SARS

EXHIBIT WW 1

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WILLIAMS

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

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AFFIDAVIT

I, the undersigned,

Athol Williams

do hereby make oath and state that:

1. I am an adult male currently employed as a senior lecturer at the University of Cape Town ("**UCT**"). I also provide services as a management consultant to various organizations.

2. The facts contained in this affidavit are within my personal knowledge save where otherwise indicated, or where the contrary appears from the context.The facts are to the best of my belief both true and correct.

3. On 29 January 2020 I was served with a summons SPS17(g)/0321/SM by the Judicial Commission of Inquiry to Inquire into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State ("**the Zondo Commission**") to "Produce Books, Documents and/or Objects." The summons presented a list of 11 items that I was to submit to the Commission in a table titled "List of Books and Documents for Bain & Company South Africa, Inc." The listed items referred to documents and emails. I complied with the summons on 10 February 2020 by submitting electronically the documents and emails in my possession and followed up with additional documents and emails as I located them on my computer.

4. It is my intention to fully cooperate with the efforts of the Zondo Commission, which I believe is an important process for our country. In order to be of service, I requested and was granted unpaid leave of absence from my work duties at UCT to focus on gathering the required information in order to prepare this affidavit.

BACKGROUND TO THE AFFIDAVIT

5. This affidavit details my association with Bain over a 16-month period commencing sometime during September 2018 when I was contracted to oversee Bain's investigation into their contracts and work with the South African Revenue Service ("**SARS**") and their reporting to the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service ("**the Nugent Commission**"), and ending in December 2019.

6. During this period, I had an office in Bain's suite of offices in Melrose Arch and I performed four different roles with Bain as follows:

6.1. Independent contractor, to perform an oversight role of Bain's investigation into their contracts and work at SARS. I performed this role on a part-time basis under contract from early September to 31 December 2018.

6.2. Independent contractor, as advisor to develop a remedy plan for Bain and help set up the Bain Africa Oversight Board. I performed this role on a part-time basis without a contract from early January to 14 May 2019.

6.3. Part-time employee, as Partner in the South African business during which time I served on the Bain Africa Oversight Board. I performed this role under an employment contract from 15 May to 28 August 2019 when I resigned.

6.4. Finally, negotiating my exit which ran from 29 August to the end of December 2019 but divided into two distinct periods:

6.4.1. Working out my notice period and negotiating terms of exit from 29 August to 17 October 2019. Bain had asked that I remain at the firm until the end of 2019 and I agreed but this was cut short by Bain when they deactivated my access to my company cellphone and laptop on 17 October 2019 after I referred to my resignation during a conference keynote address in Sandton. Bain had been resisting my requests to announce my resignation to staff and to make it public. These had been amicable discussions until 17 October 2019.

6.4.2. Between 17 October and December 2019, I held further discussions with Bain around the terms of my exit – these discussions were less amicable. This period included what I believe to be Bain's attempts to silence me. I have feared for my safety since December 2019 and even now I fear for my safety.

7. This affidavit relies on documents and emails that I received or produced during my 16-month period of engagement with Bain. The nature of these documents and emails vary according to the different roles I played:

7.1. Independent contractor to perform oversight role (September to December 2018) – in performing this role I attended telephonic meetings and the occasional face-to-face meeting with Bain and Baker McKenzie (representing Bain) to discuss the evidence that Baker McKenzie had collected from the laptops of Bain employees and other sources. My contract with Bain stipulated that I have sight of all the evidence that Baker McKenzie collected and Baker McKenzie's contract with Bain stipulated that they share evidence that they collected with me as well as the investigation reports that they produced. I only got to see what Baker McKenzie shared with me and I understand that I only got to see what they determined was non-privileged. All evidence was shared with me via email from three people at Baker McKenzie, namely Darryl Bernstein, Reagan Demas and Marilyn Batonga, or from Bain which was primarily from Chris Kennedy or Stuart Min. During this period I received an estimated 250 emails with regard to my duties, all sent to my personal email address – I continue to have access to these emails. Occasionally these emails would contain a piece of evidence but the bulk of the evidence that I refer to in this affidavit came in 4 emails:

7.1.1. 16 October 2018 from Reagan Demas which attached a folder containing 34 documents

7.1.2. 23 October 2018 from Reagan Demas which attached a folder containing 5 documents

7.1.3. 14 November 2018 from Marilyn Batonga which attached a folder containing 114 documents

7.1.4. 22 November 2018 from Marilyn Batonga which attached a folder containing 17 documents

7.2. Independent contractor as advisor (January to May 2018) – during this period and subsequent periods I received no additional documents or other pieces of evidence from Baker McKenzie and I stopped attending all meetings with Bain and Baker McKenzie held to discuss the investigation or evidence. During this period I received an estimated 50 emails to my personal email address relating to my work with Bain. During this period Bain furnished me with a company laptop and a Bain email address. I do not have access to emails or documents on this laptop. This helped me keep my Bain work separate from my other work since at this time I had two part-time jobs, the other being at UCT. The Bain laptop did not give me access to Bain's internal networks or IP databases. During this time I was given sight of a presentation that Baker McKenzie informed me was the presentation on their Bain investigation that they shared with the US Department of Justice. I could not and did not retain a copy of this presentation.

7.3. Part-time employee (15 May to 28 August 2019) – as an employee all my Bain related work and communications were done using the company laptop and email address unless mentioned otherwise in this affidavit. I do not have access to documents and emails on this laptop save for a few that I forwarded to my personal email address.

7.4. Working notice period and negotiating exit (29 August to end December 2019) – I continued to use the Bain laptop until 17 October 2019 when my access was deactivated. I do not have access to emails or documents generated during this period save for the odd email that I forwarded to my personal email address. From 18 October until the end of December 2019 I returned to using my personal email address in communicating with Bain and received an estimated 100 emails which I still have access to. These emails and attachments related mostly to my exit negotiations.

8. The scope of my oversight role referred to in par 6.1 above was only vaguely defined in my contract with Bain. I set two requirements for my oversight relating to the process and reporting of findings. In my Final

Report of December 2018, I could comment on the comprehensiveness of the investigation process but not the truthfulness of the reporting because Bain did not submit any reports on their investigation to the Nugent Commission. Had I been able to report on the truthfulness of Bain's reporting I would have studied all the evidence that I received from Bain and Baker McKenzie and compared this with what Bain reported. Since this was not required of me I did not engage in a detailed or close study of the evidence. Given my knowledge of the business and my interest in the investigation I engaged in discussions with Bain executives and Baker McKenzie lawyers about some pieces of evidence and in the evolving story of what happened at SARS as the story unfolded from their investigation. I also spoke to Bain staff not involved in the investigation as well as former Bain staff. This insight allowed me to form a high-level view of what transpired during Bain's time at SARS which I expressed in my oversight reports of November and December 2018.

9. The longer I engaged with Bain and the closer I got to the organization, progressing from providing investigation oversight, to advisor and eventually to becoming an employee, the more my suspicions grew about the extent of Bain's involvement in the phenomenon known as state capture, as detailed more fully herein. I resigned as an employee of Bain because I concluded that they were not being transparent with me and the authorities about all that they had collected during their investigation and all that they knew. It was only after I left and after Bain made offers to me that I interpreted being aimed at silencing me did I really look closely at all the evidence in my possession and study it closely – this process started in late December 2019 and concluded in March 2020. A catalyst for reviewing what I had in my possession and organizing it was the summons that I received from the Zondo Commission in January 2020. Putting together the content of the 500+ documents and emails, combined with the numerous telephone calls and meetings that I attended at Bain, plus my knowledge of Bain, management consulting, and business ethics, has allowed me to

develop the sequence of events and understanding that I present in this affidavit.

ABOUT MYSELF

10. I am currently a Senior Lecturer at the University of Cape Town, Graduate School of Business ("**GSB**"), in the Allan Gray Centre for Values-Based Leadership. I lecture and conduct research in Corporate Responsibility, Ethical Leadership and provide Management Consulting services. I am also a Research Fellow in the Centre for Applied Ethics at Stellenbosch University. I am the founding convenor of the Management Consulting MBA specialisation at UCT GSB.

11. I have worked as a Management Consultant for over 15 years either at Bain, where I worked in their Boston, London and Johannesburg offices, or as the Managing Director of Taurus Associates, a South African management consulting firm that I founded in 2003. I have held senior executive roles at Old Mutual where I was Strategy Director, at Rio Tinto in London where I was Business Development Executive, and at RMB Corvest where I was a Portfolio Executive representing shareholders on the boards of portfolio companies.

12. I have served on the boards of numerous companies and non-profit organisations including chairman of Shalamuka Capital (which funds education) and chairman of The Family Life Centre, one of the oldest welfare organisations in the country. I currently serve as chairman of the youth literacy non-profit organisation, Read to Rise, which I co-founded, and serve on the board of New Contrast literary journal, the oldest literary journal in South Africa. Read to Rise works in primary schools in Soweto and on the Cape Flats.

13. I am a member of the *Scholars and Practitioners Network* for the *Corporate Responsibility Initiative* at Harvard University, a member of the *International Network of Scholars and Activists for African Reparation* and a member of *Unite 4 Mzansi*, an anti-corruption initiative of the SA Institute of Chartered Accountants. I have been recognised for my community development work by Lead SA, Inyathelo, Wits

University and the City of Cape Town, which erected a personalised bollard in my name in Mitchells Plain, where I grew up.

14. I have been awarded the following degrees and qualifications:

14.1. Bachelors degree in Mechanical Engineering from *Wits University*.

14.2. Masters degree (MBA) from the *Massachusetts Institute of Technology* (MIT) Sloan School of Management, in the USA. This degree I completed with specialisation in Management Consulting.

14.3. Masters degree (MSc) in Finance from the *London Business School* in the UK.

14.4. Masters degree (MPA) from *Harvard University* in the USA, where I was a Mason Fellow in Public Policy and Management and received the Lucius N. Littauer Award for academic excellence and service to the Harvard Kennedy School community.

14.5. Masters degree (MSc) in Political Theory from the *London School of Economics and Political Science* (LSE) in the UK.

14.6. Masters degree (MPhil) in Political Theory from *Oxford University*.

14.7. Doctorate degree (DPhil) from *Oxford University* which is in progress – this degree was interrupted during 2018 when I contracted with Bain to perform my independent oversight role of their investigation.

MY HISTORY WITH BAIN BEFORE SEPTEMBER 2018

15. Bain & Company is one of the top 3 premium management consulting firms in the world, and was founded in Boston in 1973. The firm closed its South African office in 2002 after scandals at South African Airways ("**SAA**") and SARS, and reopened the office in late 2009. Bain employs 11 500 staff in 58 offices around the world and generates over $4 billion in annual revenue according to Forbes. At its peak in 2018, the South African office employed approximately 200 staff members with most junior consultants and administrative staff being recruited locally whilst the most senior consultants were foreign nationals, mostly from Europe. In contrast to Bain's practise around the world, the top leadership in South Africa has always been dominated by foreign nationals.

16. Bain works with CEOs and executive teams across most industries to drive financial and operational performance. These services are

performed by highly analytical business advisors who understand how organisations and markets work and are able to identify opportunities for value creation for their clients.

17. To deliver its usual high-calibre work, Bain recruits smart, highly educated staff and works them very hard (65+ hours a week), and in return their consultants are paid extremely well. Bain consultants are recruited from a handful of the top universities around the world. The working environment is intense and there is enormous pressure to deliver. Firms like Bain have an exacting performance management system where under-performers are actively managed out of and exit the business on a systematic basis.

18. Management consulting is a unique segment of professional services, distinct from accountants, auditors, lawyers, marketing and public relations firms. The consulting industry is unregulated with no compulsory industry-wide professional standards or codes of ethics, and no oversight. There is no qualification standard to enter the profession or independent examination that needs passing to become a management consultant. Unlike in the case of auditing and some other professional services, all spend by clients on management consulting services is discretionary.

19. Firms like Bain have great sway with boards and institutional investment decision-makers because of the impact of their work and their market reputations. Their depth and breadth of intellectual property is vast, enabling the firm to address most strategic business problems. Consultants work collaboratively within the firm which means that a global network of experts is usually just a phone call or email away. Their advice is often incisive and powerful when executed.

20. The firm fosters a work-hard play-hard atmosphere and frequently throws parties for staff, has elaborate off-site company meetings and has training in exotic locations. As examples, while I was an employee I attended multi-day company events in Miami and Sun City, and training in Monte Carlo and Puerto Rico.

21. I have a long history with Bain both as an employee and contractor. I first joined Bain in 1995 as a Summer Associate (intern) at their global

headquarters in Boston while I was completing my MBA degree in the United States. Prior to my involvement with Bain in 2018 I was a full-time employee of Bain in three periods: 1996 to 1997 in Boston, 1999 to 2001 in London and Boston with extended periods in New York, and 2009 to 2010 in Johannesburg, after turning down an offer in 2007 to join the firm in their London office.

22. I was not employed by Bain or involved with the business during the period when Bain worked at SARS from 2014 to 2017. During this period, in July 2015, Bain made a donation of R4,500 to the literacy organisation, Read to Rise, that I chair. This donation was solicited by means of a mass email campaign to my business associates around South Africa and globally. In addition to Bain, other contacts also responded favourably and donated funds that went toward the printing and distribution of books to children in primary schools in under-resourced communities.

23. During the late 1990s I was featured prominently in Bain's recruiting brochures, website and advertisements. Over the years I have remained in touch with friends at Bain scattered around the world and would ordinarily consider myself a 'friend of Bain.' Immediately after leaving in 2010 I acted as a Senior Advisor to Bain for a year, and over the years I have contributed to initiatives at Bain including professional development of their staff, speaking at recruiting events and contributing to a research study on gender equality in South Africa. In recent years I have exchanged emails relating to my interest in corporate responsibility with senior Bain executives as I undertook my academic activities.

24. I joined Bain as a Partner in September 2009 in Johannesburg after they approached me with an offer. They were restarting their South African operation after having left the country in 2002. Sometime during the early part of 2010 Vittorio Massone ("**Massone**") arrived in Johannesburg as the Office Head or Managing Partner. He was previously a Partner with Bain in Italy. My and Massone's arrival at Bain in South Africa was publicly announced in March 2010 through print media and television appearances. In 2018, Massone represented Bain at the Nugent Commission public hearings.

25. Very soon after his arrival, Massone started clashing with members of the small leadership team, which consisted of myself, Tiaan Moolman ("**Moolman**") and Susan Smith. I, and I believe others, including Moolman, expressed grave concern about Massone's ethics and his suitability to lead the business in South Africa. So great was the expression of concern that the head of Bain's London office, to whom Massone reported, Paul Rogers, came to South Africa in early 2010 to hear the concerns that had been raised. We were sure that Massone was going to be relieved of his post but to our surprise he was retained.

26. I tried to continue working in the office but could not work in the toxic environment Massone engendered. People who worked with Massone around this time describe him as having "no morals, ethics or scruples" and that "Ethically, he was compromising. He had no regard for the law." In terms of his treatment of staff, his colleagues shared with me that he was "cold and false," "arrogant," "staff were treated like scum" and "the way he treated staff was detestable." I also battled with the arrogant attitudes of many of my European colleagues who were coming to the country. Even my long-term clients commented on what they perceived to be arrogance and condescension by these colleagues.

27. To relieve some of the tension I transferred to the London office for a few months during the first half of 2010 but on my return to Johannesburg, I found the situation unbearable and eventually resigned later that year.

28. After I resigned in 2010, I took on the role as Senior Advisor to Bain which is an ad-hoc role, while I pursued my other interests primarily focused on social development. During my time as an advisor, I met occasionally with Massone and other Bain partners to discuss business and catch up socially but we never collaborated on delivering any paid client work. On occasion I discussed with Bain the prospect of playing a more active role in their business but from 2012 to 2018 I spent most of my time outside South Africa and these ideas never materialised.

CONTRACTING WITH BAIN IN 2018 TO PROVIDE INVESTIGATION OVERSIGHT

29. I was shocked to read in an article published sometime in August 2018 about the nature of Bain's involvement at SARS with allegations that it had damaged the institution, SARS, and allegations of broader involvement in state capture. This upset me both as a South African citizen and as a former Partner at the firm, an association at the time, of which I was proud.

30. After I watched Massone's public testimony to the Nugent Commission on 30 August 2018, I took a decision to do two things. First, I sent an email to Massone's superior, Paul Meehan ("**Meehan**"), who was head of the Europe, Middle East, Africa (EMEA) region for Bain. This email is attached as annexure **AW1**. In this email I stated that I was disappointed to learn of Bain's involvement at SARS and wrote that "some of my concerns are playing out now." The concerns to which I refer relate to "leadership behaviour and attitudes" which I identified back in 2010 about Massone and which I had already communicated to members of Bain's global leadership. I offered my support to Bain although I mention that "I am not entirely sure how you might find me useful."

31. The second thing I did was to contact a *Daily Maverick* investigative journalist who was reporting on the Nugent Commission and more broadly into state capture. Through this communication with the journalist I was introduced to Judge Robert Nugent who was leading the Nugent Commission into SARS. Judge Nugent indicated that he may need my assistance to verify information and on 4 September 2018 I wrote to Judge Nugent introducing myself and offering that, "I am happy to support the work of the commission in any way I can." The email is attached hereto as **AW2**.

32. When Moolman sent an email to former employees of Bain South Africa, myself included, with a statement on the Nugent Commission, (the statement is attached as **AW3**), I again expressed my disappointment with Bain in a reply email to Moolman. My reply email is attached as **AW4**. This email exchange sparked further communication and combined with my offer to Meehan, sparked active discussions about how I could get involved. I drew encouragement from Moolman's email on 5 September 2018 (attached as **AW5**) in which he writes that "There

is a very genuine desire from Manny Maceda, [Bain worldwide managing partner] down to the team in SA left to address this disaster to DO THE RIGHT THING."

33. I was also encouraged by Bain's press statement of 2 September 2018 (attached as **AW6**) where they state that they are "undertaking a deep and extensive investigation ... into all matters relating to our work at SARS" and that they would be "completely open and transparent" about the findings of this investigation because "we believe that is what the people of South Africa deserve." The statement concludes, "We will continue to cooperate with the Commission of Inquiry to support a process aimed at restoring SARS to the once credible institution it was known as." I took this at face value to mean that Bain would fully cooperate with the Nugent Commission to reveal the whole truth about its involvement at SARS and would actively seek to make amends at SARS. If I could help them fulfil this promise, for the good of South Africa, then I was keen to do so.

34. Moolman and I had a telephone conversation on or about 6 September 2018 in which he asked for my advice and asked me to think about the role I could play in supporting Bain. At this stage I was based in Cape Town and had begun the application process for the Senior Lecturer role at UCT GSB and was working remotely on completing my doctoral degree at Oxford University. Any support to Bain would therefore come at great personal cost to me in terms of time and would have a marked impact on my career plans.

35. The following day I sent an email to Moolman (which is attached as **AW7**) outlining a "process of repair" that Bain could follow to make amends and "key success factors" for a programme of external engagement. In terms of my role, my suggestion was that I "advise on process of repair and solution design" and that I "keep the process honest." Following on from our phonecall, I suggest that I could play additional roles into the future.

36. Importantly, in this email I emphasised that I had a "hierarchy of interest" that put South Africa at the top of my agenda, my own interests second, and Bain's interests third. In other words, I wanted to ensure from the

outset that my involvement would not entail defending or protecting Bain but acting in the interest of South Africa to bring remedy for any harms that Bain had caused. I emphasised this point in the email: "I must be seen externally to be part of creating and delivering a solution in the public interest not defending the Bain status quo." My position was understood and acknowledged by Bain.

37. On 7 September 2018 I travelled to Johannesburg to meet with Bain where I met with Moolman, Meehan (who had travelled from London where he is based) and Stuart Min ("**Min**"), Bain's global head of legal (who had travelled from Boston where he is based). I signed a Letter of Intent with Bain which described the intent to enter into a formal agreement around my role, which was still, at that point, being developed. I attached an unsigned copy of the Letter of Intent as annexure **AW8** since I have misplaced the signed version. To verify its authenticity I have attached as annexure **AW9** an email from Min sent on 14 September 2018 to which this unsigned copy was attached.

38. I informed Bain, by email and in discussion, that I was communicating with Judge Nugent, and I informed Judge Nugent, by email, that I would contract with Bain to support them. Both parties were happy with this arrangement.

39. Bain put out a press statement on 10 September 2018 (Annexure **AW10**) in which they announced that law firm Baker McKenzie had been hired to conduct the investigation into Bain's relationship with SARS ("**the investigation**" or "**the Baker McKenzie invevestigation**") and that Massone was relieved of his day to day operational duties of the business to allow him to focus on "cooperating with the Commission," which I now know was not to be the case as he hastily left the country and refused to appear before the Nugent Commission again after testifying at the end of August. The Bain press statement further announced that Moolman was stepping into the Managing Partner role in South Africa on an interim basis and also announced my role. In the statement my expertise as "a respected independent advisor," a "distinguished academic in the areas of corporate responsibility" and a "corporate leader," is mentioned to add credibility to my appointment.

The statement made reference to my contract even though I only had the letter of intent at the time but more importantly, the statement states that I was contractually required "to do what is right for South Africa, without restrictions." These would prove to be important statements in what was to come.

40. I was pleased that Bain made this commitment public. Not only had Bain committed to doing the right thing for South Africa, they now publicly committed me to doing the right thing as well. I found myself in a position of having a unique opportunity to make a meaningful contribution to justice and to our country's anti-corruption efforts. The position gave me an inside, albeit limited, view of Bain's investigation but as an independent person able to communicate freely with the Nugent Commission. I felt that I had an opportunity to serve my country to help uncover the truth and be part of Bain's "doing the right thing."

41. An item in Bain's 10 September 2018 press statement of concern to me was their announcement that to ensure independence and rigour of their investigation they "have established an oversight committee" which was to be made up of senior global Bain partners and outside directors and which I was to chair. This statement gave the clear impression that the oversight committee had already been established yet at the time of this press statement on 10 September 2018, the oversight committee had not been established, and was in fact never established. I was the only person overseeing the investigation and doing so on a part-time basis. As early as 19 September 2018, in an email giving a status update to Bain, I raised my concern over the fact that the oversight committee had not been created and that I had no contract which stipulated my mandate. (See Points 1 and 2 under 'My role' on page 2 of the email attached as **AW11**). I write that in the absence of establishing the oversight committee "my presence could be considered farcical." In this same email I share an update on my communication with Judge Nugent and I urge Bain towards full disclosure in two instances: first by writing "Bain needs to satisfy itself that there is full disclosure," and then "Bain has to answer: Have we declared everything we know about everything

that transpired and all those internally and externally who were involved?"

42. My contract (attached as annexure **AW12**) as a part-time independent adviser was finally formalised on 26 September 2018 with my role being: "to provide independent oversight of the external and internal investigations that Bain are conducting," and that "Bain's intent in securing Mr Williams's services is that he does what is right for South Africa, without restrictions." My contract made no mention of an oversight committee. Bain had stated publicly in their press statement of 10 September 2018 that they *had* established: "we have established an oversight committee" (annexure **AW10,** 6th paragraph). During one of my discussions with Judge Nugent he asked me about the oversight committee which he had read about in Bain's press statement. I responded that Bain had not established the oversight committee. At the Nugent Commission public hearing on 25 September 2018, Judge Nugent asked Min, who was testifying before the Commission, about the oversight committee. Min responded to the Commission that "We are in the process of putting it together" and "We are in the process of establishing it." (See annexure **AW13** which is a transcription of Min's testimony before the Nugent Commission, page 2155 points 17-20 and page 2156 points 10-18). Even as Min was testifying that Bain was establishing the oversight committee there was no effort being made to do so as far as I knew. The day after Min's testimony, on 26 September 2018, Bain sent me a contract to cover my relationship with the firm – the contract made no mention of any oversight committee or that I would be chairing such a committee. No such investigation oversight committee was ever established, leaving me to oversee the investigation on my own. Bain never offered me any explanation for this change in the plan and after raising my concerns and objections, motivated by the social good that my role could offer, I decided that I would continue with providing oversight of the investigation albeit possibly less effectively than if I had a committee.

43. The scope of the investigation that I was to oversee, and how I was to

engage with the investigators, was captured in an agreement between Bain and Baker McKenzie titled "Bain South Africa Investigation Plan," dated 25 September 2018 (attached as annexure **AW14**) although the agreement was only finalised in October 2018. I gave input to the agreement where I saw fit as shown in emails on 26 and 27 September 2018 (attached as annexure **AW15**) between myself and Chris Kennedy ("**Kennedy**"), Bain's head of legal for EMEA. Kennedy had worked closely with Massone on legal matters since Bain had no legal resources in South Africa. Kennedy was leading Bain's response to the Nugent Commission and overall legal strategy to the crisis. In these emails I raised issues about the need for Baker McKenzie to submit a findings report to the Nugent Commission and raised a question about their independence. I wrote that "I will want to ultimately comment on whether Bain has left no stone unturned to find the truth about the big scheme, small scheme or any other scheme that Bain might have been involved in." One issue that did arise was whether I would have access to all evidence and investigation communications or only those that Bain and Baker McKenzie deemed non-privileged. The agreement shows that they chose the latter and the attached email (attached as **AW16**) gives some background to that decision. Some of the mechanics of the investigation methodology are described in the email from Baker McKenzie's Darryl Bernstein ("**Bernstein**") to Kennedy on 9 October 2018, attached as **AW17** which also mentions that a disclosure was made to the US Department of Justice (DOJ), (see last paragraph.) Bernstein writes that the DOJ will be interested in "unethical or illegal conduct, including use of intermediaries to obtain public sector work." This affidavit addresses this topic in the next section.

44. As part of my commitment to public service I instructed Bain to pay R900,000 of the fees due to me, directly to Read to Rise, which ensured that 18,000 children could get new age-appropriate reading books. To free up time to undertake this work, I put my doctorate on hold. My role at UCT encouraged consulting work and engagement with the real-

world, and as I had just started, my teaching load was not yet heavy, so I had some flexibility to perform my duties at Bain, which were part-time.

45. In the following sections I rely on information contained in documents and emails that was in my possession during the period of my engagement with Bain. The emails and documents are those that I exchanged with employees of Bain or those conducting the investigation (that is, Baker McKenzie), or emails and documents that were given to me by employees of Bain or the people conducting the investigation. I believe the emails and documents to be authentic. I will also refer to whatsapp messages and conversations I held with various people related to the investigation I was overseeing or relating to Bain's business. Some of the events I describe will refer to verbal conversations that I participated in of which there is no physical record but which I recall.

BAIN'S ENTRY TO THE PUBLIC SECTOR THROUGH A PAID INTERMEDIARY

46. By Bain's own account, they were failing to make inroads into what they described as the "lucrative" public sector. To facilitate its entry into the public sector, Bain entered into a "Business Development and Stakeholder Management" contract ("**the Ambrobrite contract**") (attached as **AW18**) with a company named Ambrobrite ("**Ambrobrite**"). Ambrobrite was led by Mr Duma Ndlovu ("**Ndlovu**"), a TV show producer and a close associate of former President Jacob Zuma ("**Zuma**"), together with creative artist, Mr Mandla KaNozulu ("**KaNozulu**"), also known as Mandla Kheswa who served as the Special Advisor to the Minister of Police, Mr Nathi Nhleko according to KaNozulu's personal website, media reports and a Bain email (These three documents are attached as annexure **AW19**). Bain first met Ndlovu as early as 2012 since documents that I attach later show that Ndlovu was present at Massone's first meeting with Zuma in August 2012.

47. By Bain's own account, Ambrobrite had no trading history, was

unregistered, and appeared to be non-tax-compliant with SARS – their tax clearance certificate was suspected by SARS as being fraudulent. See email exchange, attached as annexure **AW20,** between Nicolle Venter ("**Venter**"), Bain's Finance Manager in SA, Geoff Smout ("**Smout**"), Bain's Senior Director of Finance based in London and Massone, from 29 November 2013 to 7 January 2014. In the email exchange Smout expresses numerous concerns.

48. According to an internal email by Bain partner, Fabrice Franzen ("**Franzen**"), Bain was introduced to Ndlovu by prominent businessmen Jabu Mabuza ("**Mabuza**") and Sipho Maseko ("**Maseko**"), Chairman and CEO respectively of Telkom (Franzen's email is attached as **AW21**). Telkom was one of Bain's largest clients. In Massone's affidavit to the Nugent Commission he states that he was introduced to Ndlovu by Maseko. (See Clause 8 of Massone's affidavit attached as **AW22**). Maseko and Mabuza were also present at numerous meetings between Bain and Zuma, as described later. On 16 January 2017, Massone writes in an email to Meehan that Mabuza has "accepted to become Chair of our to be created SA Advisory Board" and that he "is and will be even more a key component of our growth in SA, esp in government." (Massone's email is attached as **AW23**). Massone writes in this same email that Mabuza is helping Massone "build a relationship with the Min of Finance after the issues related to Sars and its Commissioner."

49. Bain may have been working with Ambrobrite for over a year before a contract was signed as far as I can tell. Massone's first meeting with Zuma, supposedly set up and attended by Ndlovu, was in August 2012 while the contract was only signed in January 2014. Massone writes in an internal email to Venter and Smout on 22 November 2013 that Ambrobrite had already worked with him "on SARS" and "the event with the President" (This email is attached as annexure **AW24**). In an email to Wendy Miller ("**Miller**"), Bain's Global Head of Marketing based in Boston, on 15 January 2014, Massone states that Ambrobrite helped Bain organise "a 40th birthday dinner with the 3 business associations and the President." (See page 2 of the email attached as annexure

AW25). It seems that the catalyst for drafting an agreement was Ambrobrite's submission of an invoice to Bain in November 2013 (I have not seen this invoice), with Massone writing that he cannot settle an invoice without a contract between the companies. (The email exchange between Massone and KaNozulu is attached as annexure **AW26**). I do not know if Bain paid Ambrobrite for any services before entering into this contract.

50. The Ambrobrite contract is dated 1 November 2013 but was only signed in January 2014 while internal red flags were still being raised – the attached email (**AW27**) from Smout to Massone on 7 January 2014 refers to a "proposed arrangement" with Ambrobrite indicating that it had not yet been concluded. The email attached as **AW28** shows that on 13 November 2013, two weeks after the date that the contract was supposedly signed, the contract had not even been drafted yet.

51. The contract is surprisingly poorly written with frequent grammatical and spelling errors, not what I would expect from Bain who usually produces work with great attention to detail. The intermediary's name is variously written as Ambrobrite or "Ambrorite." Supposedly indicating that they employ high calibre people the contract states that the company targets the "top of the cream." The city where they all operate is spelled incorrectly as "Johannesburgh." It seems very little attention was paid to the details of the contract even though it was approved by Bain's Legal and Finance departments as Massone writes to Miller in the email attached as **AW29**. These approvals would have come from Europe or the US since Bain had no local legal team.

52. Bain were already working at Telkom where they expected in excess of R200 million in fees for 2014 as Massone wrote to Meehan on 14 January 2014 (**AW30**). In Point 3 of the same email Massone mentions other SOE (state-owned enterprises) targets, namely, SA Post Office, Eskom and Denel, and estimates revenues for Bain of up to R1 billion over 4-5 years from these three public entities. He mentions that SAA is also a target but "there are not the right conditions at the moment," which may indicate that the leadership there were not open to Bain's

advances. In an email from Massone to Meehan on 16 January 2017 in which Massone offers Meehan topics to discuss with Mabuza ahead of their meeting in Davos, Massone identifies Bain's targets as SAA, PRASA, Transnet, PetroSA and Eskom. (**AW31**)

53. In my experience, a relationship with the President of South Africa would ordinarily offer no material benefit to a provider of management consulting services intent on ethically gaining contracts to serve public sector organisations. Decisions to hire management consultants are usually made by those with operating authority in these organisations, that is, the directors-general (DGs) of ministries, commissioners or CEOs of government agencies and the CEOs of state-owned enterprises. For the latter, the approval of the boards would typically be sought for large projects. For public institutions, again depending on the scale and scope of the consulting project, the operating decision-maker may seek the consent or support of the overseeing Minister. Decisions to hire management consultants in these organisations are required to follow public sector procurement laws and rules established by these public entities themselves, all of which are publicly available and follow public tender processes.

54. Given these facts about public institutions, it is concerning to see the content of the contract that Bain entered with Ambrobrite. The contract states in Section 2, "in the next few years a number of state owned enterprises and agencies will be subject to leadership and strategic changes and will require significant transformation and turnaround processes." It is worrying that people outside government had this "intelligence" about significant changes that were planned for our public institutions long before they happened. The contract states that Ambrobrite will help Bain overcome its weakness in the public sector which includes "understanding of the internal situations and competitive dynamics, purchasing policies and procedures" of public institutions and that Ambrobrite would provide Bain with "information and intelligence" on "needs, concerns and buying criteria" of their target public institutions (see section 3c, fourth bullet of annexure AW18). With purchasing

policies and buying criteria already publicly available, there would ordinarily be no need for Bain to hire an intermediary to gather this information unless this "information and intelligence" was non-public in which case the ethics of this arrangement is called into question.

55. In terms of the contract, Ambrobrite would gather intelligence, guide Bain's brand positioning, "qualify and quantify" the business opportunities and define "commercial strategy/tactics" for priority target clients. That a world leader in business strategy was hiring a TV producer to do what Bain charges clients top dollar to do, is perplexing.

56. If anything, Bain was feeding Ambrobrite with information and documents for meetings with public officials such as the former president (see emails marked **AW32** and **AW33**). This, and the further facts set out below, tell me that Bain's reach in influencing state capture planning extended beyond those occasions when Massone met with Zuma or other government officials.

57. Through Ambrobrite's "intelligence" Bain understood that information regarding imminent "leadership and strategic changes" at SOEs and government agencies would be shared with them. One example of Ambrobrite deploying their "intelligence" on imminent leadership changes was their introduction to Bain of Mr. Tom Moyane ("**Moyane**") in October 2013, a relationship that led to the supposed "CEO coaching" engagements that Bain had with Moyane for the year leading up to his appointment as commissioner of SARS. (More details are included in the section titled "Bain's Relationship with Tom Moyane" below). As discussed below, Ambrobrite would in time facilitate meetings for Bain with Zuma and government ministers, which appears to be an unwritten but key deliverable of this contractual relationship.

58. Reading the Ambrobrite contract and the Bain emails already referred to, the premise for the relationship with Ndlovu and KaNozulu seems to be that they would use their proximity to the Zuma and other government officials to glean major intended government actions or changes and pass this information onto Bain in the hope that this would provide Bain

with a commercial advantage, the fruits of which would be shared with Ndlovu and KaNozulu. Ambrobrite's value to Bain was to gather non-public information on South Africa's public officials and public institutions, as well as "competitive dynamics" presumably on Bain's competitors, and to offer Bain exclusive access to this information as well as facilitate meetings with public officials while also channelling Bain's ideas and plans to the public officials.

59. Gaining an unfair advantage by accessing non-public information such as contemplated by the Bain-Ambrobrite contract is problematic since it compromises public procurement rules and fair competition. Also, Bain as a company with its origins in the United States is well aware of The Foreign Corrupt Practices Act of 1977 (FCPA) and the severe penalties issued by the DOJ for any infractions. When Miller asks Massone in an email on 15 January 2014 (see page 2 of **AW34**) whether it is a "normal" arrangement in South Africa for consultants to "pay influencers for access like this," referring to access to politicians like the then President, Massone's reply is that Bain's main rivals, McKinsey and BCG already have these arrangements in place. The email is copied to Innocent Dutiro ("**Dutiro**") a former Bain partner based in South Africa whose name appears frequently in communications and who was a member of the Bain team that presented their proposal to SARS in December 2014.

60. The parties to the Ambrobrite contract seemed satisfied with the relationship as judged by the multiple renewals of the contract and the fact that Ambrobrite's performance was rated highly - in an email attached hereto as **AW35** from KaNozulu on 10 November 2013 he states that his invoice amount is based on the "very happy" rating, indicating his assumption that Bain was very happy with Ambrobrite's service. On 3 February 2015 Massone writes an email to his finance manager, Venter attached hereto as **AW36**, saying "we can now pay the success fees – the highest level of satisfaction." This payment occurred with weeks of Bain being awarded the SARS contract.

61. In December 2013 concerns were raised internally within Bain's leadership about the Ambrobrite contract. Venter, based in

Johannesburg, wrote to her finance supervisor, Smout, based in London, that SARS officials could not verify Ambrobrite's tax clearance certificate and that SARS officials "suspect it's fraudulent!" Smout replies to Venter: "This whole situation seems very dodgy" and "... I don't trust this situation." This email exchange is attached hereto as **AW37**.

62. Smout would most likely have raised his concerns through channels in London but also expresses his concerns in an email to Massone on 7 January 2014 outlining the lack of public information available on Ambrobrite (no internet presence, no financials, no listings in business databases) and expressing his discomfort with the proposed contractual arrangement and payment of Ambrobrite. On the same day Massone replies in an email "I am very comfortable ... That's why I've chosen them," which is attached hereto as **AW38**.

63. In an email to Massone and Dutiro on 15 January 2014 (**AW39**), Miller expresses her concern that people outside Bain "may twist this contract into an accusation of impropriety in how Bain is getting our business - that we pay people close to the President to use their influence to get 'our man' the CEO job, so we get the work." In an email to Miller on the same day, Min writes of Ndlovu and KaNozulu: "how are two 'artistic producers' qualified to provide us with intelligence on companies' strategic and operational issues" and "it just seems disingenuous for Vittorio to not acknowledge in any way that we hope these guys [Ndlovu and KaNozulu] will use their connections with President Zuma to influence executive selection decisions." See page 2 of this email, which was forwarded to me by Baker McKenzie, attached as annexure **AW40**. Miller writes to Massone on 15 January 2014 "There are other articles online which talk about Ndlovu introducing people to Pres. Zuma" and continues, "Given that these two are writers and video producers, it is hard to argue we hired them for their business acumen and expertise" (**AW41**). Bain's global head of legal, Min, and Bain's global head of marketing, Miller, incredulously make it obvious that Bain's primary interest in Ambrobrite was opening doors to Zuma and to influence

executive selection decisions at public institutions. At a meeting that I attended at Bain's office in September 2018 which included Kennedy and Bernstein, Min (who was on the speaker phone from the US), stated that he had objected to the Ambrobrite contract. When asked by someone in the room as to the identity of the person who approved the contract despite his objection, Min asked who was in the room that could hear him. When he was told who was in the room he chose not to answer the question as to who overrode his objection. It seems obvious to me that only a very senior person in Bain's global leadership would have had the authority to override the objection to a contractual matter by their global head of legal.

64. Despite all these warning signs and legitimate concerns raised by senior people within the firm, the "dodgy" situation and relationship with Ambrobrite proceeded. The contract ran for 6-month periods backdated to November 2013. An internal Bain email in April 2014 shows that the contract was renewed at that time (see **AW42**) and a Bain letter (**AW43**) renews the contract again in June 2016. Massone's affidavit to the Nugent Commission (par 9) indicates that the contract ran to December 2016.

65. The Ambrobrite contract states that the parties "...sincerely hope it will bring success, satisfaction, friendship and wealth for both parties," nothing about advancing the prosperity of South Africa by improving the workings of the public sector. For Bain, wealth came in the form of significant consulting fees. For Ambrobrite, wealth was accumulated in the form of payments from Bain of R3.6 million per year, per the contract and emails, although I have not seen actual evidence of these payments. This made Ambrobrite the second highest paid of the 52 advisors that Bain worked with worldwide and it was paid 50% higher than the next highest-paid advisor. This information is contained in an internal email from Miller to Massone and Dutiro attached hereto as **AW44** in which Miller also states that this information "could make for a pretty powerful story of 'alleged abuses.'" The level at which Ndlovu and KaNozulu were paid is quite extraordinary when one considers that

Bain's other advisors are typically former CEOs, top public officials or former management consulting partners, yet two individuals without any obvious business skills were paid at the highest level.

66. In their press statement of 17 December 2018 (see section 4 of **AW45**), Bain claim that Massone showed "poor judgement in drawing us into the SARS assignment." Based on the information presented here it is clear that Bain was not "drawn" into any engagement with any organisation by Massone or anyone else - rather they actively targeted SARS and it was their explicit intention to do work at SARS, something they pursued for over a year at great expense in terms of billable consulting hours and their payments to their intermediary Ambrobrite. Concluding the Ambrobrite contract was an explicit effort to get to SOEs and government agencies, described by Massone in the internal email (**AW34** page 2) on 15 January 2014 as a "strategic pillar for the long term sustainability of the SA office" and SARS was their first target. Attributing the SARS engagement to one person's "poor judgement" belies the fact that numerous senior people up the Bain global leadership chain had full knowledge of the Ambrobrite contract and its intended outcomes. Knowledge of the Ambrobrite contract went all the way up to Min, Miller and Meehan, all members of Bain's highest management committee, the Global Operating Committee (GOC).

67. Bain appear to want to portray Massone as a lone rogue who flouted the law and Bain's operating principles, yet it was perfectly well understood by Bain's global leadership that the key benefit of the Ambrobrite relationship would be Bain's ability to get close to President Zuma which would bring commercial benefits and allow Bain to participate in projects that the President was facilitating. As I have shown, and will show in what is to come below, Massone acted according to a Bain strategy that was approved by global leadership and was fully endorsed and supported by his superiors, even in the face of internal objections. All along the way he received input and guidance from colleagues in South Africa and globally. The contract and its terms were approved by members of Bain's global leadership and its legal team.

68. In addition to facilitating engagements with former President Zuma and other government officials, the relationship between Bain and Ambrobrite also gave rise to activities unusual for a management consulting firm:

68.1. *Unusual payments in the normal course of business*. In October 2015, Massone received and appears to pay an invoice from KaNozulu for a party catering for 350 people at a cost of R50,000 (an email and the invoice is attached as **AW46**). After receiving the invoice, which is issued to KaNozulu, Massone writes: "Ok Mandla – sent instructions to the bank now, will forward you proof of payment asap" and then later the same day, "Here you go - hope you guys enjoy the party... Most likely I won't be able to come, I have meetings here. But would be great to greet in person the new Youth League head when he is in JHB." A month earlier, the ANC Youth League had elected a new President and it is unclear whether these events are related. In a separate incident, in June 2016, Nondumiso Khumalo, a person who appears to be from Ndlovu's office wrote to Sharlene Economou ("**Economou**"), Massone's executive assistant at Bain, copying Massone, "Please find below Ms Lungelo Nqubuka's banking details. I was advised by Mr Ndlovu to forward them to your office." There is no indication of the service provided by Ms Nqubuka to Bain and why her banking details are sent to Bain through Ambrobrite. This email is attached hereto as **AW47**.

68.2. *Facilitating international government meetings* – An email chain from 7 to 18 September 2015 attached hereto as annexure **AW48**, indicates that Bain was facilitating meetings between South African and Italian senior police officials including Interpol Italy. Arrangements included protocol on arrival at the airport, transport to Pretoria, hotel bookings and meeting schedule. It is not clear who paid for this trip. From the information contained in the email chain, there was to be a meet and greet with the Minister of Police and then meetings attended by:

68.2.1. General Zuma, head of special projects at SAPS

68.2.2. General Scott Naidoo, head of Interpol at SAPS

68.2.3. General Ntlemeza, head of Hawks

68.2.4. Molate Moremi, Stakeholder Relations, Civilian Secretariat for Police

68.2.5. Mandla KaNozulu, Special Advisor to Minister of Police and adviser to Bain through the Ambrobrite contract

68.3. According to the email chain, the Italian counterparts at the meetings were:

68.3.1. Antonio Cufalo, Deputy Director General of the Security Police

68.3.2. Filippo Dispenza, General Manager of Public Security

68.3.3. Gennaro Capoluongo, Superior Director of the State Police and Director of the Service for International Police Cooperation

68.4. In the context of a client relationship and while delivering consulting services it may on occasion happen that a management consulting firm would facilitate meetings and arrange logistics for clients or associates to attend events, but that Bain was facilitating such a meeting between senior police officials between two countries outside the context of delivering consulting services and providing logistical support is most unusual in my experience. Massone makes it clear to his assistant Economou that Bain is arranging the logistics when he writes on 18 September 2015 "they won't contact him directly, they're using us."

68.5. *Possibly facilitating arms sale* – In arranging the meetings between Italian and South African senior police officials, Massone suggests to an executive of arms manufacturer, Beretta, in Italian which can be roughly translated as "One of the important themes is the Public Order Policing and the theme of the non-lethal weapons very important for Beretta. They received specific instructions from the President to collect and replace the R5s." The Beretta executive responds in Italian which could be roughly translated as "Thanks again for your valuable collaboration, I am convinced that with your help we will complete this "enterprise". In an email of 12 June 2015 (annexure **AW49**), Massone identified to the Beretta executive, opportunities for Italian companies to supply the South African Police Service with "technology, automotive and defence

in general."

69. From the email exchange between Bain and the Beretta executive on 12 June 2015 mentioned above (annexure AW49), it appears that Bain had access to privileged government information such as the fact that in 2015, the President had instructed the Minister of Police to begin the process of appointing a new Police Commissioner. Bain seem to have been aware that the Chinese police had offered the South African Minister of Police a training programme for intelligence officers and that the Minister of Police was interested in discussing training to be given by the Italian police. I do not know Bain's source for this information but perhaps this is the type of "information and intelligence" that Bain received from Ambrobrite about "internal situations" in the South African government. The fact that this information was being shared with Bain who in turn shared it with business associates in another country (the Beretta executive was based in the United States) should concern South Africans.

BAIN'S RELATIONSHIP WITH PRESIDENT JACOB ZUMA AND THE PLANNED REPURPOSING OF STATE-OWNED ENTERPRISES AND GOVERNMENT AGENCIES

70. According to Massone's affidavit to the Nugent Commission dated 17 September 2018, he was introduced to Zuma by Maseko and Ndlovu at a meeting on 11 August 2012, (see Massone's affidavit attached as **AW50**, Par 43.1) and would go on to have at least 12 private meetings with the President. According to Massone's affidavit "most" of the meetings were arranged by Ndlovu but there is no mention of who organised the other meetings. In Bain's public statement of 17 December 2018 (AW45, under Point 2), Bain state that Massone had meetings with Zuma a "total" of 12 times over the following "two years." This number of meetings may be understated. In Massone's affidavit to the Nugent Commission of 17 September 2018 (annexure AW50, par 41) he states that "most" of his meetings with Zuma "happened between

2012 and 2014," which indicates that there may have been additional meetings to the 12 to which he and Bain refer. In Bain's letter to the Nugent Commission of 9 September 2018 (**AW51**, last page) Bain writes that the meetings with Zuma took place "between August 2012 and sometime in 2015-2016" which indicates there may have been meetings after 2014.

71. An internal Bain document titled "Tracker Table" created by Bain and their lawyers at Baker McKenzie in September 2018, describes the details of Bain's meetings with Zuma, (see Annexure **AW52** which includes 2 versions of this document). This document lists 18 meetings that Bain attended with Zuma between 2012 and 2014 rather than the 12 that Bain declared, although the discussion in the document suggests that not all of these meetings took place. The "Tracker Table" document outlines the dates of the meetings, the location of the meetings which were at the President's official residences and what was discussed at the meetings. The document also shows that the other attendees at these meetings between Zuma and Bain variously included Maseko, Mabuza, Glen Mashinini (Chairman of the Independent Electoral Commission) as well as Ndlovu. Massone's affidavit also mentions that Maseko and Mabuza (annexure AW50, par 44.1 and 45.1) were at these meetings. An additional list of people meeting with Bain and Zuma is listed in an email from Ndlovu on 2 July 2014 regarding an apparent meeting scheduled for the following day. The email is addressed to Massone, Patrick Monyeki and Busi Mabuza giving the impression that they were the attendees, as contained in Annexure **AW53**. This is confirmed by Massone's affidavit, even though the dates don't match, which states that Busi Mabuza, who was Chairperson of the IDC at the time, attended a meeting between him, Ndlovu and the President on 6 July 2014 in Durban where the Energy sector restructure was discussed. This is contained in clause 53.1 of the Massone's affidavit attached earlier as Annexure AW50. Massone's affidavit also mentions that Fantas Mobu attended the Central Procurement Service meeting (discussed below). Mobu was a procurement executive at

Eskom, ACSA, SITA and Telkom as described in his LinkedIn profile (Annexure **AW54**). There may have been other attendees, in addition to the names that I mention, that Bain might have knowledge of, but whose names I have not seen.

72. The aforementioned attached "Tracker Table" document also shows that Bain, most likely represented by Massone, had a series of meetings with government Ministers during 2014 and 2015 without Zuma. According to this document, these meetings were with Minister Malusi Gigaba, Minister Jeff Radebe, unnamed "Minister of Police," unnamed "Minister of Defence" and Dr Zweli Mkhize. I have not seen the documents discussed at these meetings.

73. Between 2012 and 2015 Bain created a series of documents containing far-reaching plans to not only restructure certain government agencies and state-owned enterprises but also to restructure entire sectors of the South African economy. While claiming that such restructuring would offer economic benefits and service improvement to South African society, the consistent theme is that of *restructuring* which, in my view, was aimed at bringing as many organisations and as much financial resources under more concentrated control, which would greatly facilitate state capture. Much like Bain did at SARS (to be discussed below), the restructured public entities would be repurposed to serve an agenda most likely not in the public interest. Bain labelled these plans "reshaping the South African economy." While there may be many more such plans, I have access to eight – I show the date and title of each below.

73.1. 11 August 2012: *Sisekelo - Reshaping South African Economy* (Annexure **AW55**). Sisekelo was later renamed Project Phoenix.

73.2. 23 August 2012: *Project Phoenix - Reshaping South African Economy* (Annexure **AW56**)

73.3. September 2012: *Project Phoenix - Reshaping South African Economy* (**AW57**)

73.4. 25 April 2013: *Holistic approach to Infrastructure Development* (**AW58**)

73.5. 4 August 2013: *Project Phoenix - Reshaping South African Economy* (**AW59**)

73.6. 22 May 2014: *Developing the SMME Sector* (**AW60**)

73.7. June 2014: *Sirius program – Reshaping South Africa's Energy sector* (**AW61**)

73.8. July 2014: *Project Phoenix - Reshaping South African Economy: Accelerating Implementation* (**AW62**)

74. Bain didn't stop at planning the reshaping of SA's economy. They also planned the reshaping of the workings of the South African government, including seeking to centralise government procurement. Under the banner of working with the ANC to develop a plan to implement the ANC's 2014 election manifesto, it seemed that Bain were given opportunities to develop plans to restructure and repurpose state institutions. On 6 September 2018, Stephane Timpano ("**Timpano**"), a partner in Bain's South African office, sent an email to Min and Kennedy explaining that Bain had helped "some ANC officials" to "reorganise their agenda" (which I read to mean the ANC plans) and "clarify ANC priorities", this email is attached as Annexure **AW63**. The email refers to four documents being attached to it, which I have not have sight of but I have attached the following three documents which speak to these topics:

74.1. April 2014: *2014 ANC Manifesto Implementation – Discussion on way forward* (**AW64**)

74.2. 23 May 2014: *ANC Manifesto – Programme Management Proposal* (**AW65**)

74.3. March 2014: *Discussion on a possible Central Procurement Service* (**AW66**)

Bain's "Tracker Table" document, referenced above, states that

Massone had "3 to 5" meetings to discuss the topic of the ANC manifesto and what he called a "100 days plan," a blueprint of action presumably for the ANC, much like the blueprint Bain created for Moyane at SARS, which is dealt with below. As many as 5 meetings to discuss the ANC manifesto plans gives an indication of the depth of Bain's involvement and vested interest with the ruling party's plans. Bain claim that these documents and meetings relate to the country's National Development Plan (NDP) as referenced in their public statement of 17 December 2018 (Annexure AW45, end of Point 2,) but they are clearly labelled as "ANC Manifesto" documents and referred to as ANC documents in Timpano's email of 6 September 2018 referenced above. These ANC Manifesto documents include discussions relating to the cabinet planning process and performance agreements for Ministers and DGs. The documents make explicit references to the ANC Top 6 and DGs in the Presidency.

75. Judging by the content of these eleven documents that I have reviewed and attached, it appears that Bain, represented by Massone, met with Zuma to discuss, develop, and strategise the execution of these plans to "reshape" our economy and elements of our government. Whoever was orchestrating the reshaping agenda appears to have set up an approach where a prominent business person would take the lead in developing the plan with Bain. Hence we see, in the Tracker Table document (AW52) and Massone's affidavit (AW50), Maseko's attendance at Project Phoenix meetings as well as a few others, Jabu Mabuza and Busi Mabuza's attendance at energy sector restructuring meetings, and Mobu's attendance of the meeting relating to centralising government procurement. The identical approach was followed with Moyane and SARS – Bain developed the SARS restructuring plan *with* Moyane, which Moyane presented to the president, most likely with Bain in attendance. In his partner self-assessment dated 6 December 2013 attached hereto as **AW67** (a partner self-assessment is a document that all Bain partners prepare annually as part of their performance review), Massone mentions that he produced a "strategic turnaround" document for SARS that he developed "with" Moyane and which Moyane "pitched

to the SA President."

76. The email from Ndlovu on 2 July 2014 referenced above (attached as AW53) seems to differentiate between the President and the "Principal" which introduces the possibility that at times the main audience for the Zuma meetings was not President Zuma but someone else. Ndlovu also makes reference to "Principal" in an earlier email on 22 May 2014 attached as **AW68** in setting up a meeting attended by Massone, KaNozulu and Maseko.

77. I had sent an email to Kennedy and the Baker McKenzie partners on 29 November 2018 with an article quote saying that "the Guptas used to handle Zuma's diary" (**AW69**). With the Guptas reportedly so close to Zuma, and Bain now also close to Zuma, it occurred to me that perhaps there was some overlap between Bain and the Guptas. Kennedy replied to my email that he was "On the Gupta trail" giving me the impression that any possible dealings between Bain and the Guptas was being investigated. I was not informed of what was found, although the attached sheet prepared by Baker McKenzie shows that they identified 19 documents which they have labelled "Gupta relationship" that they thought were relevant to the investigation. (The first sheet of annexure **AW70** shows the charts that Baker McKenzie presented by way of status update of their investigation which I was overseeing. One of these charts categorises relevant documents by "Issue Designation". The second sheet contains a table showing the numbers that went into producing the "Issues Designation" chart on the first sheet). I note that this document also shows that Baker McKenzie had identified 138 relevant documents which they labelled "Zuma relationship," 122 relevant document relating to Ambrobrite, 266 labelled "SAA Issues" and 1,050 relevant documents labelled "Telkom Issues." I have not seen these documents. The only other reference to the Guptas that I've encountered is an email from Bernstein to me on 27 November 2019 on the day of my planned meeting with the Zondo Commission investigations. Under 1b of the email, Bernstein writes that "Relationship with the Guptas" may be a specific topic that the investigators may want

to discuss (see annexure **AW71**).

78. I consider it unusual for a management consultant to be meeting with the president of a country. Bain partners would ordinarily only meet senior business executives. Meeting the president 12 or more times is even more unusual and when that president is embroiled in alleged public corruption scandals which were widely reported in the press locally and internationally as well as being linked to state capture allegations, it is even more unusual.

79. Massone was extremely proud of his close proximity to Zuma and spoke about it widely to his colleagues, including mentioning it to me during one of our catch-up meetings after I had left the firm. Bain's global and local leadership were well aware of the meetings with Zuma - after all, it was well known that the intention of the relationship with Ndlovu and entering the Ambrobrite contract was to engage with the President and other politically-connected people. Massone would have no doubt given his superiors updates about his progress. In the 17 December 2018 press statement (AW45), Bain claim to be surprised by the frequency of the Zuma meetings but express no surprise at the content of these meetings which was to repurpose public institutions. Massone expressed his pride in his relationship with Zuma and Ndlovu in an email dated 18 January 2014 to his superior Meehan (**AW72**, second page) "I wouldn't feel ashamed of an article associating us with Duma and the President" he writes, "possibly I believe it could be quite positive and strengthening as an association." It seems the people in whose eyes Bain was building their brand were of such standing that they would consider an association with Zuma as "quite positive."

80. Bain had gathered non-public insight into President Zuma's plans and how the numerous projects they were involved in, and were planning, fitted together. This is revealed in an email sent by Massone to his superior, Meehan on 18 January 2014 (**AW73**, second page, under point 2) in which he explains that he has been part of a broader discussion with President Zuma about Zuma's vision and strategy for the country. Massone explains that Project Phoenix which was

underway, with Telkom at its core, was the first piece of the President's strategy and in which Bain was "tested." I can only presume what Massone meant by "tested" but I imagine part of the "test" would be whether Bain would go along with whatever strategy Zuma had in mind. The other fundamental pieces of the strategy that Bain was exploring with the President involved SARS and Eskom, according to Massone's email. Massone writes that Bain are "key in the industrial component" of the President's strategy. It is remarkable that Bain could have become so intimately involved in the plans to repurpose the SOE's that they knew as early as January 2014 that they were "key" to its delivery. Presumably the President would have given them this assurance.

81. Massone's email of 18 January 2014 also reveals that Bain knew that there were multiple parts to the state capture project – they had already begun working at Telkom, the cornerstone of Project Phoenix which involved large-scale restructuring of public institutions, and had their sights on SARS, having already begun planning with Moyane, and on Eskom where it appears they sought to influence the content of an Eskom RFP in their favour as reflected in the email I received from a Bain manager, attached in Annexure **AW74**.

82. Though interspersed with some sensible analyses, what emerges from a close review of the eleven strategic planning documents described above is a strategy to enable grand-scale state capture, a pattern now well known to South Africa. My understanding of the strategy, involving three stages, is summarised below:

82.1. Stage A: Create a new macro-structure in the target sector:

82.1.1. Step 1: Consolidate multiple organisations or functions – bring multiple organisations or functions, that are currently separate, into one organisation or function.

82.1.2. Step 2: Concentrate economic and policy power – design the macro-structure such that control over the organisation or function is held by only a few decision-makers.

82.1.3. Step 3: Insert aligned leadership – appoint heads of these organisations

or functions that will follow the agenda set by the architects of state capture.

82.2. Stage B: Restructure individual organisations within the macro-structure:

82.2.1. Step 4: Consolidate control and decision-making – by restructuring the organisation, ensure that control and authority is held by only a few decision-makers – the fewer, the better.

82.2.2. Step 5: Concentrate financial resources – bring budgets, procurement spend and financial assets together rather than keeping them separated.

82.2.3. Step 6: Insert aligned leadership – appoint heads of these organisations that will follow the agenda set by the architects of state capture, lead the restructuring and replace staff who resist the plans.

82.3. Stage C: Exert control of the 'reshaped economy' through control of these repurposed organisations and pursue private financial enrichment through corrupt procurement or other means.

In certain cases the strategy implementation would start at Stage B.

83. This scale of sector and organizational restructuring seems to have been anticipated by Bain as stated in their contract with Ambrobrite which states that "in the next few years a number of state owned enterprises and agencies will be subject to leadership and strategic changes and will require significant transformation and turnaround processes." Large-scale restructuring, such as that done by Bain at SARS, seems to serve the state capture agenda as well as Bain's financial interests since organizational restructuring is among the most lucrative types of consulting projects given their breadth of involvement across the organization and the length of the project, usually upwards of 18 months.

84. The state capture strategy is evident in the energy sector project document prepared by Bain in June 2014: It states that the goal is to "completely restructure and transform the energy sector" and "redesign

sector structure and governance" (Stage A) under the Department of Energy (DOE) which involved a plan to "consolidate Eskom, PetroSA and CEF." Structural changes are proposed for Eskom as well as the appointment of a "new Eskom Board, Chairman and CEO." (Stage B). The strategy calls for the creation of a "national champion to aggressively pursue shale gas" and to "launch nuclear development," both of which would entail major capital spend.

85. The strategy is again evident in the Project Phoenix documents whose dramatic aim is stated as "Giving birth to a national regional ICT champion." (Stage A). The documents describe the plan to consolidate Telkom, SA Post Office, SABC, SITA, Sentech and Infraco and then restructure them into a "Bank of the People, Telecom & ICT company and TV & radio company" (Stage B). It is telling that the restructure will "centralise infrastructure and procurement" and it should be driven by appointing a "new CEO and Chair." This can be seen in annexure AW56, Page 3, last bullet and Page 34, second bullet respectively.

86. Project Phoenix is mentioned 4 times in the document "TM First 100 days" that Bain prepared for Moyane before his appointment at SARS in 2014 (see page 3, 21, 25 and 33 of **AW75**) – this shows the interconnected nature of these strategies.

87. If Bain was genuinely developing ideas to improve certain SOEs or sectors of our economy, I would expect that they would present such plans to the DG of the appropriate Ministry or the Minister, not to the President. But there seems to have been a very specific beneficial reason for presenting these to the President, that one might not ordinarily expect. It is suggested in the Phoenix document (AW56, page 34, first bullet) and the Energy sector strategy document (AW61, page 26, first bullet) that these projects be designated a "President's Program." The significance of designating a project in this way is gleaned from an email that Massone sent on 18 May 2014 to a group of global Bain partners after his meeting with Monwabisi Kalawe, then CEO of SAA. Massone writes that "they'll try to make this a 'President's project', like Telkom, so to eliminate the Minister's discretionary power."

(**AW76**, last 2 lines on first page)

88. This line of Massone's email of 18 May 2014 is revealing: it shows that Bain's work at Telkom was designated a 'President's project' or 'President's Program' as suggested in the Project Phoenix document, which by Massone's explanation, would mean that they had "eliminated the discretionary power" of the Minister of Communications in their dealings with Telkom. What this entailed isn't clear but one gets the impression that it meant the projects could proceed with less oversight and governance when they were designated 'President's projects.'

89. It is not clear to me who "they" are in Massone's email who will be trying to make SAA a 'President's project' but it does indicate the intent to "eliminate the Minister's discretionary power" and the fact that there was a group of people working behind the scenes to influence decisions that could have major impacts on SOEs.

90. Recommending that the Energy sector project be designated a 'President's program' appears to show the intent to find ways around normal governance and ministerial oversight.

91. The plan to centralise government procurement through a Centralised Procurement Agency as described in annexure AW66, is a frightening prospect and another example of grand-scale state capture. While this may work in circumstances where state capture efforts are not in play and offer potential cost savings, under conditions where public institutions were being crippled, it is unlikely that it was conceived with the public good in mind. Consolidating procurement functions across government ministries (another example of Stage A of my synthesised grand state capture plan) would decimate oversight and governance, concentrating decision making power over enormous government procurement in the hands of a few people. Concentrating decision-making power over enormous financial resources in the hands of those intent on corruption could have led to looting on a scale that dwarfs what we have already seen in the country.

92. It is the mark of a good leader to consult widely and be well informed,

taking advice from experts. One might be tempted to think that this is what the President was doing by having Bain prepare these documents. Based on my knowledge of Bain and what I have read in these documents, it is doubtful that this is what happened - rather than provide insightful analyses and ideas as expert advisors do, these documents contained detailed plans for sweeping restructuring across our public sector. Presidents all around the world have advisors and sometimes these advisors are from foreign countries but these advisors usually form an advisory committee whose work is public, rather than the clandestine manner in which these discussions between the foreign nationals of Bain and the President which occurred in secret, behind closed doors.

93. A disturbing feature to me in the ANC Manifesto documents is the plan for a special Delivery Agency to "overcome execution roadblocks" for the changes Bain were proposing to the way cabinet and ministries functioned. The proposed Delivery Agency, as I understand the document, would sit outside any formal government structures and report directly to the President. The Delivery Agency would be armed with a "strategic and controlling role." Derived from the President, this controlling role would grant this Agency the "power to control funding and approve rights for project spend," authority to "supervise project budgets," "power to intervene," and to "take over execution." Among the benefits of this centralised control agency is that it "combines central control and direction with local context." (See pages 26 of annexure AW64. Page 30 shows the extensive and intrusive role Bain saw themselves playing in this restructuring.)

94. Other than the projects with Telkom and SARS it is not clear what became of the projects that were planned, especially with the change of president in 2018 when Mr Cyril Ramaphosa became president following Zuma's resignation. It is plausible that these projects might still be active or perhaps folded into other initiatives. If these plans had been implemented by those intent on state capture, the planned restructuring would have removed layers of governance and oversight making looting

easier, and by concentrating control over greater financial resources, would offer easier access to these resources.

95. Since the state capture strategies required changes of leadership in the relevant organisations, influencing leadership appointments would evidently be of great value to Bain. Min understood that Bain had hoped Ndlovu would use his connection to President Zuma to influence executive selection decisions, which he had written to his colleague Miller as discussed earlier and supported by annexure AW40. Massone mentions in an email on 18 January 2014 to his superior, Meehan, that some could view Bain's "CEO coaching" as "manipulating the appointments of CEOs," but "I wouldn't feel ashamed to have helped a potential CEO prepare for his pitch to get the job." He references Maseko in his email, who had been a beneficiary of Bain's "coaching" and whose appointment at Telkom has come under intense criticism. But "don't worry" wrote Massone, just to make sure to avoid accusations "we'd very careful in making sure we don't appear in any way at any formal point." (See page 2, under 1b of the email attached as annexure **AW77**).

96. It is curious to me that Bain had removed its corporate logo from the strategy documents it presented to the President and the documents prepared for Moyane. It does happen sometimes that clients ask management consultants to use the client's logo on documents to help the client's staff feel greater ownership of the plans developed but Zuma and Moyane were not paying clients, as Bain has led us to believe. Removing their corporate branding is especially odd when considering that Bain claims the meetings with the president were to "build our brand" as Massone wrote in his affidavit (AW50, par 30). If anything, and if Massone is to be believed about Bain's intent with these documents, I would have thought that Bain's branding would be displayed even more prominently on every sheet as they usually do.

97. Even with their established connection to President Zuma, it appears that Bain sought separate, additional channels into the ANC. On 30 January 2014, a Bain employee, understood to be related to Maseko,

wrote to Massone, giving him an update on efforts to connect with the ANC Treasurer General, Dr Zweli Mkhize, who she described as a family friend, and her connection with the 'Friends of Zuma' Trust. (See the email attached as Annexure **AW78**.

98. A point mentioned earlier merits repeating here. A relationship with the President of South Africa would ordinarily offer no material benefit to a provider of management consulting services intent on ethically gaining contracts to serve public sector organisations. Decisions to hire management consultants are usually made by those with operating authority in these organisations, that is, the directors-general (DGs) of ministries, commissioners or CEOs of government agencies and the CEOs of state-owned companies. Decisions to hire management consultants in these organisations are required to follow public sector procurement laws and rules established by these public entities themselves, all of which are publicly available. In my view, a strategy to pursue a relationship with the President must point to something other than attempts to raise Bain's profile and demonstrate Bain's sector specific expertise, as Bain claims (par 81 of Massone affidavit, AW50).

99. What concerns me and should concern every South African is that a group of foreign nationals working for a foreign company with no obvious knowledge of South African society, or demonstrable skills in socio-economic development saw fit to develop plans to reshape our public sector and managed to have an audience with the President, at least twelve times over a two-year period, to discuss and further develop these plans.

100. That the relationship between Bain and public sector officials was unusual is further evidenced by some unusual behaviours for a management consultanting firm, as evidenced below:

100.1. Massone offered to pay the costs of a holiday resort in Zanzibar for Maseko over the Christmas/New Year period of 2014, whilst at the time Bain was a service provider to Telkom (annexure **AW79** is the English translation by Baker McKenzie of an email sent from Massone to the

resort in Zanzibar). I have not seen evidence of this payment or whether Maseko went on the trip.

100.2. As discussed already, Massone arranged for Bain to pay R50,000 for what seems to be an ANC youth league party in October 2015.

100.3. Massone's diary for 20 January 2018 shows that he attended Moyane's father's funeral in Soweto which conveys a level of familiarity with Moyane. See **AW80**.

101. In their letter to Judge Nugent on 9 September 2018 (AW51, last page), Bain claim that "the materials that we believe Mr. Massone prepared for his meetings with former President Zuma were focused on ideas for improving the well being of the people of South Africa" – I think one can safely say this is untrue. The Bain letter also mentions that plans were developed across a range of areas including "education, healthcare, safety, employment, rural communities, environment and social security." I have not seen any of these documents which suggests that Bain are withholding these.

102. Bain's press statement of 17 December 2018 (annexure AW45) which has been their final word on the SARS and state capture matters, tries to give the impression that the company was surprised by what was happening in the South Africa office, yet at the highest level of Bain's global organisation, the GOC, Massone's activities were known and he continued to be supported. In the midst of the internal red flags being raised over Bain's relationship with Ambrobrite and President Zuma, Meehan, who served on Bain's GOC, wrote to Massone on 18 January 2014: "I really appreciate your leadership" and "I know you have the best interests of our firm and your RSA partners in mind at all times." (**AW81**) I was told in confidence by Partners in the business that Massone was celebrated at global Partner events for his achievements in South Africa and I understand that he was the longest serving Office Head across all Bain offices worldwide in its history. Only a month before his testimony to the Nugent Commission, the entire South African business gave Massone a standing ovation in recognition of his leadership of the

company. By the end of 2018 Massone was being rewarded with a senior position as head of Bain's Middle East business based in Dubai. Given all that Bain's global leadership knew about what their local leadership team was doing in South Africa, it is unthinkable that they did not intervene to put a stop to it - instead they gave Massone free rein to proceed as he saw fit and supported him. If they had stopped the unethical behaviour, SARS would not have been damaged to the great cost of all South Africans, as is described below.

BAIN'S RELATIONSHIP WITH TOM MOYANE

103. Sometime during October 2013, Ndlovu introduced Massone to Tom Moyane who would in September 2014 become the Commissioner of SARS and then later be fired by President Ramaphosa on 1 November 2018 on the recommendation of the Nugent Commission. Massone claims in his affidavit to the Nugent Commission (AW50, par 14) that the "purpose" of Bain's introduction to Moyane was to provide him with "CEO coaching," to help Moyane "achieve his professional goals." I will show below that Bain's engagements with Moyane did not amount to coaching but efforts to plan the repurposing of SARS, a view supported by Judge Nugent who concluded in the final Nugent Commission report that Bain and Moyane were in "deep collusion" to restructure SARS. (See Annexure **AW82** for an extract from the Nugent report, page 42, par 55).

104. Bain have claimed that Moyane was not present at any of Massone's meetings with President Zuma nor was SARS or Moyane discussed at any of the meetings with Zuma (for example Massone's affidavit, AW50 at par 34.1). This is an attempt to show that Bain had no knowledge of Moyane's imminent appointment as SARS Commissioner and that Bain had no influence on the decision to appoint Moyane. However in the internal "Tracker Table" document referred to earlier (AW52), Massone is quoted: "It is possible Tom Moyane was present at the Cape Town meeting [with Zuma] as I remember bumping into him in the waiting area

but I can't remember if he was also at the meeting as an observer. I cannot rule out that SARS was mentioned in passing, but it was never a meeting topic." The "Cape Town meeting" refers to the meeting Massone had with Zuma in Cape Town on 25 February 2014 (Massone affidavit, AW50, par 48.1). Referring to this meeting, Massone wrote in an email to colleagues on 26 February 2014 that he met Zuma and "There was also Tom (the guy we met re: Sars)" from which it appears Zuma and Moyane were in the same meeting. (This email is attached as annexure **AW83**) Also, in an email, Franzen, the Bain partner who together with Massone led Bain's work at SARS, writes that "Vittorio was meeting with the president in multiple occasions, including with Duma and Moyane." This email is attached hereto as Annexure **AW84**. In an email on 29 August 2014 to Timpano, Massone asks (in Italian) for a SARS document that they first presented to "Z." (see **AW85**). It is not unreasonable to assume that the Z refers to Zuma, again showing that SARS was discussed with the President.

105. Bain appeared to have access to non-public, government information about the upcoming appointment of Moyane as the new SARS Commissioner and appeared to expect that Bain would be hired upon his appointment. On 4 April 2014, some five months before Moyane's appointment at SARS and apparently after a meeting with President Zuma, Massone wrote to colleagues, "Sars is a go, right after the elections" and "Be ready for SARS !!!". This email is attached hereto at Annexure **AW86**. Bain seemed to have a strong indication even earlier of the imminent appointment of Moyane as the new SARS Commissioner. After a meeting with President Zuma which it appears was also attended by Moyane (as discussed above), on 26 February 2014, Massone already indicated that "it really seems he's [Moyane] getting the job". (see annexure **AW219**). And even earlier, in December 2013, in his annual partner self-assessment, Massone wrote of Moyane – "[he] is most likely going to be appointed as Commissioner in the next few weeks/months." The extract from the assessment is attached hereto as Annexure **AW87**. Yet in Massone's affidavit to the Commission

(AW50, par 34.2) he claims to have learned about Moyane's appointment "via the media."

106. Massone testified before the Nugent Commission that he only met Moyane once in connection with SARS during which he presented an "outside in" view on SARS (Annexure **AW88** contains an extract from the transcription of the Nugent Commission hearings). However, the Nugent Commission identified at least seven meetings from the evidence it uncovered as stated in the Nugent Report at page 32, par 20 attached hereto as Annexure **AW89**. Bain concedes in their 17 December 2018 press statement (AW45), that there were "numerous meetings" between Moyane and Bain staff before Moyane was appointed as the SARS Commissioner.

107. In their 17 December 2018 public statement, Bain describes their meetings with Moyane as "coaching" him for his new role (see Point 2, AW45) and Massone refers to this as "CEO coaching" in his affidavit (par 19, AW50). Preparing these materials and having the meetings requires a large investment by the consulting firm so they are usually very selective when making such an investment. It is either in the context of an existing relationship with the executive or when there is certainty that the executive is going to get the job for which they are preparing him. Bain did not have a pre-existing relationship with Moyane but they do appear to have had assurance that he would be appointed as the SARS Commissioner.

108. The first indication that what Bain were doing with Moyane was not mere coaching stems from an email Massone sends to his superior, Meehan, on 18 January 2014, about how they intend using "coaching" in South Africa (email attached hereto as Annexure **AW90**, see second page, point 4.) What Massone writes is not a description of coaching at all but developing a "high level strategy plan" with the expectation that if this plan is approved and the senior executive gets the job, Bain will "most likely" be hired to "work with the CEO in its detailing and implementation". Furthermore, in his partner self-assessment on 6 December 2013 referred to earlier, Massone again does not describe

his engagements with Moyane as coaching but described that he produced a "strategic turnaround" document "with" Moyane and which Moyane "pitched to the SA President."

109. Bain produced four documents for Moyane before Moyane was appointed SARS Commissioner (see Massone affidavit, AW50 par 60). These documents formed the basis of many of their meetings. I have seen two of these documents. The first document was titled "SARS 2.0" (**AW91**) which made the case for a complete restructure of SARS, while the second, titled "TM first 100 days" (**AW92**) outlined the plan for the restructure of SARS to be led by Moyane, referred to as "TM" in the document title. The first document had different versions.

110. My reading of the materials is that they were crafted in a way to show alleged deficiencies at SARS to justify a major restructuring of the organisation. The materials also outlined specific actions to be taken. Ahead of Bain's first presentation to Moyane, in an email to Timpano on 1 October 2013, attached hereto as **AW93**, Massone suggests that they identify "flaws" at SARS. Even the email subject line is telling – the email is titled "SARS Opportunity" which is exactly how Bain saw their discussions with Moyane rather than the delivery of CEO coaching. Rather than standardised CEO coaching materials, it appears that the materials were designed to make the case for restructuring SARS and planning the restructure, which supports the conclusion arrived at by the Nugent Commission. The Commission concluded in their final report that Bain and Moyane orchestrated a "premeditated offensive against SARS" (**AW94** par 1 on p27)

111. Seemingly assured that Moyane would be appointed as the new SARS Commissioner, on 26 May 2014, four months before his appointment, Bain prepared the "TM first 100 days" document which sets out Moyane's priorities for the first three months in his new role. In Bain's 9 September 2018 letter to the Nugent Commission, attached earlier as AW51, Bain attempts to portray this document as a typical example of guidance that they would offer to an executive considering or starting a new job. While it is indeed Bain's normal practice to offer guidance to

executives using a standard set of materials, what is included in the document in question goes well beyond general guidance. This document contains instructions for concrete actions. The document, "TM First 100 days" lays out an agenda to "Take Control" with actions relating to the SARS Commissioner's mandate and the SARS Board, actions relating to decision-making authority, actions relating to staff and hiring, launching a forensic investigation, even down to an action to hire a new Assistant (see page 7, third column of AW92). It is noteworthy that procurement decision rights are highlighted. This is an extraordinary list of detailed actions by consultants who had not even entered SARS and well before Moyane was appointed as the new SARS Commissioner.

112. The "TM first 100 days" document (third column, third bullet on page 7 of AW92) identifies one senior SARS executive to "test." The document mentions "BH" in relation to the COO (chief operating officer) role so it would be reasonable to expect that Bain is referring to Mr Barry Hore who was SARS's COO at the time. That Bain was already in a position, not having even stepped inside SARS, to identify a specific SARS executive to "test" and to write this in a document is quite extraordinary, and something I have never seen before. Ordinarily Bain would exercise extreme discretion when it came to expressing views on client organisation's executives. But here they seemed to be ruthlessly willing to target individuals this early on and present it in a document. Given the context of this document it is unlikely that Bain were suggesting Hore's technical or business expertise be tested since Hore is highly regarded and Moyane was unlikely to have been equipped to make such an assessment. What is more likely to be "tested" here is whether Hore would go along with the plan set out by Bain and Moyane. When it happened that Hore resigned from SARS soon after Moyane arrived, presumably having failed the "test", Bain partners Franzen and Massone exchanged emails on 3 December 2014 attached as Annexure **AW95**, seemingly pleased with the result with Franzen writing "Goodbye Barry Hore."

113. The level of specificity with which Bain was able to offer action guidance to Moyane would only be possible with access to inside information at SARS, and as it turns out, this is exactly what happened. Franzen indicates in an email to Kennedy on 3 September 2018, attached as Annexure **AW96**, that Bain had "multiple meetings" with Jonas Makwakwa ("**Makwakwa**") head of Internal Audit at SARS and that Makwakwa was a "deep throat" relaying information about events at SARS to Bain and Moyane. An email on 30 October 2018, from US-based Baker McKenzie partner, Regan Demas ("**Demas**"), confirms this as he wrote that they have found evidence in Massone's diary that Makwakwa delivered a flash drive to Massone in August 2014. The flash drive contained a document written by Makwakwa titled "Review of SARS's Operating Model & Structure, August 2014' (See annexure **AW97** for the Demas email and Makwakwa's document). This further confirms that the restructure of SARS was discussed even before Moyane was appointed at SARS. In his affidavit, Massone suggests that he only met Makwakwa once and downplays this meeting as Makwakwa sharing his "personal issues"(see AW50, par 26.1). In his testimony to the Nugent Commission Massone claimed that the materials they prepared for Moyane as "outside-in," used "public data" implying that they relied only on information from outside SARS – however this seems unlikely in light of the discussions and document that they received from Makwakwa.

114. The "Take Control" agenda in the "TM first 100 days" document states that Moyane must "quickly colour-code the Exec and Mgt team (top 100) and reshuffle," (third column, fifth bullet on page 7 of annexure AW92) suggesting to Moyane that he conduct an appraisal of the executive and management team at SARS in terms of their support for his agenda. On page 8 of the "TM first 100 days" document (AW92), Bain states that Moyane should identify staff members that would "hamper change" which requires that he label them as either "watch outs" or "to neutralize." (this page is attached as annexure **AW98**). In their letter to the Nugent Commission on 9 September 2018, (**AW99**, page 3) Bain

claim that the term "neutralize" relates to their Net Promoter System methodology. In my experience of the use of the Net Promoter System I have never heard the term "neutralize" being used. From my experience, the word "neutralize" was not part of the usual Bain language used when developing a plan for a client to win over dissatisfied employees.

115. Bain and Moyane's plan for the restructure of SARS is contained in the document "SARS 2.0 – what has to be done" dated August 2014 attached as Annexure **AW100**, which includes the document and the email which Massone sent to Ndlovu on 29 August 2019 in which Massone writes "for your meeting on Sunday." It is unclear who the Sunday meeting is with but would likely be with someone in government since the document addresses what "government" must do to achieve "our" ambition. Again, it is not clear who "our" refers to, but I doubt Bain is referring to the South African public interest. In his affidavit to the Nugent Commission, Massone writes that Ndlovu's use of the document on this day "may have been for a meeting involving Zuma." (AW50, par 27).

116. The "2.0" in the title SARS 2.0 harks to the introduction of new technology products, where 2.0 would refer to a new product while 1.1 say, would refer to an update to the old product which would have been 1.0. The intent was clear even before Moyane and Bain arrived at SARS, that they would not be merely updating the world-class organisation that existed but creating something different. This is exactly why Bain would call for a "profound strategy refresh," (see" SARS 2.0 – what has to be done" document (AW100, page 2, third bullet), words that I have never seen a management consulting firm use because of its far-reaching implications. Recommending a profound strategy refresh to any organisation suggests that it is completely dysfunctional and needs a complete overhaul of its vision, mission, strategic plans and operations, including organisation structure. One would be hard-pressed to find any knowledgeable person who could justify the claim that this is what SARS needed, yet this is exactly what Bain set out to

do as reflected in the "SARS 2.0 – what has to be done" document and its subsequent actions once entering SARS. The second part of the document title, "what has to be done," along with the contents of the document creates, in my view, a false sense of urgency that immediate action was required.

117. Any reference in the document to the good progress or accomplishments that SARS has achieved is followed by phrases that point to apparent inadequacies such as "but several questions arise …" The "SARS 2.0" document contains page after page of supposed "significant challenges" that SARS faces as a way to justify the need for a profound strategy refresh and organisational overhaul. In the hands of anyone intent on damaging SARS, the Bain document is a powerful weapon as it portrays the organisation to be awash with major strategic and organisational deficiencies.

118. As expected from the intent to make major change at SARS, the document contains "the new vision and strategic plan," evidence that Moyane and Bain had a vision for SARS even before they arrived at the organisation. It is preposterous that Moyane and Bain, as outsiders, would create the new vision and strategic plan for an organisation yet this is what is documented. When Massone was asked at the Nugent Commission hearings on 31 August 2018, "… Mr Massone, did you ever talk to the Commissioner about what his vision would be about SARS, what he would like to achieve in SARS?" Massone replied, "No."

119. The intent of Bain and Moyane's planning seems clear – there would be major change across the SARS organisation no matter what Moyane and Bain found when they got there.

120. It is not unusual that a management consultant would sketch out a hypothetical organisational structure to facilitate a discussion with an executive. Based on the context already discussed, and the acute focus on the organisational structure, it is my view that what Bain presented was not a mere hypothetical structure but something a lot closer to an intended or proposed structure. Changing the organisation's structure

seems to have been central to many discussions between Bain and Moyane. Even Makwakwa's document to Bain included discussion on changes to the structure. So focused on the redesigned structure was Moyane that on 26 June 2014, he requested only this page from Bain having seemingly discussed it with Bain the day before. The reply email on 27 June 2014 and the page containing the Bain-designed "Potential SARS organisation chart and focus areas" is attached as Annexure **AW101**. The email is sent by Bain Manager, Alexis Bour ("**Bour**"), who thanks Moyane for "the insightful discussion" of the previous day. From my experience as a management consultant, designing a new organisational structure usually follows an extensive process of analysis and engagement with the organisation. That Bain and Moyane were redesigning the organisation structure from the outside is highly irregular.

BAIN AND THEIR WORK AT SARS

121. It seems that Bain were confident that they would be hired by SARS after Moyane's appointment, even going as far as "pre-identifying teams" to work on the projects that they anticipated as contained in Franzen's email to Kennedy on 3 September 2018, attached as Annexure **AW102**. Franzen, writes further that "After the appointment of Moyane … it was clear at the end of 2014 that Vittorio was expecting work to come" and "Vittorio became confident that work would come from SARS after Moyane's appointment." Franzen was intimately involved in all discussions relating to SARS and would eventually be the operational lead for the project at SARS. Emails between Bain Partners and their Finance department show that Bain had planned for the work at SARS to start in September 2014 already, (See emails attached as Annexure **AW103**.) Even Massone's self-assessment in December 2013 demonstrates his confidence that if Moyane was appointed as the SARS Commissioner that Bain would be hired – after writing that Bain had helped Moyane develop his pitch for the SARS job which was presented to the president, he writes that "Bain will be assisting" Moyane

"should he get the job" (**AW104**) which they had been assured he would.

122. SARS issued their request for proposal, RFP 26/2014 ('SARS RFP') on 12 December 2014 titled "Consultancy Services to Review the SARS Operating Model." This is the RFP to which Bain responded in order to get the work at SARS.

123. During Massone's testimony at the Nugent Commission on 31 August 2018, before he left the country ignoring the Commission's summons to testify a second time, when asked whether Bain had seen the SARS RFP before it was publicly issued, Massone answered "No we did not." (See extract from transcript of Massone's testimony attached as annexure **AW105**, page 2106, point 7)

124. Even if Bain did not see the actual final version of the RFP that was eventually issued, there are two incidents that suggest that they had insight to the upcoming procurement process that SARS was planning and the contents of the RFP.

124.1. In an internal email to his colleagues on 28 August 2014, Massone wrote that he had just been informed by telephone that the announcement of the new SARS Commissioner was imminent and that there will be a meeting in Bain's office that day to discuss the procurement process, (A copy of the email is attached as Annexure **AW106**. Massone's affidavit (AW50, par 26.1) confirms that the meeting held in Bain's office included Moyane and Makwakwa, among others, and it was likely that the procurement process was discussed.

124.2. Bain wrote a draft of the SARS RFP two months before it was issued. A document dated October 2014 and titled "South African Revenue Service / Strategy and Operations review / Request for Proposal" was retrieved from a Bain computer by Baker McKenzie during their investigation (attached as Annexure **AW107**.) In a document titled "Project Arrow – Index of Key Documents" prepared by Baker McKenzie (Project Arrow was their code name for the Bain investigation) which catalogues documentary evidence collected, Baker McKenzie states that Bain partner Franzen confirmed that he wrote this draft RFP. I

obtained these document in an email from Marilyn Batonga, a Baker McKenzie lawyer, on 22 November 2018 as part of my oversight role. (The document and the email are attached as Annexure **AW108**). This draft SARS RFP contains many of the core elements of the SARS RFP that SARS eventually issued in December 2014.

125. Writing or influencing RFP documents for public institutions appears to have become a commonplace occurrence at Bain. In addition to the example already given above, [redacted] a Manager at Bain sent me an email on 12 October 2018 stating that in 2017 he was tasked by his superiors with reviewing an RFP document from Eskom. As [redacted] writes in his email, Bain's goal was to send feedback on the RFP to Eskom so that "the RFP could be tailored to help the chances of Bain being the successful bidder." This email was attached earlier as AW74. Additionally, Massone writes to Meehan that the Telkom RFP issued on 17 November 2014 was "designed for us," giving the impression that the RFP was engineered to ensure that Bain wins it. This email dated 18 November 2014 is attached as **AW109**.

126. On another occasion Bain seems to be part of an effort to circumvent the tender process at a public institution entirely, this time involving the PIC (Public Investment Corporation). In an email from partner Andrei Vorobyov to senior colleagues in December 2014 relating to the PIC, he states: "They would like to go with Bain, instead of issuing full RFP and considering other providers." The email is attached as Annexure **AW110**.

127. It appears that SARS went to great lengths to ensure that Bain would end up being the winning bidder for the multiple phases of the eventual project; a procurement process which the Nugent Commission described as a "procurement sham" on page 43, par 61 of their final report attached as Annexure **AW111**. SARS personnel engaged with Bain variously through phone calls, emails and meetings in support of Bain's bids for the different phases, and Bain willingly participated in this process. At no point in the documents and emails made available to me did I see any objections by any Bain person to SARS's irregular tender

process. One would think if this was present, it would have been made readily available.

128. The following examples highlight the engagements between SARS and Bain around procurement:

128.1. On 2 December 2014, Mogogodi Dioka, SARS's Executive Procurement wrote to Massone asking him to send a list of references for the RFP process. The RFP had not been issued yet and Bain had not yet submitted a proposal, so it is strange that SARS were already requesting references from Bain. (The email is attached as **AW112**)

128.2. In an email on 4 December 2014 (Annexure **AW113**) to Maseko, Massone requests permission to use Bain's contract with Telkom as a way to circumvent the tender process at SARS: "I received a call from SARS (the acting COO) who told me that they would like to … give a mandate to Bain. This will enable an immediate start avoiding long and complicated tender processes." Besides an obvious intent to circumvent the public tender process, this email is written a week before the SARS RFP is issued. If not an irregular process, I cannot fathom why SARS would be in a position to "give a mandate to Bain" and was seeking ways to contract with Bain even before the RFP had even been issued. At the Nugent Commission public hearings on 31 August 2018, Massone denied his involvement in communication between SARS and Maseko at Telkom over this matter. This transcript of this testimony is attached as Annexure **AW114**, page 2105, points 16 to 21. On 31 August 2018, the same day that Massone testified, Mr Solly Tshitangano of the National Treasury testified to the Nugent Commission that on 5 December 2014, Moyane wrote a letter to Maseko requesting approval for the three-way contractual arrangement between SARS, Telkom and Bain. The transcript of the testimony is attached as Annexure **AW115** (see page 2042 points 23 to 25 and page 2043 points 1 to 5.) This testimony adds to what appears to be a SARS bias in favour of Bain even before the official tender process commenced.

