December and 6 December 2012[1].

4.4 It is helpful to understand how the consortium working on both phases of the project evolved over time.

4.5 Original consortium: McKinsey, Letsema, Nedbank and Utho, Advanced Railway Technologies and Edward Nathan Sonnenbergs

(1) On 7 June 2012, the McKinsey consortium submitted its response to RFP GSM/12/05/0447[2]. The consortium members were:

(a) McKinsey: prime contractor

(b) Letsema Consulting: supply development, procurement strategy, RFP process, supplier evaluation and contracting

(c) Nedbank Capital and Utho Capital: financial advice related to funding options and structuring

(d) Advanced Railway Technologies: expertise for the technical specification of locomotives, input on the business case revision, identify technical leaders and support value engineering

(e) Edward Nathan Sonnenbergs: legal advice, with local partner Koikanyong

4.6 We understand that the McKinsey consortium's submission was discussed at a Transnet Acquisition Council meeting on 18 July 2012.

4.7 Around this time, Transnet raised a conflict of interest regarding Letsema which was serving General Electric Locomotives, a potential bidder to build and supply locomotives. In addition, McKinsey was reviewing Letsema as a supplier development partner because its size and the demographics of its workforce meant that its involvement in the project might not continue to satisfy BEE regulations.

4.8 Revised consortium: Regiments Capital Partners (**Regiments**) as a potential alternative to Letsema

(1) In a revised consortium, potential alternatives to Letsema were considered.

(2) From 2012 to 2016, Regiments were McKinsey's Supplier Development Partner.

(3) In discussing potential alternatives, Mr Singh noted that Regiments had performed well for Transnet in work that Regiments had done for Transnet's Treasury function in the past. It is important to stress that Regiments had been working at Transnet prior to any relationship with McKinsey, and McKinsey did not introduce Regiments to Transnet.

4.9 Revised consortium: Regiments replaced Letsema, and Webber Wentzel replaced Edward Nathan Sonnenbergs

(1) On 30 November 2012, Mr Singh sent the Letter of Intent to Mr Kloss. The consortium then consisted of McKinsey, Regiments, Advanced Railway Technologies, and Nedbank and Utho Capital.

(2) Webber Wentzel replaced ENS as the provider of legal services, as noted in the letter.

[1] Annexure A1
[2] Annexure A2

4.10 Further revised consortium: Regiments replaced Nedbank

(1) On 22 May 2013, after the work had commenced and McKinsey's validation of the business case had been completed, Mr Singh sent Mr Kloss a letter identifying that Nedbank had a potential conflict of interest "*primarily based on Nedbank Capital being appointed as part of the McKinsey led consortium to provide Transnet with Advisory services related to the acquisition of 1 064 locomotives as well as their interest in providing funding for other related services to Transnet for the same transaction*" and that, in light of the potential conflict, Transnet requested McKinsey to source an alternative service provider[3].

(2) It will be noted that Mr Singh notified McKinsey of the potential conflict of interest, and that the basis for the conflict stemmed from Nedbank's stated interest in providing funding for other parts of the transaction.

(3) McKinsey responded to Mr Singh on 12 June 2013 proposing to Transnet that Regiments was a logical candidate to handle the financial advisory piece of the contract, in addition to the procurement and supply development work, bearing in mind that Regiments was already working as part of the consortium on the procurement and supply development elements[4].

5 **McKinsey's role in the first phase (the development of the business case) and subsequent withdrawal from the second phase of the project (paragraph 2.5)**

5.1 As noted, McKinsey's principal role in the project involved assisting Transnet on the narrow remit of a business case, a full year before the tender was awarded to the four OEMs, and after Transnet had issued the RFP for the locomotives acquisition.

5.2 Specifically, in the first phase of the project, from early 2013 to the end of April 2013, McKinsey facilitated the development of the business case, which included work validating whether the acquisition of 1064 locomotives was financially viable. McKinsey's recommendations are dealt with at paragraph 5.5 below.

5.3 The business case was, in the first instance, a Transnet document that was prepared by Mr Pillay and Mr Callard, and which McKinsey was asked to validate. In particular, the focus of the business case involved analysis demonstrating the "*clear need to accelerate locomotive deployment to enable delivery against Transnet's Market Demand Strategy (MDS) and achieve South Africa's broader socioeconomic objectives*" (emphasis omitted).

5.4 As a part of this work, McKinsey proposed flexibility in the procurement approach in case predicted market volumes did not materialize. While the 1064 figure was considered as the base case, McKinsey provided alternative scenarios in which 960, 920, or 830 locomotives would be needed. Additionally, McKinsey did not propose the prices for the locomotives. The prices for the locomotives were provided by Transnet.

5.5 The business case, signed off by Transnet's executive committee and board in April 2013, provides explicitly for the following:

(1) without locomotive procurement, the shortfall between locomotive capacity and market demand would rise to almost 112 million tons by 2021/22 (i.e. a 59% shortfall in capacity);

(2) the projections of the likely future volumes of commodities Transnet could transport were the most sensitive variable for the business case. Since the global financial crisis in 2008, McKinsey's standard practice is to advise its clients to ensure their capital investment plans are able to scale back or accelerate to better match volume movements. McKinsey included this advice to Transnet on its capital expenditure programme, including the 1 064 locomotive transaction. Therefore, the proposed procurement process included flexibility in the

[3] Annexure A3
[4] Annexure A4

contracts so that the number of locomotives could be adjusted downwards or upwards if necessary;

(3) local supply content was important and possible. McKinsey's calculation showed that 50% local supply content would probably add only 2% to the price and create about R68 billion in economic impact for South Africa;

(4) the likely capital expenditure required for the 1 064 locomotives as set out in the business case would be R38.6 billion over a 7-year period, including the cost of forex hedging and cost escalation. Locomotive cost estimates were provided by Transnet Freight Rail based on recent locomotive acquisitions combined with expert input from Advanced Railway Technologies. They estimated each diesel locomotive would cost around R25 million and each electric locomotive around R34 million;

(5) using likely efficiency improvements and projecting past volume performance at Transnet, McKinsey recommended that Transnet might only require the 1 064 locomotives beyond the business case time frame of 7 years. This was because Transnet would still require to procure between 60-80 locomotives per annum to maintain its locomotive fleet;

(6) while the 1 064 amount was considered as the base case, McKinsey provided alternative scenarios in which 960, 920 or 830 locomotives would be needed. Additionally, section 3.2 of the business case notes that the ultimate number of locomotives that were needed could change over time depending on the operational efficiencies captured and the volumes realised; and

(7) detailed recommendations were made on procurement security and governance issues, given the size of the transaction.

5.6 After completing the validation of the business case in April 2013, McKinsey expected to transition to the second phase, the procurement execution phase. But as recounted in Mr Fine's testimony annexures, work on this phase could not begin in earnest and McKinsey ultimately decided to discontinue its involvement on the project. In particular:

(1) McKinsey was unable to start on the procurement execution phase after finishing the business case because it was not provided timely access to Transnet Freight Rail's data. This was essential for McKinsey to support Transnet on this element of the project.

(2) Around this time, Transnet had experienced its own delays in terms of the work it had committed to perform as part of the project, and only completed its work by the end of 2013. In particular:

(a) The Transnet RFP for potential locomotive suppliers was delayed;

(b) Transnet did not secure necessary internal approvals within agreed timelines;

(c) DPE and National Treasury approvals were not submitted in time.

(3) McKinsey was not involved in the Technical, Financial, or B-BBEE assessment of bidders. McKinsey played no role in identifying bidders, scoring bidders, assessing bidders, or awarding bids.

(4) From April 2013 to January 2014, McKinsey did not work on the assessment of locomotive bidders and was not involved in the project.

(5) In January 2014, Transnet informed McKinsey that it had concluded the selection of the locomotive bidders and sought to complete the locomotive negotiation and procurement process more rapidly than originally intended, with McKinsey's support. To do this, Transnet revised the project's scope of work.

(6) McKinsey sent Mr Singh a memorandum on 31 January 2014, informing Transnet that the change in scope and timing limited McKinsey's ability to deliver against the scope. The memo described the additional cooperation and information McKinsey would require from Transnet in order to complete its work in Transnet's proposed compressed schedule.

(7) The required information was not forthcoming and additionally, McKinsey was concerned about its ability to add value to the transaction.

(8) In light of these concerns, on 4 February 2014, McKinsey withdrew from the locomotives engagement. At the time, McKinsey had done less than a week of work on this phase.

(9) On 5 February 2014, Transnet and McKinsey representatives met and agreed that as the consortium lead, McKinsey would transfer the remaining work and contract to Regiments. As recounted in Mr Fine's testimony, Regiments had already taken over a workstream related to the locomotives transaction from Nedbank, and it was the understanding of McKinsey personnel that Transnet thought that Regiments would also provide the financial advice to complete the locomotive procurement phase.

(10) On 16 April 2014, McKinsey wrote a letter memorializing the early February transfer of the remaining work to Regiments.

(11) McKinsey had no involvement in advising Transnet in relation to the awarding of the tender, nor on how the value of the transactions was determined after 4 February 2014. Regiments and Webber Wentzel would need to explain any work after this date.

(12) McKinsey did not have any involvement in and was not paid for the procurement work after 4 February 2014.

5.7 In summary, the delays in 2013 and the proposed shortened procurement timing meant that there were few negotiation levers left for discussion with the OEMs. McKinsey felt that its value-add would be very limited. Accordingly, although McKinsey had re-engaged at the end of January 2014, it withdrew from the engagement after less than one week of work.

5.8 After McKinsey withdrew from the locomotives engagement, Transnet apparently signed locomotive acquisition contracts with four Original Equipment Manufacturers at a total cost of around R54.6 billion, compared to the original R38.4 billion. McKinsey played no role in relation to the awarding of the tender or the contracts to the four OEMs or the determination of the locomotive prices, or any of the fund raising, hedging and derivative considerations.

6 Extensions to the letter of intent (paragraph 2.3)

6.1 We are aware of Addendums 1 and 2 to the Letter of Intent, which are merely extensions to the duration of the LOI from 7 March 2013 to 15 October 2013, and 15 October 2013 to 30 November 2013 respectively. There were no cost or scope implications associated with either Addendum.

6.2 McKinsey is not familiar with Addendum 3, which was signed by Eric Wood of Regiments after McKinsey withdrew from the project and ceded the contract to Regiments. At no time did Eric Wood work for McKinsey, or act on McKinsey's behalf in signing the various addendums.

6.3 McKinsey has no knowledge of how the contract price increased to over R200 million as reported in the media.

7 Signature of the Master Services Agreement (paragraph 2.4)

7.1 McKinsey withdrew from the locomotives engagement on 4 February 2014, having done work up to that point under the Letter of Intent, in anticipation of a contract being signed.

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7.2 It is correct that the MSA was signed by Mr Fine on 21 February 2014. This did not, however, represent a commitment to do further work, nor was it an indication that McKinsey agreed to resume work on the locomotives engagement.

7.3 After McKinsey withdrew on 4 February 2014, it transferred the remaining work to be done under the LOI to Regiments on 5 February 2014.

8 **Report submitted to the Directorate of Priority Crime Investigations (paragraph 4)**

8.1 In December 2017 McKinsey informed the South African authorities that its internal investigation found evidence that a McKinsey partner co-ordinated research support and used company resources to help draft some of a Transnet executive's MBA course work. This support, which was outside the scope of any client engagement, was a serious violation of McKinsey's professional standards. The individual in question, who is the same partner to whom we refer in our statement of 17 October 2017[5], is no longer with the firm.

8.2 A report in terms of section 34(1) of the *Prevention and Combatting of Corrupt Activities Act* was lodged with the Directorate for Priority Crime Investigation. It would therefore be inappropriate to comment further, as the matter is in the hands of the investigative authorities. Of course we would be happy to refer you to the relevant investigators.

***

We are happy to meet at your convenience to answer any further questions and continue to help Transnet understand these details.

Yours very truly,

Virginia L Molino

Virginia L. Molino
General Counsel

[5] Annexure A5

JCM05

McKinsey & Company

McKinsey and Company Africa (Pty) Ltd
140 West Street, Sandown, 2196
South Africa
Telephone +27 (11) 506 8000
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20 May 2019

Mncedisi Ndlovu & Sedumedi Attorneys
2nd Floor, 16 Fricker Road
Illovo
2196
Attention: Mr Ndlovu

Dear Mr Ndlovu,

Preliminary report into the alleged irregularities relating to the appointment of the transaction advisors in respect of the acquisition of the 1064 locomotives tenders, Volume 2A, March 2019

1 Thank you again for taking the time to meet with us to discuss the Volume 2A report.

2 We do not intend to respond to all of the topics covered in the Volume 2A report. We also do not intend to repeat all of our previous submissions, but we did think that it would be useful to remind you of McKinsey's answers to certain of the preliminary findings expressed by you. We appreciate the thoroughness of your review but you may not have been aware of or may have inadvertently overlooked certain key components which we would want to highlight and which we hope would be useful to you and included in your final report. Since we understand that the report has been introduced to the Zondo Commission as a draft, and that it will only be finalised after feedback from McKinsey, we would ask that our input in this letter be considered when finalising the report, and that we be afforded an opportunity to review the penultimate draft before the report is finalised and provided to the Commission.

3 **Evaluation of the McKinsey consortium's proposal**

3.1 Your preliminary conclusion is that McKinsey should have been disqualified at stage 1 because we did not submit what you describe as an acceptable tender.

3.2 As we read your report, the essence of the support for this conclusion is that McKinsey did not submit audited financial statements for the previous three years. As a result of that omission – and the fact that you say McKinsey also did not submit "any other document" reflecting its verifiable financial stability – you opine that Transnet could not achieve the purpose of the PPM.

3.3 For the reasons discussed below, we are hopeful you will make evident in your final report that McKinsey in good faith sought to evince its financial stability in the application – and that the ultimate responsibility for determining the adequacy of McKinsey's submission in these circumstances fell upon Transnet and not upon McKinsey. In addition, we believe it is important context that there was no prejudice to Transnet arising out of this issue, as the fact that McKinsey indeed had the requisite financial stability with Transnet was not in doubt.

3.4 As the report makes clear, McKinsey was very transparent in how it sought to evidence its financial stability in its application when it included the following paragraphs in respect of the matter in its application:

> In terms of the internal governance regarding the provision of Annual Financial Statements, McKinsey provides such statements only in terms of statutory or regulatory requirements, or when compelled to do so through any legal requirement.
>
> In order to provide details of the financial *bona fides* of McKinsey Incorporated, an original statement from the auditors of the entity is provided. Please refer to the original 'Report of Factual Findings' as prepared by PriceWaterhouseCoopers, covering the financial period, as required.
>
> In the event that McKinsey Incorporated is successful in its submission, and it remains a requirement to view the Annual Financial Statements, the Annual Financial Statements can be viewed through an on-site inspection.

3.5 We submit that the PWC report referenced is precisely "any other document", and that it expressly enabled Transnet to assess McKinsey's financial stability.

(1) The PWC report (an example of which is here attached[1]) and the opportunity to review McKinsey's annual financial statements amounts to material and substantial compliance, and is in line with a purposive approach to interpreting the PPPFA (as a whole), giving effect to section 217 of the Constitution.

(2) Inasmuch as there remained unresolved questions upon Transnet's review of the PWC report, McKinsey also expressly offered Transnet an on-site inspection of its annual financial statements in the event its submission was otherwise successful.

(3) That Transnet never availed itself of the opportunity for such on-site inspection corroborates that McKinsey's financial stability was never in doubt and that McKinsey had ample reason to conclude that its proffer on this issue was sufficient.

(4) It was ultimately Transnet and not McKinsey that had the responsibility to assess whether this element of the application had been satisfied. That McKinsey's proposal was accepted as indeed being administratively compliant with the RPF is clear from the sequence of events and is evident from Transnet's internal checklist.

3.6 As you are aware, our courts have consistently adopted the view that a procurement process that lays undue emphasis on form at the expense of substance would be inimical to the value of fairness, cost effectiveness, transparency, competitiveness and equitability – which is enshrined in section 217 of the Constitution.

3.7 We submit that strict compliance, even where annual financial statements may have been

---

[1] The application was submitted nearly seven years ago, and we have to date not been able to confirm that we have in our files a copy of the specific PWC report referred to in the application. We accordingly attach a similar report prepared by PWC for one of McKinsey's other SOE clients (marked "A") for illustrative purposes.

identified as a mandatory document, would amount to nothing other than placing form over substance since the PWC report expressly enables Transnet to assess McKinsey's financial stability and since the offer of an on-site inspection was conveyed clearly in writing and never pursued by Transnet.

3.8 Lastly, we note for the record that at no point has Transnet ever been prejudiced in any respect as it relates to this issue, as not only did McKinsey at all times have the requisite financial stability to undertake this project, but the long working relationship with Transnet gave Transnet visibility of McKinsey's financial stability.

3.9 In summary, we say that it is clear that the purpose of requesting annual financial statements was to establish McKinsey's financial health, as the Volume 2A report itself identifies. Our tender submission complied with the purpose of this requirement. To adopt a different position now, despite McKinsey's transparent disclosure of the underlying substance, would be emphasising form over substance which our courts are loathe to endorse – and would penalize McKinsey despite its good faith and transparent efforts to furnish the requisite information.

4 Changes to the McKinsey Consortium

4.1 We refer here to our previous submission on 30 October 2018 when we explained who the members of the original consortium were, and how the consortium members evolved over time. We attach the letter marked "B", rather than repeat in full what we've said before.

4.2 The critical point we have sought to emphasize is that the impetus for the consortium changes was Transnet, which requested the substitution of members of the consortium on the basis of conflicts of interest that were identified following the submission.

4.3 We ask that you make it clearer in your report that McKinsey was entitled to rely on Transnet's assessment at the time that a conflict of interest had arisen and that a substitution as to certain members was therefore appropriate.

4.4 In addition, it was for Transnet to determine and communicate whether such a substitution should have required reopening the procurement process - and McKinsey should not be faulted for accepting Transnet's views on the matter. This is particularly so given the urgency to start on the project and the potential consequences to Transnet of further delays.

5 Lapsing of the Letter of Intent

5.1 We note that you accept the first and second extensions of the LOI, up to 30 November 2013.

5.2 As we've said before, McKinsey's principal role in the locomotives project involved assisting Transnet on the narrow remit of the business case, which it did up to and including April 2013. McKinsey facilitated the development of the business case, which included work validating whether the acquisition of the 1064 locomotives was financially viable.

5.3 The business case was signed off by Transnet's executive committee and board in April 2013. The work that McKinsey did on the business case was done prior to 30 November 2013 and was therefore done before the LOI lapsed, on your reasoning.

5.4 We have previously said that McKinsey is not familiar with addendum 3, signed by Eric Wood of Regiments, after McKinsey withdrew from the project and after it ceded the contract, with Transnet's knowledge and approval, to Regiments. Eric Wood did not and has never worked for McKinsey, and McKinsey has no knowledge of how the contract price increased to over R200m under Regiments as reported in the media.

6 **Master Services Agreement**

6.1 We have previously explained that McKinsey *signed* the contract for the provision of services related to the acquisition of 1064 Locomotives Tender on 21 February 2014. Consistent with market practice, the signature of the MSA did not represent a commitment to do further work, including any agreement to resume work that ended on 4 February 2014.

6.2 After McKinsey withdrew from the engagement on 4 February 2014, it transferred the remaining work, with Transnet's knowledge and approval, to Regiments. The cession letter of 16 April 2014 memorialised this agreement.

6.3 McKinsey only recently became aware of the 23 January 2014 agreement between Transnet and Regiments for essentially the same services that the McKinsey-led consortium was contracted to provide – a date that precedes the cession from McKinsey to Regiments in February. McKinsey was not party to the Transnet/Regiments agreement.

7 **Fees/recoveries**

7.1 Our 12 April 2013 invoice number 5302 covers services rendered from 4 March 2013 to 12 April 2013, in relation to the business case which was signed off in April 2013. The fee component of the invoice is R6 556 588 (which is less than the R6.6m allowed by the LOI).

7.2 Our further invoice number 5574 dated 20 November 2013 covers services rendered for the period 6 May to 17 May 2013. The fee component of the invoice is R2.1m.

7.3 We note your conclusion that McKinsey invoiced Transnet R8 656 588 for the business case, an amount that you say exceeds the R6.6m which was allowed under the LOI. The charge of R2.1m was agreed between Mr Sagar and Mr Singh at a meeting on 17 November 2013, and was in respect of an additional two weeks work after McKinsey's work on the business case had been completed and the corresponding invoice submitted.

7.4 Invoices 5302 and 5574 reflect charges for our out-of-pocket expenses and support services at a rate of 11.5%. We annex a schedule marked "C" detailing McKinsey's actual out of pocket expenses, in respect of both invoices, in the cumulative amount of R1 277 400.99. You will note that McKinsey's actual expenses exceed the 11.5% charge by almost R282 000. As you have pointed out, the LOI by its terms limits the actual expenses to 10% of the contract value. Having regard to the fact that these invoices go back to 2012 (and represent two among many invoices generated over the years to Transnet), it is difficult to ascertain the basis on which out-of-pocket expenses were raised to 11.5% of the contract value. We calculate the difference at R129 848.82; being an amount of R98 348.82 under invoice 5302 plus R31 500 under invoice 5574.

7.5 McKinsey, relying on Mr Singh's authorisation, performed the services identified in invoice 5574 and charged that amount in good faith. You conclude that McKinsey was not entitled to raise the additional charge of R2.1m as essentially being a breach of procurement regulations. Those requirements were solely Transnet's responsibility.

7.6 We previously advised that, in January 2014, Transnet informed McKinsey that it had concluded the selection of locomotive bidders and that it sought to complete the locomotive

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negotiation and procurement process more quickly than initially intended. Transnet sought McKinsey's support, and revised the scope of the project. McKinsey withdrew from the engagement on 4 February 2014, concerned about its ability to add value to the transaction in a significantly compressed timeline. McKinsey had done less than a week of work on this phase, and did not charge Transnet for any of the work on this phase.

7.7 McKinsey stands ready to explore a mutually satisfactory resolution to your conclusions about the issues raised in this paragraph 7 at the meeting between Transnet and McKinsey representatives that has been arranged for 22 May 2019.

8 McKinsey has repeatedly expressed its commitment to working with Transnet's advisors to assist its investigations and we intend our offer here in the spirit of helping Transnet move forward. We would welcome a meeting to clarify any remaining misunderstandings or any outstanding issues.

Yours faithfully

Xandra Blacklaws
Associate General Counsel
McKinsey and Company Africa (Pty) Ltd

"A" JCM05

McKinsey&Company

McKinsey Incorporated

Policy on provision of Annual Financial Statements

McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African branch is a privately held entity.

In terms of the internal governance regarding the provision of Annual Financial Statements, McKinsey provides such statements only in terms of statutory or regulatory requirements, or when compelled to do so through any legal requirement.

In order to provide details of the financial *bona fides* of McKinsey Incorporated, an original statement from the auditors of the entity is provided. Please refer to the original 'Report of Factual Findings' as prepared by PriceWaterhouseCoopers, covering the financial period, as required.

In the event that McKinsey Incorporated is successful in its submission, and it remains a requirement to view the Annual Financial Statements, the Annual Financial Statements can be viewed through an on-site inspection.

McKinsey, Incorporated, trading as McKinsey & Company
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CERTIFIED A TRUE COPY OF THE ORIGINAL
NICO KNOP
347 Bushwillow Street
Roodekrans 1724
COMMISSIONER OF OATHS
Ex Officio ADMITTED ATTORNEY
28/5/12

pwc

REPORT OF FACTUAL FINDINGS
TO MCKINSEY INCORPORATED (INCORPORATED IN THE STATE OF DELAWARE UNITED STATES OF AMERICA) SOUTH AFRICAN BRANCH

We have performed the procedures agreed with you and enumerated below with respect to the audited, but not approved financial information of McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African Branch (the "Company") for the year ended 31 December 2010. Our engagement was undertaken in accordance with the International Standard on Related Services applicable to agreed-upon procedures engagements. The procedures were performed solely to assist you in obtaining the financial information of the Company for the year ended 31 December 2010 and are summarised as follows:

1. Agree the reported revenue of the Company for the financial year ended 31 December 2010 to the audited and approved financial statements.

2. Agree the reported net profit after taxation of the Company for the financial year ended 31 December 2010 to the audited and approved financial statements.

3. Agree the reported cash and cash equivalents of the Company for the financial year ended 31 December 2010 to the audited and approved financial statements.

4. Check that all tax returns (IT 14) to the South African Revenue Services up to and including 31 December 2010 have been filed.

5. Compute the undermentioned ratio's as defined below:
   a. Return on Capital Employed = Profit before interest and tax / Total assets – Current liabilities;
   b. Liquidity Ratio = Current assets – Inventory : Current liabilities; and
   c. Current Ratio = Current assets : Current liabilities.

We report our findings below:

1. The reported revenue per the audited and approved financial statements of the Company for the financial year ended 31 December 2010 exceeded R1 billion.

2. The reported net profit after tax per the audited and approved financial statements of the Company for the financial year ended 31 December 2010 exceeded R108 million.

3. The reported cash and cash equivalents per the audited and approved financial statements of the Company for the financial year ended 31 December 2010 exceeded R294 million.

4. The company has filed all tax returns (IT 14) to the South African Revenue Services up to and including 31 December 2010.

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5. The following ratio's were computed and the results are as follows:
   a. Return on Capital Employed = 0.4398;
   b. Liquidity Ratio = Current assets – Inventory : Current liabilities = 3.2891 : 1; and
   c. Current Ratio = Current assets : Current liabilities = 3.2891 : 1.

These ratios were based on the audited and approved financial information of McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African Branch (the "Company") for the year ended 31 December 2010.

Because the above procedures do not constitute either an audit, review or other assurance engagement made in accordance with International Standards on Auditing, International Standards on Review Engagements or International Standards on Assurance Engagements, we do not express any assurance on the financial information of the Company for the year ended 31 December 2010.

Had we performed additional procedures or had we performed an audit or review of, or other assurance engagement on the financial statements in accordance with International Standards on Auditing, International Standards on Review Engagements or International Standards on Assurance Engagements, other matters might have come to our attention that would have been reported to you.

Copies of our report may be made available to your professional advisers provided that it is clearly understood by the recipients that they enjoy such receipt for information only and that we accept no duty of care to them in respect of our reports and letters. Furthermore, the reports and letters are to be used by them only for the purposes stated herein. The report must not be made available or copied in whole or in part to any other party without our prior written consent, which consent may be given or withheld at our absolute discretion. This limitation will obviously not apply to the provision of this report in compliance with any order or court, subpoena or other judicially enforceable directive.

This report relates only to the accounts and items specified above and do not extend to any financial statements of McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African Branch, taken as a whole.

AL Venter
Director
Chartered Accountant (SA)
Johannesburg
2 November 2011

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CERTIFIED A TRUE COPY OF THE ORIGINAL
NICO KNOP 28/5/18
347 Bushwillow Street
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COMMISSIONER OF OATHS
Ex Officio ADMITTED ATTORNEY

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REPORT OF FACTUAL FINDINGS
TO MCKINSEY INCORPORATED (INCORPORATED IN THE STATE OF DELAWARE UNITED STATES OF AMERICA) SOUTH AFRICAN BRANCH

We have performed the procedures agreed with you and enumerated below with respect to the audited, but not approved financial information of McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African Branch (the "Company") for the year ended 31 December 2009. Our engagement was undertaken in accordance with the International Standard on Related Services applicable to agreed-upon procedures engagements. The procedures were performed solely to assist you in obtaining the financial information of the Company for the year ended 31 December 2009 and are summarised as follows:

1. Agree the reported revenue of the Company for the financial year ended 31 December 2009 to the audited, but not approved financial statements.

2. Agree the reported net profit after taxation of the Company for the financial year ended 31 December 2009 to the audited, but not approved financial statements.

3. Agree the reported cash and cash equivalents of the Company for the financial year ended 31 December 2009 to the audited, but not approved financial statements.

4. Check that all tax returns (IT 14) to the South African Revenue Services up to and including 31 December 2009 have been filed.

5. Compute the undermentioned ratio's as defined below:
   a. Return on Capital Employed = Profit before interest and tax / Total assets – Current liabilities;
   b. Liquidity Ratio = Current assets – Inventory : Current liabilities; and
   c. Current Ratio = Current assets : Current liabilities.

We report our findings below:

1. The reported revenue per the audited, but not approved financial statements of the Company for the financial year ended 31 December 2009 exceeded R1 billion.

2. The reported net profit after tax per the audited, but not approved financial statements of the Company for the financial year ended 31 December 2009 exceeded R125 million.

3. The reported cash and cash equivalents per the audited, but not approved financial statements of the Company for the financial year ended 31 December 2009 exceeded R270 million.

4. The company has filed all tax returns (IT 14) to the South African Revenue Services up to and including 31 December 2009.

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5. The following ratio's were computed and the results are as follows:
   a. Return on Capital Employed = 0.4793;
   b. Liquidity Ratio = Current assets – Inventory : Current liabilities = 4,0287 : 1; and
   c. Current Ratio = Current assets : Current liabilities = 4,0287 : 1.

   These ratio's were based on the audited, but not approved financial information of McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African Branch (the "Company") for the year ended 31 December 2009.

Because the above procedures do not constitute either an audit, review or other assurance engagement made in accordance with International Standards on Auditing, International Standards on Review Engagements or International Standards on Assurance Engagements, we do not express any assurance on the financial information of the Company for the year ended 31 December 2009.

Had we performed additional procedures or had we performed an audit or review of, or other assurance engagement on the financial statements in accordance with International Standards on Auditing, International Standards on Review Engagements or International Standards on Assurance Engagements, other matters might have come to our attention that would have been reported to you.

Copies of our report may be made available to your professional advisers provided that it is clearly understood by the recipients that they enjoy such receipt for information only and that we accept no duty of care to them in respect of our reports and letters. Furthermore, the reports and letters are to be used by them only for the purposes stated herein. The report must not be made available or copied in whole or in part to any other party without our prior written consent, which consent may be given or withheld at our absolute discretion. This limitation will obviously not apply to the provision of this report in compliance with any order or court, subpoena or other judicially enforceable directive.

This report relates only to the accounts and items specified above and do not extend to any financial statements of McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African Branch, taken as a whole.

AL Venter
Director
Chartered Accountant (SA)
Johannesburg
28 July 2010

"B" JCM05

McKinsey&Company

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2196
nkosenhle@ndlovu-sedumedi.co.za
October 30, 2018

Dear Mr Mzinyathi:

Transnet's investigation relating to the procurement of 1064 locomotives

1 We refer to your letter to McKinsey dated 5 October 2018 (**your letter**).

2 We thought that it would be useful if we were to provide a comprehensive written response to the questions posed in your letter. If you need additional clarity, please identify what further information you need. We wish to reiterate that McKinsey remains fully committed to working with Transnet's advisers to assist with Transnet's various investigations; as evidenced by McKinsey's co-operation with both Werksmans and Fundudzi Forensic Services.

3 Even though we have not seen proof of your authority from Transnet, we accept that you have such authority, and we proceed on that basis.

4 **McKinsey's appointment by Transnet as preferred bidder (paragraph 2.1), and Regiments' appointment as McKinsey's supplier development partner (paragraph 2.2)**

4.1 As an initial matter, we refer you here to the appendix to David Fine's submission to Parliament. The appendix extensively recounts the work that McKinsey did on projects related to the 1064 Locomotives (GSM/12/05/0447) and makes clear that McKinsey's principal role in this matter involved advising Transnet on the narrow remit of a business case a full year before the tender was awarded, and after Transnet had issued the RFP for the locomotives acquisition. We understand the final award deviated significantly from McKinsey's work.

4.2 By way of background, on 15 January 2013, a McKinsey-led consortium won a tender to provide advisory services to Transnet on Transnet's planned locomotives acquisition. There were four primary work-streams, which were intended to start in March 2013 and conclude in October 2013. The work-streams were:

(1) McKinsey would be responsible for validating Transnet's business case, to include projections for the volume of commodities Transnet could transport, validate that the procurement of 1064 locomotives was financially viable, and conduct scenario planning to inform contracting;

(2) Letsema would be responsible for programme management, to monitor overall progress against timelines and ensure proper governance;

(3) Utho/Nedbank, Webber Wentzel, and McKinsey would provide transaction advisory services and procurement execution, to minimise financial risk for Transnet and ensure suppliers deliver on their commitments; and

(4) Advanced Railway Technologies and McKinsey would provide technical evaluation and optimisation by assessing the life-cycle costs of suppliers shortlisted by Transnet.

4.3 With respect to the specific questions that you pose in paragraphs 2.1 and 2.2 of your letter, Transnet issued a confined RFP to four entities (McKinsey, PWC, Webber Wentzel and KPMG). McKinsey's consortium scored the highest. The McKinsey-led consortium's proposal was accepted, and the consortium was awarded the work in a Letter of Intent sent on 30 November 2012, and which was signed on 4 December and 6 December 2012[1].

4.4 It is helpful to understand how the consortium working on both phases of the project evolved over time.

4.5 Original consortium: McKinsey, Letsema, Nedbank and Utho, Advanced Railway Technologies and Edward Nathan Sonnenbergs

(1) On 7 June 2012, the McKinsey consortium submitted its response to RFP GSM/12/05/0447[2]. The consortium members were:

(a) McKinsey: prime contractor

(b) Letsema Consulting: supply development, procurement strategy, RFP process, supplier evaluation and contracting

(c) Nedbank Capital and Utho Capital: financial advice related to funding options and structuring

(d) Advanced Railway Technologies: expertise for the technical specification of locomotives, input on the business case revision, identify technical leaders and support value engineering

(e) Edward Nathan Sonnenbergs: legal advice, with local partner Koikanyong

4.6 We understand that the McKinsey consortium's submission was discussed at a Transnet Acquisition Council meeting on 18 July 2012.

4.7 Around this time, Transnet raised a conflict of interest regarding Letsema which was serving General Electric Locomotives, a potential bidder to build and supply locomotives. In addition, McKinsey was reviewing Letsema as a supplier development partner because its size and the demographics of its workforce meant that its involvement in the project might not continue to satisfy BEE regulations.

4.8 Revised consortium: Regiments Capital Partners (**Regiments**) as a potential alternative to Letsema

(1) In a revised consortium, potential alternatives to Letsema were considered.

(2) From 2012 to 2016, Regiments were McKinsey's Supplier Development Partner.

(3) In discussing potential alternatives, Mr Singh noted that Regiments had performed well for Transnet in work that Regiments had done for Transnet's Treasury function in the past. It is important to stress that Regiments had been working at Transnet prior to any relationship with McKinsey, and McKinsey did not introduce Regiments to Transnet.

4.9 Revised consortium: Regiments replaced Letsema, and Webber Wentzel replaced Edward Nathan Sonnenbergs

(1) On 30 November 2012, Mr Singh sent the Letter of Intent to Mr Kloss. The consortium then consisted of McKinsey, Regiments, Advanced Railway Technologies, and Nedbank and Utho Capital.

(2) Webber Wentzel replaced ENS as the provider of legal services, as noted in the letter.

[1] Annexure A1
[2] Annexure A2

4.10 Further revised consortium: Regiments replaced Nedbank

(1) On 22 May 2013, after the work had commenced and McKinsey's validation of the business case had been completed, Mr Singh sent Mr Kloss a letter identifying that Nedbank had a potential conflict of interest "*primarily based on Nedbank Capital being appointed as part of the McKinsey led consortium to provide Transnet with Advisory services related to the acquisition of 1 064 locomotives as well as their interest in providing funding for other related services to Transnet for the same transaction*" and that, in light of the potential conflict, Transnet requested McKinsey to source an alternative service provider[3].

(2) It will be noted that Mr Singh notified McKinsey of the potential conflict of interest, and that the basis for the conflict stemmed from Nedbank's stated interest in providing funding for other parts of the transaction.

(3) McKinsey responded to Mr Singh on 12 June 2013 proposing to Transnet that Regiments was a logical candidate to handle the financial advisory piece of the contract, in addition to the procurement and supply development work, bearing in mind that Regiments was already working as part of the consortium on the procurement and supply development elements[4].

5 **McKinsey's role in the first phase (the development of the business case) and subsequent withdrawal from the second phase of the project (paragraph 2.5)**

5.1 As noted, McKinsey's principal role in the project involved assisting Transnet on the narrow remit of a business case, a full year before the tender was awarded to the four OEMs, and after Transnet had issued the RFP for the locomotives acquisition.

5.2 Specifically, in the first phase of the project, from early 2013 to the end of April 2013, McKinsey facilitated the development of the business case, which included work validating whether the acquisition of 1064 locomotives was financially viable. McKinsey's recommendations are dealt with at paragraph 5.5 below.

5.3 The business case was, in the first instance, a Transnet document that was prepared by Mr Pillay and Mr Callard, and which McKinsey was asked to validate. In particular, the focus of the business case involved analysis demonstrating the "*clear need to accelerate locomotive deployment to enable delivery against Transnet's Market Demand Strategy (MDS) and achieve South Africa's broader socioeconomic objectives*" (emphasis omitted).

5.4 As a part of this work, McKinsey proposed flexibility in the procurement approach in case predicted market volumes did not materialize. While the 1064 figure was considered as the base case, McKinsey provided alternative scenarios in which 960, 920, or 830 locomotives would be needed. Additionally, McKinsey did not propose the prices for the locomotives. The prices for the locomotives were provided by Transnet.

5.5 The business case, signed off by Transnet's executive committee and board in April 2013, provides explicitly for the following:

(1) without locomotive procurement, the shortfall between locomotive capacity and market demand would rise to almost 112 million tons by 2021/22 (i.e. a 59% shortfall in capacity);

(2) the projections of the likely future volumes of commodities Transnet could transport were the most sensitive variable for the business case. Since the global financial crisis in 2008, McKinsey's standard practice is to advise its clients to ensure their capital investment plans are able to scale back or accelerate to better match volume movements. McKinsey included this advice to Transnet on its capital expenditure programme, including the 1 064 locomotive transaction. Therefore, the proposed procurement process included flexibility in the

[3] Annexure A3
[4] Annexure A4

contracts so that the number of locomotives could be adjusted downwards or upwards if necessary;

(3) local supply content was important and possible. McKinsey's calculation showed that 50% local supply content would probably add only 2% to the price and create about R68 billion in economic impact for South Africa;

(4) the likely capital expenditure required for the 1 064 locomotives as set out in the business case would be R38.6 billion over a 7-year period, including the cost of forex hedging and cost escalation. Locomotive cost estimates were provided by Transnet Freight Rail based on recent locomotive acquisitions combined with expert input from Advanced Railway Technologies. They estimated each diesel locomotive would cost around R25 million and each electric locomotive around R34 million;

(5) using likely efficiency improvements and projecting past volume performance at Transnet, McKinsey recommended that Transnet might only require the 1 064 locomotives beyond the business case time frame of 7 years. This was because Transnet would still require to procure between 60-80 locomotives per annum to maintain its locomotive fleet;

(6) while the 1 064 amount was considered as the base case, McKinsey provided alternative scenarios in which 960, 920 or 830 locomotives would be needed. Additionally, section 3.2 of the business case notes that the ultimate number of locomotives that were needed could change over time depending on the operational efficiencies captured and the volumes realised; and

(7) detailed recommendations were made on procurement security and governance issues, given the size of the transaction.

5.6 After completing the validation of the business case in April 2013, McKinsey expected to transition to the second phase, the procurement execution phase. But as recounted in Mr Fine's testimony annexures, work on this phase could not begin in earnest and McKinsey ultimately decided to discontinue its involvement on the project. In particular:

(1) McKinsey was unable to start on the procurement execution phase after finishing the business case because it was not provided timely access to Transnet Freight Rail's data. This was essential for McKinsey to support Transnet on this element of the project.

(2) Around this time, Transnet had experienced its own delays in terms of the work it had committed to perform as part of the project, and only completed its work by the end of 2013. In particular:

(a) The Transnet RFP for potential locomotive suppliers was delayed;

(b) Transnet did not secure necessary internal approvals within agreed timelines;

(c) DPE and National Treasury approvals were not submitted in time.

(3) McKinsey was not involved in the Technical, Financial, or B-BBEE assessment of bidders. McKinsey played no role in identifying bidders, scoring bidders, assessing bidders, or awarding bids.

(4) From April 2013 to January 2014, McKinsey did not work on the assessment of locomotive bidders and was not involved in the project.

(5) In January 2014, Transnet informed McKinsey that it had concluded the selection of the locomotive bidders and sought to complete the locomotive negotiation and procurement process more rapidly than originally intended, with McKinsey's support. To do this, Transnet revised the project's scope of work.

(6) McKinsey sent Mr Singh a memorandum on 31 January 2014, informing Transnet that the change in scope and timing limited McKinsey's ability to deliver against the scope. The memo described the additional cooperation and information McKinsey would require from Transnet in order to complete its work in Transnet's proposed compressed schedule.

(7) The required information was not forthcoming and additionally, McKinsey was concerned about its ability to add value to the transaction.

(8) In light of these concerns, on 4 February 2014, McKinsey withdrew from the locomotives engagement. At the time, McKinsey had done less than a week of work on this phase.