128.3. On 12 March 2015 Massone sent an internal email to colleagues

informing them that "Jonas" at SARS, presumably Makwakwa, informs him that Moyane met with the SARS Procurement department and that "he doesn't see problem." (**AW116**)

128.4. On 13 March 2015, Neville Eisenberg ("**Eisenberg**") at Bain sends an email to Bain colleagues after a discussion with Jonas (presumably Makwakwa). Eisenberg writes that SARS have received "letters of complaint" about the original procurement process and thus must run a "bulletproof" process this time round. This information is contained in an email attached hereto as Annexure **AW117**.

128.5. On 19 March 2015, Eisenberg writes to his Bain colleagues again to say that he's been informed that SARS will "need to run an open tender process" as contained in an email attached hereto Annexure **AW118**. The email indicates that Bain and SARS had explored the option of extending their contract for the additional work rather than a new contract. Eisenberg writes that "they" (I am not sure who at SARS this is) "still hope that we are the winning bidder" – again, executives at SARS displaying a preference for Bain.

128.6. On 1 April 2015 a Bain internal email authored by Massone attached hereto as Annexure **AW119**, reports that after a discussion with "Jonas at Sars" (presumably Makwakwa) SARS might have found a way to "legally resume work without tender," that is, avoid an open tender process for the next phase of their work at SARS. On 9 April 2015 Alexis Bour at Bain writes an internal email after a meeting with Jonas (Makwakwa) at which he is informed that SARS had had legal advice that supports their decision not to follow an open tender process. Even before the SARS procurement meeting has taken place where the procurement decision is to be made, Bain are told to be "ready to run." (See email attached as Annexure **AW120**.) A year later, on 9 June 2016, as Bain's contract comes to an end and they seek to renew it, Bour from Bain writes an internal email conveying assurance from Ronald (presumably Makomva), that Bain should not be concerned about the procurement process since SARS will find a way to extend the contract without an open tender process. Bour writes that he was told "if they

cannot formally extend the contract they will copy/paste the information in a new agreement. This will not need to go through the typical process with RFP." (See Annexure **AW121** for this email.) Internal Bain emails between Franzen and colleagues on 2 July 2018 show that there was indeed no contract signed in 2016, and that the work was done as an "extension" on the 2015 contract. (The emails are attached as Annexure **AW122**.)

129. At each new phase of Bain's project with SARS, regulations covering public procurement would typically require that SARS enter a new tender process, with certain limited exceptions allowing for single sourcing. Bain seemed only too willing to go along with SARS's efforts to avoid a tender process (as described above), ultimately succeeding with respect to the work extensions following the initial tendered work. In an email on 16 June 2016, Bain partner Peter Clearkin ("**Clearkin**") suggests that a new piece of work they're proposing be "considered as a new piece of work, with a new contract, not an extension," to which Massone replies in an email, the same day: "A new contract will need to be assigned via a tender process, which we won't win.. So not a viable option" (emails attached hereto, Annexure **AW123**). Bain's SA leadership seemed to acknowledge that Bain would lose if they entered a competitive, open market tender process. This was the motivation, in my view, to keep finding ways around the rules.

130. After the meeting where Bain, represented by Innocent Dutiro, John Beaumont and Alexis Bour, presented their proposal to SARS (presumably the procurement committee) on 19 December 2014 (see extract from the proposal in annexure **AW124**), in an internal email, Bour writes that the SARS executives at the meeting seemed to be "going through the motions." (Annexure **AW125**.).

131. Throughout my review of the email exchanges between Bain and SARS relating to procurement, I did not come across a single instance where a Bain executive raised concerns about being involved in a potentially irregular tender process at SARS, that they might be involved in contravening public procurement laws or indeed that they may be

contravening their own operating principles. If anything, Bain seems to willingly go along with the process, behaving as though what they were doing was normal.

132. In an email to Massone, Franzen and Clearkin on 5 June 2015, Bain manager Bour describes SARS's procurement and legal staff as "a bunch of losers." (see email attached as annexure **AW126**). This seems to be the level of disdain with which Bain executives regarded SARS staff who were seeking to uphold policies and laws and act in SARS's and South Africa's best interest.

133. Once Bain was awarded their first contract in January 2015, the work to restructure SARS began. In my opinion as a management consultant, organisations always have opportunities for improvement, but it is not always the case that organisations need to be restructured to achieve the improvement. Restructuring an organisation is a significant undertaking and one that requires deep consideration because of the significant impact the restructuring can have on the operations and ultimately the performance of the organisation. If you get it wrong, the outcome could be disastrous. A restructuring breaks or modifies existing bonds and organisational norms, which are often undocumented and developed over many years and packed with institutional memory. During a restructuring, these are replaced with new structures, reporting lines, ways of doing things and norms that can take months or even years to yield positive results, but if wrongly done can spell disaster immediately. A restructuring can change who does what, the linkages between them, and sometimes how it is done, and changes the reality of work for every employee impacted by the restructuring. It should really only be done when there is a compelling reason to do so, that is, a set of major failings in the organisation, or major opportunities that can be achieved only with a restructure of the organisation. Bain showed no reasonable justification at the time for this restructuring. Even today they're unable to justify the devastating restructuring they were part of at SARS.

134. While most of the Bain consultants working on the SARS projects,

especially the juniors, might have had good intentions, unfortunately for them, this was not the case for a number of their superiors. Even during the SARS projects, junior consultants recognised that all was not well but were silenced when raising their concerns. In an email to Baker McKenzie on 18 December 2018, forwarded to me by Bernstein on the same day, former Bain consultant Katherine Feeney wrote that she got the sense that Bain's work at SARS was "effectively a sham" because it was apparent that the Bain team was "not, in fact, creating any value for the client" and that "something was simply not quite right." Feeney writes that she communicated her concerns to Bain management "multiple times" but was "brushed aside." She writes that she considered what Bain was doing at SARS to be "unethical" and felt her "personal ethics were being compromised." What a tragic position for Bain to place one of their young staff members in. Not only did she raise her concerns with management in South Africa, she also reported her concerns twice to a partner in Bain's Washington DC office. Feeney's email is attached as annexure **AW127**, along with the email from Bernstein. In my reply to Bernstein I wrote that Feeney's experience "is consistent with comments heard from numerous consultants" - I am referencing face-to-face discussions I had with junior Bain consultants who seemed traumatised by their experience still years later.

135. Another former Bain consultant, Marlon Bowman, addressed an email to Baker McKenzie and myself on 6 November 2018. Bowman's comments echo that of Feeney. He writes that "senior SARS staff were highly skeptical of our presence at their offices" and "senior management resistance was obvious through the org [organisation restructure] work." Bowman says that when media reports emerged in 2015 questioning Bain's work at SARS, he felt that Bain leadership's response was "inadequate and arrogant." Even in the face of resistance from SARS management to the restructuring, Bain consultants were told by their seniors to force the work upon SARS, to "power through and get it done" as Bowman writes. Bowman refers to Bain's arrogance which was portrayed with an attitude that said "we are smarter than them" and

"we'll have our facts ready if they come for us." Bowman's email is attached as annexure **AW128**. Any partner on a consulting engagement would know something was seriously wrong if their client was disengaged or resistant as described here, or when their consultants felt this negatively about the value of their work. From these accounts it is highly unlikely that senior Bain people in South Africa did not know how dysfunctional and damaging their involvement at SARS was. This is a damning indictment of Bain and is not the organisation with whom I held a proud association.

136. During the three months of my oversight role at Bain (September to December 2018), during informal discussions, numerous consultants shared similar experiences of speaking up to their supervisors regarding the SARS assignment, but were ignored. The fear in the business was palpable – what emerged from my informal discussions with staff was that most consultants were afraid to raise concerns in general or even ask simple clarifying questions. Just as Feeney used the word "fear" in her email, consultants spoke of their fear of speaking up. This indicates that the failings at Bain were not mere lapses of governance as Bain would have us believe as published in their 17 December 2018 press statement, but rather a deeply-rooted, widely-spread toxic culture.

137. Annexure **AW129** shows an extract from a Bain document titled 'Meeting with Jonas' presented to Jonas Makwakwa on 21 May 2015. The extract is titled 'Diagnostic summary: a strong case for change at SARS.' The extract summarises the outcomes of the diagnostic first phase of Bain's work which supposedly presents the argument for significant change at SARS yet, to me, an inadequate case is made. Under the fourth bullet Bain writes that the "Organisation not structured for maximum effectiveness" and provide two supporting points. The first supporting point suggests that role definition and leadership cohesion, along with "structure" itself are causes of the structure being inadequate. The latter is nonsensical and role definition and leadership cohesion are management issues that can be improved without restructuring the entire organisation. The second supporting point for the claim that the

structure is inadequate is that 70% of staff are "concentrated under operations." This concentration of staff is not unusual since most staff were engaged in operational activities at SARS but this may have been seen as cause for restructure because the head of operations was Barry Hore, the same person who Bain suggested Moyane "test" early on and whose departure from SARS soon after Moyane arrived drew celebratory internal emails from Bain partners. As an experienced management consultant, this argument, along with the other contestable claims for improvements in this document, are no case at all for restructuring SARS.

138. One of the reasons organisations hire management consultants is for consultants' depth of expertise in the client's industry, sector or similar organisation. Bain presented their team as such experts – their proposal to SARS on 19 December 2014 states that "The Bain team brings considerable experience and expertise to the table" (page 24, annexure **AW130**). Yet within their ranks there was little to no discernible tax agency expertise. Of the senior people on the team Massone had a background in telecommunications, Franzen, who led the SARS project, has a background in financial services and Moolman who is listed as an "expert" had a background in mining.

139 There were other occasions where Bain misrepresented the depth of their expertise – again something which is unusual for the firm globally but which seems to have been common practise in South Africa. In an internal email from Alexis Bour dated 3 June 2016, discussing which consultants to allocate to a new piece of work pertaining to SARS, he writes: "We are selling 10 people with only 2 of them … having deep knowledge about the topic." (See attached as Annexure **AW131**.) This appears to have happened at Telkom as well as seen in Massone's email on 18 November 2014 where he writes to Meehan that even though Bain seems certain of winning the contract "we know that we can't claim to have done much on the specific topic." (annexure **AW132**)

140. Feeney wrote in her email dated 18 December 2018 that even though her complaints were dismissed, she hoped that when others spoke up

at Bain they would be taken more seriously for the good of the countries like South Africa where Bain worked. Sadly, my experience of Bain from 2018 to 2019, in which they continued to withhold the details of their involvement in state capture and sought to silence me, suggests that the cultural and ethical change that Feeney had hoped for at Bain, had not happened.

BAIN WITHHOLDS KEY EVIDENCE FROM THE NUGENT COMMISSION

141. What I've presented so far is the evidence in my possession that I believe shows Bain's involvement in damaging SARS and the broader state capture planning. I now turn to Bain's efforts to cover up this involvement which became most apparent during the Nugent Commission. Bain's cover-up strategy entailed, through obfuscation and evasion, claiming to cooperate fully with the Commission and claiming to commit to full disclosure while consciously practising selective disclosure, that is, only sharing what they wanted and only when asked.

142. During my oversight role of Bain's investigation, I exchanged emails with Judge Nugent, as my contract allowed, and had two face-to-face discussions with him.

143. From my in-depth and extensive discussions with those leading Bain's response to the Nugent Commission, Bain was driven by two factors, neither of which included telling the whole truth. Firstly, Bain wanted to avoid unlimited liability in South Africa and secondly, Bain wanted to avoid an investigation or prosecution by the US Department of Justice. They wanted to limit the fallout.

144. The cover-up intent was mentioned or intimated through my oversight role in 2018 but became most obvious to me when I received an internal document in October 2019 titled "SARS External Communications - Legal Guardrails" attached as Annexure **AW133**, which was developed with Baker McKenzie. The document was sent to members of the Bain Africa Oversight Board, of which I was a member, and presumably to other partners as well. The document highlights a set of wrongful acts

that senior leaders ought not to admit to. It lists the acts that should not be admitted to including "corruption or improper influence," "fraud, bid rigging, collusion or other misconduct in violation of South Africa's public procurement laws," "the use of any third party agents to carry out illegal or improper schemes," and "any *quid pro quo* arrangements." The document also instructs that no one should disclose that "discussions with US enforcement authorities (DOJ/SEC) is taking place." (SEC refers to the US Securities and Exchange Commission).

145. To avoid unlimited liability, Bain would avoid admitting to any wrongdoing, instead only admitting to "mistakes." One sees use of this tactic repeatedly in their press statements.

146. To avoid a DOJ investigation and in the hope of receiving up to 50% discount on any fines, Bain had self-reported to the DOJ as Kennedy explained to me in an email on 28 September 2018 (annexure **AW134**).

147. Bain were aware of everything that I have discussed above but chose to withhold most of it from the Nugent Commission, only revealing certain facts when asked by the Commission. For example, Bain made no mention of their meetings with Moyane in their submissions to the Commission and only provided detail after this fact was teased out of Massone during the Commission's public hearings.

148. As stated in paragraph 6.1 above, I was appointed by Bain on 7 September 2018 "to provide independent oversight of the external and internal investigations that Bain are conducting," and to demonstrate that "Bain's intent in securing Mr Williams's services is that he does what is right for South Africa, without restrictions."

149. In conducting my duties my primary contacts were with Kennedy, Bain's head of legal for the EMEA region, Min, Bain's global head of legal, Moolman, Interim Office Head for Bain South Africa, Greg Hutchinson ("**Hutchinson**"), advisor to Bain's global Managing Partner, Bernstein, Partner at Baker McKenzie in South Africa and Demas, Partner at Baker McKenzie in the US. Hutchinson represented Bain's global leadership in managing the crisis (from their perspective) caused by the revelation

of their wrongdoing, and Kennedy was leading the legal strategy.

150. During my 16-month engagement at Bain, the partners in the Johannesburg business were John Senior, Peter Clearkin, Joachim Breidenthal, Julien Vermersch, Chris Mitchell, Rob Howgego, Bertrand Fallon-Kund and Stephane Timpano. Clearkin and Timpano were directly involved with SARS and Breidenthal and Moolman were in the Johannesburg office at the time of the SARS work. My offers to the partners to present my reasons for resigning in August 2019 and explain my concerns over Bain's involvement in state capture, were all rejected. Only one partner met with me to gather some facts. I had offered to Moolman late in 2019 that I would be willing to present the facts behind my reasons for resigning to the Bain global board but that too was rejected. Other partners who were at Bain at the time of the SARS work and part of the leadership of the business during Massone's tenure quickly relocated out of South Africa when trouble came – these include Fabrice Franzen, Berry Diepeveen, Andrei Vorobyov, Catalina Fajardo and Jérémie Danicourt. Innocent Dutiro had left the business earlier.

151. It was tragic to see how my senior colleagues were willing to turn a blind eye to what was happening around them and to eventually hang me out to dry after I spoke up. Once Bain's wrongdoing was revealed all decisions were directed out of Boston. So often what was said about the SARS debacle to staff, clients and associates in South Africa was scripted in Boston. Even a senior partner and long-time friend like Moolman was willing to have someone in the US send emails in his name – in an email to me on 10 January 2020 after I'd challenged a lie about me on Bain's website, I received an email supposedly from Moolman but clearly written by someone in the US in which he refers to "September 2018" as "the fall of 2018" – not language used between two South Africans and factually incorrect since September is Spring in South Africa but is "fall" in the US (annexure **AW135**).

152. During the initial month of my engagement, in an email dated 19 September 2018 (annexure **AW136**) I began to raise a red flag over "different scopes of truth" among Bain leaders. I wrote this because my

discussions with leaders in the business indicated that no one was setting out to tell the whole truth, only partial truths about narrow aspects of Bain's work in South Africa. In the same email, I highlight that I had not seen everything that Bain knows and I urge the leadership to ensure that they tell the whole truth and make full disclosure since I was getting a sense from internal discussions and exchanges with Judge Nugent that this was not happening. I make my expectation crystal clear as the person providing oversight of the investigation "Bain has to answer: Have we declared everything we know about everything that transpired and all those internally and externally who were involved?"

153. Judge Nugent indicated to Bain and to me that he deemed Bain not to be cooperating with his Commission. Even in his final report he wrote that the Commission has "not yet heard the full truth from Bain" (Annexure **AW137,** page 32, par 19) and that if Bain wanted to do the right thing, they should furnish the Commission with "all information in its possession" (Annexure AW137, page 31, par 15). In an email on 22 September 2018 to Hutchinson, Moolman, Kennedy and Min I conveyed Judge Nugent's concern and included a graphic in which I tried to offer an explanation to the Bain executives of my view that all relevant information was not being shared with the Commission (annexure **AW138** contains the email and the graphic). My aim was to encourage Bain to reveal all that they knew.

154. Massone had testified before the Commission on 30 and 31 August 2018. He was summonsed to testify again on 25 September 2018, but did not do so, claiming ill health. On 21 September 2018 Massone's lawyers sent a letter to the Nugent Commission explaining his absence. The letter is attached as (annexure **AW139**). I received this letter from Bain who were sent a copy by Massone's lawyers. The Commission then summonsed Min to testify on this date which he did.

155. A junior consultant at Bain told me that while out with her family on 21 September 2018, she and her family saw Massone dining in public in a restaurant during the period when he was supposedly too ill to testify. She stated to me that he looked as if he was in full health. I shared this

information in an email on 9 November 2018 with Kennedy, Bernstein and Demas (annexure **AW140**) to which Demas replied: "... mental illness of course sometimes does not manifest itself physically at all times. In any event, we're interested primarily in ensuring his cooperation and interviews in the investigation." Demas also suggests that Bain consider hiring a private investigator to follow Massone.

156. I know from internal discussions that Bain did not fire Massone. Rather they paid him to leave in November 2018, three months after the revelations at the Nugent Commission and only after protracted negotiations with him. In fact, no one at Bain was fired for Bain's involvement at SARS and state capture. Bain has staggered payments to Massone to ensure his silence and cooperation should Bain need him.

157. On or around 25 September 2018 Judge Nugent offered Bain an opportunity to present witnesses to the Commission who could help the Commission get to the whole truth of Bain's involvement. The Commission offered to set aside a whole day, 22 October 2018, to hear from Bain's witnesses. Rather than make available the many people within Bain's ranks who possessed information relevant to the Commission, Bain refused. Judge Nugent in his final report quotes Min as saying: "Bain believes there is no one other than Mr Massone who can provide meaningful information."(See extract from Judge Nugent's final report attached hereto as annexure **AW141,** page 30, first paragraph). The claim was that since Massone was not available to testify, there was nothing more to learn from speaking to anyone else. "That was itself untrue," Judge Nugent wrote in his report. I respectfully concur with Judge Nugent's view since there were numerous people within Bain with relevant knowledge who could have testified.

158. It was clear to Bain who the Nugent Commission would be interested in speaking to as witnesses. On 28 September 2018 Kennedy wrote: "... narrow down the list of custodians and witnesses to those the judge would be interested in. I guess that would be Stephane [Timpano], Fabrice [Franzen] and a handful of others."(annexure **AW142**) I had

written to Kennedy and Baker McKenzie recommending additional Bain executives be interviewed by Baker McKenzie investigators because of their deep knowledge of what transpired from a governance perspective with Bain's involvement with SARS and other politically exposed persons. On 3 October 2018 Kennedy wrote to his superior, Min, agreeing with my recommendation and makes reference to Min, Miller and Meehan with regard to "governance failings." He continues further down in the email that "We can also use what we find to prepare Fabrice [Franzen] for testimony if we decide to do that" (annexure **AW143**). As I noted in my report submitted to the Nugent Commission on 20 November 2018, (see extract as annexure **AW144**, page 12), Bain identified at least 17 individuals who possessed relevant information and therefore set out to conduct formal investigative interviews with them. These individuals could have provided valuable information to the Commission had Bain made them available.

159. Kennedy wrote in an internal email on 9 October 2018 that Bain was still deciding whether to make any witnesses available to the Commission: "To be clear, exactly what we give to the Judge as a next step in response to his request for a witness who can testify on 22 Oct is still open …" (annexure **AW145**)

160. Not only was Bain withholding witnesses from the Commission, they were also excluding key Bain people from the investigation I was contracted to oversee. Given the facts of the situation it seemed extremely odd to me that Baker McKenzie was not planning to interview Timpano (involved in preparing materials for meetings with Zuma, Moyane and SARS), (for example see Massone's affidavit, AW50, par 43.4), Meehan (Massone's superior and directly involved in many critical discussions and decisions), Min (directly involved in many relevant discussions in his role as global head of legal), Miller (who raised many concerns internally and at times was the only one pressing Massone; she was global head of marketing), Christopher Cameron (a senior Bain manager who had worked on the SARS project) and Kennedy (who had negotiated the SARS contract and had worked closely with Massone on

legal matters.) I also supported the idea of interviewing Marlynie Moodley, Bain's head of external affairs in South Africa and who worked closest with Massone in his external engagements and had been central to Bain's engagements with the Nugent Commission.

161. On 1 October 2018 I wrote an email to Baker McKenzie (Demas and Bernstein) and Bain (Min and Kennedy) suggesting that the abovementioned individuals be added to the list of Baker McKenzie's interviewees (this email excluded mentioning Kennedy who I only mentioned later). Demas from Baker McKenzie replied that putting Min up as a witness would negatively impact the discussions with the DOJ (The full email exchange is attached as annexure **AW146**). Demas claimed that Min had no knowledge of the underlying facts, yet I knew, as I've discussed above, that Min was well aware, at a minimum, of what was happening with the Ambrobrite arrangements and Bain's pursuit of Zuma. As the lawyers conducting a supposed independent investigation, I would not have expected that concern over the DOJ's reaction would be their primary reason for excluding a potential witness. To me, an independent investigation seeks to get all the relevant facts from whatever source is available. I believe that some of the individuals were added to the interview list subsequent to my intervention but I have not seen the final list of those interviewed by Baker McKenzie.

162. The response which focused on the DOJ was a precursor for what was to come – that Bain was far more focused on what may matter to the DOJ in the US than what would contribute to revealing the whole truth in South Africa.

163. My contract stipulated that I would have access to all communications between Bain and the Commission and that I was required to review all documentary submissions to the Commission before submission.

164. I frequently had to urge compliance by Bain, for example in an email on 22 September 2018 (**AW147**). For reasons unknown to me, I did not see the 23 lever arch files of collected evidence that were sent to the Nugent Commission, so could not judge if Bain were being transparent with the

Commission, even if the Judge was scathing of these files describing their contents as: "most of which are irrelevant to matters that concern the Commission" in his final report (extract attached as annexure **AW148**, Page 29, par 11).

165. In a verbal update to Moolman on or around 9 October 2018 I outlined a few of my concerns over Bain's investigation and my ability to perform my oversight role. These concerns related to a lack of findings from Baker McKenzie, delays in access to requested information from Bain and concerns over the nature of the investigation which to me seemed focused on the issue of legality rather than a broader question of ethical behaviour. Moolman conveyed these and other concerns of mine in an email on 9 October 2018 to Hutchinson, Kennedy and Min. (**AW149**)

166. Despite commitments to do so and urging from me, Bain decided not to submit a written report to the Nugent Commission, a submission that could have shed significant light on what had happened at SARS. In an email from Kennedy to Min on 3 October 2018, Kennedy explains that Baker McKenzie, the supposed independent investigators, had "strongly advised against offering the Commission an interim written report." (page 2 of annexure **AW150**). Again it seemed highly unusual that the "independent" investigators were offering advice to the company they were investigating and offering advice that seemed to withhold valuable information from the Nugent Commission. An email from Demas of Baker McKenzie to Min, Kennedy and myself on 23 October 2018 says "we should be in a position to draw some conclusions on SARS based on at least the forensic email review in November, which could allow us to provide input into Nugent's report (if he's interested and we're willing)." (annexure **AW152**) The email gives an indication of Baker McKenzie's and Bain's attitude towards the Nugent Commission – even if they had relevant information available and the Commission was interested in this information, which was likely, it was not a foregone conclusion that Bain would submit this information to the Commission. This did not look to me like a company that was fully cooperating with the Commission and being completely open and transparent as Bain

kept trying to give the pretence of being. Ultimately Bain decided not to share findings with the Nugent Commission. Bain did not produce an interim report or indeed a final report for the Commission, which to me amounted to an unwillingness to cooperate and make full disclosure.

167. On 16 October 2018 I wrote an article in the *Daily Maverick* titled: "What do we want from Bain" (annexure **AW153**, see page 3). In the article I express my understanding that Bain was going to release the investigation findings to the public because this is what they communicated, and I state that "I hope to be able to express my view to the Commission that Bain has reached the point of full co-operation, by the Commission's standard, not Bain's." Sadly, I would not reach this point owing to Bain's withholding.

168. From the beginning of October 2018, I attended weekly phone call meetings between Bain and Baker McKenzie. I also had a weekly meeting with Baker McKenzie without Bain. I received emails with pieces of evidence that Baker McKenzie collected and statistical summaries on what they had found. According to the Baker McKenzie agreement with Bain I only saw "non-privileged" communications so I do not know the nature or content of what was kept from me.

169. On 20 November 2018, I voluntarily submitted my 40-page report to the Nugent Commission. The report was titled, "Bain and the Weakening of SARS: Oversight Observations and Suggested Remedial Framework" (the full report is attached hereto as annexure **AW154**). Even though I was contractually required to only write a report at the end of my contract, which was December 2018, I elected to write an interim report so that I could provide some input to the Nugent Commission which was finishing its work at the end of November 2018. I had hoped to comment on Bain's interim report to the Nugent Commission, but they chose not to submit one, so I could not comment on Bain's truthful reporting which was one of my contractual deliverables. Judge Nugent welcomed my report and referenced it in his final report.

170. My report consisted of 3 parts. Part 1 offered my assessment of Bain's

investigation. In Part 2 of the report, I offered my assessment of where Bain went wrong in weakening SARS and in Part 3 I present a framework which offered guidance on how Bain could understand the harm it caused and proceed to make amends. Materials presented in Part 3 would form the basis of the work I would do with Bain in 2019 in developing what I called a "Remedy Plan".

171. There was no manual to guide what I was doing. As far as I was aware, my role was unprecedented – having access, albeit limited, to an investigation as an independent with a public mandate to ensure ethical standards.

172. The conclusion of my Final Report, written in December 2018 (the full report is attached as annexure **AW155**), was that the Bain investigation was comprehensive but that the findings had not been reported truthfully, that is, based upon the knowledge I had, Bain was withholding relevant information and witnesses from the Nugent Commission. My interim report made a similar finding but not as definitively. I also documented in the Final Report, Bain's orchestrated efforts to withhold information from me (discussed below). This report was not submitted to the Nugent Commission which by then had concluded its work.

173. Other than comments on the draft of my Interim report, Bain leadership showed no interest in engaging with me on my findings and showed no interest in my Final Report. The stated intention by Bain was that my Final Report was to reflect my review of the Baker McKenzie investigation report but Bain withheld this report from me until after I wrote my Final Report. This delayed the writing of my Final Report until it was too late to submit as input to the Nugent Commission. I believe that the Nugent Commission would have derived great value from the Baker McKenzie investigation report and my Final Report.

174. My Final Report highlighted three major failings by Bain in their dealings with the investigation and the Commission, led by Baker McKenzie:

174.1. I could not assess the rigour of the interviews of Bain staff because I did not attend the interviews which were deemed legally privileged, and I

was denied access to any of the interview notes. The investigation team interviewed key individuals who were related to the SARS project and Bain getting the SARS contracts. As far as I knew, the investigation team conducted 27 interviews with 21 individuals (in contrast to the 17 individuals that I repoted in my Interim Report). The interviewees included current Bain employees as well as former employees. Most of the interviews conducted ran for multiple hours and in the case of Massone ran over three days. Those interviewed were mainly at the Partner level, located in South Africa, Europe and the US.

174.2. Bain intentionally took a strategic stance of non-cooperation with the Nugent Commission by withholding relevant information and witnesses who could describe in detail what transpired leading up to and during the SARS project.

174.3. I could not assess the truthful reporting of Bain's investigation because I was denied access to their final investigation report by both Bain and Baker McKenzie and denied full access to evidence.

175. These three failings lead me to conclude that Bain was withholding information and evidence that I felt should have been provided to the Commission.

176. Judge Nugent expressed to me what he considered to be Bain's lack of co-operation with his Inquiry. The Judge urged me to remind Bain that he would not tolerate what he termed their "obfuscation" and "evasion."

177. I share Judge Nugent's view of Bain's obfuscation and evasion because this has been my experience at times in seeking to gain access to information. It is my conclusion that Bain has not fulfilled its commitment expressed in its press statement of 2 September 2018 to be "completely open and transparent," with the people of South Africa.

178. In establishing my role, Bain committed itself to independence of its investigation, and transparency in its dealing with the findings. It also committed to allowing me freedom to provide independent oversight and to communicate any concerns with the Commission and the public. To varying degrees Bain met all the requirements of my terms of reference

to allow me to perform my role except for the most critical one – that of access to all relevant information and their final investigation report. Without access to the findings of Bain's investigation I was unable to perform the role for which I was contracted, that of ensuring that the investigation was fair and independent, and reported truthfully. Bain's refusal to grant me access to the final report violated their commitment to openness and transparency and restricted my ability to adequately provide independent oversight. Ultimately, Bain's lack of openness and transparency with me, means that their objective of giving assurance to the public of their honesty has failed, and led to my suspicions that my appointment was part of their cover-up efforts to avoid full disclosure.

179. At the outset of the Nugent Commission Bain's position was that they did not know anything worth sharing and needed an investigation. I have shown that this was untrue. Bain then asked South Africa to be patient as they conducted their investigation to get to the facts and committed to sharing the findings. They did not share their findings with the Nugent Commission nor the public, only some vague statement on 17 December 2018. They practised selective disclosure, which actively sought to withhold information and witnesses, only giving the Commission sensitive information after being caught out in the public hearings or when the Commission asked directly.

180. This withholding behaviour also extended to withholding information from me, even though my role was meant to give the public comfort that Bain's investigation was independent, comprehensive and truthfully reported, a conclusion that I could not reach.

BAIN AND BAKER MCKENZIE PREVENT MY ACCESS TO INVESTIGATION INFORMATION DURING MY OVERSIGHT ROLE

181. Baker McKenzie were fully aware of my oversight role and how they were to interact with me as described in their investigation agreement with Bain – see points 3.6 and 3.7 in their agreement attached hereto as annexure **AW156**. Their agreement with Bain states that "final

reporting of findings shall be provided to Athol Williams and Bain simultaneously." Baker McKenzie did not fully comply as detailed below.

182. By late November 2018, the level of Bain's and Baker McKenzie's engagement with me had cooled substantially. My reading of the situation was that they saw no value in my continued involvement because I had been critical of the investigation, the Nugent Commission had wrapped up its work and they had decided not to disclose the Baker McKenzie investigation findings as promised, thus not needing me to report on its truthfulness.

183. Bain mandated Baker McKenzie to investigate Bain's work at other public institutions in addition to SARS. I understood from conversations with Bain partners and emails that Bain had done consulting work for Telkom, Industrial Development Corporation (IDC), Public Investment Corporation (PIC), Development Bank of South Africa (DBSA), SAA and the African Union, where their client was Nkosazana Dlamini-Zuma. My contract was focused on SARS so I was not involved in discussions and did not receive documents relating to these investigations. Bernstein, the lead Baker McKenzie partner in South Africa, did mention to me during a meeting at Bain's office in June 2019, that their investigation into Bain's work at Telkom revealed more problematic findings for Bain than what they found at SARS. I did not get any details on the "embarrassing" evidence, as Bernstein described it, but it could relate to topics already discussed such as Bain offering to pay for a vacation for the Telkom CEO in December 2014 or the fact that the Telkom RFP issued on 17 November 2014 was engineered to ensure Bain won it – "designed for us" as Massone wrote to his superior, Meehan on 18 November 2014; or that Massone had asked Meehan on 16 January 2017 to thank Telkom chairman, Jabu Mabuza, "for the business." A document dated 4 December 2013, that I received from Baker McKenzie during my oversight role, shows that a group of 6 Telkom employees wrote to Bob Becheck, Bain's global managing partner at the time, based in Boston about an "infringement involving your RSA Bain team." (annexure **AW157**). The document appears to allege Bain's

involvement in the manipulation of the appointment of Maseko as Telkom CEO. Unfortunately page 4 of the document which deals with Bain was not included in the version I received from Baker McKenzie. This document also discusses Jabu Mabuza and Maseko in relation to Project Phoenix, which Bain was involved in designing. Bain's contract with Baker McKenzie which outlines the investigation plan names 6 individuals that Baker McKenzie are to focus on – Sipho Maseko is one of the 6 people named, which indicates to me that Bain had cause for concern about their relationship with him (see par 2.1 (b) of annexure AW14).

184. At some point Bain decided that they would withhold the Baker McKenzie findings from the public and from me. This went counter to their claims of full cooperation with the Nugent Commission and their press statement that they would be open and transparent with the public about the findings. Withholding the findings from me made part of my oversight role a farce because I was required to verify that Bain reported their investigation findings truthfully. I could not do this if I did not see their investigation report. What followed was an orchestrated set of events between Baker McKenzie and Bain which showed just how far Bain was prepared to go to hide the evidence contained in the Baker McKenzie report. I outline these events here.

185. On 10 December 2018, after a phone call with Baker McKenzie's two lead partners (Demas and Bernstein), I wrote an email (Annexure **AW158**) to Kennedy (copied to Moolman) indicating that, to my surprise, Baker McKenzie had informed me that they would not produce a detailed report that captures the findings of their investigation into Bain's work at SARS. I indicated in my email that this outcome meant I would not be in a position to complete the scope of what I had been contracted to do and that I would meet with Bernstein, add any edits to my interim report and issue it as my final report. Kennedy's reply shows indifference to the magnitude of the issues that I raised in my email – he wrote: "I think that's right and the process you suggest seems correct." (annexure **AW159**)

186. In a follow-up email I raised a concern about how negatively the media may react to Bain not producing a report after having publicly committed to doing so, to which Kennedy replied," Yes that question has been well discussed," (email is attached Annexure **AW160**) and that Bain was following "very clear advice from BM [Baker McKenzie]..." That the question was "well discussed" shows the conscious intentionality of these actions that were presumably decided upon by numerous members of Bain's senior leadership with input from Bain's lawyers. My emails were copied to Moolman who did not respond.

187. On 11 December 2018 the Nugent Commission issued its final report which concluded that what occurred was a "premeditated offensive against SARS, strategized by the local office of Bain & Company Inc, located in Boston, for Mr Moyane to seize SARS." (annexure **AW161** page 27 par 1). The Commission's report referenced my Interim report of November 2018 on a number of occasions and acknowledged my contribution to the work of the Commission and Bain's investigation.

188. On the same day I wrote to Bain's South African marketing head, Nicola Wilson, (annexure **AW162**) again copied to Moolman, expressing my annoyance that no one had told me beforehand that I would not be provided with a copy of the Baker McKenzie findings. Moolman replied to this email claiming that he, the head of the South African business, too was surprised that no report was to be produced (annexure **AW163**).

189. I find it hard to believe that Baker McKenzie, having conducted an extensive investigation, did not compile a report of its findings, and that Bain would be satisfied with a sparse Powerpoint presentation as the final output. While Bain and Baker McKenzie were telling me that no report would be written, I suspect that it had been written but was being withheld from me – it certainly was not submitted to the Nugent Commission.

190. I wrote an email to Moolman, copying Kennedy, on 11 December 2018 with the subject "BM output" (annexure **AW164**) after a phone call with Kennedy relating to the fact that Baker McKenzie was supposedly not

writing a report. I relayed to Moolman that Kennedy informed me that the only output to be produced by Baker McKenzie after months of investigation, was a PowerPoint presentation which Baker McKenzie told me was prepared for the US DOJ. I also indicated to Moolman that I'd been told that I could view this presentation but that I could never acknowledge that I had seen it and was not to make any written reference to its content because Bain did not want this information to be made public. I informed Moolman that I would decline this absurd offer writing "I'd rather not see something if I cannot make reference to having seen it."

191. These actions by Bain added further to my view that they were not interested in South Africa at all - the DOJ in the United States was the focus of their attention. The Nugent Commission was really just being treated as a side show. My persistence on full disclosure and openness in South Africa was merely an annoyance to them.

192. Around 10 to 12 December 2018 I had a string of discussions with Kennedy and Moolman to take stock of the situation. The message from them was clear – I would not see a Baker McKenzie report. If I was not being permitted to see the report then I argued that I should at least have sight of all the evidence that was collected. By then I had not seen investigation update emails for a while and had not seen outputs from any of the interviews that Baker McKenzie were conducting with Bain personnel. On 12 December 2018 I wrote to Marilyn Batonga at Baker McKenzie asking for the regular updates on evidence collected and asked to have sight of notes taken from their interviews with Bain staff and any documents submitted by these interviewees. Batonga did not reply to my email but Demas did, indicating that information emanating from the interviews would not be shared with me.The email exchange is attached as Annexure **AW165**.

193. I became increasingly concerned that I was been misled. The Nugent Commission had ended, so approaching the Commission with these concerns was not an option.

194. On 14 December 2018 I made an impassioned plea by email to Moolman, Kennedy, Hutchinson and John Senior ("**Senior**") who had recently transferred to the South African office from the US and would soon be appointed as the new Office Head. My plea was that Bain fulfil its commitment to make the investigation findings public and give me access to it so that I could complete my duties. This communication is contained in an email attached as Annexure **AW166**. As with most other occasions where I raised concerns over Bain's behaviour, my concerns were ignored or dismissed. Kennedy replied on the same day suggesting I read Bain's "master narrative" which was the PR document they had created. I replied to Kennedy, including Moolman, Senior and Hutchinson, that without seeing the actual investigation findings I could not vouch for the truthfulness of Bain's "master narrative" (**AW167**).

195. On 14 December 2018, Kennedy wrote: "As you know, not having privilege on the BM report would be a huge disadvantage if we are investigated by the Hawks, DOJ or if anyone brings a lawsuit," (annexure **AW168**). The email shows that Bain executives had moved far away from their public commitment of full disclosure and full transparency and were acting solely in their own interest with the focus on withholding any information that might count against them in an investigation.

196. By 15 December 2018 I had accepted that at best I would have sight of Baker McKenzie's watered-down presentation and not a detailed reporting of the investigation. I wrote to Bain's lawyers and Moolman with what my expectations were in terms of my role and what was expected of Bain (email attached Annexure **AW169**). I highlight that I have only been permitted to view the Baker McKenzie presentation, which I would study closely, and I again request to have sight of all relevant evidence which I have not seen. I go on to ask "I would appreciate it if we could be proactive in identifying relevant evidence that I have not seen," rather than what was happening where they would only send me something if I asked for it, a frustration that Judge Nugent had also expressed. It seems that Bain's leaders and their legal

representative's strategy was not to volunteer information, only reacting to specific requests – this was how Bain interacted with the Nugent Commission as well while claiming to be fully cooperative. I again insisted that if I was going to review the Baker McKenzie presentation that I have no restrictions in referring to it.

197. As Bain's executive was finalising its carefully curated public statements after the release of the Nugent Commission report, Baker McKenzie raised a concern with how Bain's statements referred to my role. Demas wrote to Bain on 15 December 2018: "… reference is made to Athol's "oversight" role of Baker's investigation. We have sought to avoid language suggesting he controlled or oversaw our investigation, which could result in privilege waiver. Yesterday, DOJ actually inquired about the nature of Athol's role in our investigation and we explained it as such, so would also be important to be consistent in a public message." The Baker McKenzie partner then suggests wording that downplays the role Bain had contracted me to play. This email is attached as Annexure **AW170**. I had little interest in how my role was being described in the United States, rather I was focused on my task ahead of working towards my final report, with just two weeks remaining of my contract with Bain.

198. In an email on 15 December 2018, copied to me, Demas continues the discussion around the description of my role in public statements and to the DOJ. He mentions the DOJ's interest in me and my role and wanting to discuss potential scenarios in which privilege waiver could impact upon Bain. (annexure **AW171**)

199. I had raised a question about Baker McKenzie's independence early in my involvement back in 27 September 2018 (see email attached as annexure **AW172**) but with hindsight should have pressed harder on this issue. On page 2, point 5 of the attached email I ask Kennedy whether he's comfortable that Baker McKenzie are independent enough to which he replies "Yes, I am comfortable … BM assisted us on some related workstreams but that these workstreams are a separate matter … BM is a sophisticated independent law firm". It appears that there was more

to the Bain-Baker McKenzie relationship than Kennedy was making out since Baker McKenzie were acting as Bain's legal advisers, advising Bain on what disclosures to make and how to avoid prosecution not merely working on "related workstreams." If Baker McKenzie were independent, they would have conducted the investigation and handed their report to me and Bain, per their agreement, and been on their way. However, it seems that Baker McKenzie were already advising Bain as early as the time before Massone's testimony. They were part of the team that prepared Massone for testimony and part of the team that prepared Bain's materials for the Nugent Commission. Baker McKenzie's independent investigation mandate and legal advisory roles seem indistinct to me.

200. The announcement in September 2018 that Bain had hired Baker McKenzie to conduct an independent investigation gives the impression that this was a new relationship when actually Baker McKenzie had been working on the case for several months, at least as early as July 2018 but most likely earlier. In their dealings with me during my oversight role and for the months that followed, it became clear that Baker McKenzie were acting not in the interest of full disclosure of the truth, or in the interest of South Africa but in the interest of Bain. Even when I told them in November 2019 that I was in communication with the Zondo Commission investigators their reaction was that I would have nothing of value to offer and tried to steer how I should respond to certain questions and topics (see annexure AW71).

201. Eventually a session was arranged for 19 December 2018 for me to have sight of Baker McKenzie's presentation which was supposedly presented to the DOJ. This was a week after the Nugent Commission had finalised its report on 11 December 2018. This was certainly not the detailed report that I had requested and had been promised but it offered me an opportunity to engage with the Baker McKenzie investigation lawyers to get a fuller picture of what happened at SARS.

202. On 19 December 2018 I joined a conference call and SharePoint link (which allowed them to show me documents but without me being able

to download or print them) with Kennedy and four Baker McKenzie lawyers including Demas and Bernstein. I was already making a huge compromise by not being able to study the presentation on my own but at least I would now get to see it. What happened on the call astounded me. I was not shown the presentation that had been promised. Demas and Bernstein talked through their narrative of what they supposedly had told the DOJ but I did not get to see the materials for which we had set up the session.

203. Some way into the call I asked when I would see the presentation for which we had set up the meeting. Demas responded by asking why I insisted on seeing the presentation when, in his opinion, having him read it over the phone amounted to me seeing them. I was irritated by this comment and their devious behaviour. I described the absurdity of what he had just said – it was akin to Baker McKenzie describing a painting to me without me seeing it and then asking me to say, having heard their description only, that I have seen the painting. Demas responded by asking whether I thought he would lie when reading out the slides. This was bizarre conduct for a professional person. This of course was not the point. I ended the call. In effect, Bain and Baker McKenzie was preventing me from doing what Bain had employed me to do. Their refusal to share this information made it impossible for me to fulfil my mandate.

204. After this call on 19 December 2018 I sent two whatsapp messages to Moolman who was still the interim Office Head of Bain South Africa: "Spent 2 hours with BM and Chris. Didn't see a single slide. I told them there's no point having this discussion. You and Chris are NOT aligned..." and "I can't help but feel that I am being procedurally manipulated regarding BM's output. I'm not happy ..." (Transcript of whatsapp discussion attached as annexure **AW174**). The transcript shows that on 21 December 2018 Moolman wrote that he understands my frustration with "Bain legal is changing the rules all the time" and assures me that I will have access to the "full BM report + all interview notes etc" I never got to see the interview notes despite requesting it

multiple times from Bain Legal and Baker McKenzie.

205. On 19 December 2018, I followed up the whatsapp messages with an email to Moolman describing the farcical encounter with Baker McKenzie and expressing my disappointment yet again that Bain was behaving dishonourably (annexure **AW175**). I wrote that I had hoped that I could publicly vouch for Bain's honesty and that the company had acted openly and transparent as they had claimed they would, but that their behaviour had led me to the point where I could not say this.

206. After a few emails Moolman wrote that "I absolutely agree that this is not acceptable." (annexure **AW176**). Kennedy on the other hand continued on issues of legal privilege even suggesting that I needed to have Baker McKenzie approve the wording of my final report. During a conversation Kennedy told me that he was the one who gave instructions for Baker McKenzie to withhold the presentation from me on the 19 December 2018 conference call (I have no evidence to support this). Moolman agreed with my position because he too understood that I would see the presentation document that Baker McKenzie had prepared. Baker McKenzie might point to Demas's email of 15 December 2018, discussed above (annexure AW171) where in the third paragraph he refers to a "read out" of the DOJ presentation as suggesting that the presentation was never intended to be shown to me but this would be inconsistent with the understanding of all involved, including Moolman, evidenced also by the fact that I got to see it later (as discussed below).

207. On 20 December 2018 Kennedy wrote, copying Moolman, Min, Hutchinson, Meehan and Demas expressing his "disappointment" at how things had turned out, implying that the blame lay with me. He proceeded to offer a way forward in his email titled "Viewing/Referring to the BM Report in Athol's Report" again emphasising issues relating to privilege and downside to Bain, without acknowledgement of the dire situation in South Africa that Bain had been party to, and the need to establish and disclose the truth (annexure **AW177**). In my reply on 21 December 2018, which included Min, Moolman, Hutchinson, Demas and Meehan, I repeated my position that Bain was intently and actively

withholding the truth (this email is attached as annexure **AW178**) In this email I outlined reasons for feeling "distinctly that I have been played and manipulated."

208. It surprised me that an email like mine of 21 December 2018 did not illicit any response from any of Bain's most senior people globally in Min, Meehan and Hutchinson. Not even a call to understand my perspective, let alone an apology for the way I'd been treated or to thank me for trying to keep Bain's process honest for which they had hired me. Hutchinson, who seemed to be in charge of proceedings and had the ear of Bain's global head did not once respond to an email in which I raised concerns. Moolman called me and then wrote to all on the email list describing my frustration at what Moolman termed Bain's efforts to 'manage' me – it was in my view much more sinister than this. (annexure **AW179**) We agreed that we would pick these issues up again in the new year but we didn't.

209. A few weeks after the conclusion of my contract, Bain again offered to share with me the PowerPoint document that they had withheld on 19 December 2018. I had no interest in viewing the document given that my contract had expired but Moolman asked that I view it as a form of closure. On 15 January 2019, through a SharePoint facility I was able to see the Baker McKenzie presentation on my laptop but could not download or print it. This had no bearing on my oversight function since I had already completed my Final Report and was out of contract.

210. After seeing the document on 15 January 2019, I wrote an email to Moolman saying that I had seen the Baker McKenzie presentation. Moolman replied "Any surprises?" to which I replied "It was quite thin on info, only about 30-40 of the 115 pages had content, the rest appendices and background. No surprises. Quite a firm view that Bain has done nothing wrong legally." (Annexure **AW180**). I was not in a position to assess the document's claim that Bain had done nothing illegal but what I could tell was that the document did not produce an account of the relevant events of Bain's involvement with Zuma, Moyane and SARS, as I reference with the phrase "it was quite thin on info." Bain had

claimed that their investigation's aim was to gather the full facts and that this would be reported. What I saw in the Baker McKenzie presentation was not the full facts, rather it was designed to make the claim that Bain had not done anything illegal. As far as I recall the presentation did not point out any of Bain's unethical behaviour nor those areas where it was unclear whether or not Bain had acted illegally.

211. I could not know for sure that the document that I had seen was the one presented to the DOJ and it certainly was not the detailed findings of Bain's investigation. I was reminded of what Kennedy had written to me on 28 September 2018 that "the DOJ probably won't be thinking about state capture and deliberate schemes to destroy SARS" which would explain why the DOJ report was "thin on info" by my assessment – the report did not focus on the issues that mattered to South Africans which was exactly what Kennedy thought the DOJ would not be interested in, that is, state capture and damage to SARS. Even this watered-down version of their findings, that I saw, has not been made public.

212. Bain had hired PR firm Aprio to facilitate media engagements over my report. I had a few discussions with Aprio but as the end of 2018 drew near any engagement with the media would be muted. I did not proceed with them.

213. In my Final Report I wrote:" It is my conclusion that Bain has not fulfilled its commitment expressed in its press statement of 2 September 2018 to be "completely open and transparent," with the people of South Africa" and "Without access to the findings of Bain's investigation I was unable to perform the role for which I was contracted, that of ensuring that the investigation was fair and independent, and reported truthfully. Bain's refusal to grant me access to the final report violated their commitment to openness and transparency and restricted my ability to adequately provide independent oversight." This reference is contained in page 15 of the report (attached earlier as AW155).

214. The Nugent Commission concluded in its final report on page 47, par 77: "… what the South African people want to know is what happened

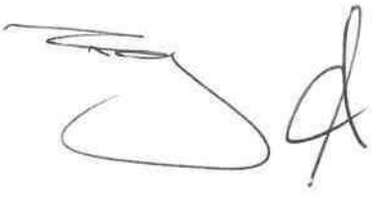
to their country's institutions, and the information Bain has will help to find that out. If Bain wants truly to make reparation, then it should give to South Africans what they want, and not what Bain thinks they should have, which it has steadfastly refrained from doing." I share the Commission's conclusion and further conclude that Bain acted in bad faith during their investigation.

215. Bain had invited me into their business to provide oversight over their investigation to reinforce its independence, as they claimed, as part of their public commitment to do the right thing for South Africa. I entered into a contract which outlined what I was to oversee, how I was to perform my duties and what my deliverables were. One has to question Bain's motives for obstructing me from performing these duties. I tried repeatedly to get Bain to stand by their commitments to full disclosure and to remove obstacles that prevented me from doing what they had hired me to do. Bain had publicly stated that I would be enabled to act in South Africa's interest "without restriction" yet they restricted what I could do. My repeated pleas were unsuccessful as Bain dug in their heels to avoid full disclosure. If Bain would go to such devious measures to hide information from me, the person they had hired to report on their truthfulness, it should concern South Africans what devious measures they would go to in order to hide information relating to their actions from the public.

216. I ultimately spoke out publicly on 17 October 2019 about Bain's withholding of relevant information from the Nugent Commission and from myself. The circumstances leading to this event is discussed next.

MY EMPLOYMENT BY BAIN IN 2019 AND EVENTS THAT LED TO MY RESIGNATION

217. In January 2019, John Senior, a British national, was announced as the permanent replacement for Massone as Office Head of Bain's South African operations with Moolman returning to his role as Partner. Moolman would eventually relocate to London.



218. Even though I was out of contract, quite disheartened and sceptical of Bain, they asked me to help them develop a plan to make amends in South Africa. No one from Bain as much as mentioned the events of December 2018. Whenever I raised it, it was brushed aside. While denying their involvement in state capture, claiming to be mere unwitting participants, Bain wanted to make amends for their "mistakes."

219. I weighed this request up heavily and decided to continue working with Bain at this juncture, despite my reservations, because of the following considerations:

219.1. My professional view is that companies need to remedy the harms they cause: On 19 February 2019 *Business Day* published an article that I wrote titled "Criminal justice after corporate corruption is just the beginning" (annexure **AW181**) in which I argued that complete justice required more than criminal justice but also reparative justice. I described a six-step corporate remedy programme that I had devised and first introduced in Part C of my report to the Nugent Commission and was, as I understood the situation, a key reason for Bain seeking to further retain my services.

219.2. Assurances from senior Bain executives that they wanted to make amends: Discussions with Moolman, Senior and Bain's global Managing Partner, Manny Maceda, (on 29 January 2019 via videocall) gave me assurance (later shown to be hollow) that Bain was committed to making amends for the harms they had caused and to now do the right thing. Although I was quite cautious about Bain's assurances given my experiences in November and December 2018, I still held the belief that I could contribute to achieving reparative justice in South Africa, so I decided to continue engaging with Bain.

220. The focus of this work would be to develop a Remedy Plan which both made amends for harms caused to South Africa as a result of Bain's involvement at SARS, and made internal changes within Bain to ensure that the events that transpired at SARS and the harms caused would not be repeated. This plan included developing an Africa Oversight

Board for Bain which would take responsibility for reviewing the risks associated with Bain's work in the public and private sector. I was tasked with developing the Board charter and designing some of its mechanisms and was also asked to serve on the Board. I accepted the offer to serve on the Board since it again offered me the opportunity to give input to good governance at Bain.

221. Despite several requests to Senior for a revised contract I never received one. On 20 February 2019 he wrote that he would be discussing my contract with Hutchinson which was strange since Hutchinson was only an advisor not a partner, but again shows that Hutchinson was the one leading Bain's response to their state capture crisis. On 21 February Senior wrote that he had spoken to Hutchinson and that it would take "2-3 weeks" till I had a contract. In response to another query, on 14 March 2019 Senior wrote that "I have agreement from Russ [Hagey] and just need to work through the contract with him ... so I hope we can have a contract ready for the end of March." These 3 emails are attached as annexure **AW187**. I found the lapse in governance very strange and ironic since lapses in governance was one of the reasons Bain got mixed up with state capture actors.

222. On 26 March 2019 I was invited to a meeting in Johannesburg with Russ Hagey ("**Hagey**"), a senior partner visiting from the US who was responsible for all Partner-related matters for Bain globally. Rather than discuss the details of my independent advisor contract, as I was expecting, Hagey proposed that I join Bain as an employee on the grounds that they would need someone to drive the implementation of the remedy plan that I had designed. That same morning I had met with Moolman who raised the issue of me joining the firm but I told him I was only available as a part-time advisor. I still had my job at UCT, and I was in talks with other organisations about potential advisory roles. For a formal employment position within Bain, I would have expected interviews with the other South African partners before receiving an offer to join. When I raised this with Senior later, he assured me that the South African partner group had input to the decision and supported it. I

learned from partners that they had not been consulted only informed of the decision to appoint me which is highly unusual for Bain.

223. On 16 April 2019 I wrote to Senior saying that I rather wanted to continue as an independent advisor and that we could revisit the issue of me joining the firm again at the end of the year. Senior responded angrily by email and telephone (email exchange attached as annexure **AW216**). It was unclear what the reason for this response was but I sensed from my discussions with Senior and Moolman around this time that there was tension among senior people at Bain around my continued involvement in the business. The fact that it took over a month to receive a formal offer, something which usually takes days, shows that this was not a smooth process internally.

224. Sometime in early May 2019 I received a formal job offer to join Bain. The offer proposed that I would work at Bain 60% of my time and at UCT 40% of my time. Bain wanted someone to drive implementation of its remedial actions and it made sense for me to do it, given my background, and it made sense that I do it from inside the firm rather than remain as an independent advisor. Still believing that Bain was committed to making amends I thought the offer presented a good opportunity professionally and a way for me to make a meaningful social justice and economic impact in South Africa. I accepted the offer on 12 May 2019 and re-joined the company on 15 May 2019. My signed acceptance of the offer of employment is attached as annexure **AW217**. I also had to sign Bain's *Global Confidentiality, Intellectual Property and Non-Competition Agreement (Global)*, attached as annexure **AW218**.

225. There was great confusion amongst Bain's South African management about my role and my re-joining. Some thought I had joined to build the firm's financial services practice across Africa. Others thought that joining raised questions about my independence in 2018 which was understandable and indicated to me that they had not been consulted. Upon my arrival it seemed to me as though no one was expecting me. The HR Manager told me that she was not informed that I was joining and as a result had made no preparations. I received a similar response

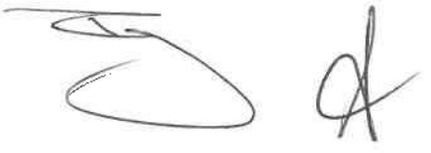
from the Finance and IT managers who I had to contact to make appropriate arrangements for my onboarding. There was no induction, no introduction to policies or other formal entry procedures a person would expect at a professional company of Bain's stature.

226. In a press statement on 25 June 2019, Bain announced that I was joining as a Partner in the Johannesburg office and announced the appointment of Norman Mbazima ("**Mbazima**") as chairman of the newly created Bain Africa Oversight Board (the press statement is attached as annexure **AW182**). The statement also provided an outline of the remedy plan and the scope of my role.

227. I commenced engaging with stakeholders and building relationships and, as part of my role leading the implementation of the remedy plan, started the process of offering verbal apologies to external parties who had been impacted by Bain's previous conduct. One of my early duties was to present the remedy plan to a subcommittee of the SAVCA board (South African Venture Capital Association) who were considering disciplinary action against Bain. Bain was a member of SAVCA. The conclusion of their process was to suspend Bain. Bain had now been suspended by two business organisations for its role at SARS, after already being suspended by BLSA (Business Leadership South Africa).

228. Because Bain had become of great public interest and because my oversight role had been public, I felt it was important to make a public statement about joining the firm. *Business Day* published the article 'Jump into the fray to remedy corporate wrongs' on 27 June 2019 (annexure **AW183**) in which I gave my background with Bain and explained that we need more ethical leaders in businesses that have been involved in wrongdoing and that this was what I was doing.

229. In this same article I wrote that 'Bain has committed itself to a path of remedy and change in its service to SA. … What I do know is that Bain's leadership — locally and globally — is committed to this path.' From all my discussions with Bain's local and global leadership, including the global managing partner, Manny Maceda, I was led to believe that Bain



was committed to full disclosure and making amends for the harms it had caused and the wrongful acts it committed in South Africa. I would later discover this to be untrue.

230. Also, on 27 June 2019 I represented Bain at a highly visible public conference in Johannesburg. It was the 'Business Against Corruption' conference hosted by the *Daily Maverick* and BLSA. I was a firm believer that if Bain had nothing to hide, it needed to come out of hiding and present its case to the South African public. Given the conference attendees, this would be the ideal opportunity. Attendees included Minister of Public Enterprises, the new SARS Commissioner and the head of the National Prosecuting Authority (NPA), as well as representatives of business, civil society and the media.

231. Bain arranged for extensive preparation ahead of the conference, hiring public relations experts and allocating time from its legal team and Baker McKenzie. Some of the preparation materials are attached (annexure **AW184**). The shaded parts of this document show the instructions I received on how to respond to questions relating to the Baker McKenzie investigation and Bain's commitment to share findings publicly. The conference was a harrowing experience for me because all anger that had been built up against Bain, was now directed at me because I was the first Bain person to engage with the public. Symbolically, I sat right in front throughout the conference because I felt that Bain needed to face South Africa.

232. At the conference Edward Kieswetter, the new SARS Commissioner, mentioned in his talk that SARS was collaborating with the NPA to prosecute cases. This included following the Nugent Commission's recommendation for the NPA to consider prosecuting those involved in Bain's contract at SARS.

233. I had brief conversations directly with Kieswetter, as well as Minister Pravin Gordhan and two SARS staff members who were in attendance at the conference. The latter told me of the trauma of their direct encounter with the Bain consultants and the devastating impact Bain

and Moyane had had on their careers and lives, and those of many others at SARS. This was a deeply moving experience for me to hear of people's pain and to experience their anger especially since I was there representing the organisation who had contributed to the damage. In the spirit of reparation and reconciliation I listened to them and exchanged messages of friendship afterwards.

234. Kieswetter expressed the view to me that Bain had not made full disclosure about the extent of their role at SARS and state capture beyond SARS. I had met Kieswetter just once before when I introduced myself to him at OR Tambo airport on or about 19 June 2019.

235. Minister Gordhan, who I met for the first time, said he was glad that I was at Bain (I got the impression that he knew some of my background) and that Bain had a lot to do to remedy the damage caused. Bain gave me the impression that Bain's global chairman, Orit Gadiesh, enjoyed a friendly relationship with the Minister, but Minister Gordhan made it clear that this was not the case. In fact, he expressed a negative attitude toward Bain for what they had done in South Africa and their lack of openness and remedy. He referred to meeting the Bain chairman in Davos where he asked about Bain's coming clean and making amends - he described her attitude to his questions as "dismissive." The conference experience left me with a sense of urgency that Bain needed to face the facts of the harm that it had been part of and that we owed it to the people of SARS and South Africa to engage with honesty and sincerity.

236. Soon after the 'Business Against Corruption' conference, on 2 July 2019, *Mail & Guardian* published an article with the headline 'Sars and Treasury to pursue criminal charges against Bain & Co.' For fear of accelerating a prosecution, instructions came from Bain's legal team that I and other Partners were barred from engaging with SARS. This was massively problematic for me because there could be no meaningful remedy without engaging with SARS. There was also a complete media blackout on any further statements imposed by the global legal team.

237. It became increasingly apparent to me that the firm's global leadership was acting in the interest of the global business with only peripheral interest in the problems Bain had caused in South Africa. The message seemed to be – make amends in South Africa only as far as it does not threaten the global business, in other words, don't do anything that may aggravate the DOJ which meant, stay out of the media and stay away from SARS.

238. To be clear: it became apparent to me that the strategy to deal with Bain's involvement with state capture and damage to SARS was not centred around full disclosure and remedy in South Africa but avoiding a DOJ prosecution.

239. Bain's stance might seem reasonable to some, that is, that employees were to act in the interest of our employer, but my view was that this is not acceptable when acting in the interest of your employer entails covering up wrongful or unlawful acts that have or could have caused harm to people directly or through damaging public institutions.

240. By early August 2019 I felt that my ethics were being compromised by being at Bain. It became very hard trying to convince external parties that my employer was going to do the right thing when I myself doubted their good faith. I faced resistance from business associates, friends, family, my students and even strangers – a few organisations and individuals started social media campaigns to have me blocked from public speaking platforms. Trusted mentors expressed disappointment that I had 'gone over to the dark side' as some would say. A former Finance Minister greeted me saying "I see you've joined the crooks." That he saw Bain as "crooks" was bad enough but now associating me with crooks was difficult for me to accept especially since I was an ethics lecturer and was at Bain trying to get them to do the right thing. All this resistance would have been easy to manage if I could show progress on remedial actions and if I had faith that Bain was going to do the right thing. On 8 August 2019, I wrote to Hagey, the Partner in charge of the welfare of Partners at Bain describing what a personal and professional burden I was facing (this email is attached as annexure **AW185**). I

received no reply. After I resigned on 28 August 2019 Hagey acknowledged receiving my email asking for support. On 20 August 2019 I wrote to Senior, my superior in the Johannesburg office, saying that "things are very tough for me" and asking for support because "Right now the cost to me of being at Bain is extremely high and will become harder for me to justify to myself let alone to others." (annexure **AW186**). Senior offered no support. Bain's claims to care for their staff rang hollow.

241. On 22 August 2019, a few senior people gathered on a conference call to take stock of the major legal and reputational issues facing Bain and to prepare for an internal strategy meeting to be held in Paris on 3 September 2019, at which we were hoping to develop a new comprehensive approach to the crisis facing the business. On the call was Senior, Hutchinson, Dale Cottrell ("**Cottrell**"), who had taken over from Meehan as the reporting line for the South Africa office, Kennedy, Norman Mbazima and me. On the call I raised my concern that I was not being allowed to engage with SARS as part of leading efforts to make amends. There was heated disagreement particularly between myself and Kennedy, who was leading Bain's legal effort, over this issue and who had been active in the manipulation I encountered in December 2018 over viewing Baker McKenzie's investigation findings.

242. The core of the disagreement between Kennedy and myself was that his preferred legal route called for remaining silent, selective disclosure to authorities as Bain did with the Nugent Commission and focussing on defending any prosecutions, whereas I wanted to follow a remedial and conciliatory route which we had documented in our remedy plan and which entailed engaging with affected parties and beginning to make amends for the harm Bain had caused. I wanted to ensure my employer's success in South Africa but I also wanted to do what was right for South Africa – this after all was what I had been given assurance was Bain's intent behind my appointment and was my mandate. It seemed to me that Kennedy and my colleagues wanted to protect Bain regardless of the cost to South Africa in terms of the truth and making

amends.

243. In the days that followed (22 - 26 August 2019), Kennedy and I exchanged emails with the subject line 'Kieswetter engagement options' referring to Edward Kieswetter, the Commissioner of SARS and whether Bain should be engaging with him (annexure **AW188**). In this email exchange I expressed my view that I wanted engagement with SARS and pressed Kennedy on why the legal team was opposed to this. In response to a series of questions that Kennedy posed to me, I pointed out on 25 August 2019 that "I am trying to build a non-legal case that says we have committed to making amends and we made all reasonable efforts to make amends at SARS."

244. In this email exchange, Kennedy's email of 23 August 2019, makes Bain's position clear: "A prosecution would be bad for Bain's business globally, not just in South Africa, because Bain is also being investigated by the DOJ and we are advised that an SA prosecution would likely cause them to extend and expand that investigation" and "Bain's legal advisers in both SA and the USA advise that making contact with SARS in any way is a high risk strategy as they are worried that it might increase the chances of prosecution. This is because it is very difficult to tell Bain's side of the story without relying on and showing the Baker McKenzie investigation … "

245. In addition to confirming the focus on the DOJ and that the DOJ was already investigating Bain, the conclusion I drew from these statements was that the findings of the Baker McKenzie investigation point to wrongdoing by Bain and that Bain was withholding these findings to avoid being held accountable. Yet Bain continued to claim that they are not withholding anything.

246. I was convinced that the only way for Bain to make real progress towards remedy was to engage with SARS. I had exchanged emails with Kieswetter earlier through my UCT email account. I followed up with him on 24 August 2019, writing in my personal capacity but making the case for engagement with Bain (annexure **AW189**). Kieswetter had said

to me at the conference and publicly that "Bain must come clean." In the email I asked him to explain what he meant by the statement.

247. On 26 August 2019 Kieswetter replied to my email (annexure **AW190**) and his reply proved extremely useful because it offered an indication of what South African authorities were thinking about the Bain situation and what they wanted to know. In fact, this is what the Nugent Commission wanted to know. He emphasised that Bain needed to disclose what transpired during its meetings with President Zuma and Moyane. "The best service you can render to South Africa and SARS," wrote Kieswetter, "is to persuade them to come clean." Kieswetter's email proved to be exactly the catalyst I needed to encourage Bain to move towards full disclosure. I had only a limited sense of what my colleagues at Bain might be hiding but even before I was going to argue for external full disclosure, I wanted full disclosure internally, if to no one else, to me given the prominent public role I was to play.

248. On 26 August 2019 I forwarded Kieswetter's email to my Bain colleagues who were on the conference call of 22 August 2019, namely Senior, Hutchinson, Cottrell, Kennedy and Mbazima. All except Hutchinson responded. No one expressed any concern that I had contacted Kieswetter. The ensuing email exchange which ran from 26 – 28 August 2019 is attached as annexure **AW191**.

249. As part of this crucial email exchange, I offered my analysis of Kieswetter's email to my colleagues on 26 August 2019 by outlining that Kieswetter had told me and made public statements to the effect that he was following the Nugent Commission's recommendations. It was no surprise then that his sentiments towards Bain echoed that of Judge Nugent. Kieswetter did not believe that Bain had disclosed everything and that Bain was focused solely on defending itself rather than acting in the interest of South Africa. I was increasingly coming to this view as well. More importantly, Kieswetter expressed a view, similar to what the Nugent Commission did, that Bain was not only complicit in state capture but assisted in enabling it.

250. Senior understood what Kieswetter was saying, writing on 27 August 2019, "I interpret that as he wants to us to come clean about any involvement in state capture with Zuma and with Moyane. So, I think we all need to have a crystal-clear understanding about what we actually know ...". In his reply on 27 August 2019, Mbazima agrees with my analysis and writes that Kieswetter's concerns should be taken seriously because they're the same concerns held by those in government, while Kennedy's response was predictably negative and dismissive: "Regrettably, my reading of the email is that he expects nothing less than the company admitting to state capture." Both Senior and Mbazima agreed with the analysis that I presented in the emails in which I argued that state capture broadly, not only at SARS, was the issue. I felt that we were making progress – at least others saw the merit of a broad internal review of what Bain knew about its involvement in state capture.

251. I wrote in the emails that what was at stake was Bain's involvement in state capture and gave my reasons for believing that there was a case for which Bain had to answer. Back in 2018 already, Kennedy and I had talked about two possible "schemes" that Bain could have been involved in – a big scheme (Bain strategized with Moyane and Zuma to cause damage at SARS and plan broader state capture) and the small scheme (Bain unwittingly contributed to damage at SARS) (See annexure **AW192** for a partial representation of the "big scheme"). In the email exchange analysing the implications of Kieswetter's email, I wrote on 26 August 2019: "I'd like us to step back and take another look at everything we now know and refresh our view of VM's [Vittorio Massone] involvement in the big scheme [state capture] and the small scheme [unwitting harm at SARS]. I am not so sure he was only involved in the latter." Bain operated with the view that at most, the small scheme was the reality. I had also started out with this view in September 2018 but consistent with Kieswetter, the Nugent Commission and many other observers, the facts seemed to point more towards the big scheme. In internal discussions, Bain flatly rejected the idea of involvement in state capture but without providing any support for this view.

252. Since September 2018 already I had been insisting that I wanted to know everything that transpired at SARS and all the meetings with politically exposed persons, and that this be disclosed publicly. Kennedy was not keen on this level of disclosure even internally, let alone to the outside world. His behaviour had already indicated this, but he would make this explicit the following day, causing me to reconsider my employment at Bain.

253. The following day, on 27 August 2019 I had a meeting in Senior's office with Kennedy on the phone from Europe. I pressed hard again that Bain needed to make full disclosure and that I certainly wanted to know everything that Bain knows, not just the one-liner that we were being fed from Bain's legal team and global leadership that "Baker McKenzie found no evidence of anything illegal." Kennedy dug in his heels. He had been silent or ignored many of my earlier requests for full disclosure and to discuss state capture, but now he flat-out rejected the idea that Bain's legal team would support making full disclosure to me and other Partners, let alone externally. I pressed on what we knew about the content of the Zuma meetings and about what was revealed during the investigation interviews and what was contained in the Baker McKenzie reports. Kennedy made it clear that the firm would not share any of these. Senior remained silent.

254. After the call with Kennedy ended, while still in Senior's office, I told Senior that I could not continue on the basis where my ability to implement the remedy plan was constrained by Bain and where we were unwilling to discuss the full truth among ourselves let alone withholding this from the public. I described the growing distress that I was facing. Senior offered no solutions.

255. The next day, on 28 August 2019 I sent an email to Senior, resigning from Bain (annexure **AW193**). If Bain were not going to come clean and rather continue to withhold relevant information from me; and not do what they had committed to in terms of making amends and not going to allow me to do what they had hired me to do, I could not stay at the firm because I felt that this would make me complicit in their cover-up. I

could just look the other way, sit quietly and take my pay like so many of the senior people at Bain had decided to do, but ultimately my personal and professional ethics, and my commitment to the people of South Africa drove me to take a stand.

256. I met with Senior to discuss my resignation. I asked if he was surprised, he said "No." He offered that Bain could arrange for me to be relocated outside South Africa. I refused. I received calls from numerous other Bain partners as word spread of my resignation, including from Moolman and Cottrell. I met with Mbazima as well.

257. On 29 August 2019 I wrote an email to Hagey (copying Senior, Moolman, Cottrell) in which I explained that my reasons for resigning are due to Bain's withholding information relating to their involvement in state capture, their cynical view of ethical business and their lack of support for partners like me in South Africa facing great difficulty. (annexure **AW194**). In a follow-up email I said I would issue apologies if any of my statements were shown to be false but received no response.

258. Bain had been withholding information and witnesses that I felt the authorities and myself should have had access to since September 2018. I had hoped that being inside the firm would change this stance, but it had not. A Bain manager with whom I shared the news of my resignation wrote: "They (we) like the idea of the recovery but lack the will to face South Africa and do the work. Thank you for trying. But your energy and talent can do so much more in another space where you won't be blocked." I was encouraged that at least one person had seen the situation for what it was.

259. I had a remuneration package that guaranteed annual income of R11 million a year if I worked full-time or R6 million if I worked part-time as I had chosen to do. Resigning came at a huge financial cost to me in terms of lost income but also money that I would potentially have to pay back to Bain. But it had become clear to me that despite the assurances I was given, Bain continued to avoid taking responsibility for the full

range of its involvement in damaging SARS and involvement in state capture. I had already established in 2018 that they were withholding information and witnesses and had hoped that as a Partner I could play a part in getting them to make full disclosure. It became apparent that this was not going to happen. Regardless of the personal cost, I resigned.

GOING PUBLIC AND EFFORTS BY BAIN TO INTIMIDATE AND SILENCE ME

260. My resignation was a sudden decision and I had not thought about my next steps. Obvious potential next moves would be to return to UCT on a full-time basis or to work on completing my doctorate. Bain asked me to stay at the firm till the end of the year to allow a smooth handover, to which I agreed. I saw this as my notice period for which I expected to be paid. I remained on the Africa Oversight Board but my involvement in key meetings around the legal strategy dwindled either because I withdrew or because I was not invited.

261. What was still to be determined was the terms under which I would leave. A promising alternative to simply walking away was the idea that I proposed for me to establish an independent institute, seed-funded by Bain, that conducted research into corporate responsibility and offered advisory services to companies seeking to make amends after wrongdoings. This idea fitted in perfectly with my academic focus, was consistent with why I joined Bain in the first place and clearly there was a need in South Africa and also other parts of the world. I had discussed the idea of such an institute with Bain for a long time as part of the remedy plan. What would be new was that I would run it as a non-Bain person, with Bain contributing financially.

262. On 25 September 2019 I received an email from Cottrell, Hagey and Senior with an attached note titled 'Future Role' that described an offer of a future relationship between myself and Bain (the email and attached document are attached as annexure **AW195**). This followed a number of phonecalls including one with Hagey on 5 September 2019 which I

described to Moolman as "very positive" in a whatsapp which is recorded in a document "Whatsapp Messages AW-TM2" point 1 attached hereto as annexure **AW196**. The offer included time and resources to develop a business plan for a corporate responsibility institute, a research trip to Australia, continued salary and bonus till the end of 2019 and 6 months off to complete my doctorate, returning in July 2020 to start as the Director of the institute. But my concerns remained. Even though Bain's offer document lists some of the reasons I had resigned it omitted the most important reasons which were my concerns about Bain's involvement in state capture and their withholding of information.

263. No matter how professionally rewarding the institute would be and how constructive it could be for our society, I felt that going along with the proposal would silence my concerns and even though the institute would do good it would be built on an unethical foundation. I turned down the offer during a phonecall with Cottrell. On 14 October 2019 I sent a whatsapp to Moolman saying that "I have confirmed to Dale, Russ and John that I will stay to the end of the year but then make a clean break. Happy to stay on oversight board if required."

264. On 15 October 2019 I received a disturbing email which reinforced my decision to make a clean break. The email came from Kennedy and sent to members of the Africa Oversight Board (Moolman, Alan Bird, Norman Mbazima) and Senior, Min and Cottrell. The email stated that the attached document titled 'SARS External Communications - Legal Guardrails' (Annexure **AW197**) was to be used for stakeholder engagement. Stakeholder engagement referred to anyone Bain partners spoke to including Bain staff, Bain clients, the media, civil society, politicians, government officials or authorities. As stated earlier in this affidavit, the document gives specific instructions to Bain's senior leadership not to admit to any corruption or improper influence, any fraud, bid rigging, collusion or other misconduct in violation of South Africa's public procurement laws, the use of any third party agents to carry out illegal or improper schemes, and any quid pro quo

arrangements such as promises of consulting work in exchange for CEO coaching. The document also instructs that no one should disclose that discussions with US enforcement authorities such as the DOJ and SEC (Securities and Exchange Commission) was taking place.

265. An instruction that bothered me more than the others in the document was on page 1, point 2a which read: "Do not state that you have had any role or involvement in overseeing or directing Baker McKenzie's investigation." This was exactly what I had done in 2018 and it was public knowledge. Bain was asking me to lie or withhold the truth.

266. Throughout the period since I had resigned on 28 August 2019, despite my repeated requests, Bain refused to announce internally or externally that I had resigned. Most worrisome was that Bain continued to include my name in letters to clients, potential clients and other external bodies and not inform them that I was leaving.

267. On 17 October 2019 I was the keynote speaker at the Finance Indaba conference for finance professionals held at the Sandton Convention Centre. During my address I stated that I had resigned from Bain. The print, radio and TV media covered my resignation extensively.

268. My statement during my address and my responses to journalists afterwards mistakenly gave the impression to the media that I had actually resigned at the conference and that Bain was unaware of my resignation, rather than the fact that I was merely making my resignation public given that I had resigned on 28 August 2019 already.

269. Within hours of my keynote address, and without informing me, Bain blocked my access to my work-issued cellphone and laptop. This was done remotely and according to Bain's local IT department, was done from outside South Africa. This blockage meant that I was blocked from all Bain communications but also that I lost access to my passwords, contacts, messages, emails and documents, both work-related and personal. Bain would not restore these to me. In the meantime Senior sent an internal email to the African business announcing that I had decided to leave and thanking me for my contribution (this email is

attached as **AW200**).

270. Bain's next move was to write a press release on my behalf in which I was to retract some of the statements I had made. I had written a whatsapp to Moolman on 17 October 2019 about coordinating communications (see annexure AW196, point 2) but was not going to have Bain write my press statements for me. On 21 October 2019, Erol Munuz ("**Munuz**"), Bain's Director of Global PR based in Boston, sent the press release (annexure **AW198**) which was labelled "v4" or version 4, indicating that it had already done the rounds within Bain. The press release was clearly intended to influence what I said publicly and included statements which I outright rejected like "There is a difference between unintentional bad choices and intentional bad behaviour. It is my belief that Bain's actions fall into the former category." Also on 21 October 2019 Cottrell sent me an email reminding me of my "confidentiality commitments" as he described them, and an email with an attachment highlighting the 17 media statements relating to my talk on 17 October 2019 that Bain found "problematic." (annexure **AW199**)

271. I refused to include certain phrases in my press statement even after Munuz wrote them a second time. Numerous phone calls and emails, several per day, followed as we went back and forth on what I wanted to say and what Bain wanted me to say. I did not mind issuing a statement because I did think some of the media statements were inaccurate but was not going to add any weight to Bain's twisting of the facts. On 22 October 2019 I issued a press statement (annexure **AW201**) which was written under pressure from Bain and before I had reviewed the 500+ documents and emails that I have now reviewed which came into my possession during my involvement with Bain. I was content that my oversight reports of November 2018 and December 2018 contained the best presentation of my position so wrote in the press statement that I had no additional information on Bain. On the same day I also sent to Cottrell and Munuz an email with a document titled "My claims and conclusion" in which I state that I believe Bain was withholding evidence from me that would help me form a view of Bain's

involvement in state capture. This withholding of information had raised my suspicions of Bain's involvement in state capture, but I state in this document that I am not making any claims about Bain's involvement at that stage. Once I reviewed the 500+ documents and emails in my possession, and reflected upon my experience since September 2018, this view changed. The email and document are attached hereto as annexure **AW202**.

272. On 23 October 2019 Moolman wrote to thank me for my press statement (See annexure AW196, point 4). I replied apologising for the aggravation my actions had caused – most of the people at Bain were good people and some were my friends, including Moolman. If I had caused "undue damage" I wanted to ensure that I remedied that. On the same day Cottrell wrote to say that Bain would make [redacted] available to me personally to help me with my PR. A day earlier [redacted] had written an email titled "kitchen cabinet" from his personal email address indicating that he was offering his services to "help you frame and build the next stage of your public intellectual life" (annexure **AW 203**). He writes "you are worth it as a human being"– a bizarre statement. In the email he again tries to steer me away from engaging with the media. Much like Cottrell's communications, I found this email from [redacted] to be condescending. I had a good working rapport with [redacted] but this act between him and Cottrell was so obviously another attempt by Bain to manipulate me – why else would Bain offer personal access to the Director of Global PR. I did not take up the offer.

273. On a phonecall with Cottrell and Russ Hagey on 30 October 2019 they stated that the bottom line for me going forward was that I could never speak about Bain again. (I have no proof of the contents of this phonecall).

274. I was surprised by this statement and confused about what this meant. The answer from them was that I could not speak about any aspect of my experience with Bain to anyone, particularly the media. It seemed absurd to me. With a case this public and my public life as a speaker and academic it seemed impossible that I could never speak about Bain.

I thought perhaps we could agree how to handle certain topics, but complete silence was not an option.

275. I was shaken by Bain's request that I never speak about my experience. They knew my position on so many serious ethical topics relating to their behaviour – I still hoped that they would want to engage on these and find a way to come clean. I could understand abiding by a confidentiality agreement but the demand for complete silence shook me.

276. I recalled Cottrell saying to me on one of our phonecalls that Bain's lawyers would be "very aggressive" with me if we ended up in court. I also recalled discussions between Bain and Baker McKenzie about hiring a private investigator to track Massone and the thought occurred to me that they may already have me followed. My family's anxiety grew over my safety, as did mine, when Bain's determination to silence me became apparent. I realised that any involvement Bain would have had in corrupt activities involved powerful people in South Africa who would also have an incentive to keep me quiet. Driven by fear and urged by my family I wavered and began discussing options with Bain.

277. Spending time out of the country seemed like a good option for me. I could go to Oxford to complete my doctorate, something that I needed to do anyway, and this would take me off Bain's war path in the short term. Bain loved this idea when I mentioned it to Cottrell, after all they were getting what they wanted. Numerous phonecalls followed to work out the details which would see Bain cover my cost to be in the UK as part of my separation terms with the firm.

278. On 4 November 2019 Cottrell called with a settlement offer that would require that I go to Oxford for two years, as I had suggested, and Bain would cover the costs of me being there and my opportunity costs of not working in South Africa. I indicated that their offer was unattractive on financial grounds. The structure of our discussions was such that if I went along with Bain's request for silence they would waive amounts that I owed them plus offer additional money. Ethical discomfort started arising over the position in which I found myself – I could consider

staying out of the media but complete silence was problematic for me.

279. On 7 November 2019 Cottrell sent an email (annexure **AW204**) which followed up his telephone offer of 4 November 2019. The email presented a breakdown of what he claimed I owed Bain, totalling R2.645 million – the largest component being the R2 million signing bonus that Bain paid. In his email he then offers that this R2.645 million would be waived, that is, I would not have to repay it, plus I would receive additional cash and other benefits worth R2.4 million. The condition for this offer was that I remained silent about my experience at Bain since getting involved in September 2018. The email included statements dictating what I should say when questioned about Bain, including saying: 'I have a set of confidentiality protocols in place and am not at liberty to talk about my time at Bain' and if pressed, I should talk about the 'broader set of issues facing South Africa.' The total benefit to me of my silence would be R5 million. They wanted to pay me off.

280. Seeing this in black and white convinced me that I could not be part of this even if I had suggested going to Oxford. My resolve began to firm again, to look beyond my fear and to return to doing what I believed needed to be done which was to point out Bain's wrongdoing.

281. I replied the following day (annexure **AW205**) correcting statements in his email and reminding him of his "ethical obligations to truth and to the people of South Africa." I received no response.

282. On 15 November 2019 Cottrell sent another email (annexure **AW206**) with reminders of confidentiality obligations, this time about the return of information that I had gained access to during my oversight role. I had pointed out to him the risk that I myself be seen to be withholding information which was relevant to understanding the truth of Bain's actions and therefore could not simply delete or return everything that I had which was his instruction.

283. On 21 November 2019 I had a phone call with Cottrell again. During this call I turned down Bain's offer. I was willing to stay out of the media, go to Oxford and have Bain contribute to my expenses of being there and

some loss of income in South Africa but would not accept any offer that required that I remain silent about the many concerns I had.

284. But Bain were not ready to give up yet. Moolman called me on 21 November 2019 after I asked him over whatsapp if he knew how badly my discussions were going with Bain (see annexure AW196, point 6 to 10). In the whatsapp under point 10 I write "The strategy of telling me to shut up and go away is not going to work" – I was determined not to be silenced. He expressed determination to find a solution that could work.

285. The next day on 22 November 2019 I sent Moolman an email (annexure **AW207**) indicating that my objectives were to support and nudge Bain to act for the good of South Africa in all dealings whether relating to investigations or their operations, and that in my writing and public speaking, I wanted to draw lessons from my Bain experience and Bain's operations in South Africa. I suggested that we didn't need to waste money on me going to Oxford. I suggested that rather than be an external agitator or independent advisor, that I serve on their Oversight Board but with a public mandate, meaning that I would give public assurances that Bain's Oversight Board was ensuring that Bain were not involved in any activities that could cause harm to South Africa. I saw this as a great opportunity for Bain to demonstrate sincerity about transparency and acting for the good of South Africa. It was a long shot, but I had to keep trying. At this point I still thought a financial settlement could be reached without compromising my ethics. Moolman did not respond to my email.

286. On 27 November 2019 I met with the Zondo Commission's investigators at the Commission's offices in Parktown. The Commission investigator had contacted me by sms and telephone so I had no way of ensuring that she was who she said she was. With so much anxiety already swirling around I needed to make sure that I was not being deceived by someone pretending to be from the Zondo Commission so I asked Bain if their lawyers could verify the investigator's identity (see annexure AW196, point 13) but they could not.

287. On Bain's request Bernstein of Baker McKenzie called me and then followed up with an email (attached earlier as annexure AW71). The email was yet another attempt to exert influence over my decision making and what I would say. Bernstein wrote that my value to the Commission would be "limited" and my evidence would amount to "hearsay". He suggested that I be prepared for some topics that may come up, all of which were obvious, except for his mention of "Relationship with the Guptas." During my involvement with the investigation, the Guptas very rarely got mentioned even though I did ask about Bain's connection with them in an email on 29 November 2018 to which Kennedy replied that he was "on the Gupta trail" and speaking to "Amit" who I believe was a partner in Bain's India business (annexure **AW208**). Bernstein's mention of the Guptas made me suspect that evidence might have emerged of a relationship between the Guptas and Bain. The 19 relevant documents that Baker McKenzie labelled as "Gupta relationship" may also have some bearing.

288. Meanwhile Moolman had been working on a new settlement offer. On 28 November 2019 he sent me a document titled, "Outline of potential elements in separation agreement" (annexure **AW209**) which presented an offer of over R9 million, much higher than the earlier R5 million offer with some payments spread over multiple years. – the offer stated that I would return or delete all materials and have to enter into an agreement "not to talk publicly about Bain during the period up to December 2021." I later returned hardcopy documents that I had but refused to delete any documents and emails all of which I had obtained lawfully.

289. After back and forth with Moolman, on 30 November I rejected Bain's offer. I sent a whatsapp to Moolman: "All things considered I think its best that we part ways with a clean break" (see annexure AW196, point 17). I followed up with an email to Moolman and Cottrell on 30 November 2019 titled "Clean Break" in which I wrote (annexure **AW210**): "I cannot remain silent about my experience of Bain over the last 14 months, as you've requested, in fact, I consider it my duty to speak up." I end with: "I suggest we draw a line under our relationship

and go our separate ways." But Bain would not give up. Moolman called and pleaded for me to reconsider.

290. On 4 December 2019 Moolman sent me a whatsapp saying "Would love to chat. I have another idea (maybe)" (see annexure AW196, point 18). We eventually connected by phonecall on 5 December 2019 during which Moolman made the most startling offer on behalf of Bain – Bain would waive all that I owed them, and Bain would pay R5 million cash directly into my bank account "without a paper trail" (Moolman's words). There would be no agreements or signed documents between myself and Bain and they would simply pay R5 million cash into my bank account. Moolman emphasised however, that before they paid the money Bain needed assurance from me that I would remain silent, according to him, they wanted to know that they could "trust me" to remain quiet about all that I knew about Bain. I was shocked that Bain had stooped this low. I said he knows my position on Bain's wrongdoing and that this would not change. I rejected the offer. On 10 December, Moolman sent a whatsapp (see annexure AW196, point 19) - "I just want to confirm that as per our conversation end of last week, and for the reasons we discussed, you definitely don't want to explore the UK study option any more." The "UK study option" was the chosen euphemism for the offer to pay me to be silent. My reply was clear: "Nothing has changed on my side regarding making a clean break from Bain."

291. On 17 December 2019 I received an email from Cottrell (with a final separation agreement (annexure **AW211**) giving me three days' notice to pay what they claimed I owed them. I sent Moolman a whatsapp "On 17 Dec I get a letter from Bain requiring payment on 20 Dec." Moolman replied that the short repayment period was a surprise to him.

292. On 18 December 2019 I sent Cottrell an email (annexure **AW212**) with my calculation of what I owed them. On 20 December 2019 I paid the amount I owed according to my calculations and attached proof of payment to an email to Cottrell (annexure **AW213**). I did not sign the final separation agreement.

293. On 19 December 2019 several media outlets reported that Bain were trying to buy my silence. I felt it necessary to reaffirm my public commitment to full disclosure, to reveal yet more of Bain's cover-up attempts.

294. On 20 December 2019 Bain posted a statement on their Johannesburg website which among other statements read, "We also reject out of hand Mr Williams' allegations that Bain in any way attempted to coerce him or influence him through monetary levers or otherwise." The documents and emails that I've presented above show otherwise. The Bain website statement also claimed that I had "unilaterally approached us to rejoin the firm in 2018 and we welcomed him back" (annexure **AW214**). This was a blatant lie since Bain asked for my help in September 2018. After an email and whatsapp exchange with Moolman (see annexure attached earlier as AW135 and AW196, points 21 and 22) and his colleagues in which I challenged them over their statement, Bain removed the lie but without stating the change on their website or apologising to me. Moolman wrote in a whatsapp that the website statement will be amended "as it was not accurate."

295. On 8 January 2020 Cottrell wrote an email asking me to confirm that I had deleted soft copy documents. I replied the next day that the documents served as proof of my engagements with Bain "especially at a time when Bain is challenging my integrity." (annexure **AW215**) In addition to the misrepresentations on their website, Bain had barred all staff from communicating with me and I was told by Bain staff that I was being slandered to clients and presented as "prime evil" to staff. In the same email Cottrell writes that "In relation to the final settlement amount, we are reviewing the amounts you owe Bain and we will revert to you with any outstanding amounts." They continued to try to keep things unresolved in the hope of hooking me back. I replied that "I consider the financial matter settled." I have not heard anything on the matter since.

Signed at CENTURY CITY on 20 AUGUST 2020

ATHOL WILLIAMS

I certify that this affidavit was signed and sworn to before me at CENTURY CITY on this the 20th day of AUGUST 2020, by the deponent after he declared that he knew and understood the contents of this declaration, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

COMMISSIONER OF OATHS

Name: RENZO GRANT MULLER

Address: Kommissaris van Ede / Commissioner of Oaths
Praktiserende Prokureur R.S.A / Practicing Attorney R.S.A
SCHNETLER'S INC
SUITE 205 - FOYER 3, COLOSSEUM
CENTURY BOULEVARD, CENTURY CITY 7441

Capacity:

ANNEXURE "AW1"

AW1

atholwilliams@hotmail.com

From: Athol Williams
Sent: 31 August 2018 10:52
To: Meehan, Paul
Subject: Bain in South Africa

Dear Paul,

It is very distressing and disappointing, as I'm sure you and all Bainies do as well, to see Bain in the South African media over its involvement with the South African national tax agency (SARS), including the accusations of a sinister role and Bain's own admission of not delivering its best work. As a former Partner I, sadly, find myself already having to be defensive with associates about my role and knowledge of Bain's work with the tax agency, this after years of defending Bain for previous questionable behaviour in this market. The main reason that I left Bain in 2010, as communicated to Paul Rogers (then head of the London office with responsibility for Johannesburg) was my concern over leadership behaviour and attitudes. Some of my concerns are playing out now. While all the Partners in the Johannesburg office, bar one, have home countries to escape to if Bain's reputation gets destroyed here, there are many of us who remain behind having to suffer the cost to our personal and professional relationships. I must confess that I turned down the invitation to the recent office offsite owing to concerns over what was to come through the inquiry.

I have been associated with Bain since 1995 and am extremely proud of this association. I started in Boston, was in New York when the office opened, worked in London and finally in Johannesburg. I have constantly repeated my commitment of being a friend of Bain and have acted in this way, including recent support to the Johannesburg office with recruiting, mentoring young talent and public good projects to raise Bain's visibility in South Africa. I have offered my expertise in corporate responsibility and business ethics to a few partners.

I want to see Bain succeed in South Africa because I believe in what Bain has to offer our society, both in terms of services to clients and development of our young people. Selfishly, I want to see Bain succeed because I have so much of my history and reputation tied up in Bain. And lastly, I will always want to see Bain succeed as one friend desires to see another succeed. So, I am writing to offer my support. I am not entirely sure how you might find me useful but I do have a reasonable public image and have developed networks around my scholarly expertise of values-based leadership and corporate responsibility. I offer no personal relations with powerful politicians, but I think this pursuit among the office leadership has been part of the problem.

I am teaching at Oxford during October and November so will be in the UK if you are interested in meeting.

Kind regards
Athol
+27 (0)82 828 6346

From: Marchal, Olivier <Olivier.Marchal@Bain.com>
Sent: 15 August 2013 12:25
To: Athol Williams <atholwilliams@hotmail.com>
Cc: Meehan, Paul <Paul.Meehan@Bain.com>
Subject: RE: Leadership update

Thanks a lot Athol for your kind message !

Olivier

From: Athol Williams [mailto:atholwilliams@hotmail.com]
Sent: Wednesday, August 14, 2013 5:17 PM

ANNEXURE "AW2"

AW2

atholwilliams@hotmail.com

From: Athol Williams
Sent: 04 September 2018 23:07
To: commission@inqcomm.co.za
Subject: Message for Judge Nugent
Attachments: Athol William CV Academic.docx

Dear Judge Nugent,

I have been offering my support to Pauli van Wyk in her investigation of the relationship between Bain and SARS. She forwarded a message from you requesting that I make contact.

I was a Partner at Bain in Johannesburg until 2010 and have been involved with the firm intermittently since then, until as recent as a few months ago. I have had regular one-on-one meetings or email exchanges with the managing partner Vittorio Massone. I first joined Bain in Boston in 1995 and was the first South African appointed to partnership here in South Africa.

I am happy to support the work of the commission in any way I can. My number is [redacted] I am attaching a brief CV by way of introduction.

Kind regards
Athol Williams
www.atholwilliams.com

ANNEXURE "AW3"

AW3

Bain & Company Statement: SARS Commission of Inquiry

Over the last several months, Bain & Company has been actively supporting and participating in a Public Inquiry into the performance of SARS (the South African Revenue Service). The high-level scope of the Inquiry is to investigate and understand what has led to the underperformance of this institution, and goes well beyond our work as it examines multiple elements of the institution's performance. We have made written submissions to the Inquiry and, last Thursday and Friday, we provided public testimony.

We supported SARS on an operating model review for the then new Commissioner back in 2015. Our scope was limited to recommending a new organizational structure, project managing the implementation of the organizational structure SARS selected and supporting a number of pilots. SARS chose to adopt a new structure that was not one of the four options Bain recommended, and the implementation of the new model was not successful. Bain did not have the mandate to work on the full elements of operating model design or implementation.

In light of new questions being raised during last week's testimony before the SARS Commission of Inquiry and from media inquiries, Bain & Company is now undertaking a deep and extensive investigation, led by our global leadership and external counsel, into all matters relating to our work with SARS. We want to be absolutely certain that we entered into our SARS engagement in full compliance with applicable procurement laws and that our investigation's findings are accurate and unassailable.

We want to be completely open and transparent, as we believe that is what the people of South Africa deserve. However, given the Commission of Inquiry is continuing its investigation we cannot publicly discuss anything that would in any way affect the ongoing work of the Commission.

Bain continues to stand by the value and rigor of its work – not as a point of pride – but out of a sense of mission that our South African associates wanted to bring to that organization. We worked hard because we wanted to help SARS become an even better organization and we believed our work could help to do that.

We have listened with concern to the testimonies of SARS employees who feel they have been mistreated and disrespected, at their frustration and pain and the consequences this has had on the lives of these individuals and their families. We are dismayed by the way our work has been used to further a different agenda than was intended. In our recommendations, there was no need for any lay-offs or terminations. This didn't turn out to be the reality when the model was implemented. We are deeply sorry for how this turned out – we wish we had known then what we do now.

We contend that this could have been avoided. Through the various Commission testimony, we now know that essential elements of delivering a successful operating model were not systematically addressed, causing the failure at SARS.

As we stated in our testimony, Bain believes that the success of an operating model for an organization is a function of defining and implementing all elements of the model correctly: leadership, organization structure, accountabilities and decision processes, governance forums, core values/ways of working, capabilities, business processes, and IT systems. We raised this with SARS, but Bain's contracted work on the operating model covered only one aspect, organizational structure, while SARS handled internally all other aspects of the process. This point must not be lost nor is the fact that the design principles for this

structure was presented to and reviewed by SARS's independent Advisory Board instituted by the Finance Minister.

In hindsight, as we reflect on our role at SARS there are several places where we could have done better. We could have listened better. We could have pushed SARS harder to acknowledge and address the risks we raised. We could have been more aware of agendas that could have diverged from the mandate we were given. These are lessons we have already taken to heart.

These last few weeks have been difficult. There is a growing frustration within our firm that we did not recognize the possibility that we may have been used to further a political or personal agenda. We always go into our work presuming our clients have good intentions. We are now questioning these beliefs as it relates to SARS.

As a firm, we stand by the work we produced and the dedicated effort of our employees who wanted nothing more than to make SARS a better place. We will continue to cooperate with the Commission of Inquiry to support a process aimed at restoring SARS to the credible institution it was once known as.

We recognise that what has been revealed in the past week about Bain's engagement with SARS, both through the Commission and the media, may be deeply uncomfortable for you as a Bain Alumnus.

We would like to reassure you that we will continue to engage openly and transparently with the Commission about our work with SARS. We remain, at all times, firmly invested in and deeply committed to both our long-term business in South Africa and to the country.

If you have any questions or would like a deeper dialogue, do let me know and I will arrange accordingly.

Best regards,
Tiaan Moolman on behalf of the Bain South Africa Partner team

ANNEXURE "AW4"

AW4

atholwilliams@hotmail.com

From: Athol Williams
Sent: 04 September 2018 21:20
To: Bain Africa, Alumni
Subject: RE: Bain & Company Statement: SARS Commission of Inquiry

Dear Tiaan,

Thank you for the email. The description that alumni "may be deeply uncomfortable" trivialises the real impact on us. Alumni carry the Bain brand wherever we go – when that brand is tainted, our reputations become tainted, a gross unfairness because it is through no act on our part. Your alumni deserve more than a watered-down statement but an apology. Many of the young alumni who still have long careers ahead of them will carry the cost of the public loss of faith in Bain for a long time. The professional and social cost to me already has been significant. I am deeply disappointed in what I am seeing, hearing and reading.

Regards
Athol

From: Bain Africa, Alumni <Alumni.BainAfrica@Bain.com>
Sent: 04 September 2018 15:55
Cc: Bain Africa, Alumni <Alumni.BainAfrica@Bain.com>
Subject: Bain & Company Statement: SARS Commission of Inquiry
Importance: High

Dear Bain Johannesburg Alumni,

Please find attached a Bain & Company statement on the SARS Commission of Inquiry.

For our public statement, please refer to our webpage: www.bain.co.za

Best,
Nicola

This e-mail, including any attachments, contains confidential information of Bain & Company, Inc. ("Bain") and/or its clients. It may be read, copied and used only by the intended recipient. Any use by a person other than its intended recipient, or by the recipient but for purposes other than the intended purpose, is strictly prohibited. If you received this e-mail in error, please contact the sender and then destroy this e-mail. Opinions, conclusions and other information in this message that do not relate to the official business of Bain shall be understood to be neither given nor endorsed by Bain.

ANNEXURE "AW5"

AWS 3

atholwilliams@hotmail.com

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 05 September 2018 20:25
To: Athol Williams
Subject: FW: Bain & Company Statement: SARS Commission of Inquiry

Athol

Can we have a call?

If the press release and the tone of the broad mail to alumni trivialised the impact of the SARS crisis on you and other alumnae, I am truly sorry.

What I can assure you, is that all current Bain employees (myself included) are having an even harder time, also through no fault of our own. We are facing an incredibly difficult situation and we are only now learning some of the real facts. There is a very genuine desire from Manny Maceda down to the team in SA left to address this disaster to DO THE RIGHT THING. Since the real facts started to come out on Friday, I have been pulled into a process to find the right way forward, true to our values. I have honestly not slept much since.

I would value your counsel as a friend.

Tiaan

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Tuesday, September 4, 2018 9:20 PM
To: Bain Africa, Alumni <Alumni.BainAfrica@Bain.com>
Subject: RE: Bain & Company Statement: SARS Commission of Inquiry

Dear Tiaan,

Thank you for the email. The description that alumni "may be deeply uncomfortable" trivialises the real impact on us. Alumni carry the Bain brand wherever we go – when that brand is tainted, our reputations become tainted, a gross unfairness because it is through no act on our part. Your alumni deserve more than a watered-down statement but an apology. Many of the young alumni who still have long careers ahead of them will carry the cost of the public loss of faith in Bain for a long time. The professional and social cost to me already has been significant. I am deeply disappointed in what I am seeing, hearing and reading.

ANNEXURE "AW6"

AW6

Bain Press Statement

https://www.bain.com/offices/johannesburg/ Retrieved 14 Dec 2018

2 September 2018 - In light of new questions being raised during last week's testimony before the SARS Commission of Inquiry and from media inquiries, Bain & Company is now undertaking a deep and extensive investigation, led by our global leadership and external counsel, into all matters relating to our work with SARS. We want to be absolutely certain that we entered into our SARS engagement in full compliance with applicable procurement laws and that our investigation's findings are accurate and unassailable.

We want to be completely open and transparent, as we believe that is what the people of South Africa deserve. However, given the Commission of Inquiry is continuing its investigation we cannot publicly discuss anything that would in any way affect the ongoing work of the Commission.

Bain continues to stand by the value and rigor of its work – not as a point of pride– but out of a sense of mission that our South African associates wanted to bring to that organization. We worked hard because we wanted to help SARS become an even better organization and we believe our work could help to do that.

We have listened with concern to the testimonies of SARS employees who feel they have been mistreated and disrespected, at their frustration and pain and the consequences this has had on the lives of these individuals and their families. We are dismayed by the way our work has been used to further a different agenda than was intended. In our recommendations, there was no need for any lay-offs or terminations. This didn't turn out to be the reality when the model was implemented. We are deeply sorry for how this turned out – we wish we had known then what we do now.

We contend that this could have been avoided. Through the various Commission testimony, we now know that essential elements of delivering a successful operating model were not systematically addressed, causing the failure at SARS.

As we stated in our testimony, Bain believes that the success of an operating model for an organization is a function of defining and implementing all elements of the model correctly: leadership, organization structure, accountabilities and decision processes, governance forums, core values/ways of working, capabilities, business processes, and IT systems. We raised this with SARS, but Bain's contracted work on the operating model covered only one aspect, organizational structure, whilst SARS handled internally all other aspects of the process. This point must not be lost nor is the fact that the design principles for this structure was presented to and reviewed by SARS's independent Advisory Board instituted by the Finance Minister.

In hindsight, as we reflect on our role at SARS there are several places where we could have done better. We could have listened better. We could have pushed SARS harder to acknowledge and address the risks we raised. We could have been more aware of agendas that could have diverged from the mandate we were given. These are lessons we have already taken to heart.

WW1-AW-123

These last few weeks have been difficult. There is a growing frustration within our firm that we did not recognize the possibility that we may have been used to further a political or personal agenda. We always go into our work presuming our clients have good intentions. We are now questioning these beliefs as it relates to SARS.

As a firm, we stand by the work we produced and the dedicated effort of our employees who wanted nothing more than to make SARS a better place. We will continue to cooperate with the Commission of Inquiry to support a process aimed at restoring SARS to the once credible institution it was known as.

ANNEXURE "AW7"

AW7

atholwilliams@hotmail.com

From: Athol Williams
Sent: 06 September 2018 00:51
To: Moolman, Tiaan
Subject: Follow up

Hi Tiaan,

Some thoughts on a broad process to follow:

Process of Repair (derived from the logic of dealing with social harm)

- Identification - of harm done
- Acknowledgement
- Apology
- Restitution
  - Punishment
  - Make whole
  - Change of behaviour
- Communication

Key success factors for external engagement

- Packaging of message to meet factual and legal requirements while satisfying public opinion
- Credible public faces
- Broad stakeholder engagement
- Creating opportunity for constructive public engagement

In terms of my role:

My role

- Immediate – advise on process of repair and solution design; keep the process honest
- Short-term – TBC – more public role?
- Long-term – TBC – more operational role?

FYI - my hierarchy of interest for now (there is a hierarchy but hopefully they become perfectly aligned quickly)

- South Africa
- Myself
- Bain

What I would need

- No harm to my reputation by getting involved

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- I must be seen externally to be part of creating and delivering the solution in the public interest not defending the Bain status quo
- I need to make a public declaration upfront
    - What I know now – i.e. no involvement with SARS or Bain client work, what Vittorio told me (perhaps to the Commission of Inquiry)
    - That I will be supporting Bain
- Payment for services

Let me know what you think.

Full disclosure on my side:

- I shared with a journalist what Vittorio had told me about his meetings with Zuma
- I offered my availability to the Commission of Inquiry. This was yesterday. I've had no reply.
- I've exchanged messages with 3 ex-Bainies – just sharing reactions to what we saw happening
- I've exchanged messages with 2 current Joburg Bainies – expressing my support and sending words of encouragement
- I've exchanged messages with 2 current global Bainies – one responding to questions from a Partner in NYC, the another with a senior executive in Boston
- I've exchanged emails with Paul Meehan, which you've seen
- I made one neutral comment on Facebook

Best regards

Athol

ANNEXURE "AW8"

AW8

LETTER OF INTENT

This Letter of Intent, dated as of September 7, 2018, is entered into by and between Bain & Company South Africa, Inc. ("Bain") and Mr. Athol Williams ("Williams").

1. Bain and Williams intend to enter into an independent contractor agreement whereby Williams shall be given the role and title of Interim Chairman of Bain.

2. Among other responsibilities, Williams shall observe Bain's compliance with ethical business practices and professional standards.

3. If Williams believes that Bain has at any time failed to adhere to the highest ethical and professional standards, he shall first bring that the attention of the Interim Office Head, Tiaan Moolman.

4. Williams and Moolman shall discuss the matter in good faith and attempt to agree on a course of remedial action to address Williams' concerns.

5. If Williams is not satisfied that Bain has acted, or intends to act, in a manner that will address his concerns, he shall in no way be restricted from bringing his concerns to the attention of an appropriate third party outside of Bain, and Williams shall not be deemed to be in breach of his confidentiality obligations to Bain in such an event.

6. Bain further agrees that in the event of a situation arising under Section 5 above, it shall not assert any claim of legal privilege to prevent Williams from bringing his concerns to the attention of an appropriate third party.

7. The initial term of the independent contractor agreement to be entered into between Williams and Bain shall be until December 31, 2018 (the "Initial Term"). The independent contractor agreement may be extended beyond the Initial Term by mutual consent.

8. Williams shall be paid a per diem of ZAR 60,000 for his duties as Interim Chairman of Bain.

9. Williams and Bain shall enter into a definitive independent contractor agreement as soon as practicable, reflecting the terms set forth in this Letter of Intent.

BAIN & COMPANY SOUTH AFRICA, INC.

By: _____
Tiaan Moolman

MR. ATHOL WILLIAMS

_____

ANNEXURE "AW9"

AW9

atholwilliams@hotmail.com

From: Min, Stuart <Stuart.Min@Bain.com>
Sent: 14 September 2018 16:08
To: Kennedy, Chris; Moolman, Tiaan; Williams, Athol
Cc: atholwilliams@hotmail.com; Hutchinson, Greg
Subject: RE: Formalising the Role of Athol
Attachments: Athol Williams Letter of Intent.docx; Athol Williams Agmt (7 Sept. 2018).docx; Athol Williams Agreement Annex A.docx

Attached is a draft Advisor Agreement for Athol, hopefully reflecting the terms of the Letter of Intent already signed (copy attached for convenience) as well as incorporating the Terms of Reference that I believe were prepared by Athol and Tiaan. A couple of things:

1. I have back-dated the Agreement to 7 September 2018, which is the date of the Letter of Intent and the date on which Athol actually began to provide services to Bain.
2. The actual two page Agreement and the attached Independent Advisor Terms ("IA Terms") are standard form documents. The IA Terms in particular contain a lot of the detailed legal "boilerplate" required for any contractor agreement. I removed some of the standard terms that I don't think are applicable to this situation (e.g., the advisor indemnifying Bain, background checks), and then as an overall precaution at the very end of the two page main Agreement I added language that in the event of any conflict between the main Agreement and the detailed IA Terms, the main Agreement would govern.
3. The details about raising any concerns with Tiaan first, then being able to go to the Commission without Bain asserting confidentiality or legal privilege, etc. have been added to the Terms of Reference, which should be attached as Annex A to the main Agreement and the IA Terms.

Hope that all makes sense. Please let me know if you have any questions or comments on the draft documents.

Best,
Stuart

From: Kennedy, Chris
Sent: Thursday, September 13, 2018 8:46 AM
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Cc: atholwilliams@hotmail.com; Min, Stuart <Stuart.Min@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: Formalising the Role of Athol

Dear Tiaan

I'm just sitting with Athol and talking through the plan to pull together the deliverables requested by the judge. I think his role is very important in this in helping us keep perspective on the wider ethical issues and not allowing us to be dragged into the trenches of a formal legal argument. However, I think it is only fair to him that we take steps to formalize this role. As I discuss with him, I think that is as follows:

- **An adviser contract** – just something off the shelf for a usual Bain adviser with protections (I.e. what if he gets sued). I think we have an existing one that we can reuse.
- Some **thought-through terms of reference**. I don't have a view as to what these should look like beyond the assisting role he's helping me with – I'll let you discuss this with him.
- I also think we should agree who should be on the **oversight committee** and what it is overseeing. Even if we establish something provisional for now with a view to changing later as we move past the crisis response phase.

ANNEXURE "AW10"

AW10

Bain & Company Statement: SARS Commission of Inquiry - September 10

10 September 2018 - Bain & Company prides itself on helping our clients achieve sustainable results. Our work on the organization structure at SARS did not achieve this and we are deeply troubled by the pain suffered by employees of SARS and their families.

To understand what happened, we launched an independent investigation led by the global law firm Baker McKenzie. The investigation is focusing on understanding the facts relating to people, processes, and governance that resulted in us getting and accepting the work.

Our own internal review established that our engagement with SARS did not meet our standards for delivery of sustainable, positive results for our client. We do not want to benefit from work that was used to further a different agenda than was intended.

Bain & Company's global Board yesterday approved to set aside all of the R164M of fees plus interest, from our work with SARS. This money will be used either as prescribed by the Nugent Commission of Inquiry or – in the absence of such prescription – for the benefit of South Africa. In the latter instance, we will seek guidance from civil society, government, and business leaders on how these funds can best be used.

We continue to cooperate voluntarily with the Nugent Commission of Inquiry. Tiaan Moolman, a long serving member of the Bain partnership, will take over day to day operations of Bain South Africa to allow Vittorio Massone to focus his time on cooperating with the Commission. He remains a partner of Bain & Company.

To reinforce the independence of the investigation and Bain's commitment to addressing any new facts, we have established an oversight committee made up of senior global Bain partners and outside directors. Athol Williams, a Bain alumnus and a respected independent advisor, will chair this committee on an interim basis. He is a distinguished academic in the area of corporate responsibility, a corporate leader and lifelong social advocate. Bain's contract with Mr Williams calls for him to do what is right for South Africa, without restrictions.

Bain continues to be committed to our people, our clients and to South Africa. We are actively exploring additional ways to be part of the solution to creating prosperity in the country. We will be seeking guidance from multiple stakeholders in this process.

While external stakeholders and Bain leadership await the outcome of the independent investigation, we acknowledge that the desire for answers will continue to build. Please be patient with us as we take the necessary steps to answer questions raised

https://www.bain.com/de/offices/johannesburg/sars-statement-sep10/

Accessed 12 January 2020

ANNEXURE "AW11"

AWII

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 19 September 2018 12:01
To: Moolman, Tiaan; Hutchinson, Greg; Kennedy, Chris
Subject: Update from Athol

Dear Tiaan, Greg, Chris

Am sending a status update.

Overview

1. I've been engaged at Bain for 12 days
2. My sense is that there is a genuine general intent to uncover the truth of what transpired during Bain's engagement with SARS but this intention has not been fully executed (yet). Execution often lags intention because execution requires time and resources, however, my impression is that there are other factors that contribute to this lag:
    a. There is no internal commonly shared and supported "Bain view." It is apparent that the VM affidavit of 17 September 2018 does not represent the "Bain view"
    b. There are different scopes of truth, i.e. different views to what we are telling the truth about.
    c. There are possible kinks in the unity of the Bain SA leadership and senior staff which slows down progress.
3. Bain needs to satisfy itself that there is full disclosure as outlined below – my sense is that we have two strikes against us in the Commissioner's mind ...

The Commissioner

1. The Judge has made it very clear that he will not tolerate Bain withholding information. I have seen no evidence of information being withheld but this is no guarantee since I have not seen everything that Bain knows.
2. My impression is that Bain faces massive reputational risk if there is even the slightest hint in the Judge's mind that information is being withheld.
    a. Judge to me: "One more incident of withholding information, or obfuscation or evasion, and their [Bain] reputation will be in desperate trouble"
3. As we'd expect, the Commission has information beyond what Bain has supplied – which reinforces the need to develop the comprehensive Bain view and consider sharing that with the Judge:
    a. Judge to me: "... when these things get out to the public, one finds further information coming to the fore, and I am not sure Bain fully understands that"
4. Bain is not the ultimate target of the inquiry, the Commission wants those who really masterminded the state capture but my read is that the Judge feels Bain may be protecting the real villains:
    a. Judge to me: "if there is indeed rot elsewhere, then Bain has the choice of exposing it, or not complaining if it falls by default upon themselves."
5. So Bain has to answer: Have we declared everything we know about everything that transpired and all those internally and externally who were involved?

Nkandla

1. Whether or not VM went to Nkandla is a hot issue. Where he met JZ ought to matter less than what was discussed but it is worth ensuring that this is not something that creates a surprise. My concern stems from:

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a. A former Bain partner has told me that VM was at Nkandla
b. A journalist told me that she has a source who is a former Bain "Senior Manager" who says he/she was present at Nkandla with VM.

2. VM's affidavit states that he was not at Nkandla
3. I have no facts to defend or refute either view.

My role

1. Bain created an expectation (to the public and the Commission) of the role that I would play as chair of the oversight committee that had been created consisting of senior Bain partners and outside directors.
   a. Judge to me: "... the Commission is capable of calling upon you to disclose everything you see or hear in the position to which you have been appointed."
2. Bain has not fulfilled this expectation. This is problematic because my role was created as a powerful indication of transparency and display of intent to get to the full truth. Not fulfilling this role could potentially cast doubt on Bain's motives. It certainly has caused me concern because my presence could be considered farcical.
3. Notwithstanding a very productive discussion with GH on 18 September to scope out my role and move towards a contract, as of today I do not have a signed contract (other than a letter of intent) and no agreed upon terms of reference. I have no assurance from Bain of protection should I suffer legal liability or costs which may stem from my involvement, etc.
4. This situation leaves me exposed and presents a major exposure for Bain. By my measure this is poor governance, which ironically, is part of my hypothesis of what led to the situation we're in. Again, intention hasn't been matched with execution.
5. I feel let down by this uncertainty (not directed to any person at Bain) because I stepped in to help with very little to gain; the least I would have expected is urgency around gaining clarity on expectations and mitigation of my risk. Hopefully by the end of next week this gap will be closed.

Best regards

Athol

ANNEXURE "AW12"

AW12

AGREEMENT

7 September 2018

Athol Williams
Suite 271, Private Bag X1005
Claremont, Cape Town, 7735
South Africa

Dear Athol:

We are thankful that you have agreed to provide independent oversight of Bain's investigations into its work at SARS. This Service Agreement (the "Agreement") is effective as of September 7, 2018, by and between Bain and Athol Williams, an individual with a place of business as set forth above ("you"). This Agreement describes how Bain and/or its affiliates may engage you to provide oversight of the investigations (the "Services") and how you will provide the Services.

Agreed:

TERM

The Services will be provided during the period from September 7, 2018 through December 31, 2018 unless we mutually agree to extend that period or we end our relationship earlier as permitted by the IA Terms (defined below). We refer to the actual term of this Agreement as the "Term".

SCOPE

The scope of the Services to be provided by you is set forth in the Terms of Reference attached to this Agreement as Annex A.

WORKPLAN AND RESOURCES

Bain shall initially require you to provide the Services for at least three (3) days per week. The parties understand and acknowledge that this time commitment may increase or decrease, within reasonable limits, depending on the nature of specific Services that Bain may ask you to perform, as well as your external obligations.

Bain agrees to make available the following resources to you during the Term as Bain deems necessary to provide the Services and protect the confidentiality of relevant information: (i) limited access to office space such as a visiting office, conference room or similar space for use when you are present at Bain's office; (ii) limited administrative support from the general assistant pool as needed when you are present at Bain's office; and (iii) additional support and resources required to undertake the Services as approved by the Office Head of Bain & Company South Africa.

FEES, EXPENSES, INVOICING AND PAYMENT

In exchange for the Services, Bain will pay you on the following basis. These fees may, at Bain's discretion, be paid by an affiliate of Bain for whom you perform Services.

Fees

Bain agrees to pay you fees at the rate of ZAR 60,000 per day for all Services requested by Bain.

Expenses

Bain will reimburse you for all reasonable and actual out-of-pocket expenses ("Expenses") incurred at Bain's request in furtherance of the Services provided that you follow Bain's travel and expense policies, which we will provide to you on request.

Invoicing and Payment

You will issue monthly invoices to Bain following the end of each month during the Term for fees for, and reimbursable Expenses, if applicable, incurred during, the prior month.

Your invoices should be accompanied by receipts or other documentation supporting any Expenses reflected on the invoice.

We will pay approved invoices within 45 days of receipt.

NON-SOLICITATION

During the Term and for one (1) year thereafter, you will not solicit or recruit any employee or consultant of Bain to directly or indirectly work for or with you or to otherwise encourage an employee or consultant of Bain to terminate his or her employment or consultancy with Bain.

INDEPENDENT ADVISOR TERMS

In addition to this Agreement, the Services will be governed by the Independent Advisor Terms attached hereto (the "IA Terms"); provided, however that in the event of any conflict between this Agreement and the IA Terms, the terms of this Agreement shall govern.

****

If these terms meet with your approval, please have one copy of this Agreement signed and returned to me.

BAIN & COMPANY SOUTH AFRICA, INC.

By:
Name:
Title:

ATHOL WILLIAMS

ANNEX A-Athol Williams Advisor Agreement

Terms of Reference

CONTEXT

- Bain is cooperating with the Nugent Commission of Inquiry (the "Commission") to understand the facts of Bain's engagement with SARS in 2014 and 2015.
- To reinforce Bain's commitment to transparency to the Commission and to support Bain's cooperation with the Commission, Bain has secured the services of Athol Williams, a Bain alumnus and a respected independent advisor.
- Bain's intent in securing Mr Williams's services if that he does what is right for South Africa, without restrictions.
- Mr Williams's role is to provide independent oversight of the external and internal investigations that Bain are conducting.

SCOPE

Included

- The scope of the Nugent Commission of Inquiry.

Excluded

- All other Bain clients
- All other Bain contracts
- All aspects of Bain operations and finance

unless any of these relate to the scope of the Commission's inquiry.

TENURE

- Bain procures Mr Williams's services until 31 December 2018 and will extend this engagement if mutually agreed upon.

OPERATING PROCEDURES

- Mr Williams will have full access to the interim and final reports of the external and internal investigations, and will have weekly meetings with the leads of these investigations
- Mr Williams will have access to all communications between Bain and the Commission
- Mr Williams will attend all meetings that relate to Bain's preparation for meetings with the Commission and all meetings that relate to Bain's preparation for submissions to the Commission
- Mr Williams will review all documentary submissions to the Commission before submission

OUTPUTS

- While engaged, should Mr Williams at any time determine that Bain is not behaving transparently with the Commission, Mr Williams will:
  - First raise his concerns with the Bain South Africa Interim Office Head, Mr Tiaan Moolman, and seek resolution in good faith
  - If resolution cannot be reached, Mr Williams has the liberty to share his concerns with the Commission
- Mr Williams and the Commission are free to communicate directly on matters relating to the Commission's investigation, including any concerns that could not be resolved with Mr Moolman. With respect to any such communication:
  - Bain agrees that it shall not deem any such communication by Mr Williams with the Commission to be a breach of Mr Williams' confidentiality obligations to Bain
  - Bain agrees that is shall not seek to assert a claim of legal privilege to prevent Mr Williams from bringing his concerns to the attention of the Commission
- At the culmination of Mr Williams's services, he will produce a brief report of his assessment of Bain's fulfilment of the intent of his engagement with Bain.

INDEPENDENT ADVISOR TERMS

These Independent Advisor Terms of Service (the "IA Terms") are agreed by and between **BAIN & COMPANY SOUTH AFRICA, INC.** (together with all entities controlled by, controlling or under common control with it, referred to herein as "Bain") and **ATHOL WILLIAMS** ("you") and effective as of 7 September 2018.

The purpose of the IA Terms is to document the terms and conditions under which you will: (i) maintain the security of any information provided to you by Bain or Bain's clients, and (ii) provide any services for Bain ("Services"). Exhibit A and Exhibit B hereto may be amended by Bain from time to time by advance written notice to you. If you are an entity, you agree that your obligations under these terms shall also be obligations of your employees and you shall be responsible for ensuring compliance by your employees with these terms and obtaining their written agreement to these terms to the extent reasonably required by Bain.

1. Standards for Performance; No Conflicts. We expect, and you agree, that:
   a. you will provide the Services in a diligent and professional manner and in accordance with the highest industry and ethical standards; and
   b. you will at all times comply with all applicable laws and regulations; and
   c. you will not engage in any deceptive, misleading, unlawful, illegal or unethical practice; and
   d. you will not make any false or misleading representations regarding Bain, the Services or any Bain clients; and
   e. your provision of Services will not violate any obligation you may have to any party, including any current or prior employer or client.

You shall notify Bain of any interest in, or relationship with, any person or entity (including without limitation any entity listed on Exhibit B hereto) which could be considered to create a conflict of interest with regard to your performance of Services, in advance of performing such Services.

In connection with your provision of Services, you will not disclose or make use of any information in violation of applicable law or the rights of any third party. This includes, without limitation, not disclosing to Bain, the Bain client or any third party, any material non-public information regarding any public company or any trade secrets or confidential or proprietary information regarding any of your current or past employers or clients.

2. Relationship of the Parties.

Independent Contractor Status. You are an independent contractor and not an employee or agent of Bain. At no time will you act as an agent of Bain except as expressly set forth in these IA Terms. As an independent contractor, neither you nor any of your employees will be covered at any time by employee benefit programs of Bain.

Bain is not responsible for any tax liability, social insurance obligations or withholdings or contributions due in respect of amounts paid to you under these IA Terms or with respect to your employees. If withholding tax is required to be paid by applicable law, Bain will pay such withholding tax to the relevant tax authorities and will deduct such amount(s) from fees/amounts payable to you.

No Subcontractors. All Services will be performed by you.

3. Marketing and Disclosure. You will not reference Bain, Bain's clients or the Services in any of your marketing materials, on your website or in any other public disclosure. Except as expressly permitted by a Service Agreement or as strictly necessary in order to perform the Services, you will not disclose to any third party

Bain's name or any material resulting from the Services, without Bain's prior written consent.

You acknowledge and agree that Bain may include your name, background and other personal details in its database of external advisors for internal reference and use by personnel of Bain and its affiliates throughout the world. Such database may be maintained by a third party service provider.

4. Insurance. Except as provided in these IA Terms, Bain will neither bear any responsibility nor will be liable for any injuries or damages to any person (including to you) or property arising out of or in connection with the Services. In providing the Services to Bain, Bain will use commercially reasonable efforts to include you as an "Additional Insured" under Bain's professional liability insurance policy (as such term is defined therein).

5. Confidentiality and Use of Bain's Electronic Systems. The term "Confidential Information" means all information disclosed, directly or indirectly to you, by Bain, any Bain client or any party acting on behalf of Bain or its client in any manner, whether orally, electronically or otherwise, regarding Bain or Bain's clients' business, including, without limitation, any data or information regarding Bain or Bain's clients' respective customers, clients, management, employees and suppliers, products, services, pricing, proprietary information, product and service information, planning information, marketing strategies, strategic plans, financial or operational data, customer/client transactions, and other past, present or future business activities.

Confidential Information does not include information that: (i) is known to you prior to disclosure by Bain; (ii) is available to the general public without fault of yours; (iii) is lawfully obtained by you from a third party; or (iv) is independently developed by you without use or reference to Confidential Information, in each case as evidenced by written records.

You agree to hold Confidential Information in strict confidence and will exercise best efforts to protect the Confidential Information from unauthorized use or disclosure. Without the prior written consent of Bain, you shall not disclose any Confidential Information to any third party or use the Confidential Information for any purpose other than to provide the Services.

If you are an entity, you shall be entitled to disclose and discuss the Confidential Information only with those employees of yours who need to know such Confidential Information to perform any Services, provided, that such employees shall be bound by obligations of confidentiality no less restrictive than those set forth herein and provided further, that you shall be responsible for any breach of the IA Terms by your employees.

If requested by Bain, you will agree in writing to be bound by the terms of any confidentiality agreement entered into between Bain and any entity covering Confidential Information disclosed to you

You shall immediately notify Bain of any unauthorized disclosure or use of Confidential Information by you or your employee(s) and shall cooperate with Bain at your expense to prevent further disclosure and mitigate any resulting harm.

6. Compliance Obligations. You understand and agree to comply with the Bain policies appended hereto as Exhibit A.

Compliance with Policies and Procedures Required by Bain's Client. If required by Bain's client for whom you are providing Services you shall agree to any additional terms and conditions as may be required in connection with Bain's client obligations, provided that these are not more onerous than required of Bain's employees serving such client. Any such additional terms and conditions will be communicated to you in writing.

7. Indemnification; Limitation of Liability. Bain will indemnify and hold you harmless from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any claim, or any civil or criminal action or other proceeding of

whatever nature brought against you by reason of your having provided the Services to Bain, assuming that you have acted in good faith and in the reasonable belief that your actions were part of the Services.

8. Termination; Effect of Termination; Survival. Bain may terminate your Services and/or this Agreement with immediate effect at any time upon written notice to you. You may terminate the Services and/or this Agreement in the event of a material breach by Bain immediately upon written notice to Bain.

Upon any such termination, you will promptly return all copies of Confidential Information. You will also promptly furnish to Bain all work in progress or portions thereof, including all incomplete work. Should Bain terminate any Services without cause, you will be paid your agreed fees and expenses through the effective date of termination.

Sections 3 through 9 hereof shall survive any termination of the Services or the Agreement.

9. Miscellaneous.

Assignment; Third Party Beneficiaries. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. This Agreement exists solely for the benefit of Bain and you, and our respective indemnified parties, and no other party will have or acquire any right hereunder

Waiver and Amendment. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

Governing Law. The IA Terms will be governed by and construed under the laws of the Republic of South Africa without reference to any conflict of law rule or provision of the Republic of South Africa or any other jurisdiction.

Equitable Relief. You agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that Bain shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which Bain may be entitled at law or in equity.

Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, the parties hereto have executed these Independent Advisor Terms as of the day and year first above written.

BAIN & COMPANY SOUTH AFRICA, INC.

By:
Name:
Title:

ATHOL WILLIAMS

EXHIBIT A

External Advisor Policy Certification Requirements

You acknowledge and agree that you will comply with the following Bain policies:

Anti-Bribery and Corruption Policy
You are prohibited from offering or giving a bribe to, or soliciting or accepting a bribe from, any person or company (including any public official or body or private person or company), from condoning any activity constituting bribery and from being a party to any corrupt behavior.

Stock Purchase and Insider Trading Policy
You are prohibited from trading in the securities of any company, or tipping others to trade, on the basis of material non-public information about that company. You are prohibited from trading in the securities of any company whom you have supported or received information from during the prior three (3) months in your capacity as an advisor to Bain.

Third Party Communications Policy
Bain's work product may not be disclosed to any external party other than the Bain client for whom the work was performed, without Bain's explicit consent.

Records Management Policy
Information and materials relating to your service as an advisor to Bain must be destroyed or returned to Bain upon the completion of your involvement as a Bain advisor with the Bain case to which the information or materials relate.

Harassment and Discrimination
Bain does not tolerate discrimination or harassment in the workplace. As a condition of providing services to Bain, you agree that you will not engage in any discrimination or harassing conduct (of any kind) in your employment practices or towards anyone in the workplace (including, but not limited to, any Bain employees). Discrimination or harassment on the basis of race, color, religion, national origin, citizenship, ancestry, gender (including pregnancy), gender identity, age, disability, marital status, sexual orientation, or other protected characteristic or status is strictly prohibited.

EXHIBIT B
Bain Competitors*

A.T. Kearney
Accenture
Alix Partners
Strategy & (formerly Booz & Company, Inc.)
The Boston Consulting Group
CapGemini
Deloitte Consulting (including Monitor Deloitte)
Ernst & Young Consulting/Advisory Services
IBM Consulting
KPMG Consulting
LEK Partnership
McKinsey & Company
Oliver Wyman Group
PricewaterhouseCoopers
The Parthenon Group
Roland Berger Strategy Consultants

*includes all affiliates, successors, and assigns of the companies listed in this schedule

ANNEXURE "AW13"

AW13

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

DAY 13 | 25 SEPTEMBER 2018 | PAGES 2127 - 2271

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street, Brooklyn, Pretoria

© REALTIME TRANSCRIPTIONS

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E-mail: realtime@mweb.co.za
Web Address: http://www.realtimesa.co.za

NCRA
Guardians of the Record

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made, Sir.
COMMISSIONER: But Bain is setting the conditions.
MR MIN: We will take into account all the factors, once we have the facts.
COMMISSIONER: I understand you will. My question is Bain will decide whether the conditions are suitable to it. Is that correct?
MR MIN: Ultimately yes, Sir.
COMMISSIONER: Now if you go to the 1, 2, 3, 4, 5, 6th paragraph. To reinforce the independence of the investigation we have established an oversight committee made of senior global Bain partners, Athol Williams, a Bain alumnus and a respected independent advisor will chair this committee.
MR MIN: Yes, Sir.
COMMISSIONER: Now I understand from Mr Williams there has not been such a committee.
MR MIN: We are in the process of putting it together.
COMMISSIONER: But you've finished your investigation haven't you?
MR MIN: No, Sir, not our internal investigation.
COMMISSIONER: When are you going to –

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but you've been very busy with this investigation.
MR MIN: Yes, Sir –
COMMISSIONER: Not under the oversight of a committee because it hasn't yet been established.
MR MIN: Correct.
COMMISSIONER: But that's also correct that you have established an oversight committee, in fact you haven't established an oversight committee. Is that correct?
MR MIN: We are in the process of establishing it.
COMMISSIONER: Would you just answer the question?
MR MIN: Yes, Sir.
COMMISSIONER: Is it correct that you have not established an oversight committee?
MR MIN: As of today that is correct, Sir.
COMMISSIONER: Just a question, third paragraph "We have learnt in the first week of the investigation that our engagement with SARS fell short of our operating principles." In what way did it fall short of your operating principles?
MR MIN: Two things on that, Sir, first of all this version of the press release was actually an

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incorrect version.
COMMISSIONER: Did it go out to the press?
MR MIN: Excuse me.
COMMISSIONER: Did it go out to the press?
MR MIN: Yes this did go out, this did go out, but there was an internal mistake that we had made and I believe that you have been sent the version of September 10 which was the version that was actually approved for issuance by Bain & Company.
COMMISSIONER: But the 9th of September one went out.
MR MIN: It did, it did.
COMMISSIONER: And that was incorrect.
MR MIN: It did and we issued a clarification once we sent out the correct press release.
COMMISSIONER: Perhaps I've missed the one of the 10th then. Well I'll look at that and we'll come back to that.
MR MIN: Because it does correct actually that language in particular.
COMMISSIONER: Yes we'll come back to that.
MR MIN: With respect to your specific

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question of the operating principles this was a reference to our admission statement where our first principle is we create higher economic value for our clients. That is our guiding mission for Bain & Company and under the circumstances as we said in the same release we did not in fact generate sustainable results. And so we felt we did not actually that very first key principle of our operating principles.
COMMISSIONER: Well we'll come to that when I've seen the other press statement. Now you wrote me then a long letter, page 16, 17, 18, 19. Now if don't mind I'm not going to go through all this because you and I can spend a morning dealing with this letter by the way. But you do say in the second paragraph for example, you see there are lots of paragraphs marked. "I regret if you interpreted the statement submitted by Mr Massone as a failure to cooperate. We have provided several written submissions and Mr Massone testified before the Commission on a voluntary basis." What you omit there though is that he didn't make full disclosure on a voluntary basis. There was nothing in any of the submissions that were made before his evidence to tell us that he had been seeing Mr Moyane, correct?
MR MIN: Correct, Sir.
[09:49] COMMISSIONER: So what he gave us

ANNEXURE "AW14"

AW14

Baker McKenzie.

Memorandum

PRIVILEGED AND CONFIDENTIAL

Date: September 25, 2018

To: Bain & Company

From: Baker McKenzie

Re: **Bain South Africa Investigation Plan**

1. Background

1.1 This plan governs the investigation of Bain & Company South Africa Inc.'s (**Bain**) contracts with the South African Revenue Service (**SARS**), which is to be conducted by Baker McKenzie (the **Investigation**). Bain commenced the Investigation in response to questions raised at the Commission of Inquiry into Tax Administration and Governance by SARS (also known as the Nugent Commission of Inquiry) (**Commission**), which is probing corporate governance and revenue collection at SARS. The Investigation is being led by Baker & McKenzie.

1.2 Bain conducted an initial internal investigation in the week immediately following when the allegations below were first made by the Commission on 30 and 31 August 2018. BM supported Bain in this internal investigation. In addition, BM also subsequently assisted Bain and Tabacks (legal counsel for Massone) by conducting the document review process that was necessary in order to provide documents requested by the Commission. BM performed this role at the request of Bain because they had access to the relevant documentation and because of the subject matter overlap with the Investigation.

1.3 The Investigation will address a number of questions that have arisen to date from the testimonies at the Commission:

(a) Whether Bain, through Vittorio Massone (**Massone**), Bain's former managing partner in South Africa, provided Tom Moyane (**Moyane**) with a free technical analysis and related CEO coaching of SARS to assist him in securing his appointment as the Commissioner of SARS as a *quid pro quo* of Moyane directing future opportunities at SARS to Bain;

(b) In providing these services to Moyane, whether Bain stepped beyond the services it would typically provide to a CEO who is being "CEO coached" in a material way;

(c) To the extent that Moyane had a pre-determined plan to take control of SARS (as has subsequently been alleged), the extent to which individuals at Bain were aware of this pre-determined plan and whether this awareness could reasonably be attributed to "mere" CEO coaching;

(d) Whether Bain had prior knowledge of the tender as well as the tender requirements for the review of the SARS operating model (RFP 26/2014), which prior knowledge afforded it a competitive advantage in the process for RFP 26/2014; and

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(e) Whether Bain underquoted the first phase of its work for SARS and misdiagnosed SARS, a high functioning institution, as "broken" in order to implement an expensive, unnecessary restructuring process.

1.4 Additionally, the Investigation will review the relationship between Bain and **Ambrobrite (Pty) Ltd** (**Ambrobrite**), a third party that allegedly helped Bain secure the SARS contracts. The Investigation will initially review Bain's work for entities that Ambrobrite and its principals introduced to Bain, and expand to other public sector work, as necessary.

1.5 Finally, the Investigation will examine allegations that individuals within SARS used Bain to achieve a goal other than the contracted-for structural improvement of SARS. As part of this, the Investigation will consider whether there is any contemporaneous evidence that members of the SARS teams raised concerns with senior individuals at Bain regarding the work at SARS (this is the allegation made by the Commission that Bain should have walked away).

2. Scope of Investigation

2.1 The review period is 2012 to 2017 (**Review Period**) and will focus on the following:

(a) All SARS procurement processes in which Bain participated and all contracts that Bain entered into with SARS during the Review Period, including the three-phased SARS project at the focus of the Commission's inquiry (**SARS Restructuring Project**):

(i) Pre-contractual "CEO coaching" sessions with Moyane from October 2013 to August 2014;

(ii) Consultancy Services to Review the SARS Operating Model (January 2015 to March 2015) (**Phase 1**);

(iii) Continuation of the Review of the SARS Operating Model, and design and implementation of a revised SARS Operating Model (April 2015 to June 2016) (**Phase 2**); and

(iv) Continuation of the Implementation of Operating Model Review and Implementation for Custom & Excise (September 2016 to March 2017) (**Phase 3**).

(b) Bain's interactions, communications, and dealings with government officials, related associates, and third party intermediaries in connection with the contracts referenced in section 2.1(a) above, including:

(i) former President of South Africa Jacob Zuma;

(ii) suspended Commissioner of SARS, Tom Moyane;

(iii) suspended COO of SARS, Jonas Makwakwa;

(iv) CEO of Telkom, Sipho Maseko;

(v) Ambrobrite co-owner and director, Duma Ndlovo; and

(vi) Ambrobrite co-founder, Mandla Kheswa.

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(c) Whether Bain improperly supported Moyane, prior to his appointment as Commissioner of SARS, in exchange for future work from SARS and/or with knowledge of Moyane's intention, following his appoint as SARS Commissioner, to appoint a consultancy firm to review the SARS operating model.

(d) Whether anything of value was improperly provided to any government official, directly or through a third party, in connection with the business under review.

(e) Whether Bain had prior knowledge of the tender and/or tender requirements for the review of the SARS operating model (RFP 26/2014).

(f) Agreements entered into between Bain and any third parties (such as consultants, agents, sales representatives, brokers, vendors, suppliers, commission payees, subcontractors, joint ventures, or other business affiliates or their representatives), which relates directly or indirectly to Bain's efforts to obtain the contracts referenced in section 2.1(a), above.

(g) The relationship between Massone and former President Jacob Zuma and any other government official, with a particular focus on the evidence provided to the Commission.

(h) Bain's work for public sector clients that Ambrobrite and its principals introduced to Bain.

3. Investigation Methodology

3.1 Initial steps undertaken/underway

(a) As part of the preliminary internal investigation described above, Baker McKenzie and Bain conducted preliminary interviews and reviewed initial project and accounting data for certain custodians and preliminarily reviewed certain limited project documents.

3.2 Securing and Organizing Evidence

(a) Mailbox holds have already been put in place for relevant active users, including Massone, Bour, Clearkin and Franzen.

(b) Litigation hold notices will be issued to relevant employees of Bain directing that all information and documents be retained.

(c) The electronic devices, including laptops and mobile devices, of relevant custodians will be secured (**Secured Devices**). Steps will be taken to preserve the confidentiality of all documents collected during the course of the Investigation by keeping them in a secure location and indicating that the documents are confidential.

(d) A "whistleblower" e-mail address will be established whereby people within Bain can reach out to BM and provide information to the BM investigating team on an anonymous basis. This will be publicized within Bain.

(e) The following documents will be collected:

(i) any documents or information provided by Bain to Moyane prior to and in anticipation of Moyane's appointment at SARS as the Commissioner;

(ii) Bain's tender submission for Phase 1 in December 2014;

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(iii) any documents submitted to, and correspondence exchanged with, SARS in support Bain & Company's bid for the Phase 2 and 3 contracts;

(iv) any agreements entered into between SARS and Bain between 2012 and 2017, including the Phase 1, 2 and 3 agreements;

(v) the Phase 1 diagnostic prepared by Bain in 2015, including any other work product relating to Phase 1, 2 and 3;

(vi) the due diligence and other relevant policies related to Bain's relationship with Ambrobrite;

(vii) any agreements entered into between Bain and Ambrobrite;

(viii) accounting detail on payments made to Ambrobrite;

(ix) any work product, including documents and presentations, prepared, received and/or utilised during meetings with Moyane and/or his associates;

(x) any work product, including documents and presentations, prepared, received and/or utilised during meetings with Ambrobrite and/or its associates;

(xi) any work product, including documents and presentations, prepared, received and/or utilised during meetings with Jacob Zuma and/or his associates;

(xii) any agreements entered into between Bain and any South African organ of state, government department, or State Owned Entity between 2012 and 2017;

(xiii) documents related to Bain's compliance program, including compliance policies and procedures; and

(xiv) employment policies, especially electronic device policies, as well as the employment contracts with relevant employees.

(f) Email and Document Review

(i) The data on the Secured Devices will be decrypted (if necessary), imaged, and uploaded onto the Relativity e-discovery platform, where possible.

(ii) The data will be filtered using key words to conduct a targeted search for relevant documents, expediting the review as well as preparation for additional interviews with Bain employees and final reporting.

3.3 Interviews

(a) Interviews of relevant individuals will be conducted in parallel with the document review process.

(b) Interviews will be conducted in accordance with the following procedures:

(i) Employees will be given Upjohn warnings and advised to maintain confidentiality; and

(ii) At least two Baker McKenzie attorneys will be present for each interview.

3.4 Third Party Audits

Baker McKenzie.

(a) As appropriate, Baker McKenzie will conduct interviews of key third parties, in accordance with the procedures set forth above. The following third parties have been identified to date:

(i) Duma Ndlovu (Ambrobrite)

(ii) Mandla Kheswa (Ambrobrite)

(b) To the extent Bain has audit rights with respect to key third-party service providers and promoters, it will consider exercising such rights, as appropriate.

3.5 Forensic Accounting Review

During the course of the review, Baker McKenzie, together with Bain, will determine whether forensic review of Bain's relevant books and records is needed to complete a comprehensive review.

3.6 Reporting of Findings and Independence

The findings will be reported on an ongoing basis to a Committee with assigned oversight of this Investigation. The chair of this Committee is Athol Williams. Chris Kennedy shall also sit on this Committee.

To ensure that the Investigation and the resulting reporting of findings be fully transparent and independent, and having been conducted at arm's length, the following measures shall be implemented:

(a) Final reporting of findings shall be provided to Athol Williams and Bain simultaneously.

(b) Athol Williams will be included on non-privileged correspondence between Bain and Baker McKenzie in respect of the Investigation.

(c) Whilst the Investigation is ongoing, Athol Williams shall be invited to each of the check in meetings with Bain.

(d) As well as the scheduled check-in meetings, Athol Williams shall be entitled to request an independent check-in meeting or update from Baker McKenzie at any time.

In the event that Baker McKenzie is requested by Bain to assist with any further document review exercise that is being conducted in order to assist Bain in providing documents to the Commission, Bain and Athol Williams shall meet and discuss what additional measures (if any) are required in order to ensure the independent nature of the Investigation is not compromised.

3.7 Clarification of roles

Bain is Baker McKenzie's client. Athol Williams is an adviser to Bain for purposes of ensuring the independence of the investigation.

ANNEXURE "AW15"

AW15b

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 26 September 2018 09:17
To: Kennedy, Chris
Subject: RE: Investigation Plan

Hi Chris,

5 points:

1. The attachment describes an "internal investigation" ... shouldn't this say "external"?
2. The investigation should ultimately talk to Bain's involvement or not, in the big scheme and the small scheme – I'm not sure this is captured
3. Who is BM's client? If it is Bain, then how does my role as independent overseer interact with their client?
4. I would like to submit a report to the Commission on 22 October when Bain testifies – how does this fit into the scheduler for BM?
5. The advocate who visited us at the office (Tiaan's uncle) indicated that BM might be seen externally to be "contaminated" as an independent investigator, given that they've been involved with Bain already. Are you comfortable that this is not the case and that this might not undermine the results of the investigation?
6. The attachment describes BM's external investigation, but my understanding is that there is also an internal investigation that is going on – or is this incorrect?

I have met Darryl from BM, so probably no need for a further introduction.

Regards
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 25 September 2018 22:28
To: Athol Williams <atholwilliams@hotmail.com>
Subject: FW: Investigation Plan

Hi Athol

See below. As it happens, I'd like to take you to meet Baker & McKenzie tomorrow afternoon. You got time?

Thanks

Chris

From: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Date: Tuesday, 25 Sep 2018, 9:26 pm
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Demas, Reagan R <reagan.demas@bakermckenzie.com>, Steyn, Wian <Wian.Steyn@bakermckenzie.com>, Klinger, Jane C <jane.klinger@bakermckenzie.com>
Subject: Investigation Plan

Stuart, Chris,

426

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 27 September 2018 15:25
To: Kennedy, Chris
Cc: Min, Stuart
Subject: RE: Investigation Plan

Hi Chris,

Have you managed to finalise the BM terms of reference?

What is the timetable for updates from them?

Thanks for your comments below – please see my responses.

Stuart, per the discussion with you, John and Tiaan yesterday – any update?

Many thanks
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 26 September 2018 14:46
To: Athol Williams <atholwilliams@hotmail.com>
Cc: Min, Stuart <Stuart.Min@Bain.com>
Subject: RE: Investigation Plan

Hi Athol

My thoughts below. Stuart and I are just finalizing some changes to the document and then we'll send to you for review.

Kind regards

Chris

Chris Kennedy
Senior Counsel
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany
tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Wednesday, September 26, 2018 9:17 AM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Investigation Plan

Hi Chris,

5 points:

1. The attachment describes an "internal investigation" … shouldn't this say "external"? **I've changed references to the BM investigation to the defined term "Investigation". Where we talk about the internal investigation we did, this is "investigation" – little i.** As long as it is clearly independent
2. The investigation should ultimately talk to Bain's involvement or not, in the big scheme and the small scheme – I'm not sure this is captured **I agree. I have tweaked the scope to cover these wider**

issues but I still think we can make it better. Let me know your thoughts. I do want to balance this with making the Investigation unnecessarily broadly scoped, as that will just add too much time and we would like it done asap. Will provide thoughts once I see the revised version

3. Who is BM's client? If it is Bain, then how does my role as independent overseer interact with their client? **See clause 3.7 for a clarification. Essentially, Bain is the client but as an advisor to Bain you have full access and rights to updates, briefing etc. I've also added a mechanism whereby you can give them instructions.** Will provide thoughts once I see the revised version
4. I would like to submit a report to the Commission on 22 October when Bain testifies – how does this fit into the scheduler for BM? **No idea – we'll have to ask them. I've already asked them what is possible by 22 Oct – not heard back yet. My guess is they won't be ready on all of it, but a preliminary deliverable will be possible.** If not completed by 22 October I can't see it being of much use to the Commission.
5. The advocate who visited us at the office (Tiaan's uncle) indicated that BM might be seen externally to be "contaminated" as an independent investigator, given that they've been involved with Bain already. Are you comfortable that this is not the case and that this might not undermine the results of the investigation? **Yes, I'm comfortable. I've clarified in the document that BM assisted us on some related workstreams but that these worstreams are a separate matter and are not part of the Investigation. BM is a sophisticated independent law firm and I've included in the terms that the Investigation must be at arm's length. We have WW advising us as regards how we interact with the Commission so there should be no conflict on that, whether real or apparent. I'm sure the Commission will accept this structure but if they (or you) have concerns then we can address them.** Thanks
6. The attachment describes BM's external investigation, but my understanding is that there is also an internal investigation that is going on – or is this incorrect? **Kind of. To the extent we do an internal investigation, it will be more ad hoc. For instance, the matters raised by JB last night and anything required for us to get ready for 22 October. Perhaps also the discussions with partners you said you would like to have, to the extent that Bain is involved.** I will want to ultimately comment on whether Bain has left no stone unturned to find the truth about the big scheme, small scheme or any other scheme that Bain might have been involved in. If you think BM's investigation will do that then I will restrict my oversight to their work.

I have met Darryl from BM, so probably no need for a further introduction.

Regards
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 25 September 2018 22:28
To: Athol Williams <atholwilliams@hotmail.com>
Subject: FW: Investigation Plan

Hi Athol

See below. As it happens, I'd like to take you to meet Baker & McKenzie tomorrow afternoon. You got time?

Thanks

Chris

From: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Date: Tuesday, 25 Sep 2018, 9:26 pm
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>

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Cc: Demas, Reagan R <reagan.demas@bakermckenzie.com>, Steyn, Wian <Wian.Steyn@bakermckenzie.com>, Klinger, Jane C <jane.klinger@bakermckenzie.com>
Subject: Investigation Plan

Stuart, Chris,

Following our earlier discussions, please now see attached our updated Investigation Plan for your consideration and further comment.

You will note that two sections are highlighted in the plan. The first relates to the issuing of the hold notice. All individuals listed as potentially relevant in the plan, or in the list of custodians sent to you for consideration by Wian earlier, should be part of the hold. In the event that this is finalised before we finalise the plan, we can consider appending that list. The second relates to the reporting structure regarding our findings. This will need to be finalised once the appropriate structure is in place.

Thanks

Darryl Bernstein
Partner
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Baker McKenzie.

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ANNEXURE "AW16"

AW416

atholwilliams@hotmail.com

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: 02 October 2018 18:36
To: Min, Stuart; atholwilliams@hotmail.com; Bernstein, Darryl; Kennedy, Chris
Subject: RE: Investigation plan
Attachments: Baker - Bain South Africa Investigation Plan 10.2.docx

I have incorporated Stuart's revisions in the attached clean version. Let's plan to finalize on tomorrow's call. On the call we will also share the plan with respect to prioritizing email and evidence review over the next two weeks in advance of the Commission testimony. Best regards, Reagan

From: Min, Stuart [mailto:Stuart.Min@Bain.com]
Sent: Monday, October 01, 2018 5:57 PM
To: Demas, Reagan R; Athol Williams; Bernstein, Darryl; Kennedy, Chris
Subject: [EXTERNAL] FW: Investigation plan

I do think Athol raises a fair point that the Commission has not made allegations against Bain, but we are investigating questions which have arisen out of the hearings to date. I have made minor revisions to Section 1.3 accordingly.

Stuart

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: Monday, October 1, 2018 4:41 PM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>; atholwilliams@hotmail.com; Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>; Min, Stuart <Stuart.Min@Bain.com>
Subject: Investigation plan

I have attached a clean final version of the plan for final comment. Let us know if there are additional changes/suggestions, otherwise would be good to finalize it to have available when DOJ requests it. Thanks, Reagan

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From: Demas, Reagan R
Sent: Sunday, September 30, 2018 10:08 PM
To: Kennedy, Chris (Chris.Kennedy@Bain.com) (Chris.Kennedy@Bain.com); atholwilliams@hotmail.com; Bernstein, Darryl; Min, Stuart (Stuart.Min@Bain.com)
Subject: 30092018- South Africa Investigation Plan (DB amendments).docx

All – see attached a few revisions (working from Darryl's version today) to 3.6 and 3.7 to cover the privilege issue given Athol's engagement terms. I've made it clear that he will still have the visibility and ability to ensure thoroughness and independence of the review, but have made a few tweaks to allow for certain privileged communications between Bain and BM (requiring that he be cc'd on all BM and Bain emails would lead to a claim of privilege waiver with respect to our work on the investigation) and removed the previous note in 3.7 stating that Athol's engagement is a privileged one. Let me know if there are any questions. I'm happy to circulate a clean version in the absence of any additional revisions or comments. Best regards, Reagan

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ANNEXURE "AW17"

AW17

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 11 October 2018 22:14
To: atholwilliams@hotmail.com
Subject: FW: Investigation | Update

This was attached to my e-mail to Tiaan. Just in case it got stripped out.

CK

Chris Kennedy
Senior Counsel
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany
tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Sent: Tuesday, October 9, 2018 5:44 PM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: Investigation | Update

Dear Chris,

I refer to our discussion last night and wanted to give you the following updates in our investigation and approach. Naturally this update is to be read with the Investigation Plan previously finalised.

I also do not intend for this email to be a comprehensive summary of findings, or a supplement to the report, I just wanted you to have insight into steps taken to date, anticipated steps over the next two weeks and further steps to follow in the investigation.

I also wanted to confirm with you our plan to spend the next two weeks, until 19 October, focusing on the very narrow task of compiling further hot documents for the Commission and before we get into the additional detail set out in the Investigation Plan. To the extent that this is not clear from the plan, as soon as the Commission-focused review is complete we intend to:

- review documents and schedule interviews with all role players involved in the SARS matter, as well as interactions with Ambrobrite;
- these interviews will include people involved with Bain internal approval processes, compliance and financial, so that we understand how high risk / public sector contracts of this nature are managed and where compliance failings may have occurred;
- the review will include a broader review of unethical or illegal activity, identified through the use of targeted search terms designed to flag communications suggesting such activity;
- we will also invite any other employees to approach us with any information that they may have which they deem relevant. We can also set up a whistle blower facility to this end; and
- we will approach Ambrobrite to engage in a third party audit exercise.

Naturally, our intention in this investigation is to find evidence, if any, of any unlawful conduct but more importantly we are interested in finding evidence of ethical compromises, unethical conduct by any individual, compliance breaches or systemic failures which need to be remediated and addressed in the organisation. We will also be guided by what comes out of interviews, document review and whistle blower reports, which may require us to obtain further information either by way of imaging additional devices or conducting further interviews. These processes will follow the urgent Commission-focused review. They have also been slightly delayed by the compilation of documents subpoenaed by the Commission before the last round of hearings. We intend to progress these aspects of the investigation as urgently as possible, mindful of the various workstreams necessitated by the Commission.

In terms of work completed to date, we have now obtained the following data:

- 8 laptops, imaged and processed;
- 2 mobile devices, imaged and processed with a further 6 (potentially more) to follow this week;
- Server backups for Alexis Bour; and
- Expense reports submitted by each of the relevant custodians for financial review.

We have completed a review of a large volume of documents in order to prepare the deliverable to the Commission on 21 September. In this regards we used limited search terms to reduce the universe of relevant data on Vittorio's laptop from 28,000 to 7,000 which were then limited further by data range and author, allowing us to review 5,300 potentially relevant documents and produce 656 of these as relevant to the Commission.

Since 21 September, expanded search terms have been applied to the total data set and review of these documents has begun. In this regard the volume of data reviewed to date amounts to some additional 9,286 documents. I am waiting on further reports on this data volume and will update this shortly.

A disclosure was made to the US DOJ in late September as well. The DOJ will be interested not just in the specific issues under review by the Commission, but also in any broader unethical or illegal conduct, including use of intermediaries to obtain public sector work and the controls around the same. For that reason, our review will be comprehensive, and any additional issues of concern that are flagged in the review will be thoroughly reviewed.

I would suggest a call before the end of the week to discuss findings on this work to date.

Please let me know if you would like to discuss.

Darryl Bernstein
Partner
Baker & McKenzie
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ANNEXURE "AW18"

AW18

Business Development and Stakeholder Management contract

This document defines the context, the content, objectives, governance, timing and financial terms of the collaboration between Bain & Company South Africa, Inc. and Ambrorite Ltd in a Business Development and Stakeholder Management mandate

1) Parties involved

AMBROBRITE (Pty) Ltd is a Communications, events, Project Management and strategic Stakeholder Management specialist company. South Africa's reputable communications and entertainment specialists, Dr. Duma Ndlovu and Mr. Mandla KaNozulu, formed it. It focuses on the public sector and in the communications and entertainment industries.

The individuals employed by the company bring together a wealth of expertise and experience as the company targets the top of the cream when it engages skills personnel for the projects it gets involved in.

Bain & Company South Africa is a leading global strategy consulting firm, with fifty offices in the world and operating in South Africa from Johannesburgh since 1993. Bain & Company SA relaunched its operations in the country in 2010 and has achieved substantial commercial and talent acquisition successes.

2) Current context

Bain & Company SA, in collaboration of Ambrorite, has identified the Government and State Owned Enterprise sector as a strategic priority. This sector represents an important share of the GDP and is an important buyer of consulting services. It is commonly accepted that to build a sustainable consulting business in South Africa a substantial participation to this sector is required

In addition, Ambrorite intelligence has allowed Bain in the last few months to acknowledge that in the next few years a number of State Owned Enterprises and Agencies will be subject to leadership and strategic changes and will require significant transformation and turn-around processes. This is at "the core" of Bain activity and skills. Supporting competent, empowered and change oriented leaders in solving important strategic challenges is Bain & Company SA's most important ambition.

However, current Bain positioning in this sector is extremely weak: in terms of brand positioning, relationships, understanding of the internal situations and competitive dynamics, purchasing policies and procedures

Bain & company South Africa is of the opinion that a collaboration with Ambrorite would substantially benefit its business and the probability of success in this sector

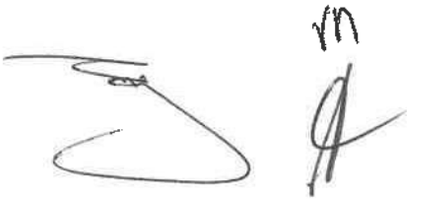
3) **Content and objectives of the project**

The collaboration will be articulated in three major areas:

- a) Strategic sector analysis and intelligence. This will include, but not be limited to:
  - Gather data and information on consulting spend and competitive landscape in the different possible target clients
  - Identify key priority targets in the Government/SOE sector (an initial analysis performed by Ambrorite for Bain preliminary shortlisted company like SA Revenues Service (SARS), SA Post Office (SAPO), SITA, Eskom.
  - Analyze specific sector needs and consequent possible IP development opportunities (capabilities,...)
  - Support in the understanding the different procurement policies and practices (PFMA, BEE and others)
  - ...

- b) Bain brand positioning. This will entail
  - Understand current Bain brand positioning and perception in the minds of the key leaders and stakeholders. In particular identify gaps and misconceptions and their root cause (past events, misinformation,...
  - Support Bain in defining a possible specific positioning and messaging for this sector in South Africa, of course completely consistent with Bain global values and attributes
  - Identify the key opinion leaders and stakeholders in the public sector, in particular those who, even if not directly decision makers on consulting spend, have key roles in deciding or influencing future policies (e.g.: broadband plan, industrial development, special economic zones, foreign investment attraction,...) and who will possibly benefit in their endeavor from Bain global expertise
  - Help in translating those messages in a concrete set of actions: events, meetings, articles and publications,...
  - Supporting Bain in the organization and execution of the action plan, in particular if related to events: defining the right stakeholders to be alerted and invited

- c) Business development
  - Qualify and quantify more specifically the business opportunity for the priority target clients
  - Define a "commercial strategy/tactics" in pursuing those clients
    - Who is the decision makers, who the influencers,...
    - What are the stages of the process: who to meet, in what sequence,..
    - What objectives for each meeting, what type of conversations and content
  - Facilitate the introduction or directly introduce Bain Partners to those key leaders and decision makers



- Drive and support the preparation of those meetings
  - providing information and intelligence on the clients' needs, concerns and buying criteria
  - concretely ensuring coordination of diaries and efficient communication between offices
  - suggesting format, tone and content of the message: written vs. verbal, stand-up projection vs. 2 ways discussion, ...
  - ensuring appropriate feedback on the meeting results (from the client side) and follow up

The ultimate objective of the collaboration is to drive commercial success for Bain & Company SA in the Government and State Owned Enterprises sector. But this will need to happen strictly respecting the following boundaries

- Bain will be in contact and work only with companies and individuals of irreproachable reputation and maximum integrity
- Bain will consider collaborating with Companies only when the following conditions are in place
  - The CEO and leadership of the Company are competent and skilled, relatively to their job/mission and positively interpret their role within the greater context of the South Africa situation and challenges
  - They are change oriented and see Bain as a possible partner and support in achieving their ambitions
  - They are empowered and supported by their Board and shareholders in their endeavor

Governance and timing of the project

The relationships between Bain & Company South Africa and Ambrorite will be led by Vittorio Massone, Managing Partner, for Bain and Dr. Duma Ndlovu and Mr. Mandla KaNozulu, for Ambrorite. This project will be governed by the legal terms laid out in Appendix 1.

The daily activities will see different people involved from both parties, previously identified and based on the type of tasks and activities, but all the key decisions, approvals and issues resolutions will be taken by the above mentioned individuals

Bain and Ambrorite have already informally initiated the collaboration since September, but a formal kick-off meeting will be held as soon as possible, in order to:

- Identify and introduce the key team members from both parties
- Define the initial activity plan
- Launch possible urgent actions, regarding some immediate opportunities

The workplan will define the engagement model in detail, but monthly meetings will be held between the representatives of the parties, to drive action and decision making, assess results and possible corrective actions, resolve issues and hopefully, celebrate successes!

The duration of the project and of the collaboration will be initially of 6 months, starting in November 1st 2013, and will be renewed at discretion of the parts at conclusion of the initial terms. In case of renew of the collaboration, terms and conditions will remain constant

Financial terms – Aligned incentives

The financial terms of the collaboration will be structured as follows:

- Bain will pay a "retainer fee" of Rand 100,000 (one hundred thousand) per month for the services provided by Ambrorite. The retainer fee will be entirely paid, for the initial 6 months of the project, at the beginning of the period
- In order to align incentives on this project, Bain will recognize an additional "success fee" in the measure of:
    - Rand 100,000 (one hundred thousand) per each month, in case of a "meet expectations" performance from Ambrorite
    - Rand 200,000 (two hundred thousand) per each month, in case of an "exceed expectations" performance
- The assessment of the performance will be based, at Bain sole discretion, on the analysis of the actual successes and realizations with the above described activities and objectives, taking in full consideration the real value add and the quality of the support that Ambrorite will have brought to Bain and the level of commitment and passion demonstrated
- The assessment and the payments will be executed every 3 months. Bain will ensure the evaluations are based on evidences and fairness; the results will be openly and frankly discussed between the two parties. *We believe this is a long-term collaboration and we sincerely hope that it will bring success, satisfaction, friendship and wealth for both parties*

General terms

In addition to the specific terms of this proposal, the project described herein shall be governed by the general terms and conditions set forth in the Legal Terms attached as Appendix 1.

Melrose Arch, November 1st 2013

Signatures

Bain & Company South Africa, Inc.

Ambrorite (Pty) Ltd

Appendix 1 – Legal Terms

This Engagement Agreement (this "Agreement"), effective as of 1 November 2013 (the "Effective Date"), by and between Bain & Company South Africa, Inc. with a principal place of business at 10 The High Street, Melrose Arch, Johannesburg, ("Bain"), and AMBROBRITE (Pty) Ltd, a Communications, events, Project Management and strategic Stakeholder Management specialist company, with a principal place of business at 13 Frost Avenue, 1st Floor, Sunnyside Centre ("Vendor"), sets forth the terms and conditions under which Vendor will perform certain services for Bain and its affiliates.

In consideration of the mutual covenants set forth below, the parties agree as follows:

1. Projects; Statements of Work. From time to time, Bain may engage Vendor, as an independent contractor, to provide services ("Services") in connection with individual projects (the "Projects"). Such engagements may include, without limitation, engagements by Bain of Vendor as a subcontractor to Bain in connection with consulting services being rendered by Bain to a Bain client (the "Bain Client"). This Agreement will govern all of the Services and Projects undertaken by Vendor for Bain and its affiliates.

For each Project, Vendor and Bain will jointly determine the Project's scope, work plan and fees which will be set forth in a Statement of Work (the "Statement of Work"). Other than the fees set forth in the Statement of Work (the "Fees"), and, if applicable, any reimbursement of expenses to the extent set forth in the Statement of Work, Vendor will not receive any commission, referral fees or any other form of compensation in exchange for providing Services.

2. Standards for Performance; No Conflicts. Vendor represents and warrants that Vendor will provide the Services in a diligent and professional manner and in accordance with the highest industry and ethical standards and will at all times comply with all applicable laws and regulations. Vendor will, and will cause its employees to, comply with Bain's Code of Conduct which has been made available to Vendor.

Vendor will conduct its business in a manner that reflects favorably at all times on the good name, goodwill and reputation of Bain. Vendor will not engage in any deceptive, misleading, unlawful, illegal or unethical practice. Vendor will not make any false or misleading representations regarding Bain, the Services or any Bain clients or other consultants.

Vendor represents to Bain that Vendor's execution of this Agreement and the provision of Services hereunder will not violate any obligation Vendor may have to any third party. In connection with Vendor's provision of Services hereunder, Vendor will not disclose or make use of any information in violation of any agreements with or rights of any third party and Vendor will not bring to the premises of Bain any copies or other tangible embodiments of non-public information belonging to or obtained from any third party.

Upon its request, Bain will have the right to review Vendor's books and records in order to confirm Vendor's compliance with the terms of this Agreement.

Vendor shall be liable for any breach of this Agreement by its employees.

3. Relationship of the Parties.

Independent Vendor Status. Vendor is an independent contractor hereunder and is not by virtue of this Agreement a partner, joint venturer, employee or agent of Bain. At no time will Vendor or any of its employees be deemed to be employees of Bain nor will Vendor have any power to act as an agent of Bain except as expressly set forth in this Agreement. In view of the independent relationship of the parties, Vendor and its employees will not be covered at any time by employee benefit programs of Bain or any of its subsidiaries.

Bain will not bear any responsibility and will not be liable for any tax liability, social insurance obligations or withholdings or contributions of any kind due in respect of the consideration paid to Vendor under this Agreement.

No Subcontractors. All Services will be performed by Vendor. Vendor may not engage any subcontractor without the prior written consent of Bain.

No Exclusivity. Except as set forth in Section 6, nothing in this Agreement will be construed as establishing an exclusive relationship between Bain and Vendor.

4. Marketing and Disclosure. Vendor will not reference Bain or the Services in any of its marketing materials, public filings or similar publications without the prior written consent of Bain. Vendor will not disclose to any third party Bain's name, the name of the Bain Client or any details of material resulting from the Services, without Bain's prior written consent.

5. Insurance. Vendor will maintain in effect adequate insurance against all losses, claims and expenses for injuries or damage to any person or property arising out of or in connection with this Agreement maintain including, without limitation: (i) commercial general liability insurance with a minimum limit of $1 million general aggregate, and (ii) professional liability insurance covering the Services to be provided hereunder with a minimum limit of $1 million per claim. Vendor shall provide Bain with a Certificate of Insurance evidencing the foregoing coverage upon request.

6. Confidentiality. Vendor and Bain have developed, through the expenditure of substantial time and other resources, valuable information relating to the operation of their respective businesses, including without limitation the identities of their respective clients and prospective clients.

The term "Confidential Information" means all information disclosed, directly or indirectly, by the disclosing party or its representatives to the receiving party in any manner, whether orally, visually or in tangible form (including, without limitation, documents, devices and computer readable media) and all copies thereof, regarding the disclosing party's or its clients' business, including, without limitation, any data or information regarding disclosing party's or its clients' customers, clients, management, employees and suppliers, pricing information, proprietary information, product and

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As to Vendor, Confidential Information also includes any information or materials provided to Bain on a confidential basis by any third party, including but not limited to that of Bain's clients or potential clients, including without limitation any client that Vendor's Services are supporting.

Confidential Information does not include information which (i) may be known to Bain or to Vendor or any of their employees or agents prior to disclosure; (ii) may at any time become available to the general public without fault of Bain or Vendor; (iii) at any time becomes lawfully available to Bain or Vendor or any of their employees or agent from any third party; or (iv) is independently developed by Vendor or Bain without use or reference to the other party's Confidential Information.

Vendor and Bain agree to hold the other's Confidential Information in strict confidence and will exercise reasonable efforts to protect the Confidential Information from unauthorized use or disclosure.

To the extent required by Bain, Vendor will agree in writing to be bound by the terms of any confidentiality agreement entered into between Bain and the Bain Client (or if applicable any target company of a Bain Client) as if Vendor were an original party thereto.

The obligations set forth in this section will survive any termination of this Agreement.

7. Non-Solicitation; Non Competition

Non-Solicitation. During the Term and for a period of six (6) months thereafter, Vendor will not solicit or recruit any employee or consultant of Bain to directly or indirectly work for or with Vendor or to otherwise encourage an employee or consultant of Bain to terminate his or her employment or consultancy with Bain.

Non-Competition. During the Term, Vendor agrees that it will not perform consulting services for and/or have a business relationship with: (i) any Bain competitors that are listed on Appendix 2 attached hereto; or (ii) any person or company that the Vendor knows or should have known intends to compete in any line of business with any person or company that is a Bain client or potential client for or about which Vendor provided Services. Bain reserves the right to amend Exhibit B as a result of changes in the industry.

VM

8. Intellectual Property Rights. For purposes of this Agreement, "Material" means (i) works of authorship including, without limitations, presentations, marketing plans, survey instruments, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, designs, files, records and data; (ii) inventions (whether or not patentable), improvements, concepts, ideas, techniques, research, reports, technology, frameworks, methodologies, analytical tools and industry data and insights (iii) proprietary and confidential information, including demographic information, technical data and customer/client and supplier lists, trade secrets and know how; (iv) databases, data compilations and collections and technical data; and (v) logos, trade names, trade dress, trademarks, servicemarks, World Wide Web addresses and domain names, tools, methods, and processes ("Material").

Existing Material. All right, title and interest in and to any Material conceived, created or first reduced to practice by either party prior to the Effective Date (the "Existing Material") will remain vested in such party. Such party will have the sole and exclusive right to prosecute any intellectual property rights pertaining to such Material.

Existing Intellectual Property Rights. All right, title and interest in and to any intellectual property rights owned or held by either party prior to the Effective Date ("Existing Intellectual Property Rights") will remain owned and held by such party. Such party will have the sole and exclusive right to prosecute with respect to any of said intellectual property rights.

License Grant. Vendor grants to Bain a perpetual, worldwide, non-exclusive, fully transferable, royalty-free license to use any Existing Material or Existing Intellectual Property Rights of Vendor to the extent embedded in or necessary for the use of the Work Product (as defined below).

Ownership of New Material. All Material developed in the course of, or resulting from, Vendor's provision of Services hereunder (collectively, "Work Product") are "works-for-hire" and will become and remain the sole and exclusive property of Bain. Vendor agrees that all Work Product and all rights (including, without limitation, moral rights), title and interest Vendor may have in the Work Product, will, upon their creation, be owned exclusively by Bain. Vendor hereby automatically assigns, transfers and sets over to Bain the ownership of such Work Product, including all copyright interests and any other intellectual property interests therein, without the necessity of any further consideration, and waives any moral rights or other special rights which Vendor may have or accrue therein. Vendor agrees to take such further actions, at reasonable cost to Bain, including, without limitation, the execution and delivery of such documents as Bain, in its sole reasonable discretion, determines may be necessary, appropriate or desirable in order to give full and proper effect to the foregoing assignment and to assist Bain in applying for, obtaining and enforcing patents, copyrights, trademarks and other intellectual property rights in the Work Product, in the United States and any foreign countries. If Bain is unable, after reasonable effort, to secure Vendor's signature on any letters patent, copyright or other analogous protection relating to a Work Product, whether because of Vendor's physical or mental incapacity or for any other reason whatsoever, Vendor hereby irrevocably designates and appoints Bain and its officers and agents as Vendor's agent and attorney-in-fact, to act for and on Vendor's behalf and

VN

in its stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letter patents, copyright and other analogous protection thereon with the same legal force and effect as if executed by Vendor.

Vendor agrees and acknowledges that any client, potential client or other protectable interest relating to same resulting from the Services provided under this Agreement will belong solely and exclusively to Bain, including but not limited to, those companies or entities identified in the Letter Agreement and any good will associated therewith.

9. Indemnification; Limitation of Liability. Vendor will indemnify and hold Bain and its predecessors, successors, parents, subsidiaries, affiliates, officers, directors, shareholders, investors, employees, agents, representatives, and attorneys harmless from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to: (i) any third party claims (including any claims by a Bain Client) arising out of the Services performed by Vendor; (ii) any breach by Vendor of this Agreement; (iii) Vendor's gross negligence or willful misconduct; (iv) claims or demands that Vendor has infringed any copyright, patent, trademark or any other intellectual property rights of a third party in connection with Vendor's provision of Services to Bain; or (v) a determination that Vendor is or should be treated as an employee of Bain.

IN NO EVENT WILL BAIN BE LIABLE TO VENDOR FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT BAIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

THE LIABILITY OF BAIN FOR DAMAGES OR ALLEGED DAMAGES HEREUNDER, WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IS LIMITED TO, AND WILL NOT EXCEED, AN AMOUNT EQUAL TO THE SUM OF THE PAYMENTS MADE BY BAIN TO VENDOR HEREUNDER IN CONNECTION WITH THE LETTER AGREEMENT UNDER WHICH SAID LIABILITY AROSE.

10. Termination; Effect of Termination; Survival. Bain may terminate the Services and this Agreement without cause at any time upon written notice to Vendor. Either party may terminate the Services and this Agreement in the event of a material breach by the other party upon written notice to the other party.

Upon termination of this Agreement for any reason or at any time upon Bain's written request, Vendor will promptly return to Bain all copies of all Confidential Information. Vendor will also promptly furnish to Bain all work in progress or portions thereof, including all incomplete work. Should Bain terminate Vendor without cause, Vendor will be paid Fees to the effective date of termination, pro-rated for any portion of a month.

Upon Vendor's written request, Bain will promptly return to Vendor all copies of Vendor's Confidential Information.

Sections 4, 6 through 9 and 11 of these Terms and Conditions shall survive any termination of the Services or this Agreement.

VA

11. Miscellaneous

Anti-bribery. Vendor represents and warrants that neither its affiliates, nor any officer, director, representative, employee, or agent thereof, will either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement which:

- would violate any applicable anti-corruption laws or regulations;
- is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;
- is made to or for any person holding or acting on behalf of a person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a state-owned or public enterprise, a public international organisation, any federal or regional government department or agency, any political party, any candidate for political office or a relative or associate of any such person; with the intention of influencing them and obtaining or retaining an advantage in the conduct of business.

Vendor undertakes to notify Bain immediately if it has knowledge of, or suspects, a breach of this section.

Assignment. This Agreement is made solely for the benefit of Bain and Vendor, and their indemnified parties, and no party will have or acquire any right under or by virtue of this Agreement besides Bain and Vendor. Vendor may not assign its rights or delegate its duties under this Agreement, without the prior written consent of Bain.

Waiver. Except as otherwise expressly provided herein, no purported waiver by any party of any breach by the other party of its obligations, agreements, or covenants hereunder will be effective unless made in a writing subscribed by the party sought to be bound thereby, and no failure to pursue or elect any remedy with respect to any default under or breach of any provision of this Agreement will be deemed to be a waiver of any subsequent similar or different default or breach.

Governing Law. This Agreement will be governed by and construed under the laws of South Africa without reference to conflicts of laws principles.

Equitable Relief. Vendor acknowledges and agrees that Vendor's breach of the provisions of Section 6 and Section 7 (Non-Competition) of these Terms and Conditions will result in irreparable harm to Bain and that money damages may be difficult to ascertain and may be inadequate. Vendor agrees that Bain will have the right to enforce such provisions by injunction, specific performance and/or other equitable relief without prejudice to any other rights and remedies that Bain may have under this Agreement.

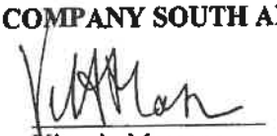
Entire Agreement; Amendment. This Agreement constitutes the entire understanding of the parties and supersedes all prior agreements and understandings of the parties

pertaining to the subject matter herein, whether written, oral or otherwise. This Agreement may be altered or amended only in a writing signed by both parties.

Severability. In the event that any provision of this Agreement will be held by a court of law to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have executed this by their duly authorized officers or representatives.

BAIN & COMPANY SOUTH AFRICA, INC.

By: 
Name: Vittorio Massone
Title: Vice President

AMBROBRITE (Pty) Ltd

By: _____
Name:

Appendix 2

Bain Competitors*

A.T. Kearney
Accenture
Booz & Company, Inc.
The Boston Consulting Group
Deloitte Consulting
Ernst & Young
LEK Partnership
McKinsey
Monitor Company
Oliver Wyman Group
Roland Berger
PricewaterhouseCoopers

*includes all affiliates, successors, and assigns of the companies listed in this schedule

ANNEXURE "AW19"

AW19

KaNozulu Productions which was responsible for the music of DJ Mlisa (debut album 2009) and Zimdollar in 2013.

He played a pivotal role in the conceptualization of KZN Music House. He has worked in the arts with such greats as Mbongeni Ngema, Duma Ndlovu and Linda Bukhosini of The Playhouse Company where Mandla was Arts Manager. He is a founding member of the KZN African Rennaisance Committe established by Dr. Sbusiso Ndebele. As part of the African Rennaisance, Mandla co-founded the King Cetshwayo African Image Award

which saw the creation of a star walk in front of the DURBAN CITY HALL where names of great South Africans such as Mandela, Makeba, Isaiah shembe, Princess Magogo and others are permanently engraved.

The second pillar is his love for politics and church. KaNozulu He has served the Catholic Church in various positions at St. James Parish in Lamontvilleand rose right up to chairing the Justice and Peace Commission in the Arch-Diocese of Durban under the late Arch-Bishop Dennis Hurley. Mandla is a member of the African National Congress in good standing, he served on various structures during the liberation struggle including the Lamontville Youth Congress and COSAS and was the first chairperson of the ANC youth league Lamontville branch after unbanning. He served on various ANC Branch Executive Committees and zonal structures between 1991 and 1996. In 1995 he was employed by the Diakonia Council of Churches to head it's Democracy In Action programme. He lead the Churches Democracy that saw the churches across the province becoming a platform for democracy education. During this time, he also chaired the training commission of Non-Governmental Organizations working on democracy education. Currently KaNozulu is the Special Advisor to the Minister of Police.