(9) On 5 February 2014, Transnet and McKinsey representatives met and agreed that as the consortium lead, McKinsey would transfer the remaining work and contract to Regiments. As recounted in Mr Fine's testimony, Regiments had already taken over a workstream related to the locomotives transaction from Nedbank, and it was the understanding of McKinsey personnel that Transnet thought that Regiments would also provide the financial advice to complete the locomotive procurement phase.

(10) On 16 April 2014, McKinsey wrote a letter memorializing the early February transfer of the remaining work to Regiments.

(11) McKinsey had no involvement in advising Transnet in relation to the awarding of the tender, nor on how the value of the transactions was determined after 4 February 2014. Regiments and Webber Wentzel would need to explain any work after this date.

(12) McKinsey did not have any involvement in and was not paid for the procurement work after 4 February 2014.

5.7 In summary, the delays in 2013 and the proposed shortened procurement timing meant that there were few negotiation levers left for discussion with the OEMs. McKinsey felt that its value-add would be very limited. Accordingly, although McKinsey had re-engaged at the end of January 2014, it withdrew from the engagement after less than one week of work.

5.8 After McKinsey withdrew from the locomotives engagement, Transnet apparently signed locomotive acquisition contracts with four Original Equipment Manufacturers at a total cost of around R54.6 billion, compared to the original R38.4 billion. McKinsey played no role in relation to the awarding of the tender or the contracts to the four OEMs or the determination of the locomotive prices, or any of the fund raising, hedging and derivative considerations.

6 Extensions to the letter of intent (paragraph 2.3)

6.1 We are aware of Addendums 1 and 2 to the Letter of Intent, which are merely extensions to the duration of the LOI from 7 March 2013 to 15 October 2013, and 15 October 2013 to 30 November 2013 respectively. There were no cost or scope implications associated with either Addendum.

6.2 McKinsey is not familiar with Addendum 3, which was signed by Eric Wood of Regiments after McKinsey withdrew from the project and ceded the contract to Regiments. At no time did Eric Wood work for McKinsey, or act on McKinsey's behalf in signing the various addendums.

6.3 McKinsey has no knowledge of how the contract price increased to over R200 million as reported in the media.

7 Signature of the Master Services Agreement (paragraph 2.4)

7.1 McKinsey withdrew from the locomotives engagement on 4 February 2014, having done work up to that point under the Letter of Intent, in anticipation of a contract being signed.

7.2 It is correct that the MSA was signed by Mr Fine on 21 February 2014. This did not, however, represent a commitment to do further work, nor was it an indication that McKinsey agreed to resume work on the locomotives engagement.

7.3 After McKinsey withdrew on 4 February 2014, it transferred the remaining work to be done under the LOI to Regiments on 5 February 2014.

8 Report submitted to the Directorate of Priority Crime Investigations (paragraph 4)

8.1 In December 2017 McKinsey informed the South African authorities that its internal investigation found evidence that a McKinsey partner co-ordinated research support and used company resources to help draft some of a Transnet executive's MBA course work. This support, which was outside the scope of any client engagement, was a serious violation of McKinsey's professional standards. The individual in question, who is the same partner to whom we refer in our statement of 17 October 2017[5], is no longer with the firm.

8.2 A report in terms of section 34(1) of the *Prevention and Combatting of Corrupt Activities Act* was lodged with the Directorate for Priority Crime Investigation. It would therefore be inappropriate to comment further, as the matter is in the hands of the investigative authorities. Of course we would be happy to refer you to the relevant investigators.

***

We are happy to meet at your convenience to answer any further questions and continue to help Transnet understand these details.

Yours very truly,

Virginia L Molino

Virginia L. Molino
General Counsel

[5] Annexure A5

"JCM05"

The table below sets out the actual expenses incurred:

Invoice Number 5302		Invoice Number 5574	
Support Professionals	221 434,50	Support Professionals	249 551,43
Air Travel	292 706,70	Air Travel	257 699,65
Research and Information Expenses	9 855,78	Research and Information Expenses	2 790,01
IT Costs	56 610,08	IT Costs	14 818,07
Meals	46 843,50	Meals	11 642,40
Lodging	46 117,92	Lodging	-
Surface Transport	56 097,86	Surface Transport	2 172,80
Printing and Delivery	3 365,35	Printing and Delivery	236,20
Miscellaneous	4 577,76	Miscellaneous	800,00
TOTAL	**737 690,43**	**TOTAL**	**539 710,56**

JCM05

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By Email: Xandra_Blacklaws@mckinsey.com

McKinsey and Company Africa (Pty) Ltd
Ms Xandra Blacklaws

OUR REF: MAT3510 REF: DATE: 22-May-19

Dear Ms Blacklaws

MNS AND MCKINSEY ENGAGEMENTS ON THE PRELIMINARY FINDINGS OF THE MNS VOLUME 2a REPORT

1. We refer to your letter dated 20 May 2019 and respond thereto as follows:

1.1 For the record, we advise that we do not intend to deal with each and every aspect contained in your letter under reply and confirm that our failure to deal with any aspect must not be construed as an admission of the correctness of the contents of your letter or acquiescence therewith. As such we reserve the right to deal with each aspect contained in your letter at the appropriate forum, should the need arise.

Ad paragraph 2

1.2 We note your request in paragraph 2 of your letter. However, we reserve the right finalize our Volume 2a Report as we deem fit and in consultation with our Client.

Ad paragraph 3

1.3 In terms of section 1 sub-paragraph 9.1 read with section 4 under the heading "*Returnable Documents and Schedules*" of the request for proposal GSM/12/05/0447 ("the 1064 RFP") "*failure to provide all the above-referenced returnable documents marked with a [√] will result in a Respondent's disqualification.*"

1.4 This requirement expressly provides that the audited financial statements must form part of a bidder's returnable documents to be evaluated by Transnet SOC

Ltd ("Transnet" or "our Client") during the adjudication of the bids. The opportunity to access McKinsey and Company Africa (Pty) Ltd's ("McKinsey") audited financial statements subject to McKinsey being awarded the tender does not comply with the RFP's requirements as this opportunity would only be available to Transnet post the evaluation of the bids.

1.5 We have perused the original bid submitted by the McKinsey & Company and Letsema Consulting Joint Venture ("the McKinsey JV") as provided to us by Transnet and confirm that the bid does not contain McKinsey's audited financial statements nor does the bid include a "*Report of Factual Findings as prepared by Price Waterhouse Coopers, covering the financial period, as required*."

1.1 It is on this basis that we confirm that the McKinsey JV ought to have been disqualified by Transnet at stage 1 of the tender evaluation process due to its non-compliance with the RFP's mandatory requirements.

1.2 In terms of Transnet's Procurement Procedure Manual ("PPM") the objective for requesting a bidder to submit its audited financial statements is to evaluate a bidder's financial stability.

1.3 In the <u>Allpay Consolidated Investments Holdings v CEO of SASSA[1]</u> case, the Court held that in circumstances where the materiality of compliance with legal requirements must be assessed, it is essential *"to link the question of compliance to the purpose"*.

1.4 We note the statement made in your sub-paragraph 3.7 regarding substance over form and are of the view that the Allpay judgement places the principle in context in relation to the facts of the matter.

1.5 Transnet could not achieve the purpose of the PPM without having considered McKinsey's audited financial statements during the adjudication process of the bids.

1.6 We conclude that the McKinsey JV bid was non-responsive and was not an acceptable tender.

<u>Ad paragraph 4</u>

1.7 The MNS Volume 2a Report makes it clear that Transnet transgressed the Constitution by irregularly appointing Regiments. However, we note your request

[1] 2014 (1) SA 604 (CC).

at sub-paragraph 4.3 and will consider it in the finalization of our Volume 2a Report.

Ad paragraph 6

1.8 We note the contents of paragraph 6. However, we do not agree that the signing of the Master Service Agreement ("MSA") on 21 February 2014 did not represent a commitment to do further work for Transnet.

1.9 In terms of a letter from McKinsey dated 16 April 2014 addressed to Transnet, Mr V Sagar states that McKinsey ceded its rights and obligations to Regiments on 05 February 2014.

1.10 In sub-paragraph 5.1 of your letter you accept that the Second Addendum to the Letter of Intent ("LOI") lapsed on 30 November 2013. Accordingly, the relationship between Transnet and McKinsey terminated on 30 November 2013.

1.11 On your version McKinsey had completed its workstream in terms of the LOI before it lapsed and further withdrew from the contract on 04 February 2014. On this basis you concede that the relationship between McKinsey and Transnet had terminated if not on 30 November 2013 then at the latest on the date of your withdrawal being 04 February 2014.

1.12 In terms of the law of contract when parties enter into an agreement the conclusion thereof creates rights and obligations between parties. On 21 February 2014 McKinsey and Transnet concluded the MSA which created rights and obligations between the parties. However, the MSA was invalid due to that fact that it was concluded pursuant to a lapsed LOI.

1.13 We confirm that the conclusion of the MSA was null and void.

Ad paragraph 7

1.14 We note the alleged agreement between Mr Sagar and Mr Singh. However, without us having perused the agreement we are unable to confirm its existence and its veracity.

1.15 In terms of paragraph 5.6(4) of your letter addressed to MNS (dated 30 October 2018 and annexed to the letter under reply as annexure "B") you confirm that McKinsey "*did not work on the assessment of the locomotive bidders and was not involved in the project"* from April 2013 to January 2014.

1.16 On your version invoice 5574 dated 20 November 2013 was for an increased scope of work in respect of the 1064 transaction advisory services conducted during the period 06 May to 17 May 2013, this is a contradiction of the averments made in your letter dated 30 October 2018 confirming that no further work and/or services where performed by McKinsey after April 2013.

1.17 In terms of the LOI only a written amendment authorized by the signatories to the LOI is a valid variation of the LOI. The existence of a verbal agreement to vary McKinsey's scope of work is invalid and does not amount to a variation of the scope of work in respect of the LOI.

1.18 Accordingly, the purported variation of the LOI and the increase in the contract value by R 2.1 million was invalid and unlawful.

1.19 As a signatory to the LOI McKinsey was at all times aware of the terms of the LOI and it can thus not be said that the responsibility to comply with the procurement requirements rested solely on Transnet. McKinsey had a contractual duty to comply with the terms of the LOI.

1.20 We reiterate that McKinsey was not entitled to charge Transnet an additional R 2.1 million and that the extension of the scope of work was invalid.

1.21 We confirm that the out-of-pocket expenses paid to McKinsey in excess of the 10% provided by the LOI amounts to R 129 848.82. The excess fees where unjustifiably paid to McKinsey.

2. We do not intend to debate legal points via correspondence and advise that should McKinsey wish to express its views, it may approach the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including State Organs to state its case.

3. Whilst we thank you for and appreciate your co-operation in our view the finding in our Volume 2a Report are not prejudicial to McKinsey either by implication or expressly.

4. Having read the MNS Volume 2a Report you will note that the findings in relation to McKinsey are largely in respect of Transnet's conduct and are not an indictment on McKinsey.

5. We reiterate that the preliminary findings in our Volume 2a Report are premised on the irregularities we uncovered as a result of Transnet's non-compliance with both statutory and its internal legal prescripts.

JCM05

Yours faithfully

Kanabo Skhosana

(Electronically submitted without signature)

MNCEDISI NDLOVU & SEDUMEDI ATTORNEYS

JCM05

McKinsey & Company

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24 May 2019

Mncedisi Ndlovu & Sedumedi Attorneys
2nd Floor, 16 Fricker Road
Illovo
2196
Attention: Ms Skhosana

Dear Ms Skhosana,

Preliminary report into the alleged irregularities relating to the appointment of the transaction advisors in respect of the acquisition of the 1064 locomotives tenders, Volume 2A, March 2019

Thank you for your letter of 22 May 2019.

We note that there are aspects of our letter with which you disagree. Equally there are aspects of your letter which we do not agree with and where we continue to maintain our previous submissions.

We are comforted however by what you have correctly pointed out in paragraphs 4 and 5 of your letter.

Further, as you are aware, we met with Transnet on Wednesday this week. Transnet is having difficulties accessing and locating a number of documents from their records relating to the work undertaken by McKinsey since 2012 and have asked us to assist by providing them with information and documentation. We have agreed to do so and have also agreed that once Transnet has had an opportunity of reviewing the additional information and documentation we will engage with Transnet further in respect of the work we have done for Transnet and the impact we have delivered. As part of these discussions we will continue to explore a mutually satisfactory resolution to your conclusions about the issues raised in paragraph 7 of our letter dated 20 May 2019.

We would also like to express our appreciation for the constructive engagement with you.

Kind regards

Xandra Blacklaws
Associate General Counsel
McKinsey and Company Africa (Pty) Ltd

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement (Submitted to Commission 8 April 2019) **JCM06**

5 **The Corporate Plan Project**

5.1 In mid-2015, Eskom faced operational and financial challenges that were negatively impacting the South African economy. By way of example, Eskom was unable to meet demand for electricity supply (e.g., 99 days of load shedding, forced power outages, in 2015), operating and capital costs were out of control, and cash and overall balance sheet challenges were creating risks for the South African economy. In response, Eskom awarded the Corporate Plan project – a six-month, fixed-fee project – to McKinsey on 29 September 2015 on a sole source basis (discussed further below) to try to help resolve these challenges. **Annexure MCK8 - Notification of Acceptance, 29 September 2015.**

5.2 Historically, McKinsey had been less involved in drafting Eskom's Corporate Plan (an annually compiled document that Eskom is required to submit to National Treasury in compliance with its legislative duties) because Eskom had internal resources and personnel who were experienced in such matters. However, McKinsey was asked to become more involved in drafting Eskom's Corporate Plans for financial years 2016-2017 and 2017-2018, years when Eskom had a new management team with less experience and institutional knowledge about Eskom. The new management team therefore sought out McKinsey's objectivity and years of experience supporting Eskom to assist them. In addition, Eskom was facing the dual challenge of rising costs and load shedding affecting the economy and required a comprehensive strategy on how to deal with these challenges in a way that would support the South African economy. The Corporate Plan developed with McKinsey created a fundamental shift in approach for Eskom, moving from a cost-reflective tariff path to a design to cost strategy with a tariff path that would be more supportive of the South African economy. This required providing global expertise on energy market trends, sharing levers for improvement based on international utility experience, ongoing change management within the organisation, and expertise on implementation planning for the turnaround.

5.3 McKinsey's mandate under the Corporate Plan was to develop a strategy that would help Eskom recover from its challenging financial crisis (costs greater than revenue) and its precarious operational situation (prevalent load shedding). McKinsey started work on the Corporate Plan in October 2015 in close collaboration with Eskom's teams.

5.4 The Corporate Plan outlined six target areas where impact could be achieved, namely:

(1) Meeting cash flow and profitability targets for FY16 by helping Eskom turn around an expected net loss of over R 10 billion into a small net profit through immediate cost saving efforts;

(2) Developing an immediate response to the load shedding situation of late 2015 by assessing short term ideas for extra capacity (e.g., power barges and leased generators) and establishing a maintenance strategy that balances short term load shedding prevention with critical maintenance requirements;

(3) Updating the Medupi and Kusile business cases to support key strategic decisions and understand the risk to the balance sheet;

(4) Getting to a design to cost strategy and improving efficiencies to achieve a 6% to 8% per annum tariff trajectory;

(5) Aligning Eskom governance to the design to cost strategy; and

(6) Developing a sustainable skills development plan starting with scaling out the Top Engineers program into a broader Top Consultants Programme.

5.5 The Corporate Plan project served as a viable strategic plan to chart a path for Eskom's return to support economic growth. It was informed by industry benchmarks and supported by Eskom's management, Eskom's Board, and key stakeholders such as the Department of Public enterprises.

5.6 McKinsey devoted significant personnel and resources to delivering impact on this project. Over the duration of the Corporate Plan project, 47 McKinsey consultants and experts devoted over 8,300 hours to the project. The project involved numerous workshops with teams from Eskom's business divisions including Transmission, Distribution, Generation, Group Capital, Customer Services, Finance, and Regulation to help determine strategies. It also involved weekly Steering Committee meetings with the CFO and Treasury, Financial Planning, and Corporate Planning executives. The project culminated in the submission of an over 300-page Corporate Plan, which was delivered and completed on schedule and to the client's satisfaction. **Annexure MCK9 - Eskom Holdings Corporate Plan.**

5.7 McKinsey did the underlying analysis and helped draft the Corporate Plan with extensive input from a broad range of Eskom personnel, including Mr Freddy Ndou, Ms Maya Bhana, and Mr Martin Buys. During the month of February 2016, McKinsey and Eskom experts provided Mr Anoj Singh and his team with drafts and sections of the report to present to the Eskom Board (and its subcommittees) as well as the Department of Public Enterprises. In turn, reactions from these stakeholders were fed into the editing of the Plan.

5.8 The Corporate Plan was finalised on 26 February 2016. As a part of distilling the plan for approval, McKinsey helped draft a presentation about the Corporate Plan for submission to the Department of Public Enterprises. **Annexure MCK10 - FY 16/17 Corporate Plan Eskom Presentation, 26 February 2016.** By the end of the month, the Plan had Eskom Board and National Treasury approval.

5.9 Eskom has argued, in the Eskom Review Proceedings, that the Corporate Plan work was done internally at Eskom and that the contract was not entered into lawfully. McKinsey disputes these assertions. While McKinsey worked very closely with Eskom personnel on all parts of the Corporate Plan, McKinsey was responsible for integrating these inputs and ensuring that the Plan was completed according to the suggestions from Eskom executives as well as the Eskom Board and Department of Public Enterprises.

6 **Sole Source Appointment: Corporate Plan**

6.1 On 10 September 2015 at a special Eskom Board meeting, the Board approved the appointment of McKinsey, on a sole source basis, in terms of the Corporate Plan project. **Annexure MCK11 - Minutes of the Eskom Board Meeting, 10 September 2015.**

6.2 McKinsey had worked at Eskom for many years and had institutional expertise in the energy sector. Because of this, McKinsey was uniquely positioned to address the pressing challenges discussed above. The specific justifications for the sole source are discussed further below. But in general terms, McKinsey personnel at the time understood that the Corporate Plan contract was determined to fall within the guidelines for sole source contracts given the urgent business challenges Eskom was facing and the specific capabilities and experience that McKinsey could bring to bear to address these challenges.

6.3 For the below reasons, McKinsey understood that the award of the Corporate Plan on a sole source basis complied with Eskom's SCM Policy.

6.4 McKinsey, as a private contractor, is entitled to rely in good faith on the determination of Eskom officials that a sole-source procurement, as opposed to competitive tendering, is justified in reference to applicable legal authorities and constraints. I draw particular attention to the following:

(1) Eskom prepared and submitted a Sole Source Justification form headed "Provision of Professional Consulting Service for Urgent Ad-Hoc financial and Strategy Work" signed 7 and 8 September 2015. **Annexure MCK12 - Eskom Sole Source Justification, 8 September 2015.** I shall refer to it as the "Sole Source Justification".

(2) The Sole Source Justification was signed and approved by Mr Bruno Correia (senior advisor, Top Engineers Department), Mr Prish Govender (Programme Director, Group Capital), Mr Mandla Gobingca (Supplier Development & Localisation, Group

Technology & Commercial), Ms Tshiamo Makoloane (Middle Manager Procurement, Group Technology & Commercial), and Mr Charles Kalima (General Manager (Acting): Commodity Sourcing, Group Technology & Commercial).

(3) In the Sole Source Justification, those motivating for and approving the motivation had the option to indicate that the motivation was based on "True Sole Source", which is defined as either "Monopoly/Single Source" or "Sole Agent/Distributor", or as "Installed Base/Compatibility", which includes "Exclusive Rights", "Proprietary Design", "Replacement Equipment", or "Replacement Parts".

(4) The signatories to the Sole Source Justification did not purport to assert that a sole-source procurement to McKinsey was justified on the basis of "True Sole Source". Instead, they asserted that sole source procurement was justified on the basis of "Installed Base/Compatibility" and more particularly on the basis of "Proprietary Design". Eskom contended in the Sole Source Justification and under the headings "Installed Base/Compatibility" and "Proprietary Design" that "[the] product possesses a unique functional capability critical in the use of the item and not available from any other sources". **Annexure MCK12 - Eskom Sole Source Justification, 8 September 2015.**

(5) Eskom supplied the reasons supporting the Sole Source Justification under the following headings (all of which relate to subjects addressed in the Corporate Plan):

(a) Meeting cash flow and profitability targets for FY16;

(b) Updating the Medupi and Kusile business cases;

(c) Design to cost strategy;

(d) Aligning Eskom governance to the design to cost strategy; and

(e) Sustainable skills development.

(6) Those reasons include three core motivations:

(a) "Continuity – due to the 8-years of support on new build, McKinsey had distinctive insights and understanding of the key challenges in Eskom today and how to resolve these in the short, medium, and long-term.

(b) Urgency and speed of delivery – considering an alternative supply would lose valuable time and would require additional investments, potentially at Eskom's expense, for another supplier to ramp up and confirm their understanding of the issues. This could delay progress, defer implementation of initiatives and increase costs to Eskom.

(c) Sustainability via the continued development of Top Engineers – the work done by McKinsey teams will include Top Engineers from Eskom who will again receive on-the-job coaching and supervision".

6.5 Eskom included certain additional comments as follows:

"The work from McKinsey has proven to have much deeper insights than the competitors. Gaining this insight with from [sic] a new consultancy would be inefficient and delay progress of this critical and urgent topic. Additionally considering another consultancy would require additional costs for Eskom and may exceed that contract value proposed by McKinsey as another consultancy would require time to ramp up and confirm the understanding of the situation and improvement levers".

"McKinsey has built intimate knowledge of the project, stakeholders and challenges faced given their 8 year track record of on-site support of planning and execution".

"Due to McKinsey's role in the development of the design to costs strategy and financial actions for FY16, for continuity reasons as well as faster delivery and better risk management and recourse for Eskom, only McKinsey should be considered for this".

"[I]nteraction with McKinsey consultants sees immediate skill transfer between client and consultant".

6.6 On 10 September 2015, Mr Matshela Koko (Group Executive: Technology and Commercial) and Mr Anoj Singh (Chief Financial Officer (Acting) submitted a request for approval for the

Corporate Plan Project from the Eskom Board. **Annexure MCK11 - Minutes of the Eskom Board Meeting, 10 September 2015.** This submission to the board contains the gist of the motivation and reasons contained in the Sole Source Justification. The submission also indicated that "PFMA approval" was not required.

6.7 As described above, the justification for why no competitive bidding process was possible in the circumstances is clearly stated in the document itself.

6.8 McKinsey went on to help with the 2017/2018 Corporate Plan due the success with the 2016/2017 Plan.

7 Regiments' Role in the Corporate Plan Project

7.1 McKinsey was notified late in the contracting process, in Eskom's acceptance letter of 29 September 2015, that McKinsey would need to outsource 30% of the Corporate Plan contract to a SDP. **Annexure MCK8 - Notification of Acceptance, 29 September 2015.**

7.2 At this time, Regiments Capital (**Regiments**), a firm that had previously performed work at Eskom on a financial strategy, was viewed as a logical candidate to partner for the Corporate Plan. Regiments' prior track record at Eskom and its prior work with McKinsey positioned it to make an important contribution to the Corporate Plan. (McKinsey's prior work with Regiments will be discussed further below.)

7.3 In the end, however, there was no formalised relationship in the form of a contract with Regiments for work at Eskom on the Corporate Plan. Regiments reported directly to Eskom on its work and McKinsey and Regiments largely worked on separate work streams, although McKinsey's consultants collaborated with Regiments on select issues.

7.4 Regiments worked on the financial part of the Corporate Plan that formed the Funding Plan Chapter, which was work that was directly overseen by Eskom. **Annexure MCK13 - Correspondence Between McKinsey and Regiments Attaching Draft Funding Chapter, 24 January 2016.** This was an extension of the financial modeling work that Regiments had worked on for Eskom on what I understand was a pro bono basis.

7.5 McKinsey's decision to proceed with the Corporate Plan without a formal contract in place with a supplier development partner is an example of a mistake that should not have been made.

While it appears to have stemmed principally from the fact that Regiments was already working at Eskom on related work streams (and was in the process of spinning off its consulting business), it is nevertheless regrettable. Although Regiments' work on the Corporate Plan was overseen by Eskom, the ambiguity surrounding the relationship between McKinsey and Regiments with respect to the Corporate Plan led to confusion among the McKinsey team and allowed Regiments to undertake its work with less supervision from McKinsey than it might have received otherwise. This lack of contractual rigour is an example of the type of mistake McKinsey has sought to remedy with updates to its policies, described below.

8 **Payments Made to McKinsey for Work Done on the Corporate Plan Project**

McKinsey invoiced Eskom and was paid a total amount of R68 922 859 (excluding VAT) for its work on the Corporate Plan Project. **Annexure MCK14 - McKinsey Invoices for Corporate Plan.** This amount reflected 70% of the fixed fee provided for in the contract. As I will explain below, the remaining 30% of the contract value was set aside for a supplier development partner. (I will also explain below how this payment relates to the 9 February 2016 letter from McKinsey to Eskom that has led to significant confusion.)

9 **The Inception of the Turnaround Programme**

9.1 In early 2015, as described above, Eskom found itself in a challenging situation caused by a continued escalation in its operating costs well above inflation. For example, coal costs for Eskom were increasing at 16% per annum, compared to overall mining inflation of 10% per annum. Eskom's projects were experiencing delays and overruns and an ageing fleet was facing continuous failures.

9.2 Eskom's power supply could not meet demand because plant availability declined from 82% in 2011/12 to 71% in 2015/16. This led to Eskom running its expensive diesel plants 100% of the time (as compared to a planned use of 5% of the time), thereby creating significant budget overruns (R12 billion as opposed to R1 billion planned in 2015/16). It also caused Eskom to initiate regular load shedding (99 days in the first half of 2015) in order to manage network stability.

9.3 The aim of the Turnaround Programme was to meet these challenges. The Turnaround Programme was part of the implementation of the framework set forth in the previously discussed Corporate Plan Project.

9.4 The Turnaround Programme was a three-year at-risk (also known as "performance-based") contract under the terms of which McKinsey would deliver improved operational and financial performance for Eskom. The objective was to decrease load shedding, grow revenues, reduce costs and reduce Eskom's reliance on external consulting services and financing by building up an internal consulting capability.

9.5 To achieve its goals, the Turnaround Programme was divided into several work streams. These were: Generation, Coal/Primary Energy Division, Procurement, Claims Management, and Balance Sheet. The Turnaround Programme also contained a continuation and expansion of the successful Top Engineers Programme, discussed further below.

10 **Sole Source Appointment: Turnaround Programme**

10.1 In July 2015, the mandate to negotiate a contract with McKinsey on a sole source basis was approved. **Annexure MCK15 - Mandate to Negotiate, July 2015.** These documents lay out the expansion of the Top Engineers Programme and the projects that would be needed to build up an internal consulting unit at Eskom. In addition, the documents, approved by Eskom officials, included the reasons for contracting with McKinsey on a sole-sourced basis. McKinsey understood that the sole-sourcing followed by Eskom for the Turnaround Programme was valid for the reasons set out in that document and that Eskom was not required to call for tenders.

10.2 These documents describe that, while the overarching program would be to expand the capabilities of the Top Engineers, as a part of this, McKinsey, as the "strategic partner", would be leading "the internal consulting unit to deliver consulting projects focusing on accelerating efficiencies that can unlock immediate cash for Eskom as well as embedding long term efficiencies". The documents denote that the proposed projects at the outset included "unlocking of cash by optimising the balance sheet" and "the unlocking of funding sources through additional financing opportunities and claim management" at various locations.

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10.3 The documents also lay out the motivation for Eskom's proposal to utilise a procurement method that involved negotiations without prior tendering including the following:

> "It is proposed that McKinsey & Co be chosen as a Strategic Partner for the development of the Top Engineers consulting unit. McKinsey is a suitable partner due to the following reasons:
>
> - McKinsey developed the original Top Engineers Programme and has intellectual property in the design of the programme that Eskom cannot recreate in respect of:
>   - Content of class room training programmes;
>   - Reverse secondment approach to include Eskom employees as trainees on McKinsey's engagements within Eskom and other clients;
>   - Specific mentorship methodology to fast track development; and
>   - Specific evaluation schemes to assess consulting readiness of engineers in training.
> - Additionally, McKinsey is the only leading global consulting firm capable of delivering this world class knowledge to South Africa, bearing in mind the following:
>   - McKinsey is the largest global management consulting house;
>   - McKinsey has the largest knowledge development spent [sic] in the industry;
>   - McKinsey is the only global consulting company with a local presence of over 20 years having transformed to a level 1 BBBEE contributor;
>   - Eskom has completed the majority of its management consulting projects with McKinsey support, giving McKinsey privileged insight into the business, culture, processes, and people of Eskom. The intrinsic insight cannot be offered by any other consultancy".

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11 **Turnaround Programme Contract and Fees**

11.1 The Turnaround Programme was negotiated at length between McKinsey and Eskom. Over six months, from July 2015 to December 2015, McKinsey and Eskom participated in 28 or more negotiation sessions. As of October 2015, most of the packages for the various work streams had been negotiated. The results of these negotiations are laid out in a report to Eskom's Exco Procurement Sub-committee (EXCOPS). **Annexure MCK16 - Report to EXCOPS, 2 October 2015.** The negotiations involved core teams from Eskom and McKinsey, as well as subject-matter experts who participated during the discussions of the particular work packages related to their expertise.

11.2 These negotiations always appeared to me and my colleagues to be professional and at arm's length. Each provision and baseline was extensively discussed and negotiated, with each side pushing back on the other. Eskom had full visibility and say in the payment baselines and the methods of measurement for calculating the at-risk fees, as discussed further below.

11.3 At all times, the Turnaround Programme was negotiated within the relevant decision-making structures in Eskom. Those structures included EXCOPS and the Board Tender Committee. Eskom's lead negotiator was Mr Prish Govender, who worked with a large Eskom team including Ms Ntombizodwa Mokoatle (Commercial), Mr Johnstone Makhubu (Business Enablement), Mr Snehal Nagar (Finance), Mr Mandla Gobingca (SD&L), Mr Andile Dikana (SD&L), Mr Dunn Mukosa (Top Engineers), Mr Bruno Correia (Top Engineers) and Mr Lyle Timm (Top Engineers). **Annexure MCK16 - Report to EXCOPS.**

11.4 On 17 December 2015, Eskom and McKinsey signed a document entitled "notification of acceptance for the provision of consulting services". **Annexure MCK17 - Letter of Acceptance, 17 December 2015.** The document recorded Eskom's acceptance of McKinsey's "proposal for the provision of Consulting Services concerning the Top Engineers Program on the terms and conditions generally agreed in the draft contract recently negotiated between McKinsey and Eskom between McKinsey and Eskom". The document went on to record that "[t]he contract documents will be available for your signature and acceptance in due course".

11.5 Eskom and McKinsey subsequently worked under a Services Level Agreement (or SLA) to regulate work on the Turnaround Programme. **Annexure MCK18 - SLA, 11 January 2016.**

11.6 The Turnaround Programme envisaged that McKinsey would provide services in the form of various "Work Package Schedules". The scope of the services to be provided in terms of each Work Package Schedule had to be agreed by both parties and confirmed by the Steering Committee (on which both parties as well as other companies working on the project at Eskom such as Deloitte were represented). **Annexure MCK19 - Steering Committee Meeting Minutes, 31 March 2016.** Before any work commenced on a Work Package Schedule, the Steering Committee had to agree on a baseline value and the methodology to be used in calculating the impact on McKinsey's work. The baseline value, from which any impact would be measured was, in essence, the level that Eskom projected it could get to on its own, without the help of McKinsey's expertise.

11.7 The SLA provided that fees for the Turnaround Programme would be paid based on the impact delivered by McKinsey (known as "fees at risk"), rather than an hourly rate or a fixed fee. In simple terms, the "fees at risk" model meant that Eskom would only pay McKinsey if Eskom realised benefits or impact from the work (e.g., improvement in internal capabilities, reduction in demand for components, improvement in inventory tracking, charting and moving of off-contract spend to on-contract spend, implementation of centralised spend tracking, training on and support of historical claims negotiations). This is in contrast to the Corporate Plan, which was a fixed-fee engagement.

11.8 If Eskom did <u>not</u> derive any benefits or impact, then McKinsey would not receive any fees and, as I explain in more detail further below, would in fact incur significant costs, for which it could not seek remuneration. However, if Eskom <u>did</u> derive benefit or impact, then a stipulated percentage of that negotiated saving would be paid to McKinsey in the form of fees. While I appreciate that some have questioned whether such benefits were sufficiently demonstrated to warrant payment, in accordance with the contract, the work that was performed was rigorously tracked by Eskom (through the use of the WAVE tool described below) in order to ensure that the impact was real and quantifiable.

11.9 While still used less frequently than fixed-fee arrangements, performance-based or "fees at risk" arrangements are increasingly common in the management consulting industry. Clients

– including those struggling with resource shortages – appreciate an arrangement whereby the fees we charge are wholly dependent on the impact we are able to achieve. If properly structured, such an at-risk fee arrangement makes commercial sense because it aligns both contracting parties' interests. We find our clients around the world – in both the public and private sector – regularly prefer such a structure as a way to align incentives and fees with the realisation of impact.

11.10 The fees payable were based on Eskom's assessment of the impact on its performance. In other words, Eskom subject matter experts and business owners participated in and signed off on the decision about whether the impact amount exceeded the baseline value and, if so, by how much. These were contemporaneously recorded in a tool known as WAVE.

11.11 In addition, the SLA allowed for down payments for each work package. The performance payments were then intended to be calculated net of these down payments. The SLA also provided that if the total impact did not exceed any down payments made, McKinsey would be required to return the difference between any down payment and the total impact to Eskom. In the event Eskom made such a down payment, McKinsey was to provide a bank guarantee to Eskom. While provided for in the contract, McKinsey never invoiced for these down payments and Eskom never paid McKinsey any down payments.

12 **Necessary Approvals for the Turnaround Programme**

12.1 As a SOE, Eskom is required by law to comply with PFMA provisions and must secure any approvals or consents that may be required by the PFMA prior to executing any agreement. Clause 22 of the SLA contractually acknowledges this legal requirement and provides that:

> "The parties acknowledge that the employer [Eskom] is required to comply with the provision of the PFMA. In light thereof, the Parties acknowledge that the employer [Eskom] will not be required to (and the employer [Eskom] warrants and represents to the contractor [McKinsey] that it shall not) take any steps contemplated in this Agreement, including the execution of this Agreement, unless and until it [Eskom] has secured any approvals or consents that may be required in terms of the PFMA".

Annexure MCK18 - SLA, 11 January 2016.

12.2 This clause specifically entitled McKinsey to rely on Eskom's compliance with the PFMA. This included reliance on Eskom's assurances that it had obtained any approvals required under the PFMA for the Turnaround Programme.

12.3 Eskom informed McKinsey on 4 February 2016 that it had received National Treasury approval for the Turnaround Programme. We understand that there was extensive internal discussion and deliberation about the importance of National Treasury approval. Further, the minutes of the meeting of the Steering Committee held on 9 February 2016 record that Eskom informed the Steering Committee that "National Treasury approved confirmation of the Contract Methodology for the Risk Based Approach with the Chief Procurement Officers Office". **Annexure MCK20 - Steering Committee Meeting Minutes, 9 February 2016.** McKinsey reasonably relied on these specific assurances, and on Eskom's contractual obligation described above, to comply with the PFMA. Thus, McKinsey worked on the Turnaround Programme with reliance on Eskom's assurances that the approvals had, in fact, been obtained.

12.4 Eskom now admits that its officials never obtained the National Treasury approvals that were required. However, McKinsey had no knowledge of this crucial fact at the time because Eskom had made the above representations that such approval had been obtained when, in fact, it had not been obtained. It was not until October 2017, when discussing these matters with Eskom's lawyers, that McKinsey was informed by Eskom that Eskom had not, in fact, obtained the approvals.

13 **Work on the Turnaround Programme**

13.1 Work on the Turnaround Programme commenced in January 2016. The program mobilised over 400 Eskom employees to work with over 100 McKinsey consultants to attack the financial crisis Eskom faced. In general, the Turnaround Programme contributed to achieving the following for Eskom: improvement in addressing Eskom's load shedding difficulties relative to the prior year (where Eskom implemented Stage 3 rotational load shedding for 79 days between 1 November 2014 and 8 August 2015 and there was no further load shedding from 15 September 2015 until May 2018); helping to turn a projected multi-billion Rand loss into a net multi-billion Rand profit for the 2016 financial year; continuing and expanding the Top

Engineers/Top Consultants Programme; and achieving a below-inflation increase in costs to relieve pressure on above-inflation electricity price increases.

13.2 The Turnaround Programme, led by McKinsey, contributed to an improvement in Eskom's financial performance from financial years 2016/17 to 2017/18. This included: increased EBITDA (from R33 billion to R38 billion), increased cash operations (from R35 billion to R47 billion), increased ratio of Funds from Operations/Net Debt (from 10.48% to 11.3%), and increased cash interest cover (from 1.69 to 1.77). Additionally, overall plant availability across the entire Eskom fleet increased from 71% in 2015/16 to 77% in 2016/17 and coal cost escalation decreased from 16% per annum to 3.5% per annum. Further, Eskom developed a pipeline of procurement savings initiatives worth R3.3 billion. McKinsey also supported Eskom Group Capital in managing its contractors claims, reducing these from more than R150 billion to approximately R15 billion, which was then further reduced to approximately R6 billion with a settlement target of R4 billion.

13.3 McKinsey also scaled up Eskom's internal consulting arm, known as the Top Consultants Programme, which was an extension of McKinsey's Top Engineers Programme that got underway with McKinsey's help in 2013. **Annexure MCK21 - The McKinsey Client Experience: Eskom's first cohort of Top Engineers, 28 October 2015.** This involved training a skilled group of over 50 internal engineers who would be able to support Eskom's top priority projects going forward, constituting a major step in Eskom's progress toward reduced reliance on external consultants. **Annexure MCK22 - Top Consulting Group Playbook, June 2016.** Those participating in the program received one-on-one coaching from senior McKinsey colleagues while rotating across three different areas of the Eskom business, ensuring broad learning and exposure to senior Eskom management. Prior to each rotation, those participating in the program received an intensive week of training modeled after the training all new McKinsey consultants get.

13.4 In addition, McKinsey's work with the Top Engineers/Top Consultants helped Eskom think about how to manage and plan their maintenance to reduce load shedding. To implement this, we helped them develop a software tool, dubbed Tetris, that made Eskom's maintenance planning more visual, user-friendly, and in near-real-time. This allowed Eskom to dynamically manage planned maintenance, which helped reduce load shedding.

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13.5 McKinsey also launched an advanced analytics initiative to improve the performance of the Majuba power station by helping Eskom reduce unplanned maintenance. This involved building and implementing an advanced analytics model to predict when equipment breakdowns would occur. This work was not completed when the contract was terminated, as described further below, so the benefits were not realised.

13.6 The Turnaround Programme began producing benefits for Eskom in a short amount of time. By leveraging its deep expertise, McKinsey – working with the existing Eskom personnel – was able to lead a combination of initiatives to increase new and existing generating capacity at lower than anticipated costs and to improve Eskom's existing generation capabilities. The combination of these initiatives led to significant operational and financial performance improvement. As a result of the capacity additions and increased plant availability, there was no load shedding in South Africa from 2015 until it recommenced in 2018. While Eskom's situation during this time improved, McKinsey's work was cut short before further impact could be made and before improvements could be made fully sustainable, as discussed further below.

14 Termination of the Turnaround Programme Contract and Subsequent Settlement

14.1 On 16 June 2016, Eskom sent a letter to McKinsey terminating the Turnaround Programme – 28 months before the contemplated completion of the project. **Annexure MCK23 - Termination of Top Consulting Group MSA, 16 June 2016** McKinsey, at that time, was still in the process of identifying suitable supplier development partners with whom to partner at Eskom, an effort that continued even after receipt of Eskom's cancellation letter.

14.2 McKinsey consented to Eskom's termination of the agreement even though Eskom was not contractually permitted to terminate the agreement in the absence of force majeure during the first 12 months of the contract under Section 13.1 of the SLA. **Annexure MCK18 - SLA, 11 January 2016.**

14.3 McKinsey continued to work without payment following the termination to ensure that the work would transition properly and that the Top Engineers/Top Consultants class had continued support and were able to graduate. By agreement with Eskom, McKinsey continued working on various components of the Turnaround Programme through November 2016 while winding down the Project.

14.4 Following the termination of the contract, Eskom and McKinsey entered into discussions regarding the amount that was due to McKinsey for work done on the Turnaround Programme through the termination date. **Annexure MCK24 - June Correspondence Between Eskom and McKinsey.**

14.5 As I have indicated above, the SLA provided that the fees would be calculated on the basis of the impact identified and executed rather than at an hourly rate or a fixed fee. The termination clauses in the SLA meant that, as measured against the demonstrated impact of the Turnaround Programme, Eskom's liability to McKinsey was in the order of R2.7 billion as of August 2016. After extensive back and forth over the appropriate amount and terms, McKinsey proposed an agreement whereby Eskom would pay a considerably-reduced settlement amount of R1.8 billion. In August 2016, the Board of Eskom reviewed the proposal and proposed an initial settlement amount of R937 million (including VAT) for McKinsey and "its supplier development partner".