The third pillar is his love for his family and families in general, which is what has propelled him to create board games that are educational that families can enjoy and learn from at the same time. It is this love also that has given him the strength to establish a family friendly shisanyama and restaurant called KaNozulu Food Square. This shisanyama/ restaurant does not serve alcohol which is rather

AW 19

The deadline for a response from these implicated officials has come and gone. Emails from *Daily Maverick* to Zondo Commission spokesperson, Reverend Mbuyiselo *Stemela*, as to when McBride can be expected to be called to testify, were not answered at the time of writing.

Emails from *Daily Maverick* to Nhleko (who has been dropped from the ANC list, unlike a few other of Zuma's human shields) as well as Dr Mthembu with regard McBride's testimony were not replied to.

McBride's Zondo Commission testimony cuts to the heart of the State Capture project and how it played out in the country's law enforcement agencies.

Nhleko features as a recurring player who was, right from the start of the Zuma presidency in 2009, part of a small inner circle who surrounded the then-new president and which was called the "Engine Room".

In his submission, McBride makes a further revelation in his affidavit, which he says ultimately doubles back to the Chinese-trained covert unit, of how in 2009, the tripartite alliance – the ANC, Cosatu and the SACP – nominated senior leaders "to look at ways to re-position government to make it more efficient but also to assist with the orientation of the president-to-be, at that stage, Mr Zuma".

The Transitional Team consisted of Neil Coleman from Cosatu, Solly Mapaila from the SACP and Collins Chabane for the ANC.

Before Zuma's appointment, however, a group of individuals known as the "Engine Room" had availed themselves to the president-to-be, to discuss strategy "with regards the placing of strategic people in strategic positions."

The Engine Room was made up of Zuma, Nhleko (who was Provisional Commissioner of Corrections, later to become DG of Labour, Minister of Police and Minister of Public Services), Riah Phiyega (appointed as National Police Commissioner in 2012), Bonisile Makhene (who would go on to become Zuma's legal adviser), her husband, SSA spy Yekane Mondi Gadini (https://city-press.news24.com/News/zuma-spooks-and-the-bogus-union-20160508)(later implicated in setting up, at Zuma's behest, a rival union to Amcu, WAU (https://www.news24.com/SouthAfrica/News/nhleko-named-in-bogus-union-claims-20161219), at Lonmin), Thuli Madonsela (later to be appointed Public Protector and who would be key to exposing Zuma's breach of ethics, the Nkandla upgrades), Glen Mashinini (a special projects adviser to Zuma and now Chairperson of the IEC), Vincent Magwenya (later a spokesperson for Zuma) and Mandla Sithole NoZulu (who went on to become a special adviser to Police Minister Nhleko).

Responding to McBride's revelation of her membership of the Engine Room, Madonsela told *Daily Maverick:*

"I have decided to respect the State Capture Commission process by waiting till I'm requested to explain or defend an allegation of impropriety. All I can say now is I have never had a corrupt or unethical relationship with former president Zuma. Grand corruption, as far as I understand is the essence of the State Capture investigation. I've never been part of such. As regards how I was nominated as PP, SAWID, who nominated me can assist you."

The Engine Room, says McBride, "functioned outside the mandate of the ruling party and the state".

McBride sets out a meeting with Mapaila where the SACP leader confirmed the existence of the Transitional Team and set out the context.

"They had a series of engagements/work sessions with the then president-to-be in preparation for the new administration. On at least one of these occasions, the president-to-be introduced the Transitional Team to the Engine Room. As the Engine Room had no mandate from the ANC, the Transitional Team expressed their concerns as to the appropriateness of the meeting with them. In short, the existence of the 'Engine Room' was of great concern to the Transitional Team," said McBride.

Zuma had "laughed this off" saying he had been working with the Engine Room "for some time and that they been assisting him to understand some initiatives for the new administration".

At one of the meetings between the Engine Room and the Transitional Team, says McBride, Nhleko did a presentation that related to prisons and another introducing the concept of a Border Managment Authority (https://www.dailymaverick.co.za/article/2017-06-09-trainspotter-border-management-authority-bill-once-just-a-stupid-idea-now-an-insane-reality/).

Later, when The Border Management Authority Bill finally made it to Parliament in 2017, *Daily Maverick*'s Richard Poplak described (https://www.dailymaverick.co.za/article/2017-06-09-trainspotter-border-management-authority-bill-once-just-a-stupid-idea-now-an-insane-reality/) it as "widely regarded as one of the worst pieces of legislation ever to hit the House".

> "This is the bill that hands over the policing of our borders to a stand-alone authority answering only to the Minister of Home Affairs and the President – a parastatal that will collect over R3-billion rand of customs and duties outside of the South African Revenue Service's computerised systems. What's more, it treats migrants and asylum seekers like errant livestock. State capture? This is the sine qua non. While you were otherwise occupied, they screwed you."

AW19

Email michele.micheletti@beretta.com

Da: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Per: '"michele.micheletti@beretta.com"' <michele.micheletti@beretta.com>
Cc: '"Carlo.Ferlito@beretta.com"' <Carlo.Ferlito@beretta.com>
Data: 15/09/2015 11:15
Oggetto: RE: Rif: Re: Rif: RE: Cooperazione Italia RSA

Eccoci finalmente sig. Micheletti.

La logistica e i protocolli vari sono da definire con Mr. Molate Moremi, che guida la segreteria del Ministro. Contatti: +27(0)763022018 – moremim@saps.gov.za

Partecipanti all'incontro, dopo il meet and greet con il Ministro

- Gen. Zuma (non e' parente), head of special projects
- Gen. Scotts Naindoo, head of Interpol in SAPS
- Gen. Ntlemeza (si pronuncia Nkameza), head of Hawks, la Special Investigation Unit
- Mr. Mandla Kanozulu, advisor del Ministro
- Mr. Moremi

Spero questo sia sufficiente. Sono ad un offsite con il Ministro e c'e' anche questo Moremi, gli faro' pressione in modo che risponda subito al contatto dell'Interpol. Per favore mi avverta se non risponde velocemente

Cordiali saluti

Vittorio Massone

From: Massone, Vittorio
Sent: Thursday, September 10, 2015 9:34 AM
To: 'michele.micheletti@beretta.com'
Cc: 'Carlo.Ferlito@beretta.com'
Subject: Re: Rif: Re: Rif: RE: Cooperazione Italia RSA

Grazie Sig. Micheletti

Nessun problema - sono io ad essere a disagio perche' sono solo un intermediario e questi signori sono molto poco strutturati e diligenti (se lo fossero non avrebbero bisogno di aiuto, credo)

In questo momento sono anche ossessionati dalle intercettazioni (e' un anno che cercano di far fuori il Commissioner), sono infatti dovuto andare ad incontrarli in aeroporto per poterci parlare e questo certo non velocizza le cose.

A presto, spero

Vittorio

ANNEXURE "AW20"

AW20

To: Venter, Nicolle[Nicolle.Venter@Bain.com]
From: Smout, Geoff
Sent: Wed 12/18/2013 10:41:18 AM (UTC)
Subject: RE: Ambrorite

This whole situation seems very dodgy.

Do you know anything about the background of the people who run Ambrorite or who are named in the contract?

From: Olmesdahl, Nicolle
Sent: Wednesday, December 18, 2013 10:39 AM
To: Smout, Geoff
Subject: RE: Ambrorite

Well, I have just been to SARS who could not verify the TCC and suspect it's fraudulent!

They have taken a copy and will get back to me later confirming whether it is a fake certificate or not.

From: Smout, Geoff
Sent: Wednesday, December 18, 2013 8:35 AM
To: Olmesdahl, Nicolle
Subject: RE: Ambrorite

Yes I'm happy if we can verify the certificate with SARS.

From: Olmesdahl, Nicolle
Sent: Wednesday, December 18, 2013 5:49 AM
To: Smout, Geoff
Subject: RE: Ambrorite

When we do get asked for documents, these 3 usually come up although in my mind a tax clearance certificate covers everything.

Would you be happy if I went to SARS to verify this certificate?

Vittorio will be annoyed if I go back and ask Mandla for additional documentation (he has signed the contract) but of course we need to do what we need to do.

From: Smout, Geoff
Sent: Tuesday, December 17, 2013 1:27 PM
To: Olmesdahl, Nicolle
Subject: RE: Ambrorite

For some reason I don't trust this situation – I'd like to see their certificate of incorporation and VAT certificate too. What else do we typically get asked for?

I'm happy to accrue whatever fee we believe they are likely to have earned in 2013, including success fees, but I think this can only be a pro-rata portion of the total.

From: Olmesdahl, Nicolle
Sent: Monday, December 16, 2013 4:48 PM
To: Smout, Geoff
Subject: RE: Ambrorite

Geoff

I have received their tax clearance certificate which shows Ambrobrite are a genuine registered company in South Africa including their company registration number and income tax number. Are you happy with this?

I will speak to him tomorrow regarding the upfront retainer but I suppose he

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was hoping we could reduce our CD spend this year, which I am not sure we can allocate the R400k for 2014? Perhaps we could adjust based on the fact we may pay this in Success Fees?

Nicolle

From: Smout, Geoff
Sent: Friday, November 29, 2013 8:33 AM
To: Olmesdahl, Nicolle
Subject: Ambrorite

I don't know if you managed to get any information for us to get comfortable with Ambrorite and its executives? The draft contract with legal terms is attached.

My only question on the commercial matters laid out by Vittorio is why we are paying their retainer in full up front? It seems better to me to spread it, in case we are unhappy with what their output. I know we have a success fee too, but at present we are paying R600K up front once we sign.

Geoff Smout
Senior Director, Finance
Bain & Company, Inc. | 40 Strand | London | WC2N 5RW | United Kingdom
tel: +44 (0)207 969 6560 fax: +44 (0)870 731 8560 mobile: +44 (0)7768 708 537
Geoff.Smout@bain.com | web: www.bain.com

AW20

To: Venter, Nicolle[Nicolle.Venter@Bain.com]
From: Smout, Geoff
Sent: Tue 1/7/2014 6:08:14 PM (UTC)
Subject: FW: Ambrobrite

FYI

Any sign of the tax clearance certificate or the contract yet?

From: Massone, Vittorio
Sent: Tuesday, January 07, 2014 10:28 AM
To: Smout, Geoff
Subject: Re: Ambrobrite

Thank you Geoff

I am very comfortable to do business with the people, which we've been doing for a few months already. That's why I've chosen them. We should however do all the appropriate verifications on the vehicle/entity.

Actually, I wish we applied the same level of scrutiny in all our activities, as we're having with this one

Kind regards,
Vittorio

From: Smout, Geoff
Sent: Tuesday, January 07, 2014 09:07 AM GMT Standard Time
To: Massone, Vittorio
Subject: Ambrobrite

Vittorio, Happy New Year. I hope you and your family had a good break.

I wanted to let you know that I feel uncomfortable about our proposed arrangement with and payment to Ambrobrite:

- I cannot find any information about the company on the internet
- There does not appear to be a website for them at all, which is highly unusual
- No financials etc. are available that I can find
- They do not appear on Onesource
- A Google search only brings up the information below, showing they are in a de-registration process and have never filed accounts
- The tax certificate they provided us looked 'unusual' but we are awaiting an original copy that we can review

Are you completely comfortable that they are an appropriate partner for us to be working with? If so, we will proceed with the payment although we need to receive the signed contract and an acceptable tax clearance certificate from them first (which Nicolle has asked for).

Thanks

Geoff

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AMBROBRITE

Get found with Google advertising. Start now With £75 credit.

Google

Remove this company from out database

Business Summary

AMBROBRITE is an Private Company business incorporated in South Africa on October 26, 2009. Their business is recorded as Deregistration Process. The activity is registered as GENERAL TRADING IN ALL ASPECTS. It is not part of a group. The company has no filed accounts. The company was incorporated 5 years ago.

Business informations

Name	AMBROBRITE
Identification number:	2009-020492-07

flashbay USB Flash Drives Delivered in 6 Days. Printed or Engraved with your Logo. Get Quote

Type	Private Company
Status	Deregistration Process
Status History	-
Standard Industrial Classification	GENERAL TRADING IN ALL ASPECTS
Register date	26/10/2009
Address	13 FROST AVENUE 1 ST FLOORSUNNYSIDE CENTRE 0132
Postal Address	13 FROST AVENUE 1 ST FLOORSUNNYSIDE CENTRE 0132

Geoff Smout
Senior Director, Finance
Bain & Company, Inc. | 40 Strand | London | WC2N 5RW | United Kingdom
tel: +44 (0)207 969 6560 fax: +44 (0)870 731 8560 mobile: +44 (0)7768 708 537
Geoff.Smout@bain.com | web: www.bain.com

ANNEXURE "AW21"

AW 28

To: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Min, Stuart[Stuart.Min@Bain.com]
From: Kennedy, Chris
Sent: Mon 9/3/2018 7:50:40 AM (UTC)
Subject: RE: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Thanks Fabrice - please be assured that we will keep this and all other contributions entirely confidential.

What is missing here is dates. Please could you spend some time thinking or looking in your diary and filling in the dates for us?

Thanks

Chris

From: Franzen, Fabrice <Fabrice.Franzen@Bain.com>
Date: Monday, 03 Sep 2018, 9:42 am
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Stuart, Chris,

As indicated earlier, I am at your disposal to engage on my own recollection of events around the SARS process.

- My recollection is that Vittorio was introduced to Moyane in H2-2013 by Duma, a paid advisor of Bain which Vittorio had decided to contract.
  - Vittorio never shared the advisor contract with the partner group, nor the details of the financial arrangements
  - As a partner group, we raised concerns about that advisor – Tiaan and Innnocent were particular vocal about it
  - Duma had been introduced to Vittorio by Jabu Mabuza and Sipho Maseko, respectively chairman and CEO of Telkom
- Following that introduction, there have been numerous meetings between Vittorio, Moyane, Duma, Jabu Mabuza. Some happened in plain sight in the office during business hours. Materials or these meetings were prepared by Stephane Timpano and Alexis Bour
- It was also known to all the partners that Vittorio was meeting with the resident in multiple occasions, including with Duma and Moyane – he was talking openly about it in partner meetings:
  - I don't know the specifics and timing of these Presidential meetings, except for a late Saturday night one, which I remember because Vittorio joined late a dinner party because of that
- In 2014, Vittorio also had multiple meetings with Jonas Makwakwa, the future head of BAIT. At that time head of internal audit at SARS.
  - These meetings were with Vittorio, Moyane and Makwkawa. They also happened in plain sight in the office
  - As Vittorio indicated during witness prep, Makwakwa was playing sort of a "deep throat" on evens happening at sars and feeding into Moyane
- After the appointment of Moyane in October, it was clear at the end of 2014 that Vittorio was expecting work to come – he asked to pre-identify teams, and asked me to play an OVP role on the project, should it become live

As far as I am concerned:

- I met Moyane twice before the beginning of our work at SARS (both in my diary and easily verified):
  - May 15 2014: Vittorio asked me to join a lunch he had with Moyane at a restaurant in Melrose Arch. They clearly knew each other very well already while Moyane was still Correctional services head, Vittorio spoke a lot about how to optimize a revenue service
  - June 2 2014: meeting in the office with Vittorio and Moyane. I was asked to come an explain the type of operating model work we had done at DBSA in the public sector

ANNEXURE "AW22"

AW22 2

INTRODUCTION

4. On 30 August 2018 and 31 August 2018, I testified before the former Judge of the Supreme Court of Appeal, Honourable Mr. Justice Robert Nugent (**Commissioner**), Mr. Michael Katz, Advocate Mabongi Masilo, and Mr. Vuyo Dominic Kahla (**Commission**).

5. During the course of that testimony, I could not conclusively recall the facts and occurrence of all events required to answer certain questions. I have now had the opportunity to refresh my memory and recollect my experiences since 2013 and my clarification of these matters follow.

6. The main purpose of this affidavit is to respond directly to all questions raised by the Commission in its letter of 3 September 2018. I attach marked **"VM2"** copy of that letter. This affidavit also deals with, and having considered the transcript of my testimony, clarifications and context to certain of my answers provided to the Commission. It may be necessary to supplement my affidavit and I reserve my right to do so at a later stage.

MEETINGS WITH MOYANE

7. After consultation of my records, to the best of my recollection, I have had the meetings or encounters with Moyane as set out below. I was introduced to Tom Moyane by Duma Ndlovu (**Ndlovu**). I was told by Ndlovu that Moyane had approached him and asked for an introduction to Bain because he had heard about Bain's successful work at Telkom and wished to understand more about how Bain worked.

8. It is necessary to pause here to set out Bain's relationship with Ndlovu. I was introduced to Ndlovu by Sipho Maseko (**Maseko**) (The CEO of Telkom). At the time I remember that Ndlovu had been an activist from KwaZulu Natal during the apartheid regime and that at one stage he fled to the United States and started to work in the media industry. Ndlovu probably is better known for the production of a local soap opera Muvhango broadcast by the SABC. There was no reason to doubt the reputation of Ndlovu, nor that any association with Ndlovu would be improper.

ANNEXURE "AW23"

AW23

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
Cc: Debruyne, Frederic[Frederic.Debruyne@Bain.com]
From: Meehan, Paul
Sent: Fri 1/20/2017 8:25:03 PM (UTC)
Subject: RE: Davos - Jabu

Vittorio,

Really nice to meet Jabu today. Very warm and friendly.

Nothing major to report out to you as he was a little pressed for time.

Best,
Paul

From: Massone, Vittorio
Sent: Monday, January 16, 2017 11:34 AM
To: Meehan, Paul <Paul.Meehan@Bain.com>
Cc: Debruyne, Frederic <Frederic.Debruyne@Bain.com>
Subject: Re: Davos - Jabu

Hi Paul,

Excellent as Jabu is and will be even more a key component of our growth in SA, esp in government

Jabu accepted to become Chair of our to be created SA Advisory Board and will actively recruit with me the other members (he has closed one candidate already). I sent you the relative document, role is broad and include business development, brand building, recruiting, people coaching

Besides being one of the most influential and credible business persons in SA, Jabu the key link btw the President and the Min of Finance, who have been fighting for the last 12 months

He's currently helping me build a relationship with the Min of Finance after the issues related to Sars and its Commissioner. And with the Chair of SAA after she didn't appreciate our appointment from Treasury and brought up all the old Coleman Andrews stories

On CD, besides SAA we are talking about Prasa (passenger railway) and Transnet (freight railway). In the future months we'll speak about Petro SA (a sort of NOC) and Eskom (electricity). These being the known priorities, other important discussions with Gov will come up, I believe

Important to note that Jabu has recently become control shareholder in the largest local (and reputable) consulting firm and we are discussing all the above opportunities with them as our BEE partners

So in terms of agenda, my suggestions would be

- Telkom. Thanking him for the business and getting his insights of where the company is and our role going forward (we have 1 team as of now and we might get to zero if they don't open the wallet). Maybe a curved ball on MTN, if he sees the possible merger gone or still a possibility.

- reinforcing all the above message on how we consider this friendship as a privilege and count on him and we look forward to doing business with him, incl with his company. Maybe also some asking some feedback on how we can continue to grow (besides the clients above..) and what we could do differently (I'm sure he'll raise our demographics..)

- giving him exposure to Bain IP and people as this is part of the advisor deal. He recently met Jimmy Allen and was very happy with that. Maybe a coffee 1-1 with one of our IP experts that will be in Davos would be great. He travels a lot, really a lot, so a cool thing would be to design a roadmap of meetings with experts for the next 12-18 months based on his schedule. Paul, you know Bain people and the new IPs much more than me so it'd be great if you could jot down some ideas with Jabu

- and of course asking him if we can be helpful in any other way.. His style is that he doesn't really ask, we need to offer...

48c

Hope this helps - and I'm sure I'll get back an even more motivated and committed Jabu, so thank you very much in advance!!

Best,
Vittorio

From: Meehan, Paul
Sent: Monday, January 16, 2017 10:23 AM GMT Standard Time
To: Massone, Vittorio
Cc: Debruyne, Frederic
Subject: Davos - Jabu

Vittorio,

I have secured 30 mons with Jabu on Friday in Davos.

Let me know if there are any questions/issues you would like me to push on?

Would be good to get the latest context on the relationship overall from you in advance.

Cheers,
Paul

ANNEXURE "AW24"

AW24

To: Venter, Nicolle[Nicolle.Venter@Bain.com]
Cc: Smout, Geoff[Geoff.Smout@Bain.com]
From: Massone, Vittorio
Sent: Fri 11/22/2013 9:59:44 AM (UTC)
Subject: Ambrorite.docx
Ambrorite.docx

Hi Nicolle,

I have drafted the terms of the collaboration with Ambrorite.

We don't need a "proposal" from them, this can be directly the contract with which we hire them - we just need to put it on Bain letterhead, add in an appendix the data/info for the parties (address, registration number, banking details etc) and sign it

I have agreed this already with Paul Meehan some time ago and discussed terms and structure of the financials (success fees) with Graham Luce

We also need to – quickly – "run a check" on the company before signature so we are compliant

They have started working with me in September (eg on SARS, the event with the President) and we are actually late in recognizing them the fees (you'll see we'd start paying them in November - let's hope ok for them - as I don't like retro-dated contracts) – but let's move as fast as possible please

If there are any standard clauses we use with our suppliers (eg competent tribunal, etc..), please add in a separate final section.

I'd like to have this signed mid next week, if possible

Thank you

Vittorio

ANNEXURE "AW25"

AW256

From: Massone, Vittorio
Sent: Wednesday, January 15, 2014 1:39 PM
To: Miller, Wendy
Subject: RE: follow up

Hi Wendy, thank you for your time and guidance, appreciated.

On your comments, always good and stimulating to have "pushes" from and deeper dialogues with Sr. colleagues - please find below in red my comments/answers

Best,

Vittorio

From: Miller, Wendy
Sent: Wednesday, January 15, 2014 5:53 AM
To: Massone, Vittorio
Cc: Dutiro, Innocent
Subject: follow up

Thanks for the call today Vittorio and Innocent. It was very helpful context.

I reviewed the contact you sent through and I did talk to Stuart Min a bit about it as well. I just want to confirm again that:

1- Neither of the two people mentioned by name in the contract, nor any of the other employees of Ambrorite, are SA government employees?
2- There is no plan for money or favors changing hands between these two people or other Ambrorite employees and any of the target executives or companies?

Either of these would be explicitly against the law.

I must assume these are rhetorical questions. In case they are not, the answer is no for both. Not Government employees and no favors/money

Assuming this is not the case, I come back to a concern about the "sunshine test" here, especially given the recent media coverage about Telkom as a client. We need to assume that this contract will be discovered by a journalist and we must be 100% comfortable that it's terms are things we can comfortably defend in a court of public opinion (even if in a legal court we are not breaking any laws). On the one hand, one could make an analogy here to a US lobbying firms that companies hire to influence government officials. But what really matters is how this would be portrayed and perceived by the South African media and it's readership.

As discussed on the phone, I'm ok with the sunshine test on this, otherwise I wouldn't have proceeded – and I assessed at length the pros and cons. This doesn't mean that I would go public with this in the same way that I am ok with having a contract with a client for USD 8M (btw, in Telkom 2014 fiscal year the number will be ~20) but I'd rather not see it written in the papers
I don't think the parallel with lobbying companies is right and I wouldn't contract someone for that, despite this being legal in the US. It is simply a business development arrangement where these people would inform us if they are aware of changes in the key positions in a few selected companies, provide us intelligence on the current situation of the company (strategic and operational issues) and possible leadership evolutions, try to position Bain and introduce us to the relevant decision makers. It is pretty straightforward and it is clearly written in the contract I sent you. There are no "favors" or "quid pro quo" or else. It is instead very relevant the clause that says – not sure if you noticed it - that we'll work only for competent and integer people, that are willing to change the status quo and are empowered to do so. For me this is Bible, no compromises.

I am also concerned that we are trading off short term access for long term issues. IF

these individuals are so well connected with the current President and his administration, by association with them, Bain too will become associated with this faction and, as will certainly be the case, when he and his associates fall out of favor, Bain will also fall out of favor...or even worse. His opponents may see a real opportunity to publicly attack Bain in order to attack him, even when he is still in office. We lived through this during Romney's election bid and it was quite damaging. Or they may twist this contract into an accusation of impropriety in how Bain is getting our business- that we pay people close to the President to use their influence to get "our man" the CEO job, so we get the work. This certainly is what the journalist was insinuating in the Telkom article. They could use this contract as evidence.

There is no real evident link between these guys and the President. They have never been involved in politics, while instead they are reputable people in the black SA community. So they are not part of any factions and they are absolutely under the radar of any public person. What happens here is that there is a potential – or a current – CEO of a company and they seriously believe that Bain – like we did with Sipho – can provide this person the best business guidance and support to set him up for success. As I said in the call, I wanted to have a contract and some basic compensation regulating our relationship with them, so to be able to define clearly the guidelines and principles of it. Most likely, they would involve us anyway in some of the situations, even without any reward. Their interest is creating a legacy for the President and improve the country. I know it sounds too nice to be true... if you are happy to fly to SA I'll introduce you to them.
There is an inherent risk in working as a consultant of choice with any CEO that the his/her successor will want to change advisor.. that's just life... we certainly don't spare our support to CEOs thinking about what happens when they leave

I am sorry, but the parallel with Romney's doesn't make sense, he was the politician and he was Bain all over... (btw, maybe not relevant, but in my opinion in SA the association with Mitt had a positive impact, not negative) here the situation is completely different. And that is not what the journalist is insinuating: what he is saying is that we "groomed" Sipho (i.e. trained him on telco, welcomed him in our office,...) in a tough moment in his professional life and that the investment is paying back. Btw, this is quite true – obviously everything can be seen in a malicious way even if the relationship with Sipho is very healthy and strictly professional

I am concerned that while this contract may help us win some business in the short term, it may really hurt us in the long term to be so closely associated with this President. We don't publicly align Bain's brand with politics for exactly this reason or allow firm contributions to political parties. And we absolutely can't assume that this contract agreement will stay confidential. It will certainly leak/be discovered. Which is why, if you are not comfortable with this arrangement being publicly known, we should probably not be in it.

I thought this was clarified in the call. This is not "some business", this is a strategic pillar for the long term sustainability of the SA office. Each of those clients (and there are a couple not on that list) can generate Revenues for USD 5-10M per year on a multi-year basis. We tried 4 years to penetrate the Government/SOE sector (which as we said is fundamental in SA) and we had basically zero success. Clearly this is a potential, no one can guarantee that the Revenues will come, but I believe this is the best and less risky approach to the issue

I confess I don't know the norms of South African business. Is this a "normal" arrangement for consultants and other professional service firms to be in, to pay influencers for access like this and to align with political factions?

I think Innocent explained that both Mck and BCG have more than one paid people doing this. I am not sure what "align with political factions" mean

In your second mail you raise the point that USD ~100k as a retainer and a maximum of 300k is not immaterial and higher than other advisory roles. I've read many of those contracts. You need to take into account that a) the role is different and the workload is much higher (as an example, help us organize a 40th birthday dinner with the 3 business associations and the President), b) these agreements often contain a success fee expresses in % (1-3 if I remember correctly) of the revenues generated. Graham

49

Luce, because this is South Africa and people might misread the meaning and rationale of that %, suggested that we had specific amounts instead. If you consider the potential revenues that have to be generated to exceed expectations (and get to the 300k), this is quite reasonable

Let me know your thoughts and maybe we should have another call. I will work on pulling together the brand building examples as well to share with you from other markets.

Thank you looking forward to seeing other successful experiences
Wendy

From: Massone, Vittorio
Sent: Tuesday, January 14, 2014 10:18 AM
To: Miller, Wendy
Cc: Dutiro, Innocent
Subject:

Wendy,

Please find attached the contract, as discussed. The names of the relevant people are included. Contract has been approved by Legal and Finance

Let me know what you think

Thank you

Best,
Vittorio

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com | web:www.bain.com

ANNEXURE "AW26"

AW26

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: mandla@kanozulu.co.za
Sent: Sun 11/10/2013 7:38:41 AM (UTC)
Subject: Re: Ambrobrite Invoices
AMBRObrite profile1

Dear Vittorio
Thanks for your quick response. Kindly find attached company information for contracting. I will come back to you on the event date.

Best regards,
Mandla KaNozulu

From: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Sent: Sunday, November 10, 2013 7:54 AM
To: "mandla@kanozulu.co.za" <mandla@kanozulu.co.za>
Subject: Re: Ambrobrite Invoices

Thank you Mandla

To pay invoices we need a contract. To create a contract we need to have the companies data. Which I've been asking for a couple of months now

I cannot ask to pay a company with whom I don't have a contract.. I am sure we all understand this

Kindly provide me with the above as soon as possible so we can proceed. We'll need to change the period of the invoices for the same reason: if I sign a contract in November I can't pay someone in September. We can partially adjust the numbers to get to the same totals, but I need to be able to sign a contract immediately

By the way re happiness, the date of the 28th doesn't work for the Presidency and we still don't have an alternative date. If I can't send the invites in the next very few days there will be no event this year.. Which clearly doesn't make me very happy.. Anything you can do there?

Best,
Vittorio

From: mandla@kanozulu.co.za [mailto:mandla@kanozulu.co.za]
Sent: Sunday, November 10, 2013 05:02 AM GMT Standard Time
To: Massone, Vittorio
Cc: mandla@kanozulu.co.za <mandla@kanozulu.co.za>
Subject: Ambrobrite Invoices

Dear V
Kindly find attached invoices for September and October. Please note that these are calculated at the very happy rate. Should you require me adjust, please don't hesitate to say so.

Hoping all is in order.

Best regards,
Mandla KaNozulu
AMBROBRITE (PTY) LTD

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ANNEXURE "AW27"

AW27.

From: Smout, Geoff
Sent: Tuesday, January 07, 2014 09:07 AM GMT Standard Time
To: Massone, Vittorio
Subject: Ambrobrite

Vittorio, Happy New Year. I hope you and your family had a good break.

I wanted to let you know that I feel uncomfortable about our proposed arrangement with and payment to Ambrobrite:

- I cannot find any information about the company on the internet
- There does not appear to be a website for them at all, which is highly unusual
- No financials etc. are available that I can find
- They do not appear on Onesource
- A Google search only brings up the information below, showing they are in a de-registration process and have never filed accounts
- The tax certificate they provided us looked 'unusual' but we are awaiting an original copy that we can review

Are you completely comfortable that they are an appropriate partner for us to be working with? If so, we will proceed with the payment although we need to receive the signed contract and an acceptable tax clearance certificate from them first (which Nicolle has asked for).

Thanks

Geoff

ANNEXURE "AW28"

AW28

To: Venter, Nicolle[Nicolle.Venter@Bain.com]
Cc: Smout, Geoff[Geoff.Smout@Bain.com]
From: Massone, Vittorio
Sent: Wed 11/13/2013 3:50:50 PM (UTC)
Subject: Re: Ambrobrite contract documents

Ok, no worries - I'll draft it and send it to you. What they do has not much to do with what Fleishman does (luckily!)

V

From: Olmesdahl, Nicolle
Sent: Wednesday, November 13, 2013 02:55 PM GMT Standard Time
To: Massone, Vittorio
Cc: Smout, Geoff
Subject: FW: Ambrobrite contract documents

Vittorio

Since I have not done this before, I had a quick chat to Geoff for some guidance. He suggested the contract should be drafted by Ambrobrite and we should then check and also ensure our Legal team are happy.

So, I will get in touch with Mandla now to ask him to do this and we can go from there.

Geoff, FYI - the fee structure will look as follows:

- Annual Retainer – R1.2m
- Success Fee - R1.2m Meets Expectation and an additional R1.2m for Exceeds Expectation.

I have also asked Dan Pinkney and his team to send through the Fleishman Hilliard contract for us to compare against if we want to.

Thanks
Nicolle

From: Casella, Curtis
Sent: Tuesday, November 12, 2013 1:04 PM
To: Olmesdahl, Nicolle
Cc: Massone, Vittorio; Chirume, Mary-Rose
Subject: Ambrobrite contract documents

Hi Nicolle,

Vittorio asked me to send these documents to you to draft a contract to work with this company.

Thanks,

Curtis Casella
Executive Assistant to Vittorio Massone
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 087 9022 fax: +27 11 012 9101 mobile: +27 82 920 0113
mailto:Curtis.Casella@Bain.com | web:www.bain.com

ANNEXURE "AW29"

AW29

From: Massone, Vittorio
Sent: Tuesday, January 14, 2014 10:18 AM
To: Miller, Wendy
Cc: Dutiro, Innocent
Subject:

Wendy,

Please find attached the contract, as discussed. The names of the relevant people are included. Contract has been approved by Legal and Finance

Let me know what you think

Thank you

Best,
Vittorio

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com | web:www.bain.com

ANNEXURE "AW30"

AW30

From: Massone, Vittorio
Sent: Saturday, January 18, 2014 12:25 PM
To: Meehan, Paul
Subject: RE: follow up

Paul,

If we are not convinced this is the right thing to do, we can pull out of the contract in the space of a phone call. There is a relationship of trust, they'll understand.

The partner group is on board, Innocent and Fabrice in particular as they're also going to be involved in the target clients. The strategy session we had in November produced that "house" I sent you earlier which contains the Government sector as a pillar of the office strategy. We all recognize that we cannot have a sustainable scale business in SA without a decent presence in this sector. Duma is a fundamental tool to enter it. We tried for 4 years with zero – literally zero – results. We can continue to try and we may have some successes in a few years, who knows.

Rationale

PROS

1. This is an important, fundamental step in the establishment of the SA Office
    a. Government sector (SOEs in particular, plus a couple of agencies) is fundamental in the SA economy and in for the consulting spend
    b. Bain position is very weak (btw, NOT for any link with SAA) because it is a relationship market
    c. Mck is extremely solid there, having been around for decades and leveraging their research capacity and the international connections to continuously feed government members and CEOs. They are also clearly stronger IP/expertise wise in many of the specific industries (power, railways,...)
2. It is also an important strategic initiative, it's not just about "selling" to a couple of companies. The discussion with Duma on the target SOEs is consequent to a broader discussion on the country vision and strategy we had with the President, which sees some of the SOEs as key to achieve change and economic development in the country. Zuma's idea is to create a concrete legacy during his second mandate which will start in June this year. The Phoenix project was the first piece of this plan and where we were "tested". There are other fundamental pieces of that legacy, which will involve the Revenue Service (SARS), the power company (Eskom) and others. There also other components of that legacy (policies, laws,...), but we are clearly much less involved on that, Bain is key in the "industrial" component.
3. The list of companies we are targeting in the next 6-12 months and my conservatives estimates of their potential (per year Revs, number of years) are the following. In time other might come into the equation, for example SAA, or O&G, but there are not the right conditions at the moment. So those will be considered later.
    a. Post Office, ~5-10M USD, 4-5 years
    b. SARS 3-5M, 2-3 years
    c. Denel (Defence company), 2-3M, 1 year
    d. Eskom, 5-10M, 4-5 years

    As a comparison, Telkom will be ~20M in 2014
4. To clarify, in extreme synthesis, the mechanism is more or less the following. There is a current or potential CEO of a target company. Duma helps us understand his/the companies issues and

ANNEXURE "AW31"

AW31

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
Cc: Debruyne, Frederic[Frederic.Debruyne@Bain.com]
From: Meehan, Paul
Sent: Fri 1/20/2017 8:25:03 PM (UTC)
Subject: RE: Davos - Jabu

Vittorio,

Really nice to meet Jabu today. Very warm and friendly.

Nothing major to report out to you as he was a little pressed for time.

Best,
Paul

From: Massone, Vittorio
Sent: Monday, January 16, 2017 11:34 AM
To: Meehan, Paul <Paul.Meehan@Bain.com>
Cc: Debruyne, Frederic <Frederic.Debruyne@Bain.com>
Subject: Re: Davos - Jabu

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Excellent as Jabu is and will be even more a key component of our growth in SA, esp in government

Jabu accepted to become Chair of our to be created SA Advisory Board and will actively recruit with me the other members (he has closed one candidate already). I sent you the relative document, role is broad and include business development, brand building, recruiting, people coaching

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On CD, besides SAA we are talking about Prasa (passenger railway) and Transnet (freight railway). In the future months we'll speak about Petro SA (a sort of NOC) and Eskom (electricity). These being the known priorities, other important discussions with Gov will come up, I believe

Important to note that Jabu has recently become control shareholder in the largest local (and reputable) consulting firm and we are discussing all the above opportunities with them as our BEE partners

So in terms of agenda, my suggestions would be

- Telkom. Thanking him for the business and getting his insights of where the company is and our role going forward (we have 1 team as of now and we might get to zero if they don't open the wallet). Maybe a curved ball on MTN, if he sees the possible merger gone or still a possibility.

- reinforcing all the above message on how we consider this friendship as a privilege and count on him and we look forward to doing business with him, incl with his company. Maybe also some asking some feedback on how we can continue to grow (besides the clients above..) and what we could do differently (I'm sure he'll raise our demographics..)

- giving him exposure to Bain IP and people as this is part of the advisor deal. He recently met Jimmy Allen and was very happy with that. Maybe a coffee 1-1 with one of our IP experts that will be in Davos would be great. He travels a lot, really a lot, so a cool thing would be to design a roadmap of meetings with experts for the next 12-18 months based on his schedule. Paul, you know Bain people and the new IPs much more than me so it'd be great if you could jot down some ideas with Jabu

- and of course asking him if we can be helpful in any other way.. His style is that he doesn't really ask, we need to offer...

ANNEXURE "AW32"

AW32 "VM8.1"

Nanri Labuschagne

121

From: Massone, Vittorio <Vittorio.Massone@Bain.com>
Sent: Monday, September 17, 2018 7:25 PM
To: Nanri Labuschagne
Cc: Kennedy, Chris
Subject: FW: SARS what has to be done Aug 2014 .pptx
Attachments: SARS what has to be done Aug 2014 .pptx

From: Massone, Vittorio
Sent: Friday, August 29, 2014 5:54 PM
To: duma@icon.co.za
Subject: SARS what has to be done Aug 2014 .pptx

Hi Duma,

Please find attached document for your meeting on Sunday.

Best,
Vittorio

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ANNEXURE "AW33"

AW33

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Bour, Alexis
Sent: Wed 5/7/2014 7:57:09 AM (UTC)
Subject: RE:

I have Mandla's email - mandla@kanozulu.co.za

I found this email for Duma in an email trail - duma@icon.co.za - is it correct?

Alexis

-----Original Message-----
From: Massone, Vittorio
Sent: Wednesday, May 07, 2014 7:33 AM
To: Bour, Alexis
Cc: Gumede, Nokwanda
Subject: Re:

Tomorrow they see the President, so we should try today.. Ouch I see it's holiday today.. So let's send it via mail to him, Sipho and Mandla - if you send me the deck I'll send it to Sipho's private you can send directly to Duma and Mandla
Thank you!
V

1

----- Original Message -----
From: Bour, Alexis
Sent: Wednesday, May 07, 2014 06:29 AM GMT Standard Time
To: Massone, Vittorio
Cc: Gumede, Nokwanda
Subject: RE:

Of course, we can we can. Is it ok to give it to Nokwanda first thing tomorrow morning or should we try and get in touch with her today?

Alexis

-----Original Message-----
From: Massone, Vittorio
Sent: Wednesday, May 07, 2014 7:24 AM
To: Bour, Alexis
Subject: Re:

Thank you Alexis - why don't we merge the two documents and have it sent to Duma same way (Nokwanda dealing with his PA), I'm sure he'll like that part a lot

Thank you
V

----- Original Message -----
From: Bour, Alexis
Sent: Wednesday, May 07, 2014 06:16 AM GMT Standard Time
To: Massone, Vittorio

ANNEXURE "AW34"

AW34

From: Miller, Wendy
Sent: Wednesday, January 15, 2014 5:53 AM
To: Massone, Vittorio
Cc: Dutiro, Innocent
Subject: follow up

Thanks for the call today Vittorio and Innocent. It was very helpful context.

I reviewed the contact you sent through and I did talk to Stuart Min a bit about it as well. I just want to confirm again that:

1- Neither of the two people mentioned by name in the contract, nor any of the other employees of Ambrorite, are SA government employees?
2- There is no plan for money or favors changing hands between these two people or other Ambrorite employees and any of the target executives or companies?

Either of these would be explicitly against the law.

I must assume these are rhetorical questions. In case they are not, the answer is no for both. Not Government employees and no favors/money

Assuming this is not the case, I come back to a concern about the "sunshine test" here, especially given the recent media coverage about Telkom as a client. We need to assume that this contract will be discovered by a journalist and we must be 100% comfortable that it's terms are things we can comfortably defend in a court of public opinion (even if in a legal court we are not breaking any laws). On the one hand, one could make an analogy here to a US lobbying firms that companies hire to influence government officials. But what really matters is how this would be portrayed and perceived by the South African media and it's readership.

As discussed on the phone, I'm ok with the sunshine test on this, otherwise I wouldn't have proceeded – and I assessed at length the pros and cons. This doesn't mean that I would go public with this in the same way that I am ok with having a contract with a client for USD 8M (btw, in Telkom 2014 fiscal year the number will be ~20) but I'd rather not see it written in the papers I don't think the parallel with lobbying companies is right and I wouldn't contract someone for that, despite this being legal in the US. It is simply a business development arrangement where these people would inform us if they are aware of changes in the key positions in a few selected companies, provide us intelligence on the current situation of the company (strategic and operational issues) and possible leadership evolutions, try to position Bain and introduce us to the relevant decision makers. It is pretty straightforward and it is clearly written in the contract I sent you. There are no "favors" or "quid pro quo" or else. It is instead very relevant the clause that says – not sure if you noticed it – that we'll work only for competent and integer people, that are willing to change the status quo and are empowered to do so. For me this is Bible, no compromises.

I am also concerned that we are trading off short term access for long term issues. IF these individuals are so well connected with the current President and his administration, by association with them, Bain too will become associated with this faction and, as will certainly be the case, when he and his associates fall out of favor, Bain will also fall out of favor...or even worse. His opponents may see a real opportunity to publicly attack Bain in order to attack him, even when he is still in office. We lived through this during Romney's election bid and it was quite damaging. Or they may twist this contract into an accusation of impropriety in how Bain is getting our business- that we pay people close to the President to use their influence to get "our man" the CEO job, so we get the work. This certainly is what the journalist was insinuating in the Telkom article. They could use this contract as evidence.

There is no real evident link between these guys and the President. They have never been involved in politics, while instead they are reputable people in the black SA community. So they are not part of any factions and they are absolutely under the radar of any public person. What happens here is that there is a potential – or a current – CEO of a company and they seriously believe that Bain – like we did with Sipho – can provide this person the best business guidance and support to set him up for success. As I said in the call, I wanted to have a contract and some basic compensation regulating our relationship with them, so to be able to define clearly the guidelines and principles of it. Most likely, they would involve us anyway in some of the situations, even without any reward. Their interest is creating a legacy for the President and improve the country. I know it sounds too nice to be true... if you are happy to fly to SA I'll introduce you to

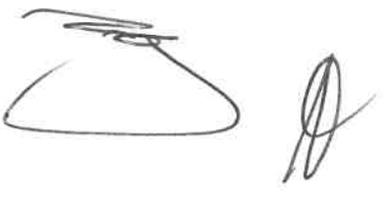
them.
There is an inherent risk in working as a consultant of choice with any CEO that the his/her successor will want to change advisor.. that's just life... we certainly don't spare our support to CEOs thinking about what happens when they leave

I am sorry, but the parallel with Romney's doesn't make sense, he was the politician and he was Bain all over... (btw, maybe not relevant, but in my opinion in SA the association with Mitt had a positive impact, not negative) here the situation is completely different. And that is not what the journalist is insinuating: what he is saying is that we "groomed" Sipho (i.e. trained him on telco, welcomed him in our office,...) in a tough moment in his professional life and that the investment is paying back. Btw, this is quite true – obviously everything can be seen in a malicious way even if the relationship with Sipho is very healthy and strictly professional

> I am concerned that while this contract may help us win some business in the short term, it may really hurt us in the long term to be so closely associated with this President. We don't publicly align Bain's brand with politics for exactly this reason or allow firm contributions to political parties. And we absolutely can't assume that this contract agreement will stay confidential. It will certainly leak/be discovered. Which is why, if you are not comfortable with this arrangement being publicly known, we should probably not be in it.
>
> I thought this was clarified in the call. This is not "some business", this is a strategic pillar for the long term sustainability of the SA office. Each of those clients (and there are a couple not on that list) can generate Revenues for USD 5-10M per year on a multi-year basis. We tried 4 years to penetrate the Government/SOE sector (which as we said is fundamental in SA) and we had basically zero success. Clearly this is a potential, no one can guarantee that the Revenues will come, but I believe this is the best and less risky approach to the issue
>
> I confess I don't know the norms of South African business. Is this a "normal" arrangement for consultants and other professional service firms to be in, to pay influencers for access like this and to align with political factions?

I think Innocent explained that both Mck and BCG have more than one paid people doing this. I am not sure what "align with political factions" mean

> In your second mail you raise the point that USD ~100k as a retainer and a maximum of 300k is not immaterial and higher than other advisory roles. I've read many of those contracts. You need to take into account that a) the role is different and the workload is much higher (as an example, help us organize a 40th birthday dinner with the 3 business associations and the President), b) these agreements often contain a success fee expresses in % (1-3 if I remember correctly) of the revenues generated. Graham Luce, because this is South Africa and people might misread the meaning and rationale of that %, suggested that we had specific amounts instead. If you consider the potential revenues that have to be generated to exceed expectations (and get to the 300k), this is quite reasonable
>
> Let me know your thoughts and maybe we should have another call. I will work on pulling together the brand building examples as well to share with you from other markets.
>
> Thank you looking forward to seeing other successful experiences
> Wendy
>
> ---
> **From:** Massone, Vittorio
> **Sent:** Tuesday, January 14, 2014 10:18 AM
> **To:** Miller, Wendy
> **Cc:** Dutiro, Innocent
> **Subject:**
>
> Wendy,
>
> Please find attached the contract, as discussed. The names of the relevant people are included. Contract has been approved by Legal and Finance
>
> Let me know what you think



ANNEXURE "AW35"

AW35

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: mandla@kanozulu.co.za
Sent: Sun 11/10/2013 7:38:41 AM (UTC)
Subject: Re: Ambrobrite Invoices
AMBRObrite profile1

Dear Vittorio
Thanks for your quick response. Kindly find attached company information for contracting. I will come back to you on the event date.

Best regards,
Mandla KaNozulu

From: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Sent: Sunday, November 10, 2013 7:54 AM
To: "mandla@kanozulu.co.za" <mandla@kanozulu.co.za>
Subject: Re: Ambrobrite Invoices

Thank you Mandla

To pay invoices we need a contract. To create a contract we need to have the companies data. Which I've been asking for a couple of months now

I cannot ask to pay a company with whom I don't have a contract.. I am sure we all understand this

Kindly provide me with the above as soon as possible so we can proceed. We'll need to change the period of the invoices for the same reason: if I sign a contract in November I can't pay someone in September. We can partially adjust the numbers to get to the same totals, but I need to be able to sign a contract immediately

By the way re happiness, the date of the 28th doesn't work for the Presidency and we still don't have an alternative date. If I can't send the invites in the next very few days there will be no event this year.. Which clearly doesn't make me very happy.. Anything you can do there?

Best,
Vittorio

From: mandla@kanozulu.co.za [mailto:mandla@kanozulu.co.za]
Sent: Sunday, November 10, 2013 05:02 AM GMT Standard Time
To: Massone, Vittorio
Cc: mandla@kanozulu.co.za <mandla@kanozulu.co.za>
Subject: Ambrobrite Invoices

Dear V
Kindly find attached invoices for September and October. Please note that these are calculated at the very happy rate. Should you require me adjust, please don't hesitate to say so.

Hoping all is in order.

Best regards,
Mandla KaNozulu
AMBROBRITE (PTY) LTD

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ANNEXURE "AW36"

AW 36 b

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Olmesdahl, Nicolle
Sent: Thur 2/5/2015 3:53:12 PM (UTC)
Subject: RE:

Thanks, I have let him know and we'll pay it tomorrow.

Thanks
Nicolle

-----Original Message-----
From: Massone, Vittorio
Sent: Thursday, February 05, 2015 5:51 PM
To: Olmesdahl, Nicolle
Subject: Re:

Yes thank you
V

----- Original Message -----
From: Olmesdahl, Nicolle
Sent: Thursday, February 05, 2015 03:47 PM GMT Standard Time
To: Massone, Vittorio
Subject: RE:

Vittorio

I spoke to Mandla today letting him know I'd send him an email later today with the value of invoice, which he was happy with.

Just to be clear, we're settling the success fee for October 2014 to March 2015 (6 months) at exceeds expectation - R1.2m?

Thanks
Nicolle

-----Original Message-----
From: Massone, Vittorio
Sent: Tuesday, February 03, 2015 7:52 AM
To: Olmesdahl, Nicolle
Subject:

Nicolle,

For Ambrorite, I think we can now pay the success fees - the highest level of satisfaction - for the period from last october to april 2015

Thank you
V

ANNEXURE "AW37"

AW 37

To: Venter, Nicolle[Nicolle.Venter@Bain.com]
From: Smout, Geoff
Sent: Wed 12/18/2013 10:41:18 AM (UTC)
Subject: RE: Ambrorite

This whole situation seems very dodgy.

Do you know anything about the background of the people who run Ambrorite or who are named in the contract?

From: Olmesdahl, Nicolle
Sent: Wednesday, December 18, 2013 10:39 AM
To: Smout, Geoff
Subject: RE: Ambrorite

Well, I have just been to SARS who could not verify the TCC and suspect it's fraudulent!

They have taken a copy and will get back to me later confirming whether it is a fake certificate or not.

From: Smout, Geoff
Sent: Wednesday, December 18, 2013 8:35 AM
To: Olmesdahl, Nicolle
Subject: RE: Ambrorite

Yes I'm happy if we can verify the certificate with SARS.

From: Olmesdahl, Nicolle
Sent: Wednesday, December 18, 2013 5:49 AM
To: Smout, Geoff
Subject: RE: Ambrorite

When we do get asked for documents, these 3 usually come up although in my mind a tax clearance certificate covers everything.

Would you be happy if I went to SARS to verify this certificate?

Vittorio will be annoyed if I go back and ask Mandla for additional documentation (he has signed the contract) but of course we need to do what we need to do.

From: Smout, Geoff
Sent: Tuesday, December 17, 2013 1:27 PM
To: Olmesdahl, Nicolle
Subject: RE: Ambrorite

For some reason I don't trust this situation - I'd like to see their certificate of incorporation and VAT certificate too. What else do we typically get asked for?

I'm happy to accrue whatever fee we believe they are likely to have earned in 2013, including success fees, but I think this can only be a pro-rata portion of the total.

From: Olmesdahl, Nicolle
Sent: Monday, December 16, 2013 4:48 PM
To: Smout, Geoff
Subject: RE: Ambrorite

Geoff

I have received their tax clearance certificate which shows Ambrobrite are a genuine registered company in South Africa including their company registration number and income tax number. Are you happy with this?

I will speak to him tomorrow regarding the upfront retainer but I suppose he

was hoping we could reduce our CD spend this year, which I am not sure we can allocate the R400k for 2014? Perhaps we could adjust based on the fact we may pay this in Success Fees?

Nicolle

From: Smout, Geoff
Sent: Friday, November 29, 2013 8:33 AM
To: Olmesdahl, Nicolle
Subject: Ambrorite

I don't know if you managed to get any information for us to get comfortable with Ambrorite and its executives? The draft contract with legal terms is attached.

My only question on the commercial matters laid out by Vittorio is why we are paying their retainer in full up front? It seems better to me to spread it, in case we are unhappy with what their output. I know we have a success fee too, but at present we are paying R600K up front once we sign.

Geoff Smout
Senior Director, Finance
Bain & Company, Inc. | 40 Strand | London | WC2N 5RW | United Kingdom
tel: +44 (0)207 969 6560 fax: +44 (0)870 731 8560 mobile: +44 (0)7768 708 537
Geoff.Smout@bain.com | web: www.bain.com

ANNEXURE "AW38"

AW38

To: Venter, Nicolle[Nicolle.Venter@Bain.com]
From: Smout, Geoff
Sent: Tue 1/7/2014 6:08:14 PM (UTC)
Subject: FW: Ambrobrite

FYI

Any sign of the tax clearance certificate or the contract yet?

From: Massone, Vittorio
Sent: Tuesday, January 07, 2014 10:28 AM
To: Smout, Geoff
Subject: Re: Ambrobrite

Thank you Geoff

I am very comfortable to do business with the people, which we've been doing for a few months already. That's why I've chosen them. We should however do all the appropriate verifications on the vehicle/entity.

Actually, I wish we applied the same level of scrutiny in all our activities, as we're having with this one

Kind regards,
Vittorio

From: Smout, Geoff
Sent: Tuesday, January 07, 2014 09:07 AM GMT Standard Time
To: Massone, Vittorio
Subject: Ambrobrite

Vittorio, Happy New Year. I hope you and your family had a good break.

I wanted to let you know that I feel uncomfortable about our proposed arrangement with and payment to Ambrobrite:

- I cannot find any information about the company on the internet
- There does not appear to be a website for them at all, which is highly unusual
- No financials etc. are available that I can find
- They do not appear on Onesource
- A Google search only brings up the information below, showing they are in a de-registration process and have never filed accounts
- The tax certificate they provided us looked 'unusual' but we are awaiting an original copy that we can review

Are you completely comfortable that they are an appropriate partner for us to be working with? If so, we will proceed with the payment although we need to receive the signed contract and an acceptable tax clearance certificate from them first (which Nicolle has asked for).

Thanks

Geoff

ANNEXURE "AW39"

AW39

From: Miller, Wendy
Sent: Wednesday, January 15, 2014 5:53 AM
To: Massone, Vittorio
Cc: Dutiro, Innocent
Subject: follow up

Thanks for the call today Vittorio and Innocent. It was very helpful context.

I reviewed the contact you sent through and I did talk to Stuart Min a bit about it as well. I just want to confirm again that:

1- Neither of the two people mentioned by name in the contract, nor any of the other employees of Ambrorite, are SA government employees?
2- There is no plan for money or favors changing hands between these two people or other Ambrorite employees and any of the target executives or companies?

Either of these would be explicitly against the law.

I must assume these are rhetorical questions. In case they are not, the answer is no for both. Not Government employees and no favors/money

Assuming this is not the case, I come back to a concern about the "sunshine test" here, especially given the recent media coverage about Telkom as a client. We need to assume that this contract will be discovered by a journalist and we must be 100% comfortable that it's terms are things we can comfortably defend in a court of public opinion (even if in a legal court we are not breaking any laws). On the one hand, one could make an analogy here to a US lobbying firms that companies hire to influence government officials. But what really matters is how this would be portrayed and perceived by the South African media and it's readership.

As discussed on the phone, I'm ok with the sunshine test on this, otherwise I wouldn't have proceeded – and I assessed at length the pros and cons. This doesn't mean that I would go public with this in the same way that I am ok with having a contract with a client for USD 8M (btw, in Telkom 2014 fiscal year the number will be ~20) but I'd rather not see it written in the papers I don't think the parallel with lobbying companies is right and I wouldn't contract someone for that, despite this being legal in the US. It is simply a business development arrangement where these people would inform us if they are aware of changes in the key positions in a few selected companies, provide us intelligence on the current situation of the company (strategic and operational issues) and possible leadership evolutions, try to position Bain and introduce us to the relevant decision makers. It is pretty straightforward and it is clearly written in the contract I sent you. There are no "favors" or "quid pro quo" or else. It is instead very relevant the clause that says – not sure if you noticed it – that we'll work only for competent and integer people, that are willing to change the status quo and are empowered to do so. For me this is Bible, no compromises.

I am also concerned that we are trading off short term access for long term issues. IF these individuals are so well connected with the current President and his administration, by association with them, Bain too will become associated with this faction and, as will certainly be the case, when he and his associates fall out of favor, Bain will also fall out of favor...or even worse. His opponents may see a real opportunity to publicly attack Bain in order to attack him, even when he is still in office. We lived through this during Romney's election bid and it was quite damaging. Or they may twist this contract into an accusation of impropriety in how Bain is getting our business- that we pay people close to the President to use their influence to get "our man" the CEO job, so we get the work. This certainly is what the journalist was insinuating in the Telkom article. They could use this contract as evidence.

There is no real evident link between these guys and the President. They have never been involved in politics, while instead they are reputable people in the black SA community. So they are not part of any factions and they are absolutely under the radar of any public person. What happens here is that there is a potential – or a current – CEO of a company and they seriously believe that Bain – like we did with Sipho – can provide this person the best business guidance and support to set him up for success. As I said in the call, I wanted to have a contract and some basic compensation regulating our relationship with them, so to be able to define clearly the guidelines and principles of it. Most likely, they would involve us anyway in some of the situations, even without any reward. Their interest is creating a legacy for the President and improve the country. I know it sounds too nice to be true... if you are happy to fly to SA I'll introduce you to

ANNEXURE "AW40"

AW40

atholwilliams@hotmail.com

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: 09 October 2018 16:59
To: atholwilliams@hotmail.com
Cc: Bernstein, Darryl
Subject: Fwd: [EXTERNAL] FW: follow up

Athol - see below, to be read alongside the chain between Paul and Vittorio.

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit <https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C86921bbb3efb4d1d8ff108d62df7d4c6%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636746939779163263&sdata=NQsxUx446vuD8erTi1aAnLplV9gWoAQquSC6n%2Bcd4AY%3D&reserved=0>
https://eur02.safelinks.protection.outlook.com/?url=www.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C86921bbb3efb4d1d8ff108d62df7d4c6%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636746939779163263&sdata=XDZHAveHjOp5xpZB%2FYT87iLIT2DWPJpCNOvLRL8FggY%3D&reserved=0<https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C86921bbb3efb4d1d8ff108d62df7d4c6%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636746939779163263&sdata=NQsxUx446vuD8erTi1aAnLplV9gWoAQquSC6n%2Bcd4AY%3D&reserved=0> for other important information concerning this message.

Begin forwarded message:

From: "Min, Stuart" <Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>>
Date: September 22, 2018 at 5:16:56 PM EDT
To: "Demas, Reagan R" <reagan.demas@bakermckenzie.com<mailto:reagan.demas@bakermckenzie.com>>
Subject: [EXTERNAL] FW: follow up

As discussed.

From: Miller, Wendy
Sent: Sunday, September 9, 2018 2:06 PM
To: Min, Stuart <Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>>
Subject: FW: follow up

Some of our concerns with Duma

From: Min, Stuart
Sent: Wednesday, January 15, 2014 1:19 PM
To: Miller, Wendy <Wendy.Miller@Bain.com<mailto:Wendy.Miller@Bain.com>>
Subject: RE: follow up

Wendy,

Thanks. I did a quick Google search. A couple of things:

6B6

1. In the last paragraph of this article, Duma Ndlovu is listed as one of President Jacob Zuma's "most trusted lieutenants" outside of the gov't.
https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fmg.co.za%2Farticle%2F2013-02-08-00-zumas-most-trusted-lieutenants&data=02%7C01%7C%7C86921bbb3efb4d1d8ff108d62df7d4c6%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636746939779163263&sdata=OFS6nxEm1auz2%2BYRK3No6xa2NIxxgEtcSpLNFXjUy1Y%3D&reserved=0<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__mg.co.za_article_2013-2D02-2D08-2D00-2Dzumas-2Dmost-2Dtrusted-2Dlieutenants%26d%3DDwMFAg%26c%3DptMoEJ5oTofwe4L9tBtGCQ%26r%3DcdB3wQvc8t2vgkKDeYWC_zabTF7IntMSyRTar4KpvW4%26m%3DVrCmzbtsaBWfeHenmUAUF3hopVwbfZhaojWoUjx8EH4%26s%3DfbKr1GAWrFftAIDdzV53d0OYTM8Ok8X1KJZD47bCoqU%26e&data=02%7C01%7C%7C86921bbb3efb4d1d8ff108d62df7d4c6%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636746939779163263&sdata=ITG%2Bw3UCD3DcF81kRgnVt8%2FuFYWEueSMZJGqQoUWvSM%3D&reserved=0=>. I don't see how Vittorio can claim "there is no real evident link between these guys and the President". There are other articles online which talk about Ndlovu introducing people to Pres. Zuma, etc. Even if the article is not entirely accurate, it seems disingenuous to me that Vittorio is completely downplaying the link with the President, as if that has nothing to do with his decision to hire these guys.

2. I didn't find anything similar re: a link between President Zuma and the other guy, Mandla KaNozulu, but I didn't really do a comprehensive search. Up to you if you want to have someone in your online group research more thoroughly. KaNozulu is another "creative executive" who has done several artistic projects with Duma Ndlovu per this article. Zulus launch major cultural initiative - Tonight News | IOL.co.za<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.iol.co.za_tonight_news_local_zulus-2Dlaunch-2Dmajor-2Dcultural-2Dinitiative-2D1.1361900%26d%3DDwMFAg%26c%3DptMoEJ5oTofwe4L9tBtGCQ%26r%3DcdB3wQvc8t2vgkKDeYWC_zabTF7IntMSyRTar4KpvW4%26m%3DVrCmzbtsaBWfeHenmUAUF3hopVwbfZhaojWoUjx8EH4%26s%3D-kaJVJiKmFnjwJ1FL47_-M2MIp9cXY9ggFGGQTbCc4E%26e&data=02%7C01%7C%7C86921bbb3efb4d1d8ff108d62df7d4c6%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636746939779163263&sdata=gEiKMZtmN7hZ%2FH9hMtSAZWkXX%2FvuIUWr5o8wnWu1pHI%3D&reserved=0=>

3. So here's my main question—how are two "artistic producers" qualified to provide us with intelligence on companies' strategic and operational issues, pending leadership changes, etc., which Vittorio claims is the purpose of the arrangement? It's quite possible that they are well connected in the SA black business community and so would have independent access to this information. But again, it just seems disingenuous for Vittorio to not acknowledge in any way that we hope these guys will use their connections with President Zuma to influence executive selection decisions. We might still decide collectively that this is what it takes to develop business in SA, others play this game too and so we're willing to proceed with them. But I think we should have a fully informed decision, and I just feel that Vittorio is not giving us the full picture.

Stuart

From: Miller, Wendy
Sent: Wednesday, January 15, 2014 7:44 AM
To: Min, Stuart
Subject: FW: follow up

Any reaction to his thoughtful reply? At the surface, he seems to be comfortable with the risks

From: Massone, Vittorio
Sent: Wednesday, January 15, 2014 6:39 AM
To: Miller, Wendy
Subject: RE: follow up

ANNEXURE "AW41"

AW41

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
Cc: Dutiro, Innocent[Innocent.Dutiro@Bain.com]
From: Miller, Wendy
Sent: Wed 1/15/2014 4:29:15 PM (UTC)
Subject: RE: follow up

Hi Vittorio

It's good to hear your confidence on this, but I still feel uncomfortable with the situation, the potential harm it could do to our business if the arrangement came into the hands of a reporter and, longer term, the backlash it could have on our business when Zuma falls out of favor if his political opponents have evidence that Bain was closely aligned with him.

We saw this play out when the new administration publicly attacked Bain's work with SAA, also a government controlled SOE, and the reported "cronyism" of then SAA CEO, Bain alum, Colin Andersen. Even though our work for SAA was amazingly terrific work, adding significant value to the company, because Bain was seen as being closely affiliated with the old regime, the new administration saw an opportunity to attack their political opponents by attacking Bain. It certainly tainted our reputation and contributed to us shutting down our SA operations. I'm wary of analogous situations. I'd think we'd want to be extra cautious as we approach this sector to avoid that happening again! It is not about our relationship with an outgoing CEO during a CEO succession as you talk about below, of course we do that all the time in every country, it is about cultivating too close a relationship with the President if that means when he leaves office, we come under fire and lose business because of our perceived affiliation with him. And I don't see how you can say "There is no real evident link between these guys and the President" when a quick Google search turns up this article in which the last paragraph lists Duma Ndlovu as one of President Jacob Zuma's "most trusted lieutenants" outside of the gov't. http://mg.co.za/article/2013-02-08-00-zumas-most-trusted-lieutenants. There are other articles online which talk about Ndlovu introducing people to Pres. Zuma, etc. Given these two are writers and video producers, it is hard to argue we hired them for their business acumen and expertise. Any reporter would question how they could "provide us intelligence on the current situation of the company (strategic and operational issues)." And if a reporter pieces that together with what we're paying them relative to what other consultant "advisors" get paid, it could make for a pretty powerful story of "alleged abuses" that we have a tough time countering. Given the 2012 data I have on how much our 52 advisors got paid, only 1 was paid as much as we're proposing potentially paying and the next closest is 2/3 that amount. A reporter could question the amount for people with no business experience.

I want to be clear, the point is not if we are doing anything wrong here Vittorio. The "truth" doesn't actually matter. What matters is perception of what we're doing, and how a reporter could twist what we're doing in a story and what kind of backlash that could have on our business.

This may be the only way we can get into the very lucrative SA government market. But I want to be sure that everyone goes into this with a clear understanding of the potential risks, especially given the Telkom story. You see how easily information flows to reporters. We might still decide collectively that this is what it takes to develop business in SA, others play this game too and so we're willing to proceed. But I think we should have a fully informed decision. I'd actually value Innocent's perspective too, given he's worked for many years in the industry in South Africa and would have a better sense of how this might play out in the SA media if discovered and what other executives reactions would be.

Again, happy to discuss on a call instead of by email.

Wendy

From: Massone, Vittorio
Sent: Wednesday, January 15, 2014 6:39 AM
To: Miller, Wendy
Subject: RE: follow up

Hi Wendy, thank you for your time and guidance, appreciated.

On your comments, always good and stimulating to have "pushes" from and deeper dialogues with Sr. colleagues - please find below in red my comments/answers

Best,

Vittorio

ANNEXURE "AW42"

AW42

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Olmesdahl, Nicolle
Sent: Wed 4/23/2014 1:52:19 PM (UTC)
Subject: RE:

Sure, can I get this to you for first thing tomorrow morning?

From: Massone, Vittorio
Sent: Tuesday, April 22, 2014 6:41 PM
To: Olmesdahl, Nicolle
Subject:

Nicolle,

Can we please send a letter to Duma-Ambrorite, saying something like (but much better English, please!!)

"as foreseen by our current contract, we intend to renew the same for the period of 6 months, starting.... All the terms and conditions, as well as the scope of work, will remain unchanged.

"for the previous 6 months we haven't been able to credit you with the indicated success fees. But in recognition of the great amount of work that has been done, that just hasn't yet translated into concrete results, and of the long term nature of our collaboration, we are willing to accrue those success fees this next contractual period and recognize them should the results materialize.....

Sorry, I jotted down the language very quickly, please let me know if the intent/meaning is not clear

Best,
Vittorio

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com | web:www.bain.com

ANNEXURE "AW43"

AW43

40

BAIN & COMPANY

Bain & Company South Africa, Inc.

10 The High Street
Melrose Arch
Johannesburg 2076
South Africa

AMBROBRITE (Pty) Ltd
13 FROST AVENUE
1ST FLOOR
SUNNYSIDE CENTRE
0132

2 June 2016

STRICTLY CONFIDENTIAL

Business Development and Stakeholder Management contract

Dear Sirs

This letter serves to confirm the continuation of work set out in the contract signed in November 2013, between Bain & Company South Africa and AMBROBRITE (Pty) Ltd. The contract will be renewed for a further 6 months through to September 2016. The initial scope as well as the terms and conditions agreed in the signed contract (attached) apply for the extended 6 month period.

The assessment of the performance and 'results' will be based, at Bain sole discretion, on the analysis of the actual successes and realizations with the enclosed described activities and objectives, taking in full consideration the real value add and the quality of the support that Ambrorite will have brought to Bain and the level of commitment and passion demonstrated.

We look forward to continuing working with AMBROBRITE.

Signatures

Vittorio Massone
Managing Partner

Bain & Company South Africa, Inc.

Ambrobrite (Pty) Ltd

Incorporated in the USA with limited liability and registered in South Africa (1996/000558/10)

ANNEXURE "AW44"

AW44

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
Cc: Dutiro, Innocent[Innocent.Dutiro@Bain.com]
From: Miller, Wendy
Sent: Wed 1/15/2014 4:29:15 PM (UTC)
Subject: RE: follow up

Hi Vittorio

It's good to hear your confidence on this, but I still feel uncomfortable with the situation, the potential harm it could do to our business if the arrangement came into the hands of a reporter and, longer term, the backlash it could have on our business when Zuma falls out of favor if his political opponents have evidence that Bain was closely aligned with him.

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Wendy

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To: Miller, Wendy
Subject: RE: follow up

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Best,

Vittorio

ANNEXURE "AW45"

BAIN & COMPANY

Bain & Company Statement: SARS Commission of Inquiry - December 17

BAIN & COMPANY CORPORATE STATEMENT FOLLOWING THE COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY THE SOUTH AFRICAN REVENUE SERVICE

1. Introduction

The past few months have been a highly challenging and sobering period for Bain South Africa and Bain globally. Through public testimony and documents submitted at the Commission of Inquiry headed by Judge Nugent, it has become painfully evident that the firm's involvement with the South African Revenue Service (SARS) was a serious failure, for South Africa and SARS, and clearly for Bain too.

The Commission's hearings, and the final report published last week, have laid bare the disarray in which SARS now finds itself, with both morale and performance severely damaged. Contributing to that outcome was not the intent

of the Bain project and we clearly made significant errors of judgement in taking on this work.

As a firm, we have been shocked and saddened by our involvement with SARS. We let down our clients, our people, our alumni and our firm. Most of all, we have let down South Africa.

We accept that through various lapses in leadership and governance, Bain South Africa became an unwitting participant in a process that inflicted serious damage on SARS. We understand the justifiable anger felt by South Africans and are deeply sorry for what has happened to SARS and for our involvement.

Bain does not, however, accept that its representatives knowingly participated in an effort to damage SARS. Bain made many mistakes in relation to SARS, but the firm had no motive, monetary or otherwise, to damage SARS, and did not set out to do so.

2. Background to the SARS assignment

Mr. Massone, Bain South Africa's former managing partner, was introduced in August 2012 to South African President Jacob Zuma and met with him a total of 12 times over the following two years. We were aware that Mr Massone was meeting with the President in order to build Bain South Africa's Public Sector practice, but were surprised to discover the frequency of their meetings.

AW45

AW45

SARS-01-252

WW1-AW-242

It would appear that most of these meetings involved other senior and well-respected South African business leaders and were aimed at supporting the government to formulate and execute policy over a broad range of areas, such as ICT policy, energy, infrastructure deployment, entrepreneurship, and supporting delivery of the government's National Development Plan.

In October 2013 Mr. Massone was also introduced to Mr. Tom Moyane, later to become the Commissioner of SARS, by Mr. Duma Ndlovu, an external advisor to Bain at that time. It would appear that Mr. Massone understood that Mr. Moyane was the President's intended appointee to be SARS Commissioner well before it happened.

Over the course of the following year, leading up to Mr. Moyane's appointment as Commissioner of SARS, Mr. Massone had numerous meetings that focused on coaching him for this role, including preparation of a "First 100 Days" document.

Following Mr. Moyane's appointment in October 2014, SARS ran a formal procurement process in December. Bain won this process and was appointed in January 2015 to perform a rapid diagnostic and make high-level recommendations on organisation restructure.

It is clear from our investigations that Bain's participation in this procurement process may

have been irregular as the firm had prior knowledge of the RFP.

3. Project Delivery

When Bain commenced work with SARS, we acknowledged that it was a well-performing institution, but we felt there were some areas in which it could be improved.

In our execution of the assignment, however, we made three significant mistakes.

First, we overstated the case for change by talking about the requirement for a "Profound Strategy Refresh" of SARS. Although there was scope for improvement, this did not justify the proposal of such a fundamental overhaul of the business.

Second, when Mr. Moyane disregarded our proposed organisational structure changes and developed his own answer, we should either have walked away, or at least ensured that our scope for the next phase of work was broad enough to ensure a workable operating model was put in place. Instead we consented to a scope of work which we knew impaired our ability to deliver appropriate results.

Third, it is also clear that while we started the work in good faith (still believing misguidedly that everybody's intention was to improve SARS), by late 2016 we either knew, or should have known, that Mr. Moyane had a different agenda. It was a mistake not to walk away also at

SARS-01-253

WW1-AW-243

this point, instead seeing out our contract through March 2017.

4. Acknowledging the faults

In addition to these specific mistakes, there are further lessons that Bain has learned from the SARS engagement.

Clearly some responsibility should lie with Mr Massone who displayed poor judgement in drawing us into the SARS assignment in the first instance, and then did not adhere to some core Bain leadership values, especially around transparency, as the problems at SARS unfolded. It is for this reason that Bain and Mr Massone separated permanently in November.

But as a firm we also recognise that we must accept culpability for allowing an environment in which this could take place. These faults include:

Failures of governance
When an individual in charge of an office (Office Head) is also the lead advisor to a client (Client Head), as it was in the case of Mr. Massone, the combination calls for more active global oversight than in other situations where either the Office Head or Client Head can perform degrees of oversight/challenge. In the case of South Africa, Bain also allowed dissenting voices to be ignored or side-lined. The commercial success and continued rapid growth of the South Africa office encouraged Bain global to trust Mr.

Massone and not to question his decisions and actions closely enough.

Absence of public sector protocols
Only a small proportion (~5%, since 2010) of our work in South Africa is for the public sector. As a result, there was a lack of strong public sector capability or understanding of public sector protocols. In hindsight, there is evidence to suggest that Mr. Moyane was pursuing a personal political agenda at SARS. Proper due diligence on Mr. Moyane may have identified this risk.

Naïve on South African politics
We entered into this work for SARS without a full appreciation of the political environment and the agendas that individuals were pursuing. While our local knowledge of South Africa was deep, the SARS experience has been a cautionary reminder that we are at risk if we do not adequately understand the domestic political environment when engaging in public sector work.

5. Seeking the truth

Since the fuller picture came to light through testimony to the Nugent Commission of Inquiry, Bain's mission has been to seek the truth of what happened, to make amends for behaviours which fell short of what was expected, and to make the necessary changes so that they can never happen again.

SARS-01-254
WW1-AW-244

After Mr. Massone's initial testimony, it became clear that he was not being fully transparent with the Commission or with Bain, and so we hired global law firm Baker McKenzie to conduct a thorough, independent, forensic investigation. The work of Baker McKenzie identified almost 1,000 potentially relevant documents which were immediately submitted, unfiltered, to the Commission.

We also mandated Athol Williams, a respected academic, social advocate and Bain Alumnus, to provide his own opinion on the independence and adequacy of the investigation by Baker McKenzie.

Bain regrets the Commission's assessment that we failed adequately to co-operate with its work. We committed to be transparent with the Commission and believe we have made every reasonable effort to live up to that commitment.

6. Making amends

We owe it to South Africa, our clients, our alumni and our people to learn the appropriate lessons from this episode and implement suitable remedies to prevent repetition. We have already returned to SARS all of the fees plus interest that we received for our engagement with them.

Our proposed fixes acknowledge that our errors at SARS go beyond individual actions and must also address broader failings. These include:

Public Sector Working Group

The Bain Board has launched a Public Sector Working Group, tasked with improving how we govern and approach public sector work globally, including South Africa, and developing a set of protocols to guide any future work in this sector. The working group will also recommend how oversight should be provided prior to and during any future public sector projects.

Public Sector Risk Function

We also envisage establishing a public sector risk function independent of line leadership and accountable to our Board, which would undertake risk assessments across countries, offices, clients and opportunities, establish a whistle blowing function, and participate in regular risk reviews. In parallel we plan to strengthen our capability in working within the public sector, including stricter protocols in how we engage and contract with our clients. We envisage this review will narrow the range of both the projects we undertake and the clients with whom we work.

7. Changing Bain South Africa

To ensure a re-set of the leadership and the culture of our business in South Africa, we have appointed a permanent office head from outside the Bain South Africa leadership team. Mr. John Senior, a highly experienced Bain partner and a global leader in our Digital, Telecoms, Media & Technology practice, will assume the role of head of Bain South Africa from January 2019.

SARS-01-255

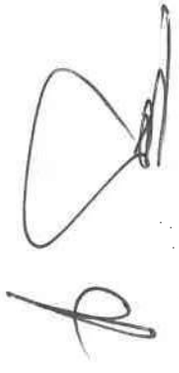
WW1-AW-245

John has spent the past eight years as a senior partner in Bain's New York and Sydney offices.

We have also decided to create a South Africa Advisory Board, which will comprise experienced local and global partners, legal counsel as well as external advisors, to guide our future work and ensure that local governance practices are adhered to in South Africa.

8. Conclusion

SARS has been a humbling episode for Bain. We have let South Africa and ourselves down, and it is our earnest desire to make good our wrong. This will take time, but we are determined to show again the better face of the firm. This includes participation in any further government or judicial investigations into SARS as appropriate. We will also do everything in our power to ensure that Bain itself learns the right lessons.



While highly regrettable, the SARS assignment is in no way representative of the firm's activities in South Africa where it has a track record of being a valued partner across several different clients and assignments.

We hope that by acknowledging our failings in the SARS process, and ultimately making amends for them, we will in time again be considered a trusted and high-quality partner for change oriented businesses in South Africa.

Read Bain & Company statement - September 10 ▸

Read Bain & Company statement - September 2 ▸

SARS-01-256

WW1-AW-246

ANNEXURE "AW46"

AW46

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Mandla KaNozulu
Sent: Thur 10/22/2015 12:35:59 PM (UTC)
Subject: Re: FAREWELL PARTY INVOICE

Thank you very much V, much appreciated. I'll make sure he meets you soon.
Best regards!

On Thursday, October 22, 2015, Massone, Vittorio <Vittorio.Massone@bain.com> wrote:

Hi Mandla
Here you go - hope you guys enjoy the party... Most likely I won't be able to come, I have meetings here. But would be great to greet in parson the new Youth League head when he is in JHB

Best,
Vittorio

-----Original Message-----
From: Mandla KaNozulu [kanozulu@gmail.com]
Sent: Thursday, October 22, 2015 10:10 AM GMT Standard Time
To: Massone, Vittorio
Subject: Re: FAREWELL PARTY INVOICE

Thanks

On Thursday, October 22, 2015, Massone, Vittorio <Vittorio.Massone@bain.com> wrote:

Ok Mandla – sent instructions to the bank now, will forward you proof of payment asap, I believe early pm

Best,

Vittorio

From: Mandla KaNozulu [mailto:kanozulu@gmail.com]
Sent: 22 October 2015 09:23 AM
To: Massone, Vittorio
Cc: mkhwanazit@webmail.co.za
Subject: Fwd: FAREWELL PARTY INVOICE

Dear Comrade Thulani, thanks very much. V please receive attached.

With thanks

---------- Forwarded message ----------

AW46

From: **Thulani Mkhwanazi** <mkhwanazit@webmail.co.za>
Date: Thursday, October 22, 2015
Subject: FAREWELL PARTY INVOICE
To: kanozulu@gmail.com

Dear Mr. Sithole

Kindly find the above mentioned.

Thank you

Thulani Mkhwanazi

South Africas premier free email service - www.webmail.co.za

This e-mail, including any attachments, contains confidential information of Bain & Company, Inc. ("Bain") and/or its clients. It may be read, copied and used only by the intended recipient. Any use by a person other than its intended recipient, or by the recipient but for purposes other than the intended purpose, is strictly prohibited. If you received this e-mail in error, please contact the sender and then destroy this e-mail. Opinions, conclusions and other information in this message that do not relate to the official business of Bain shall be understood to be neither given nor endorsed by Bain.

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AW46

Gagu Contracting and Trading

ABSA Building, Office 5007, Krugerrand Road

INVOICE NO: 48

TO : Mandla Kheswa

Item	Description	Amount
1. Venue 2. Catering 3. Decorations and tables	350 people	R 7000 00 R 4000 00 R 3000 00
Total		**R 50 000**

(NB. The above mentioned prices are valid for 3 months from the date of this invoice/quotation.)

BANK DETAILS

BANK : ABSA BANK

BRANCH CODE : 632005

ACC NO. : 9290547031

Regards

Mr. Thulani Mkhwanazi
General Manager

082 82 747 86
mkhwanazit@webmail.co.za

ANNEXURE "AW47"

AW.47

To: Economou, Sharlene[Sharlene.Economou@Bain.com]
Cc: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Nondumiso Khumalo
Sent: Thur 6/9/2016 1:19:19 PM (UTC)
Subject: FW: Lungelo Nqubuka Banking details

Good day Sharlene

I trust this mail finds you well.

Please find below Ms Lungelo Nqubuka's banking details.
I was advised by Mr Ndlovu to forward them to your office.

Regards
Nondumiso
From: lungelo nqubuka [mailto:lungelonqubuka@gmail.com]
Sent: 09 June 2016 11:05 AM
To: nondumiso@muvhango.co.za
Subject: Banking details

Good morning Nondumiso

Please find below banking details,

Lungelo Nqubuka
FNB
Acc no. 62444943139
Cheque Account

Regards,

Lungelo Nqubuka

ANNEXURE "AW48"

AW48

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Economou, Sharlene
Sent: Fri 9/18/2015 7:49:39 AM (UTC)
Subject: RE: : RE: Cooperazione Italia RSA - Update

V

- I have got hold of Moremi, he was on a flight to PE this morning.
- He has asked me to mail all the requirements through to him which I am busy with now . He said **he will respond by Monday** as he is in PE today and can only look over this on the weekend.
- I have asked him to include an agenda
- I have mailed Vittoria to confirm flight details and passengers, is there only Michele Micheletti flying down?

Thank you
S

From: Massone, Vittorio
Sent: Friday, September 18, 2015 7:04 AM
To: Economou, Sharlene
Subject: Fw: : RE: Cooperazione Italia RSA

Sharlene
We need to organize this visit for the italian Interpol

- call Moremi, mail and number below at Saps. If you don't get quick reply, Mandla Kanozulu
- give them names and flights, they won't contact him directly, they're using us
- they need a protocol at arrival, transport to Pretoria and help with reservations at an hotel there, where there's an agreement with SAPs
- they also need an agenda for the trip

Let's try to close the contact today. Italian contact is the person that writes below, Vittorio

Thank you
V

From: Michele.Micheletti@beretta.com [mailto:Michele.Micheletti@beretta.com]
Sent: Tuesday, September 15, 2015 12:13 PM GMT Standard Time
To: Massone, Vittorio
Cc: Carlo.Ferlito@beretta.com <Carlo.Ferlito@beretta.com>
Subject: : RE: Cooperazione Italia RSA

Egregio Dr Massone ,

In allegato la risposta della PS Italiana, come vede la delegazione è ai massimi livelli ed è composta dal Vice Capo delle Polizia e Capo della Polizia Criminale , dal Dirigente Generale per la cooperazione internazionale e dal capo dell'INTERPOL Italia.

La PS italiana non contatterà direttamente la Polizia SA quindi la prego di trasmettere lei i nominativi ,
Penso che i funzionari italiani si aspettino di essere ricevuti all'aeroporto ed accompagnati in albergo , probabilmente l'ufficio cerimoniale della Polizia del SA ha un protocollo in tal senso , lo stesso dicasi per il prosieguo della visita, sarebbe interessante sapere se il programma è disponibile .

In alternativa posso contattare io per mail ma temo di creare confusione , non so ad esempio se la SAPS ha convenzione

69.2

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Economou, Sharlene
Sent: Fri 9/18/2015 5:06:30 AM (UTC)
Subject: RE: : RE: Cooperazione Italia RSA

Noted V

Tks
S

-----Original Message-----
From: Massone, Vittorio
Sent: Friday, September 18, 2015 06:03 AM GMT Standard Time
To: Economou, Sharlene
Subject: Fw: : RE: Cooperazione Italia RSA

Sharlene
We need to organize this visit for the italian Interpol

- call Moremi, mail and number below at Saps. If you don't get quick reply, Mandla Kanozulu
- give them names and flights, they won't contact him directly, they're using us
- they need a protocol at arrival, transport to Pretoria and help with reservations at an hotel there, where there's an agreement with SAPs
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Sent: Tuesday, September 15, 2015 12:13 PM GMT Standard Time
To: Massone, Vittorio
Cc: Carlo.Ferlito@beretta.com <Carlo.Ferlito@beretta.com>
Subject: : RE: Cooperazione Italia RSA

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In alternativa posso contattare io per mail ma temo di creare confusione , non so ad esempio se la SAPS ha convenzione con albergo Sheraton .

Grazie ancora per la collaborazione
Resto in attesa di sue notizie

Saluti

Michele Micheletti

69.2

Dr Michele Micheletti
Director of Product Management
Fabbrica d'Armi Pietro Beretta S.P.A.
Ph 0039 030 8341382
Fax 0039 030 8341370
Email michele.micheletti@beretta.com
----- Inoltrato da Michele Micheletti/BERETTA il 15/09/2015 12:58 -----

Da: Palmerini Vittoria <vpalmerini@dcpc.interno.it>
Per: "Michele.Micheletti@beretta.com" <Michele.Micheletti@beretta.com>
Cc: SCIP SEGRETERIA DIRETTORE <SCIPSEGRETERIADIRETTORE@dcpc.interno.it>
Data: 15/09/2015 12:47
Oggetto: R: Re: Rif: RE: Rif: Re: Rif: RE: Cooperazione Italia RSA

Gentile dr. Micheletti,
penso che l'albergo vada benissimo. Mi faccia sapere se è possibile procedere alla prenotazione di tre camere (al riguardo le sarei grata di conoscere le tariffe applicate) per la delegazione italiana che sarà così composta:

- Prefetto Antonio CUFALO, Vice Direttore Generale della Polizia Sicurezza-Direttore Centrale della Polizia Criminale
- Dirigente Generale della Pubblica Sicurezza dr. Filippo DISPENZA, Consigliere Ministeriale per la cooperazione internazionale
- Dirigente Superiore della Polizia di Stato dr. Gennaro CAPOLUONGO, Direttore del Servizio per la Cooperazione Internazionale di Polizia

Il piano di volo della delegazione è il seguente da Roma a Cape Town via Amsterdam e poi arrivo a Pretoria il 29 settembre pomeriggio:

1. AZ 7728 I 27SEP FCOAMS HK1 1725 2000 O*
   OPERATED BY KLM ROYAL DUTCH AIRL
2. KL 597 C 28SEP AMSCPT HK1 1000 2115 O*
3. SA 8672 W 29SEP CPTPRY HK1 1500 1715 O*
   OPERATED BY SA AIRLINK
4. SA 8671 W 01OCT PRYCPT HK1 1030 1300 O*
   OPERATED BY SA AIRLINK
5. SA 8124 L 01OCT CPTWDH HK1 1450 1655 O*
   OPERATED BY SA AIRLINK

Un saluto
Vittoria Palmerini
Da: Michele.Micheletti@beretta.com [mailto:Michele.Micheletti@beretta.com]
Inviato: martedì 15 settembre 2015 12:37
A: Palmerini Vittoria
Oggetto: In: Re: Rif: RE: Rif: Re: Rif: RE: Cooperazione Italia RSA

Gentile Dottoressa ,

Ecco la risposta per l'alberogo , resto in attesa dei nominativi e dei voli da comunicare a Pretoria .

Grazie e buona giornata

Michele Micheletti

69.2

Dr Michele Micheletti
Director of Product Management
Fabbrica d'Armi Pietro Beretta S.P.A.
Ph 0039 030 8341382
Fax 0039 030 8341370
Email michele.micheletti@beretta.com
----- Inoltrato da Michele Micheletti/BERETTA il 15/09/2015 12:34 -----

Da: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Per: '"michele.micheletti@beretta.com"' <michele.micheletti@beretta.com>
Cc: '"Carlo.Ferlito@beretta.com"' <Carlo.Ferlito@beretta.com>
Data: 15/09/2015 12:30
Oggetto: Re: Rif: RE: Rif: Re: Rif: RE: Cooperazione Italia RSA

Ottimo, grazie a lei!

Credo la cosa migliore sia lo **Sheraton a Pretoria**. Molto centrale e buon livello, conosciuto da tutti.

A presto,
Vittorio

From: Michele.Micheletti@beretta.com [mailto:Michele.Micheletti@beretta.com]
Sent: Tuesday, September 15, 2015 11:10 AM GMT Standard Time
To: Massone, Vittorio
Cc: 'Carlo.Ferlito@beretta.com' <Carlo.Ferlito@beretta.com>
Subject: Rif: RE: Rif: Re: Rif: RE: Cooperazione Italia RSA

Dr Massone.,

Ho parlato in questo istante con INTERPOL Roma ,

l'iter autorizzatorio si è avviato grazie alle sue informazioni, a breve le comunicherò l'elenco delle persone che compongono la delegazione Italiana con i voli di arrivo , La dottoressa incaricata del Ministero Interni mi chiede se possiamo suggerire il nominativo di un albergo possibilmente vicino al luogo dell'incontro .che immagino sia il Ministero degli Interni o la Direzione della SAPS .

Grazie ancora per la preziosa collaborazione , sono convinto che con il suo aiuto porteremo a termine questa "impresa"

Cordiali saluti

Michele Micheletti

Dr Michele Micheletti
Director of Product Management
Fabbrica d'Armi Pietro Beretta S.P.A.
Ph 0039 030 8341382
Fax 0039 030 8341370

69.2

Email michele.micheletti@beretta.com

Da: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Per: '"michele.micheletti@beretta.com"' <michele.micheletti@beretta.com>
Cc: '"Carlo.Ferlito@beretta.com"' <Carlo.Ferlito@beretta.com>
Data: 15/09/2015 11:15
Oggetto: RE: Rif: Re: Rif: RE: Cooperazione Italia RSA

Eccoci finalmente sig. Micheletti.

La logistica e i protocolli vari sono da definire con Mr. Molate Moremi, che guida la segreteria del Ministro. Contatti: +27(0)763022018 – moremim@saps.gov.za

Partecipanti all'incontro, dopo il meet and greet con il Ministro

- Gen. Zuma (non e' parente), head of special projects
- Gen. Scotts Naindoo, head of Interpol in SAPS
- Gen. Ntlemeza (si pronuncia Nkameza), head of Hawks, la Special Investigation Unit
- Mr. Mandla Kanozulu, advisor del Ministro
- Mr. Moremi

Spero questo sia sufficiente. Sono ad un offsite con il Ministro e c'e' anche questo Moremi, gli faro' pressione in modo che risponda subito al contatto dell'Interpol. Per favore mi avverta se non risponde velocemente

Cordiali saluti

Vittorio Massone

From: Massone, Vittorio
Sent: Thursday, September 10, 2015 9:34 AM
To: 'michele.micheletti@beretta.com'
Cc: 'Carlo.Ferlito@beretta.com'
Subject: Re: Rif: Re: Rif: RE: Cooperazione Italia RSA

Grazie Sig. Micheletti

Nessun problema - sono io ad essere a disagio perche' sono solo un intermediario e questi signori sono molto poco strutturati e diligenti (se lo fossero non avrebbero bisogno di aiuto, credo)

In questo momento sono anche ossessionati dalle intercettazioni (e' un anno che cercano di far fuori il Commissioner), sono infatti dovuto andare ad incontrarli in aeroporto per poterci parlare e questo certo non velocizza le cose.

A presto, spero

Vittorio

69.2

From: Michele.Micheletti@beretta.com[mailto:Michele.Micheletti@beretta.com]
Sent: Thursday, September 10, 2015 07:36 AM GMT Standard Time
To: Massone, Vittorio
Cc: 'Carlo.Ferlito@beretta.com' <Carlo.Ferlito@beretta.com>
Subject: Rif: Re: Rif: RE: Cooperazione Italia RSA

Egregio Sig. Massone ,

La ringrazio del suo messaggio che provvederò ad inviare a INTERPOL, lei mi perdonerà se sono ansioso di ricevere informazioni dettagliate ,purtroppo i burocrati di Roma hanno regole alquanto rigide per muoversi ed ottenere le dovute autorizzazioni .
Ieri ho parlato con il Vice Direttore il quale mi ha confermato l'interesse ad incontrare la Polizia del Sud Africa , non appena ho i dettagli devo contattare immediatamente la sua assistente che sta organizzando il viaggio.

Le auguro una buona giornata .

Michele Micheletti

Dr Michele Micheletti
Director of Product Management
Fabbrica d'Armi Pietro Beretta S.P.A.
Ph 0039 030 8341382
Fax 0039 030 8341370
Email michele.micheletti@beretta.com

Da: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Per: '"michele.micheletti@beretta.com"' <michele.micheletti@beretta.com>
Cc: '"Carlo.Ferlito@beretta.com"' <Carlo.Ferlito@beretta.com>
Data: 09/09/2015 19:33
Oggetto: Re: Rif: RE: Cooperazione Italia RSA

Sig. Micheletti,

Qualche novita' che le giro non appena ricevuta la mail

- incontro in Pretoria
- dopo breve incontro con Ministro, le persone designate saranno il responsabile dei rapporti con l'Interpol e il capo degli Hawks (Special Investigative Unit)

Da qui ad allora dovrebbe saltare il Commissioner, in quel caso credo insieme al Ministro ci potrebbe essere un nuovo "Acting" Commissioner

69.2

Ho chiesto nomi esatti e contatto per coordinare la logistica. Glieli invio non appena li ricevo.

Uno dei temi importanti e' il Public Order Policing e il tema del non-lethal weapons molto importante per posizionare Beretta. Hanno ricevuto specifiche istruzioni dal Presidente di ritirare e sostituire gli R5

Cordiali Saluti,
Vittorio

From: Michele.Micheletti@beretta.com[mailto:Michele.Micheletti@beretta.com]
Sent: Monday, September 07, 2015 03:36 PM GMT Standard Time
To: Massone, Vittorio
Cc: Carlo.Ferlito@beretta.com<Carlo.Ferlito@beretta.com>
Subject: Rif: RE: Cooperazione Italia RSA

Molto bene ,

La prego di farmi avere al più presto i dettagli , oggi e domani i vertici INTERPOL sono all'estero ma , conoscendoli, sono sicuro che già mercoledì saremo critici con i tempi .

Resto in attesa di sue notizie .

Saluti

MM

Dr Michele Micheletti
Director of Product Management
Fabbrica d'Armi Pietro Beretta S.P.A.
Ph 0039 030 8341382
Fax 0039 030 8341370
Email michele.micheletti@beretta.com

Da: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Per: "Michele.Micheletti@beretta.com" <Michele.Micheletti@beretta.com>
Cc: "Carlo.Ferlito@beretta.com" <Carlo.Ferlito@beretta.com>
Data: 07/09/2015 16:20
Oggetto: RE: Cooperazione Italia RSA

Sig. Micheletti,

Allora l'incontro e' confermato. Stanno ancora definendo l'agenda del ministro, in particolare se

69.2

quell giorno sara' a Pretoria o a Cape Town, dove e' il Parlamento

Il Ministro vuole incontrare la delegazione "meet and greet" e dare il suo briefing. Mi daranno piu' tardi I nomi delle persone che faranno parte della delegazione del Sud Africa.

La persona con cui definire la logistica sara' Mr Moremi, la persona che fa "stakeholder management" per conto del Ministro. Le mando I contatti al piu' presto.

Cordiali saluti,
Vittorio

From: Michele.Micheletti@beretta.com[mailto:Michele.Micheletti@beretta.com]
Sent: Monday, September 07, 2015 2:47 PM
To: Massone, Vittorio
Cc: Carlo.Ferlito@beretta.com
Subject: Cooperazione Italia RSA

Egregio Sig. Massone ,

Mi perdoni se insisto ma ho parlato ora con i vertici di INTEERPOL Italia , hanno bisogno di una confrema entro questa settimana in quanto devono chiudere il programma in Namibia e ottenere l'autorizzazione finale dal Capo della Polizia.

Sarebbe un vero peccato perdere questa opportunità della concomitanza del loro viaggio in Namibia .

Per cortesia mi confermi al più presto che la data proposta è OK (30 settembre , a Pretoria, Dove ?) ed i nominativi dei funzionari della Polizia RSA che incontreranno la delegazione Italiana.
Grazie e buona giornata

Michele Micheletti

Dr Michele Micheletti
Director of Product Management
Fabbrica d'Armi Pietro Beretta S.P.A.
Ph 0039 030 8341382
Fax 0039 030 8341370
Email michele.micheletti@beretta.com

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Grazie

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Thank you

ANNEXURE "AW49"

AW49

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Carlo.Ferlito@beretta.com
Sent: Fri 6/12/2015 10:57:30 AM (UTC)
Subject: Rif:

Caro Vittorio,
Grazie per la nota. Per il Ministro mi muovo subito, tra l'altro sono a Roma Giovedì e provo a sondare. Per Smale, con il gran rifiuto di Truvelo si è congelato tutto, sono in attesa di proposte industriali interessanti (anche da te).
Grazie.

Carlo

CARLO FERLITO
Direttore Generale
Fabbrica d'Armi PIETRO BERETTA S.p.A.
Via Pietro Beretta, 18
I-25063 Gardone Val Trompia, Brescia - ITALY
Tel. +39 030 8341.235 - Fax. +39 030 8341.312- Mob. +39 335 1293466
Visit our web site:**http://www.beretta.it**

BERETTA

CARLO FERLITO
VP Beretta Defense Technologies
BerettaUSA Accokeek, Maryland, USA.

BDT

Da: "Massone, Vittorio" <Vittorio.Massone@Bain.com>
Per: "Carlo Ferlito (Carlo.Ferlito@beretta.com)" <Carlo.Ferlito@beretta.com>
Data: 12/06/2015 11:30
Oggetto:

Ciao Carlo,

Come stai? Spero tutto bene.

Ti volevo dare un breve aggiornamento – confidenziale - qui sul Sud Africa e presentarti una richiesta da parte del Ministro.

Il Presidente ha finalmente mandato la settimana scorsa una lettera al Ministro, dicendogli che prevede un cambiamento del Commissioner e chiedendo di preparare e presentare un successore scelto dall'interno. Questo e' stato fatto questa settimana. Quindi si spera che il cambiamento possa effettivamente accedere a breve (sempre con tempi sud africani ovviamente...)

La richiesta del Ministro. E' stato due settimane fa in Russia ed in Cina. In Cina in particolare e' stato colpito dalla loro intelligence (ovviamente...) e la polizia cinese gli ha offerto di fare un programma di training per un gruppo di funzionari dell'intelligence Sud Africana. Il ministro si chiedeva se fosse possibile intavolare una discussion simile con il Ministro degli Interni italiano, in particolare sulla criminalita' organizzata (simpatico, tra l'altro, essere considerati leading edge su una cosa del genere...). Tu pensi voi possiate facilitare una conversazione del genere? Immagino che possa essere presentata come occasione di collaborare tra Governi ma soprattutto un modo per presentare aziende italiane: voi ovviamente, anche per divise etc, ma anche aziende di tecnologia, automotive, difesa in generale. Che ne pensi?

Ultima domanda, da parte mia questa: come stai andando avanti con Smale? Ho chiesto ancora sul suo socio nero, l'ultima risposta che ho avuto e' interessante anche se un po' sarcastica: "sara'

69.5

il suo giardiniere, qualche volta i bianchi lo fanno...".

Ciao a presto
Vittorio

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com| web:www.bain.com

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Grazie

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ANNEXURE "AW50"

AW50
1

BEFORE THE COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY THE SOUTH AFRICAN REVENUE SERVICE

HELD AT PRETORIA

AFFIDAVIT

I, the undersigned,

VITTORIO MASSONE

do hereby make oath and state:

1. I am a partner of Bain & Company South Africa, Inc. (**Bain & Company/Bain**). A copy of my biography is attached marked "**VMI**".

2. The facts contained herein are true and correct and, unless otherwise stipulated or proven by context, within my personal knowledge and or belief.

3. This affidavit is structured as follows:

   3.1. Introduction and purpose of this affidavit;

   3.2. Meetings with Tom Moyane (**Moyane**);

   3.3. Meetings with Former President Jacob Zuma (**Zuma**);

   3.4. Clarification of issues and answers to certain questions at the Commission; and

   3.5. the RFP process.

INTRODUCTION

4. On 30 August 2018 and 31 August 2018, I testified before the former Judge of the Supreme Court of Appeal, Honourable Mr. Justice Robert Nugent (**Commissioner**), Mr. Michael Katz, Advocate Mabongi Masilo, and Mr. Vuyo Dominic Kahla (**Commission**).

5. During the course of that testimony, I could not conclusively recall the facts and occurrence of all events required to answer certain questions. I have now had the opportunity to refresh my memory and recollect my experiences since 2013 and my clarification of these matters follow.

6. The main purpose of this affidavit is to respond directly to all questions raised by the Commission in its letter of 3 September 2018. I attach marked "**VM2**" copy of that letter. This affidavit also deals with, and having considered the transcript of my testimony, clarifications and context to certain of my answers provided to the Commission. It may be necessary to supplement my affidavit and I reserve my right to do so at a later stage.

MEETINGS WITH MOYANE

7. After consultation of my records, to the best of my recollection, I have had the meetings or encounters with Moyane as set out below. I was introduced to Tom Moyane by Duma Ndlovu (**Ndlovu**). I was told by Ndlovu that Moyane had approached him and asked for an introduction to Bain because he had heard about Bain's successful work at Telkom and wished to understand more about how Bain worked.

8. It is necessary to pause here to set out Bain's relationship with Ndlovu. I was introduced to Ndlovu by Sipho Maseko (**Maseko**) (The CEO of Telkom). At the time I remember that Ndlovu had been an activist from KwaZulu Natal during the apartheid regime and that at one stage he fled to the United States and started to work in the media industry. Ndlovu probably is better known for the production of a local soap opera Muvhango broadcast by the SABC. There was no reason to doubt the reputation of Ndlovu, nor that any association with Ndlovu would be improper.

9. My introduction to Ndlovu resulted in a professional relationship and he acted as an external consultant to Bain, initially on an informal basis and then under a Business Development and Stakeholder Management Contract ("**Ambrobrite Contract**") concluded between Bain South Africa and Ambrobrite (Pty) Ltd ("**Ambrobrite**") and running from 1 November 2013 to December 2016. Ambrobrite is a communications, events, project management and strategic stakeholder managements specialist company and formed by Ndlovu and his partner, Mr Mandla KaNozulu (**Mandla**). Ambrobrite focuses on the public sector and in the communications and entertainment industries. This mainly assisted my introduction to the public sector. It is a common practice in the consulting industry to hire well-connected advisors to make introductions to executives and senior leaders.

10. I have asked the accounting team at Bain to confirm the exact amount paid to Ambrobrite and I shall advise the Commission as soon as this is confirmed.

11. A copy of the Ambrobrite Contract is annexed hereto as "**VM3**".

12. It was through Ndlovu that I was introduced to various key leaders, decision makers and executives from the public sector, including Moyane and Zuma.

13. Ndlovu's contribution to Bain's business and general understanding of the South African culture was of great significance to Bain and me. Ndlovu assisted me to understand South African social and political structures, including the impact of South Africa's apartheid history on its current structures and demographics, guidance on protocol when attending meetings with executives and advice on the appropriate communication (tone and clarity) skills. This allowed me to be relevant and effective in my dealings with South African executives and political leaders.

14. I now turn to deal with my meetings with Moyane. Ndlovu told me that Moyane had the ambition to become the next Commissioner of SARS, which position had recently become vacant following the resignation of Oupa Magashula in July 2013. The purpose of the introduction to Bain was for Bain to advise Moyane (it is referred to in the consultancy world as "CEO coaching") on how to achieve his professional goals.

15. My meetings with Moyane are to be understood in the context of how Bain (and I) operate/s regarding the development of Chief Executive Officers in the private sector. It is an ordinary part of our global business to meet with corporate executives who are in need of support and assistance in reaching their own personal development objectives as high performing leaders, managers and business executives. We assist these individuals in identifying potential future opportunities to advance their own careers, and in realising these opportunities.

16. In line with the usual Bain strategy to build trust and credibility when meeting a senior decision maker, I prepared fully in advance of that initial meeting in order to make a strong first impression. At the time, my intention was to use our increased visibility arising from the Telkom success story to raise our overall profile. For this reason, I asked Stephane Timpano (**Timpano**), then a principal (the level below Partner) at Bain & Company, to prepare an outside-in perspective or point of view on SARS in order that we might present it at my first meeting with Moyane.

17. After due reflection and consultation of my records, to the best of my recollection and in terms of documentary and other records at my disposal, I have had meetings or encounters with Moyane as set out below:

18. *Sunday, 13 October 2013*

18.1. This was the first meeting I ever had with Moyane and was held at Bain & Company's offices. In addition to Moyane and myself, attended by Ndlovu and Timpano. This meeting discussed the document entitled 'SARS 2.0', which is an 'outside-in document'. This document was prepared by Timpano. A copy of this document is attached marked "**VM4**" and dated 13 October 2013.

18.2. As the name suggests an outside-in document is a due diligence to better understand an organisation. It is prepared using reliable, publically available information. Typically those sources would include reports published by the target organisation, industry reports, and benchmark studies.

VM4

18.3. In the preparation of the SARS 2.0 document, we applied Bain's standard approach and we relied, amongst others, on the following publically available information (to be clear, Bain did not "just read the newspaper"): SARS annual reports and statistics; OECD reports; IMF reports and so on.

19. *More Background on CEO Coaching*

19.1. At this point, it is helpful to explain to the Commission how Bain approaches the coaching of CEOs in the private sector, because this is exactly the same approach I used in these meetings with Moyane. CEO coaching is something we do across our network all the time. We work with dozens of executives annually to prepare them for interviews.

19.2. Typically, this is done by the partner contact who knows the executive well, but we also have a central client development function that can help them prepare for key meetings or interviews. Bain's involvement can be light (e.g. walk through the "first 100 days" framework to give them a sense for the topics to think about and the executive then prepares himself for the session) or it can be more involved (e.g. prepare materials with our perspective on the direction of the particular industry, opportunities and challenges facing the company and how to address them).

19.3. Because Bain carries out this activity so often, we have standardised intellectual property that our consultants can access when creating presentations of the type that we created for Moyane. We have materials covering for what executives should be thinking about, which we call the New CEO agenda; how to develop the content; what good diagnostics look like and sample frameworks that can be tailored for the situation. These materials are developed using the lessons learned from our worldwide strategy work. We've done more than 7,000 strategy cases globally; many are blueprinting cases, which is effectively what Timpano produced here. In the context of a person who would be interviewing for a CEO job, which I accepted was Moyane's position at that time, the initial "SARS 2.0" materials are early stage preparation for the interview and the later

materials (like the first 100 days document) would typically be used in a final round interview.

19.4. I attach marked as "**VM5**", a document comparing side-by-side a few template slides from our database and their final versions in the "first 100 days document" to show how the materials prepared for Moyane used our standard approach and some of our template documents.

19.5. It is worth noting that this integral part of our business is also implemented in South Africa through two programs, through a formal Corporate Social Responsibility initiative, known as the Bain Academy Executive Programme and the Great Board Programme, fully funded by Bain & Company South Africa through the Bain Academy Trust. Through the Trust, we have created an executive training programme targeted at historically disadvantaged South Africans. We use our global business consulting expertise in order to train young South Africans as the next generation of South Africa's executives and leaders.

19.6. The conversations with Moyane that took place prior to his appointment as the Commissioner of SARS, were all in line with Bain's standard approach for CEO coaching and job interview preparation. For the avoidance of doubt, we never ask for or look to create any expectation of future work when carrying out these activities. The aim is simply to introduce them to how Bain works by showing them samples of our materials and thinking and creating a reputation of being a trusted and capable adviser in the minds of key decision makers.

20. *Tuesday, 25 February 2014*

20.1. This encounter occurred at the official presidential residence in Cape Town. I was there to see Zuma, not Moyane. There were several groups of persons awaiting their turn for a meeting with Zuma. I exchanged pleasantries with Moyane in the waiting room whilst waiting to meet with Zuma.

21. *Thursday, 15 May 2014*

21.1. This meeting occurred at Tashas Café in Melrose Arch and was attended, in addition to Moyane and myself, by Fabrice Franzen (**Franzen**). Franzen is a partner at Bain & Company and I had invited him to attend in order to meet Moyane. My recollection regarding this meeting is that it was a general catch-up lunch with Moyane, given the lapse of time (several months) between the first meeting identified in paragraph 18 above and this meeting.

22. *Monday, 2 June 2014*

22.1. This meeting was held at Bain & Company's offices and, in addition to Moyane and me, attended by Franzen and Alexis Bour (**Bour**)(a Principal at Bain at the time). A "first 100 days" document was prepared by Timpano and Bour for purposes of this meeting and I attach marked "**VM6**" a copy of this document, dated 26 May 2014. Accordingly, Bour attended at my invitation because he had assisted with the creation of the 'first 100 days document' that was presented and discussed with Moyane at this meeting. I deal with this document in more detail below.

22.2. In short, the "100 days document" is a document that summarises for the candidate what his/her "report card" ideally should look like after the first 100 days in office, assuming he/she was to be appointed to the job/position then aimed for.

23. *Monday, 16 June 2014*

23.1. This meeting was initially scheduled to be held at Bain & Company's offices and, in addition to Moyane and myself, was to have been attended by Ndlovu. I do not recall this meeting actually taking place and only mention it because it is referred to in my diary, but I cannot provide any additional information concerning this meeting.

24. *Thursday, 26 June 2014*

VM1

24.1. This meeting was held at Bain & Company's offices and, in addition to Moyane and me, attended by Bour. At this meeting the document entitled 'Potential SARS organisation chart and focus areas' was discussed with Moyane. I attach a copy of this document marked **"VM7"**. This document was prepared by Bour.

24.2. I attach marked as **"VM8"**, an email sent by Bour to Moyane on Friday, 27 June 2014 in which Bour thanked Moyane for the discussion on 26 June 2014 and attached the 'Potential SARS organisation chart and focus areas' document as referred to above.

25. *Wednesday, 6 August 2014*

25.1. On this day Bain's Global Economic Macro-Trends Breakfast was held. Moyane was invited to this event. Besides greeting each other, we did not speak or had a discussion. This was a general client event intended for a wider audience of Bain clients and potential clients. I do not recall how many people were present, but I remember it was well attended.

26. *Thursday, 28 August 2014*

26.1. This meeting was held at Bain & Company's offices and, in addition to Moyane and myself, attended by Ndlovu, Jonas Makwakwa (**Makwakwa**) who was already an employee of SARS, and Mandla. My recollection of this meeting is that I did not participate extensively and mostly listened to what Makwakwa had to say. What I recall is Makwakwa sharing his personal issues that he had been experiencing at SARS at that time. I don't know who suggested he attend this meeting, but the suggestion did not come from me.

27. Pursuant to this last meeting with Moyane, Ndlovu requested Bain to prepare an updated version of the SARS2.0 dated September 2013. I did so and provided Ndlovu with a copy under the cover of an email dated 29 August 2014. A copy of that email and the document, entitled "SARS what has to be done" is attached marked "**VM8.1**". I note that my covering email refers to an upcoming meeting. I

don't have an independent recollection of what that meeting was; but it may have been for a meeting involving Zuma.

MEETINGS WITH FORMER PRESIDENT JACOB ZUMA

28. Set out below is as full a record as I am able to put together (with the assistance of Bain personnel and my legal advisors) of the meetings I had at which Zuma was present. In putting together this record, I did as thorough a search as possible of my emails and documents.

29. These meetings happened over the course of a long period of time and it is fair to say that I was never really mindful of the total number thereof until I went through this exercise and tallied them up. I was always open about the meetings with colleagues and would mention them in partner meetings as part of a general business update. It is fair to say that I was proud to be meeting with senior politicians and I was very hopeful that Bain could suggest or otherwise become involved in projects that would lead to economic growth and positive improvements in South Africa.

30. Bain & Company never charged or accepted any fees or other consideration for these services and we did all the work on a pro bono basis because we wanted to build our brand and reputation as a trusted adviser with senior government officials by exposing them to our approaches and insights and – if some of these ideas were accepted as formal projects effected with consulting support – we hoped to have the opportunity of being included in the RFP process for these projects. I am happy to talk in detail about the contents of these documents and I am currently going through the process of reminding myself of these materials in order that I can assist the Commission.

31. When attending these meetings, I was almost always present as a guest to the presenter of the meeting. The only time I ever took the lead in any meeting with Zuma was for the meetings concerning a different 100 days' plan (annexure VM15 below). The person with whom we prepared the materials would present and I would only occasionally step in to assist if there was a question on a detail or a number.

32. The timing of the meetings was usually during the evenings or at the weekend, sometimes late at night. Although I found this inconvenient, I was told it was the only time that Zuma was free. In any event I was prepared to accommodate those requirements in order to have the opportunity to demonstrate Bain's expertise and insights to executives. As we would often be kept waiting for hours before we could see Zuma, we took to gathering at the Sheraton Hotel in Pretoria near the official residence. I would usually pay the bill and these expense receipts have helped us identify the dates of meetings. These were then cross-checked against my e-mails and documents to match a meeting date with a meeting topic. It was frequently the case that we would gather in advance of a meeting and then after waiting a few hours the meeting would be postponed until a future date.

33. I also wish to point out that many of the presentation slides which I have provided may not be the final version that was presented at the corresponding meeting. In almost all cases, various versions of the presentation would be circulated and amendments made prior to the meeting. I have included, to the best of my knowledge, the most recent versions of the documents that were ultimately presented.

34. I wish to be completely clear on the following:

34.1. at no point in any of the meetings with Zuma was SARS or Moyane discussed;

34.2. I had no control or influence over, or input into, the appointment of Moyane. I was not involved or consulted in this decision in any way. I learned of the appointment, to the best of my recollection, via the media after it had been announced.

35. Accordingly, I have attempted as best I can to recall the meetings I attended with Zuma. I have also attempted to recall who else attended those meetings and what was discussed. Where I have located a document that was presented or discussed at a meeting with Zuma, I have attached this document to this affidavit.

36. Should the Commission require further clarity on the documents disclosed, I will do so.

37. I was introduced to Zuma by Maseko. Most of the meetings with Zuma were scheduled and arranged by Ndlovu. Maseko is a long-standing client of mine and I have provided him with advice and consulting support on a number of occasions over the 2 years I had then known him. I believe he has been a client of Bain for even longer, although I am not sure how long. Before Maseko was appointed as CEO of Telkom, Bain provided him with advice and CEO coaching of the type I described above. We also assisted him in creating the "Project Phoenix" turnaround plan for Telkom that he successfully pitched in order to be appointed CEO of Telkom. Since the successful implementation of that plan by Maseko, the share price of Telkom has increased significantly.

38. Almost all of the meetings with Zuma took place at his official residence in Pretoria. One meeting each took place at his official residences in Cape Town and Durban respectively. I note the absence of "official" in the question posed by the Commission in its letter to me dated 3 September 2018. To avoid any possible confusion, I should say in advance that I have never been to Nkandla.

39. I believe Zuma's secretary would then contact Ndlovu, who attended all the meetings with Zuma and me, to advise when we should make our way to the meeting at Zuma's residence. My driver would then take me to Zuma's residence for the meeting.

40. I have reconstructed the dates of the meetings with Zuma based on entries in my diary, entries in my driver's diary, expense claims submitted by me, emails in which a meeting is mentioned and presentations or documents marked with a date which indicates that a meeting would probably have occurred on that date.

41. Given that most of these meetings happened between 2012 and 2014, I have some difficulty in recalling the specifics in relation to each meeting, especially where I have not been able to refer to a document or email.

42. I have set out below my best recollection of my meetings with Zuma.

43. *11 August 2012*

43.1. This was the first time I met Zuma. I had been invited to attend this meeting by Maseko. In addition to Maseko and Zuma, Ndlovu was also in attendance at this first meeting.

43.2. This was the first meeting related to Project Phoenix (**Phoenix**) (which was initially called Sisekelo).

43.3. Phoenix was aimed at creating a national and regional ICT champion, leapfrogging economic development and transformation in urban and rural areas, creating a world class generation of professionals and infrastructures and maximizing the impact of government in the delivery of services to South African citizens.

43.4. I have attached marked annexure "**VM9**" the document that was presented at the meeting. The document was prepared by Timpano.

44. *23 August 2012*

44.1. This was a further meeting with Zuma in relation to Phoenix, and the intention was to follow-up on what had been discussed at the first meeting and to discuss additional topics relating to Telkom/Phoenix and to dive deeper into certain aspects of Phoenix. This meeting was attended by Ndlovu, Maseko and Zuma. I seem to recall that Jabu Mabuza (**Mabuza**)(the Chairman of Telkom) may also have been at this meeting, but I cannot be sure. I remember that he joined us in relation to Phoenix meetings either at the second or third meeting on the topic with Zuma.

44.2. I have attached marked annexure "**VM10**" the document that was presented at this meeting.

45. *27 October 2012*

45.1. This was another meeting on Phoenix with Ndlovu, Maseko and Mabuza also in attendance.

45.2. I recall delving deeper into various regulatory aspects of Phoenix, specifically in relation to the different technological choices of the broadband plan (which was a plan to have broadband implemented across the whole of South Africa) which would drive different investment profiles.

45.3. I have attached marked annexure "**VM11**" the Phoenix document that was presented at this meeting, the document is dated September 2012.

46. *25 April 2013*

46.1. I include this reference because the attached document, marked annexure "**VM12**", is dated 25 April 2013 and I remember being present at a meeting with Zuma where this document was presented, around this time, but I do not recall specifically who was at the meeting, apart from Maseko.

46.2. The idea was to change the way infrastructure deployment was done through the creation of a delivery agency that would take care of the most important infrastructure and then find improvements in the methodology that was used to plan the infrastructure and incentivise suppliers in delivering on time and within budget (later called project Elephant). Elephant was based on a set of global best practices.

47. *4 August 2013*

47.1. I do not recall the exact date of this meeting, but the document attached marked annexure "**VM13**" bears this date.

47.2. From a reading of the document this meeting was regarding Phoenix progress. I do remember discussing strategic solutions for the Mobile Division, which was at the time unprofitable.

47.3. I do not recall who else was at this meeting but, if Phoenix was discussed then, in addition to Zuma, Ndlovu and Maseko would likely have been there as well.

48. *25 February 2014*

48.1. This meeting was scheduled to take place at the President's Official Residence in Cape Town. I do not recall who else was scheduled to attend the meeting.

48.2. I remember that this meeting did not unfold as planned. We had intended to discuss the central procurement agency idea (**CPA**) (to which I refer to further below), but Zuma arrived very late and there was no time to delve into that topic. Instead, we had a social chat and I remember Zuma telling us about Zulu customs and traditions relating to marriage.

48.3. I recall that prior to our chat with Zuma, I bumped into Moyane in the waiting room. I believe he was there to meet with Zuma as well. We only exchanged pleasantries.

48.4. I have attached marked annexure "**VM14**" the presentation of the CPA that was intended to be discussed at this meeting, the document is dated March 2014. The CPA was eventually discussed at a meeting on 26 April 2014, which I discuss further below.

48.5. The idea behind the CPA was to create an agency that would manage procurement for central government and create opportunities for significant savings in expenses and investments, improve the quality of supply and increase transparency.

49. *3 April 2014*

49.1. It appears that a meeting with Zuma was scheduled and I know that I was at the Sheraton that evening as I have an expense claim indicating that I, along with other guests, had dinner at the Sheraton.

49.2. This meeting never went ahead as planned and was postponed to 26 April 2014. This meeting had been scheduled to discuss the CPA which we had failed to discuss in Cape Town in February as set out in paragraph 48.

49.3. I recall that when this meeting did eventually take place on 26 April I was late for my brother's birthday dinner, as his birthday is on 26 April.

49.4. I suspect what happened is that we waited at the Sheraton and eventually ended up having dinner there while waiting to be called by Zuma's residence. This is my best recollection regarding this date.

49.5. I do not have any document or email that specifically relates to this date.

50. *26 April 2014*

50.1. This was the meeting where the CPA was presented. I refer to the document dated March 2014 marked as **VM14.** The document was prepared by me.

50.2. I recall that Fantas Mobu (**Mobu**) was at this meeting because he presented the document to Zuma. In addition to Mobu, Ndlovu was present.

50.3. In addition to the CPA, the idea of a workshop to be launched after the new government administration in order to create their 100 days' plan was presented at this meeting. This was a different 100 days document to the document prepared for Moyane regarding SARS.

50.4. The workshop (simply described, a more interactive form of presentation where ideas are generated and exchanged by the attendees) was aimed at ensuring the best delivery of the promises of the ANC Manifesto in the upcoming elections consistently with the recommendations of the National Development Plan. It was to focus on the prioritisation of the most important projects and the creation of a better process for the collaboration between government departments, the private sector and state owned entities.

50.5. I have attached marked annexure "**VM15**" the document that was presented in relation to the workshop.

51. *22 May 2014*

51.1. This was a meeting to discuss new entrepreneurship and Small and Medium sized Enterprises (SME) and it was presented to Zuma by Maseko.

51.2. The idea behind this presentation was to acknowledge that SMEs were a potential major driver of employment and growth which was underdeveloped and to discuss a number of possible actions (regulatory framework, dedicated ministry, creation of incubators and specific funding. I believe that KaNozulu may have also been at this meeting, along with Ndlovu. KaNozulu was Ndlovu's partner at Ambrorite.

51.3. I attach marked annexure **"VM16"** the document that was presented at this meeting.

52. *The period between 23 May 2014 and 3 July 2014*

52.1. These meetings related to what was known as the 100 days' plan. The 100 days' plan was similar to the workshop that was presented in relation to the ANC manifesto and it again related to how best to execute on the National Development Plan.

52.2. Between May and July 2014 I recall a few meetings that took place in relation to the 100 days' plan. One of these meetings took place on 23 May 2014. I have attached marked annexure **"VM17"** the document that was presented at the meeting of 23 May 2014.

53. *6 July 2014*

53.1. This meeting took place at Zuma's official residence in Durban. I think that Ndlovu and Busi Mabuza (Chairman of the IDC) were at this meeting and the topic of discussion was Project Sirius (Sirius).

53.2. Sirius was aimed at re-shaping South Africa's energy sector. This included the need for a turnaround at Eskom, similar to what was then being done at Telkom.

53.3. The document attached marked annexure "**VM18**" was discussed at this meeting, the document is dated June 2014.

54. *28 July 2014*

54.1. This was another meeting on Phoenix. The purpose of this meeting was to accelerate the implementation of Phoenix. Often, Phoenix would be discussed when a new Minister of Telecommunications had been appointed, and I think that this was the reason for this meeting. The acceleration would have been based on the results of one year of Telkom turnaround and the idea was to implement the broader Phoenix concept.

54.2. I attach the document marked as **"VM19"** that was discussed at this meeting. It is dated July 2014.

55. I have said that most of the meetings with Zuma were arranged and scheduled by Ndlovu. I should also add that none of the ideas or projects referred to above (save for Telkom) were ever followed up, or lead to any projects for Bain.

CLARIFICATION OF ISSUES AND ANSWERS TO CERTAIN QUESTIONS

56. The Commissioner enquired whether I had met with Moyane "*at all in connection with SARS*" before Bain & Company's submission as regard to the Request for Proposal (**RFP**) released by SARS on 11 December 2014.[1] [2] I have now reconstructed that history as set out above.

57. I should add here, that I did not, myself, prepare any of the documents to which I have referred to above, save where expressly recorded otherwise. I do not do so ordinarily, nor do I generally present any of the documents produced by Bain to a client.

58. My professional responsibility in the period in question (August 2012 to December 2014) consisted largely of meetings and reviewing documents or portions of

[1] Vittorio Massone, Transcript, *Commission of Inquiry Into Tax Administration and Governance by SARS* at p. 2100, lines 3-4.
[2] *Ibid.* at lines 8-11.

documents produced pursuant to, or for, such meetings and managing the work of the Bain Johannesburg office. A review of my Outlook diary demonstrated that I attended more or less 15 to 20 meetings per week, meaning a total of more than 1600 meetings over this period. My best estimate is that at least 25% of those meetings were with prominent public and private sector figures, mostly but not exclusively from South Africa. When giving evidence on 30 and 31 August 2018 and not having prepared for this issue at all, I had to trawl through my memory in an attempt to recall meetings with Moyane and Zuma without the benefit of first reviewing my calendar or any other records relating to these meetings.

59. I respectfully submit that my responses during the course of my evidence should be seen in the light of this background.

60. Also I mentioned that Bain & Company's customary 'outside-in' document is a "five, six, ten, pages summary".[3] In this regard I must clarify that the extent of any 'outside-in' document is wholly dependant on the specific company or institution to which the document relates and could easily run to more. In this context it is appropriate to indicate that Bain & Company prepared four documents for Moyane; namely, the SARS2.0 (dated 13 October 2013), TM first 100 days (dated 26 May 2014), "Potential SARS organisation chart and focus areas" (meta dated 27 July 2014) and SARS2.0 "What needs to be done" (dated August 2014). The difference between the SARS2.0 document dated 13 October 2013 and the SARS2.0 document dated August 2014 is not substantial, the main difference being that an implementation plan and an indicative example structure chart were added to the 2014 SARS2.0 document.

61. The Commissioner also posed the question as to what the "follow up" was after I "had made [my] presentation" to which I answered "[n]othing".[4] After reviewing my records, I have ascertained that some further meetings were arranged as described above. The 'TM first 100 days' document as well as the 'proposed organisational structure' document would have been presented to Moyane.

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[3] *Ibid* at p. 2102, line 20.
[4] *Ibid* at p. 2104, line 23-25.

62. The next question relates to whether Moyane "approached … [me] about the possibility of … [Moyane] approaching Telkom" in respect of the request for the so-called "transversal contract" to which I have answered "[n]o, it is the first time I heard about that".[5] I have reviewed my records and confirm that I did receive a telephone call from the then acting Chief Operating Officer of SARS, about which I had forgotten. I discovered correspondence confirming this phone call and this appears to indicate that I did receive a request as to whether SARS could use the Telkom contract (the relevant email referring to this discussion is attached hereto as "**VM20**").

63. The final question which I seek to address is the question posed by Mr. Kahla as to whether there I had met with any other public office bearers with whom I discussed any matter relating to what could be done at SARS.[6] My answer to the posed question was "[t]hat I recollect, no".[7] After due consideration of the question posed in this regard, it has become apparent to me that I had met with Makwakwa as set out above.

64. I have been advised that using such "transversal contract" is currently in fact an express requirement of SARS's Procurement Policy. At that time however, during 2014/2015, I am not sure what Procurement Policy existed, and in the limited time I have not been able to obtain a copy of the SARS Procurement Policy that existed at that time. However it appears likely that those conditions applied as well.

65. I have also been requested to provide an answer to the allegation that Bain & Company submitted its tender proposal on 12 December 2014 and that it would have been impossible to prepare the submission within such a short period of time (within 24 hours).[8] The allegation and concomitant conclusion is inaccurate and without any basis. To start with, our proposal was not completed in 24 hours and it should have been obvious that it was not. The Technical proposal presentation and also the Price proposal presentation, both submitted in respect of that RFP, are both dated 19 December 2014 and attached hereto as "**VM21**" and "**VM22**", respectively. In

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[5] Vittorio Massone, Transcript, *Commission of Inquiry Into Tax Administration and Governance by SARS* at p. 2105, lines 8, 16-17, & 20-21.
[6] *Ibid* at p. 2107, lines 14-16.
[7] Ibid at p. 2107, line 17.
[8] *Ibid.* at p. 2106.

addition, the meta data of Bain & Company's pricing schedule to its submission shows that it had last been edited on 17 December 2014, which schedule and metadata is attached hereto as "**VM23**".

66. On 11 December 2014, at 09:33AM, my assistant at the time, Samantha van Wyk received an email from SARS setting out an overview of the RFP presentation which would be conducted by SARS the next day. I attach a copy marked "**VM23.1**". There is nothing unusual or remarkable in the scope of the proposed tender. On the basis of this email it is also easy to assess that every tenderer would have to qualify itself in terms of experience, capacity etc. Giving that it was a long weekend (the 16th December was a public holiday) and that most people were preparing for a long weekend holiday (and the time of the year when most people prepare for the annual holiday), Bour starting pulling together basic documents for the technical presentation. I attach as annexure marked "**VM24**" a copy of an email circulated internally by Bour later that evening demonstrating the effort then put in to the first part of the preparation of the tender submission.

67. I point out that the tender, as will appear more fully below, consists of three discrete sections. The first is an administrative section dealing with the aspects referred to above, all of which is readily available to any executive at Bain responsible for the completion and submission of tenders. The two other sections deal with Technical and Pricing proposals. Those two sections are, and would almost always be, specific to the tender only and would require some detailed work on the Pricing schedule before being encapsulated in an formal tender. As is apparent from the email from SARS to Bain dated 12 December 2014, marked "**VM25**" the pricing schedule would only be provided for the first time on Monday 15 December 2014.

68. The RFP states at 8.2.4 "SARS Organisation and Governance: (i) Structure and sizing; (ii) Efficiency of decision making, and (iii) Governance model review". Our proposal clearly showed that this project was not intended to be just about structure, we also referenced decision-making and governance and our diagnostic highlighted the importance of those elements.

THE RFP PROCESS

69. I now respond to the question as to whether Bain & Company had prior knowledge of the RFP. My answer provided in this regard requires clarification. Before and leading up to 11 December 2014, my assessment was that SARS likely would require services from management consultants, but I had no knowledge of the substantive content of the RFP released by SARS on 11 December 2014.

70. Before and leading up to 11 December 2014 I did not have insight beyond the following:

70.1. the meetings with Moyane on the topic of SARS;

70.2. an email received from Mogogodi Dioka (Executive Procurement, SARS) on 2 December 2014 requesting any current public entity relationships and references that I might have had (the email is attached hereto as **"VM26"**); and

70.3. the telephone call received from the then acting Chief Operating Officer of SARS regarding the request of whether SARS could use the Telkom contract (refer to annexure marked "VM20").

71. I am to deal with the manner in which the RFP came to my knowledge. On 11 December 2014, Samantha van Wyk received an invitation to a briefing session. I repeat what I have said above in this regard. We attach a copy of the meeting invite marked as "**VM26.1**".

72. On 12 December 2014, Bain employees attended the briefing session.

73. On 12 December 2014, following the briefing, Bain received the RFP (RFP 26-2014)(see annexure marked "VM25"). Indeed, even a cursory review of that RFP 26/2014 would have revealed the following:

73.1. the Required Tender Documentation is set out in paragraph 8.5 thereof. Items 8.5.1 to 8.5.4 are standard, readily available material which we could (and did) produce at the proverbial "touch of a button". This is what was

produced, available and signed off, to the best of my recollection, by me, on 12 December 2014. My best effort at recollecting the events then is that whatever cover document was required to accompany the tender documentation was signed by me as I was departing on annual leave. Skeleton staff remained who completed the remaining required tender documentation and who continued to interact with SARS;

73.2. the information in paragraphs 8.5.5 and 8.5.6 constitutes the substance of the tender and those were completed and provided to SARS on 19 December 2014.

74. In addition, on 15 December 2014, Bour received a request from the Commissioner to indicate Bain & Company's availability to present its bid to the SARS Bid Evaluation Committee on 17 December 2014. Bain & Company was also requested to complete an Annexure B_RFP26_2014. A copy of the email is attached marked as "**VM27**". The reference to "17 December" in the email is clearly a typing error on the part of the draftsman of that email. As appear below, Bain only provided copies of its presentation documents at 6.18PM on Thursday 18 December 2014.

75. On 18 December 2014 Bour sent soft copies of Bain & Company's presentation sections of the tender to SARS, which presentation concerned Bain & Company's 'technical proposal presentation' and 'price proposal presentation'. The email with both presentations attached hereto as "**VM28**".

76. I attach hereto "**VM29**", which is the Letter of Award, dated and received by Bain & Company on 22 January 2015, as well as the enclosing email.

77. The innuendo against Bain is that we must have known our competitors' pricing given that we effected a 50% discount to our pricing and then came in below the competitor pricing. Of course, if Bain's tender had in fact been submitted on 12 December (as was alleged to me) it is self-evident that this allegation has no basis because the competitive tender was only delivered thereafter, albeit I don't know exactly when.

78. In any event, I attach as marked as **"VM30"** a copy of an email from me to Franzen and Bour dated 16 December 2014, the contents whereof speaks for itself. This demonstrates how and why we applied the discount and that I had no knowledge of the competitor pricing.

CONCLUSION

79. I had met with Zuma and Moyane. At no stage did any meeting or encounter have any improper motive, nor were my engagements aimed at securing work for Bain & Company without following due process or at any cost.

80. I have consistently provided various public figures with "staple" Bain & Company client development documents with the exclusive purpose of showcasing Bain & Company's technical and specialised expertise. As such, no single meeting or collection of meetings considered *in tandem* can be interpreted or understood as an attempt at securing future work unlawfully or otherwise improperly.

81. My meetings with Zuma were, as set out in detail above, completely unrelated to the work at SARS or my interactions with Moyane. These meetings were both an attempt to raise Bain & Company's profile and to demonstrate our sector specific expertise with particular emphasis on our credentials in the public sector, locally and abroad. While these meetings were a significant investment of my time, they were a valuable opportunity for me to familiarise myself with issues relevant to the public sector in South Africa and also demonstrate Bain & Company's expertise.

82. In conclusion, no document or advice had been provided, no meeting had been attended, and no correspondence had been disseminated with the expectation of future work *in exchange* for such document, advice or input. No-one ever gave me any reason to believe that they received this work or my input with any expectation or obligation to furnish Bain & Company with any preferential treatment work in return.

83. I only ever intended to ensure that Bain & Company and I were recognised as experts in various spheres of advisory services and thereby to increase Bain & Company's public profile.

end of 71

24

VITTORIO MASSONE

Signed and sworn before me at ROSEBANK on this the **17TH** day of **September 2018**.

By appending my signature hereon I, the Commissioner of Oaths, certify that the deponent has acknowledged that he has personal knowledge of and understands the content of this Affidavit, that the deponent has no objection to taking the prescribed oath, and that the dependent considers the prescribed oath to be binding on his conscience.

COMMISSIONER OF OATHS

Full names: ZULU ROBERT MTHUNZI

Capacity: WARRANT OFFICER

Address: 15 STURREE AVENUE
ROSEBANK 2196

Office: ROSEBANK CSC

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2018 -09- 17
CSC
ROSEBANK
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ANNEXURE "AW51"

AWS1

BAIN & COMPANY

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9 September 2018

Hon. Judge Nugent
Commission of Inquiry into Tax Administration and Governance by SARS
Hilton House, 2nd Floor
570 Fehrsen Street
Brooklyn, 0181
South Africa

Dear Judge Nugent

Thank you for your letter of 8 September 2018. I confirm that I have sent your subpoena to Mr. Massone and he has acknowledged receipt thereof. In the spirit of transparency, I wanted to inform you that Bain has asked Mr. Vittorio Massone to step aside as Office Head of Bain & Company South Africa pending the conclusion of the Commission's work so as to allow him to dedicate his energy and time to the Commission.

I regret if you interpreted the statement submitted on behalf of Mr. Massone on 7 September 2018 (the "Massone 7 September Statement") as a failure to cooperate with the Commission. We have provided several written submissions, and Mr. Massone testified before the Commission on 30 and 31 August 2018, on a voluntary basis. We have publicly stated our intention to fully support the Commission in its important mandate, and we have every intention to continue to do so.

As I explained during our meeting at your offices on 6 September 2018, we are making every effort to collect as much information as possible, as quickly as possible. Employees from Bain offices around the world have spent the past week in Johannesburg supporting our South Africa colleagues in this effort, and have worked on nothing else all week. We have retained the law firm of Baker McKenzie to assist us in gathering and analyzing information that has often been incomplete or difficult to understand given the passage of time (for example, some of the people who produced many of the documents are no longer employed by Bain). We want to be as certain as possible about the accuracy of information we provide to the Commission. To give you an example, the fact that a meeting between Mr. Massone and Mr. Moyane appeared on Mr. Massone's calendar does not necessarily mean that such a meeting actually took place. The meeting might have been scheduled but then cancelled, and not everyone would necessarily take the step of retroactively updating their calendars to reflect such a cancellation. So a simple calendar entry would just be the first step and we would then cross check against time sheets, expense submissions and other potential sources of corroboration. And of course, we interviewed Mr. Massone over a two-day period, but he was trying to recall from memory events that occurred over three years ago.

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The Massone 7 September Statement was our good faith attempt to provide you with information as to which we had absolute certainty at that time. My takeaway from our meeting of 6 September in your offices was that this was the appropriate approach to adopt for the submission due the next day, and that we could then supplement our responses with additional information once such information had been similarly confirmed. I realize now that I must have misunderstood your directions, and so to the extent the Massone 7 September Statement disappointed you, I am responsible for that and I apologize.

I would like to address the specific points raised in your letter of 8 September.

Mr. Massone did meet with Tom Moyane several times before he was appointed Commissioner of SARS, during the period from October 2013 to August 2014. We do not at this stage know the exact number of meetings. In the Massone 7 September Statement, Mr. Massone was not claiming that he had no present recall of having met Mr. Moyane to discuss SARS, and he definitely was not refusing to respond to your request. In fact, in paragraph 16 of the Massone 7 September Statement, Mr. Massone acknowledges meeting with Mr. Moyane before he was appointed Commissioner of SARS. However, the Commission did not just ask Mr. Massone to confirm that he had met with Mr. Moyane, but also asked him to provide details about when and where each contact occurred, who initiated each contact, and what was discussed at each meeting. When Mr. Massone stated in paragraph 9.3 of the Massone 7 September Statement that "I do not currently have a clear recollection of <u>these</u> matters" (emphasis added), he was referring to this broad range of questions and not just whether or not he had met with Mr. Moyane.

In your letter to Ms. Moodley of 3 September 2018, you asked that we furnish you with a copy of the report prepared for Mr. Moyane "referred to in the evidence of Mr. Massone". We reviewed Mr. Massone's testimony before the Commission and concluded that your letter was referring to the "outside in" report about SARS prepared on the basis of publicly available information, as Mr. Massone informed us that this was the document to which he was referring when he testified that he provided a report to Mr. Moyane. We thus submitted this report, entitled "SARS 2.0" and dated 13 October 2013, as Annex A to the Massone 7 September Statement. As you note in your letter of 8 September, there are other reports that were prepared for Mr. Moyane. The only reason we did not include those additional reports that had at that stage come to hand together with the Massone 7 September Statement was because we are continuing to search for any other such reports, and given the deadline of 7 September we decided to file the one report which was directly responsive to your request in the letter to Ms. Moodley of 3 September. But we always intended to provide you will all other such reports by way of a supplemental submission as per our discussion about supplementing the initial submission of 7 September. In any event, I am enclosing copies of two additional reports that we have found thus far. Annex 1 is a copy of a report entitled "TM first 100 days", dated as of 26 May 2014. Annex 2 is a copy of a single slide entitled "Potential SARS organisation chart and focus areas", which we believe was created on 27 June 2014.

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As you will recall from our conversation at your offices on 6 September 2018, I requested the opportunity to not just submit documents to the Commission, but also to allow Bain to provide more context about certain documents and how they are used in the consulting industry. Annex 1, the "TM first 100 days" report, is a good example of a document that requires some explanation as to its context. This report is a typical example of a company-specific "blueprint" that we provide to senior executives who are considering taking a senior position at a new company so that they will be able to "hit the ground running" if they do take on a new role. Many of these blueprints are never used if the executive does not take the position or decides for whatever reason to pursue other priorities during the first few months in the new position. However, without this context, this report could be misconstrued as evidence that the executive already had the new position "locked in". Slide 7 of Annex 1 is another example of the concern I had about certain materials being taken out of context without adequate explanation or background. The reference in the title of the slide to "identify individuals to neutralize" could be misconstrued as a plan to eliminate certain positions or terminate the employment of certain individuals, especially in the context of the personnel disruptions which subsequently occurred at SARS. However, it is in fact a reference to something entirely different. Bain has a proprietary product called "Net Promoter System" which is used to measure consumer or employee satisfaction. In the context of employees, individuals are classified as either being Promoters, Passive, or Detractors depending on their level of satisfaction with their employer. The reference to "neutralize individuals" means to identify and convert Detractors into Promoters, or in other words to focus on improving the satisfaction levels of currently disgruntled employees. If you wish, you may follow this link to get more information about our Net Promoter System: https://www.bain.com/insights/introducing-the-net-promoter-system-loyalty-insights/

We will of course ensure that these documents (Annex 1 and 2) are included in an official submission to the Commission so that they become part of the public record.

I appreciate that you have given Mr. Massone the opportunity to revise the Massone 7 September Statement to remove the names of two former Bain clients before he attests to it. We were trying to be responsive to your request to disclose information about work done by Bain for any revenue authority other than SARS.

In your letter of 3 September to Ms. Moodley, you asked us to provide details of any meetings between any Bain personnel and former President Zuma, and in our meeting of 6 September you agreed that we could limit the response for now to Mr. Massone (although as noted below, to the best of our knowledge no other Bain employees accompanied Mr. Massone to his meetings with former President Zuma). In paragraph 17 of the Massone 7 September Statement, Mr. Massone acknowledges meeting former President Zuma. This is an area where we have very little direct information and have been working very hard to piece together as complete a picture as possible, because we realize the sensitivity of this topic and thus want to be as accurate as possible. Mr. Massone did meet with former President Zuma on several occasions, but at this point in time we still do not know with certainty the exact number. To the

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best of our current knowledge, these meetings took place between August 2012 and sometime in 2015-2016. We believe they were at President Zuma's official residence in Pretoria, except for one occasion in Durban and one occasion in Cape Town. To the best of our knowledge and belief, none of the meetings were at Nkandla and Mr. Massone did not give any gifts of any kind to the former President. We believe Mr. Massone was the only Bain employee present at these meetings. We are in the process of reconstructing a record of these meetings from Mr. Massone's recollection, our Outlook meeting records, our finance and expenses records, the creation dates visible in the metadata of relevant electronic documents and other sources. Mr. Massone has told us that these meetings were on a range of topics but not on SARS. He says that he bumped into Mr. Moyane at one of the meetings and he is currently cooperating fully to help us reconstruct a full record of what was discussed. This is a work in progress and will be ready to submit this information soon. Our initial perusal of the documents that we have identified to date suggests that they do not contain anything that we would consider illegal or unethical. To the contrary, the materials that we believe Mr. Massone prepared for his meetings with former President Zuma were focused on ideas for improving the well being of the people of South Africa across a range of areas such as industrial development, education, healthcare, safety, employment, rural communities, environment and social security. We will ensure you have access to all the relevant information we find in this regard.

I reiterate that Bain intends to cooperate fully with the Commission in an open and transparent manner. We intend, in particular, to submit to the Commission by the date referred to in your most recent letter to Mr. Massone (i.e., 21 September 2018) all relevant documentation that we are able to locate in relation to the matters raised in your recent letters.

Please let us know if you have any questions regarding the matters set forth in this letter or the accompanying annexures.

Very truly yours,

Stuart K. Min
Partner and General Counsel

Enc.

ANNEXURE "AW52"

SARS-01-306

Tracker Table

Meetings with former President Jacob Zuma where Vittorio Massone was present

Created by:	Chris Kennedy, Senior Counsel Nicolle Venter, Financial Controller Jackie Lafleur, Baker & McKenzie
Sources Used:	Interview notes with Vittorio Massone (Mr Massone) on 4 and 5 September 2018 (conducted by Chris Kennedy and JJ Van der Walt, Baker & McKenzie) Outlook calendar records of Mr Massone, provided by his PA Documents/e-mails provided by Mr Massone and identified as potentially relevant (selection process and criteria not verified/audited) Travel expense records of Mr Massone
Methodology:	Mr Massone has cooperated with our investigation fully but has, at times, struggled to recall exact details regarding the meetings he attended. In order to provide as full a picture as possible, we have attempted to reconstruct the dates and times of these meetings using available internal records. Mr Massone was provided with a draft copy of this table as a memory aid and he attempted (to the best of his recollection) to correct any inaccuracies and rectify omissions. The final table was checked by Mr Massone and confirmed as accurate to the best of his recollection, after having reviewed his records.

General comment from Mr Massone:

This is intended to be as full a record as I am able to pull together (with the assistance of my colleagues in legal and finance as well as Baker & McKenzie, for which I am grateful) of the meetings I had in which Former President Jacob Zuma was present, in the short time that was made available to me to do so. In putting together this record, I did as thorough a search as possible of my emails and documents. While I have attempted to make the record as comprehensive as possible, it may well be that further relevant emails and documents are found as I continue my search and as the internal investigation at Bain begins. These meetings happened over the course of a long period of time and it is fair to say that I was never really mindful of the total number of them until I went through this exercise and tallied them up. I was always open about the meetings with colleagues and would mention them in partner meetings as part of a general business/client development update. Indeed, many of the meeting materials were prepared with the assistance of colleagues. It is fair to say that I was proud to be meeting with senior politicians and I was very hopeful that Bain could suggest or otherwise become involved in projects that would drive real change for the people of South Africa.

Bain & Company never accepted any money in payment for these services, although we did pay Duma Mdlovu (Duma) a retainer advisory fee as he would accompany me to the meetings as part of his duties as an advisor. Duma was only paid for these services a retainer agreement was concluded with him. This was some time towards the end of 2013. We did all the work on a pro bono basis because we wanted to build our brand and reputation as a trusted adviser with senior government officials and – if some of these ideas were accepted as formal projects effected with consulting support – we hoped to have the opportunity of being successful in the RFP process. I am happy to talk in detail about the contents of these documents and I am currently going through the process of reminding myself of these materials in order that I can assist the Commission to understand these meetings.

When attending these meetings, I was almost always present as a guest to the presenter of the meeting. The only time I ever took the lead in meetings with Zuma was for the meetings concerning the 100 days' plan. The person with whom we prepared the materials would present and I would only occasionally step in to assist if there was a question on a detail or a number (and only in respect of the presentations we had assisted with preparing). The timing of the meetings was usually during the evenings or at the weekend, sometimes late at night. Although I found this inconvenient, I was told it was the only time that the former President (Zuma) was free because he was a very busy man. In any event, it was a sacrifice I was prepared to make in order to have the opportunity to demonstrate Bain's expertise and insights with important public sector potential clients. As we would often be kept waiting for hours before we could see Zuma, we took to gathering at the Sheraton Hotel in Pretoria near the official residence. I would usually pay the bill and these expense receipts have helped us identify the dates of meetings. These were then cross-checked against my e-mails and documents to match a meeting date with a meeting topic. It was often the case that we would gather in advance of a meeting and then after waiting a few hours the meeting would be postponed until another day. For this reason, there are more rows in the table than meetings. I wished to be as forthcoming regarding possible dates as I could be in the hope that this would assist the Commission. I've tried to note this in the table and, where there were a group of meetings on a single topic, I have indicated this in the shading.

I also wish to point out that many of the presentation slides which I have provided may not be the final version that was presented at the corresponding meeting. In almost all cases, various versions of the presentation would be circulated and amendments made prior to the meeting. I have included, to my knowledge, the most recent versions of the documents that were ultimately presented.

Finally, I wish to be clear on a number of points. To the best of my knowledge and belief, and after having consulted my records to aid my recollection of these matters:

1) at no point in any of the meetings that I attended was SARS (or Tom Moyane's (Moyane) appointment as the Commissioner of SARS) discussed. It is possible Moyane was present at the Cape Town meeting as I remember bumping into him in the waiting area but I can't remember if he was also at the meeting as an observer. I cannot rule out that SARS was mentioned in passing, but it was never a meeting topic.
2) I had no control or influence over, or input into, the appointment of Moyane. I was not involved or consulted in this decision in any way. I learned of the appointment via the media after it had been announced.
3) at no point in any of these meetings did I witness or participate in any illegal or unethical behavior or discussions regarding the same. If I had, I would have brought it to the attention of our legal department at the time.

Meetings with Former President Jacob Zuma where Mr Massone was present				
Date	Location	List of Attendees	Meeting Topic	Mr Massone Comments
11 August 2012	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Sipho Maseko (Maseko)	Sisekelo (which became known as Project Phoenix from 2013)	Although there are three dates here, I am fairly certain that the meeting of 17 August 2012 did not happen. I have included it here because it appears in my diary, but I believe the meeting was postponed to 23 August 2012. There was an initial meeting on Project Phoenix (which, broadly, was a project to reshape the South African economy) on 11 August 2012, and then another meeting to discuss additional topics (ie. regulatory and a deeper dive on certain parts of the project) on 23 August 2012. During that second meeting we also discussed feedback in relation to the first meeting.
17 August 2012	Official Residence of the President,	Massone, Zuma, Duma, Jabu Mabuza (Mabuza),	Sisekelo	

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	Pretoria	Maseko		I have attached marked "Z1" and "Z2", the documents that I recall were presented at these meetings. 1.
23 August 2012	Official Residence of the President, Pretoria	Massone, Zuma, Duma,Mabuza), Maseko	Sisekelo	
15 October 2012	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Maseko, Mabuza	Project Phoenix	I was able to identify the date of this meeting from the date of the document presented at the meeting, which was the final Project Phoenix plan. This meeting happened because Bain assisted with the document preparation However, I may not have actually been at this meeting (and I cannot recall being at the meeting) because there is no entry in my calendar and no Sheraton Hotel receipt. After this meeting, there were no further meetings until Maseko was appointed as CEO of Telkom.. I found out that Maseko was appointed when Mabuza called me shortly after the appointment. I understand that a number of other meetings in relation to Project Pheonix took place in September, November and December 2012, including a meeting with Pravin Gordan, to discuss implementation of the project. However, I was not present at any of these meetings and cannot comment further on them. The final Project Phoenix plan which I refer to above is attached marked "Z3".
17 April 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Maseko, Mabuza	Project Phoenix	This meeting was also on Project Phoenix. This meeting happened after Maseko was appointed, and there was a desire to illustrate what could be done at Telkom. From what I can remember, the reason for the meeting was to discuss the situation at Telkom, which was more complicated than Bain had initially thought. This was for a number of reasons, for example, one of the first things that we found out was that Telkom had only 3 months of cash and, consequently, the turnaround would be more complex than initially expected This meeting happened after Bain had started work for Telkom, and this is the reason that you will see that the document is now on Telkom headed slides. The document presented by Maseko at this meeting is attached marked "Z4".
25 April 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma and possible Maseko	Project Elephant	Project Elephant was the infrastructure plan. I believe Zuma gave it to the Minister of Infrastructure , because we never heard about it again after this meeting, other than what we read in the papers (namely that a committee was created and our proposal was ultimately not adopted). I have attached marked "Z4", the Project Elephant presentation that was discussed at the meeting.
4 August 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Maseko	Telkom Meeting: Strategy and Broadband planning	I don't recall this meeting, although it is listed in my diary - I think it was likely another Project Phoenix meeting and may have related to financing. One of the plans of Project Phoenix was to put broadband in the whole country and this meeting would probably have been related to giving a better cost estimate for that plan. This is my best recollection of this. I have not been able to find any documents that might have been discussed at this meeting.
21 October 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Unknown	I have included this date as a potential meeting as my finance department has a record of a flight change for a return flight on this date from Zurich for a potential meeting with Zuma. I have no record that this meeting happened and I have no recollection of the meeting taking place. I have not been able to find any documents that might have been discussed at this meeting (although I am doubtful it occurred).
17 November 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Maseko	Project Phoenix	This was an update on Project Phoenix. There were so many meetings on Project Phoenix because every time there was a new Minister of Telecommunications, Maseko and Mabuza would meet with the new Minister to give them a briefing and I would be invited. It was typically the same briefing each time and I was invited to attend and assist in explaining the Project Phoenix plan. I attach marked "Z5" the document that was presented at this meeting.
25 February 2014	Cape Town	Zuma, Massone, Duma, (bumped into Moyane in waiting room)	Project Elephant	As I recall, this meeting did not happen as planned - Zuma arrived very late to the meeting and there was no time to have the scheduled meeting. Zuma was tired and instead we have a short social conversation with him. I remember him telling me about Zulu customs and traditions relating to marriage.
3 April 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma The Sheraton receipt Massone has suggests 8	Workshop and Central Procurement Agency	I am quite sure that the meeting was postponed until 26 April 2014 and never actually took place - I remember that I was late to my brother's birthday dinner when the meeting eventually took place, which is 26 April 2016. I believe we may have waited at the Hotel to meet with Zuma and eventually ended up having dinner there.

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		people were in attendance - Massone cannot recall the identities of the other participants		
26 April 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Workshop and Central Procurement Agency	This was an initial workshop to discuss the 100 days plan that was to be presented on in further detail at a later stage. In addition to this, we discussed the creation of a Central Procurement Agency. I have attached marked "Z6" and "Z7", the documents that were presented in relation to the workshop and the Central Procurement Agency
17 May 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan[1]	This was a series of meetings relating to the "100 Days Plan". The 100 days plan was a presentation regarding how you can accelerate the implementation of the National Development Plan using - a framework of ease of implementation vs impact to decide which projects to prioritise, and - a 100 day cooperation process whereby all Ministries would cooperate on the same goal. The idea was to recreate the "strong collaboration on a single project" spirit that was seen during the World Cup in 2010 through more effective integration and to determine a prioritization of projects Although research identified a number of dates for these meetings, in reality I think there were about 3 to 5. I cannot be more precise than this. I do, however, recall that often more than just the 100 days' plan was discussed. I have tried to be as precise as possible regarding the additional topics discussed at the various meetings I have attached marked "Z8" and "Z9" two of the presentations that related to the 100 days' plan, one being a presentation on what was required to be done within the first 100 days and the other being an ANC Manifesto, which was a programme management proposal. In addition, I have attached marked "Z10" the presentation that was made by Maseko on the new entrepreneurship and SMME. Finally, I have attached marked "Z11" and "Z12", two documents that I recall being discussed in relation to Project Sirius. This was a project aimed as re-shaping South Africa's energy sector, mainly through Eskom and PetroSA. I recall the Eskom presentation being discussed at the meeting in Durban.
23 May 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Maseko, advisors to the president (Massone believes its was Glen Mashinini and [x])	100 days plan, new entrepreneurship and SMME	
7 June 2014	Durban Official Presidential Residence[2]	Massone, Zuma, Duma, Mabuza	100 days plan, Project Sirius	
1 July 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	
4 July 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	
6 July 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	

Please note:

We also located a number of documents that were presented to other ministers as part of Bain's client development push into the public sector. Mr Massone was present at these meetings, although Zuma was not. For the sake of complete transparency, a list is included below:

a. Meeting with the Secretary of Defence on several occasions.. Attached marked "M1" is a presentation titled "Meeting with the DoD Implementing 2014 SA Defence Review - 4 June 2014". Meeting with the Minister of Police in June 2014 and July 2015. Attached marked "M2" and "M3" are presentations titled "Transform SAPS to make South Africa safe and build a national asset South Africans are proud of - June 2014", and "Implementing Farlam's commission recommendations in the context of borad transformation of SAPS- July 2015".
b. Meeting with Dr Zweli Mkize on 14 August 2014. The meeting was scheduled to discuss ways to reshape the South African economy. The presentation that was discussed is attached marked "M4".
c. Meeting with Jeff Radebe on 18 August 2014. Attached marked "M5" is a presentation titled "Reshaping the South African economy Meeting with Minister J. Radebe - 18 August 2014".

Please let us know if you would like more details on any of these documents and we will arrange for Vittorio to talk you through them.

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Tracker Table

Meetings with former President Jacob Zuma where Vittorio Massone was present

Created by:	Chris Kennedy, Senior Counsel Nicolle Venter, Financial Controller Jackie Lafleur, Baker & McKenzie
Sources Used:	Interview notes with Mr Massone on 4 and 5 September 2018 (conducted by Chris Kennedy and JJ Van der Walt, Baker & McKenzie) Outlook calendar records of Mr Massone, provided by his PA Documents/e-mails provided by Mr Massone and identified as potentially relevant (selection process and criteria not verified/audited) Travel expense records of Mr Massone
Methodology:	Mr Massone has cooperated with our investigation fully but has, at times, struggled to recall exact details regarding the meetings he attended. In order to provide as full a picture as possible, we have attempted to reconstruct the dates and times of these meetings using available internal records. Mr Massone was provided with a draft copy of this table as a memory aid and he attempted (to the best of his recollection) to correct any inaccuracies and rectify omissions. The final table was checked by Mr Massone and confirmed as accurate to the best of his recollection, after having reviewed his records

General comment from Mr Vittorio Massone:

This is intended to be as full a record as I am able to pull together (with the assistance of my colleagues in legal and finance as well as Baker & McKenzie, for which I am grateful) of the meetings I had in which Former President Jacob Zuma was present. These meetings happened over the course of a long period of time and it is fair to say that I was never really mindful of the total number of them until I went through this exercise and tallied them up. I was always open about the meetings with colleagues and would mention them in partner meetings as part of a general business/client development update. Indeed, many of the meeting materials were prepared with the assistance of colleagues. It is fair to say that I was proud to be meeting with senior politicians and I was very hopeful that Bain could suggest or otherwise become involved in projects that would drive real change for the people of South Africa.

Bain & Company never accepted any money in payment for these services, although we did pay Duma Mdlovu (**Duma**) a retainer advisory fee as he would accompany me to the meetings as part of his duties as an advisor. We did all the work on a pro bono basis because we wanted to build our brand and reputation as a trusted adviser with senior government officials and – if some of these ideas were accepted as formal projects effected with consulting support – we hoped to have the opportunity of being successful in the RFP process. I am happy to talk in detail about the contents of these documents and I am currently going through the process of remunding myself of these materials in order that I can assist the Commission to understand these meetings.

When attending these meetings, I would typically be present as an advisor but generally would not speak. The person with whom we prepared the materials would present and I would step in to assist if there was a question on a detail or a number. The timing of the meetings was usually during the evenings or at the weekend, sometimes late at night. Although I found this inconvenient, I was told it was the only time that the former President (**Zuma**) was free because he was a very busy man. In any event, it was a sacrifice I was prepared to make in order to have the opportunity to demonstrate Bain's expertise and insights with important public sector potential clients. As we would often be kept waiting for hours before we could see Zuma, we took to gathering at the Sheraton Hotel in Pretoria near the official residence. I would usually pay the bill and these expense receipts have helped us identify the dates of meetings. These were then cross-checked against my e-mails and documents to match a meeting date with a meeting topic. It was often the case that we would gather in advance of a meeting and then after waiting a few hours the meeting would be postponed until another day. For this reason, there are more rows in the table than meetings. I wished to be as forthcoming regarding possible dates as I could be in the hope that this would assist the Commission. I've tried to note this in the table and, where there were a group of meetings on a single topic, I have indicated this in the shading.

Finally, I wish to be clear on a number of points. To the best of my knowledge and belief, and after having consulted my records to aid my recollection of these matters:

1) at no point in any of the meetings that I attended was SARS (or Tom Moyane's appointment as the Commissioner of SARS) discussed. It is possible Tom Moyane was present at the Cape Town meeting as I remember bumping into him in the waiting area but I can't remember if he was also at the meeting as an observer. I cannot rule out that SARS was mentioned in passing, but it was never a meeting topic.
2) I had no control or influence over, or input into, the appointment of Tom Moyane. I was not involved or consulted in this decision in any way. I learned of the appointment via the media after it had been announced.
3) at no point in any of these meetings did I witness or participate in any illegal or unethical behavior or discussions regarding the same. If I had, I would have brought it to the attention of our legal department at the time.

Date and approx. time	Location	List of attendees	Meeting Topic	Vittorio Massone comments
11 August 2012	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Sisekelo (previous name for Project Pheonix)	Although there are three dates here, I am pretty sure that one of these meetings did not happen. One meeting was postponed, although I do not remember which one. There was an initial meeting on Project Phoenix and then another meeting to discuss additional topics (ie. regulatory and a deeper dive on other parts). During that second meeting we also discussed feedback in relation to the first meeting.
17 August 2012	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Jabu Mabuza	Sisekelo	
23 August 2012	Official Residence of the President, Pretoria	Massone, Zuma, Duma, Jabu Mabuza (Mabuza) (possibly - Vittorio to confirm)	Sisekelo	
October 15 2012	Official Residence of the President, Pretoria	Massone, Zuma. Duma, Mabuza	Project Pheonix	I was able to identify the date of this meeting from the date of the document presented at the meeting, which was the final Project Phoenix plan. This meeting happened because we assisted with the document preparation. However, I may not have actually been at this meeting (and I cannot recall being at the meeting) because there is no entry in my calendar and no Sheraton Hotel receipt. After this meeting, there were no further meetings until Sipho Maseko (**Maseko**) secured the job as COO of Telkom. I found out that Maseko was appointed when Jabu Mabuza called me shortly after the appointment.

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				The final Project Pheonix plan is attached marked "x".
17 April 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Project Phoenix	This meeting was also on Project Phoenix. This meeting was effectively Maseko saying "I have the job – this is what we want to do". I think the reason for the meeting was to discuss the situation at Telkom, which was more complicated than we thought. This was for a number of reasons, for example, one of the first things that we found out is that they have 3 months of cash and the turnaround would be more complex than initially expected. This meeting happened after Bain had started work. This is the reason that you will see that the document is now on Telkom branded paper. See document marked "x".).
25 April 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Project Elephant	Project Elephant was the infrastructure plan. It was never followed up. I think Zuma gave it to the Minister of Infrastructure because we never heard about it ever again after this meeting, other than what we read in the papers (namely that a Committee was created and our proposal was not adopted). See attached document marked "x", which is the Project Elephant presentation that was to be discussed at this meeting.
4 August 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Telkom Meeting: Strategy and Broadband planning	I don't recall what this was - I think it was likely another Project Phoenix meeting and may have related to financing. One of the plans of Project Phoenix was to put broadband in the whole country and this meeting would probably have been related to giving a better cost estimate for that plan. This is my best recollection.
21 October 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Unknown	I have included date as our finance department has a record of a flight change for a return flight on this date from Zurich for a potential meeting with Zuma. I have no record that this meeting happened and I have no recollection of the meeting taking place.
17 November 2013	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Project Phoenix	This was an update on Project Phoenix. There were so many meetings on Project Phoenix because every time there was a new Minister of Telecommunications, Maseko and Mabuza would meet the new Minister to give them a briefing and I would be invited. It was typically the same briefing each time and I was invited to attend and assist in explaining the Project Phoenix plan.
25 February 2014	Cape Town	Zuma, Massone, Duma, (bumped into Moyane in waiting room)	Project Elephant	As I recall, this meeting did not happen – Zuma came very late and there was no time to have the scheduled meeting. He was tired and instead it was a short social conversation. I remember him telling me about Zulu customs and traditions relating to marriage. See attached document marked "x" (being the Project Elephant document referred to in relation to the meeting on 25 April 2015) - this was intended to be discussed at the meeting but ultimately never was.
3 April 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma The Sheraton receipt suggests 8 people were in attendance - I cannot recall the identities of the other participants	Project April	I have a document titled Project April dated 25 April 2014. I am quite sure that the meeting happened on 26 April 2014 because I remember I was late for a dinner. I think that this meeting was just postponed. See attached document marked "x".
24 April 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Unknown	I think that this meeting was just postponed and never actually happened.
26 April 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	Unknown	See attached document marked "x", which indicates that a meeting with Zuma was to take place on this day, although I cannot recall what was discussed
17 May 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan[1]	This was a series of meetings relating to the "100 Days Plan". The 100 days plan was a presentation regarding how you can accelerate the implementation of the National Development Plan using - a framework of ease of implementation vs impact to decide which projects to prioritise, and - a 100 day cooperation process whereby all Ministries would cooperate on the same goal. The idea was to recreate the "strong collaboration on a single project" spirit that was seen during the World Cup in 2010
23 May 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	
7 June 2014	Durban Official Presidential			

[1] Vittorio does not expressly remember, but advised that given the timeline, it was likely related to the 100 days plan.

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WW1-AW-300

	Residence[2]			
1 July 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	Although research identified a number of dates for these meetings, in reality I think there were about 3 to 5. I cannot be more precise than this. See document marked [x].
4 July 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	
6 July 2014	Official Residence of the President, Pretoria	Massone, Zuma, Duma	100 days plan	

Please note:

1) As part of our investigation we located some documents that we were unable to link to a specific meeting date. We have included a list of these below:
   a. Document with title "ANC Manifest Implementation - March 2014". This was intended to be a lead into Former President Jacob Zuma's legacy. See attached marked [x]
   b. Project Phoenix - acceleration dated July 2014. See attached marked [x]
   c. In an email dated 22 May 2014, Duma indicates that there would be a meeting with Zuma that evening to discuss a new venture Entrepreneurship and SMME to be presented by Maseko.
   d. In an email dated 3 July 2014, Duma indicates that the "energy document" would be discussed at the meeting with Zuma on 4 July.
   e. Document with the title "Sirius PetroSA 29 October 2014" - this related to Project Sirius which was to discuss Petro SA's potential role in the African economy. See attached marked [x]
   f. Implementation of a National Development Plan.
   g.
2) We also located a number of documents that were presented to other ministers as part of Bain's client development push into the public sector. A list is included below:
   a. Document entitled "TITLE" and dated "DATE". This appears to have been presented to NAME on DATE
   b. Meeting with the Secretary of Defence on 3 September 2018.
   c. A meeting with Minister Gigaba on 8 October 2013. Duma was also at the meeting, as was [insert other participants] See attached meeting invitation marked [x].
   d. A meeting with the Minister of Police on 1 July 2014. Duma was also at the meeting, as was [insert]. See attached email discussing the meeting to take place marked [x]
   e. A meeting with Dr Zweli Mkize on 14 August 2014. The meeting was scheduled to discuss ways to reshape the South African economy. The presentation that was discussed is attached marked [x].
   f. Document with the title "Bergville Sports Institute Concept Paper" dated 21 January 2014.
   g. [We have some emails referencing "SAA and ACSA in Nigeria". Were these presented to Ministers and is it necessary to disclose?]

Please let us know if you would like more details on any of these documents and we will arrange for copies to be made available and for Vittorio to talk you through them.

[2] Vittorio interview.

SARS-01-311

WW1-AW-301

ANNEXURE "AW53"

AW53

1

To: Massone, Vittorio[Vittorio.Massone@Bain.com]; 'Busi Mabuza'[busimabuza@gmail.com]; 'Patrick Monyeki'[patrick.monyeki@rangewave.com]; 'Busi Mabuza'[busimabuza1@telkomsa.net]
Cc: 'Mathapelo Maimane'[mathapelomm@gmail.com]
From: Duma Ndlovu
Sent: Wed 7/2/2014 10:06:28 PM (UTC)
Subject: Meeting with uBaba

Dear all,

I have been told that the meeting with the Principal is tomorrow, Thursday. I suspect that it will be in the evening after 6pm but was told to be on standby and will be advised on time tomorrow.

Mathapelo will communicate with the office of the President and will update us as soon as she finds out...

We will present the energy document.

Thank you

ANNEXURE "AW54"

AW54

Fantas Mobu (MCIPS)

General manager Commercial: Tactical Procurement at Eskom

Contact

www.linkedin.com/in/fantas-mobu-mcips-694661b (Linkedin)
goggle (Portfolio)

Top Skills

Supply Management
Supply Chain
Sourcing

Publications

Brainstorm

Summary

Fantas Mobu is a devoted supply chain professional with many years cognate experience, encompassing Telecommunication, Pos telecommunication, IT, Construction, strategic sourcing, in addition continuous development through academic studies.
Fantas's career in Supply Chain Management began in 1997 as a Project coordinator with Siemens Telecommunication discharged with the responsibility for sourcing , buying goods and services to deliver projects on behalf of Telkom SA, Vodacom Ltd, and later joining Telkom SA as Sourcing Manager and later he Joined SA Po office as Group Executive of Supply Chain.
He currently works for Eskom as a General Manager Commercial after a three year stint with Airports Company South Africa (ACSA) as Group Specialist Procurement services, before then he was an executive - Procurement Services with State Information Technolog Agency. He is currently a Chairperson of SOEPF (State Owned Enterprise Procurement Forum) since 2007 and was recently appointed non Executive Director and a Chairperson of Armscor Acquisition committee. He has presented numerous papers at both academic and professional forum, conferences, seminars and lectures and contributed immensely to the Procurement Reform in SA.

He is a Board member of an investment company

Specialties: Contract management,Strategic Sourcing,Procurement services, In summary the total Supply chain management

Experience

Eskom
General Manager Commercial: Tactical Procurement
April 2011 - Present (9 years 2 months)
Maxwell Drive,Sunninghill,Sou Soo

I am responsible for the management, administration, and supervision of the company's acquisition programs, also charge of the contracting services and may manage the purchase of supplies, equipment, and materials. It includes the responsibility to source goods and services, and to negotiate prices and contracts. In short i lead and direct the Procurement and Supply Managemen organization of direct and indirect acquisition and oversee the development of category strategies, with key customer input and reflecting supply market conditions, for all major spend areas.