14.6 On 11 August 2016, McKinsey sent an invoice based on the Board of Eskom proposal. **Annexure MCK25 - McKinsey Invoice, 11 August 2016.** This was for a total amount of R680 524 879 (including VAT). McKinsey's covering letter explained that the invoiced amount had been calculated in accordance with the SLA and the Work Package annexes negotiated between McKinsey and Eskom. The covering letter made it plain that the invoiced amount did not include the percentage set aside for a supplier development partner.

14.7 On 15 August 2016, Eskom paid the invoiced amount of R680 524 879 to McKinsey. **Annexure MCK26 - Remittance Advice, 15 August 2016.** This first settlement, however, did not discharge Eskom's full liability to McKinsey for fees due in terms of the Turnaround Programme. That is because a range of initiatives approved by the Steering Committee had not been included as part of the first settlement amount.

14.8 Eskom's Board Tender Committee then engaged in a process to determine what would discharge Eskom's remaining outstanding liability to McKinsey. This process included numerous conversations between Eskom and McKinsey around what would be a fair final payment. Additionally, Eskom employed an outside firm to review the impact of the project in order to gain further insight into what should be awarded to McKinsey. On 20 January 2017, Eskom sent McKinsey a letter noting that "Based on the finalisation of the External Due Diligence Process on the McKinsey Risk Based Contract, as well as the latest resolution received from the Board, Eskom is now in the position to negotiate a final settlement with the contractor". **Annexure MCK27 - Letter from Eskom to McKinsey, 20 January 2017.** On 9 February 2017, Eskom sent McKinsey a letter recording that "Based on the outcome negotiated process Eskom agreed to settle on an amount of R460 000 000.00 million inclusive of the BEE partners portion as approved by Eskom Board". **Annexure MCK28 - Letter from Eskom to McKinsey, 9 February 2017.** Eskom followed up with a more extensive letter regarding the final settlement on 16 February 2017 noting that "Eskom is prepared to offer in full and final settlement an amount of R 461 330 000". **Annexure MCK29 - Letter from Eskom to McKinsey, 16 February 2017.**

14.9 Eskom's offer was to pay R460 000 000 (excluding VAT) in addition to the first settlement amount. The amount of R460 000 000 was said to include the portion payable to a supplier development partner. McKinsey accepted Eskom's settlement offer and invoiced Eskom only for its share of the amount. **Annexure MCK30 - McKinsey Invoice, 21 February 2017.** The amount McKinsey invoiced did not include any of the percentage set aside for potential supplier development partners. Any funds paid by Eskom for that purpose thereafter were paid by Eskom directly. On 22 February 2017, Eskom paid R348 067 620 to McKinsey (including VAT). **Annexure MCK31 - Remittance Advice, 22 February 2017.**

14.10 Eskom made payments to McKinsey totalling R 1 029 592 499 (including VAT) for services rendered in terms of the Turnaround Programme. The VAT-exclusive amount is R902 274 122.56. This figure was calculated in terms of the SLA and represented a negotiated percentage of the fees actually due to McKinsey based on the impact Eskom derived from McKinsey's work. It excluded the amount set aside for a supplier development partner.

14.11 As I have indicated above, the payments to McKinsey were approved by Eskom's decision-making structures at all levels. There has – correctly – been no suggestion on the part of Eskom that McKinsey did not do the work for which it was paid. McKinsey deployed significant resources in order to deliver impact for Eskom on the Turnaround Programme, including hundreds upon hundreds of consultant months, excluding leadership, specialists, and experts.

14.12 In total, there were over 190 McKinsey consultants deployed in working teams to support this project, reflecting the high level of commitment. On average, more than 60 full-time McKinsey consultants were working on the ground at Eskom at any given time on various work streams and were supported by large teams of researchers, assistants, and other support staff. On the primary energy work stream, as many as 17 consultants focused on reducing the annual escalation of coal costs. On the generation work stream, as many as 32 consultants were working on improving the performance of the Majuba plant. Additionally, on the procurement work stream up to seven consultants were working on cost reduction and capabilities and change management. On the claims work stream, up to 19 consultants were working on helping Eskom manage the current claims by conducting a pilot for the first employer claims at Medupi, compiling a best practice process for contract close-outs, and developing an employer's claims strategy.

14.13 In addition to the manpower on the ground, McKinsey also provided proprietary tools and software. For instance, McKinsey utilised its proprietary software to create a visual representation of the predictive maintenance model for the Majuba power station and to help collect, process, and analyse data. McKinsey also utilised its subscription information service that uses McKinsey's insight, expertise, and proprietary database of global mining operations to help Eskom benchmark its operations and identify improvement opportunities. Further, McKinsey utilised its global database of operational and organisation performance metrics, which allowed McKinsey to leverage proven diagnostic and benchmarking tools as well as local knowledge networks to provide Eskom the insight it needed to improve its performance.

14.14 It is important to recall that McKinsey was not charging Eskom on a per-person or per-diem basis. The negotiated agreement entitled McKinsey to earn fees only to the extent it clearly identified impact and completed the work required to deliver that impact. Such a major outlay of resources in an at-risk contract potentially exposed McKinsey to significant financial losses in the event the project was not able to demonstrate impact. At the same time, the firm has acknowledged that we should have given more consideration to the size of the fee we received given the extreme financial and operational challenges Eskom was facing at the time.

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17 **McKinsey's Relationship with Regiments / McKinsey's Work at Transnet**

17.1 McKinsey began working with Regiments at Transnet in 2012. Therefore, to understand the genesis of McKinsey's supplier-development dealings with Regiments and its subsequent consideration of working at Eskom with Trillian (which held itself out as the successor to Regiments' consulting business), it is necessary to provide a high-level history of McKinsey's work at Transnet and the genesis of its work with Regiments.

17.2 While I did not serve on the Transnet client services team, I became familiar with this history in the course of my tenure as Location Manager of McKinsey's South Africa office and this sequence has been examined as part of the firm's review of these allegations. In addition, my colleague Dr David Fine of McKinsey testified in front of Parliament as to these matters. **Annexure MCK5 - David Fine Submission to Parliament, 11 November 2017**. The recounting of facts below draws heavily from Dr David Fine's prior testimony and my understandings after the fact.

17.3 McKinsey worked at Transnet from 2005 to 2016. During this time, McKinsey performed extensive work and served four different CEOs and over 30 senior executives at Transnet. McKinsey's work at Transnet sought to help Transnet chart a path to overcome serious challenges it faced and to address the concern that Transnet would become a commodities bottleneck in the broader South African economy:

(1) **Vulindlele Project:** McKinsey's early work at Transnet from 2005 to 2011 included the Vulindlele project, which drew on McKinsey's considerable rail and port experience and focused on ways to reduce Transnet's central costs, increase divisional revenue, and improve operational performance.

(2) **Projects at Transnet from 2012 - 2015:** As part of a new government-wide approach to infrastructure, Transnet launched its Market Demand Strategy (MDS). This strategy was launched to stimulate freight demand through the investment in infrastructure projects in advance of confirmed orders from customers. This required detailed projections of freight demand based on realistic assumptions of global growth demand.

(3) From 2012 to 2015, consistent with the MDS program, McKinsey helped Transnet on work that included an assessment and support for efforts around capital planning and execution, volumes and customer satisfaction, operational efficiencies and productivity, finance and funding, regulatory and key stakeholder engagement, safety

risk and sustainability, human capital, and building organisation readiness and a high-performance culture. Contracts as a part of this work included the Coal contract (GSM/14/04/1037), the Kumba Iron Ore contract (GSM/14/04/1038), the Manganese contract (GSM/14/04/1039), the NMPP contract (GSM/14/04/1040), and the SWAT II (GSM/14/04/1052) contract.

(4) **1064 Locomotives Contract:** In addition to this work in support of the MDS, in 2012, McKinsey began bidding for the work on the 1064 Locomotives contract (RFP GSM/12/05/0447). However, McKinsey ended up having a more limited role in the 1064 Locomotives project work than was originally envisioned:

(a) McKinsey withdrew from advising Transnet on the procurement of new locomotives on 4 February 2014, before the 1064 Locomotives tender was awarded, and played no role in those decisions.

(b) We did not help determine the locomotive prices, we did not help select the winning supplier, and we did not work on the transaction advisory service.

(c) In fact, our principal role involved advising Transnet on the narrow remit of a business case a full year earlier, and the tender deviates significantly from that work.

(d) In addition, it is important to understand that the consortium for the 1064 Locomotives contract evolved over time due to various conflicts with the original consortium.

(e) Transnet originally issued a confined RFP to four entities (McKinsey, PWC, Webber Wentzel, and KPMG). **Annexure MCK34 - 1064 Confinement Memo, 7 May 2012 (as annexed to Fundudzi Draft Forensic Report).** McKinsey's consortium scored the highest. McKinsey's proposal was accepted and the consortium was awarded the work in a letter sent on 30 November 2012 and signed on 4 and 6 December 2012. **Annexure MCK35 - Letter of Intent 1064 Locos, 30 November 2012.**

(f) The McKinsey-led consortium on the 1064 locomotives contract evolved over time. The original consortium consisted of McKinsey, Letsema, Nedbank (with local partner Utho), Advanced Railway Technologies and Edward Nathan Sonnenbergs ("ENS").

(g) When a conflict of interest arose in regards to Letsema, however, Regiments was brought into the consortium as the supplier development partner (as further described below in Sections 18 and 19). **Annexure MCK36 - Appointment for Transaction Advisor on the 1064 Locomotive Tender, 14 August 2012.**

(h) Additionally, Transnet ultimately decided to work with the Webber Wentzel law firm rather than ENS. **Annexure MCK36 - Appointment for Transaction Advisor on the 1064 Locomotive Tender, 14 August 2012.** Subsequently, a potential conflict of interest arose regarding Nedbank, which led to Regiments taking over the finance work stream as well. **Annexure MCK37 - Potential Conflict of Interest Identified—Nedbank, 22 May 2013 and 12 June 2013.**

(i) The 1064 Locomotives projected occurred in phases. McKinsey principally contributed to "Phase I", which involved the development of the business case. As Dr David Fine has described in his prior Parliamentary testimony, it was ultimately agreed between Transnet and McKinsey that Regiments should assume responsibility for Phase II—and McKinsey's work on the project ceased.

(5) **Support for Regiments' GFB Contract:** In 2015, McKinsey began working on the General Freight Business (GFB) Breakthrough Contract (GSM/15/03/1255). Regiments was selected as the main contractor for this project on a confined basis. McKinsey was its subcontractor. **Annexure MCK38 - Request for the Confinement and Award for the Provision of Professional Services to Support Transnet in Increasing General Freight Business, 23 March 2015.** The understanding of McKinsey personnel at the time was that Mr Anoj Singh and others at Transnet believed that Regiments, which had been doing work at Transnet for years, should be

the prime contractor on a new contract to test Regiments' capabilities. Developing a B-BBEE partner into a primary contractor is a central goal of the B-BBEE regulations. Nevertheless, it was anticipated from the beginning that Regiments would require substantial assistance from McKinsey to complete the project to specifications. Regiments ultimately struggled to find the resources to staff the work so the responsibility was adjusted so that McKinsey and Regiments were each responsible for 50%. **Annexure MCK39 - Email from J. Rossouw to S. Du Plessis, 12 October 2015.** This work was cut short when McKinsey ended its relationship with Regiments in March 2016, as described further below.

17.4 As described above, McKinsey was committed to working with local supplier development partners on contracts with SOEs, even before such partnerships were required by law. At Transnet, McKinsey worked over time with both Letsema and Regiments.

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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18 **Letsema**

18.1 Letsema was founded by Mr Isaac Shongwe and was the first black-owned and managed management consulting firm in South Africa. McKinsey began working with Letsema at Transnet in 2005 on the previously described Vulindlele project.

18.2 McKinsey's main partnership with Letsema continued until 2012. Over this time, McKinsey helped Letsema grow to a size that we understood to exceed B-BBEE supplier development guidelines. Moreover, Letsema had developed to the point where it was directly competing against McKinsey for work. While in many respects this was a success story given the goals of supplier development, it did give rise to conflict. While this relationship was not without its challenges, McKinsey was proud of its relationship with Letsema and the development and growth of Letsema as a consulting business.

18.3 In mid-2012, a conflict of interest emerged for Letsema on the 1064 Locomotives project. As is discussed in the Fundudzi Report, the non-executive chairman and shareholder of Letsema, Mr Isaac Shongwe, was at the time a senior executive at Barloworld. Barloworld had recently purchased EMD, an American company that manufactures locomotives. EMD was considering submitting a tender to supply locomotives and would be represented by

Barloworld in this process. Transnet determined that this presented a conflict of interest, which was its decision (not McKinsey's) to make.

18.4 Contrary to what is suggested in the Fundudzi Report, there is a clear record that this conflict appeared at the time to McKinsey to arise out of a genuine concern and that Letsema accepted it as such. Indeed, EMD did, in fact, later bid to supply the locomotives, which would have created a clear and present conflict. Letsema's Mr Derek Thomas confirmed in response to an inquiry from Fundudzi that Letsema "accepted the bona fides of Garry Pita's argument at the time even though we respectfully disagreed with his position". **Annexure MCK40 - Letter from D. Thomas to E. Nekhavhambe, 17 October 2018.**

18.5 While McKinsey transitioned away from Letsema at this time, McKinsey worked with Letsema consultants later on when Regiments subcontracted work to Letsema on certain projects with McKinsey.

19 **Regiments**

19.1 When the above-described issues and conflict developed with Letsema, McKinsey began looking for a new supplier development partner for its work at Transnet. In discussing potential alternatives to Letsema, Mr Singh of Transnet noted the fact that Regiments had performed well for Transnet in past work that Regiments had done for Transnet's Treasury function. Regiments' prior work with Transnet was documented at the time in the company profile that was given to McKinsey as well as in proposals submitted by McKinsey and Regiments to Transnet. **Annexure MCK41 - Regiments Company Profile, July 2012; Annexure MCK42 - McKinsey Regiments Proposal for RFP GSM/12/08/0527, 4 October 2012.** This work has also subsequently been described in the filings in the litigation between Regiments and Trillian. **Annexure MCK43 - L. Nyhonyha Founding Affidavit, 8 October 2016.**

19.2 As occurred with other supplier-development partners, Regiments was paid by Transnet directly (not by McKinsey) to ensure that Transnet (not McKinsey) benefited from B-BBEE supplier spend.

19.3 As noted by Dr David Fine in his testimony before Parliament, McKinsey conducted a basic due diligence of Regiments prior to working with them at Transnet. McKinsey reviewed the company profile, including the professional backgrounds, education, and relevant work history of its three directors (Mr Litha Nyhonyha, Dr Eric Wood, and Mr Niven Pillay). **Annexure MCK41 - Regiments Company Profile, July 2012.** Dr David Fine noted that Mr Litha Nyhonyha had previously been at Ernst & Young and established Thebe Investment Holdings, Mr Niven Pillay had multiple degrees from Princeton University, and Dr Eric Wood had a Masters of Management from WITS. McKinsey also reached out to contacts in the business world and received positive feedback about Regiments.

19.4 In the course of performing internet-based research, McKinsey came across an article in which Regiments was discussed as having allegedly profited from a contentious project for the City of Johannesburg. McKinsey raised this issue with Regiments and was advised that this was purely a commercial dispute since Regiments' work had been conducted on an at-risk basis and that the City was contesting its fees.

19.5 While McKinsey thus did conduct some due diligence of Regiments at the outset of the relationship, as Mr Kevin Sneader has acknowledged, this diligence was "insufficiently robust". **Annexure MCK1 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018.**

19.6 From 2013 to 2016, McKinsey and Regiments worked on a variety of contracts at Transnet, which are referenced above. Regiments did substantial work on Transnet engagements and had particular expertise in financial modeling and funding analysis based on their strength in investment banking.

19.7 While McKinsey's relationship with Regiments was challenging at times, those challenges mirrored what McKinsey had experienced with other SDPs.

19.8 When public questions surfaced regarding Regiments, McKinsey took swift action to confirm that Regiments understood and was abiding by its legal obligations. In particular, in mid-2014, there was critical press coverage concerning Mr Niven Pillay, a Regiments executive, relating to his involvement with Mr Brian Hlongwa, who was then a Member of the Executive Committee for Health in the Gauteng Government. After seeing the press coverage, McKinsey raised this issue with Regiments, and McKinsey and Regiments engaged in correspondence on the topic. In such correspondence, Regiments responded that "the allegations in the press are baseless and ill-conceived" and that it wanted "to further reassure [McKinsey] and state categorically and unequivocally that no company within the Regiments Group has paid any monies to Mr. Hlongwa". Furthermore, Regiments stated that it "already has a framework in place governing the promotion of honest and ethical behavior". Beyond those assurances, Regiments even agreed to wall off Mr Niven Pillay from all engagements with McKinsey going forward. **Annexure MCK44 - Correspondence Between McKinsey and Regiments, August and September 2014.**

19.9 Two years later, in February 2016, media reports alleged that Mr Mohamed Bobat, a partner at Regiments, had been appointed as an advisor to the Minister of Finance, Minister Des van Rooyen, in December 2015. Minister Des Van Rooyen was appointed Finance Minister on 9 December 2015 and was removed as Minister four days later after immense pressure due to his apparent links to the Guptas. McKinsey took decisive action in response to these allegations. On 23 February 2016, McKinsey sent a letter to Transnet confirming that it was ending its relationship with Regiments. **Annexure MCK45 - Letter from McKinsey to Transnet, 23 February 2016.** In the middle of March 2016, McKinsey and Regiments officially ended their relationship. **Annexure MCK46 - Letter from McKinsey to Regiments, 18 March 2016.**

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20 **Trillian**

20.1 There has been significant public confusion surrounding the interactions between McKinsey and Trillian at Eskom. This is something I would like to put right in the interactions set out below. At the outset, however, it is important to note the following general observations related to Trillian:

(1) First, Trillian held itself out in correspondence with McKinsey as the successor to the consulting business of Regiments, which had already undertaken work at Eskom.

(2) Second, McKinsey never made any payments to Trillian and never had a contract with Trillian. The reason why McKinsey never contracted with Trillian as a supplier development partner, as discussed further below, is that Trillian failed McKinsey's due diligence process in February-March 2016.

(3) Third, a comparison between what Trillian personnel advised McKinsey at the time and what has now emerged years later indicates that Trillian at the time repeatedly withheld from McKinsey information about Trillian's true ownership structure and its connections to a Gupta family associate, Mr Salim Essa.

(4) Fourth, McKinsey did not authorise any payments made by Eskom to Trillian. Any payments by Eskom to Trillian were made by Eskom after McKinsey informed Eskom that Trillian had failed McKinsey's due diligence. (As discussed further below, McKinsey's 9 February 2016 letter did not provide authorisation for Eskom to pay Trillian as the conditions set out in the letter had not been met. This fact has been acknowledged by Eskom and its counsel.)

20.1 Initially, it was anticipated that Regiments (a company familiar to both Eskom and McKinsey as described above) would serve as the supplier development partner on the Turnaround Programme. In late 2015, however, McKinsey was told by Regiments' then-director, Dr Eric Wood, that Regiments was splitting and that the management consultancy part of the business would be carried on by a new company called Trillian. McKinsey was told at different times that as many as 30 to 50 consultants would transition from Regiments to Trillian. (Later, when McKinsey worked alongside Trillian at Eskom, the actual number of Trillian personnel was not always clear, as some consultants were Trillian employees and others were from subcontractors.)

20.2 McKinsey accordingly envisaged when it began work on the Turnaround Programme that Trillian would in due course become its supplier development partner in place of Regiments. At the time, McKinsey personnel who had experience with Regiments saw this as potentially a beneficial change, as Trillian would have consulting as its core business, whereas Regiments, at times, treated the consulting business as less of a priority than its financial advisory business. McKinsey did not expect the day-to-day interactions with Trillian to be considerably different from those at Regiments since many Regiments personnel would move over to Trillian.

20.3 The Turnaround Programme would be a three-year project for McKinsey and, in light of its size, significance, and the scale of the fees "at risk", there was a significant effort undertaken by McKinsey to ensure that the risks associated with it were being mitigated. As is normal with all large programs, the project was referred to McKinsey's risk committee.

20.4 In November 2015, McKinsey's risk committee required a thorough due diligence of the proposed partner firms to demonstrate their capability to deliver, full understanding of their ownership, and an assessment of their values fit. McKinsey required Trillian to meet McKinsey's due diligence requirements before McKinsey could enter into a subcontracting arrangement with it. These due diligence requirements were not exclusively focused on corruption risk but also on whether Trillian had the necessary qualifications to serve as a B-BBEE partner and whether Trillian otherwise had adequate personnel and resources to partner on a project of this scale, appreciating that Trillian would need time as a new entity to formalise some of the specifics around structure and staffing.