Airports Company of South Africa
Group Specialist: Procurement Services
April 2011 - August 2011 (5 months)
Bedfordview

Headed the acquisition goods, services and works for Airports Company of South Africa

SITA
Executive: Procurement Services
June 2004 - January 2008 (3 years 8 months)
Erasmuskloof , Pretoria

An Executive leading the sourcing of all Information Technology systems, services and related works on behalf of National, Provincial governments and optionally for municipal entities

South African Post Office
Group Executive: Supply Chain manangement
August 2003 - May 2004 (10 months)
Silverton, Pretoria

Group Executive for sourcing all the goods,services, works and total supply chain for the Post office South Africa

Telkom
Strategic Sourcing Manager
1999 - 2003 (4 years)

Managing all strategic sourcing relatng to emerging networks and later the public telephony section, All acquisition of good, services andvworks programme relating to emerging networks and public telephony

Education

ANNEXURE "AW55"

Sisekelo players overview – Business summary

	Mobile player to be identified	TELKOM	SAPO	SABC	SITA	SENTECH	INFRACO
Summary of business		• Fixed line (voice & data) • Mobile telecoms provider • IT hosting services	• Mail • Logistics • Financial services	• Television and radio broadcaster • Content creation	• Government-dedicated ICT organization, with responsibility for maintaining Government's telecommunications & internet network	• Signal transmission broadcasting • VSAT internet connectivity provider	• "Control tower" for B2B fibre broadband network; subcontracts building and management of network
FTEs		~21,000	~15,500	~3,700	~2,600	~550	~150
Key assets		• ~80% Fixed line market share • 140,000km of fibre network • 2,000 fixed line exchanges • 1,000 mobile base stations • 120 branded retail outlets	• 1,430 full-service post offices • 1,013 postal agencies (mini-post offices) • 25 mail sorting centres	• Ability to contact 22 million households • Over 90% of SA households reached by TV/Radio • 74% TV market share	• "Next Generation Network": Most advanced carrier infrastructure network to be used by SA Gov • Various data/backup centres	• 220 Countrywide transmitting stations • 627 TV transmitters • 742 Radio transmitters • 3 satellite teleports	• 33,610km of fibre network • WACS broadband cable (connecting SA and UK)
Revenue in RB		R32B	R5.9B	R5.2B	R4.3B	R0.8B	R0.3B
EBITDA in RB		R7.5B	R0.075B	R1.7B	R0.3B	R0.2B	-R0.2B

Source: Annual Reports

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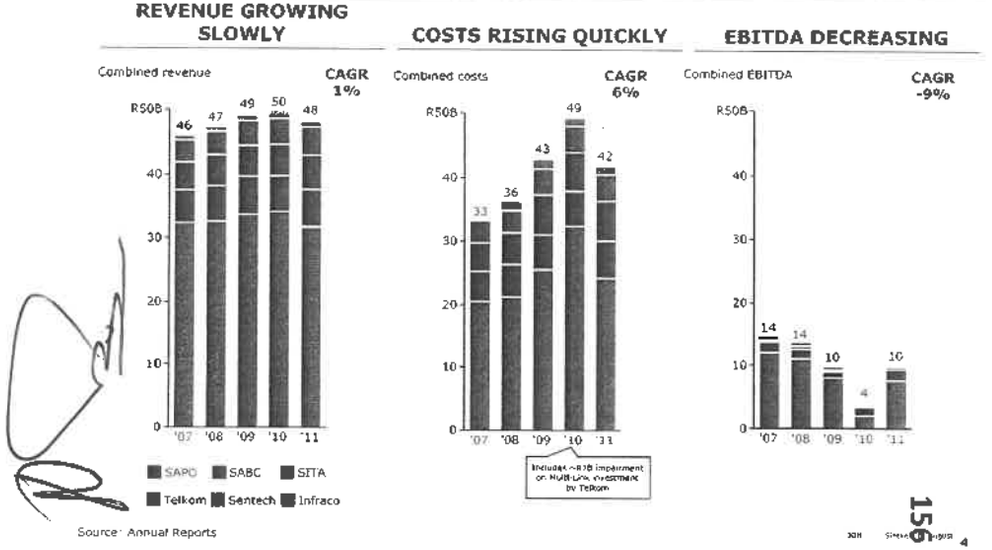
Sisekelo: reshaping South African Economy

11th August 2012

DRAFT

Sisekelo players overview – Combined financials



Source: Annual Reports

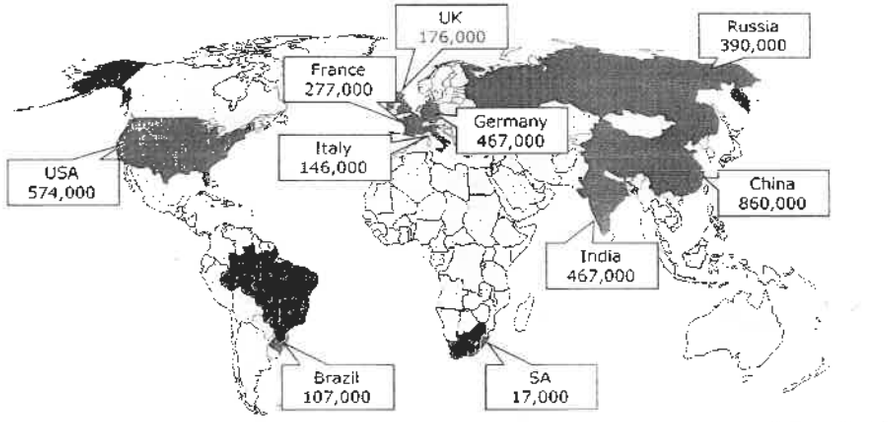
Sisekelo – Reshaping South African Economy

- **Creation of a national and regional ICT Champion:**
  - Closing digital divide: guarantee access to broadband to 100% population by 2020
  - Driving innovation, value generation, employment, efficiency
  - Security: Getting control on a strategic sector as Telecom & IT
  - Regional role, driving economic development in Africa and strengthening the "gateway to Africa"
- **Leapfrogging economic development and transformation in urban/rural areas for citizens and SMEs:**
  - E-government platform, reaching directly all citizens
  - E-learning / Education
  - E-Health (diagnosis, prevention, follow-ups,..)
  - Logistics and e-commerce (maximum capillarity provided by the Post Company)
  - Banking for the "common man", savings stimulus, SMEs financing and mobile payment (synergies with IDC, NEF,...)
  - Local procurement groups in the rural areas
  - Support Smart Grid roll-out through broadband deployment and facilitate energy saving targets
- **Creation of a world-class generation of professionals, engineers, technicians and world-class infrastructures serving the businesses**
- **Obtaining full potential: maximum synergies, efficiencies and economies of scale in the businesses and investments operated by the government:**
  - Centralized infrastructures and procurement
  - Coordination and execution capabilities
  - Modernization of State organization and processes (GTC, GTB, GTG)

AWSS

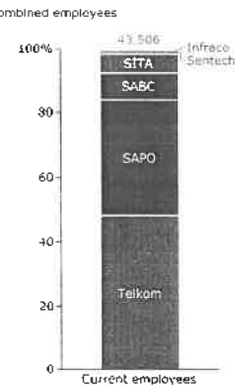
SARS-01-318
WW1-AW-308

SAPO's employees base is 6 times smaller than the next profiled national post office

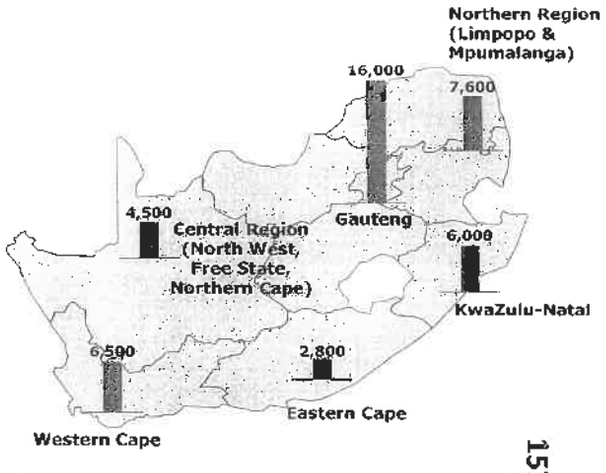


Sisekelo players overview – total employees

TELKOM & SAPO HAVE 85% OF EMPLOYEES

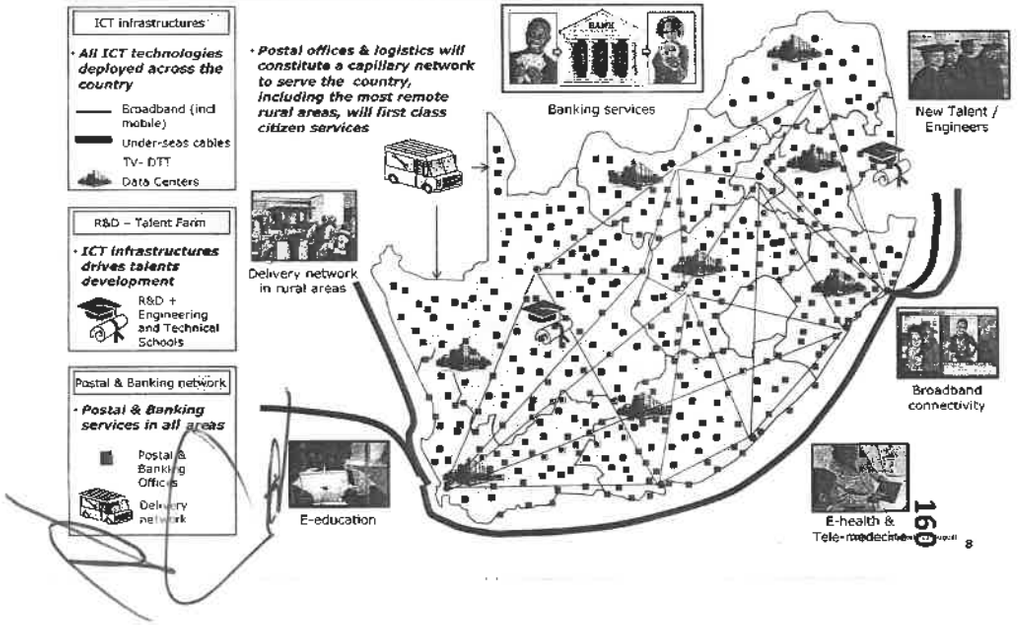


OVER 43,000 EMPLOYEES ACROSS THE COUNTRY



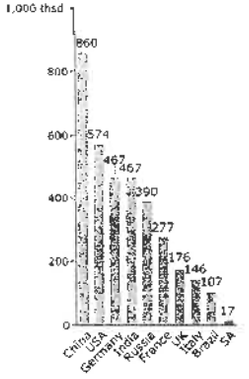
Source: Annual Reports
Note: A proxy was used where no exact breakdowns of employees per geography were available

Sisekelo will provide South Africa with first class infrastructures, services and e-government network

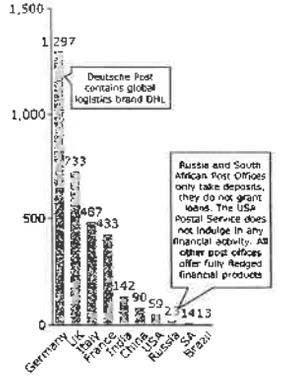


As an example, SAPO is severely understaffed compared to the Post Co. of other countries

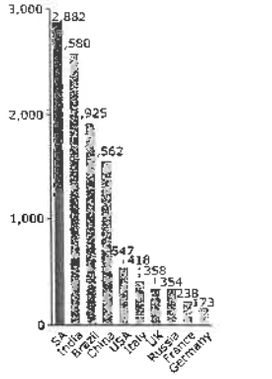
6 TIMES FEWER EMPLOYEES THAN BRAZIL



SECOND FEWEST EMPLOYEES PER SQ KM



SA HAS PROPORTIONALLY LESS STAFF THAN BRICS



Source: CIA Factbook, Company websites

SARS-01-319
WW1-AW-309

Sisekelo Strategic Mission – 3 strategic pillars for SA Economy development in the future

PRELIMINARY

First-class Strategic pillars	Capillary and efficient postal/banking eco-system	World class broadband Telecom & IT services	Excellence in TV & Radio services

Mission	• **Strong physical presence** (post offices network) across the country, **in particular in rural areas**
	• **Guarantee access to fundamental citizens services**:
	  • Mail/Parcels distribution
	  • Subsidies and pensions distribution
	  • Savings and Banking services
	  • Broad band Internet access
	  • ...
	• **Support development of Small & Medium Enterprises,**
		• **Guarantee by 2020 advanced fixed & mobile broadband services** to all South Africans citizens & companies
		• **Offer a first class suite of ICT products & services to SA government agencies and private sector**
		• Develop a **"national ICT talent pool"**, attracting and training the most talented South African ICT services specialists
		• **Keep control of a strategic sector for SA future development**
			• **Guarantee to all South Africans access to SA specific content** in terms of:
			  • News & Information
			  • Entertainment
			  • Culture
			  • Education
			• **Guarantee the transition to most modern transmission technologies** (DTT, Internet, mobile), to facilitate multiple access points to SA specific content and education services

E-Government / E-Education / E-Health

Grow the next generation of Black Leaders

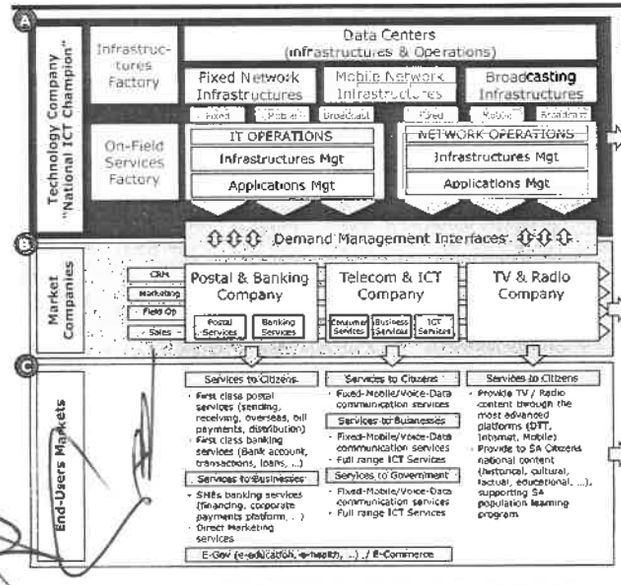
11

A Bank of the People: everyone receiving the same treatment and conditions, everything guaranteed by the State

	Citizens	SOHO/SMEs
Banking services	• Basic banking services -Account -Payments (incl. Mobile) -... • Savings and Securities • Unsecured Loans (personal, car, furniture,..) • Secured Loans/Mortgages	• Basic banking services -Payments -Cash in advance - Working capital financing -.... • Start-up and Venture financing • Loans and Mortgages • .....
Other services	• Pensions distribution • Subsidies payment • Life and Short term Insurances • All other E-Government services	• Subsidies grants (with IDC, NEF,..) • Consortium Procurement Services • Corporate Insurances • All other Corporate E-Government services (and ICT services)

9

Sisekelo Framework – Building the national & regional Telecom / IT champion to support and boost SA economy



Future benefits for South Africa

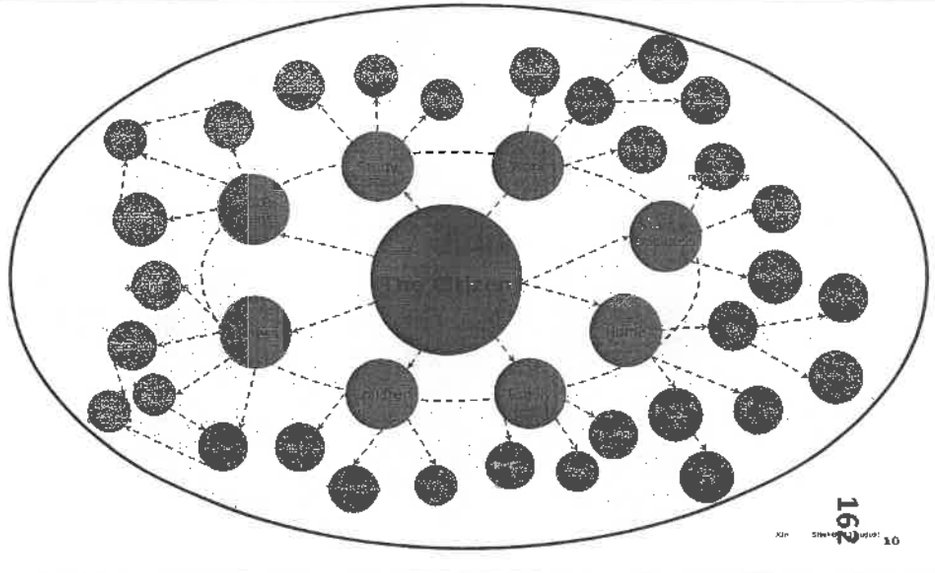
- ***Closing Digital divide by 2020***
- ***Driving innovation, value generation and employment***
- ***Growing first class engineers / technicians***
- ***Getting control on a strategic sector as Telecom & IT***
- ***Driving economic development in Africa***

- ***3 market companies «Service Oriented »***
- ***Rational approach to market, with high growth potential and impact on employment***

- ***First class services offered to SA citizens, Public and Private sector, comparable to most advanced economies and clearly leading Africa***
- ***Leapfrogging economic development & transformation in urban / rural areas***

12

Postal & Banking Company will provide all relevant services to SA citizens, supported by a first class ICT infrastructure



10

SARS-01-320
WW1-AW-310

Sisekelo project steps - illustrative

PRELIMINARY

Start | 6-8 months | 12-14 months | 18-20 months | 60 months

1 Political & legal / regulatory authorization to proceed

- Identify high level project perimeter, synergies, financials & organization implications (preliminary business plan)
- Secure political buy-in & commitment to the project
- Assess & manage all regulatory & legal issues
- Negotiate between involved entities deal structure (legal, financial, governance aspects)
- Initiate merger process

2 Create new legal entity & empower key leadership

- Create new legal entity
- Identify & appoint critical managers for the project
- Establish governance structure & procedures
- Deepen and finalize business plan

3 Set-up & run integration

- Define integration plan
- Start 360° Phoenix players integration:
  - Legal structure
  - Finance
  - IT / Network
  - On Field Operations
  - Organizations

4 Operational launch

- Progressively consolidate & deploy Sisekelo

QUICK WINS IDENTIFICATION & ROLL-OUT

Why not leave it to the "invisible hand"?

- **"Privates know it better" narrative**: consequences for all SOEs
- **Vertical market failure**: too much coordination required between all players, not enough time (Australia/Telstra example, not to mention Singapore, Indonesia)
- Even more **difficult to just use the Regulator to drive results**: natural private monopolies often the outcome (Italy example) or bankruptcy (UK's Royal Mail)
- Infrastructures game is **generally too long term** for private's perspective and objectives
- Broadband/IT is an enabling factor for many **public services**: difficult to see it as very different
- Countries need **"national champions"**, in particular during tough times (France example)

Sisekelo is a complex project with substantial execution challenges

FOR DISCUSSION

- **Complex Governance and Project Management structure to be put in place to guarantee successful project**
  - **Identify the right management, governance (credibility, integrity) and organization structure**
  - **Negotiate with the private mobile operator**
  - **Create political consensus (all stakeholders) and streamline the approval processes**
  - **Define the right planning and milestones, setting a short window of execution to keep momentum**

SARS-01-321

WW1-AW-311

ANNEXURE "AW56"

Why Phoenix?

- **Giving birth to a national and regional ICT Champion:**
  - Closing digital divide: guarantee access to broadband to 100% population by 2020
  - Driving innovation, value generation, employment, efficiency
  - Security: Getting control on a strategic sector as Telecom & IT
  - Regional role, driving economic development in Africa and strengthening the "gateway to Africa"
- **Leapfrogging economic development and transformation in urban/rural areas for citizens and SMEs:**
  - E-government platform, reaching directly all citizens
  - E-learning / Education
  - E-Health (diagnosis, prevention, follow-ups,..)
  - Logistics and e-commerce (maximum capillarity provided by the Post Company)
  - Banking for the "common man", savings stimulus, SMEs financing and mobile payment (synergies with IDC, NEF,..)
  - Local procurement groups in the rural areas
  - Support Smart Grid roll-out through broadband deployment and facilitate energy saving targets
- **Creating a world-class generation of professionals, engineers, technicians and world-class infrastructures serving the businesses**
- **Obtaining full potential: maximum synergies, efficiencies and economies of scale in the businesses and investments operated by the government:**
  - Centralized infrastructures and procurement
  - Coordination and execution capabilities
  - Modernization of State organization and processes (GTC, GTB, GTG)

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3

X Strategic Mission – 3 strategic pillars for SA Economy development in the future

PRELIMINARY

First-class Strategic pillars	Capillary and efficient postal/banking eco-system	World class broadband Telecom & IT services	Excellence in TV & Radio services

Mission	• **Strong physical presence** (post offices network) across the country, **in particular in rural areas**
	• **Guarantee access to fundamental citizens services**:
	  • Mail/Parcels distribution
	  • Subsidies and pensions distribution
	  • Savings and Banking services
	  • Broad band Internet access
	  • ...
	• **Support development of Small & Medium Enterprises,**
		• **Guarantee by 2020 advanced fixed & mobile broadband services** to all South Africans citizens & companies
		• **Offer a first class suite of ICT products & services to SA government agencies and private sector**
		• Develop a **"national ICT talent pool"**, attracting and training the most talented South African ICT services specialists
		• **Keep control of a strategic sector for SA future development**
			• **Guarantee to all South Africans access to SA specific content** in terms of:
			  • News & Information
			  • Entertainment
			  • Culture
			  • Education
			• **Guarantee the transition to most modern transmission technologies** (DTT, Internet, mobile), to facilitate multiple access points to SA specific content and education services

E-Government / E-Education / E-Health

Grow the next generation of Black Leaders

...ld be integrated later or kept separate

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4

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FOR DISCUSSION

Project Phoenix: Reshaping South African Economy

23rd August 2012

168

Today's objectives

- Recap **key elements of the project**
- Preliminarily estimate the **investment required and the potential impact** for the Country
- Summarize the **key decisions** that will shape the project and will need to be **shared with the other Stakeholders**
- **Project key steps and process** going forward
- Appendix

AWS6

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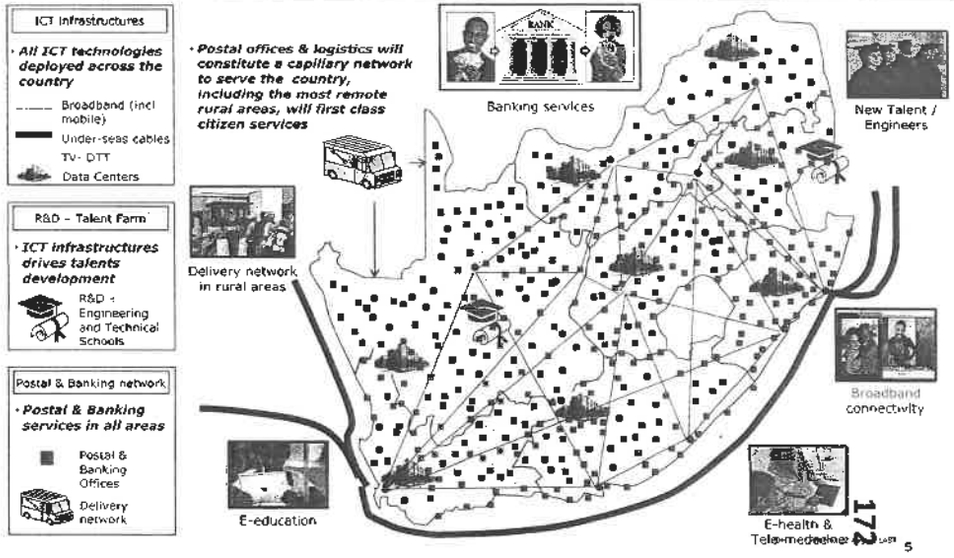
2

SARS-01-323

WW1-AW-313

Phoenix will provide South Africa with **first class infrastructures, services** and **e-government network**



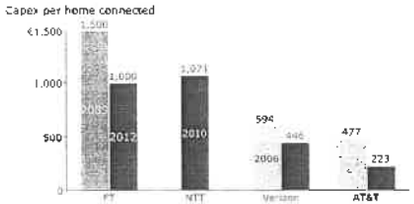
Today's objectives

- Recap **key elements of the project**
- Preliminarily estimate the **investment required and the potential impact** for the Country
- Summarize the **key decisions** that will shape the project and will need to be **shared with the other Stakeholders**
- **Project key steps and process** going forward
- Appendix

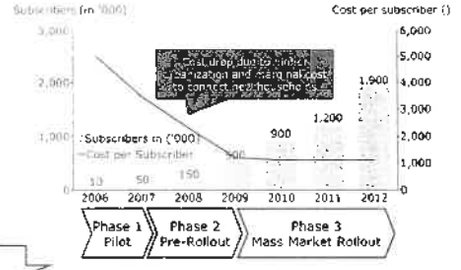
Phoenix required investments are significant, based on **international benchmarks**

PRELIMINARY

REQUIRED CAPEX PER HOUSEHOLD CONNECTED MAY VARY UPON COUNTRIES...



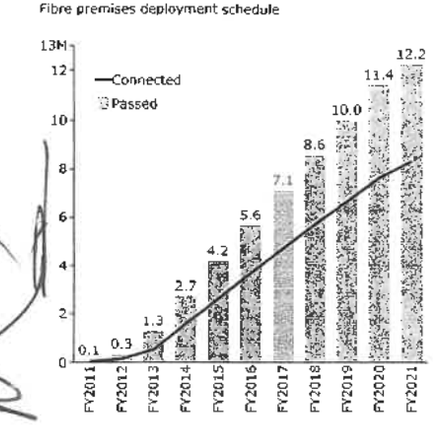
...BUT WILL DECREASE UPON TIME THANKS TO URBANIZATION GROWTH



Considering **~17M households in SA by 2020** and an average investment in a range of **R8.000 - R12.000 per Household** in the next 8-10 years, the passive layer investment required is estimated between R140-200B.
Another **R60-80Bn will cover the investment for active and service layers** for a **total expected investment of R200-280Bn**

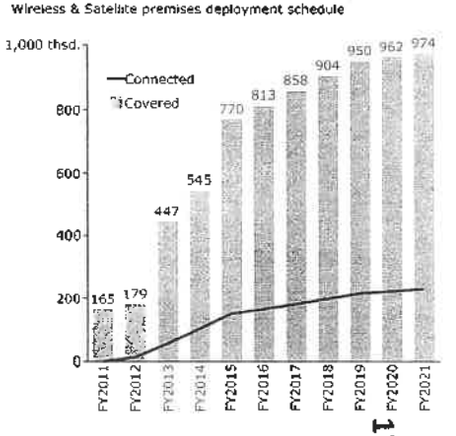
External benchmarks suggest that a **10 years period is necessary to fully roll-out infrastructure**

FIBRE PREMISES DEPLOYMENT SCHEDULE



Source: NBN 3 year corporate plan (Dec 2010)

WIRELESS & SATELLITE PREMISES DEPLOYMENT SCHEDULE

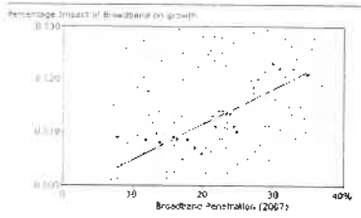


SARS-01-324

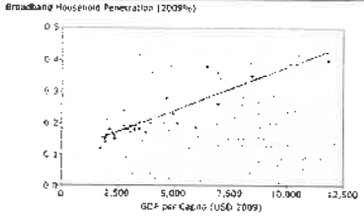
WW1-AW-314

… international benchmarks demonstrate that GDP growth is correlated with broadband penetration

GREATER IMPACT PER PENETRATION



CORRELATION IN CHINA'S PROVINCES



- There is a **direct correlation between increasing Broadband penetration and GDP per capita.**
- The GDP growth is derived from:
  - -Creation of **infrastructure**
  - -**Productivity** gains
  - -Increased **employment**
  - -Increasing **consumer surplus**
- In countries with **high broadband penetration** rates (over 30%), the impact of a **1 per cent increase** in adoption of Broadband results in a **direct growth of GDP of 0.023%**
- **Low penetration countries** (less than 20%, current SA positioning) have a **1% adoption increase** impact of only **0.008% on GDP**

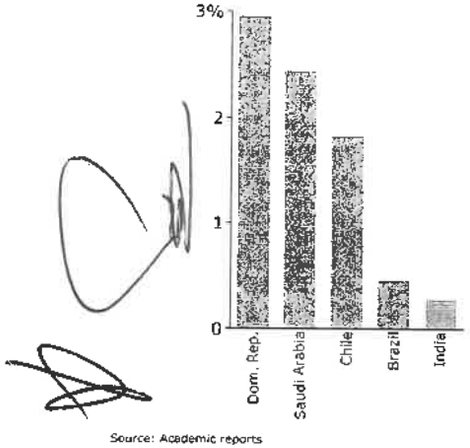
It is extremely difficult to calculate the direct and indirect economic impact of broadband…

- It is difficult to assess the exact impact of broadband. It is **an access technology** that only has an impact in combination with the adoption of IT services, **analogous to the creation of roads which only have an impact if they are used to transport goods and people.**
- **In emerging and developing economies, broadband impact on GDP has been significant, up to 4% growth impact in countries such as Jordan, UEA, Quatar**
- Following these benchmarking and applying conservative assumptions, a penetration up to 85%, **will impact the SA economy in a range of R350-550Bn in the next 10 years.**
- **In terms of employment, a similar growth may create a minimum 200,000-300.000 Jobs in the next 5 years.**
- Operating the network will **generate Revenues and Profits**, to repay debt and allow return on capital employed. When self-sustainable, the **network and all the other assets can be privatized.**

… and will **increase employment throughout the economy**

LESS DEVELOPED COUNTRIES ENJOY GREATER EMPLOYMENT BENEFITS

Impact on employment from 10% increase in Broadband penetration

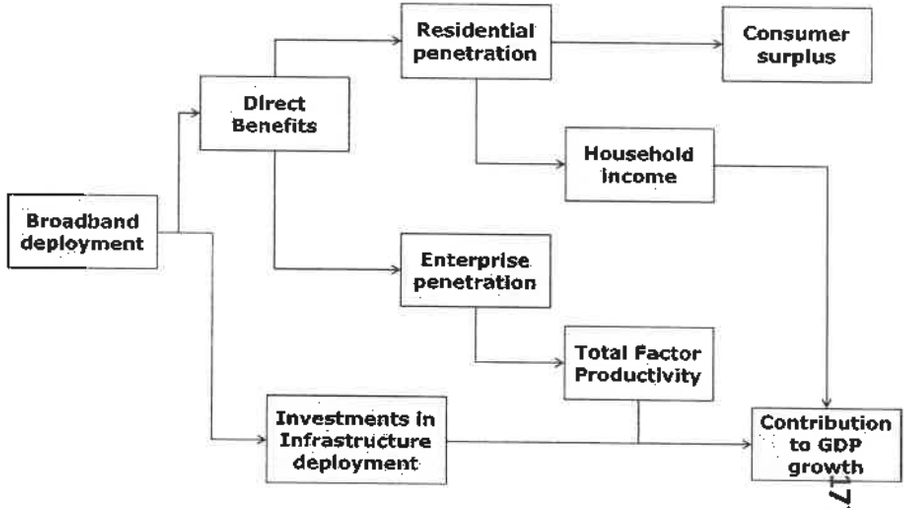


Source: Academic reports

JOBS ARE CREATED IN MULTIPLE INDUSTRIES

- Increasing the broadband network in a country creates jobs;
  - -**Directly** through network creation (construction workers, technicians, equipment manufacturing)
  - -**Indirectly** (upstream buying and selling within the metal and electrical industries)
  - -Through **inducement** (From household spending as a result of income generated from direct and indirect employment)
- **These benchmarks would lead to an impact in South Africa of 200.000 - 300 .000 jobs in the next 5 years**

Broadband economic impact framework



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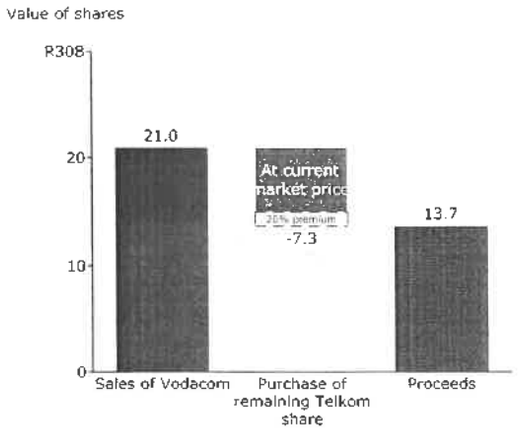
There a few **key decisions** that will need to be **shared with the stakeholders** going forward

1. Reaffirm **why Government should drive the process** operationally and from a financial perspective
2. Set the **performance targets for the network**, based on the services to the citizens and the coherent technological implications. This has strong impact on the overall investment
3. Define the **rules of the game for the ICT industry** going forward: Licensing, Local Loop Unbundling, Universal Access, Tariffs and Interconnection fees, Spectrum allocation, integration of Metro areas programs,..
4. Decide the **operating role that Telkom should have** in the Project (who creates the infrastructure vs who runs them)
5. Structure **a list of complementary actions and programs** to maximise impact of the project
   - E Government services towards citizens and SMEs in particular
   - Government ICT strategy and procurement processes
   - Other form of subsidies (e.g.: for software development, devices)

Selling Vodacom could partially fund Phoenix

PRELIMINARY



DESCRIPTION

- The government **sells 14%** stake in Vodacom for **R21 billion**
- **Delists Telkom** from the JSE by buying out 60% that it does not own
  - **Pays a 20% control premium** to other shareholders
  - Net our flows of **R7.3bn**
- The government uses the net proceeds of **R14 billion to fund Phoenix project**

Source: Corporate announcements; JSE; Based on 16 August market prices

There are 3 broad models for building and operating major infrastructure projects

	Government only	Private Public Partnership (PPP)	Private Sector only
Description:	• Government fully responsible for planning, financing, building and operating	• Private sector and government co-operate in planning, financing, building and operating	• Private sector leads planning, financing, building and operating without government involvement
Government role:	• Full control and end-to-end oversight of infrastructure project	• May have co-ownership and/or funding • Regulation and monitoring	• Regulation and monitoring only
Key fibre network examples:	• Beijing and Shanghai broadband networks • Sweden Stokab fibre network • Utah state-owned fibre network	• Japan NTT fibre network • South Korea BcN • Belgium Telenet network	• Hong Kong Broadband Network • USA BellSouth, SBC, Verizon networks

Today's objectives

- Recap **key elements of the project**
- Preliminarily estimate the **investment required and the potential impact** for the Country
- Summarize the **key decisions** that will shape the project and will need to be **shared with the other Stakeholders**
- **Project key steps and process** going forward
- Appendix

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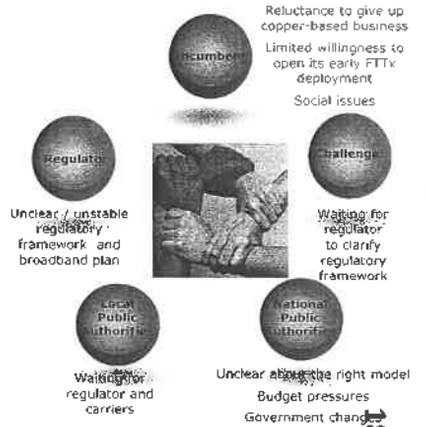
Also the EU example shows that a lack of Government action can lead to immobility

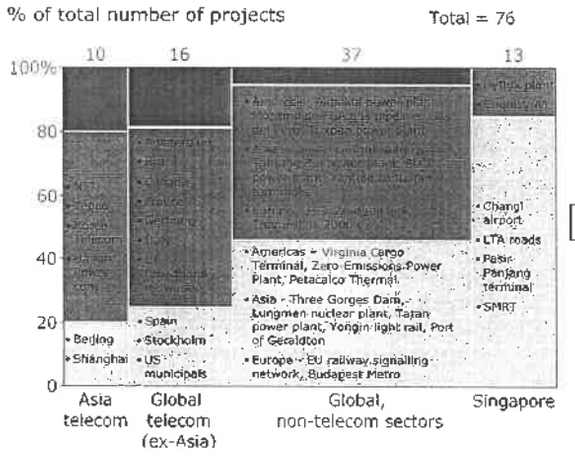
Economical barriers

- Huge **NGA CAPEX** wall **(€330Bn)**
- **Economic squeeze** driven by current **data explosion** (CAPEX increase with no revenue increase)
- **Uncertain** overall **NGA business case** (uncertain adoption and ARPU upside vs. certain CAPEX)
- **Unprofitable FTTx** deployment in **less dense areas**

Cooperation barriers (FTTx mainly)



Most infrastructure projects surveyed have favoured government and PPP models



RATIONALE FOR SIGNIFICANT GOVERNMENT INVOLVEMENT

- Lack of private sector interest given low financial viability of projects
- Natural monopolies that require significant regulation and control to ensure fair play for end-users and market players
- Need for government funding due to externalities and sheer scale of projects
- Government able to mitigate against uncertainties given long time horizons of network projects

Private sector only projects
PPP projects
Government only projects

While Singapore example is a clear success story of Government intervention...

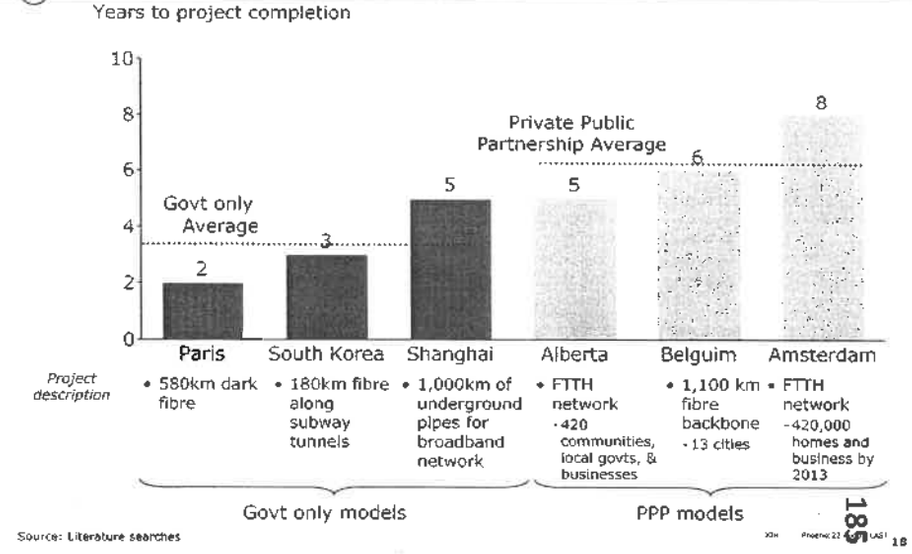
"We will develop a new national broadband network that is much faster than what is available today. It will offer fast, efficient connectivity to all – in schools, in offices and homes, and even on the move. It will help us plug into the global knowledge grid, and stay competitive with other cities..."

Lee Hsien Loong, Prime Minister (February 17th, 2006)

"...Our strategic response [to other countries' Infocomm investments] is a 10 year master plan to transform Singapore into an Intelligent Nation & Global City, powered by Infocomm..."

Dr. Lee Boon Yang, Minister for Information, Communications and the Arts (March 3rd, 2006)

Selected examples indicate **shorter completion times for projects driven by the government**



Source: Literature searches

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Why South African Government **intervention is key** to promote Phoenix initiative...

1

Only SA Government can commit to such a strategic project, with **strong social and economic impacts that are not immediately translating into profits**

Only SA Government **can drive the complexity of process with all stakeholders** (Policy-makers, Regulator, Municipalities, Unions, ...) and take adequate decisions to rapidly, effectively and successfully support Phoenix deployment

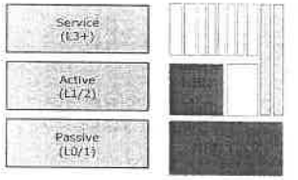
SA Government must protect a strategic Infrastructure game that is **generally too long term and large for private's** perspective and objectives

SA Government must create **"national champions"**, in order to **sustain and implement economic development** policies, in particular during tough times (France example) and looking into Africa

...as well as the Australia one: 100% government owned-NGN with 100% of territory coverage in 2021

1

Investment model	History

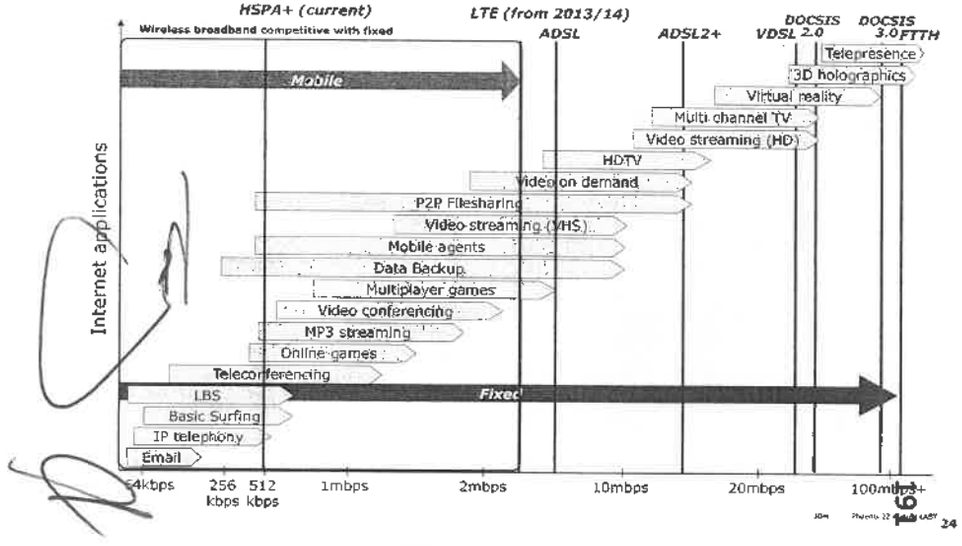


- Full separation model. Government-owned NGN company in charge of building the network and provide wholesale offers to ISPs
- Graduate roll-out by 2021 and 100% territory coverage aimed
- NBN to be eventually privatized though heavily regulated

- **2008** : NBN RFP on network build
- **2009** : RFP termination on grounds of unsatisfactory RFP submissions. Decision of government to invest $43B over 8 years to build a 100%-owned network.
- **2010** : Agreement with Testra to share existing infrastructure and migrate customers to NGN in return for $9B. Contracts for NBN awarded
- **2011** : Mainland construction starts

Services to be brought to the citizens/SMEs will inform the required bandwidth & its technological implications

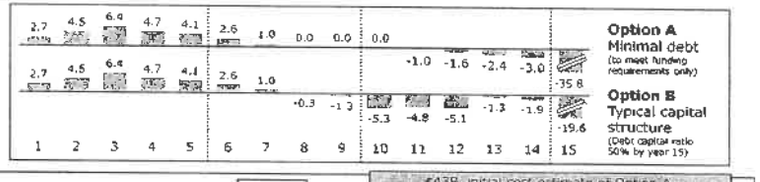
2



$43B cost to be paid for by government and private debt - ambition to eventually privatise

1

	Early roll-out	Late roll-out	Operations	Privatisation
Private sector equity	• Avoid due to adverse impact on Government flexibility and limited benefits			• Access to fulfil privatisation commitment
Private sector debt	• Unlikely to be attractive as risk profile limits availability	• Use once available as NBN Co achieves an investment grade credit rating		• Refinance at privatisation
Government funding	• Use as only funding source in early years	• Supplement private sector debt if required	• Reduce with dividends and/or capital repayments as appropriate	• Reduce with privatisation or dividend
Debt Capacity % capital	0	0	0 20 30 35 40 45 50 55 60 65	



$43B initial cost estimate of Option A. Net of savings currently estimated at $27.5B

Initially government-driven but progressively opened to capital markets

Note: Debt Capital % is the proportion of debt capacity to total capacity (debt and equity). Government potential returns assumes 15yrs until privatisation with BCF equivalent to 7.7x EBITDA. Source: Implementation Study

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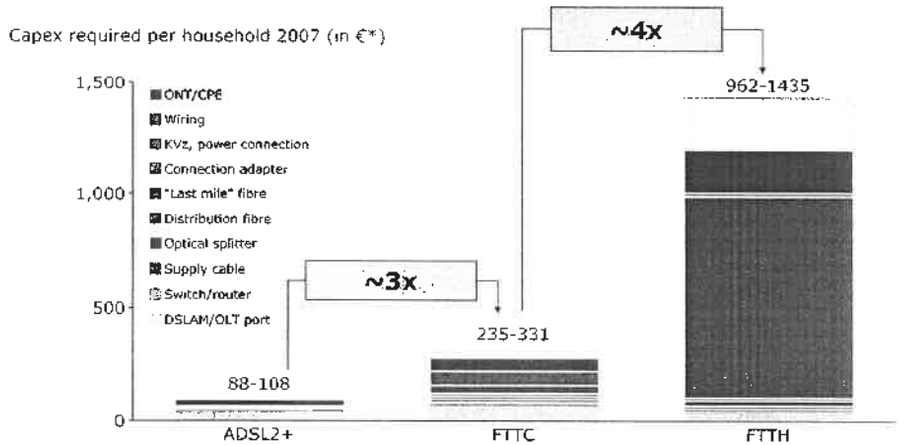
This "services and technology" decision will strongly influence the level of investment

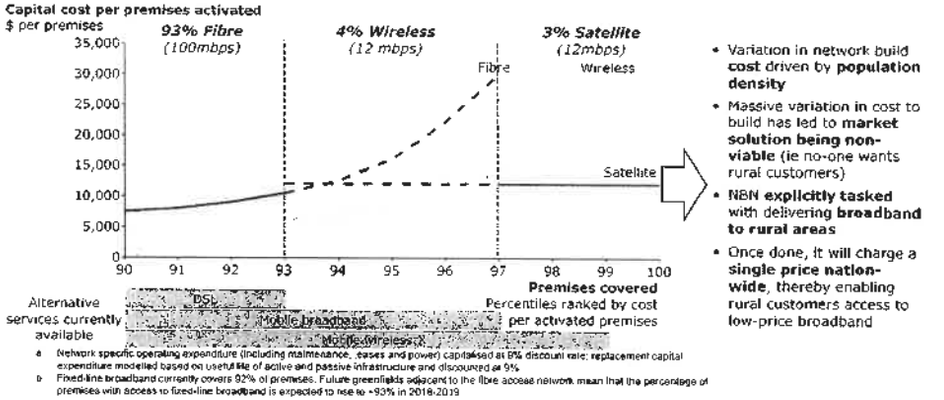
(2)



* Exchange rate of 1,30 USD per EUR applied

Australia set extremely high targets: universal coverage with 97% of population with 100 mbps

(2)



- Variation in network build **cost** driven by **population density**
- Massive variation in cost to build has led to **market solution being non-viable** (ie no-one wants rural customers)
- NBN **explicitly tasked** with delivering **broadband to rural areas**
- Once done, it will charge a **single price nation-wide**, thereby enabling rural customers access to low-price broadband

a Network specific operating expenditure (including maintenance, leases and power) capitalised at 8% discount rate; replacement capital expenditure modelled based on useful life of active and passive infrastructure and discounted at 8%

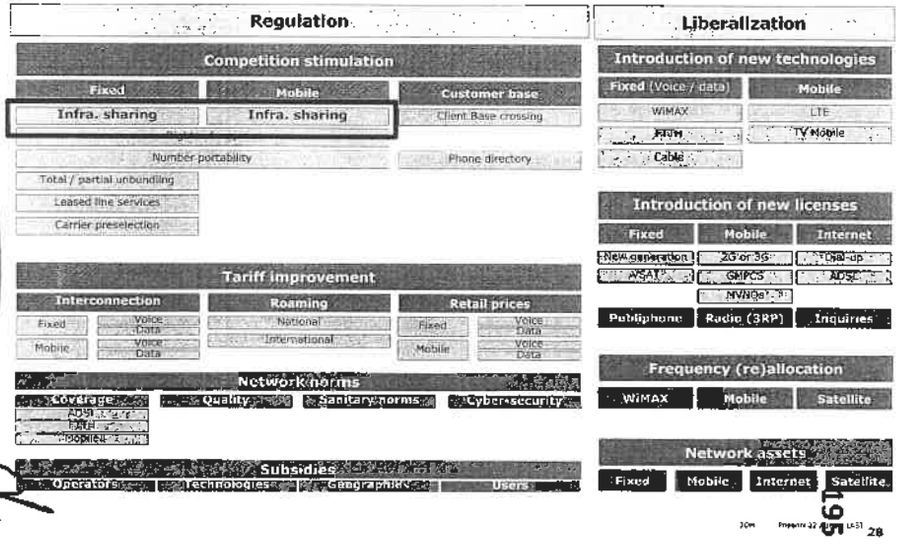
b Fixed-line broadband currently covers 92% of premises. Future greenfields adjacent to the fibre access network mean that the percentage of premises with access to fixed-line broadband is expected to rise to ~93% in 2018-2019

"RSPs currently have to pay for two "products" in order to reach households: (1) "access" through a network and (2) "backhaul" to carry content from the RSP's headquarters to a "point of interconnect" (PoI) with the access network... ***Through NBN, RSPs will have to pay the same amount, irrespective of where they are based, to deliver their service to households and business throughout Australia "***

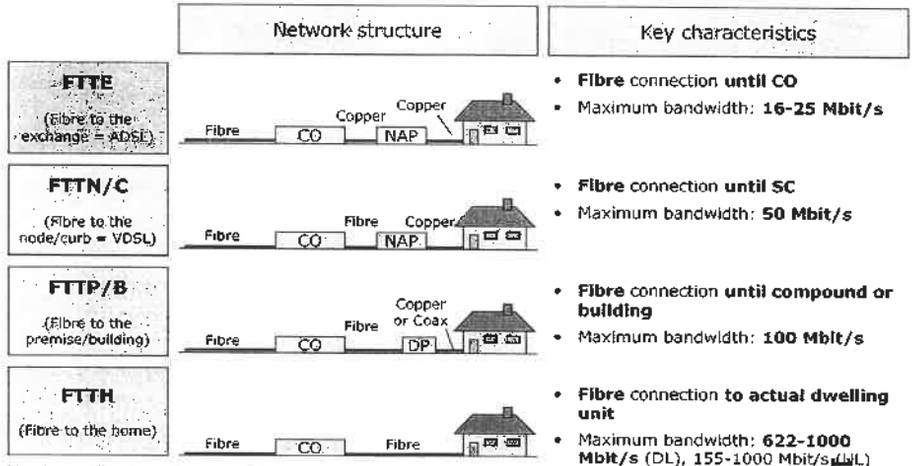
NBN Co, Nov 2010

the Regulatory aspect will be extremely important and complicated, but necessary to define the market structure

(3)



2 – the network performance depends on the extension of the fibre deployment and its proximity to the client...



- **Fibre** connection **until CO**
- Maximum bandwidth: **16-25 Mbit/s**
- **Fibre** connection **until SC**
- Maximum bandwidth: **50 Mbit/s**
- **Fibre** connection **until compound or building**
- Maximum bandwidth: **100 Mbit/s**
- **Fibre** connection **to actual dwelling unit**
- Maximum bandwidth: **622-1000 Mbit/s** (DL), 155-1000 Mbit/s (UL)

CO = Central Office; NAP = Network Access Point, DP = Distribution point
Source: ARCEP / WestLB (2008), JPM (2006)

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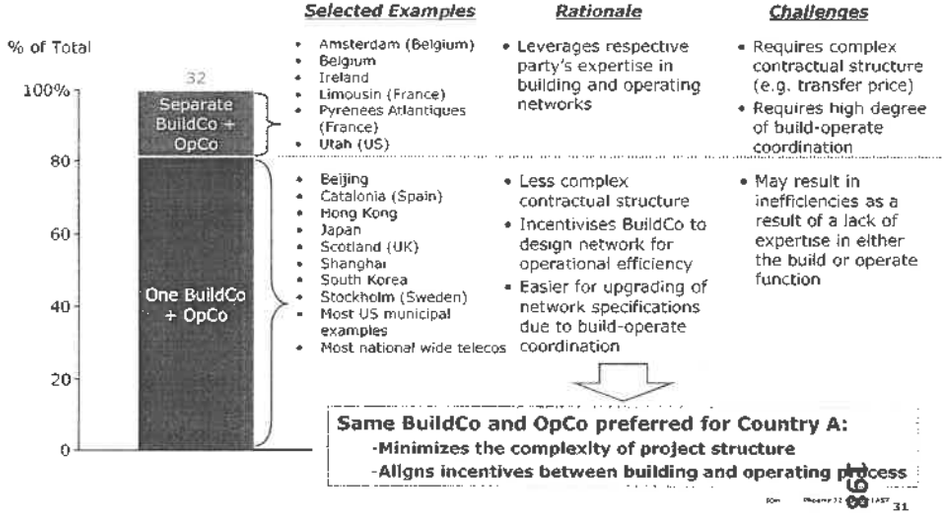
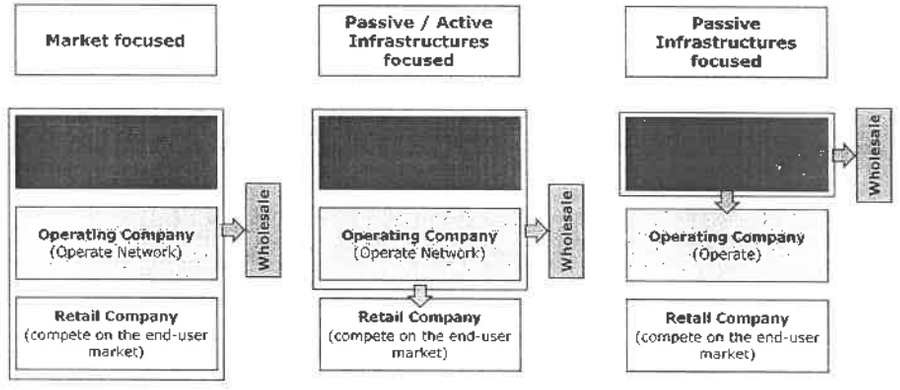
Telkom role – Same BuildCo and OpCo is optimal based on global experiences

4



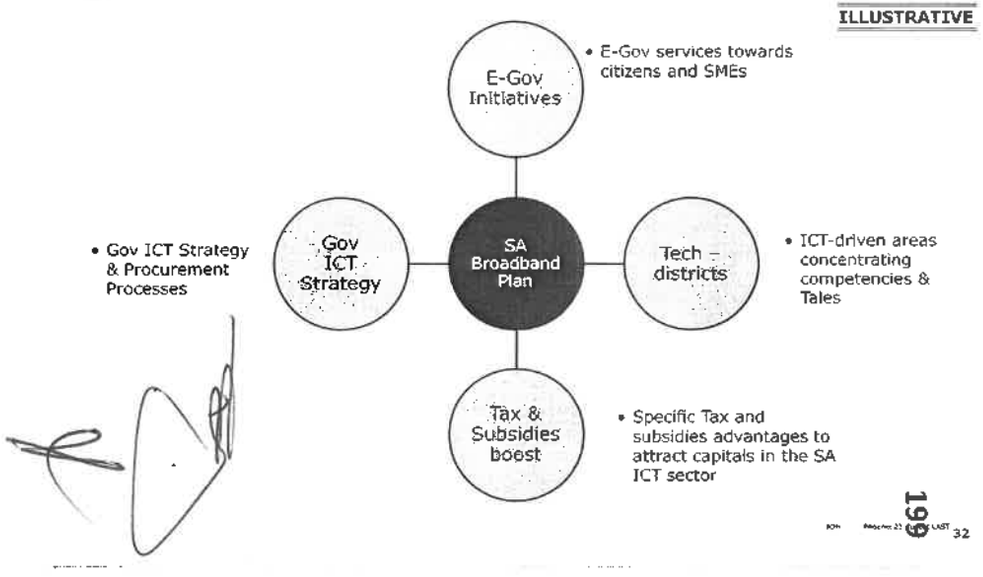
3 different theoretical models can be deployed based on the **role SA Government wants to play**

3



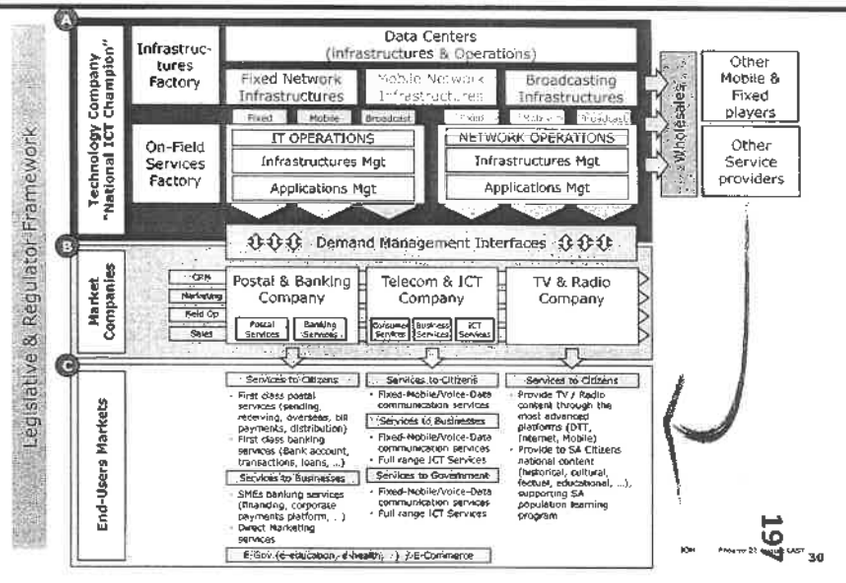
Other programs to maximize impact

5



Market structure options: Two-layer structure, with access to all players and fees/rates defined by Regulator

3



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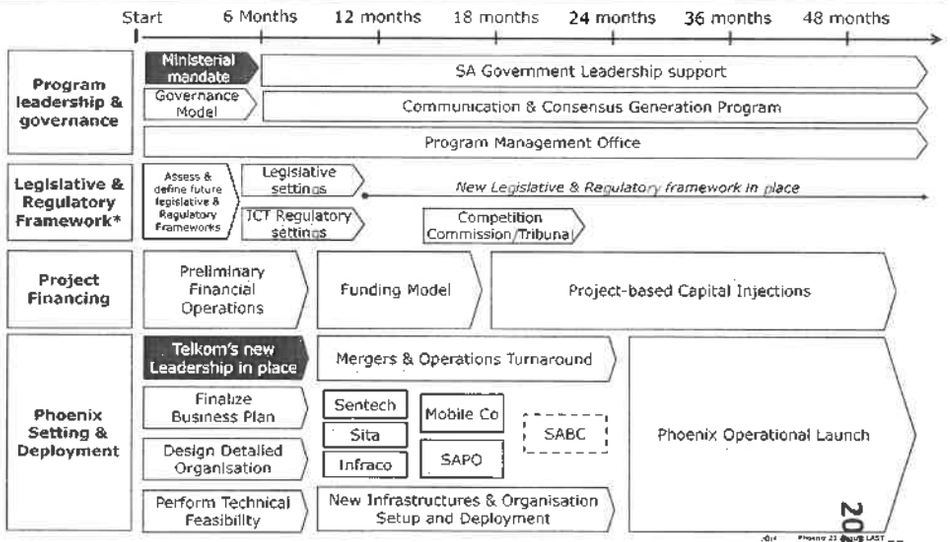
Phoenix – Major Project Steps

PRELIMINARY DRAFT



*: ECA, ICASA Act, Post Office Act, Competition Act, SOE policy framework, ICT policy framework,...

Today's objectives

- Recap **key elements of the project**
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Phoenix: key points for execution

PRELIMINARY DRAFT

- **Governmental leadership and governance**
  - -Mandate a Minister, to initiate the overall process
  - -Create the right Governance and make it a President's Program
  - -Drive consensus and effective/timely communication around the program
- **Telkom's (and other involved entities') leadership and governance**
  - -Appoint new CEO and Chair to kick-off the operational planning and implementation
  - -Guarantee the necessary autonomy and coordination
- **Financing and Procurement model**
  - -Ensure availability of funds in the long term (involvement of IDC, DBSA,..)
  - -Optimize efficiency and speed of execution (e.g.: tender processes)
- **Industry regulation and structure**
  - -Ensure the necessary policy and regulation framework is in place to support project success (ECA, ICASA Act, Post Office Act, Competition Act, SOE policy framework,...)
    - Local Loop Unbundling
    - Universal Access and fees (passive and active network sharing, wholesale reselling)
    - Spectrum allocation
    - Local Metro areas integration
    - Other subsidies

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Phoenix can be reached using a **mix of mobile technologies** ...

(2)

MOBILE	"Status quo" 3G		3.5G	"Tomorrow" 4G	
	EVDO	HSPA	HSPA+	Mobile WiMax	LTE
Technology Platform	• EVDO: Evolution-Data Optimized • Based on **CDMA**	• HSPA*: High Speed Packet Access • Based on **WCDMA**	• HSPA+: Evolution of HSPA platform • Based on **WCDMA**	• **WiMax**: World-wide Interopera-bility for Micro-wave Access	• **LTE**: Long Term Evolution
Data rates	• Up to 4.9 Mbit/s	• Up to 14 Mbit/s	• Up to 42 Mbit/s	• <100 Mbit/s	• 100+ Mbit/s
Description	• EVDO Revision A with up to 3.1 Mbit/s • EVDO Revision B with up to 4.9 Mbit/s, higher rates possible by bundling of channels • Uses CDMA and TDMA to maximize both individual user's throughput and overall sys-tem throughput • All-IP-capable	• Upgrade for 3G/ WCDMA networks to increase spectral efficiency • Dynamically changes user bandwidth allocation - decision in base station rather than deeper in the network • Dynamical adjust-ment of modu-lation and coding according to radio quality	• Supports higher order modulation schemes • Supports MIMO** antenna technology, transmitting multiple data streams via multiple antennas in parallel to a single terminal • Optional all-IP architecture	• BB wireless technology based on IEEE 802.16e standard • Better spectral efficiency and bandwidth capacity than 3G technologies • Uses OFDM and MIMO • Access network upgrade only • Not compatible with GSM legacy technologies	• Supports frequency band up to 20 MHz • New radio inter-face based on: - Orthogonal fre-quency div. multi-plexing (OFDM), splitting channels into several narrow sub-channels in which throughput is maximized - MIMO - High rate modulation • All-IP network

*includes HSDPA (downlink) and HSUPA (uplink) **MIMO = Multiple Input Multiple Output

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Advantages of each model should be considered when assessing government role

(1)

	Government only	Private Public Partnership (PPP)	Private Sector only
Pros:	• Takes into account **positive externalities** when assessing project viability • **Able to fund** large scale projects and access **capital at a low cost** • Greater **speed of execution** with clearing of roadblocks • Usually **perceived as fair** and non-discriminatory	• Potential to **uphold both public and commercial interests** • Leverages **private sector industry expertise** • **Government** can act **as a catalyst** and/or **accelerator** • Offers some **government influence** whilst **allowing markets to play out**	• Ensures **commercial viability** of the project • Likely to be **most efficient** from an operational and cost perspective • **Eliminates distortion** to the market from government involvement • **Cost** of project **borne by** the **private sector**
Cons:	• Potential market distortions and against free market principle • Huge commitment of tax-payer money • May be loss-making and inefficiently run	• Complexity in co-ordination • Need to carefully manage government role and involvement • Moral hazard issues with expectation of government bail-out	• Investment may not take place or occur at too slow a pace - Insufficient funds - Insufficient returns - Barriers to entry

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... and fiber **platforms**

(2)

FIBRE	"Tomorrow"			
	VDSL (FTTN/C)	VDSL (FTTB)	VDSL (DSM L3)	FTTH
Technology Platform	• xDSL • *"Copper / Fibre Hybrid"*	• xDSL • *"Copper / Fibre Hybrid"*	• xDSL • *"Copper / Fibre Hybrid"*	• PON or Ethernet • *"Fibre"*
Data rates	• Up to 50 Mbit/s	• Up to 100 Mbit/s	• Up to 200 Mbit/s	• Up to ~1-2 Gbit/s**
Description	• Utilizes frequency band of up to 30 MHz • Same data rates both upstream and downstream • Fibre connection until node/curbe, i.e., street cabinet (FTTN/C) • xDSL technology used for transfer from optical node to end-user connection	• Fibre to the building (FTTB) allows data rates of up to 100Mbit/s • xDSL technology* used for transfer from optical node to end-user connection	• Dynamic Spectrum Management Level 3 might increase VDSL rate up to 200 Mbit/s • Relies on short distance to DSLAM (only limited deployment expected)	• Passive optical network (PON): splitter used to serve more customers via a single optical node • Ethernet used for P2P deployments: dedicated fibre connection between each customer and optical node (no sharing with other customers)

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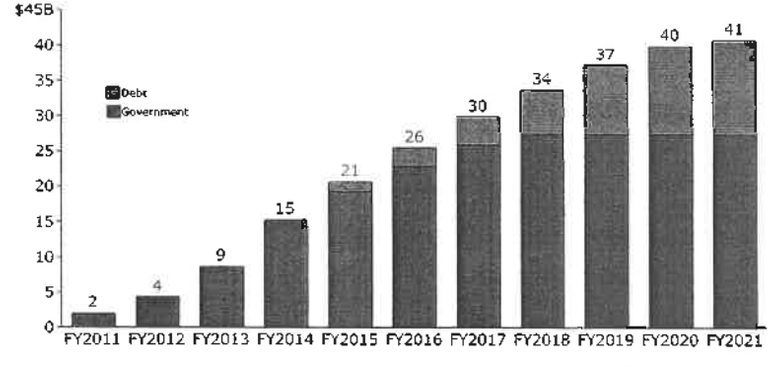
Financing provided mostly by Government, with some private debt raised later in the process

(1)

NBN Co funding forecasts (nominal dollar)



	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021
Capex ($B)	1.6	2.0	3.5	4.9	3.8	3.6	3.7	3.8	3.8	3.8	2.7

Source: NBN 3 year corporate plan (Dec 2010)

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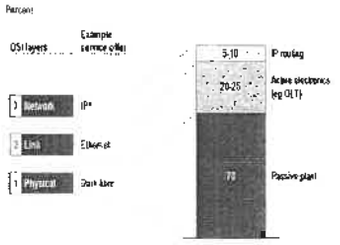
Three layers in telecom stack, majority of cost is in the passive physical network layer

Network layer	Description	Lifetime (years)	Principal characteristics
3 Service (Layer 3+)	Retail services provided to end users (NBN does not specify, but must be cognisant of demand)	n/a	Retail demand Innovation of applications and services
2 Active (Layer 1/2)	Wholesale services offered to service providers	n/a	Wholesale inputs required for service providers to meet end-user needs
	Active equipment installed on the network (OLT and FAN switch)	7–10	Operational efficiency Upgrade path Cost
1 Passive (Layer 0/1)	Fibre topology	20–50	Desired competitive outcomes Network performance Cost
	Physical deployment: Poles, ducts and trenches	30–60	Open access Security Cost

Source: Implementation Study

Breakdown of network cost



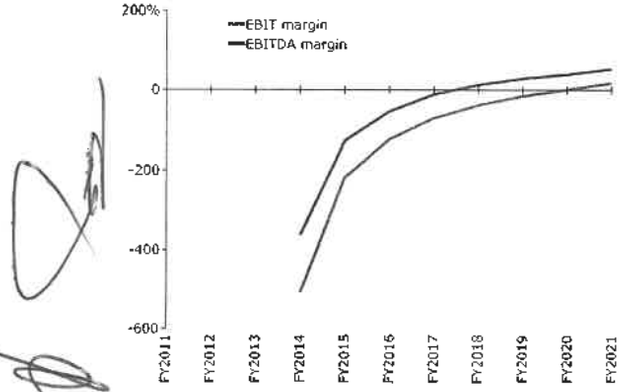
Rationale for monopolistic provision of physical / passive layer

… Or potentially upgrading of the copper network

COPPER	PSTN	ISDN	ADSL	ADSL2(+)
Technology Platform	• Public switched telephone network • *"Copper"*	• Integrated Services Digital Network • *"Copper"*	• xDSL (Digital Subscriber Line) • *"Copper"*	• xDSL (Digital Subscriber Line) • *"Copper"*
Data rates	• Up to 64 kbit/s	• Up to 128 kbit/s	• Up to 8 Mbit/s	• Up to 16/25 Mbit/s
Description	• Telephone system based on copper wires carrying analog voice data	• Telephone network system that also allows digital transmission of voice and data over ordinary telephone copper wires, resulting in better voice quality than analog phone	• Uses frequency band of up to 1 MHz • Data is carried over the high-frequency band (25 kHz and above) whereas the voice is carried over the lower-frequency band (4 kHz and below) • Downstream bandwidth higher than upstream (asymmetric DSL)	• ADSL2 with up to 16 Mbit/s • ADSL2+ increases frequency band of ADSL signal from 1.1 MHz to 2.2 MHz leading up to 25 Mbit/s

NBN Co to reach positive margins by FY2018; focuses more on implementation than profits

NBN Co profitability



Main drivers of operating expenses

- **Up-front migration incentives payable to Brownfield premises** which connect during the main construction period. Under a Deal scenario, the cost of an upfront migration incentive per Brownfield customer is half that of the No Deal scenario
- **Decommissioning payments payable to Telstra at the time of disconnection** of subscribers as an incentive for the take up to subscribers to NBN infrastructure (to occur under the Deal scenario)
- **Lease of key infrastructure** including aerial fibre, ducts, backhaul, wireless operating expenses and satellite operation expenses

*"This is not a normal commercial venture… **Our job is not necessarily to maximise the bottom line**, the job is to implement government policy as quickly and as efficiently as we can."*

CEO, NBN Co, Jul 2010

Source: NBN 3 year corporate plan (Dec 2010); NBN Business Case Summary (Nov 2010)

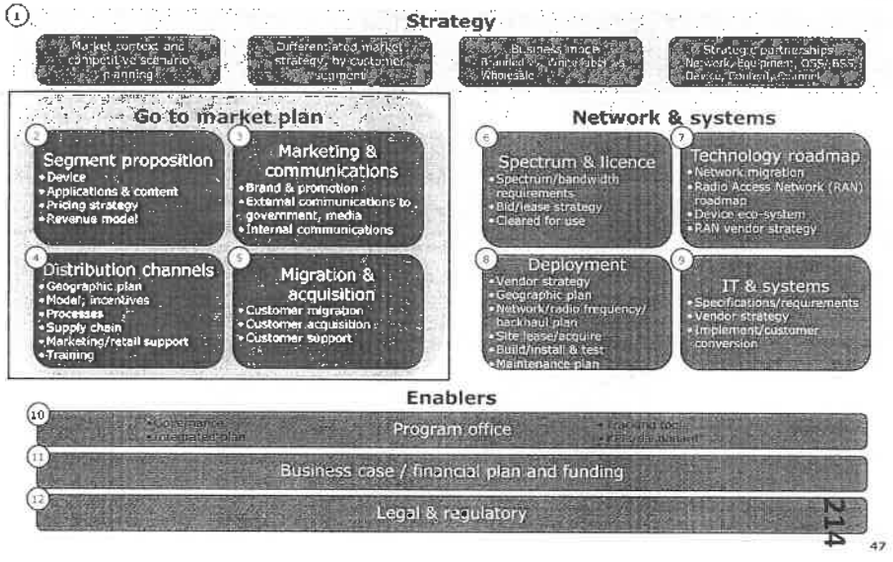
NG Fixed Networks differ in degree of fibre extension towards end-user

	Network structure	Key characteristics
FTTE (Fibre to the exchange = ADSL)	Fibre – CO – NAP – Copper – Copper	• **Fibre** connection **until CO** • Maximum bandwidth: **16-25 Mbit/s**
FTTN/C (Fibre to the node/curb = VDSL)	Fibre – CO – NAP – Fibre – Copper	• **Fibre** connection **until SC** • Maximum bandwidth: **50 Mbit/s**
FTTP/B (Fibre to the premise/building)	Fibre – CO – DP – Fibre – Copper or Coax	• **Fibre** connection **until compound or building** • Maximum bandwidth: **100 Mbit/s**
FTTH (Fibre to the home)	Fibre – CO – Fibre	• **Fibre** connection **to actual dwelling unit** • Maximum bandwidth: **622-1000 Mbit/s** (DL), 155-1000 Mbit/s (UL)

CO = Central Office; NAP = Network Access Point; DP = Distribution point

SARS-01-333
WW1-AW-323

Key elements of the Business Plan



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In South Korea **government played long-term critical role in launching similar initiatives**

3

The government's initiatives can be grouped into 3 phases dating back to 1995

SUPPLY

Planning for KII: Korea Info Infrastructure (1995-1997)	Completing the networks (1998-2000)	Moving to 'Next-Gen' (2001-2005)
• Started to build *3 types of BB network* - Test network Collaborative effort between gov and private sector - Governmental network For go, schools and research institutes funded by gov, operated by private sector - Commercial network Funded and developed by private sector	• Completed *governmental network* (total cost. *S$736M*) • Established evaluation criteria and selection process for *commercial network* KT and Dacom selected • Encouraged operators to *keep prices down*	• Set *targets for 2005*: - 20Mbps BB access to 84% of HH - 2Mbps mobile network • Initiated *BcN Project* - Next-generation integrated fibre network - Gov commits *S$1.38** towards project ($530M on network build-out, $800M on technology dev.) - *100Mbps to 10M HH* by 2010 - *10M wireless* subscribers by 2010

DEMAND

The government has articulated visions, provided subsidies, and amended laws

Laying the groundwork (1996-1999)	Cyber Korea 21 (1999-2002)	e-Korea Vision 2006 (2002-2003)	Broadband IT Korea Vision 2007 (2003-2007)
• Planned and started to build *e-Government* • Attracted *IT professionals and IT SMEs* to participate in government R&D • Enacted relevant *laws and regulations* (e.g. Law of Electronic Commerce)	• Subsidises *IT related education* in schools to minimise 'digital divide' • Subsidises *purchase of PCs*: 12 computer companies participate in program to provide lower prices on certain PCs	• Preparations made to enact *'Personal Information Security Law'* • Launched *'IT839'* vision, which contains goals of developing *services of the future* such as: - Home Network Service - Terrestrial Digital TV	• Started to enforce online *encryption and authentication* • Revised IT839 (now *'u-IT839'*) vision to ensure adequate focus on *ubiquitous services*

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Market structure: UK's BT/Ofcom set up

3

- The core problem is in the fixed line market. 20 years of pro-competition regulation has led to some improvements for consumers. But **years of intrusive regulation have not created the conditions for the sustainable competition necessary for long-term consumer benefit and which, in other countries, has spurred investment in next generation core and access networks.**
- Ofcom's overall approach, therefore, both in the individual decisions that we have taken over the past year and in the Strategic Review, has been to create a regulatory framework which seeks to encourage and incentivise sustainable, scale, infrastructure competition at the deepest extent possible.
- However, some assets in the network are either economically impossible or highly economically inefficient to try to replicate: the so-called **enduring bottlenecks**- mainly, though not exclusively, in the access part of the network. Without open and truly equivalent access to such assets, sustainable infrastructure based competition would be too risky and too easily frustrated.
- .....The third option was to seek to secure from BT '**real equality of access**' – which had two dimensions:
- requiring BT's own downstream operations use the same products, processes, and prices as those used by their retail rivals – **equivalence of input** in the jargon;
- and alongside that, **operational separation within BT** that would ensure that those responsible for overseeing BT's bottleneck assets had real incentives to wish to serve other operators in practice and on the ground with the same zeal, efficiency and enthusiasm as they served the remainder of BT's downstream activities.
- Though a small minority in the industry favoured an immediate reference under the Enterprise Act, most agreed that we should first pursue our preferred option of real equality of access. But almost all of BT's wholesale customers pointed out the importance of any arrangements being enforceable.
- In February, BT offered some voluntary changes to its own business and organisational structure which, it argued, would address Ofcom and industry concerns.
- A new **Access Services Division** within BT which would provide unbundled local loops to wholesale customers, and would be a functionally separate division of BT, with its own CEO, and its own incentives and reporting structure;
- A new **Equality of Access Board** which would have responsibility for ensuring that BT fulfilled the commitments that it would make towards Equality of Access.
- **'equivalence of input'** in relation to new products, and indicated that it was willing to move towards input equivalence of legacy products including WLR, LLU and broadband leased lines, starting in 2006 and completing by 2010.

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SARS-01-334

WW1-AW-324

ANNEXURE "AW57"

A fundamental program for a developmental State

- Giving birth to a **National and Regional ICT Champion**:
  - Close digital divide: guarantee access to broadband to 100% population by 2020
  - Drive innovation, employment, and efficiency
  - Provide security: get full control of strategic sectors of Telecom & IT
  - Strengthen SA regional "gateway to Africa" role: drive economic development in Africa
- Realizing the prerequisites (infrastructural and economic) for a **Bank of the People** with impact on inclusive banking, mobile payments, savings stimulus, SMEs financing. Synergies with DFAs (DBSA, IDC, NEF,..)
- Leapfrogging economic development and transformation in urban and rural areas for citizens and SMEs by **enhancing State presence and access to services**:
  - e-Government platform of services reaching directly to all citizens
  - e-Learning and e-Education for the younger generations
  - e-Health (diagnosis, prevention, follow-ups,..) for all citizens
  - Local procurement groups in the rural areas, with e-Commerce platform supported the Post Company
  - Support Smart Grid roll-out through broadband deployment & facilitation of energy saving targets
- Creating a **world-class generation of professionals, engineers, technicians** and world-class infrastructures serving the government and businesses
- Obtaining **full potential from State-owned assets**: maximum synergies, efficiencies and economies
  - Centralized infrastructures and procurement
  - Coordination and execution capabilities
  - Modernization of State organization and processes (GTC, GTB, GTG)

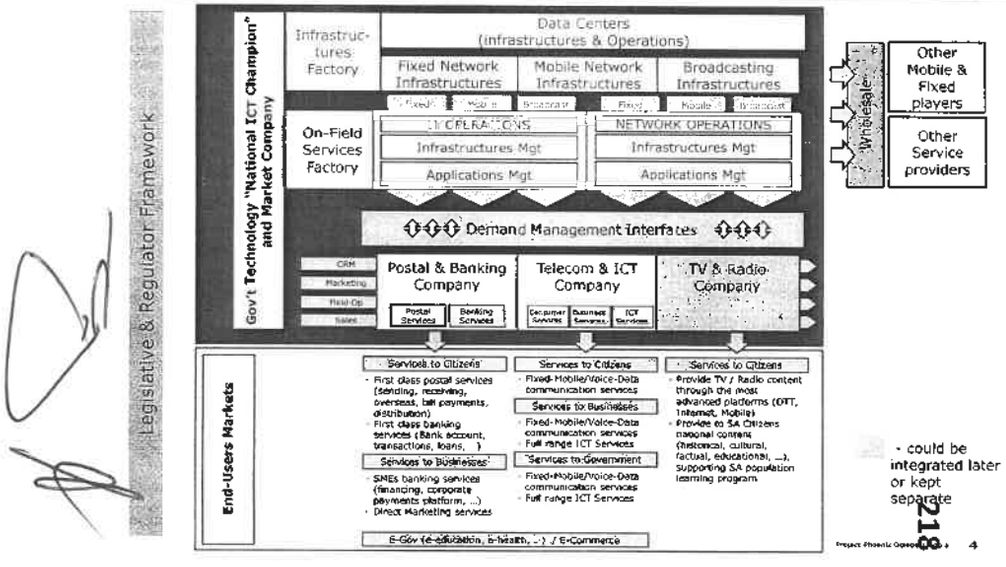
CONFIDENTIAL

FOR DISCUSSION

Project Phoenix:
Reshaping South African Economy

September 2012

Overall Phoenix operating model



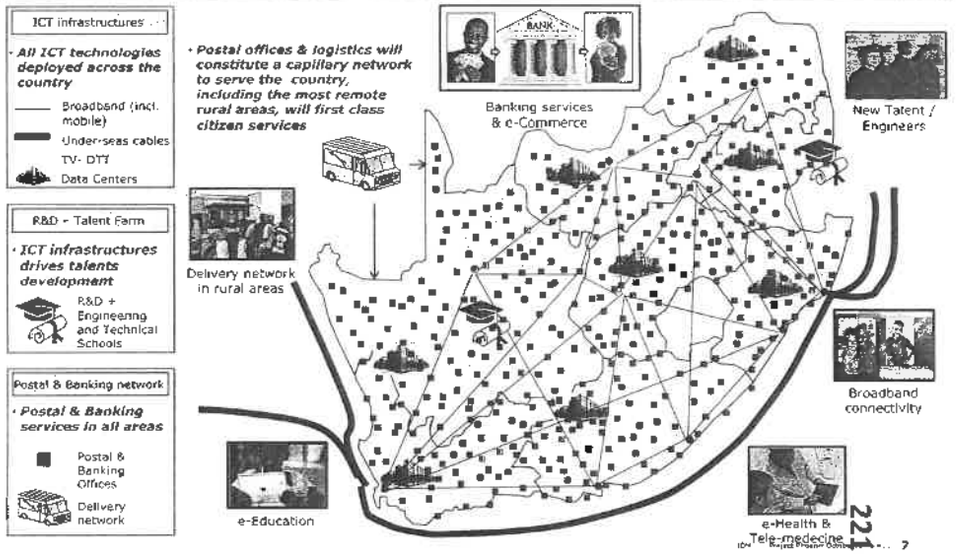
Objectives

- **Summarize the key elements of the project**
- Share preliminarily estimate of the **investment required and the potential benefits** for the Country
- List some of **other elements** that will shape the project
- Propose **key next steps and process** going forward
- Appendix

AWST

SARS-01-336
WW1-AW-326

Phoenix will provide South Africa with **first class infrastructure, services** and **e-government network**



Phoenix players overview – Business summary

	Mobile player to be identified	TELKOM	SAPO	SABC	SITA	SENTECH	INFRACO
Summary of business		• Fixed line (voice & data) • Mobile telecoms provider • IT hosting services	• Mail • Logistics • Financial services	• Television and radio broadcaster • Content creation	• Government-dedicated ICT organization, with responsibility for maintaining Government's telecommunications & internet network	• Signal transmission broadcasting • VSAT internet connectivity provider	• "Control tower" for B2B fibre broadband network; subcontracts building and management of network
FTEs		~21,000	~15,500	~3,700	~2,600	~550	~150
Key assets		• ~80% Fixed line market share • 140,000km of fibre network • 2,000 fixed line exchanges • 1,000 mobile base stations • 120 branded retail outlets	• 1,430 full-service post offices • 1,033 postal agencies (mini-post offices) • 25 mail sorting centres	• Ability to contact 22 million households • Over 90% of SA households reached by TV/Radio • 74% TV market share	• "Next Generation Network": Most advanced carrier infrastructure network to be used by SA Gov • Various data/backup centres	• 220 Countrywide transmitting stations • 627 TV transmitters • 742 Radio transmitters • 3 satellite teleports	• 13,612km of fibre network • WACS broadband cable (connecting SA and UK)
Revenue in RB		R32B	R5.9B	R5.2B	R4.3B	R0.8B	R0.3B
EBITDA in RB		R7.5B	R0.075B	R1.7B	R0.3B	R0.2B	-R0.2B

Source: Annual Reports

Examples of e-Citizen services

e-Citizen services

STUDY

- Pay school fees online
- Register and transfer learners across schools
- Receive scholarship payments
- Access Matric certificates and marks

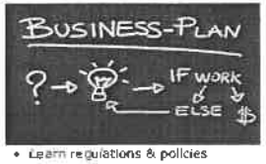
FAMILY

- Apply / book dates for key lifecycle events, e.g. marriage, divorce, drivers' tests, etc. and obtain licences / certificates
- Manage utilities payments

CHILDREN

- Obtain birth e-certificate
- Receive subsidy payments
- Update guardianship information

START A BUSINESS



- Learn regulations & policies
- Receive qualified advice
- Register company, pay taxes

RETIREMENT

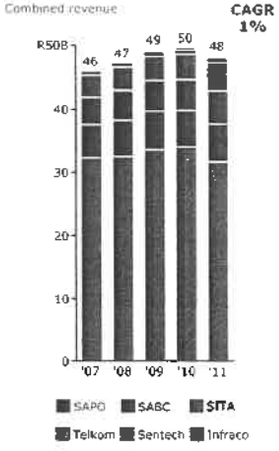
- Apply and receive pension payments
- Apply and receive death certificate

COURT SERVICES

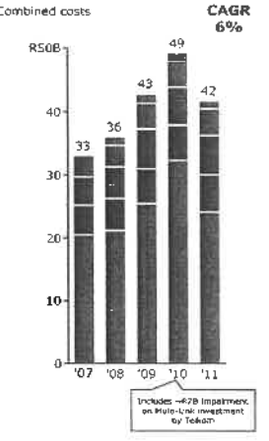
- Check status of court dates
- Submit legal documentation online
- Apply for an arbitrator

Phoenix players overview – Combined financials

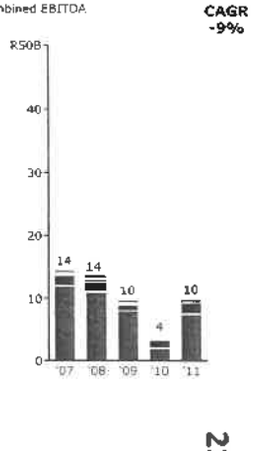
REVENUE GROWING SLOWLY



COSTS RISING QUICKLY



EBITDA DECREASING



Source: Annual Reports

SARS-01-337
WW1-AW-327

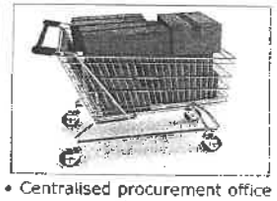
Examples of e-Procurement

e-Procure-ment

'LOCAL SELLER' DEMAND AGGREGATION

- With e-procurement, local sellers electronically submit demands to centralised procurement office with electronic device
- Improves traditional "stock-seller" model

GROUP PURCHASING ON BEHALF OF LOCAL SELLERS



- Centralised procurement office aggregates demand from all local sellers
- Then uses e-procurement to place aggregate orders with suppliers
- Benefits include
  - Receiving bulk discounts and using credit lines
  - Can hold stock
  - Lower distribution costs as suppliers delivering to one centralised location

LOCAL SELLERS DRAW STOCK AS NEEDED

- Local resellers can purchase goods at lower prices which can be passed onto the consumers

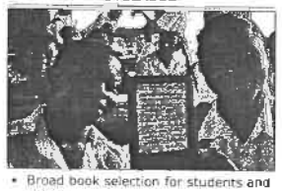
Examples of e-Education and e-Health

e-Edu-cation

E-EDUCATION FOR ALL STUDENTS

- Access to top teachers and wide variety of courses, esp. for rural schools
- Knowledge sharing across schools/ teachers / students to learn from best practices in SA and globally

E-TEXTBOOKS FOR A LIMITLESS SYLLABUS



- Broad book selection for students and citizens
- High-speed downloads

E-LIBRARIES FOR RESEARCH & COMMUNICATIONS

- Gov'ts medium to share gov't and community news/ information and communicate with citizens
- Rich content, incl. text, audio, video, interactive maps etc.

e-Health

E-DIAGNOSIS FROM LOCAL LOCATION

- Broader and more efficient diagnostic coverage
- More efficient use of resources as doctors & equipment centralised

E-MONITORING FOR CONTINUAL CARE

- Particularly important for HIV and chronic suffers; can be monitored from home or post office
- Order medication for delivery

HIGHER DOCTOR-PATIENT RATIOS

- More doctors to spend time with patients vs. processing records

Examples of e-SME services

e-SME servIces

BUSINESS EDUCATION

- Educate citizens about setting up small businesses, including rules, regulations, taxes, etc.
- SME e-forums and networks for peer guidance and expert help

LOGISTICS

- Online company registration
- Electronic annual CIPL/CIPRO returns
- Online VAT registration

FINANCING

- Ability to apply for gov't and private loans online
- Ability to apply for subsidies and learn about tax incentives

EASE OF DOING BUSINESS

- Many support services (e.g. accountants) can be outsourced
- Minimise cash holdings with electronic transfers
- Instantaneous transaction execution

GOV'T CONTROL

- Greater tax and regulatory compliance as less cash based economy
- Import and export online execution increases visibility
- Better statistics to inform public policy

Examples of e-Commerce and e-Banking services

e-Com-merce

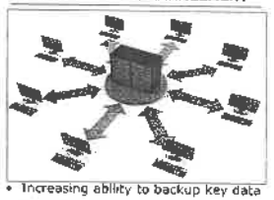
LOWER COSTS

- More efficient business model, based – partially – on virtual office requiring less travel and less space
- Ability to benefit from cloud computing

INTERNATIONALLY COMPETITIVE

- Access the global marketplace
- Expanded opening hours 24/7
- International companies can outsource to SA (e.g. accounting services)

IMPROVED RISK MANAGEMENT



- Increasing ability to backup key data
- Reduce costs for disaster recovery

e-Banking

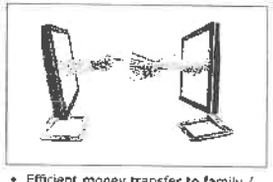
PAYING BILLS

- Pay bills (esp. with retailers) in an efficient way, thus saving on costs
- Debit orders setup to avoid blacklisting

RECEIVE PAYMENTS

- Receiving payments from customers in an efficient way, thus saving on costs
- Notifications of payments received

TRANSFERING FUNDS



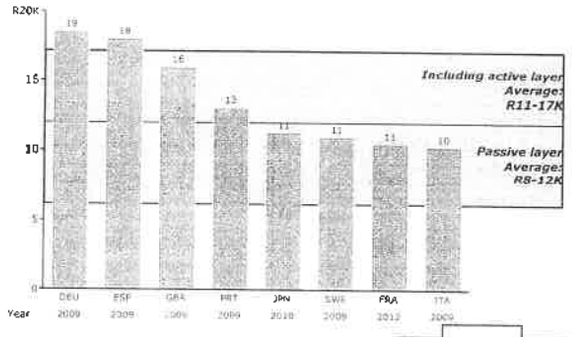
- Efficient money transfer to family / friends
- Cashless transfers are less risky

SARS-01-338
WW1-AW-328

Phoenix required investments are significant, based on international benchmarks

PRELIMINARY

Capex per premises connected - active and passive layer



- **Costs differ per country** due to
  - Extent of broadband rollout
  - Population density
  - Chosen technologies
  - Geography
- **Costs differ over time** due to
  - Experience curve
  - Cheaper technology
  - More premises connected for same capital outlay
- **Part of the network is already in place** (Telkom, Metro areas,..) and only a detailed plan will allow an appropriate sizing of the investment required

- Assuming **~17M households in SA by 2020** to be covered by the network
- An average investment of **R8.000 - R12.000 per household** in the next 8-10 years **for the passive layer** (network) totalling an estimated **~R140-200B**
- An additional **R3.000-5.000 per household** for the **active and service layers** (network mgmt.), totalling an estimated **~R60-80B**
- Bringing the **overall expected investment** to **R200-280Bn**

Assumptions: Commercial properties 10% of households; conversions at current exchange rate
Source: Euromonitor Household data, Next Generation Competion Report 2009, Company data; "Lesson from the US Broadband Battlefield", SantandeoResearch data 2007; "Fiber... Future", Verizon, Apr 2008

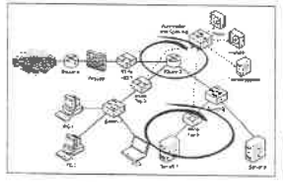
Examples of Security features

Security

IMPROVED BORDER & STREET SECURITY

- More eyes-in-the-sky and real-time pattern recognition analysis
- Real-time automated alerts to police and border guards
- Hi-definition allows footage to be used as court evidence

IMPROVED NATIONAL E-SECURITY



- Government can monitor activity on the network preventing crime and sabotage

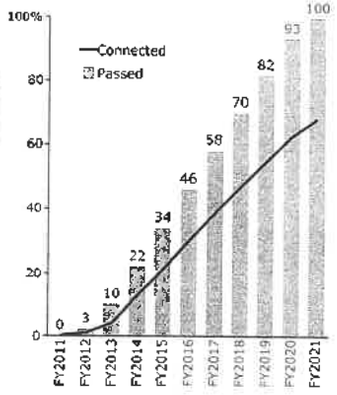
MORE POLICE TIME ON THE GROUND

- More time spent preventing crime as data process is automated and centralised

A **~10 year period is necessary to fully roll-out infrastructure**, as evident from benchmarks

FIBRE PREMISES DEPLOYMENT SCHEDULE

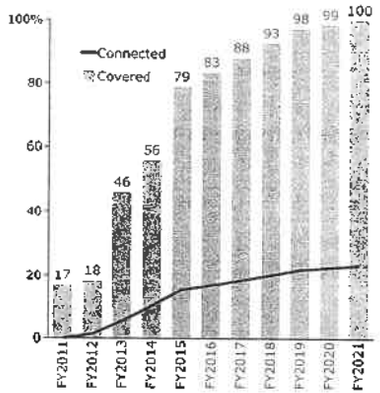
Fibre premises deployment schedule (% of households)



Source: NBN 3 year corporate plan (Dec 2010)

WIRELESS & SATELLITE PREMISES DEPLOYMENT SCHEDULE

Wireless and Satellite premises deployment schedule (% of households)



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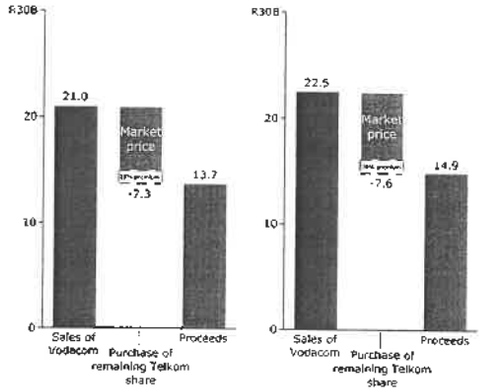
- Appendix

SARS-01-339
WW1-AW-329

Selling Vodacom could provide initial funding for Phoenix

As of August 16th

Value of shares (as of August 16)



As of September 3rd

Value of shares (as of September 3)

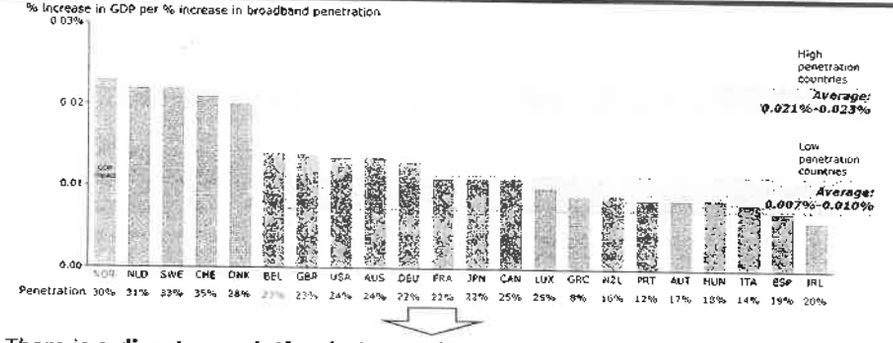
PRELIMINARY

DESCRIPTION

- The government **sells 14%** stake in Vodacom for **R21-23 billion**
- **Delists Telkom** from the JSE by buying out 60% that it does not own
  - **Pays a 20% control premium** to other shareholders
  - Net our flows of ~**R7.5bn**
- The government uses the net proceeds of **R14-15 billion to fund Phoenix project**

Source: Corporate announcements; JSE; Based on August 16 and September 3 market prices
Book value of Telkom's assets is R54B (non-current assets R44B) equity as at 31 March 2011

International benchmarks clearly demonstrate that GDP growth is correlated with broadband penetration



- There is a **direct correlation between increasing Broadband penetration and GDP growth,** driven by creation of **ICT infrastructure,** technology-driven **productivity gains,** growing **employment** (direct & indirect), and increasing **consumer surplus**
- A very **preliminary estimate of SA GDP impact,** based on these international benchmarks and anticipating a broadband penetration of ~85% leads to a **range of R330-550Bn in the next 10 years**

Source: *Impact of Broadband on the Economy*, ITU 2012

Objectives

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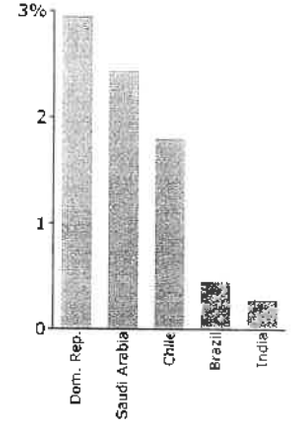
- Appendix

Increase in broadband penetration also **accelerates job creation**

LESS DEVELOPED COUNTRIES ENJOY GREATER EMPLOYMENT BENEFITS

Impact on employment from 10% increase in Broadband penetration



Source: Academic reports

JOBS ARE CREATED IN MULTIPLE INDUSTRIES

- **Increasing the broadband penetration creates jobs:**
  - **Directly** – for broadband network creation and operation, e.g. construction workers, technicians, equipment manufacturing, etc.
  - **Indirectly** – for example, increased ability for upstream buying and selling within the metal and electrical industries
  - Through **inducement** – from increased household spending as a result of additional income generated from direct and indirect employment
- **All three job creation levers could lead to additional 200,000 - 300,000 SA jobs in the next 5-7 years** (based on benchmarks)

SARS-01-340
WW1-AW-330

Network performance depends on choices for fibre deployment

1

	Network structure	Key characteristics
FTTE (Fibre to the exchange = ADSL)	Fibre – CO – NAP – Copper – Copper	• **Fibre** connection **until CO** • Maximum bandwidth: **16-25 Mbit/s**
FTTN/C (Fibre to the node/curb = VDSL)	Fibre – CO – NAP – Fibre – Copper	• **Fibre** connection **until SC** • Maximum bandwidth: **50 Mbit/s**
FTTP/B (Fibre to the premise/building)	Fibre – CO – DP – Fibre – Copper or Coax	• **Fibre** connection **until compound** or **building** • Maximum bandwidth: **100 Mbit/s**
FTTH (Fibre to the home)	Fibre – CO – Fibre	• **Fibre** connection **to actual dwelling unit** • Maximum bandwidth: **622-1000 Mbit/s** (DL), 155-1000 Mbit/s (UL)

CO = Central Office; NAP = Network Access Point; DP = Distribution point
Source: ARCEP / WestLB (2008), JPM (2006)

2334

JDH Project Phoenix October ... 23

There a few **key other elements** that will shape the project

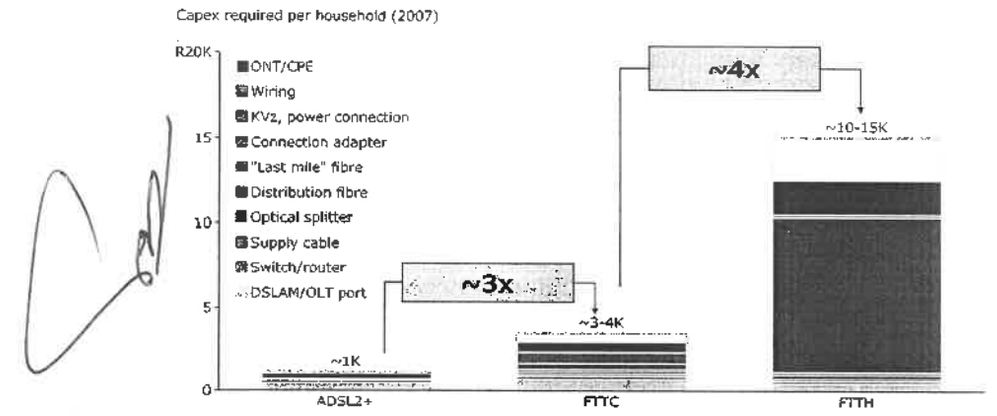
1. Set the **performance targets for the network**, based on the services to all citizens and right technological implications, which will have a strong impact on the overall investment
2. Define the **regulatory framework for the ICT industry**, like: Access to network, Licensing, Local Loop Unbundling, Spectrum allocation, Tariffs and Termination/Interconnection fees, etc...
3. Structure **a full potential list of complementary actions and programs** to maximise impact of the project (e.g. e-Gov't, e-Health, e-Education services, Gov't ICT strategy and procurement processes)

2335

JDH Project Phoenix October ... 21

Technology choices will strongly influence the **level of required investment**

1

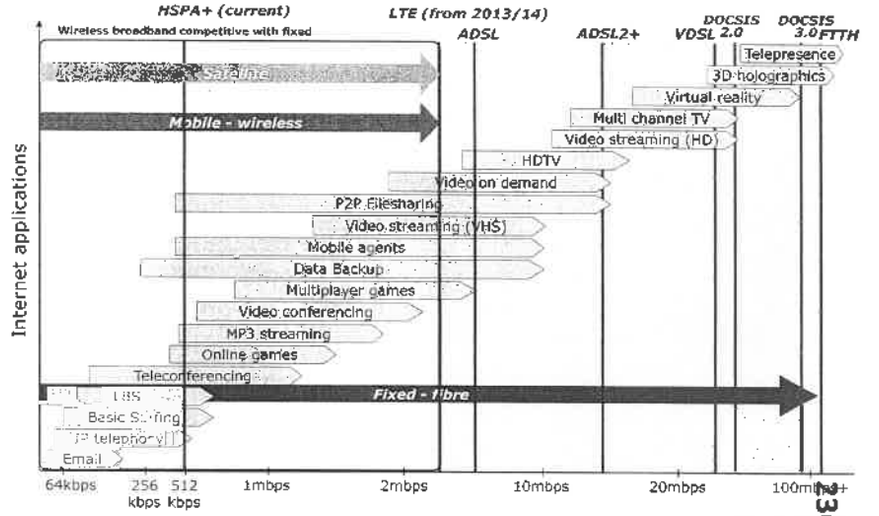


2338

JDH Project Phoenix October ... 24

Services to be brought to SA citizens, SMEs **will inform** the required bandwidth & **technology choices**

1



2336

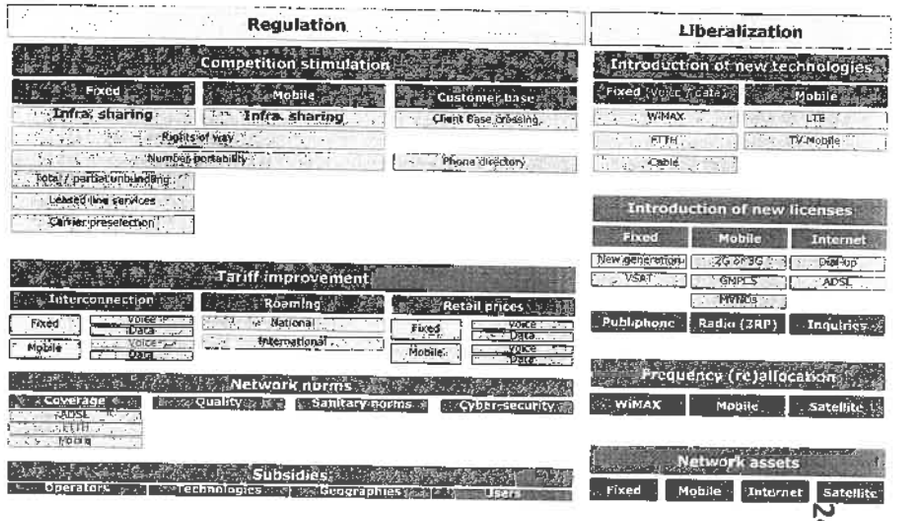
JDH Project Phoenix October ... 22

SARS-01-341

WW1-AW-331

Government has **multiple Regulatory options**

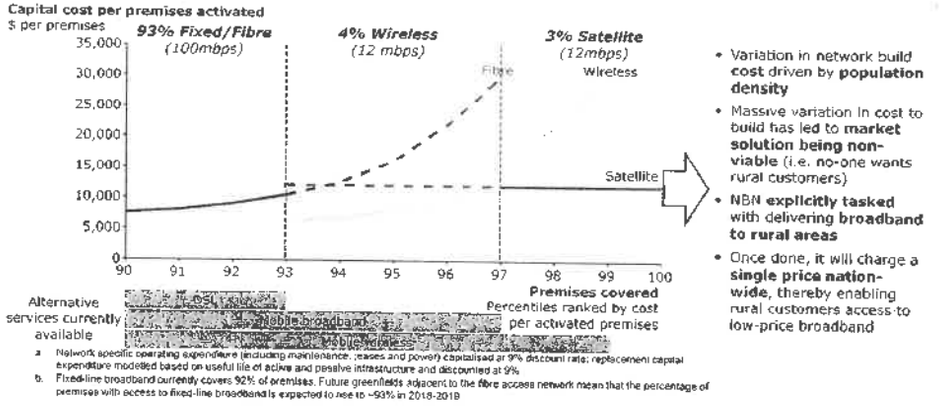
(2)



241

Australia set high targets of unive. sal broadband coverage across fixed, wireless, and satellite

(1)



- Variation in network build **cost** driven by **population density**
- Massive variation in cost to build has led to **market solution being non-viable** (i.e. no-one wants rural customers)
- **NBN explicitly tasked** with delivering **broadband to rural areas**
- Once done, it will charge a **single price nation-wide**, thereby enabling rural customers access to low-price broadband

a Network specific operating expenditure (including maintenance, leases and power) capitalised at 9% discount rate; replacement capital expenditure modelled based on useful life of active and passive infrastructure and discounted at 9%

b Fixed-line broadband currently covers 92% of premises. Future greenfields adjacent to the fibre access network mean that the percentage of premises with access to fixed-line broadband is expected to rise to ~93% in 2018-2019

"RSPs currently have to pay for two "products" in order to reach households: (1) "access" through a network and (2) "backhaul" to carry content from the RSP's headquarters to a "point of interconnect" (PoI) with the access network. ***Through NBN, RSPs will have to pay the same amount, irrespective of where they are based, to deliver their service to households and business throughout Australia.***"

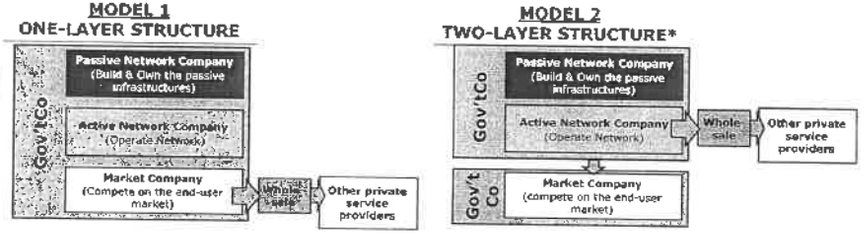
NBN Co, May 2010

239

In terms of **Network Access**, Govern..nent could choose between **2 operating models**

(2)

Increasing level of liberalization and competition intensity



Description:

- An integrated **gov't company** to build and manage the network and to sell services directly to end-consumers
- **LLU** decision **to be addressed**

- **2 "arm's length gov't companies:**
  - 1 to build & manage network*
  - 1 to go direct to end-consumers competing with other service providers
- **Industry structure and "rules of the game" to be defined**
- **LLU to be rolled out** to ensure fair competition

* Gov't could split building/owning vs. managing network to 2 separate companies

241

SA could cover up to 65-75% of population with fixed/fibre and 100mbps; rest with wireless broadband

(1)

Technology		Fixed (fibre TBD)	Wireless	Satellite
Description		Physical deployment of wires to each household	Wireless towers linked to broadband network	Satellite coverage
When to use it		Urban areas	Less dense / rural areas	Very low density areas
Key metrics		% urbanisation of the population	Country area Population rural density	-
Australian example	Metrics	89% urbanisation	7.6M km² 0.3 inhabitants / km²	-
	Deployment target	93%	93-97%	97-100%
Potential target for SA	Metrics	55-65% urbanisation	1.2M km² 15.9 inhabitants / km²	-
	Deployment potential target	65-75%	70-95%	95-100%

Lower target to take into account **lower level of urbanisation** (high cost to roll-out fibre to rural areas)

High potential for **wireless in rural areas due to sufficient density** (inefficient to roll-out wireless in areas of extremely low density)

240

SARS-01-342
WW1-AW-332

Effective Governance will be determinant to ensure success of the program

For discussion

4

President
- A "President's program"
- Quarterly Reviews, (with other Cabinet members), with a structured process and dashboard

Minister (+ dedicated DG?)
- Board members appointment
- Monthly reviews on:
  - Approvals
  - Operating and financial milestones
  - Regulatory framework (incl. Icasa) and Antitrust
- Stakeholder management and official public statements
- Conflict resolution, roadblocks removal and crisis management

Strong and Cohesive Executive

Board

Management
- Strategic autonomy within approved Program framework
- Submission of plans and reports
- Broad operating autonomy
  - Executive team composition
  - Organisation structure and operating systems
  - Post-merger integration
  - Procurement and tenders
  - Marketing and technological choices
  - ...

In addition, a few other critical decisions will need to be addressed

2

Local Loop Unbundling
- **Should Local Loop be unbundled**, e.g. equal access granted to incumbent's "last mile" copper for all service providers to promote competition?
- If yes, **how should LLU be regulated and executed**?
  - **Deployment process and location of** the alternative service provider **equipment**
  - **Regulations** to ensure equal access and quality of service

Tariffs and fees
- **Should** the historically **asymmetric fees be re-examined**?
  - Historically, **mobile** termination **fees** have been set at **3X higher** for mobile to "subsidize" development of mobile networks
  - However, should mobile fees continue to be higher, given **significant level of investment into the fixed fibre network**?
  - Initial indications from **int'l benchmarks show movement towards equalling** mobile and fixed fees
  - If change is needed, what **regulations** should be re-examined?

Mobile spectrum allocation
- **How should the mobile spectrum be allocated** to provide LTE/WiMax wireless broadband coverage?
  - **Decision on Sentech's** 50MHz @ 2.6Ghz
  - **Choice of allocation** to Gov't/Co or auction to all service providers
- If **auction, how should it be regulated** and what proceeds could it bring?
  - **Key obligations**, e.g. nationwide coverage, quality of service, etc.
  - **Proceeds** estimated at **R6.5-7.5B** based on Int'l benchmarks
  - Potential usage of proceeds

Satellite spectrum allocation
- Is **"vacant" satellite spectrum** currently **available**?
- **What regulations are needed** to allocate satellite spectrum and to whom?

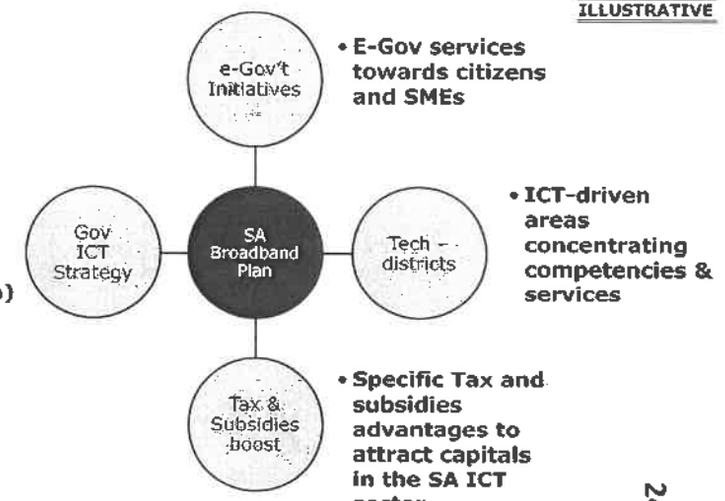
Objectives

- **Summarize the key elements of the project**
- Share preliminarily estimate of the **investment required and the potential benefits** for the Country
- List some of **key decisions** that will shape the project and will need to be **shared with the other Stakeholders**
- Propose **key next steps and process** going forward
- Appendix

Complementary actions / externalities: a set of programs should be put in place to maximize benefits

3

ILLUSTRATIVE



SARS-01-343
WW1-AW-333

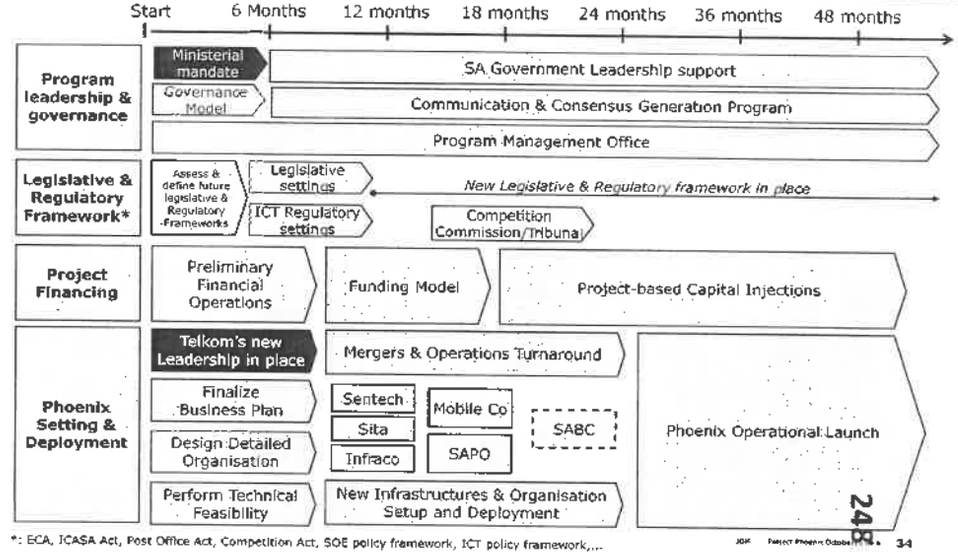
Key next steps: Execution points

PRELIMINARY DRAFT

- **Governmental leadership and governance**
  - -Mandate a Minister, to initiate the overall process
  - -Create the right Governance to drive coordination and execution; make it a President's Program
  - -Drive consensus and effective/timely communication around the program
- **Telkom's (and other involved entities') leadership and governance**
  - -Appoint new CEO and Chair to kick-off the operational planning and implementation
  - -Guarantee the necessary autonomy and coordination
- **Financing and Procurement model**
  - -Define appropriate mechanisms to ensure availability of funds in the long term (involvement of IDC, DBSA,..)
  - -Optimize efficiency and speed of execution (e.g.: tender processes)
- **Industry regulation and structure**
  - -Ensure the necessary policy and regulation framework is in place to support project success (ECA, ICASA Act, Post Office Act, Competition Act, SOE policy framework,...)
    - Local Loop Unbundling, Universal Access and fees ,...
    - Spectrum allocation
    - Local Metro areas integration
    - Other subsidies

Key next steps: Project plan

PRELIMINARY DRAFT



*: ECA, ICASA Act, Post Office Act, Competition Act, SOE policy framework, ICT policy framework,...

SARS-01-344
WW1-AW-334

ANNEXURE "AW58"

SARS-01-346

CONFIDENTIAL

FOR DISCUSSION

Infrastructure Development in South Africa

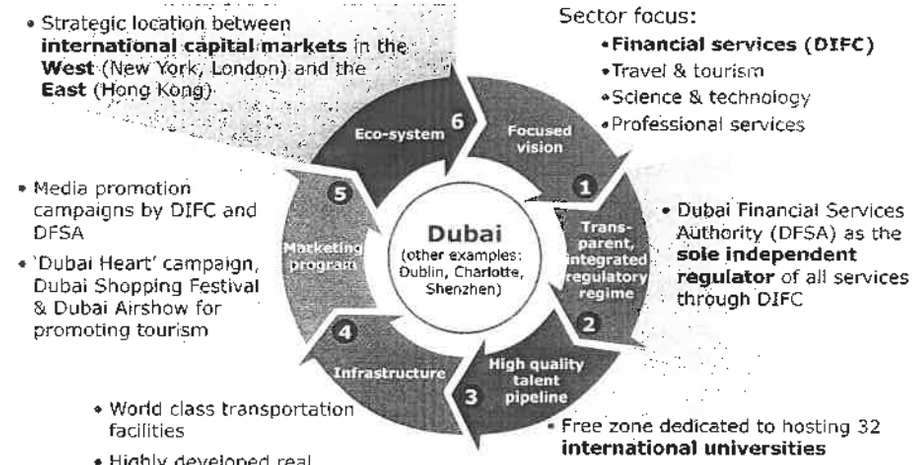
Holistic approach to infrastructure development – initial considerations

25 April 2013

Objectives

- Discuss need for **holistic approach in infrastructure and industry development** – given complex institutional set-up
- Present a possible **organisational solution to improve infrastructure delivery**

Infrastructure and industry development requires holistic approach to maximize impact – Dubai example



- Strategic location between **international capital markets** in the **West** (New York, London) and the **East** (Hong Kong)

Sector focus:
- **Financial services (DIFC)**
- Travel & tourism
- Science & technology
- Professional services

- Media promotion campaigns by DIFC and DFSA
- 'Dubai Heart' campaign, Dubai Shopping Festival & Dubai Airshow for promoting tourism

- Dubai Financial Services Authority (DFSA) as the **sole independent regulator** of all services through DIFC

- World class transportation facilities
- Highly developed real estate and infrastructure
  - Mainly due to DIFC

- Free zone dedicated to hosting 32 **international universities**
- **Global business schools** to start programs in Dubai

Source: Bain analysis, based on benchmarking of hubs worldwide

A further example of holistic approach. Malaysia's National Development Plan ('1Malaysia')

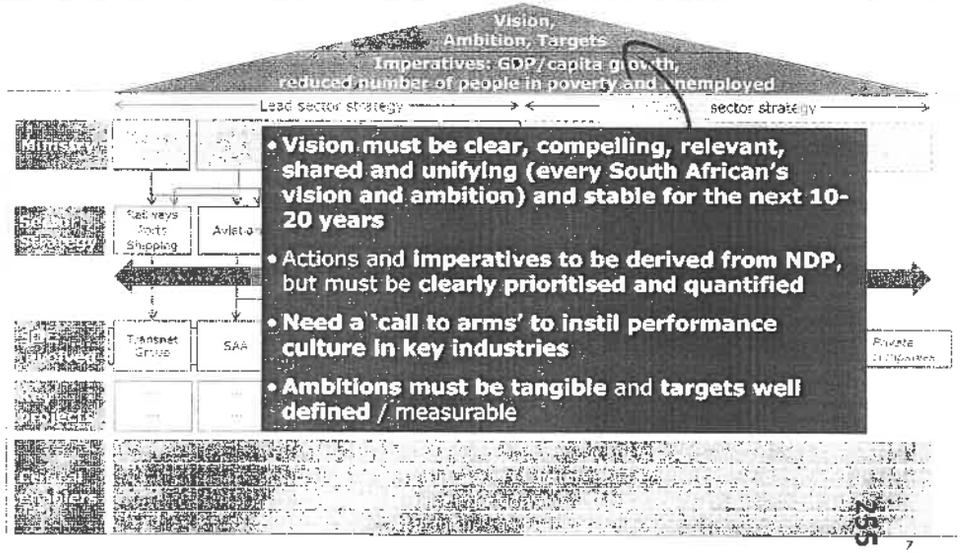
1Malaysia is an on-going campaign announced by Prime Minister Najib Razak on September 16, 2008, calling for the cabinet, government agencies, and civil servants to more strongly emphasize **ethnic harmony, national unity, and efficient governance**.

The eight values of 1Malaysia are
- perseverance
- a culture of excellence
- acceptance
- loyalty
- education
- humility
- integrity
- meritocracy

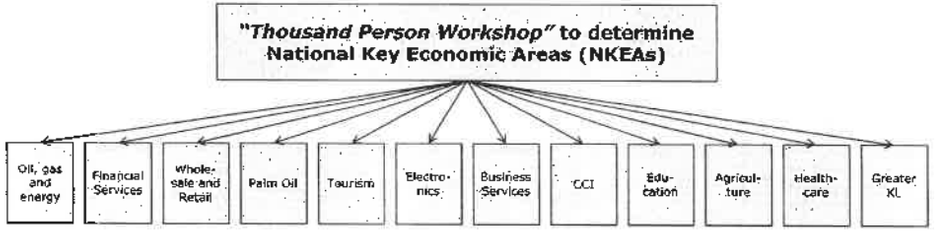
AWS8

WW1-AW-336

Holistic, integrated, and coordinated approach particularly critical in SA's complex institutional setup



The high level vision was then founded on detailed and consistent plans for each key sector

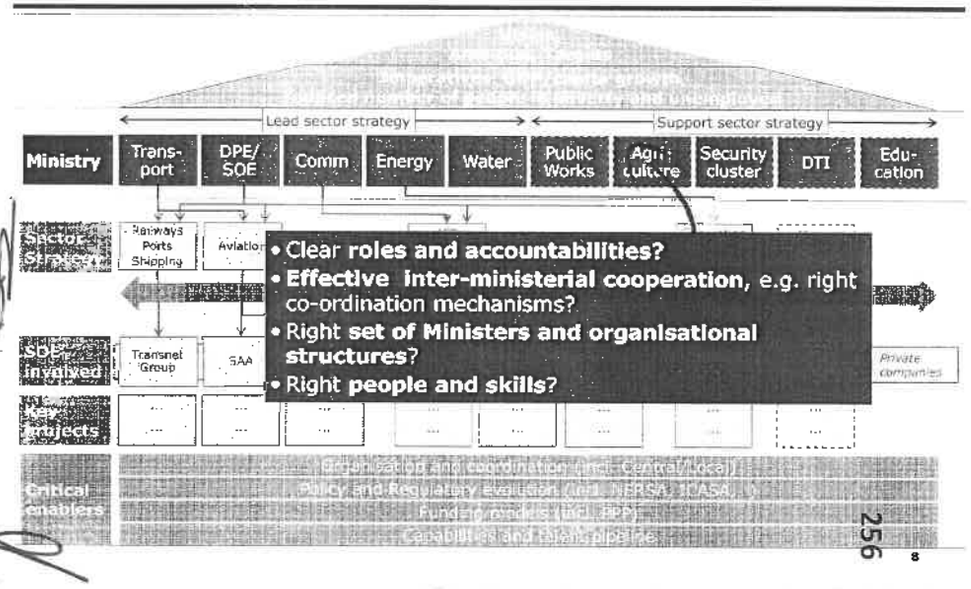


~30-50 experts (90% private sector) per NKEA assigned to "labs" and developed detailed action plans

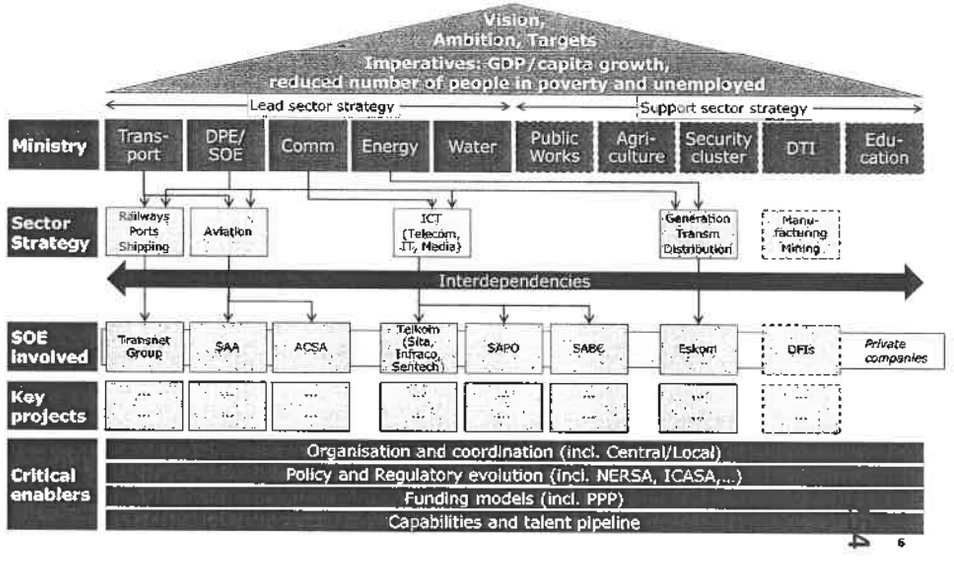
Concrete "Entry Points Projects" and KPIs established to aid implementation and progress tracking

253

Critical questions to address - ministries

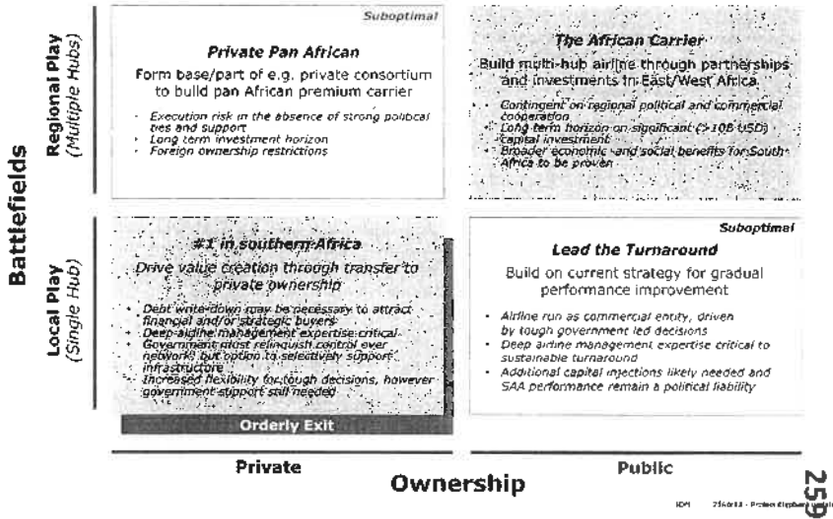


Holistic, integrated, and coordinated approach particularly critical in SA's complex institutional setup



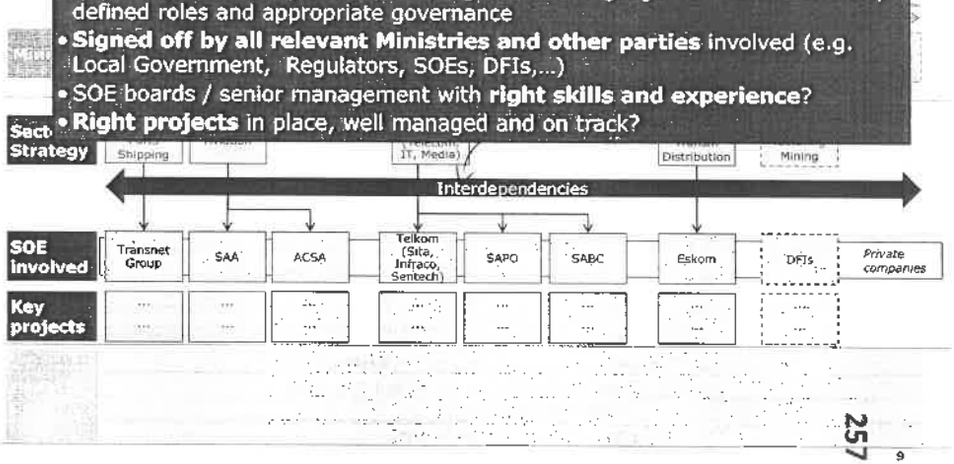
SARS-01-347
WW1-AW-337

SAA example: clear understanding of strategic options critical to direct actions…



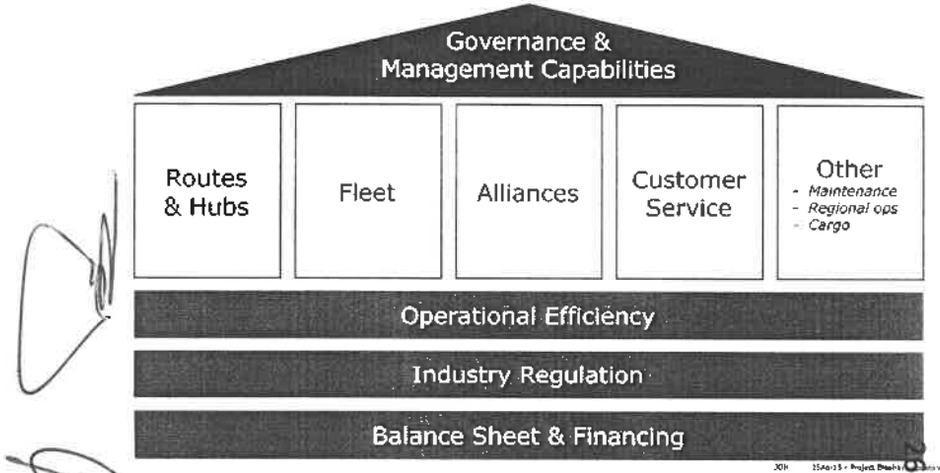
Critical questions to address – Sector strategies / SOEs / Projects

- **Clear objectives in each sector**, e.g. trade-off between SOE profitability and other goals?
- **Industry White Papers** in place, e.g. incl. strategic guidelines and choices, defined roles and appropriate governance
- **Signed off by all relevant Ministries and other parties** involved (e.g. Local Government, Regulators, SOEs, DFIs,…)
- SOE boards / senior management with **right skills and experience**?
- **Right projects** in place, well managed and on track?



… which should be consistently translated into decisions for the different key strategic factors

Key strategic imperatives for medium to large commercial airlines



Examples of some critical questions to address – industry specific (not exhaustive)

Railways, Ports, Shipping

- How to make Transnet more **efficient and time effective**?
- How to improve **integration of rail and port**? And of rail and road/truck?
- If and how to create a **local shipping industry**?
- What **long-term capacity** required to boost economic development?
- Which **markets to prioritise**: commodities, customer segments, routes?
- How to **project manage R300B expansion** programme?
- How to **improve competitiveness** vs road to stop market share decline?
- How to respond to potential **new competition**, e.g. mining industry rail operator?

Aviation

- Does the Government see SAA and ACSA as **strategic assets** critical to the economy?
- Should SAA be a pan-African **multi-hub player or a local, single-hub operator**?
- Who are the "best owners of SAA" and ACSA?
- What **capabilities** will be required for SAA/ACSA to deliver sustained value?
- What **markets** represent growth opportunities?
- Is the current **fleet** a competitive advantage or a risk to be mitigated?
- Should SAA be a member of a **global alliance**? Which one?
- Is there a broader role for **SA Express** in Africa? And of Cargo?
- Is there an opportunity to further improve **labour management and efficiency**?
- …

ICT (Telecom, IT, Media)

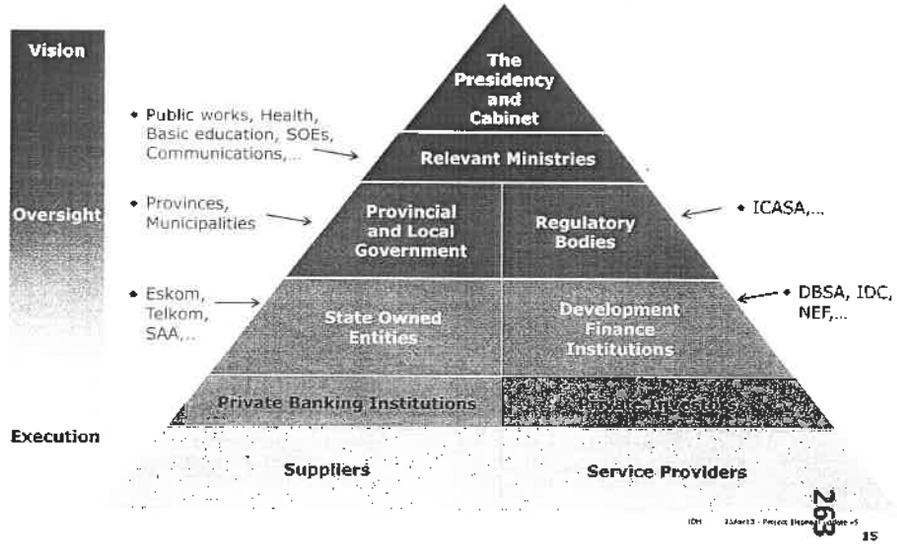
- Is access to **broadband a basic good**, and as critical as water, sanitation, energy and security ?
- What are the key constraints to achieving **broader and faster broadband coverage**? How can they be addressed?
- What is Telkom's **role, in and outside South Africa**?
- How to manage **frequency and spectrum allocation**?
- Do we have clear **technology strategies**, e.g. terrestrial to digital conversion, role of cable, LTE?
- What is SABC role in **education vs. entertainment**?
- What are the requisites to launch extended **E-government programs** (e-learning, e-health,…)
- …

Energy (Generation, T&D)

- What is the right energy mix for SA, especially in terms **role of alternative energies and nuclear**?
- What is the **hierarchy of Eskom's objectives**: economic development, economic transformation, job/skill creation, financial stability, environmental sustainability?
- Is Eskom's planning and plan execution suitable to supply **sufficient volumes at adequate cost?**
- What is the role of the **private sector, are IPP sustainable?**
- How should **local distribution** evolve and made more efficient and pervasive?
- How to secure **coal supply** given short-term concerns on mining labour unrest, long-term increase in coal exports?
- …

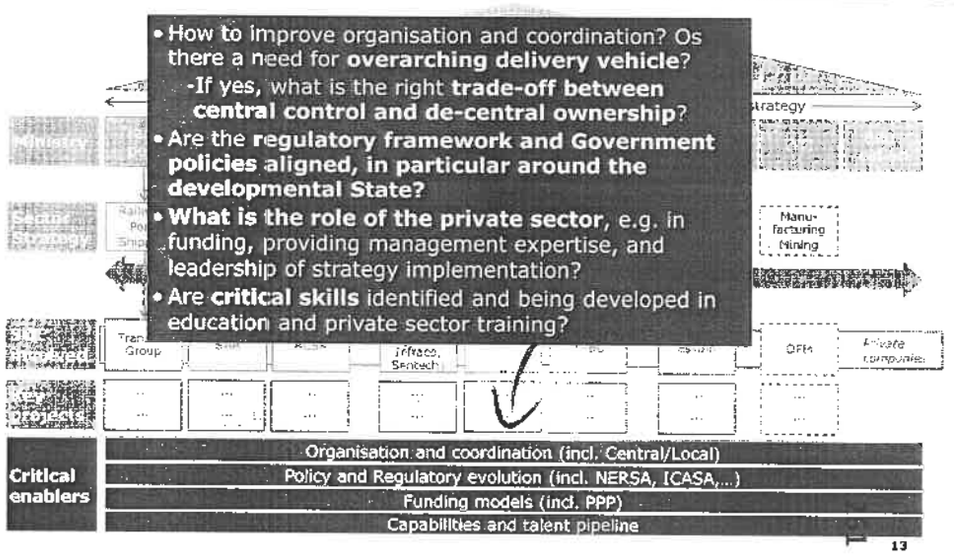
SARS-01-348
WW1-AW-338

Delivery typically requires coordination of many different stakeholders/players



15

Critical questions to address – Enablers



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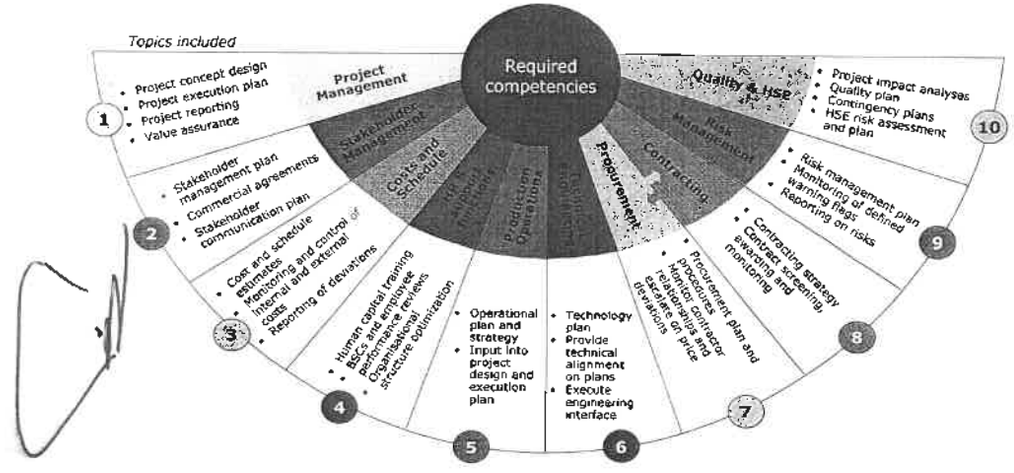
We observe 10 competencies that need to be in place to deliver



HR, Procurement and Contracting are particularly critical in SA context

16

Objectives

- Discuss need for **holistic approach in infrastructure and industry development** – given complex institutional set-up

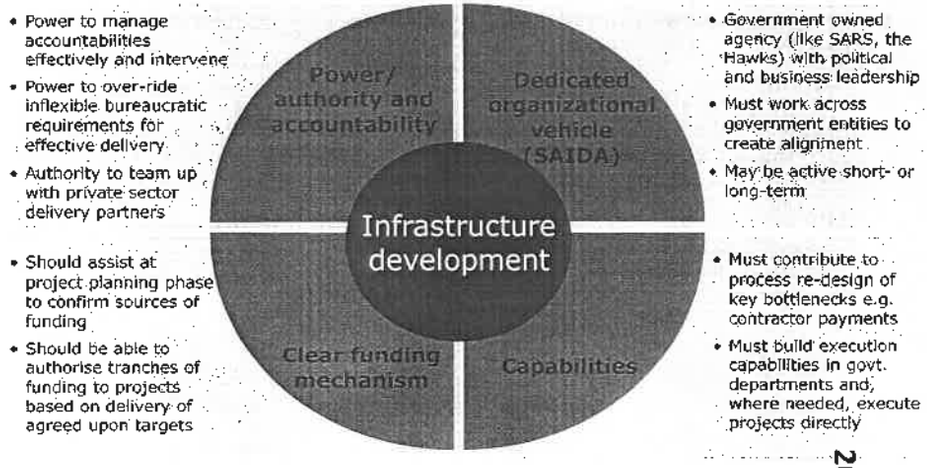
- Present a possible **organisational solution to improve infrastructure delivery**

14

SARS-01-349

WW1-AW-339

Improving infrastructure development will therefore require several elements



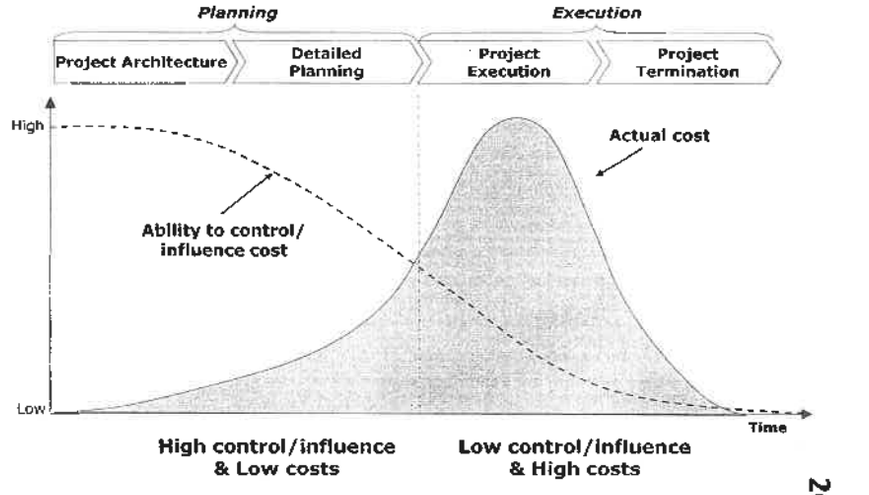
- Power to manage accountabilities effectively and intervene
- Power to over-ride inflexible bureaucratic requirements for effective delivery
- Authority to team up with private sector delivery partners

- Should assist at project planning phase to confirm sources of funding
- Should be able to authorise tranches of funding to projects based on delivery of agreed upon targets

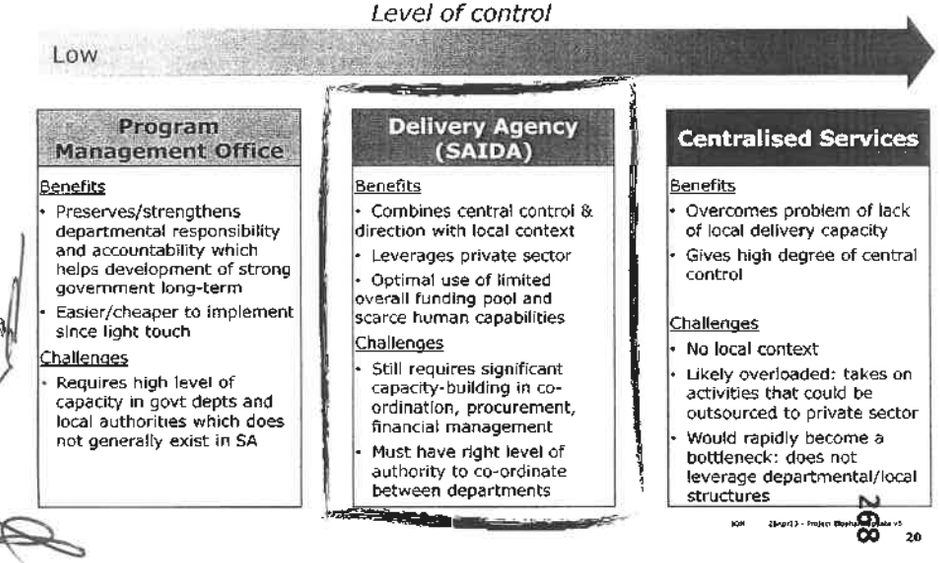
- Government owned agency (like SARS, the Hawks) with political and business leadership
- Must work across government entities to create alignment
- May be active short- or long-term

- Must contribute to process re-design of key bottlenecks e.g. contractor payments
- Must build execution capabilities in govt. departments and, where needed, execute projects directly

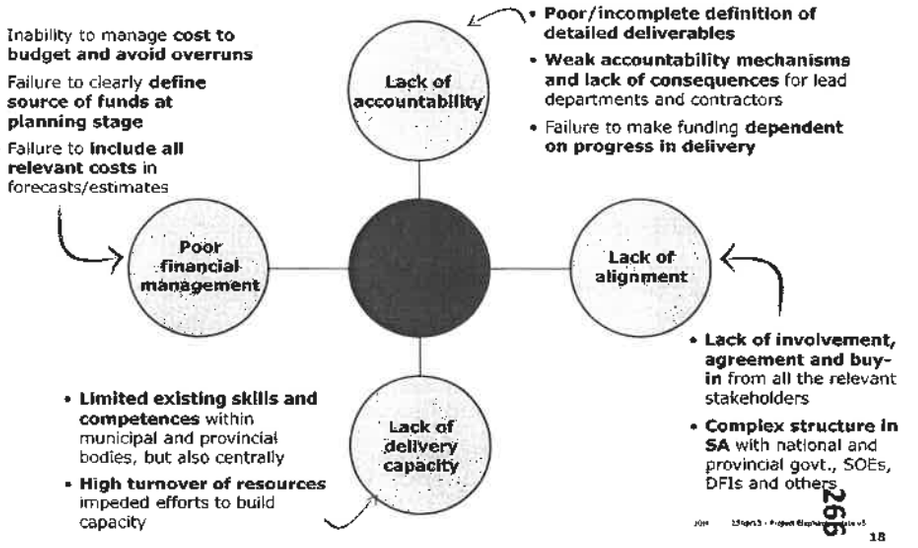
Upfront thought on costs is critical to prevent overruns near completion



Based on advantages and challenges of each, some variant of the Delivery Agency model should be pursued…



In synthesis, South Africa has four key delivery issues that are commonly seen in emerging markets



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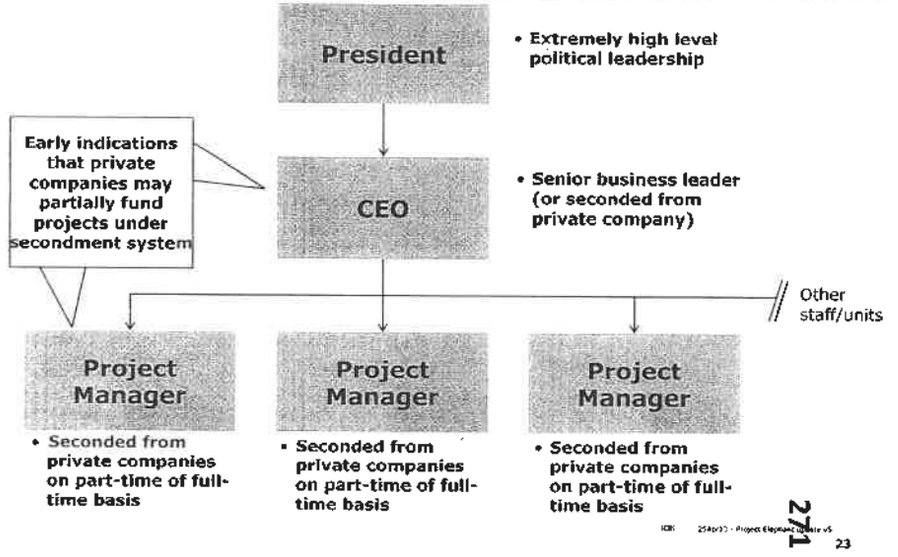
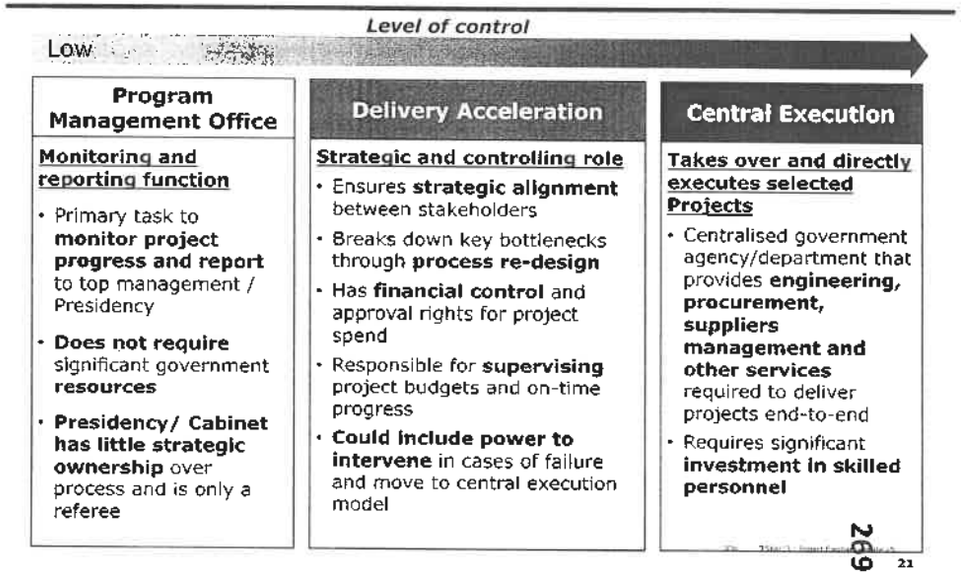
WW1-AW-340

SAIDA characteristic would be to balance political and business leadership and to involve the Private sector

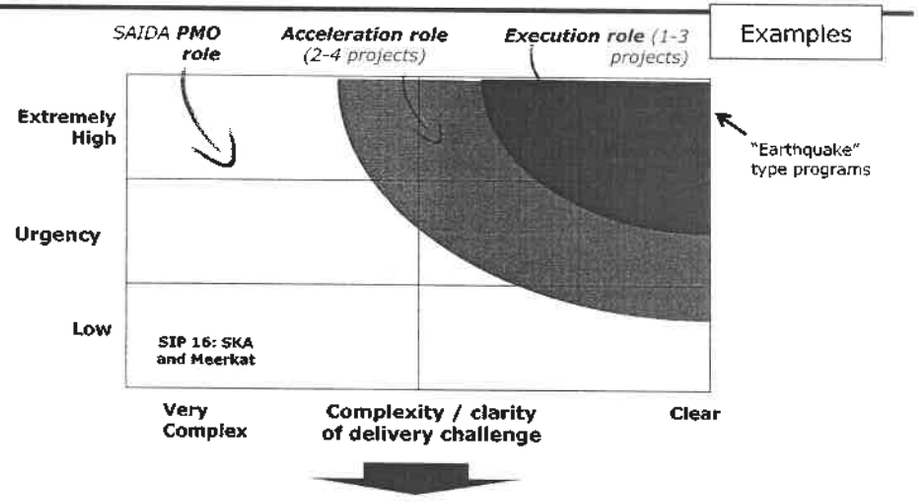


...but in with the possibility to put in place different intervention models to improve delivery....



Appendix

....based on the type of infrastructure project: urgency of the project and the clarity of what has to be done

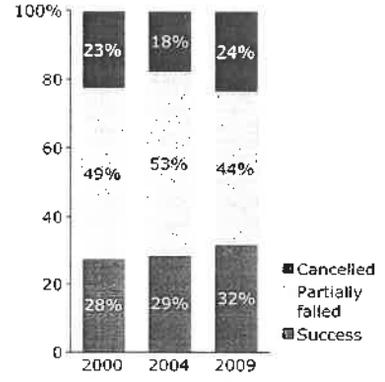


SAIDA role could apply to 3-7 selected projects maximum

SARS-01-351
WW1-AW-341

International experience shows that large projects are challenging to deliver at desired time, budget and quality

HISTORICALLY ~1 IN 3 PROJECTS MEETS TIME, COST AND QUALITY REQUIREMENTS...



... AND THIS TREND IS STILL OBSERVABLE IN GLOBAL NEWS

*"Minister disappointed with **delays in the construction** of strategic roads and infrastructure projects"*

The Times of India

*"**Substantial cost escalation** is the rule rather than the exception in **rail, fixed links and roads**"*

Aalborg University, Denmark

Note: Successful projects defined as those that fully meet all schedule, budget and quality requirements
Source: Bain Global Experience Center, Department of Development & Planning, Aalborg University; Standish Group; Factiva Search

South Africa's current infrastructure targets are significantly challenging in size and number

Presidential Infrastructure Coordinating Commission outlines 18 Strategic Integrated Projects worth R3 Trillion by 2020

SIP 1	Unlocking the northern mineral belt with Waterberg as the catalyst	SIP 7	Integrated urban space and public transport programme	SIP 13	National school build programme
SIP 2	Durban-Free State-Gauteng logistics and industrial corridor	SIP 8	Green energy in support of the South African economy	SIP 14	Higher education infrastructure
SIP 3	South-Eastern node and corridor development	SIP 9	Electricity generation to support socio-economic development	SIP 15	Expanding access to communication technology
SIP 4	Unlocking the economic opportunities in the North West Province	SIP 10	Electricity transmission and distribution for all	SIP 16	SKA & Meerkat
SIP 5	Saldanha-Northern Cape development corridor	SIP 11	Agri-logistics and rural infrastructure	SIP 17	Regional integration for African cooperation and development
SIP 6	Integrated municipal infrastructure project	SIP 12	Revitalisation of public hospitals and other health facilities	SIP 18	Water and sanitation infrastructure

Geographic SIPS
Spatial SIPS
Energy SIPS
Social Infrastructure SIPS
Knowledge SIPS
Regional SIPS
Water & Sanitation SIPS

The challenges also apply in South Africa

*"**Cost overruns** for the first phase of Transnet's new multi-product pipeline from Durban to Johannesburg have **pushed up the capital cost 146%**"*

Business Day

*"Medupi's first generating unit, planned to be on line in December 2012, has been **delayed to the second half of 2013**"*

DBSA State of SA Economic Infrastructure Report

*"The cost of Eskom's Ingula pumped storage scheme electricity project has **risen to R23.8 billion from estimates of R8.9 billion** six years ago"*

Business Day

*"**Delays expected** in the opening of the last leg of the 80 km Gautrain route **owing to uncertainty** around the roll-out of an electronic tolling system"*

Engineering News

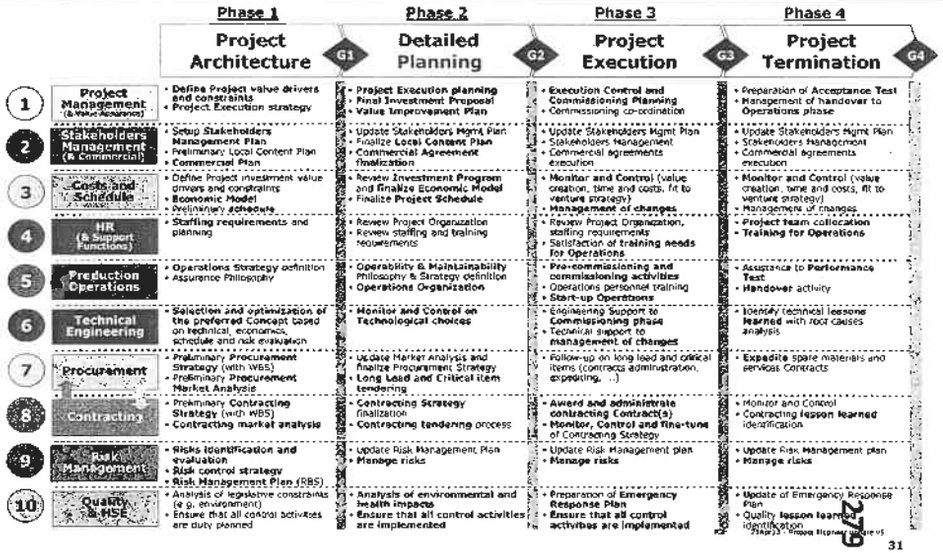
Sources: Development Bank of Southern Africa State of SA Economic Infrastructure Report 2012; Factiva Search

Possible next steps

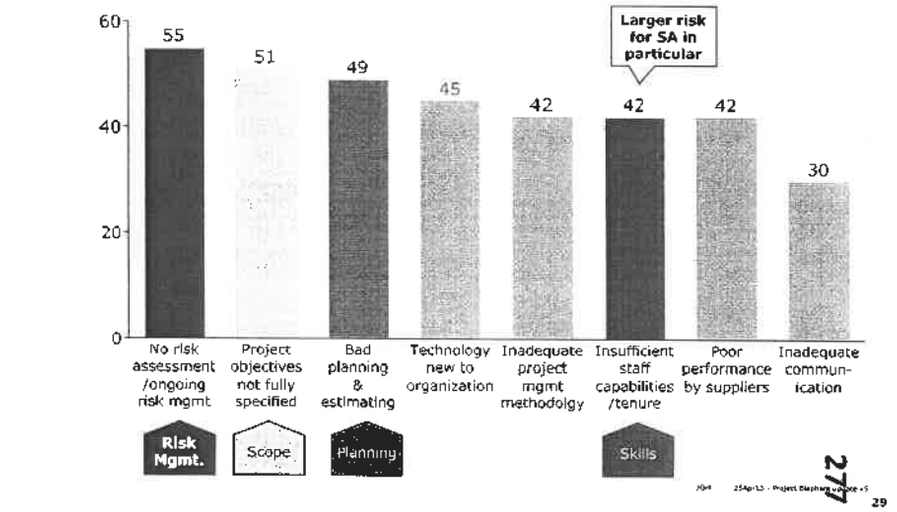
- **Clarify and agree on open issues**:
  - -Rapidly execute a list/census and a diagnostic of "strategic infrastructure projects" to understand status and root causes of non-delivery
  - -Conduct quick diagnostic of existing delivery organisations (DPW, IDT, others) to understand reasons for failure, existing capabilities, and potential synergies with SAIDA
  - -Define SAIDA in detail on several dimensions:
    - Objectives/role/powers
    - Scope of activity and required capabilities
    - Governance, processes and organisation structure
    - Public-Private collaboration model definition
    - Role in financing flows for projects
- **Launch** the creation of the Agency and initiate the activities

SARS-01-352
WW1-AW-342

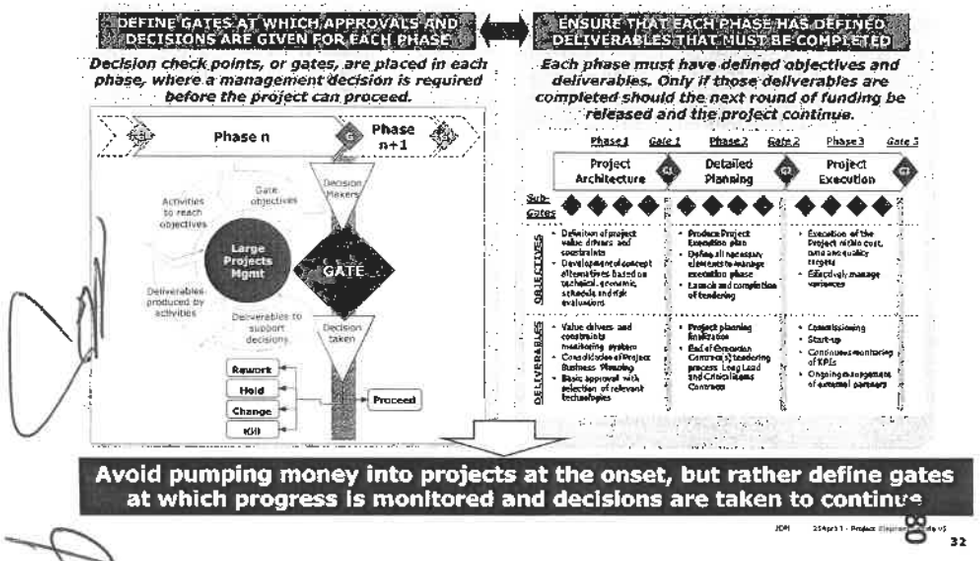
The ten capabilities required to succeed are needed in each phase of the project



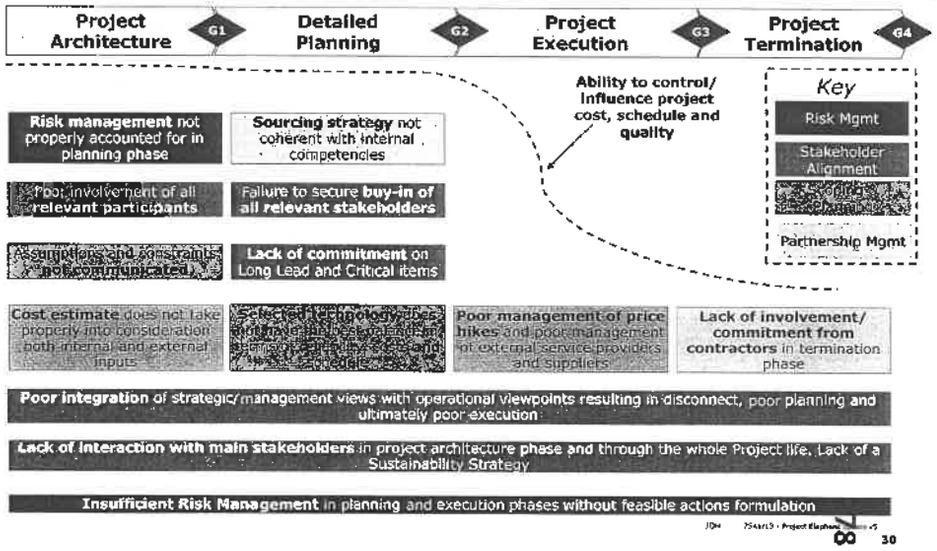
The key issues in failed international projects are poor risk assessments, scoping and planning



Taking a phased approach to projects is pivotal, with clearly defined gates at which decisions are taken



An analysis of failed international projects reveals that there are numerous common pitfalls at each project phase



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WW1-AW-343

Co-ordinating agency needs to take responsibility for the most critical areas and then leverage others for delivery

PRELIMINARY

	Co-ordinating agency	Government Departments	Provincial / Local Authorities	Private sector
Overall planning and design	✓	✓		
Individual project planning		✓	✓	
Contracting	✓	✓	✓	
Project execution			✓	✓
Financial and project monitoring	✓			

May include right to intervene directly and control project delivery on behalf of under-delivering department/SOE/private body

Care is required in designing incentives that ensure that stakeholders are always committed to the target outcome

DISINCENTIVE FOR DEVIATION FROM PLAN

- There must be a disincentive to external partners for deviating from project plan in terms of cost, schedule or quality
- The disincentive or penalty for deviation must be large enough to encourage compliance

INCENTIVE TO CONTINUE WORK EVEN IF DEVIATIONS OCCUR

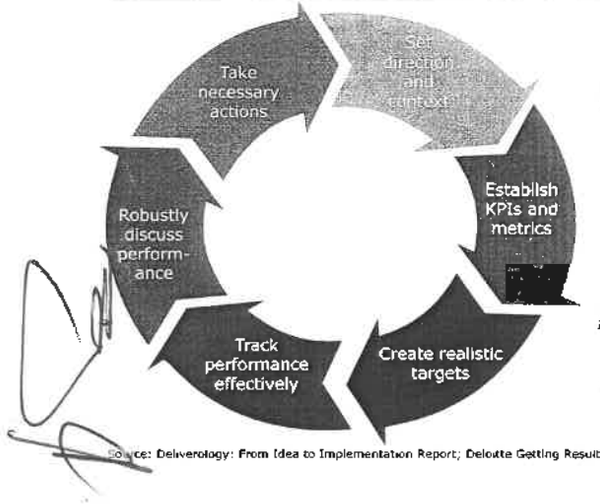
- When external partners have deviated from the plan, too large a penalty for deviating may result in the partner finding it economically unfeasible to continue working on the project

Incentives must be flexible to changing circumstances in the project and should always result in committed stakeholders

The 'Delivery Unit' concept has been applied successfully in the UK

Selected Example

THE UK CREATED THE PRIME MINISTER'S DELIVERY UNIT TO ACTIVELY SUPERVISE DELIVERY IN A CONTINUOUS CYCLE...



... AND NUMEROUS POSITIVE RESULTS HAVE BEEN OBSERVED SINCE THE CREATION OF THE DEPARTMENT IN 2001

*"The **PMDU's successes** were achieved with **clear accountability and incentives**... and performance management to the very end"*

The Guardian

*"The delivery unit offered the promise of **driving public service improvement from the centre**"*

The Observer UK

Source: Deliverology: From Idea to Implementation Report; Deloitte Getting Results in Government Report; Factiva search

Large projects require clearly defined roles and accountabilities with one person ultimately responsible

ILLUSTRATIVE

Perform | Input | Decide | Recommend | Agree

		Project Manager	Operations Manager	Procurement Manager	HR Manager	HSE Manager
Commercial	Business Development					
	Set long term strategy		D	I	R	I
	Sign off long term strategy	D	R			
	Determine priority prospects and clients		D	I	R	I
	Determine client relationship protocols[1]				D	
	Bid / no bid for major projects		D	I	R	I
	Evaluate commercial risk for bids			I	D	A
	Allocate engineering resources for bids			D	R	
	Set commercial milestones for bids				D	I
	Establish high-level technical execution strategy for bids		D		R	
	Tendering & costing					
	Establish detailed technical design for bids[3]				R	D
	Establish planning & costing for bids (up to contract)			I	D	I
	Establish detailed project plan & costing for project	D		I	I	I
	Determine contingencies, risks & margins and negotiating mandate for bids		D	I	R	I
	Define commercial conditions for negotiation mandate (e.g., pricing, timing)		D	I	I	I
	Lead negotiations within mandate (e.g., final contract / commercial terms & conditions)			I	D	A
	Final go/no-go decision on contract		D	I	I	I

Only one person holds the "D" for each decision

SARS-01-354
WW1-AW-344

...and Siyenza Manje had some project success but faced counterparty resourcing constraints

What was the intention?
- Assist in service delivery implementation by building municipal level capacity

Which elements were successful?
- Local employment of Young Professionals and Interns
  - Effective way to mobilise community and encourage skills transfer
- Focus on Policies, systems and processes
  - Built a toolkit for easy skills transfer across areas
  - Better turnaround times on approvals and implementation and better financial management

What could be improved in future Service Delivery mechanisms?
- Clear strategic scope alignment with NT; cannot operate in isolation of other initiatives
  - Leadership should not be distracted by political interference
  - Appropriate performance measurement with relevant targets agreed upfront
- Differentiation by municipality (client) type
  - Pre-entry diagnostic evaluations
  - Set up appropriate teams, systems and local manpower based on Municipal need
  - Run pilots to verify methodology
- Phase-in capacity to allow involvement from municipal resources and better exit process
  - Follow step-by-step plan to allow time for skills transfer and introduce systems
- Address lack of municipal resources and high staff turnover

Success criteria for a centre of excellence include clear scope, effective performance measurement and better differentiation by client-type

Source: DF Reporting 2010-2012; Genesis Analytics; DBSA Website

Service delivery is an ongoing concern for the shareholder

Situation
- Public Service infrastructure projects not being delivered
  - Especially in medium and under-resourced municipalities
  - DPW and IDT slow to deliver schools, hospitals, sanitation
- Projects are identified and fully funded by the fiscus
- National Treasury does not have visibility on project implementation progress
  - Currently does not intervene until funds not spent or project fails to deliver

Suspected causes
- Lack of capacity to implement at a municipal level
- Lack of project management skills
- Poor management of contractors and poor financial management

Emerging needs
- Established function within government to ensure service delivery on budgeted projects
  - Transparency and visibility of progress for the state
  - Capacity building within municipalities
  - Rigorous project, contract and financial management

Prior DBSA activities to solve this (through Siyenza Manje and government mandates) have not succeeded in unblocking overall service delivery constraints

First steps in (re-)designing a co-ordinating agency are to clarify objectives and understand why DPW/IDT failed

PRIORITISE POTENTIAL OBJECTIVES FOR CO-ORDINATING AGENCY

- *Short term implementing agency to clear the backlog*
- *Capacity-building entity for service delivery infrastructure*
- *Catalyst to ensure funds used and infrastructure delivered by the appropriate agencies*
- *Interim solution for DPW shortcomings*
- *Thought leader with input into policy and planning*

UNDERSTAND IN DETAIL THE REASONS FOR DPW/IDT FAILURE

External perspective...

- *Lack of technical skills*
- *Lack of ability to re-engineer ineffective systems e.g. payment procedure for suppliers and external service providers*
- *Poor reporting to government departments*
- *Inability to access and deliver in rural areas*
- *Poor management of external service providers and suppliers*

Basis for design of new co-ordinating agency

Previous attempts to resolve this have not been successful: IDT example...

What was the intention?
- **Development management agency** with mandate to assist government in alleviating poverty and improving quality of life of poor rural communities
- Focus on **development planning, implementation, and coordination of government programmes**

What has been achieved?
- **42% delivery** in KZN; **15% delivery** in the Eastern Cape
- Additional work in building Criminal Justice System facilities, environmental inventions, building healthcare facilities, and providing water and sanitation

What could be improved?
- **Poor results** reporting to government stakeholders
  - Have not met expectations in providing specifics of activities / projects completed
- **Inability to manage and work with contractors**
  - Poor quality management
  - Slow payment to service providers
  - Incorrect upfront estimation of costs
  - Overloading of contractors
- **Inability to access and deliver in rural locations**

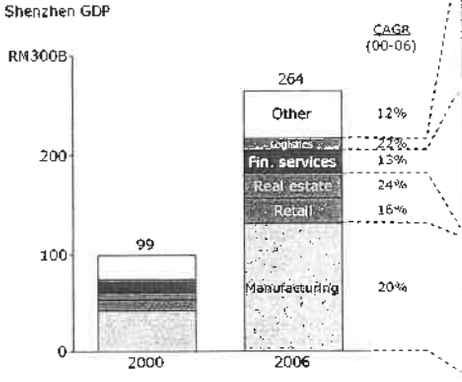
State-funded implementation agencies are problematic without rigorous reporting of deliverables and tracking of budgets

Source: IDT website, Eradication of Mud Schools and other inappropriate structures: IDT briefing, April 2012

SARS-01-355
WW1-AW-345

Shenzhen: Clearly defined pillar industries and friendly regulations to boost growth

*"Shenzhen has built a new industrial infrastructure, with **high-tech manufacturing as its base and modern tertiary industry as its backbone.**"*
Shenzhen Government



Source: Shenzhen Government Website; Shenzhen Bureau of Trade and Industry, Shenzhen Statistical Year 2007; Business Alert China

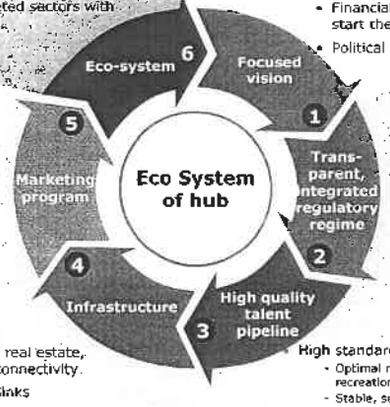
Illustrative initiatives in pillar industries

- **Logistics**
  - 103B Yuan allocated for development in **logistic facilities and related infrastructures** till 2020
  - Deployed 3.2B Yuan for the **constitution of a project bank for logistic park developments** (cumulative planned area of 22.5 square km)
- **Financial Services**
  - Implementation of **favourable policies** for the financial sector and **agreements with HK** on capital mobility
  - **Shenzhen stock exchange** – 738 companies listed as of Apr 2009
  - Strong **incentives** (including cash bonuses and tax exemption) for the **establishment of foreign banks**
- **High-tech manufacturing**
  - **Development of 14 Industrial/University parks** with sub-sector specialization
  - **China high-tech fair** – first high-tech exhibition in China for extension and number of companies involved
  - Strong **incentives** (e.g. reduction of corporate/income taxes, exemption from trade tariffs) **for foreign investors**

Clear vision driving infrastructure and industry development in Economic Zones

- Geographic proximity to "real" economies, same time zone. Tight cultural or linguistic ties to nearby economic markets
- Network of eco-system for targeted sectors with supporting services, etc.

- Prioritized sectors and value adding activity based on 'natural advantage'
- Critical mass of expertise with specialisation
- Financial investments in "catalysts" to kick-start the industry
- Political support and commitment



- Clearly articulated value proposition
- Aggressive and effective investment agency with media/PR campaign
- Coordinated effort to attract global 'anchor tenants'
- Coordinated, interagency approach

- Well governed jurisdiction with sound legal institutions, low levels of corruption
- Attractive framework for incentives, taxation, profit repatriation
- Regulatory framework up to international standards
- One point of contact with regulator

- Grade 'A' commercial real estate, energy, telecom, IT connectivity
- Good transportation links

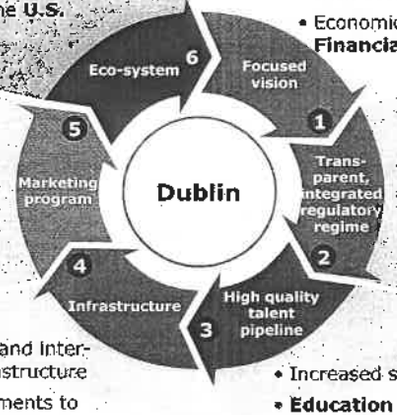
- High standard of living, quality of life
  - Optimal residential housing, education, healthcare, recreation
  - Stable, secure and open society
  - Low personal taxes
- "Best in class" education for target sectors

Source: Bain analysis, based on benchmarking of hubs worldwide

Dublin: Engine of the Irish economy

- **Proximity to EU**, enabling easy **access** to the EU **economy**
- Tight **cultural ties** to the **U.S.**

- Dublin City as the heart of the Dublin region and engine of the Irish economy
- Economic focus: **International Financial Services Centre**



- Industrial Development Agency (IDA) **aggressively promoting inward investments**

- **Low** corporate **taxes** (12.5%)
- Special **tax concessions**
- Stable and **effective regulatory** environment

- Established intra- and inter-city transport infrastructure
- Continuous investments to develop a world-class transport system

- Increased spend on **higher education**
- **Education** system **aligned with industry** needs

Source: Bain analysis, based on benchmarking of hubs worldwide

Shenzhen: A vibrant logistics, manufacturing and financial services hub

Strong relationship & collaboration with Hong Kong

- **Cross boundary infrastructure projects**
- **Technology exchanges**

3 Pillar Industries promoted by Shenzhen government:

- **Logistics**
- **Financial Services**
- **High-tech manufacturing**

- **High-tech exhibitions**
- Top in China for number of **international patents**
- **International status** with **>30 MNCs** setting up procurement, R&D, or regional headquarters

- **Favourable policies** for the financial sector
- **Agreements** with Hong Kong on **capital mobility**
- **Incentives** (cash, tax, tariffs) for foreign banks and investors

- Development of **logistics facilities** and related **infrastructures**
- **14 Industrial/University parks**

- **>270,000 experts** brought in from overseas since 1985
- **>1.67M professionals** today
- **Student exchanges** with Hong Kong

Source: Bain analysis, based on benchmarking of hubs worldwide

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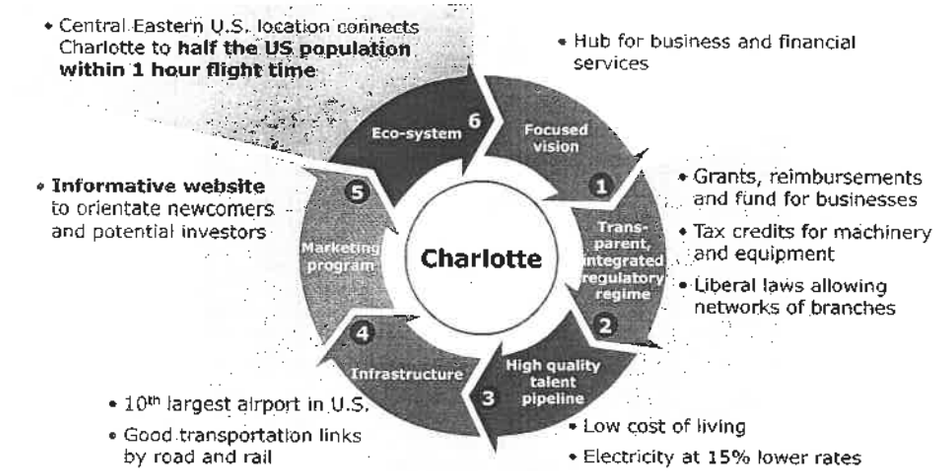
WW1-AW-346

Charlotte: A national and international financial center



Source: Bain analysis, based on benchmarking of hubs worldwide

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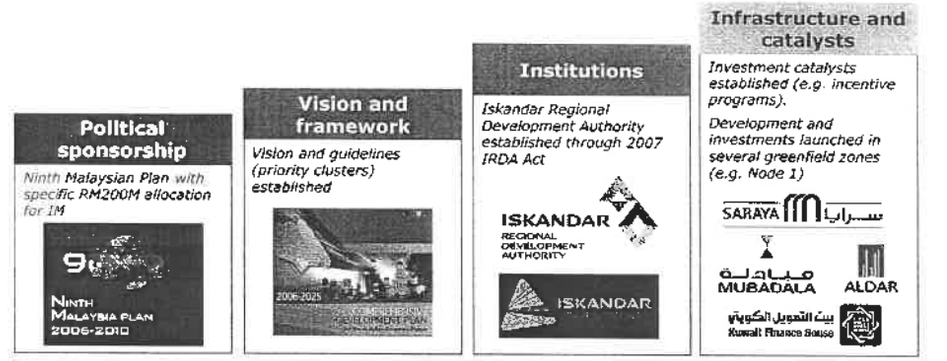
Iskandar Malaysia: Strong momentum established, Financial Services a key pillar



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ANNEXURE "AW59"

SARS-01-359

Project Phoenix:
Reshaping South African economy

August 4th 2013

Telkom

There has been substantial progress on Project Phoenix

- Chairman and new Board appointed end of 2013 (still 2 members to be appointed)
- New CEO started April 1st
- New Minister appointed and DG reconfirmed in her role
- Some very important actions and decisions have been immediately taken
  - Agreement with the Competition Commission
  - Clean-up of the Balance Sheet (impairment test)
  - Agreement with most important Union
  - Launch of 7 task forces to improve performance on cost and customer experience
  - Meetings with DoC with strong signs of interest and informal buy-in
- Some others will happen in the next few months
  - Approval of the new strategic direction
  - Redesign of the organisation structure and renewal of the leadership team
  - Concluding agreement with ICASA on termination rates

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Objectives today

- Give an update on Project Phoenix status
- Reconfirm the long term vision, ambition and targets for South Africa
- Share a few very important success factors for the Project

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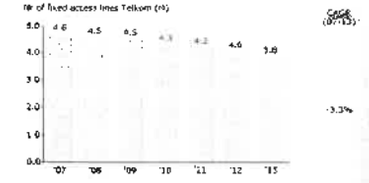
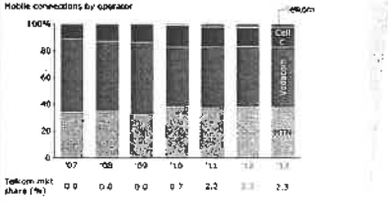
The situation in Telkom is worse than expected and requires a rapid and decisive turn-around process

OPERATIONAL INDICATORS ARE CONSISTENTLY UNDERPERFORMING...

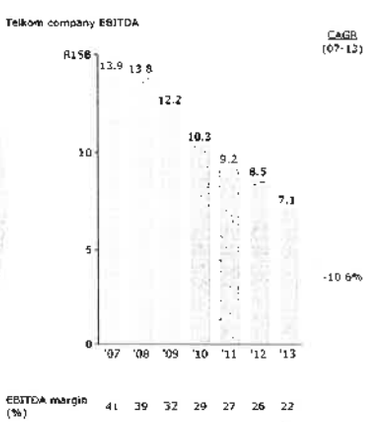
Telkom faces a declining base of fixed access lines



Telkom struggles to gain market share in consolidated mobile market



...RESULTING IN A CONSTANT DECLINE IN PROFITABILITY



Note: EBITDA restated for 2009 and before
Source: Telkom annual report 2013

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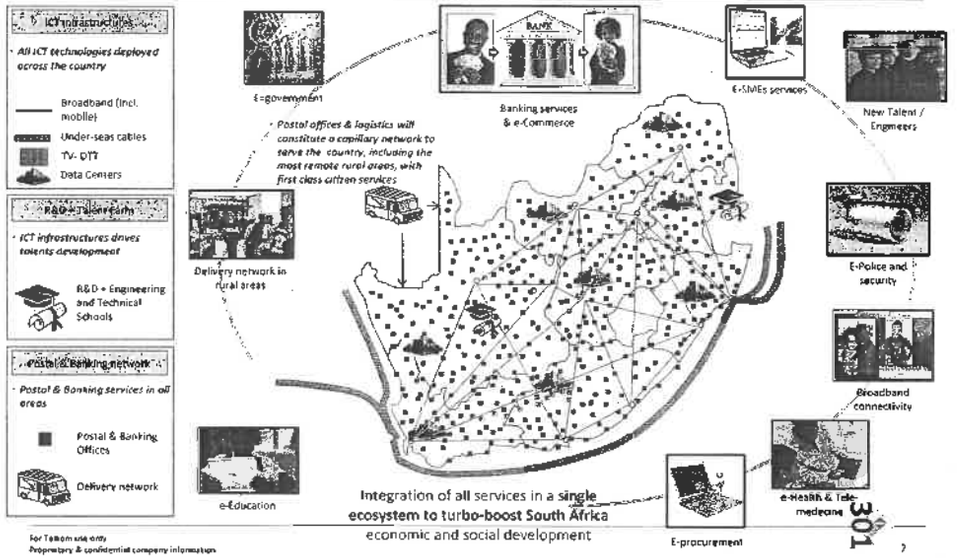
AWS9

WW1-AW-349

We are confirming the overall vision and ambition - we will provide South Africa with first class infrastructure, services and e-government network



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- Reconfirm the long term vision, ambition and targets for South Africa
- Share a few very important success factors for the Project

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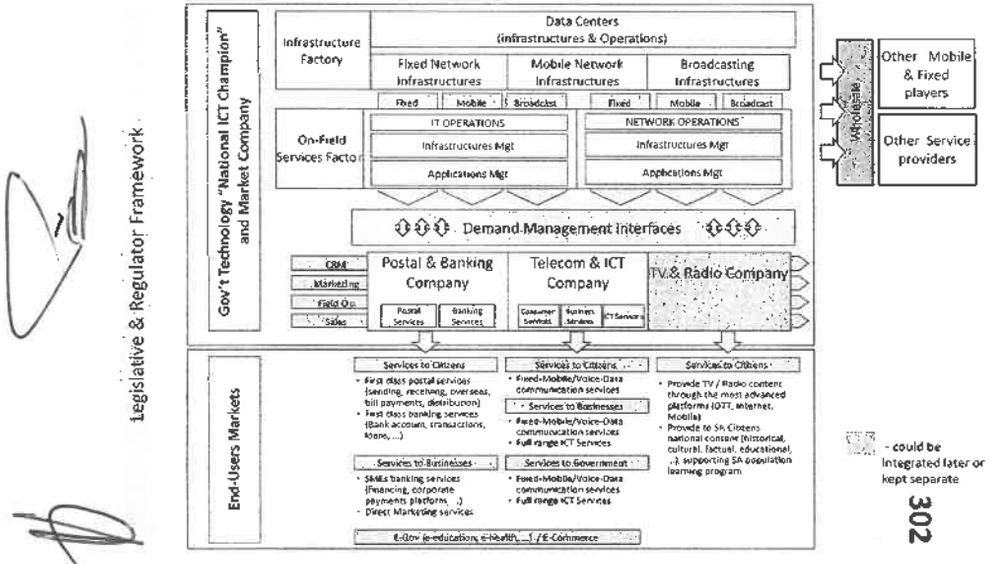
We are confirming the overall vision and ambition – operating model



We are confirming the overall vision and ambition – supporting Government in the elimination of poverty and reduction of inequality by 2030

South Africa's Vision for 2030 is to eliminate poverty and reduce inequality by growing the economy, increasing social cohesion and improving government effectiveness

Scalable, future-proof, high-speed **broadband is a critical enabler of "Vision 2030"**

Broadband enhances government ability to **provide services...**

- E-services examples include **e-health, e-education, e-security and e-government**
- E-services
  - Improve **quality of service** delivery
  - **Increase remote access** to services
  - **Reduce costs** to serve
  - **Bring down the cost of living for every SA citizen by reducing costs to the user (e.g. lower transport costs)**
  - **Increases accountability & feedback loops**
  - **Increase coordination** and innovation amongst stakeholders within these sectors

...and **improves the life of citizens**

- It address geospatial challenges
  - Works on decreasing **apartheid induced space challenges between citizens throughout SA**
  - **Links SA citizens and institutions to the rest of the world** to accelerate SA development
  - Places SA as a **leading country in the other developing nations**
- Broadband
  - **Accelerates economic growth**
  - **Creates jobs**
  - **Enables healthier and safer communities**
  - **Eventually saves people time and money**

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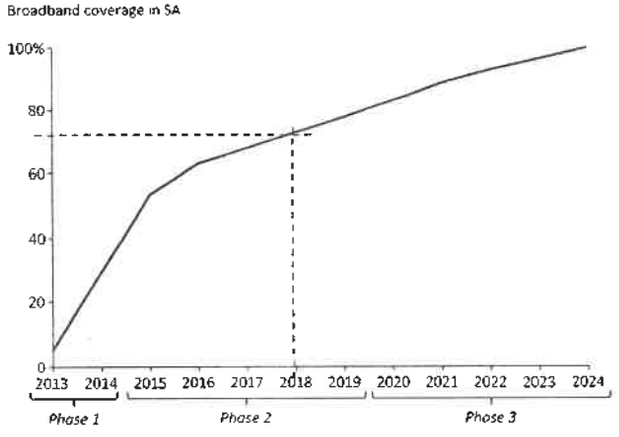
The current project is aiming at covering ~75% of the population with broadband in the next 5 years, reaching 100% by 2024



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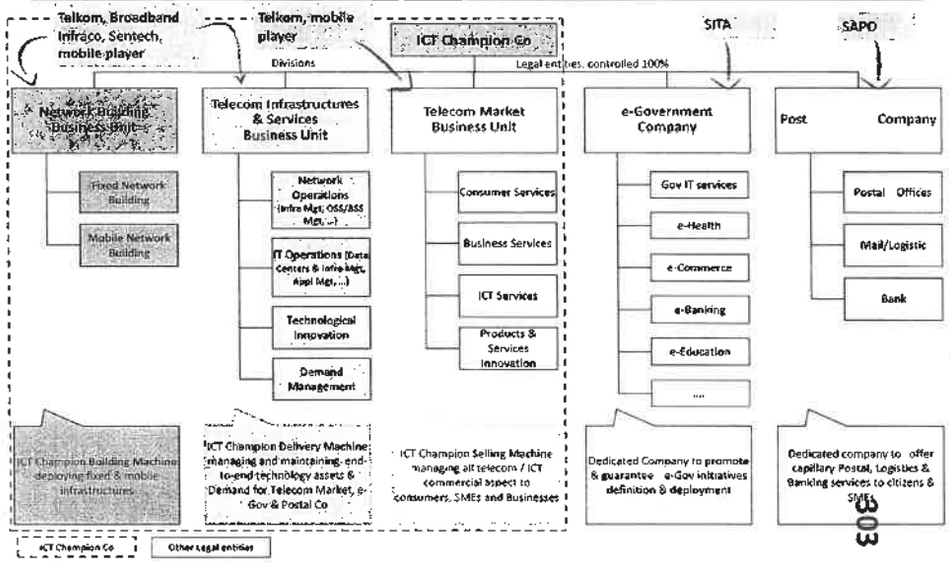
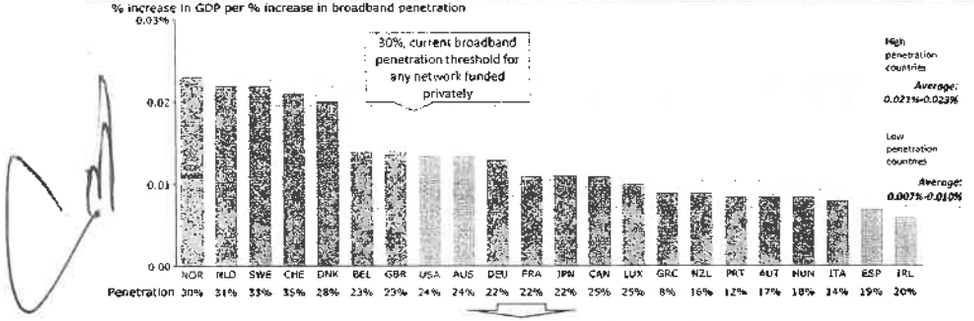
We are confirming the overall ambition and point of arrival – Simplified organization structure



We expect the National Broadband Plan to have a **accelerating factor on SA economy resulting in GDP uplift...**



- There is a **direct correlation between increasing Broadband penetration and GDP growth**
- The **accelerated GDP growth** is driven by:
  - creation of **ICT infrastructure**, technology-driven **productivity gains**, growing **employment** (direct & indirect), and increasing **consumer surplus**
- **Broadband impact on GDP increases as its overall penetration increases – up to R150B for SA over the next 10 years**
  - In countries with **high broadband penetration** (over 30%), the impact of a 1 per cent increase in adoption of Broadband results in a **direct growth of GDP of 0.022%**
  - In countries with **low broadband penetration** (less than 20% & where SA is today), the impact of **1% increase in adoption results** in only **0.008% growth of GDP**

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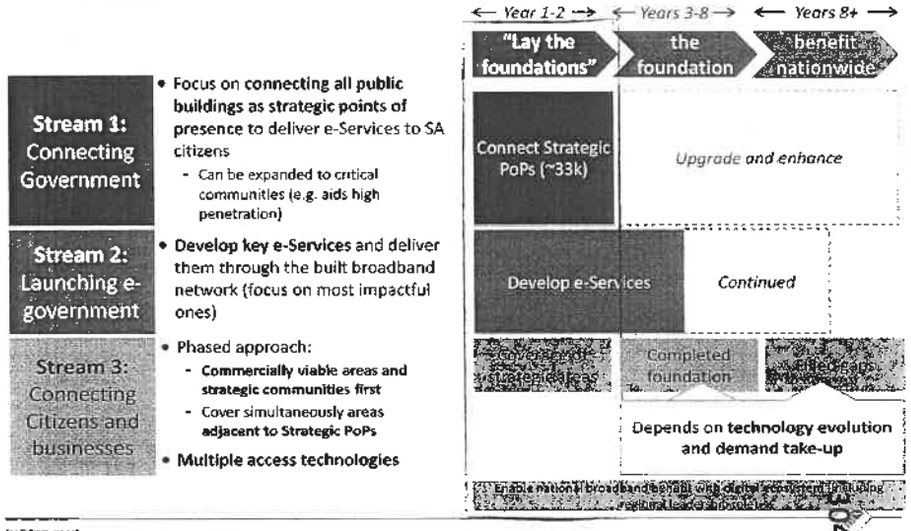
Source: *Impact of Broadband on the Economy*, ITU 2012

The project is expected to tackle 3 streams over the next 10 years; **most critical phase over the next 2 years**



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WW1-AW-351

Key success factors

1. **Giving Telkom the formal mandate to become the National ICT Champion** and introduce appropriate Governance and coordination mechanisms
   - "In-house" provider for Government
   - Consolidation of other related players for higher efficiency (Sita, Infraco, Sentech,..)
   - Coordination with local entities, to avoid duplications
2. **Providing adequate short and long term funding for the Project**, with a stable funding model
3. **Facilitating the joint venture with a mobile operator**
4. **Introducing a few important Regulatory changes**, to create a more competitive market structure and provide Telkom with the necessary "oxygen" to execute on the Turn-around
5. **Defining the Leadership and Governance of the very complex E-government Project**
   - Civil Service?