20.5 In December 2015, McKinsey began meeting with Dr Eric Wood and Mr Clive Angel (who held themselves out to be representatives of Trillian) regarding the possibility of partnering with Trillian on the Turnaround Programme. As a part of these meetings, McKinsey prepared partnering principles as well as different possible fee allocations in line with the Turnaround Programme work. **Annexure MCK47 - Correspondence Between McKinsey and Trillian, 17 December 2015.** I must emphasise that these were proposed fee allocations, not actual allocations.

20.6 From the beginning, at first orally and then in writing, McKinsey inquired about Trillian's ownership in order to establish who the owners were and whether the ownership met the requirements to qualify as the B-BBEE partner. In response, Trillian said it was still lining up its shareholders. In February 2016, having still not received satisfactory responses to its inquiries, McKinsey began taking additional measures to seek answers and information regarding Trillian's ownership. This included hiring a third-party forensics firm and performing public records searches in an effort to ascertain Trillian's shareholding structure. As Dr David Fine previously recounted in his parliamentary testimony, he and other senior partners in the office had growing concerns based on emerging media allegations and insisted that Trillian and Regiments provide us with greater clarity on their alleged ties to politically exposed persons. This increased urgency is reflected in correspondence exchanged between the parties.

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(1) On 8 February 2016, McKinsey requested Trillian's shareholding information from Trillian's CEO Ms Bianca Goodson (née Smith). **Annexure MCK48 - Email from B. Goodson to V. Sagar, 9 February 2016.**

(2) On 9 February 2016, Ms Bianca Goodson responded via e-mail to McKinsey's inquiry by stating that, "[a]t this point, all that I can state is that Trillian Management Consulting is 100% owned by Trillian Capital Partners". **Annexure MCK48 - Email from B. Goodson to V. Sagar, 9 February 2016.** We were surprised to learn later that Ms Bianca Goodson apparently was in a position to have shared more with McKinsey at the time. In particular, in a statement she submitted in 2017, Ms Bianca Goodson acknowledged that she had known since October 2015 that Mr Salim Essa was a 60% shareholder of Trillian Capital Partners. **Annexure MCK49 - Bianca Goodson Statement, 28 September 2017.** Ms Bianca Goodson has also now acknowledged that Mr Salim Essa signed her employment contract and was around and in meetings on multiple occasions. **Annexure MCK49 - Bianca Goodson Statement, 28 September 2017.**

(3) On 15 February 2016, following previously described media reports involving Minister Des van Rooyen and Mr Mohamed Bobat, McKinsey called and wrote to Trillian's Dr Eric Wood expressing McKinsey's concerns with these allegations and requesting Trillian to provide its opinion on the article, shed light on Mr Mohamed Bobat's current relationship with Trillian and provide any input on the alleged relationship. **Annexure MCK50 - Email from V. Sagar to E. Wood, 15 February 2016.** McKinsey emphasized to Trillian that "[t]his is a critical issue to address for McKinsey's risk management framework and potentially also comply with the legislation we are subject to like FCPA". **Annexure MCK50 - Email from V. Sagar to E. Wood, 15 February 2016.**

(4) On 18 February 2016, a few days after requesting information from Trillian, McKinsey (following a series of preliminary discussions) formally engaged a specialist global risk consultancy to conduct due diligence on Trillian.

(5) On 19 February 2016, Mr Anoj Singh sent a letter to Dr Alexander Weiss, a McKinsey partner that asked, among other things, for McKinsey's response to the allegations

related to Mr Mohamed Bobat. **Annexure MCK51 - Letter from A. Singh to A. Weiss, 19 February 2016.**

(6) On 25 February 2016, McKinsey wrote a letter informing Eskom of the due diligence review it was conducting on Trillian. **Annexure MCK52 - Letter from McKinsey to A. Singh, 25 February 2016.** The letter stated that McKinsey's diligence processes for partnering and sub-contracting included full details regarding the composition of the proposed partner in order to ensure that McKinsey did not have exposure to politically exposed persons. The letter also made it plain that McKinsey would not commence a supplier development relationship with Trillian unless it met McKinsey's due diligence requirements. McKinsey concluded the letter by stating that "our relationship with Trillian remains under review by our committees".

(7) On 25 February 2016, McKinsey also addressed a letter to Trillian recording its concern that Trillian had a conflict of interest since it was associated with various companies that appeared to be supplying goods to Eskom. **Annexure MCK53 - Letter from McKinsey to E. Wood, 25 February 2016.** The letter stated that McKinsey regarded this as unacceptable "in light of the high levels of transparency and good faith we expect from entities with which we seek to partner". The letter also indicated that McKinsey had triggered a global review of its potential arrangement with Trillian in relation to work for Eskom. It concluded by requesting Trillian to furnish information to McKinsey regarding the conflict of interest. McKinsey had sent a similar letter identifying the potential conflict of interest to Eskom the day prior. **Annexure MCK54 - Letter from McKinsey to Eskom, 24 February 2016.**

(8) On 26 February 2016, Trillian's Ms Bianca Goodson wrote to McKinsey responding to McKinsey's earlier questions about Mr Mohamed Bobat. **Annexure MCK55 - Letter from B. Goodson to V. Sagar, 26 February 2016.**

(a) In the response, correspondence from Ms Bianca Goodson asserted that "Bobat has no relationship with Trillian nor has he had any relationship with Trillian. I am unable to comment on Bobat's alleged relationship with the politically exposed persons referred to in the article to which you make reference as he independently pursued the advisory role in his own personal capacity". Ms Bianca Goodson's response also denied that Trillian had known about Bobat's appointment before it was reported in the press.

(b) Once again, it appears that this was a missed opportunity for Trillian to have been transparent with us. In her 2017 statement, Ms Bianca Goodson recounted at length her understanding at the time of Mr Mohamed Bobat's involvement in Trillian. **Annexure MCK49 - Bianca Goodson Statement, 28 September 2017.** Her statement makes clear that her denial that Mr Mohamed Bobat "had any relationship with Trillian" was inaccurate. Additionally, in her 2017 statement, Ms Bianca Goodson acknowledged that "In the week of 8 December 2015, I was informed of Mr Bobat's employment at Treasury and very shortly after, his position at CoGTA". **Annexure MCK49** - **Bianca Goodson Statement, 28 September 2017**.

(c) It is unclear to what extent Ms Bianca Goodson was involved in this correspondence. She has claimed that she did not sign the February 26th letter and did not know about it, despite it containing her signature. **Annexure MCK49 - Bianca Goodson Statement, 28 September 2017.** However, Dr Eric Wood, in an affidavit in separate legal proceedings, has stated that Ms Bianca Goodson had, in fact, given permission for the letter to be sent out under her name as she was unavailable. **Annexure MCK56 - Excerpt from E. Wood Affidavit.** As asserted in the affidavit from Dr Eric Wood, supported by a WhatsApp discussion attached as an annexure, Ms Bianca Goodson was apparently at the time at Ultra, which prevented her from signing in person. Wood provided the WhatsApp messages Ms Bianca Goodson exchanged with others at Trillian about the letter. **Annexure MCK56** - **Excerpt from E. Wood Affidavit, 5 June 2018.**

(9) On 26 February 2016, Trillian's Mr Marc Chipkin wrote to McKinsey stating that Trillian was "close to finalising the corporate structure, directors, and shareholding of Trillian Capital Partners and are expecting to be able to present same to you early next week". **Annexure MCK57 - Email from M. Chipkin to V. Sagar, 26 February 2016.**

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20.7 By March 2016, Trillian had yet to provide McKinsey with information about its corporate structure. On 8 March 2016, Dr Eric Wood wrote to McKinsey stating that he would be sending “a detailed group profile of the Trillian Group (including shareholder structure)” and that he was “waiting on final confirmations from the independent non-executive directors as to whether they have accepted our nomination for appointment to the Trillian board. I will be sending the final group profile during the course of this week”. **Annexure MCK58 - Email from E. Wood to V. Sagar, 8 March 2016.**

20.8 McKinsey sent a follow-up letter to Trillian on 10 March 2016 in which it reiterated the request for information and asked for “a detailed group profile of the Trillian Group (which we have still not received)”. McKinsey also asked for a response to its concerns about Trillian’s potential conflict of interest. **Annexure MCK59 - Letter from McKinsey to E. Wood, 10 March 2016.**

20.9 On 14 March 2016, Trillian’s Dr Eric Wood wrote to McKinsey asking that McKinsey “[p]lease understand that whilst I have been speaking to a number of potential shareholders, the final decision is to be taken in the light of the above statements. I do ask for your indulgence in this regard, and will supply you with a detailed company profile (and shareholding breakdown) as soon as possible”. **Annexure MCK60 - Email from E. Wood to V. Sagar, 14 March 2016.**

20.10 Later that same day, frustrated by the continued avoidance and lack of responsiveness from Trillian, McKinsey’s global risk committee made the decision not to partner with Trillian. In its decision, the committee listed the following concerns with partnering with Trillian: organisational transparency, conflict of interest and reputational risk and values issues.

20.11 On 15 March 2016, McKinsey addressed a letter to Trillian terminating its potential relationship with Trillian and recording that it had not received a response to its requests for information. **Annexure MCK61 - Letter from McKinsey to E. Wood, 15 March 2016.** The letter concluded as follows:

> “As we mentioned to you, our global risk committee has reviewed and discussed the proposal to work with Trillian, as our BBBEE partner, on our engagement with Eskom. As a result of this discussion, we have decided not to proceed with the proposal”.

20.12 On 30 March 2016, McKinsey informed Eskom in writing that it had terminated its potential relationship with Trillian and indicated to Eskom that McKinsey “does not know enough about

Trillian, its ownership and governance to be comfortable about going ahead on a programme of this scale" and "is uncomfortable about Trillian's transparency on conflict issues". The letter recorded that "McKinsey's interactions with Trillian have now been terminated". **Annexure MCK62 - Letter from McKinsey to A. Singh, 30 March 2016.**

20.13 In short, Trillian failed to satisfy McKinsey's concerns regarding its ownership and did not respond to McKinsey's requests for information (including confirmation that there were no conflicts of interest by Trillian employees or subcontractors), and McKinsey conveyed this to Eskom in parallel. As a result, McKinsey concluded that Trillian did not satisfy McKinsey's due diligence requirements, and McKinsey decided not to enter into a supplier development partnership with Trillian.

20.14 While McKinsey therefore did conduct a robust due diligence of Trillian, as Mr Kevin Sneader has acknowledged, this diligence "should have been done earlier" and "should have been completed before any work started". **Annexure MCK1 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018.**

20.15 McKinsey was aware that, even with this decision to end consideration of Trillian as a supplier development partner, Eskom could potentially continue to work with Trillian until such time as Eskom decided to terminate its own relationship with Trillian. While Eskom was notified of McKinsey's concerns, it was not McKinsey's place to dictate to Eskom which firms it may hire. Any work done for Eskom by Trillian, however, and any payments made to Trillian by Eskom, would occur independent of McKinsey. In other words, Trillian would be answerable to Eskom for its work – not to McKinsey.

20.16 As highlighted above, McKinsey informed Eskom of its decision to terminate discussions with Trillian by letter before Eskom made any payments to Trillian. **Annexure MCK63 - Letter from Bowmans to McKinsey, 4 October 2017.** Put simply, any payments made by Eskom to Trillian were made by Eskom after McKinsey explicitly informed Eskom that Trillian had failed McKinsey's due diligence process.

20.17 McKinsey then began to look for a new supplier development partner for its work at Eskom. The exchange between Eskom, Trillian, and McKinsey in this regard is recorded in the relevant Steerco minutes. **Annexure MCK64 - Steering Committee Meeting Minutes, 7**

June 2016. (There is an error in the date on the front page of the minutes. The correct date for this Steerco, which was held on 15 June 2016, is reflected on the last page of the minutes.)

20.18 By way of summary, and in light of what has been stated above, I draw attention to the following features of the relationship between McKinsey and Trillian:

(1) McKinsey entered into discussions with Trillian in order to explore the possibility of working with Trillian as a supplier development partner at Eskom. Those discussions were terminated in March 2016 when Trillian failed to satisfy McKinsey's due diligence requirements.

(2) McKinsey never entered into a sub-contract or any other contractual relationship with Trillian (whether for the Corporate Plan project or the Turnaround Programme). Trillian has never been a sub-contractor to McKinsey.

(3) McKinsey never paid money to Trillian.

(4) McKinsey never authorised payment to Trillian by Eskom.

(5) Any payments that were made by Eskom to Trillian occurred after McKinsey had informed Eskom of the fact that Trillian had failed its due diligence requirements.

(6) McKinsey has found no evidence to suggest that any of its personnel were involved in corrupt activities with employees of Trillian.

(7) Ultimately, McKinsey's risk processes worked since they halted the discussions about potentially partnering with Trillian and resulted in a prompt notification of this fact to Eskom. As to Regiments, McKinsey's diligence in monitoring its third-party relationships also resulted in the termination of this relationship.

20.19 As a consequence of its experience with Trillian, McKinsey has taken proactive steps to strengthen its processes for due diligence of new supplier development partners in South Africa, as described further below.

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McKinsey & Company
South Africa

McKinsey & Company statement on Eskom

October 17, 2017 – Over the past four months our Global General Counsel, Jean Molino, conducted a thorough investigation into the claims of wrongdoing levelled against McKinsey & Company regarding our work at Eskom since 2015 that involved Regiments Capital and Trillian. She was assisted by two law firms, Norton Rose Fulbright in consultation with Morrison & Foerster. The investigation included collecting 2.4 million emails; reviewing hundreds of thousands of documents, including contracts, invoices, payments, telephone, personal email, and financial records; and conducting over 60 interviews. Now, as this investigation nears completion, we are in a position to speak with additional certainty about these matters.

Dominic Barton, McKinsey & Company's Global Managing Partner, said:

> **"As a firm, we take these issues very seriously. We deplore corruption and we will cooperate fully with relevant authorities and any official inquiries and investigations into these matters. We are sorry for the distress this matter has caused the people of South Africa, our clients, colleagues, alumni, and others.**
>
> **"We acknowledge that there are more**

than just legal issues at stake, and that many have raised—sometimes with significant emotion—concerns about our broader practices in, and commitment to, South Africa. We assure you that we hear you. We are taking a hard look at all of our practices in the country to ensure that we are not just compliant with the law and free of any form of corruption, but also that we are seen as a constructive partner in building a better future for South Africa. This is our, and my personal, commitment to you."

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In summary, our findings from the investigation are that we have never served the Gupta family or any companies publicly linked to the Gupta family; we have never had a contract or supplier development partnership with Trillian, although we did work alongside Trillian for several months at Eskom; Trillian failed our due diligence in March 2016 after repeatedly refusing to provide details about its ownership; and we terminated all discussions with Trillian and informed Eskom that Trillian would not be our supplier development partner. That said, we should not have started working alongside Trillian in December 2015 before we had completed our due diligence and had answers to our questions.

We also found violations of our professional standards. Where we found issues, we disciplined individuals in line with our procedures and made improvements to our processes. Vikas Sagar, a partner, has decided to leave our firm. Others have been sanctioned or have left the firm. We became aware of one other potential professional standards issue, unrelated to Eskom, which we are in the process of investigating; we will take action as appropriate.

Tom Barkin, McKinsey's Global Chief Risk Officer, said:

"The allegations against us have been painful. We have been focused for the last four months on getting the facts straight. This has taken longer than we had hoped because we wanted to be thorough.

"There are things we wish we had done differently and will do differently in the future, but we reject the notion that our firm was involved in

any acts of bribery or corruption related to our work at Eskom and our interaction with Regiments or Trillian.

"We were not careful enough about who we associated with, did not understand fully the agendas at play, and should not have worked alongside Trillian, even for a few months, before completing our due diligence. The behaviours of some individuals fell short of our standards. Some of our processes were inadequate and we have acted to reinforce compliance and improve them. We did not communicate appropriately to Advocate Budlender. We are embarrassed by these failings and we apologise to the people of South Africa, our clients, our colleagues, and our alumni, who rightly expect more of our firm.

"Our investigation was based on the information to which we had access; we would ask that anyone who may have additional relevant facts to contact our General Counsel so we can further enhance our understanding of these events and take all appropriate actions.[1]"

We include below further detail of our investigation and the actions we are taking.

Our findings

We launched our internal investigation after we became aware of a letter sent by McKinsey on 9 February 2016 that inaccurately characterised our relationship with Trillian. Our investigation focused on our work at Eskom since 2015 that involved Regiments Capital and Trillian.

Based on the investigation, we can make the following conclusions:

1. McKinsey has never served the Gupta family nor any companies publicly linked to the Gupta family.
2. McKinsey has never made payments directly or indirectly to secure contracts, nor have we aided others in doing so.
3. McKinsey did not introduce Trillian to Eskom nor vice versa.

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4. McKinsey has not made payments to Trillian.

5. McKinsey never had a contract with Trillian, although we worked alongside them for a few months at Eskom.

6. McKinsey's 9 February 2016 letter did not provide authorisation for Eskom to pay Trillian as the conditions set out in the letter had not been met.

7. Trillian failed our due diligence and we terminated discussions with them about a supplier development partnership in March 2016. We believe that Trillian withheld information from us about its connections to a Gupta family associate. We informed Eskom of this decision by letter on 30 March, having previously flagged our concerns to Eskom about Trillian's continued failure to disclose its beneficial ownership.

8. McKinsey did not authorise any payments made by Eskom to

Trillian, and any payments by Eskom to Trillian were made by Eskom after McKinsey informed Eskom that Trillian failed our due diligence.

We note that a recent letter from Bowmans, Eskom's outside counsel, of 4 October 2017, reaches the same conclusions as we do on points 5-8 above.

We have concluded that we made several errors of judgment and process:

- Some of our administrative processes were not followed. For example, a letter sent to Eskom in February 2016, even conditionally authorising invoicing or payment, should not have been issued for a party with whom we did not have a subcontract. Whilst Eskom has conceded it did not rely on this letter for payment, the letter was inaccurately drafted and insufficiently

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reviewed. We found no evidence of bad faith in the drafting of this letter.

- In our eagerness to be responsive to the challenges Eskom faced, we mobilised our teams too quickly and began working alongside employees from Trillian in late 2015, before we later rejected a partnership with them in March 2016. Whilst our risk processes ultimately worked, we should have completed them sooner. We should not have begun to work alongside Trillian before we had completed our due diligence and without a contract in place. Had we fully understood Trillian's ownership structure at the time, we would not have considered working with them.
- We failed to engage adequately with Advocate Budlender. When we became aware that a letter McKinsey issued in February 2016 contradicted a

statement we had previously made, we initiated our investigation. We thought it would have been premature for us to answer Advocate Budlender's questions while we were ourselves gathering the facts. We recognise this created the impression that we were avoiding Advocate Budlender's questions. This was not our intention, and we have apologised to Advocate Budlender.

The actions we are taking

As we reflect on our findings, we are taking four steps to address issues that have arisen.

We have set aside our full fee for the Turnaround Programme for repayment.

Eskom has been a client of McKinsey since 2005, and we stand by our work at the company. We believe our work on the Turnaround Programme created

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substantial value by helping to improve operating performance and contain costs. Our work involved, amongst other things, helping to increase plant availability, reduce reliance on expensive diesel generators, reduce contractor claims on the 'new build' programme, and deliver procurement savings. In addition, we built internal capabilities, including helping to scale Eskom's project management skills and setting up a contracts management organisation. Transformation work of this type is a staple of our firm globally.

Eskom has now advised us that it believes it violated procurement regulations and its internal procedures in the formation of the contract, and that decisions it took with respect to the contract may have been taken without proper authorisation. These requirements were solely Eskom's responsibility. McKinsey entered into the contract and performed its work in good faith.

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Our contract with Eskom for the Turnaround Programme was approved by Eskom. It explicitly required Eskom to obtain the necessary approvals or consents required by the terms of the Public Finance Management Act. We were advised by Eskom on 5 February 2016 that it had received National Treasury approval and we have reviewed Eskom's Steering Committee minutes from February 2016 that confirm that fact.

Eskom now contends the contract should be held invalid because Eskom did not, in fact, receive the necessary approvals. We want this issue resolved and we have no interest in benefiting from an allegedly invalid contract.

To provide reassurance to the citizens of South Africa, we will support a review by the High Court of the validity of the Turnaround Programme contract. McKinsey will pay back the fee in full if the Court determines Eskom acted unlawfully. We invite Eskom and Trillian to submit themselves to this process too. In the expectation it will be repaid, we have already set aside the full fee McKinsey earned on the Turnaround Programme in a ring-fenced account ready to comply with the Court's decision.

We have suspended our work for state-owned companies (SOCs) in South Africa until further notice.

We will commit, as a condition of engaging with SOCs in the future, to greater transparency with the National Treasury and relevant shareholder departments, so they have a full understanding of the work we are undertaking, the value we will bring, and our contracting arrangements. We will ask SOCs for detailed documentary evidence that they have all the appropriate approvals in place before we begin work.

Furthermore, McKinsey will not begin any SOC work in South Africa until it has been thoroughly reviewed and formally approved by a newly formed and independent South Africa SOC Risk Committee. This committee will set a very high bar for impact and the quality of the contracting process.

We are improving how we work with supplier development partners. We will only work with our own approved supplier development partners. We will not start work with a supplier development partner until due diligence is complete and a contract is signed.

We have instituted a rigorous process to identify and vet potential new supplier development partners for our firm. Sixteen firms have been shortlisted for legal and financial due diligence. We will devote significant resources to helping the firms we finally select, and others vetted through the same process, grow into self-sustaining black-owned consulting firms.

We will strengthen the governance and capabilities of our South African office. We have asked Tom Barkin, a member of our Global Operating Committee and our Global Chief Risk

Officer, to take on oversight of the implementation of these changes to our South African office.

We are upgrading our finance, legal, and compliance teams and are taking steps to strengthen, and improve adherence to, our administrative processes. We will also, for the future, put in place a more rigorous approach to our SOC client engagement, contracting, monitoring, and compliance processes.

Our commitment to South Africa

McKinsey has had a continuous presence in South Africa for more than 21 years. In late 1995, soon after South Africa held its first democratic elections, a group of five consultants established our office. We have over 250 people in our South Africa office, more than 60% of whom are black South Africans. We thank our people and alumni, and we are hugely grateful to them.

We do not want this episode to affect our commitment to South Africa. We intend to redouble our efforts to be an active, positive, and responsible member of the community. We will take steps to build on our contributions to date and engage directly with a group of leading South Africans to guide us. We will communicate more on this in the coming months.

Georges Desvaux, Managing Partner of McKinsey Africa, and Saf Yeboah-Amankwah, Managing Partner of McKinsey South Africa, said:

"We know that we need to rebuild trust in our firm in South Africa. Our clients have been very patient with us throughout our investigation, and we know that it will take time and effort to restore our reputation. We sincerely appreciate

the support we have received from clients, alumni, our people, and McKinsey's global partnership. We are committed to bringing the best of what we have to offer to South Africa, to continue to advocate for the country and the entire continent, and to play our part to help build a stronger South Africa."

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1. Jean Molino, Global General Counsel, can be reached at jmolino@mckinsey.com

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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3.6 While McKinsey has not identified any such evidence, where we have found issues of concern, McKinsey has shared them with appropriate authorities. As is now public, we made a Section 34 report related to Mr Siyabonga Gama's MBA studies. In July 2017, McKinsey first received information concerning activity that suggested a then-partner of McKinsey (Mr Vikas Sagar) coordinated research support and provided course work materials for Mr Siyabonga Gama's MBA in late 2015 and early 2016. That support, which was outside the scope of any client engagement, was a violation of McKinsey's professional standards. While McKinsey was not in a position to conclude that an offense had occurred in terms of the Prevention and Combating of Corrupt Activities Act (2004), McKinsey had developed a reasonable suspicion that an offence may have occurred, and as a result we lodged a Section 34 report with the Directorate for Priority Crime Investigation. **Annexure MCK2 - Section 34 Report, 1 December 2017.** As the report indicates, McKinsey is not aware of any quid pro quo sought by Mr Vikas Sagar or received by McKinsey in exchange for the support to Mr Siyabonga Gama. Furthermore, McKinsey's investigation found no link between the support and any work awarded to McKinsey. Put simply, McKinsey was not awarded any new work at Transnet after this time. McKinsey understands that Mr Siyabonga Gama has publicly advised that he only received help with the language and flow of the report, not the content. **Annexure MCK3 - Fin24 Article, 6 August 2018.**

McKinsey&Company

1 December, 2017

Designated Police Official
Directorate for Priority Crime Investigation
South African Police Service

Dear Sir / Madam

Report in terms of Section 34(1) of the *Prevention and Combatting of Corrupt Activities Act, 2004* (PRECCA)

1. Introduction

a. This report is made by Georges Desvaux. I am a Director of McKinsey and Company Africa (Pty) Ltd (registration number 2013/091251/07) (the "Company"), with a principal place of business at Sandown Mews, East, 88 Stella Street, Sandown, Johannesburg. I am a person who holds a position of authority within the Company.

b. I make this report in terms of s34(1) of PRECCA, based on information provided to me.

c. In July 2017, the Company first received information concerning activity that suggested a partner of the Company may have engaged in behaviour noted below. As a result of that notice, the Company undertook a review to determine the relevant facts.

2. Relevant facts and circumstances

a. McKinsey & Company, Inc. ("McKinsey") is a global management consulting firm that serves private, public (including parastatals), and social sector clients. The Company, incorporated and conducting business in South Africa, is a subsidiary of McKinsey.

b. Transnet SOC Ltd (Transnet) is a state-owned freight transport company with operating divisions focused on freight rail, rail engineering, national ports authority, port terminals, and fuel and gas pipelines. The Company has served Transnet as a client at various times on a number of topics since approximately 2005.

c. A Company contractor contacted McKinsey on 12 July 2017, concerning a request he received from Mr Vikas Sagar, a former partner of the Company, to provide assistance to Mr Siyabonga Gama (then the Acting Chief Executive of Transnet), in connection with Mr Gama's MBA coursework, including Mr Gama's MBA "Capstone" project in December 2015 - January 2016.

d. McKinsey commissioned an investigation into the matter, which revealed the following:

   1) Mr Gama was enrolled in the TRIUM Global Executive MBA program (class of 2016).

   2) It appears that Mr Sagar coordinated research support for Mr Gama on one group assignment. On a second assignment, Mr Gama provided coursework materials created by Mr Gama and his fellow student team members to Mr Sagar. In turn, Mr Sagar, supplemented this coursework using Company resources and contractors to outline and help draft the two chapters which Mr Gama submitted as his contribution to the Capstone project.

e. The support commissioned by Mr Sagar caused the Company to incur costs of R100 000.

f. I am not aware of any *quid pro quo* sought by Mr Sagar or received by the Company in exchange for the benefits I believe were bestowed upon Mr Gama. To the best of my knowledge, the Company received no new business from Transnet after the benefit was given. I also do not know if Mr Gama declared the benefits so received to Transnet.

3. Conclusion

Accordingly, while I have not concluded that a violation has, in fact, occurred, I believe that there is a reasonable suspicion that an offense under s34(1) may have occurred. As such, in an abundance of caution, I am submitting this report.

Georges Desvaux
Director
McKinsey and Company Africa (Pty) Ltd

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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21 **9 February 2016 Letter**

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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21.1 On 9 February 2016, Mr Vikas Sagar transmitted a letter to Mr Prish Govender of Eskom. **Annexure MCK65 - Email from V. Sagar to P. Govender, 9 February 2016.** The letter related to the "Professional Services Contract", that is, the Corporate Plan. The letter recorded that "McKinsey has subcontracted a portion of the services to be performed under the Agreement to Trillian (Proprietary) Limited". It authorised Eskom to make payments directly to Trillian but only if McKinsey confirmed in writing that it was satisfied with the relevant services performed by Trillian and that the amount of the invoice was correct, two conditions that were never met.

21.2 Trillian was never McKinsey's subcontractor under the Corporate Plan. Because the assertion in the letter that McKinsey had "subcontracted . . . to Trillian" was wrong, this letter has engendered significant confusion. While it was expected at the time that Trillian would be McKinsey's supplier development partner on the Turnaround Programme, as explained elsewhere in my statement, McKinsey had not yet entered into a subcontract with Trillian and would indeed in the weeks following the letter decide not to do so.

21.3 McKinsey has since undertaken an extensive examination into the 9 February letter and determined that, while the letter should not have been sent with inaccurate information, the more far-reaching allegations it has spawned are not supported. The explanation that has emerged for the letter is that it was prepared at the request of Eskom and Trillian in order to streamline the process for Trillian to receive payment for the work it had undertaken up to that date in connection with the Corporate Plan Project subject to Trillian's ability to meet conditions that were never met. At the time, it was not known at McKinsey that there would be a commercial dispute between Regiments and Trillian about which entity was entitled to payment for work on the Corporate Plan project.

21.4 As discussed more fully below:

(1) The letter relates only to the Corporate Plan and not to the Turnaround Programme.

(2) The letter is significantly narrower and more conditional than some have suggested and includes express preconditions for payment that were plainly never met.

(3) At the time that the letter was sent, it was McKinsey's expectation that Trillian would become the supplier development partner for McKinsey once the due diligence had been completed.

(4) The letter was never relied upon by Eskom to make any payments to Trillian—a fact that has been conceded by Eskom multiple times.

(5) Within weeks of the 9 February 2016 letter and before any payments by Eskom to Trillian for this work, McKinsey notified Eskom and Trillian unambiguously that Trillian would not be serving as McKinsey's supplier development partner.

21.5 This 9 February 2016 letter had been prepared at the request of Eskom and Trillian in order to streamline the process for Trillian to receive payment for the work it had undertaken up to that date in connection with the Corporate Plan Project. (This letter had nothing whatsoever to do with the Turnaround Programme. This is clear from the content of the letter.)

(1) Dr. Alexander Weiss, a McKinsey partner, and Mr Vikas Sagar consulted with a McKinsey internal legal adviser regarding the form and content of the letter. (As a result, certain internal communications are subject to the attorney-client privilege and have not been reflected below.)

(2) On 26 January 2016, Trillian (Mr Clive Angel (with others copied)) wrote to McKinsey (Dr Alexander Weiss and Mr Vikas Sagar) seeking assistance in receiving payment from Eskom. **Annexure MCK66 - Email from C. Angel to V. Sagar and A. Weiss, 26 January 2016.** Mr Clive Angel asked McKinsey to write to Eskom on Trillian's behalf seeking permission for McKinsey and Trillian to invoice Eskom separately under any contracts where Trillian is the appointed Supplier Development Partner.

(3) On 8 February 2016, Mr Vikas Sagar emailed Dr Alexander Weiss relating that Eskom had asked McKinsey to issue a letter stating that Trillian can invoice Eskom directly. **Annexure MCK67 - Email from V. Sagar to A. Weiss, 8 February 2016.** Mr Vikas Sagar stated that he that received this request from Mr Clive Angel and asked Dr Alexander Weiss whether he had also received the same request. In response, Dr Alexander Weiss informed Mr Vikas Sagar that he had not received the request.

(4) On 9 February 2016, Mr Vikas Sagar, after consulting with McKinsey in-house counsel, sent the first draft of the proposed letter to Mr Clive Angel and Dr Eric Wood at Trillian. **Annexure MCK68 - Email from V. Sagar to C. Angel Attaching Draft Letter, 9 February 2016.** Later that day, Mr Vikas Sagar sent the signed letter to Mr Clive Angel and Dr Eric Wood relating that this would be the letter they were sending to Eskom. **Annexure MCK69 - Email from V. Sagar to C. Angel Attaching Signed Letter, 9 February 2016.**

(5) Shortly thereafter, Mr Vikas Sagar also transmitted the letter to Mr Prish Govender at Eskom. **Annexure MCK65 - Email from V. Sagar to P. Govender, 9 February 2016.** While the covering email discusses the MSA (Turnaround Programme) contract, the letter of 9 February 2016 only relates to the fixed-fee, six month Corporate Plan Project for which work had largely been completed at the time of this letter. This is clear from the content of the letter. Eskom has also confirmed that the 9 February 2016 letter related solely to the Corporate Plan contract and provided no authority whatsoever in respect of the Turnaround Programme.

(6) In addition, the letter as transmitted to Eskom includes two important conditions that required McKinsey to issue a "written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey" and to confirm "the correctness of the amount to be invoiced". Neither of these conditions were ever fulfilled.

(7) Later on 9 February 2016, Mr Clive Angel reverted with Trillian's proposed changes to the letter. **Annexure MCK70 - Email from C. Angel to V. Sagar, 9 February 2016.** These requested changes from Trillian included removing the conditions described above as they would "introduce further administrative issues into the process" because the letter only referred to the Corporate Plan contract. McKinsey did not adopt Trillian's proposed amendments. This correspondence further evinces the parties' understanding at the time that the 9 February 2016 letter submitted to Eskom related exclusively to the Corporate Plan project.

(8) Mr Clive Angel followed up Mr Vikas Sagar's email noting that Trillian had invoiced Eskom and, under the conditions in the letter, McKinsey needed to write to Eskom to the effect that McKinsey was satisfied with the work Trillian had done on the Corporate

Plan. Eskom never requested such a letter of satisfaction and McKinsey never sent such confirmation.

21.6 Eskom has confirmed that the 9 February 2016 letter did not itself authorise payment to Trillian, because the conditions provided for in the letter were never fulfilled. Eskom has also stated that it did not rely, and could not have relied, on the letter in order to make payment to Trillian. The letter of demand from Eskom's attorney dated 4 October 2017 provides further evidence of this. **Annexure MCK63 - Letter from Bowmans to McKinsey 4 October 2017.** It makes plain that Eskom did not make payment to Trillian in reliance on McKinsey's letter because McKinsey did not (a) issue a written confirmation of its satisfaction with the services provided by Trillian or (b) confirm the correctness of the amount to be invoiced. Eskom also correctly concluded that "there was no subcontract between Trillian and McKinsey". Additionally, any payments made to Trillian occurred after McKinsey notified Eskom it would not be partnering with Trillian.

21.7 In sum, McKinsey regrets that the 9 February 2016 letter contained inaccuracies, which generated confusion and misunderstanding. All of the people who had involvement in the creation of the letter have been disciplined or have left the firm. But the notion that the 9 February letter can be taken to confirm that Trillian was actually McKinsey's subcontractor is wrong; this has been thoroughly investigated and cannot be reconciled with contemporaneous information. Such evidence makes clear that Trillian was not McKinsey's subcontractor, was still undergoing the due diligence process, and never became McKinsey's subcontractor. As explained earlier, the 9 February letter had been prepared at the request of Eskom and Trillian in order to streamline the process for Trillian to receive payment for the work it had undertaken up to that date in connection with the Corporate Plan Project. While we acknowledge that it reflected a lack of care and attention to contracting formalities, we have found no evidence that it reflected corruption.

21.8 Lastly on this point, I also wish to acknowledge, as McKinsey has done publicly for over a year, that McKinsey regrets not having been more responsive to Advocate Geoff Budlender SC when he initially inquired about these matters. **Annexure MCK4** - **McKinsey & Company Statement on Eskom, 17 October 2017**.

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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21.9 Initially, in response to an inquiry, McKinsey advised Advocate Geoff Budlender that McKinsey had never partnered with or subcontracted to Trillian. Thereafter, Advocate Geoff Budlender questioned how this could be the case given the wording of the 9 February 2016 letter, which his review had identified.

21.10 The reason we were not more expansive and prompt in responding to Advocate Geoff Budlender's request for clarification is that the content of the 9 February letter about which he inquired was at odds with the widespread belief and understanding of McKinsey personnel who knew that Trillian was never McKinsey's subcontractor. This led to uncertainty and hesitation and a decision to investigate the facts more thoroughly before responding. We should have been more transparent with Advocate Geoff Budlender at the time, so that our uncertainty did not come across as suggesting that we were unwilling to be transparent.

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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22 **Response to Allegations Relayed by Mr Ian Sinton of Standard Bank**

22.1 McKinsey has taken note of the testimony of Mr Ian Sinton of Standard Bank before the Commission, in which Mr Ian Sinton relayed certain allegations shared with him by personnel from Regiments orally in October 2017 and in a written communication dated 10 November 2017. The years of payments from Regiments to entities linked to State Capture reflected in Standard Bank's records are deeply troubling and deserving of further investigation. However, McKinsey disputes the accuracy of the story that Regiments told Mr Ian Sinton about McKinsey's involvement in such payments—and has found no corroborating evidence that any McKinsey personnel were aware of such an arrangement involving Mr Salim Essa at the time.

22.2 As is clear from Mr Ian Sinton's testimony to the Commission, the context for the interactions between Regiments and Standard Bank was that Standard Bank had a banking relationship with Regiments and with various entities linked to Mr Salim Essa that are now the subject of State Capture allegations. Because of that relationship, Standard Bank had by 2017 identified a questionable stream of payments made by Regiments and was at that time pressing Regiments to explain these transactions.

22.3 As such, Regiments found itself in October 2017 in the position of having to come up with an explanation for payments that it could not outright deny. In the course of doing so, Regiments apparently relayed a self-serving version of events in which Mr Vikas Sagar, a former

McKinsey partner, was said to have been aware of such payments. The extent of Mr Vikas Sagar's role in these discussions changes from source to source as discussed further below.

22.4 It bears emphasis that Standard Bank's discussions with Regiments occurred in and around October 2017, more than a year and a half after McKinsey had raised its concerns with Regiments and terminated its relationship with Regiments.

22.5 In parallel, as a part of ongoing discussions between Standard Bank and McKinsey, in December 2017 Mr. Ian Sinton asked McKinsey about these allegations in general terms. In correspondence, Mr. Ian Sinton advised McKinsey that a person (whose identity he declined to disclose but whom he said claimed firsthand knowledge) advised him that Regiments had made payments to Mr. Salim Essa through its Standard Bank accounts and that McKinsey, as represented by Mr Vikas Sagar, had made the appointment of Regiments to work on contracts at Transnet conditional upon Regiments agreeing to pay 30% of all fees earned to Mr Salim Essa. **Annexure MCK71 - Email from I. Sinton to C. Duross (external counsel to McKinsey).** Mr Ian Sinton added that as part of its investigation, Standard Bank (as the banker for Regiments and entities linked to Mr Salim Essa), was able to verify that Regiments had in fact paid the 30% to Mr Salim Essa.

22.6 In subsequent exchanges of correspondence, apparently due to confidentiality restrictions, Standard Bank remained unwilling to identify the source of his information, despite repeated requests from McKinsey.

22.7 Nevertheless, McKinsey, in the course of its internal review, was able to investigate the general allegations. In the course of its review, McKinsey attempted to test this proposition that Mr Vikas Sagar was involved in the agreement alleged through various methods including:

(1) Multiple interviews with Mr Vikas Sagar, and subsequent discussions with Mr Vikas Sagar's legal representatives following his departure from the firm.

(2) Interviews with other McKinsey personnel who were engaged with Transnet at the time of the inception of the work with Regiments.

(3) A review of an extensive body of emails and other communications from Mr Vikas Sagar and other McKinsey personnel, including emails from the October 2012 time period, in which Mr Vikas Sagar purportedly gave this direction according to the version of events Regiments relayed to Mr Ian Sinton.

(4) A review of Mr Vikas Sagar's calendar entries, expense records, and other records to ascertain whether there is any evidence of such an October 2012 meeting.

(5) An in-depth review of the contracting and other project documentation relating to the work at Transnet that is at issue in the Regiments allegations.

22.8 McKinsey also reached out to Regiments through its counsel but ultimately was informed that Regiments was unwilling to provide any information to McKinsey's investigation.

22.9 In the end, McKinsey found no evidence to substantiate the allegation that in October 2012 Mr Vikas Sagar (or anyone else at McKinsey) directed or otherwise was privy to an arrangement whereby Regiments made payments to Mr Salim Essa derived from the fees it earned at Transnet.

22.10 Mr Vikas Sagar is no longer in McKinsey's employ, is no longer in South Africa and is represented by his own lawyers. On multiple occasions directly and through his counsel, Mr Vikas Sagar has strongly denied such allegations and I understand that he has reiterated such denials through his counsel in the wake of Mr Ian Sinton's testimony. Mr Vikas Sagar, while acknowledging knowing Mr Salim Essa and Mr Kuben Moodley, has steadfastly denied any knowledge of the arrangement described to Mr Ian Sinton and has maintained to McKinsey's counsel that he believed that his actions as a McKinsey partner at Transnet and Eskom were all lawful.

22.11 As discussed above, McKinsey has sought in various ways to verify Mr Vikas Sagar's denials of knowledge of, or involvement in, the alleged arrangement. In the course of reviewing an extensive body of email and other electronic communications of Mr Vikas Sagar, McKinsey has found no evidence of Mr Vikas Sagar (who acknowledges knowing Mr Salim Essa at that time) having participated in any meeting in October 2012 at all with Mr Salim Essa and Regiments representatives or of his having any awareness of the fee arrangement described to Mr Ian Sinton—much less that Mr Vikas Sagar orchestrated such a meeting and was involved in such an arrangement.

22.12 McKinsey has always been clear that its internal review is necessarily limited to the documents and the individuals to whom it has access, and that it is prepared to examine new information as it arises to supplement its own review. In keeping with that commitment, McKinsey has since had a preliminary opportunity to consider the more detailed hearsay allegations that Mr Ian Sinton relayed in his testimony on 12 March 2019 and that are set out in the annexures to that testimony. Having done so, McKinsey remains of the view that the allegations conveyed to Mr Ian Sinton are uncorroborated and that there are significant doubts about their accuracy:

(1) The assertion that Regiments first arranged to work with McKinsey at a meeting in October 2012 simply does not accord with the timeline established by the documentary record.

(a) Regiments had provided its company profile to McKinsey in July 2012. **Annexure MCK41 - Regiments Company Profile, July 2012.**

(b) As recounted in the Fundudzi Report, Transnet had already made the determination to select McKinsey for the 1064 Locomotives contract in July 2012, months in advance of the alleged October 2012 meeting.

(c) Further, Transnet identified the conflict with Letsema (which ultimately led to the appointment of Regiments) in August 2012. **Annexure MCK36 - Appointment for Transaction Advisor on the 1064 Locomotive Tender, 14 August 2012.**

(d) The RMO proposal was submitted by McKinsey and Regiments on 4 October 2012. **Annexure MCK42 - McKinsey Regiments Proposal for RFP GSM/12/08/0527, 4 October 2012**. This proposal references Regiments' previous work at Transnet restructuring its treasury operations and designing its "enterprise risk framework".

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(2) Regiments in its letter of 10 November 2017 to Mr Ian Sinton asserted that the arrangement proposed in October 2012 required Regiments to pay 30 percent to Mr Salim Essa for fees received from Transnet, even if the project did not involve McKinsey. However, there appear to be several reasons to be sceptical of Regiments' claim that Mr Vikas Sagar proposed and Regiments accepted such an arrangement (a claim that minimises Regiments' own culpability for payments it now admits to have made):

(a) Regiments had already been working at Transnet previously (as indicated on their profile, in submissions to Transnet, and in court filings in the litigation between Regiments and Trillian). Given that a relationship between Regiments and Transnet already existed, it is hard to understand why Regiments would then agree to pay significant fees in perpetuity on work at Transnet in which McKinsey was not involved.

(b) McKinsey had already been working for years at Transnet. Indeed, the majority of the fees McKinsey earned, since the inception of its relationship with Transnet, occurred prior to 2012.

(c) Regiments stated in its letter that Dr Eric Wood at one point increased the amount paid to Mr Salim Essa from 30 percent to 50 percent but does not adequately explain how this was accomplished or why it took so long for others at Regiments to appreciate that an additional 20 percent of its revenues were being diverted in this fashion.

(3) Regiments has shifted many times its accounts of its dealings with Mr Salim Essa and entities related to him.

(a) In September 2016, Mr Litha Nyhonyha responded to a *Mail and Guardian* story by saying that Transnet "flatly denied" the allegation that "Transnet employed our company without having followed the usual procurement prescripts". **Annexure MCK72 - Regiments Response to Mail and Guardian Article (Excerpted from Regiments Trillian litigation filing), 22 September 2016.** Mr Litha Nyhonyha also vehemently disputed that the fees earned by Regiments constituted a "windfall", arguing that Regiments "rendered value-added professional services in line with our contractual obligations and earned market-related fees".

(b) In October 2016, in connection with litigation Regiments initiated against Trillian accusing Dr Eric Wood of misconduct, Mr Litha Nyhonyha filed an affidavit that asserted that the "the background to Regiments' work for Transnet is relevant to Wood's improper and unlawful conduct" and described that background in detail without any reference to the alleged October 2012 meeting and the alleged payments made to Mr Salim Essa in connection with the work at Transnet. **Annexure MCK43** - **L. Nyhonyha Founding Affidavit, 8 October 2016**. This is so even as Mr Litha Nyhonyha's affidavit elsewhere asserts that Dr Eric Wood engaged in wrongdoing with Mr Salim Essa.

(c) In an interview with amaBhungane in October 2017, the same month Mr Litha Nyhonyha and Mr Niven Pillay were discussing these matters privately with Mr Ian Sinton, Mr Niven Pillay was asked pointedly whether Mr Salim Essa was involved in securing the work at Transnet and refused to give a clear answer, instead saying, "if you have it from a good source you can [print] that". **AmaBhungane interview with Regiments director Niven Pillay, October 2017, https://soundcloud.com/user-739601330/regiments-interview-about-payments.**

(d) In a subsequent statement to amaBhungane in August 2018, Regiments made no reference to Mr Vikas Sagar's role, instead asserting that "Moodley (for Regiments) and Essa (for McKinsey) facilitated the relationship between Regiments and McKinsey". **Annexure MCK73 - Regiments Statement to AmaBhungane, 15 August 2018.**

(4) The version of events that Mr Ian Sinton described having been told orally in the meeting in October 2017 also does not correspond in important respects with the subsequent letter Mr Ian Sinton received in November 2017 from Regiments. Mr Ian Sinton testified that in his in-person meeting, Regiments advised him that McKinsey had orchestrated and first proposed the arrangement with Mr Salim Essa.

Specifically, Mr Ian Sinton testified being told that in the October 2012 meeting McKinsey "offer[ed] to appoint Regiments as its SDP subject to Regiments agreeing to share 30% of all income thereby received with Essa". The November 2017 letter, however, conspicuously omits the assertion that McKinsey was the impetus for this arrangement with Mr Salim Essa (which could have been easily stated) and does not even say clearly that Mr Vikas Sagar was aware of the arrangement. **Annexure MCK74 - Letter from Regiments to Standard Bank, 10 November 2017.** Instead, the letter says only that a "strategic business partnership" (which could have simply been the partnership between McKinsey and Regiments) "was discussed" in October 2012 and that afterwards "Sagar was happy to recommend [such arrangement] to his McKinsey leadership".

(5) The clear implication of the account Mr Ian Sinton relayed as to what he was told is that Regiments met Mr Salim Essa for the first time in October 2012 through McKinsey (the letter states that Mr Salim Essa was previously "unknown to Regiments") and that Regiments' involvement with Mr Salim Essa thereafter derived from the work with McKinsey at Transnet. Since the time of Regiments' interactions with Mr Ian Sinton, however, significant reporting and documents have emerged – including emails between Regiments and Mr Salim Essa – that suggest that Regiments had an extensive relationship with Mr Salim Essa and entities linked to him that were entirely unrelated to McKinsey and that involved Regiments' work for other clients.

(6) From interviews and documents, it is clear that in the course of working at Transnet, McKinsey regularly pressed Regiments (as it did other SDPs and sub-contractors) to address performance issues and to add resources. **Annexure MCK75 - Email Correspondence Regarding Regiments Tracking, 21 June 2015.** However, based on the extensive documents reviewed and interviews conducted, it appears that at no time did anyone at Regiments allude to the notion that its resources were constrained because of the payments being made to Mr Salim Essa at Mr Vikas Sagar's request.

(7) Likewise, McKinsey took action in 2014 in response to allegations regarding Mr Niven Pillay. This resulted in Mr Niven Pillay having been walled off from McKinsey work and in the receipt by McKinsey and Company's Global General Counsel of

assurances from Regiments regarding its commitment to adhering to sound anti-corruption practices. **Annexure MCK44 - Correspondence Between McKinsey and Regiments, August and September 2014**. Yet at no point was the supposed arrangement described to Mr Ian Sinton raised by Regiments with McKinsey and Company's Global General Counsel as part of these discussions.

(8) Finally, and perhaps most notably, when in March 2016 McKinsey notified Mr Litha Nyhonyha and Mr Niven Pillay of Regiments that we were terminating our relationship with them, it does not appear that these two individuals or anyone else from Regiments objected to this decision on the grounds that Regiments had for years been making payments at McKinsey's request to Mr Salim Essa or make any reference to the prior alleged arrangement.

(9) In sum, McKinsey has undertaken extensive investigations before and after Mr Ian Sinton's testimony but has found no evidence to corroborate the account conveyed to him by Regiments. While the October 2012 meeting as described would – if accurate – appear to lie exclusively within the knowledge of Mr Vikas Sagar, one would expect to find points of verification for this account if such a meeting did in fact occur and if such an arrangement was in fact agreed on. None of those points of verification have been found to exist by McKinsey. In addition, there are serious inconsistencies about this version of events.

22.13 Our review has confirmed that what McKinsey charged Transnet for this work was in line with what we charged elsewhere in the world on similar international rail projects and on South African operations projects in the private sector. In addition, it was and remains our understanding, informed by National Treasury's report that McKinsey's fees at Transnet were generally in line with the National Treasury guidelines at that point in time.

22.14 Mr Ian Sinton testified to having been advised after the fact by Mr Niven Pillay and Mr Litha Nyhonyha that Regiments was amenable to the arrangement with Mr Salim Essa because the "rates that McKinsey had negotiated with Transnet…they were 400 percent more than would have been charged by Regiments had they negotiated directly with Transnet". McKinsey does not know what Regiments had charged for its previous work with Transnet. But the amounts paid to Regiments were as agreed upon with Transnet in the contract – and Regiments has previously represented that they were in line with market rates and commensurate with the value of the work performed. **Annexure MCK72 - Regiments Response to Mail and Guardian Article (Excerpted from Regiments Trillian litigation filing), 22 September 2016.**

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ANNEXURE 'A'

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 85105/17

In the matter of:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Applicant
and	
MCKINSEY AND COMPANY AFRICA (PTY) LTD	First Respondent
ESKOM HOLDINGS SOC LIMITED	Second Respondent
TRILLIAN CAPITAL PARTNERS (PTY) LTD	Third Respondent
M M S NXUMALO NO	Fourth Respondent

In the application in terms of Section 38 of the Prevention of Organised Crime Act 121 of 1998

SETTLEMENT AGREEMENT: CHAPTER 6 PROCEEDINGS

The Applicant, First, Second and Fourth Respondents have reached a settlement in respect of the Forfeiture Proceedings before the above Honourable Court and the Preservation Order granted to the Applicant under the above case number on 14 December 2017 (the **Chapter 6 Proceedings**).

The Applicant, First, Second and Fourth Respondents seek that this settlement agreement, the terms of which are set out below, be made an Order of Court.

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PREAMBLE

Whereas the Applicant, the National Director of Public Prosecutions (NDPP) has, in terms of Section 38 of the Prevention of Organized Crime Act, 121 of 1998 (POCA) obtained a Preservation Order against the First Respondent, McKinsey and Company Africa (Pty) Ltd (**McKinsey**), in the Chapter 6 Proceedings in the amount of R105 184 788.48 which stood to the credit of the McKinsey bank account on the date on which the Preservation Order was served on McKinsey;

And whereas the NDPP has obtained a Preservation Order against the Third Respondent, Trillian Capital Partners (Pty) Ltd and related Trillian companies including Trillian Management Consulting (Pty) Ltd (**Trillian**) but has subsequently abandoned the Chapter 6 Proceedings against Trillian, and so for the avoidance of any doubt the Third Respondent is not a party to this agreement;

And whereas the NDPP on 23 May 2018 gave notice of its intention to apply to this Honourable Court for an order forfeiting to the state, the property which is subject to the Preservation Order and McKinsey is opposing this application and disputes that there is any basis, in fact and in law for a forfeiture order;

And whereas the Second Respondent, Eskom has subsequently instituted review proceedings for (amongst other things) the return of all amounts which it paid out to McKinsey and Trillian in connection with the so called Turnaround Programme Contract and Corporate Plan (under case number 22877/18 (the **Eskom Review Proceedings**), (these contracts are defined as the "Master Services Agreement" and the "2015 McKinsey Contract" respectively in the Eskom Review Proceedings and for ease of reference are referred to as the "**MSA**" and "**Corporate Plan**" and collectively as the "**relevant Eskom/McKinsey Contracts**" in this agreement);

And whereas McKinsey has publicly offered in the past to repay Eskom the amounts McKinsey received under the MSA, and in the interests of harmonising the Chapter 6

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Proceedings and the Eskom Review Proceedings, and acting in the broader public interest so as to ensure the return to Eskom of the funds paid by it to McKinsey under the MSA, as quickly as possible, the parties have agreed on a mechanism for achieving their common interest in this matter.

THEREFORE THE PARTIES AGREE THAT:

1 McKinsey will return to Eskom an amount of R902,274,123.31 (nine hundred and two million, two hundred and seventy-four thousand, one hundred and twenty three Rand, and thirty one Cents) (the **settlement amount**) within 5 (five) calendar days of this agreement being made an order of Court. This amount is paid by McKinsey to Eskom in a settlement context and is accordingly not considered by the parties to be subject to VAT.

2 Eskom and McKinsey will obtain a VAT ruling from SARS to confirm the approach to VAT in paragraph 1 above. In this regard:

2.1 The VAT ruling application to SARS will be made jointly by Eskom and McKinsey, as co-applicants, and they will cooperate in utmost good faith to obtain the VAT ruling as soon as possible following signature of this agreement;

2.2 Eskom will prepare a first draft of the SARS application for consideration by McKinsey within 4 (four) business days of signature of this agreement and the parties will use all reasonable endeavours to settle the application between themselves and submit the application to SARS within 7 (seven) business days of signature of this agreement;

2.3 Eskom and McKinsey, or their representatives, will make themselves available on reasonable notice for any follow up meetings or presentations to SARS and related attendances.

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3 If SARS does not confirm this approach and rules that VAT is payable on the settlement amount McKinsey will pay VAT to Eskom on the settlement amount at the rate imposed by SARS, within 7 (seven) calendar days of the receipt of a valid tax invoice from Eskom.

4 The settlement amount and any VAT payment is payable by McKinsey into the following bank account of Eskom Holdings SOC Limited:

Bank: **Standard Bank**

Account Holder: **Eskom Holdings SOC Ltd**

Account Number: **002 406 616**

Account type: **Standard Bank General Fund**

Ref: **McKinsey – 85105/17**

5 The settlement amount is paid:

5.1 Without any admission of liability or wrongdoing by McKinsey in these Chapter 6 Proceedings or the Eskom Review Proceedings;

5.2 Pursuant to an agreed process to give effect to McKinsey's expressed intention to repay the settlement amount in full and final settlement of:

5.2.1 the Chapter 6 Proceedings; and

5.2.2 any claim that Eskom had or may have against McKinsey and/or any of its current or former Directors, Principals or Employees (but for the avoidance of doubt this does not include any claim that Eskom may have against Trillian or any other Trillian related company) arising out of any payment made by Eskom to McKinsey and Trillian in connection with the relevant Eskom/McKinsey

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Contracts (referred to above as the "Master Services Agreement" and the "2015 McKinsey Contract").

6 Pursuant to 5.2 above, it is specifically recorded that:

6.1 The settlement is not reached on account of any proven unlawful conduct by McKinsey nor an admission of liability or wrongdoing on McKinsey's part.

6.2 Eskom will bring this agreement to the attention of the Court hearing the Eskom Review Application and will not seek the relief in paragraph 3.1 of the Notice of Motion dated 29 March 2018 and will not seek any monetary or pecuniary relief from McKinsey in that application;

6.3 Eskom will continue to seek the balance of the relief outlined in its Notice of Motion in the Eskom Review Proceedings;

6.4 If McKinsey withdraws its opposition to the Eskom Review Proceedings, Eskom will not seek any costs order against McKinsey in those proceedings.

7 Eskom will similarly not seek any relief against the NDPP or the Fourth Respondent, M M S Nxumalo NO (the **curator bonis**) in the Eskom Review Application in respect the settlement amount paid over by McKinsey to Eskom under this agreement, and these Chapter 6 Proceedings.

8 The Chapter 6 Proceedings instituted by the NDPP against McKinsey are settled and accordingly the Preservation Order will lapse on the date that this agreement is made an Order of Court. The NDPP will not:

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8.1 Institute proceedings or seek relief against McKinsey in respect of any payment made by Eskom to Trillan in connection with the relevant Eskom/McKinsey Contracts; and

8.2 Seek to recover the settlement amount paid by McKinsey to Eskom under this agreement from Eskom.

8.3 For the avoidance of any doubt, this does not preclude any criminal or related proceedings, including Asset Forfeiture Proceedings, which the NDPP may bring against Eskom, McKinsey or Trillian and/or any present or past employee(s) of the aforementioned entities.

9 The NDPP and the curator bonis release McKinsey from the written undertaking it gave on 24 January 2018 in respect of the Funds (as defined in that undertaking) and, if so required, will notify the Standard Bank that there is no longer any prohibition against McKinsey dealing with the Funds.

10 The fees, disbursements and expenses incurred by the curator bonis, and as approved by the Master of the High Court of South Africa, in the exercise of his powers and/or duties in terms of the preservation order, are to be paid by Eskom. In this regard the curator bonis is directed to:

10.1 Submit his final account for such fees, disbursements and expenses to the Master of the High Court of South Africa, for approval, in terms of the provisions of the Prevention of Organised Crime Act, 121 of 1998 and the regulations thereto, and the Administration of Estates Act, 66 of 1965 and the regulations thereto.

11 Payment of the account of the curator bonis, as approved by the Master of the High Court, is to be made by Eskom, within 7 (seven) business days after

approval of the account by the Master of the High Court of South Africa, into the following bank account of the curator bonis:

Tembe Kheswa Nxumalo Incorporated Trust Account
Nedbank
Account Number: 164 807 5010
Bank Code: 198 765 (Coastal and Inland Business)
Ref: MMN/Est 01037

12 The payment of the approved account of the curator bonis, by Eskom, will be in full and final settlement of any claim which the curator bonis may have against the NDPP, Eskom or McKinsey in respect of his appointment as curator in the Chapter 6 Proceedings.

13 Each party to pay their own costs in respect of the Chapter 6 Proceedings and this settlement.

The signing of this Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts.

Signed at Pretoria on the 06th day of July 2018.

For and on behalf of
The National Director of Public Prosecutions (represented by the Asset Forfeiture Unit)

Name: ADV. N.F. MOKHATLA
Capacity: HEAD : ASSET FORFEITURE (NPA)
Who warrants his/her authority

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Signed at McKinsey, JoH on the 5 day of July 2018.

For and on behalf of
McKinsey and Company Africa (Pty) Ltd

Name:
Capacity: Office Manager
Who warrants his/her authority

For and on behalf of:
Eskom Holdings SOC Limited

Name: P. Hadebe
Capacity: GCE
Who warrants his/her authority

For and on behalf of
The *Curator Bonis*

Name: MMS NKUMALO
Capacity: Curator Bonis
Who warrants his/her authority

Excerpt from Mr Safroadu Yeboah-Amankwah's Statement
(Submitted to Commission 8 April 2019)

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15 **Return of Turnaround Programme Fees**

15.1 In October 2017, Eskom's counsel acknowledged that McKinsey was misled by Eskom regarding National Treasury approvals in connection with the Turnaround Programme. This is because Eskom had expressly committed under the contract to seek National Treasury approval given the "at risk" nature of the agreement and because Eskom had represented to McKinsey in February 2016 that it had obtained such approvals from the National Treasury as reflected in the Steering Committee minutes for the 9 February 2016 meeting. **Annexure MCK20 - Steering Committee Minutes, 9 February 2016.**

15.2 Despite having been misled, McKinsey announced shortly thereafter that it had no intention of benefitting from a contract that may be invalid. To that end, McKinsey stated publicly in October 2017 that it was committing to voluntarily return the fees earned by it under the Turnaround Programme under a transparent court process and noted that it did not wish to profit from a contract entered into without proper authority. **Annexure MCK4 - McKinsey & Company Statement on Eskom, 17 October 2017.**

15.3 Initially, McKinsey received mixed signals from successive Eskom management teams on the question of whether a return of the fees was desirable and how such return should be achieved. Although McKinsey wanted to return the funds expediently, we also wished to comply with all applicable laws and procedures. There followed several months of legal proceedings to ensure there was an appropriate vehicle for the return of the funds and that such funds were returned to the appropriate governmental entity in accordance with applicable law and with the appropriate degree of transparency and finality.

15.4 As part of the ongoing legal proceedings to determine the appropriate method of returning such funds, in March 2018, the current Eskom management team initiated review proceedings in the High Court in order to recover moneys paid to McKinsey and Trillian under the Corporate Plan Project and the Turnaround Programme. In July 2018, McKinsey, Eskom, and the AFU executed a settlement agreement to resolve McKinsey's portion of the Eskom review and AFU proceedings in full satisfaction of any amounts alleged to be owed by McKinsey to Eskom for the Turnaround Programme and the Corporate Plan Project. After executing the agreement, McKinsey voluntarily returned the full amounts it received under the Turnaround Programme, with interest, to Eskom. The settlement agreement provides that the return of the funds was made "[w]ithout any admission of liability or wrongdoing by McKinsey". **Annexure MCK32 - Settlement Agreement: Chapter 6/Eskom Review Proceedings, 6 July 2018.** I was personally involved in the process and observed at the time how grateful we were to have fulfilled our voluntary commitment. It was the right thing to do and was made possible by the support of the new management of Eskom and the AFU.