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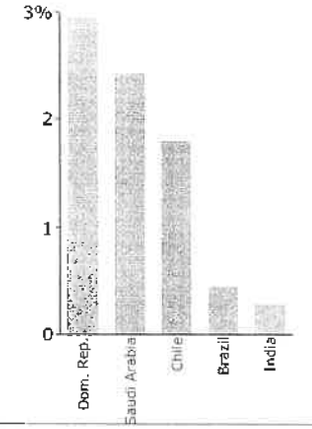
... and **acceleration in job creation**

LESS DEVELOPED COUNTRIES ENJOY GREATER EMPLOYMENT BENEFITS

Impact on employment from 10% increase in Broadband penetration



JOBS ARE CREATED IN MULTIPLE INDUSTRIES

- **Increasing the broadband penetration creates jobs:**
  - **Directly** – for broadband network creation and operation, e.g. construction workers, technicians, equipment manufacturing, etc.
  - **Indirectly** – for example, increased ability for upstream buying and selling within the metal and electrical industries
  - Through **inducement** – from increased household spending as a result of additional income generated from direct and indirect employment
- **For every 10% increase in broadband penetration, we might yield 30.000 – 40.000 additional SA jobs, directly and indirectly, in the next 5-7 years** (based on benchmarks)

Source: Academic reports

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1. Giving Telkom the formal mandate to become the National ICT Champion

- Affirm **Telkom as National ICT Champion** with Telkom as
  - The **delivery vehicle of choice** for national broadband (in-house)
  - Government's **broadband solution planning partner**
  - A **collaborator** with government to prioritise delivery of broadband to certain verticals (e.g. health and education)

- Ensure **coordination of local and provincial authorities**
  - Halt municipality construction of networks to prevent duplication of efforts
- Ensure **coordination across state departments** to ensure delivery of services to citizens

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Objectives today

- Give an update on Project Phoenix status
- Reconfirm the long term vision, ambition and targets for South Africa
- Share a few very important success factors for the Project

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SARS-01-362
WW1-AW-352

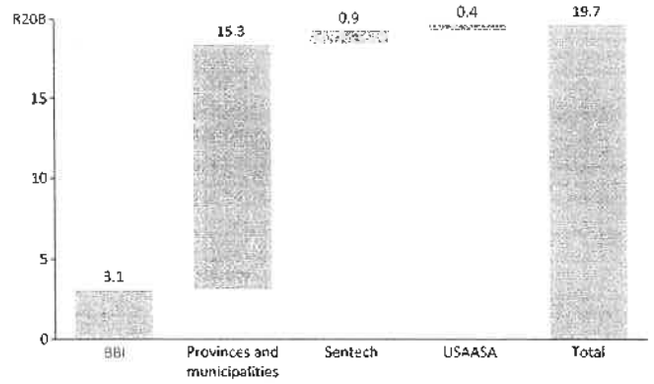
1. 3 options to realise e-Services within South Africa ICT champion

Higher complexity to realize, but also higher efficiency and effectiveness – Possible evolution path

Optimise individual processes with each ministry	Integrate all services with separate lines of accountabilities	Full integration
• ICT champion would **coordinate each e-Service independently** • Each service to be **optimised on its own** - No common database - Separate purchasing agreements • **Some interoperability** to be foreseen	• **Overarching IT structure/architecture** feeding into one common database • Every ministry to **retain ownership of its service**	• **Full integration** of all services under the ICT champion - **One common national repository database** for all - **Aggregation of purchasing agreements** across all services

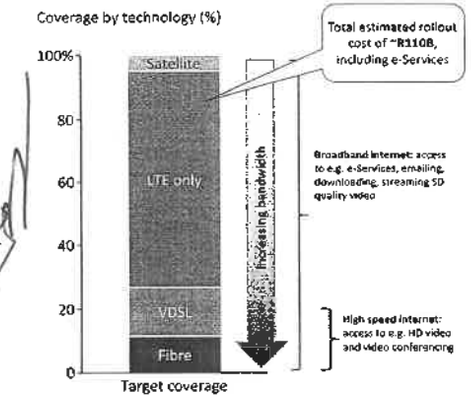
1. Coordination mechanisms will avoid duplication of existing Telecoms infrastructure

Announced and planned spend on Telecoms infrastructure over 2012-17

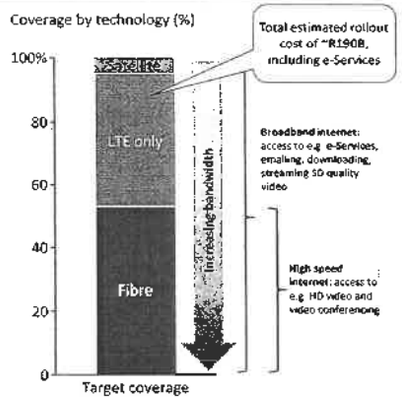


2. The current scenario forecast R110B total capital investments – an alternative scenario with more fibre deployed to households would require R190B

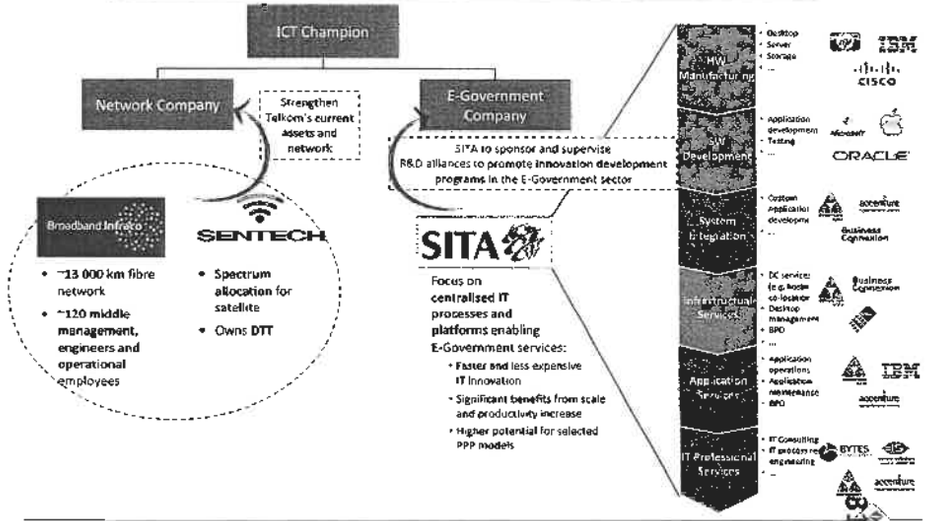
CURRENT SCENARIO: AFFORDABLE WITH 30% OF SOUTH AFRICAN CONNECTED VIA FIXED NETWORK



FIBRE SCENARIO: MORE SOUTH AFRICANS CONNECTED WITH FIBRE BUT HIGHER CAPITAL INVESTMENTS REQUIRED



1. Consolidation of other related players (SITA, Broad Band Infraco, Sentech,..) will drive higher efficiency



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4. Introducing a few important Regulatory changes

	CRITICAL/URGENT FOR SURVIVAL	CRITICAL TO START BUILDING THE NETWORK NEXT YEAR	OTHER IMPORTANT REQUIREMENTS
Inter-governmental coordination		• Re-align the business plans and mandates of SOEs to prevent competition with Telkom for network mgmt i.e. BBI, CSIR/Meraka • Integrated purchasing of government ICT	• Prevent overlap with municipalities & provinces (may require legislative change) • National e-government services strategy
Reduce costs	• Modify termination rates to end mobile operators subsidy by Telkom	• Provide oversight to ensure that local municipalities issue servitudes and way-leaves expeditiously and without charging fees	• No fees for both access and backhaul spectrum for bands used by S'PoPs
Access to spectrum		• Guaranteed & expedited access to part of the Digital Dividend for S'PoPs connection	
Protection of investment	• Forbearance on LLU		
Provide funding		• Long term purchase contracts • Indirect end user & device subsidies	• Direct funding for uneconomic areas • Indirect end user & device subsidies
National Standards		• Create national standards, automate application processes for issuance of way-leaves across all municipalities	• Define a standard for broadband speeds (e.g. 2Mbps) to assist with broadband coverage mapping

2. Providing adequate short and long term funding for the Project, with a stable funding model

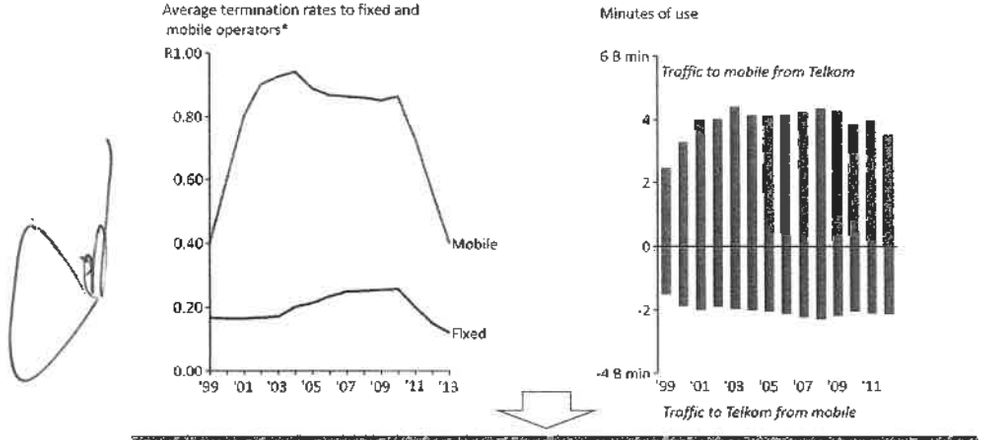
DIRECT GRANT	GOVERNMENT AS CUSTOMER OF BROADBAND SERVICES
• Presumably via National Treasury / DoC	• Through line Ministry's (preferably with long term purchase commitments)

• Both approaches fund national broadband and lower the **cost of broadband**, and a **combination thereof will likely be used**

Results achieved for and services provided to Government

• **Service** to government departments
• **Coverage** (the ability to serve)
• **Lower broadband unit pricing**
• A **more financially sustainable Telkom**

4. Need for immediate action on MTR - Asymmetrical and unfair termination rates despite higher traffic from Telkom to mobile operators for the past 15 years



>R 50 B subsidy paid by Telkom (fixed line) to mobile operators over the past 15 years

* Based on real minutes consumption (average between peak and off-peak)
Source: Telkom Interconnection Statistics, Call Termination Regulations (Government Gazette)

3. Facilitating the joint venture with a mobile operator

Options for Telkom to fix Mobile

Exit	Organic/ stand-alone	Partner			Inorganic/ M&A
		MVNO	Network JV	Full JV	
• Sell Sapphire • AND/OR wind down operations (e.g., shops) • Reposition /simplify around fixed-centric services and assets	• Leverage fixed customers and network assets • Initial focus on winning enterprise / SME share • Selectively grow Consumer – possibly combine with fixed consumer	• Sell off Sapphire spectrum and network • Strike attractive wholesale deal with MNO (multiple variants) • Initial focus on Enterprise/ SME?	• Joint build and operate 4G and 3G network with Amber or Cell C • Reinvest network cost savings to grow customer value share	• Combine Sapphire and Cell C or Amber • (Variants) – separate or integrated go to market • Potential for right to buy out / sell out	• Acquire another MNO, most likely MTN or Cell C • Deliver superior mobile data and lowest unit cost (via spectrum) • Out-invest to gain customer value share

A number of different players will critical to enable this project
- Government/Cabinet as a shareholder
- Minister of communication
- Mobile operator counterpart
- ICASA
- Competition commission

SARS-01-364
WW1-AW-354

National broadband will deliver first rate government services: education

	E-EDUCATION FOR ALL	E-TEXTBOOKS FOR A LIMITLESS SYLLABUS	E-LIBRARIES FOR RESEARCH & COMMS
Current situation			
	• Less engaged students with limited resources	• Delays and costs in shipping textbooks	• Traditional libraries falling into disrepair and not updated
Potential impact of Broad-band			
	• Access to top teachers and wide variety of courses	• Instantaneous downloads • Syllabus not constrained by textbook availability	• Access to content rich encyclopaedias • Way for gvt to reach citizens

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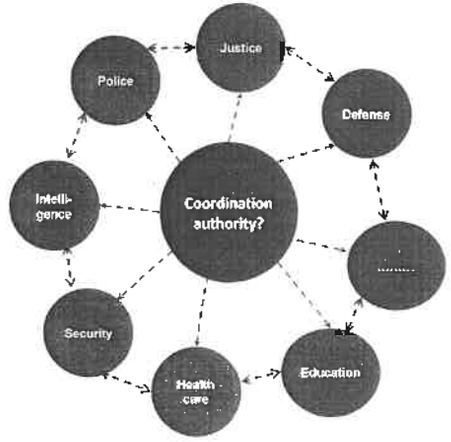
5. Defining the Leadership and Governance of the very complex E-government Project

- The E-government project is **extremely complex for its size** and the number of actors involved
- It requires specific and adequate **Leadership and Governance**
  - Strategy and ambition
  - Design and budgeting
  - Planning and prioritisation
  - Capabilities and talent acquisition
  - Execution/Results delivery
  - Procurement mechanisms
  - ....



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National broadband will deliver first rate government services: healthcare

	E-DIAGNOSIS FROM LOCAL LOCATION	E-MONITORING FOR CONTINUAL CARE	HIGHER DOCTOR-PATIENT RATIOS
Current situation			
	• Wasted travel, as patients unsure which hospitals can cater for their disease, can lead to death	• Patients struggle to monitor disease as clinics overwhelmed, far-out and not equipped	• Doctors overwhelmed by number of patients in public hospitals
Potential impact of Broad-band			
	• Saves travel for rural dwellers • Better use of resources as doctors & equipment centralised	• Particularly important for HIV and chronic suffers; can be monitored from home or post office	• Less patients as many treated remotely via e-diagnosis • Improved medical record management

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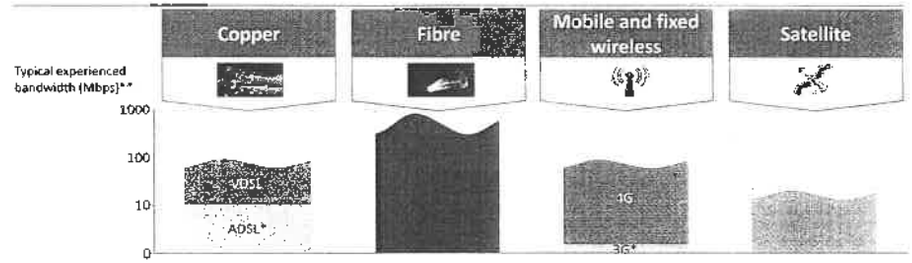
Choice of access technology for a given area will vary



	Copper	Fibre	Mobile and fixed wireless	Satellite
Pros	• Cost-efficient technology to deliver high-speed broadband to dense areas where copper network is deployed	• Highly future-proof solution • Low operating costs barely depending on bandwidth usage	• Provision of good throughput catering for most medium term needs	• No link to backbone required • Furthest reach of all technologies
Cons	• Subject to copper thefts • Expensive operating costs	• High capital investment	• Not sufficient for video intensive application • Potential high upgrade cost to increase network density	• High per-user cost
Target area	Existing dense copper areas	Dense areas with above-average income level and/or no copper	Outside dense areas and wherever demand is not congesting network	Deep rural and very low density areas

* ADSL and 3G legacy technology, not considered scalable or future-proof
** Function of speed and aggregated usage

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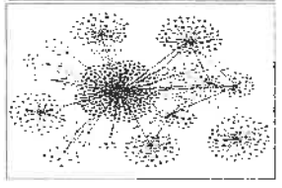
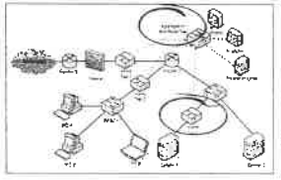
National broadband will deliver first rate government services: security

	IMPROVED BORDER & STREET SECURITY	IMPROVED NATIONAL E-SECURITY	MORE POLICE TIME ON THE GROUND
Current situation			
	• More illegal immigrants and street crime	• Multiple networks with differing levels of security increases vulnerability	• Significant time on admin and tracking info that could be centralised
Potential impact of Broad-band			
	• More eyes-in-the sky and real-time pattern recognition analysis	• Government can monitor activity on the network preventing crime and sabotage	• More time spent preventing crime as data process is automated and centralised

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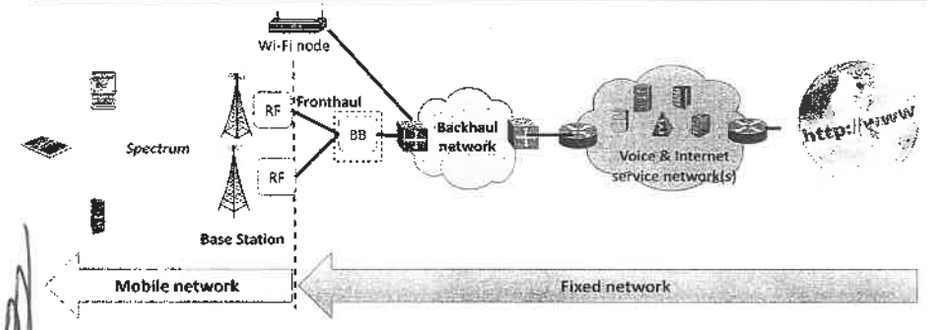
Mobile networks are predominantly fixed



- All networks are fixed however the mode of access is often wireless
- All mobile operators have investments in fixed networks; however the upgrading of networks to cope with high speed broadband requires more investments in fibre to the base station.
- All mobiles and major ISP's use some of Telkom's fixed infrastructure.

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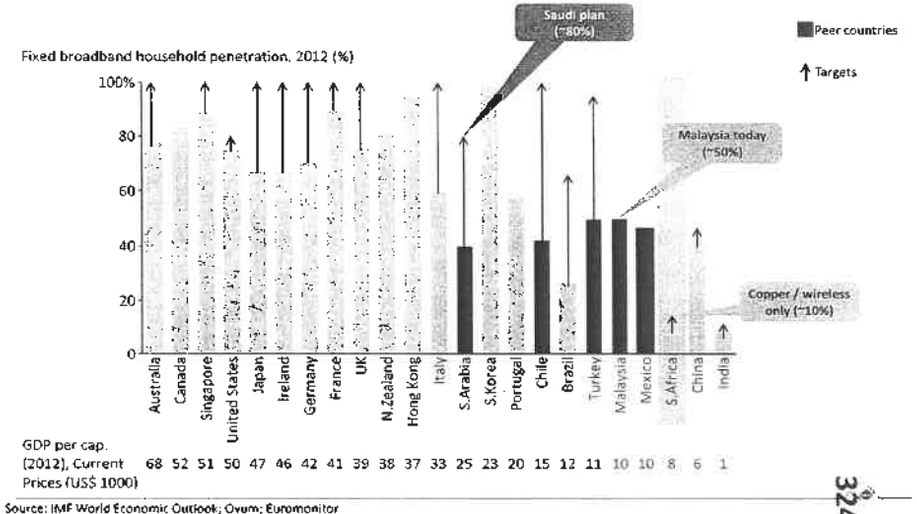
South Africa lags behind in fixed broadband penetration, and many peers have strong ambitions for the future



Source: IMF World Economic Outlook; Ovum; Euromonitor

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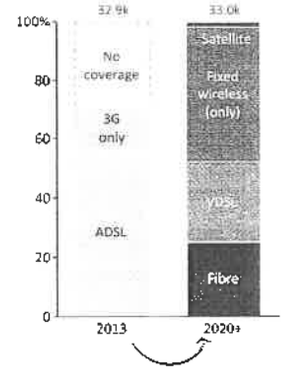
WW1-AW-356

National Broadband plan to **increase reach and speed** of current South Africa broadband coverage

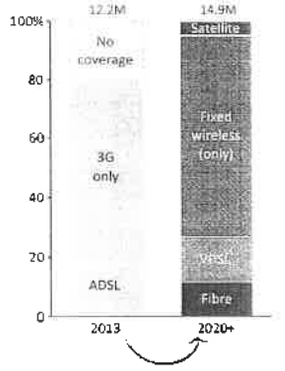
Strategic Points of Presence

Coverage by technology (%)



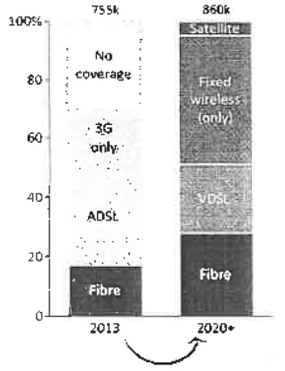
Formal Dwellings

Coverage by technology (%)



Businesses

Coverage by technology (%)



rage. if exchange area is ADSL enabled; VDSL coverage: if street cal
Fibre coverage: if fibre is rolled out to street level, 3G (and in 2020: LTE) coverage also includes areas with xDSL and/or Fibre

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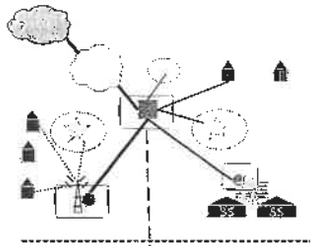
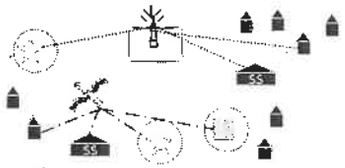
Visualization of network roll-out

MSAN = Multi Service Access Nodes
VSDL = Very High Speed DSL i.e. 20Mbps @ 1.2km and 40Mbps @ 600m

S'POPs utilizing Telkom's current infrastructure



S'POPs outside of Telkom's copper footprint



- As per fixed line HSBB coverage requirements ...
  - Exchanges and street distribution cabinets will be upgraded to fibre backhaul
  - Exchanges will have DSLAMs upgraded to MSAN's – enabling VDSL and Fibre to the Home
  - New street distribution cabinets will be installed housing remove MSAN's
- Where feasible Telkom will install SDC's with a 15m mobile mast with radio equipment.
- Alternatively Telkom will rent space upon other mobile mast, construct our own mobile masts or upgrade our infrastructure (e.g. DECT mast)
- In areas outside of Telkom's exchange footprint, Telkom will consider whether a terrestrial wireless or satellite solution is most appropriate to connect SPOPs'
- In the case of terrestrial wireless, Telkom will consider whether it is cost effective to connect the mast to our regional/ local fibre network; or instead use microwave backhaul (Telkom has extensive capacity)
- Telkom will install multiple radio technologies on mobile masts:
  - Mobile 3G
  - Fixed wireless LTE (using 100MHz spectrum in 2.3GHz)
  - Digital Dividend mobile LTE
- Telkom will connect S'POPs via the most appropriate technology for their needs – as per government design
- The same will be done for commercially viable households and businesses
- Telkom will install public WiFi hotspots using available copper and fibre infrastructure in taxi ranks, bus & train stations – in addition to those at SPOP's & commercial areas
- Telkom will install direct satellite to a SPOP or home where it makes sense
- Telkom will install mobile ICT Hubs in areas outside Telkom's copper footprint

Legend: Exchange, SDC, Wireless tower, S'POP, Household, Business, Migration / upgrade, Public Wifi hotspot, Area passed with fibre, ICT Hub

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Options – illustration for Sapphire/Amber partnering

PRELIMINARY

	MVNO	NETWORK JV	FULL JV
Description	• Sell mobile network and spectrum to Amber • Variant – minority % in Amber to avoid spectrum divestures • Focus on fixing consumer sales and marketing (still)	• Create 50/50 active RAN share • Focus on fixing consumer sales and marketing (still)	• Amber takes mobile and consumer fixed • Focus on business and wholesale full potential • #1 /#2 "Integrated player" shareholder
Value levers:	• Stop TM cash burn • Limited ability to disrupt voice (subject to pricing) • Use 1800 to get Tx	• Disrupt voice for BB/converged • R3B+/- mobile capex/opex avoidance • Use 1800 to get Tx	• Disrupt voice for BB/converged • Use 1800 to get Tx (largest wholesale customer) • Mobile network synergies
Assets:	• Contribute 1800 and active RAN assets and operations to Amber /JV • Get Amber transmission, DFA • Variant – retain mobile passive infra	• Joint owner of active RAN operating co • Get Amber transmission • Variant – we get passive mobile infra, Amber takes active RAN	• Amber gets mobile network • We retain ownership of fixed last mile • Amber "leases" IP access/BB • Amber takes access field ops • Amber takes billing/care

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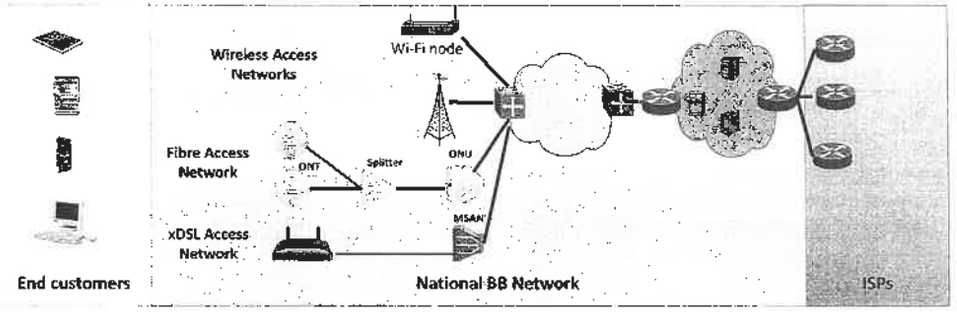
Customers of all networks will be part of the National Broadband Network



Telkom interconnects with all providers

- Telkom provides open access to the customers of any ISP, all customers, regardless of the network they are on, will have access to the NBN

Telkom as the mobile network wholesale service provider

- Telkom's network will provide Layer 2 or Layer 3 backhaul access to our network from mobile base stations in the vicinity High Speed Broadband nodes to mobiles who elect Telkom to be their backhaul provider.
- Telkom will provide dark fibre front haul access between the BaseBand and RF radio units.
- Mobile operators will benefit from lower prices due to government funding of Telkom's backhaul networks in rural areas

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WW1-AW-357

Options – illustration for Sapphire/Amber partnering

PRELIMINARY

	MVNO	NETWORK JV	FULL JV
Feasibility of winning with model - Complexity - Capabilities - Regulation	• Competition review if Amber consolidates (esp. spectrum) • Need to address consumer sales/marketing capabilities standalone	• Competition review if Amber consolidates (esp. spectrum) • Need to address consumer sales/marketing capabilities standalone	• Competition review if Amber consolidates (esp. spectrum) • Complexity driver is "PMI" – • Permits focus on business/infra capabilities • Increased coordination costs
Impact on value creation: - Consumer - Business - Wholesale - Core/fixed - Other	• No disruptive voice; few/any levers to drive BB differentially • Stops mobile cash burn • Still use 1800 as leverage	• Disrupt voice for BB/converged • Risk if roaming terms opened to 3rd parties	• Disrupt voice for BB/converged
Impact on NBP: - Fixed BB - Wireless - Other	• No infra to offer rural LTE coverage	• Role in wireless rural LTE unclear • Telkom retention of passive infra and spectrum may offset	• Role in wireless rural LTE unclear • Telkom retention of passive infra and spectrum may offset

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E-Services are expected to **provide benefits that will play a significant role in transforming South Africa** and delivering its vision for 2030

Central Population Registry

- Repository of information on all citizens: **unique ID number associated with large amounts of demographic and biometric data** incl. name, birth date and place, gender, finger prints, eye colour, current address, etc.
- **Foundation to support other central information systems** e.g. voting registry, e-health, police and security, etc.
- **Leverage / build on existing plan to issue citizens with new Smart ID Cards** that have fingerprint biometrics and biographic data embedded in card chip

E-Health

- **Lower cost of care** through increased provider **productivity** and improved **health system planning**
- **Improved quality of care** and **reduced travel and wait times**
- **Healthcare reaching rural parts of SA** that historically had limited access to healthcare
- **Platform for National Health Insurance (NHI)**

E-Education

- **Timely access to top teachers and course content** for all pupils and students equally
- Creation of **employment opportunities** (new industry to be crafted)
- **Increased motivation** for both students and teachers

E-Government

- **Efficiency and cost reduction** in government service delivery
- **Empowerment and efficiency** for public servants
- **Improved capacity** of government
- **Increased citizen participation** in democratic processes
- **Greater transparency and accountability**

E-Security / Police / Justice

- Increased **monitoring of inflow and outflow** of **people**, animals and goods at borders
- **Greater community safety**

E-services are interconnected and underpinned by central population registry

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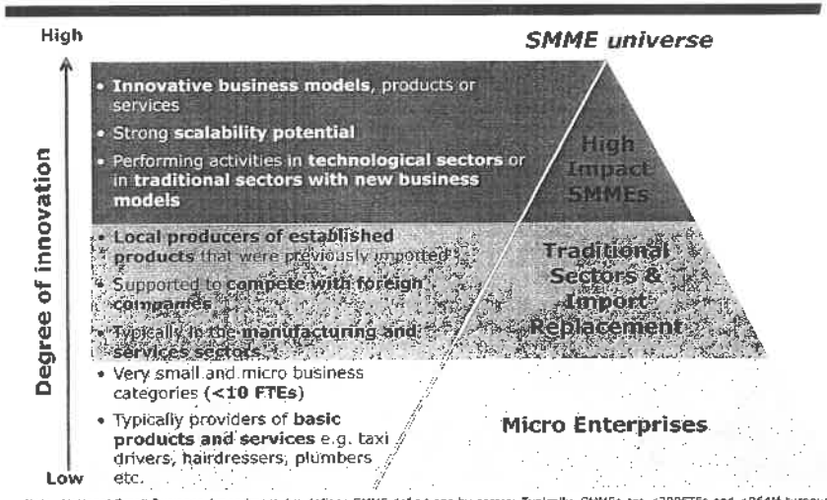
SARS-01-368
WW1-AW-358

ANNEXURE "AW60"

SARS-01-370

There are **three main types of SMMEs**



Note: National Small Business Amendment Act defines SMME definitions by sector; Typically, SMMEs are <200FTEs and <R64M turnover
Source: The Banking Association of South Africa, Bain Global Experience Centre

Developing the SMME Sector

Discussion Document

22 May 2014

DRAFT

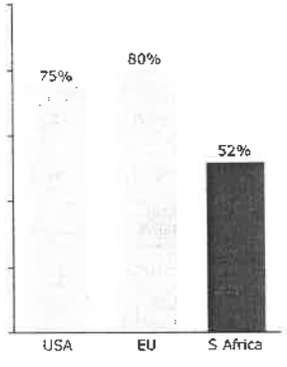
SMMEs represent the **overwhelming majority of jobs** and play a **fundamental role in job creation**

SMMES ACCOUNT FOR THE MOST AMOUNT OF JOBS...

Employment by size class

... AND THE MAJORITY OF NET JOB CREATION

Share of SMEs in net job creation



Note: * Emerging Market
Source: The Kauffman foundation; Small Business Act for Europe 2008; OECD 2009 report (2006 figures); Africa Journal of Business Management (2010)

Summary

- Based on the latest election results, there is an indication that there must be a major shift in the debate around the **integration of youth in job creation and entrepreneurship development** (youth are 73% of unemployed population)
- Globally, Small Medium Micro Enterprises (SMMEs) are the **main driver of job creation and a catalyst for economic growth** (SMMEs represent 75% of jobs in emerging markets)
- **South Africa has an under-developed SMME sector** when compared to both Emerging Economies and Developed Economies:
  - The SMME sector contributes to **disproportionately small share to GDP**
  - South Africa has a significantly **lower rate of people starting new companies**
  - Those that do start have a **significantly lower chance of developing into an established business**
- **The key obstacles blocking the development** of the sector are:
  - The **lack of a known, established coordinating entity** that manages the full SMME ecosystem
  - The **regulatory burden** that differentially impacts SMMEs (including labour law inflexibility)
  - The lack of **access to funding**, knowledge and the supporting **entrepreneurial incubators**
  - **The lack of skilled human capital and artisanal training,** constrained by public sector education standards
  - **Poor public perceptions** towards entrepreneurship career (perception of lack of opportunity/capability) and **lack of role models**
- There are a number of potential **actions required to address this pressing opportunity:**
  - Create a Ministry with task to coordinate the full SMME ecosystem
  - Review the **regulatory framework** to differentiate between large business and SMMEs
  - **Develop effective entrepreneurial incubators** by creating a tech incubators that provide support, infrastructure and mentoring e.g. one related to Telkom/Phoenix for technology sector
  - Revitalize existing institutions that provide **funding** and **expert support** to SMMEs (SEFA, NYDA)
  - **Provide fiscal incentives** (e.g. tax breaks) to private companies that incubate entrepreneurs and procure from local SMMEs
  - **Promote entrepreneurial education** in the school curriculum and publically celebrate success stories to drive culture change

AW60

WW1-AW-360

Countries that have succeeded in developing their SMME sector have adopted a comprehensive approach

EXAMPLES	France	Germany	South Korea
Strategy & framework setting	• A dedicated **SMMEs Ministry** • Law passed to reduce risks for entrepreneurs in case of bankruptcy	• SMME policy developed by **the Federal government and the Landers**	• A **dedicated** entity (**SMBA**) promoting SMMEs with several **SME & VC-friendly policies** • Exchange for **SMMEs**
Entrepreneur-ship education & culture	• Integration of **entrepreneurship courses** in most higher education institutions	• Several initiatives at regional level to promote entrepreneurship among **students and job seekers**	• Several SMBA **initiatives** to promote entrepreneurship (**clubs, graduate school, courses** etc.)
Training & support	• Public subsidies to **training and coaching programs to entrepreneurs**	• PRO INNO programs, developed to **increase R&D cooperation between SMMEs and scientists**	• Wide array of **training** services through SMBA: **SMME training center, industrial training,** etc.
Business incubation services	• Various **incubators** attached to universities • Active network of **Chambers of Commerce** providing advisory support to SMMEs	• Active support to **promote German SMMEs internationally**, through the National Fair program	• SMBA supports **incubators** operated by universities and research institutes • SMBA **promotes SMME exports** through overseas exhibitions
Access to finance	• Provision of **equity capital** to SMMEs via CDC • Provision of **SMME loans & guarantees** through OSEO	• Many programs providing **funding to SMMEs**, through KfW Mittelstand • **VC funding** through HTG, a public / private fund	• Provision of capital to SMMEs by public and private sector through **investment funds and VC funds**

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Several constraints are hindering the development of entrepreneurship in South Africa

Regulatory /legal constraints	"Compliance costs represent **8.3% cent of turnover** for enterprises with annual sales of less than R1 million, and 0.2% of turnover for corporations with sales of R1 billion or more" Counting the cost of red tape, Mata data report
Access to finance and supporting entrepreneurial ecosystem	"Smaller firm tended to view a **lack of finance as the key problem. 19% of firms** employing fewer than 21 people named this as the most important inhibitor, as did 13% of those in firms with between 21 and 30 employees" SMME growth index report 2013, SBP research
Lack of both managerial and technical human skill	"**18% of firms** mentioned the **lack of skilled labour as a key challenge**. Missing skills include: language/communication, maths, computer, sales & marketing, financial and general life skills" SMME growth index report 2013, SBP research
Poor public perceptions	"South Africa currently offers many new and exciting opportunities for entrepreneurs. However, in order to capitalise on these opportunities, the country's **entrepreneurial spirit needs to be both promoted and encouraged amongst the public**" Kobus Engelbrecht, Marketing Head at Sanlam

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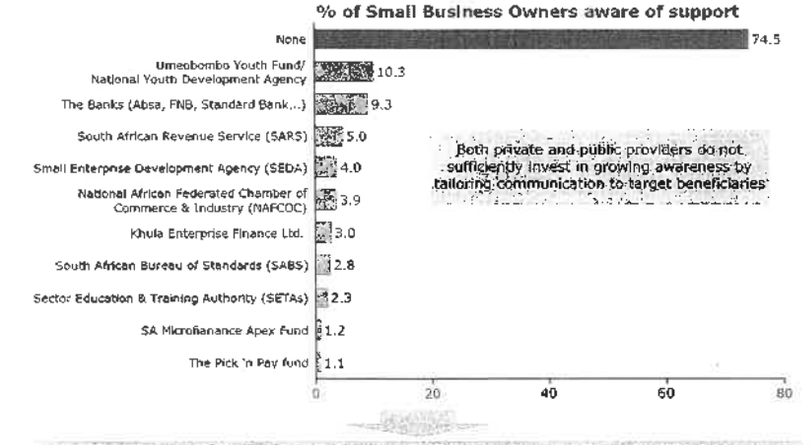
South Africa requires a **broad set of actions to revitalize its SMME sector**

FOR DISCUSSION

Strategy & framework setting	• Create a **Ministry with task to coordinate the full SMME ecosystem** • Update business regulation to **differentiate between large business and the various categories of SMMEs in polices** including, labour and taxation
Entrepreneur-ship education & culture	• Introduce entrepreneurship into **secondary school curricula** • Develop **artisanal and vocational colleges**, leveraging global best practices • Publicly **celebrate success stories** through the GCIS and media
Training & support	• Provide fiscal incentives, such as tax breaks, to companies that provide **training and coaching programmes to entrepreneurs**
Business incubation services	• Develop **effective entrepreneurial incubators** by creating a tech incubators that provide support, infrastructure and mentoring e.g. one related to Telkom/Phoenix for technology sector • Revitalize **existing institutions** that provide expert support and funding to SMMEs (SEFA, NYDA) • Accelerate development of **Special Economic Zones** and Industrial Parks
Access to finance	• Provide fiscal and/or BEE incentives to companies that move their **procurement** from foreign players to South African SMMEs • Promote private sector financing through breaks on capital gains tax for **angel investors, seed investors and venture capital funds** • Review limits on **pension fund and PIC investment in venture funds** • Continue to develop the **Small Enterprise Finance Agency**

385

Many initiatives have been launched but beyond their effectiveness, **awareness levels are very low**



Awareness of existing support can be increased by establishing a visible, dedicated center for small business support

Source: Finscope, South African Small Business Survey, 2010

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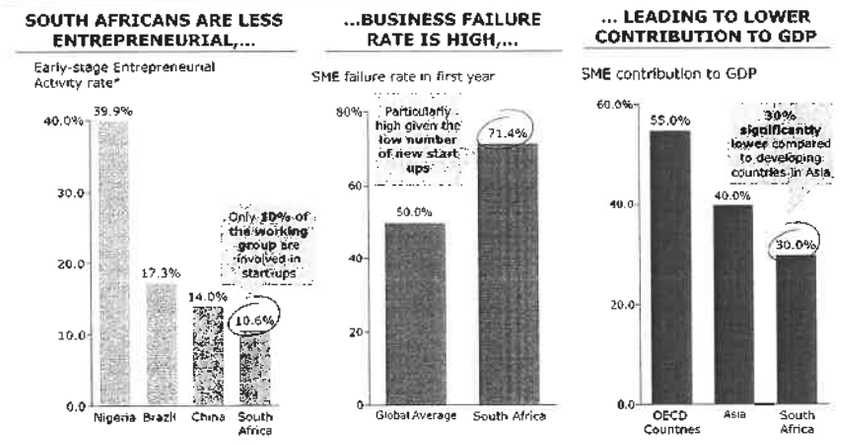
WW1-AW-361

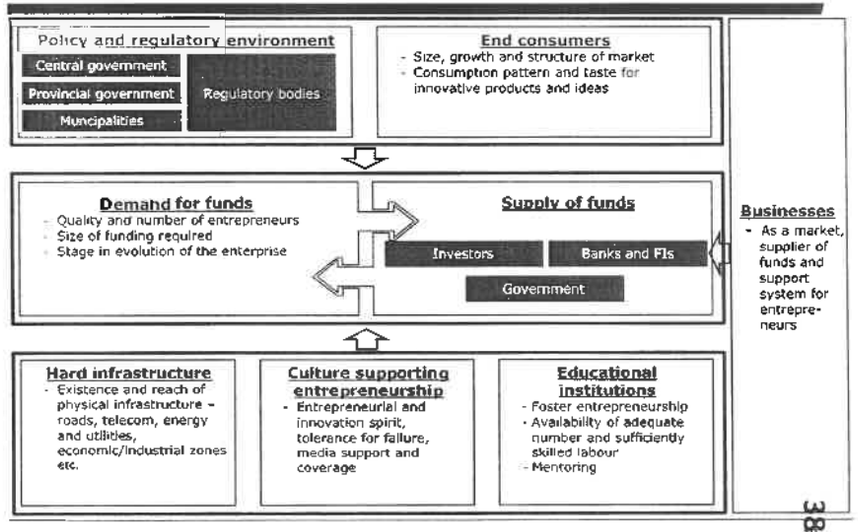
SMME sector is under-developed in South Africa



Note: Early-stage Entrepreneurial Activity (TEA) rate is defined as the prevalence rate of individuals in the working age population who are actively involved in business start-ups, either in the phase in advance of the birth of the firm (nascent entrepreneurs), or the phase spanning 42 months after the birth of the firm
Source: Global Entrepreneurship Monitor 2013 report, DTI, Growing the global economy through SMMEs report: R Davies, 2013

Appendix

The **entrepreneurial ecosystem**



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ANNEXURE "AW61"

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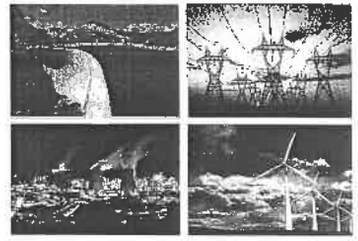


Sirius Program – reshaping South Africa's Energy sector

Discussion document

June 2014

PRELIMINARY **FOR DISCUSSION**

Objectives of the document

- **Summarize Sirius Program**: long term vision, ambition, investments and targets for South Africa

- Discuss **key elements of the energy sector transformation**
  - Transform Eskom into best-in-class utility to drive sector development
  - Solve short and medium term energy capacity/ mix challenge
  - Redefine energy ecosystem/ governance and rationalise distribution

- Propose key **next steps** and process going forward

Sirius program: re-shaping South Africa's Energy sector

- South Africa requires **sufficient, sustainable and cheap energy to fuel its development and guarantee its independence**
- **Current situation** of energy sector in South Africa presents **major challenges** and **extreme risks** in terms of security of supply and economic impact
  - **Complex energy ecosystem**, with many - often misaligned – stakeholders (Ministries, Regulator, Players)
  - Eskom inefficiency and **low productivity levels** (also due to low investments in the 20 past years)
  - **Severe delays and budget overruns** on crucial energy generation projects (Medupi/Kusile)
  - Fragmented and inefficient electricity **distribution**
- To achieve ambition, the **energy sector should be fundamentally reshaped** by
  - **Transforming Eskom into a best-in class utility** to drive SA's energy sector development and develop Sub-Saharan Africa role (National Champion)
  - **Solving short and medium term energy capacity/ mix challenge** (Coal 3, Inga hydro, shale gas, nuclear)
  - **Redefining energy ecosystem and its governance** and **rationalising distribution**
  - **Sufficient funding should be provided** to allow NDP 5.4% growth target: preliminary estimate of **R330B 5-year investment** (50% in generation) to be partially funded by future cash flows

Sirius program aims to completely restructure and transform the energy sector

FOR DISCUSSION

Vision: Sufficient, sustainable and cheap energy that fuels SA's development and guarantees its independence

Goals / key metrics	GW supply, energy unserved time, % of citizens electrified, price, country classification, % of domestic resources used in mix, GHG, [illegible]			
Strategic outcome	① **Transform Eskom into best-in-class utility to drive sector development**	② **Solve short and medium term energy capacity/ mix challenge**	③ **Redefine energy ecosystem/ governance and rationalise distribution**	④ **Further long term expansion**
Key Priorities	• **New leadership** in place with vision/plan aligned with Government goals • Provide **immediate funding** to remedy historical underinvestment • Execute **Eskom's turnaround** • **Solve Medupi/ Kusile** (this is a **national security** matter)	• Invest **in short term capacity** (Coal 3, Inga hydro) • Create a **national champion to aggressively pursue shale gas** (JV between Eskom and PetroSA, potentially Sasol) • Launch **nuclear development** to complement shale gas resources	• Redefine **energy ecosystem** and its governance, incl. – Ministry of Energy and DPE – Central Energy Fund – PetroSA • **Structure distribution network** (Eskom and municipalities) to generate efficiencies of scale and support electrification goals	• Assess introduction of **private competition in generation** • Spin-off **transmission** but maintain state ownership • Further expand in **Sub-Saharan Africa** (SSA)
Key enablers	Policy and regulatory evolution Funding & resourcing (incl. private sector participation) Organisation and human capital			

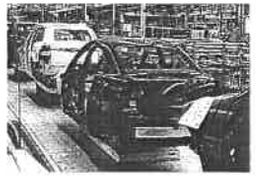
WW1-AW-364

Reshaping South Africa's energy sector will be **transformational**

Growth and job creation

- **Direct job creation from the development of the sector** (e.g. design, construction, maintenance and operation jobs)
- **GDP growth and indirect job creation** enabled by stable power supply and low energy costs

Industrialization

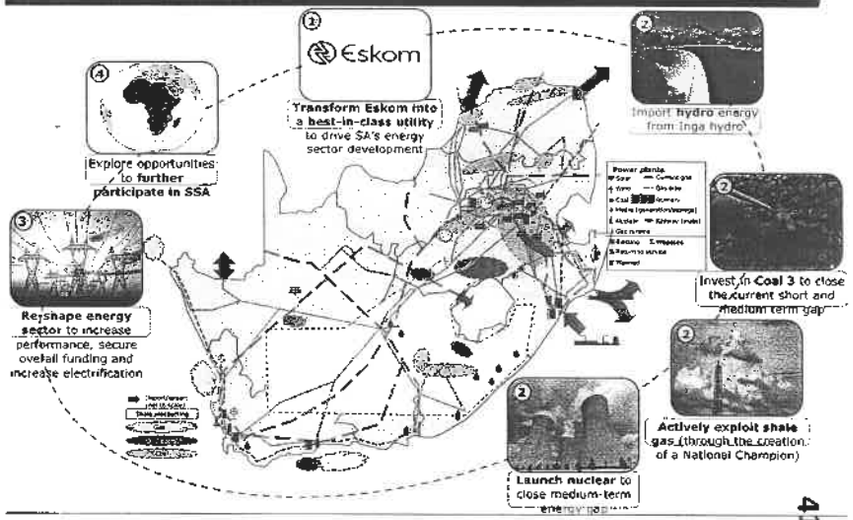


- **Increased FDIs** and **development of the industrialized sector** for which a sufficient and stable power supply is a prerequisite
- **Increased competitiveness and beneficiation** thanks to availability of affordable electricity

Socio-economic benefits

- Increased electrification of the country and **improvements in service delivery** impacting the livelihoods of citizens
  - Improved living comfort, improved security, better learning conditions, health, IT access, ...

Vision: reshaped energy sector with sustainable energy generation mix and efficient distribution PRELIMINARY



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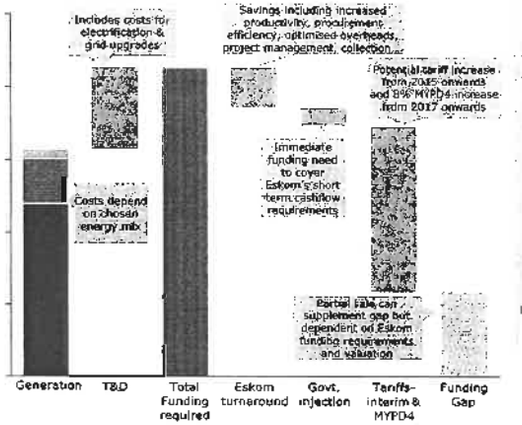
Significant investments are required in the energy sector for major returns

FOR DISCUSSION ILLUSTRATIVE

Energy funding requirements & options (2014-2025)*



- Sufficient funding of the energy sector will have a **positive GDP impact**:
  - **~R330B needed over the next 5 years** (Further long term investments in generation highly dependent on shale gas potential and future mix)
  - Allows achievement of NDP **GDP growth target of 5.4%**
  - **Prevents load shedding** (estimated negative impact of 2.5% GDP for one day/month of load shedding)**

Note: *Funding excludes completion of current build program and maintenance of existing generation facilities; **HSRC, 2008
Source: Comesa, Miningmx, IRP 2010, Eskom 2012 final integrated results; HSRC 2008; Bain analysis

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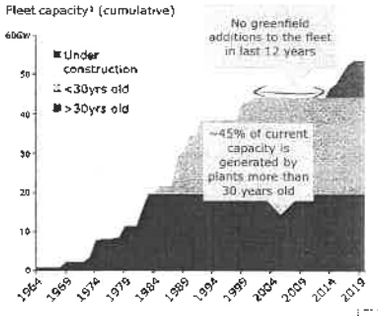
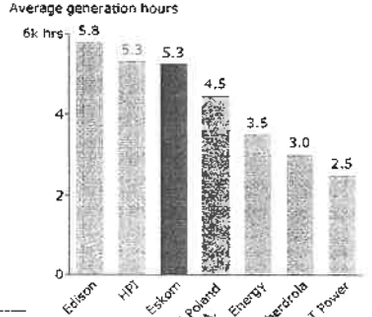
Eskom is running an **old fleet** at **high utilization levels**

Eskom

ESKOM HAS AN AGING GENERATION FLEET...



...WITH HIGH UTILIZATION LEVELS



Running Eskom's older fleet at higher utilisation is putting strain on scheduled maintenance, resulting in more unscheduled stops and in increasing operating costs

Note: [1]capacity includes plants that were previously decommissioned
Source: Eskom Annual and Interim Reports, Company websites and reports

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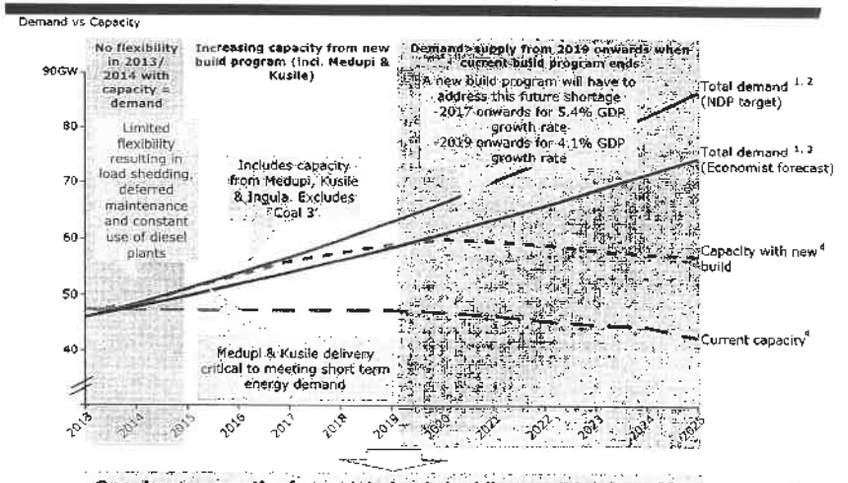
Energy **generation capacity is currently insufficient**, and likely to remain stretched



One day per month of complete load shedding would reduce GDP by 2.5% points

Note: [1]Demand includes 15% contingency over base demand, 0% SAPP supply, base demand forecast to increase at GDP growth rate; [2]Scenario based on The Economist average growth forecast for SA of 4.1% between 2014 and 2025; [3]Includes decommissioning of older plants
Source: I3 research, Eskom Annual and Interim Report; IRP2010-updated; National Development Plan; the Economist Intelligence Unit, Eben analysis

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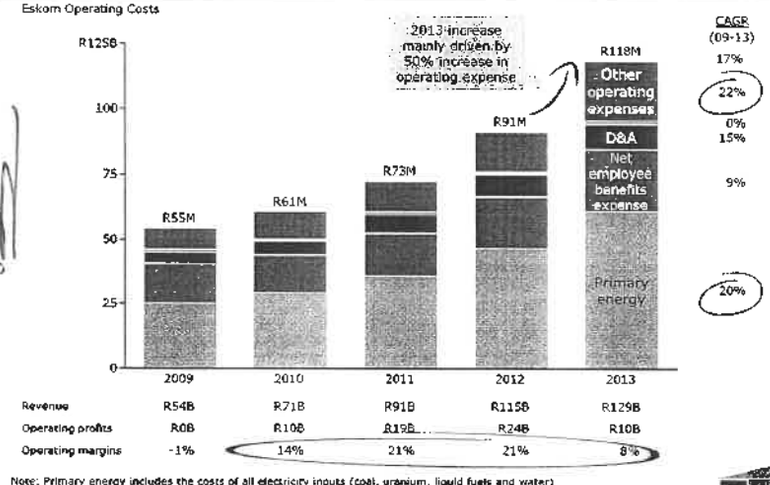
Eskom margins are under pressure from increased **operating expenses** and primary energy costs

Eskom



Note: Primary energy includes the costs of all electricity inputs (coal, uranium, liquid fuels and water)
Source: Eskom Integrated Report (2010-2013)

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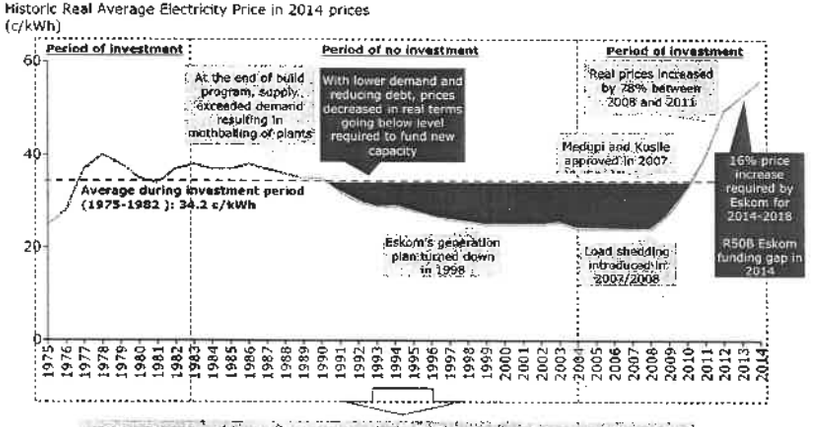
The current **energy crisis** is a result of decades of **underinvestment**



Historic underinvestment in generation cannot be addressed by price increases alone - a major injection of funds is required

Source: The Economic Impact of Electricity Price Increases on Various Sectors of the South African Economy, 2011; Eskom website

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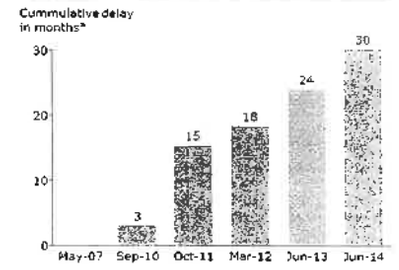
Costs continue to spiral out of control as Medupi keeps on being delayed

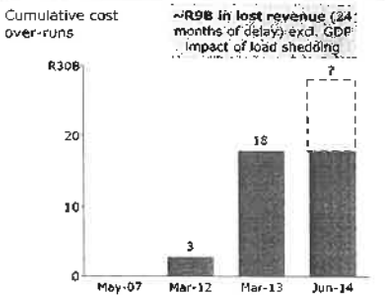
Eskom

MEDUPI HAS BEEN DELAYED MULTIPLE TIMES...



Est. completion date	Jun 12	Sept 12	Sep 13	Dec 13	2014 H2	Dec 14
Est. duration (months)	62	65	77	80	86	92

...AND COST OVERRUNS ARE ALSO INCREASING



Costs estimates**	87	91	105	?

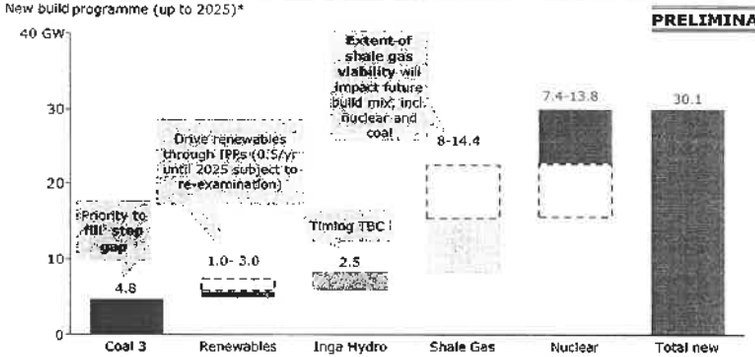
Delayed projects (Medupi and Kusile) to be delivered as soon as possible – matter of national security

Note: * Refers to the the first 1.6GW of Medupi, **Cost announced by Eskom as at Sept 2013
Source: Eskom website, Engineering news website, fin24 website, Mail & Guardian website

South Africa will need to take several **critical energy generation decisions** to meet future demand

New build programme (up to 2025)*

PRELIMINARY



Cost RB	120	0	0	106-190	326-608	636-833

IPPs to fund renewables

Funding for Inga 3 TBC. DRC to develop and sell energy to SA

To be partially funded by future cash flows and debt

Note: * Includes 15% contingency over base demand, 0% SAPP supply, excludes current committed capacity , ** scenario based on annual GDP growth rate of 5.4%
Source: Eskom; IRP2010 update; B&W analysis

Significant improvements in **productivity, spend & efficiency** could be unlocked

Eskom

EXAMPLE

	PRODUCTIVITY IMPROVEMENT	SPEND REDUCTION	OVERHEAD OPTIMISATION
Approach	• Improve **productivity** – Improve quality of input (coal) – Internal best practices – Process streamlining/ redesign – Work order quality – Resource scheduling – Performance management • **Revenue hunt** – Reduce commercial losses (T&D) – Pricing opportunities – Debt collection – Improve Customer experience	• Extracting **greater value from suppliers** – Contract renegotiation (e.g. coal supply, short term power purchase program) – Vendor consolidation – Inventory management – Enhanced services – Strategic sourcing • Lower **supply chain overhead costs**	• Focus on reducing **fixed cost structure and complexity** – Headcount – Organization – Process – Assets (incl. refurbishment of head offices) – Outsourcing
Value creation mechanism	• Increased output at existing resource levels • Existing output with reduced resource levels	• Lower rates • Reduced volume • Streamlined specs	• Attrition • Voluntary severance • Managed RIF

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WW1-AW-367

Eskom should partner with PetroSA (potentially with Sasol) to **jump-start shale gas exploitation**

PRELIMINARY FOR DISCUSSION

PetroSA · Sasol · Eskom

A new national champion could be created to focus on all aspects of the shale gas value chain

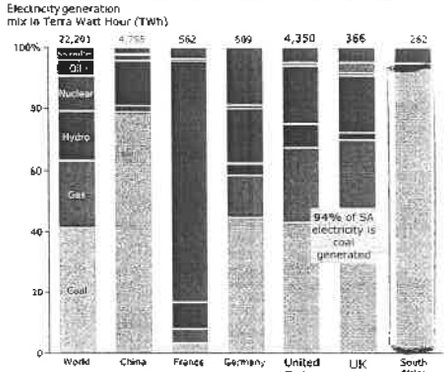
New shale gas National Company

Eskom

	Exploration	Production	Processing & refining	Transport & trading	Marketing & distribution	Power generation
Ownership/ approach	• **Partnering** with experienced companies **shortens** the time to market and **brings in** much needed **technology and skills** - **PetroSA** has expertise in **gas exploration and production** (considered a leader in **beneficiation** using gas to liquid technology to produce synthetic fuels) - **Sasol** has similar experience in natural and methane **gas extraction** and in **downstream beneficiation** with **proprietary** GTL technology • **A national champion can support beneficiation** by increasing local content and technology and developing local skills/R&D					• **Eskom** generates & distributes energy from gas
Legislation and regulation	• **Petroleum agency of South Africa** is the regulator in the exploration, production and refining of oil and gas • **Department of Energy** and **Nersa** regulates gas prices					• **Nersa** regulates fina electricity prices
Public policies	• Government can **support industry by investing in appropriate infrastructure** (e.g., water supply, pipelines, rail, etc...)					

SA should diversify its **energy mix** and avoid over-exposure to a single energy source

SA HAS DISPROPORTIONATE DEPENDENCY ON COAL-POWER



Coal is the cheapest source of energy (R58/MWh) but has the highest externalities cost (R55/MWh) due to high health costs and GHG emission

Source: International Energy Agency (IEA) website

LACK OF DIVERSIFICATION CREATES SIGNIFICANT RISKS

*"**Fukushima cleanup could cost up to $250 billion.**"*

NewsonJapan.com

*"Pollution from the **196 coal-fired** power plants in the capital region of Beijing-Tianjin-Hebei **caused 9,900 premature deaths and nearly 70,000 outpatient visits or hospitalizations** during 2011."*

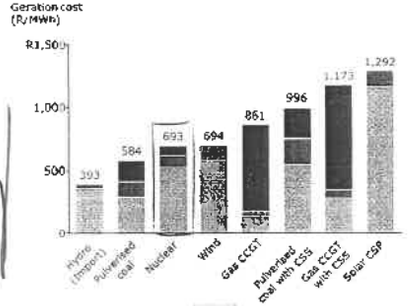
Greenpeace.org

*"After a week of rain left coal stocks wet, Eskom says the country **could experience power cuts after declaring an emergency.**"*

Mail&Guardian

Nuclear power has significant potential, but also significant constraints

NUCLEAR ENERGY IS ALSO PROMISING...



Nuclear generation presents a clean and cost effective source of electricity

...BUT SEVERELY CONSTRAINED IN PRACTICE

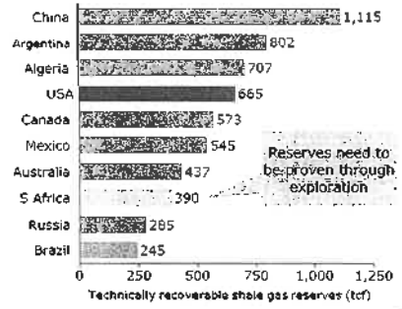
Long lead times	• Typical lead times of 10-15years
Construction bottleneck	• Major engineering companies already operating at full capacity globally (e.g. China, US)
Cost uncertainty	• Construction costs uncertain and highly sensitive to construction times and safety considerations
Local availability	• SA would need to outsource construction completely

Low job creation potential; limited ability to address capacity gap in short term

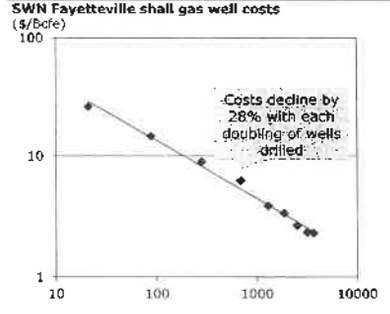
Source: IRP2010 Update; lit search

Shale gas could be a game changer based on potential resources and cost of production

SA HAS SIGNIFICANT POTENTIAL SHALE GAS RESERVES



THERE ARE SCALE BENEFITS ASSOCIATED WITH SHALE GAS PRODUCTION



Whilst shale in the USA has been driven by private companies, the associated scale benefits suggest the use of one company (e.g. a national champion) to exploit shale

Note: SWN began Fayetteville activity in 2004; 2004-2006 well costs are total well investments; 2007-2011 well costs do not include F&D costs; annual production is based lifetime production of wells spudded in that year; assume average well life of 4 years. Tcf = Trillion cubic feet equivalent, Bcfe = Billion of cubic feet

Source: US Energy Information Association (EIA); SWN company financials; Bain analysis

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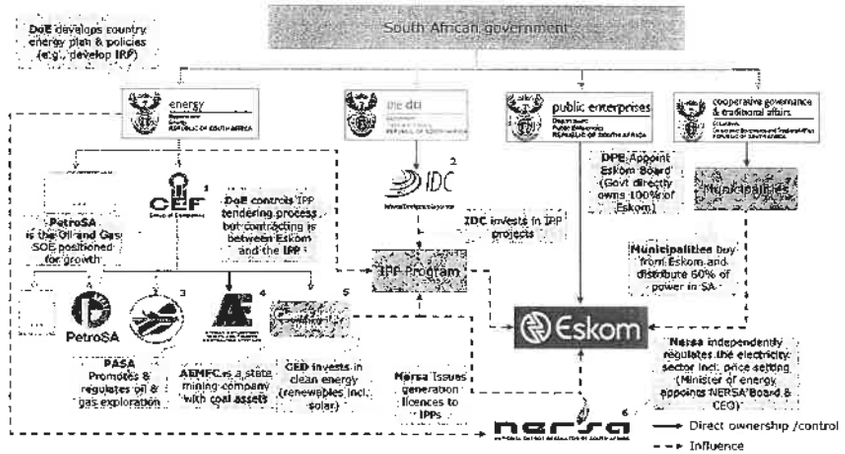
Many different stakeholders participate in South Africa's **complex and ineffective energy ecosystem**



Note: [1] Central Energy Fund holding co, [2] Industrial Development Corporation, [3] Petroleum Agency SA, [4] African Exploration Mining and Finance Corporation, [5] Clean Energy Division, [6] National Energy Regulator of South Africa
Source: DoE website, DTI website, DPE website, CEF website, NERSA website, Eskom website

EDF, the French national utility, **played the sector champion role** and drove development of nuclear

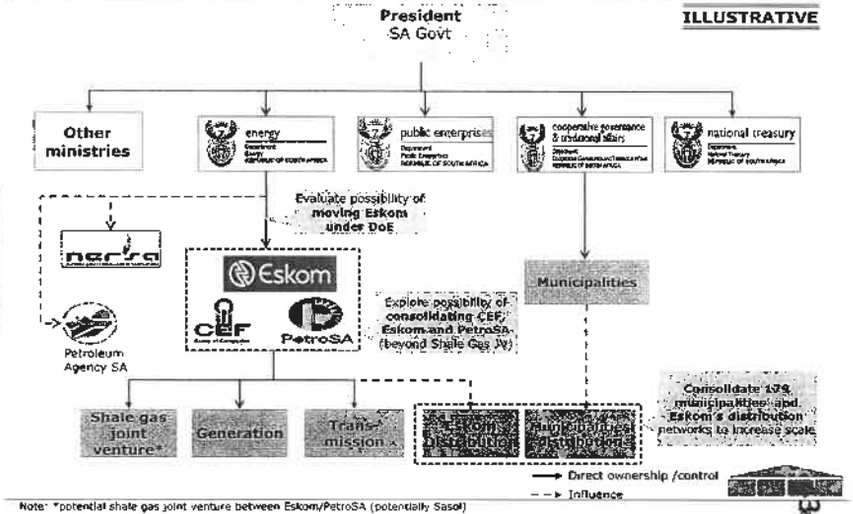
EDF'S ROLE AS A NATIONAL CHAMPION

Energy planning	• Implemented a centralized **energy development plan** to build capacity for the whole country
Power plan standardization	• **Outsourced construction** of standardized power plants mainly to Areva hence making nuclear more cost effective
Local suppliers support	• Developed beneficiation / local value chain by issuing **supply contract to French companies** (e.g. Alstom got the contract to supply conventional islands to all 58 facilities)
Sector expansion financing	• **Financed all new capacity** mainly via commercial loans backed by a strong company and country credit rating

As part of its National Champion role, Eskom should develop nuclear in South Africa

Source: EDF website, Areva website, world nuclear association

An effective **governance structure** is critical to ensure the energy sector's successful transformation



Note: *potential shale gas joint venture between Eskom/PetroSA (potentially Sasol)

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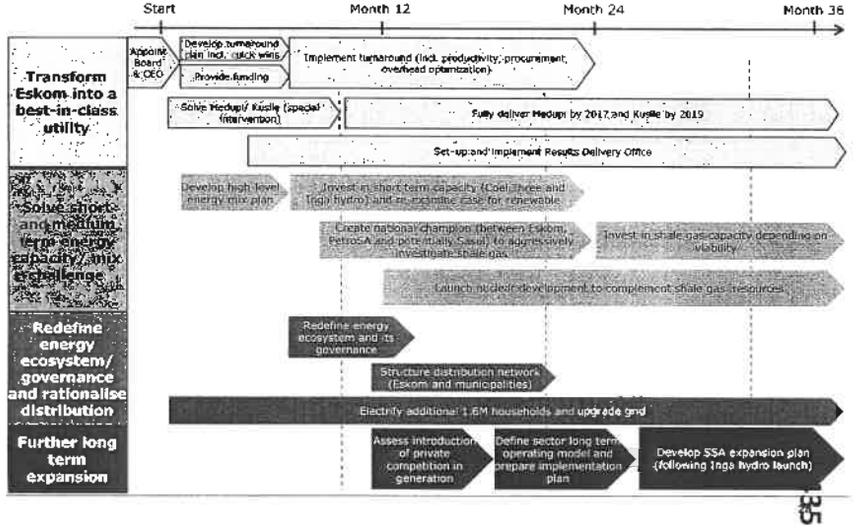
- Discuss **key elements of the energy sector transformation**
  - Transform Eskom into best-in-class utility to drive sector development
  - Solve short and medium term energy capacity/ mix challenge
  - Redefine energy ecosystem/ governance and rationalise distribution
- Propose key **next steps** and process going forward

High-level Sirius implementation roadmap

PRELIMINARY



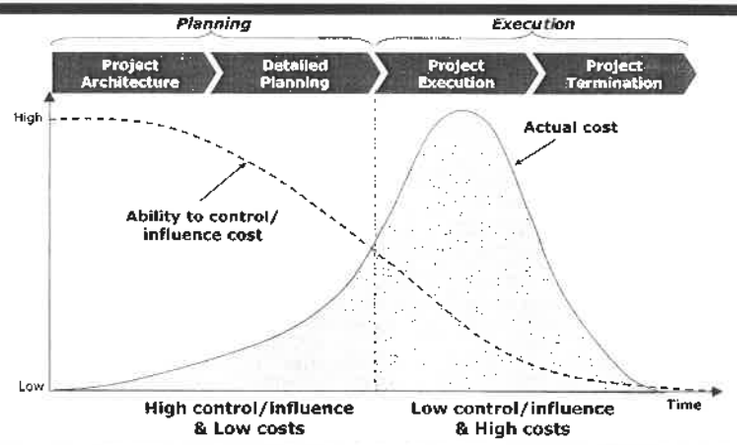
Next steps

- **Create right leadership alignment and governance** around Sirius and its vision for South Africa and make it a **President Program**
- **Appoint new Eskom Board, Chairman and CEO** to **launch Eskom's turnaround** (incl. solution for Medupi/Kusile)
- Re-design **sector structure and governance**
  - Evaluate possibility of moving Eskom under DoE
  - Explore possibility of consolidating CEF, Eskom and PetroSA (beyond Shale Gas JV)
  - Consolidate 179 municipalities' and Eskom's distribution
- Fully assess options and make key decisions in **energy generation**
  - Invest in short term capacity (Coal 3, Inga hydro)
  - Aggressively pursue shale gas (combining effort of Eskom, PetroSA, and potentially Sasol)
  - Launch Nuclear development via Eskom to complement shale gas resources
- **Ensure immediate funding needs:** Estimated R330B 5-year investment (50% in generation) to be partially funded by future cash flows

SARS-01-380
WW1-AW-370

Most **project savings** can be generated at planning stage

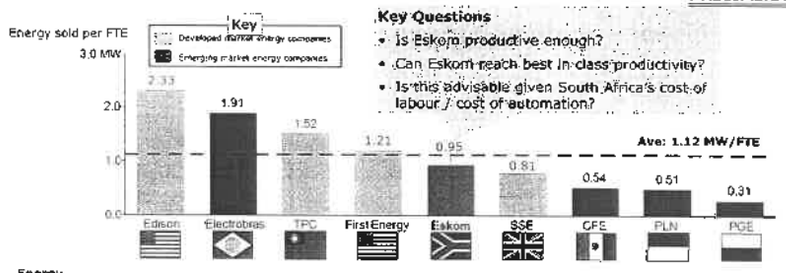
ILLUSTRATIVE



Correct planning allows to retain control of costs even in the execution phase

Eskom **productivity** levels show improvement potential

PRELIMINARY



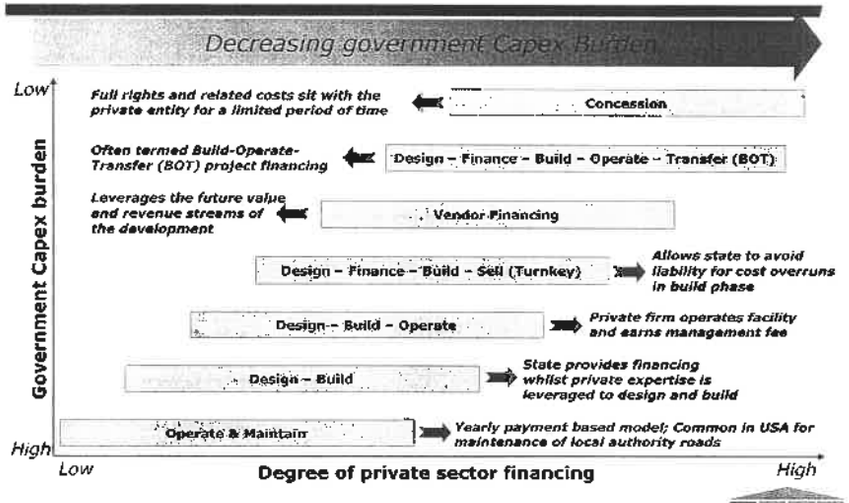
Key Questions

- Is Eskom productive enough?
- Can Eskom reach best in class productivity?
- Is this advisable given South Africa's cost of labour / cost of automation?

		Edison	Electrobras	TPC	FirstEnergy	Eskom	SSE	CFE	PLN	PGE
	Energy Capacity(GW)	32	43	41	20	44	10	53	32	13
Energy Mix	% Coal	0	6	38	60	86	22	0	48	65
	% Nuclear	0	2	5	20	4	11	4	0	0
	% Gas	41	7	25	10	6	55	72	22	3
	% Others	59	85%	32	10	4	12	24	30	12

Notes: All utility companies shown take part in all three parts of the utility value chain (i.e. generation, transmission and distribution)
Source: Company Reports and websites; Bain analysis

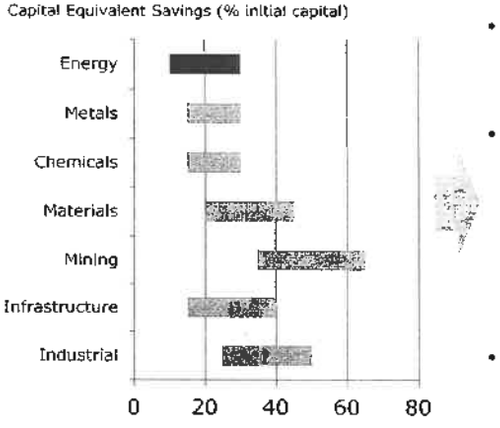
There are numerous partnership models that Eskom could leverage to **decrease Capex burden**



Source: The Canadian Council for Public-Private Partnerships; Lit search; Bain analysis

10-30% savings can be achieved through **step-change** in **project management** and project selection

EXAMPLE



- **SWAT team/ exception project management sent** to solve Medupi/Kusile with full support of Eskom leadership, DoE, and Presidency needed
- **Strong project management capabilities**
  - Ability to **influence high level asset design choices early**
  - Make **better 'go / no-go' decisions** before committing costs and awarding contracts ('Front-end loading')
  - **Reduce time between deploying phases of capital and generating income** (period costs, financing costs)
- **Robust project selection process**
  - Ability to select attractive projects

Note: Savings are capital equivalent with NPV view

SARS-01-381
WW1-AW-371

PetroSA is positioning itself to be a **significant oil and gas player** in the complete oil/gas value chain

	PETROSA IS A SMALL PLAYER IN LIMITED PARTS OF THE VALUE CHAIN	RECENT ACTIVITY HAS FOCUSSED ON SCALE AND DOWNSTREAM ACTIVITIES
Up stream	• **Production of gas** from SA fields (feedstock to Mossgas) • **Production of oil** from SA Oribi / Oryx fields • **Exploration** in Nambia, Equatorial Guinea, Egypt	• Acquisition of **jubilee oil fields in Ghana**
Mid stream	• Gas to liquids (GTL) **refinery** at Mossel Bay (**36,000 bpd***)	• Development of **360,000 bpd** Mthombo crude oil **refinery** in Coega
Down stream	• Limited storage & distribution • Limited marketing	• Interest in **purchasing Engen** to gain access into retail and distribution into Africa

Running out of feedstock for Mossgas

6% of SA refining capacity

~50% of SA's refining capacity

135,000 bpd refinery capacity and 1500 service stations across 20 African countries

Note: * barrels per day
Source: Engineering News, Financial Mail, PetroSA website, Bain Analysis

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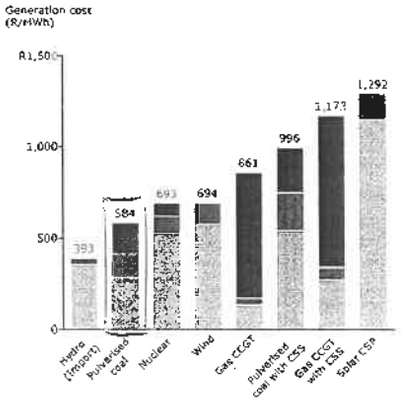
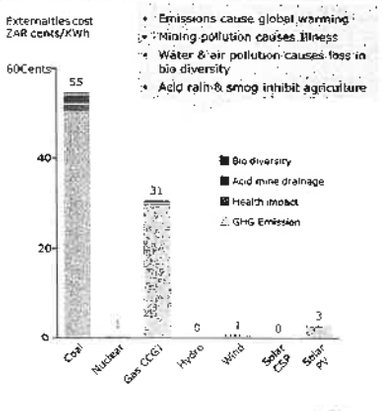
Coal is cheaper than most energy sources but comes with additional environmental and health costs

COAL IS ONE OF THE CHEAPEST ENERGY SOURCES...



...BUT COAL ALSO HAS THE HIGHEST EXTERNALITIES COSTS



Source: Cost data from Integrated Resource Plan (IRP) for Electricity 2010-2030, Externalities from University of Cape Town report: "External cost of electricity generation: Contribution to the Integrated Resource Plan 2 for Electricity"

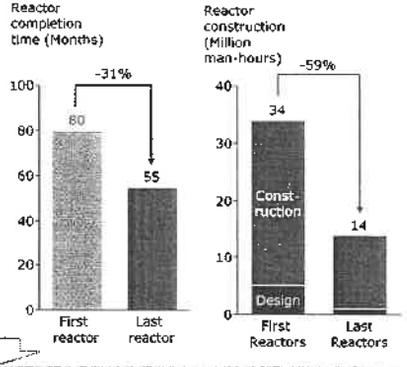
440

France is a best in class example of how to build an **efficient and standardized nuclear fleet**

KEY ELEMENTS OF STANDARDIZED NUCLEAR DEPLOYMENT

- Rapid nuclear expansion after the first oil shock in 1973
- **Standardized designs** and rules applied in all new plants
  - Identical equipment and similar plant layouts for same series nuclear plants
  - **98% of reactors built based on one technology** i.e. Pressurized Water Reactor (PWR)
- 59 currently operable reactors (63.5GW) and one under construction
- Largest exporter of energy in Europe and 2nd largest nuclear energy producer after the US

BENEFITS OF STANDARDIZED APPROACH



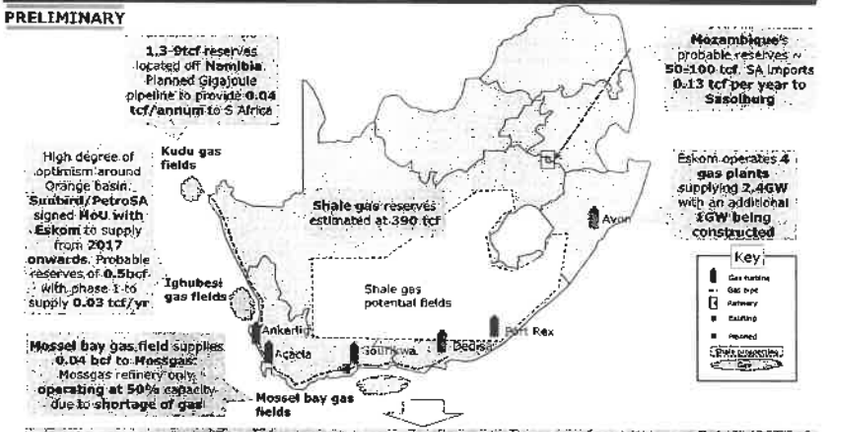
A standardized model make nuclear energy more cost effective due to a steep learning curve, faster plant turnaround times and lower maintenance costs

Source: WNA; EIA; Eurostat; Report: The French nuclear program. EDF's experience:Bain analysis

443

Gas plants could be built & share infrastructure with shale gas but currently depend on regional imports

PRELIMINARY



Source: BMI Oil & Gas industry report; BMI Energy industry report: United States Energy Information Administration.

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SARS-01-382

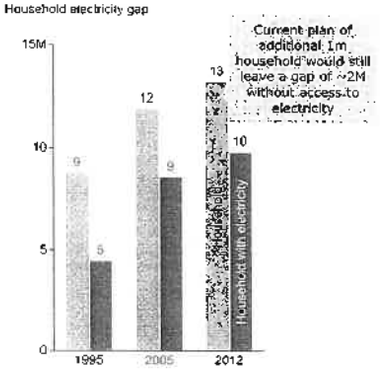
WW1-AW-372

There are **two main options** available to re-structure SA distribution and improve cost/operational efficiency

	SCENARIO I: REGIONALISATION	SCENARIO II: ESKOM
Description	• **Regional distributors take over** distribution and compensate Eskom and municipalities for the transfer of assets	• **Eskom takes over** distribution functions from all municipalities, becomes the sole distributor and compensates municipalities
Ownership of distribution resource	• Three possible models: - **100% private** owned e.g. Nigeria - **Private-public** joint owned - **100% public** owned e.g. Norway	• All distribution owned by Eskom
Political buy-in	• **Significant political buy-in** required as distribution comprises a sizeable portion of both Eskom and municipalities' activities	• **Significant political buy-in** required as distribution comprises a sizeable portion of larger municipalities' activities
Legislative changes	• **Legislation required** to allow the transfer of assets from Eskom & municipalities to regional distributors	• **Legislation required** to allow the transfer of assets from municipalities to Eskom
Changes in revenue models	• **Eskom and municipalities lose revenue/profit** from electricity distribution	• **Municipalities lose revenue/profit** from electricity distribution

Transmission & Distribution: investments are required in both **electrification and upgrading**

ELECTRIFICATION GAP NEEDS TO BE CLOSED



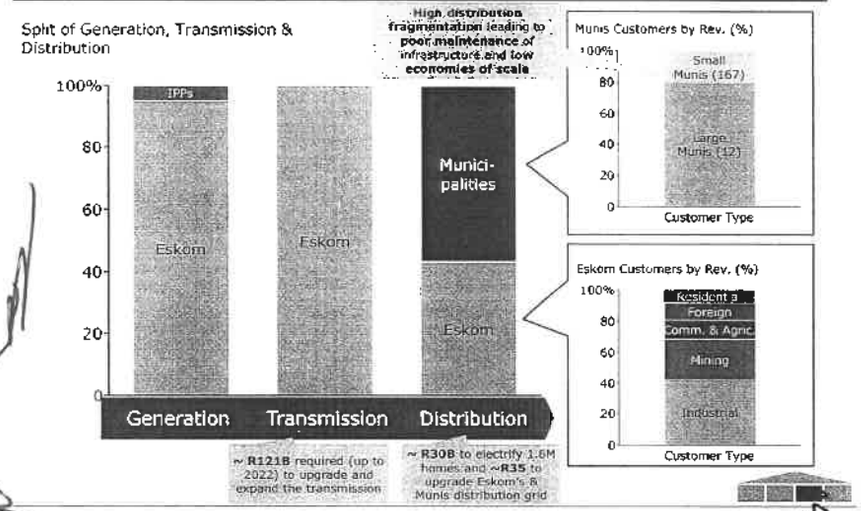
CURRENT GRID NEEDS MAJOR MAINTENANCE

"Eskom's network upgrade needs R10-billion, while municipality needs amount to R25-billion. Grid maintenance requires R6,5-million per year, but only an average of R3,5-billion is actually spent. The lifespan of a distribution network is 50 years and South Africa's network is already about 47 years old"

SANEA

Source: Department of Energy, Lit research

Distribution is highly fragmented between Eskom and 179 municipalities



Source: Eskom (2013), Eskom Transmission 10 yr Development plan, Integrated National Electrification Program (INEP)

The fragmented distribution model leads to **lack of efficiency, maintenance and investment**

FRAGMENTED DISTRIBUTION MODEL ISSUES

- Various tariff models with **lack of transparency**
- **Sub-optimal revenue collection**
- Distribution **infrastructure not** properly **maintained** and **refurbished**
- Municipality unable (or unwilling) to create a **separate P&L for financing the grid**
- **Profit** from distribution not always used for **investments** in distribution infrastructure

FRAGMENTED DISTRIBUTION MODEL IMPACTS

- Uneven quality of the **infrastructure leads to disparate levels of service**
- Smaller municipalities unable to afford / retain talent and technical skills for grid management and upgrading
- **Losses in economies of scale** in smaller distribution networks
- **Higher cost of financing** as debt not directly linked to specific revenues (electricity revenues) but used to finance the municipality overall

SARS-01-383
WW1-AW-373

Though South Africa can **benefit significantly** from the power pool, there are also some **major constraints**

REGIONAL POWER POOL RATIONALE

- Co-financing of power projects
  - **Reduced capital and operating costs** through construction of large power units (allowing for reduced power prices within the region)
  - **Risk sharing**
- Coordination & corporation amongst countries
  - Joint planning of new generation and transmission expansion projects
  - Development of a regional market for electricity trading in the region

CHALLENGES TO DEVELOP PROJECTS

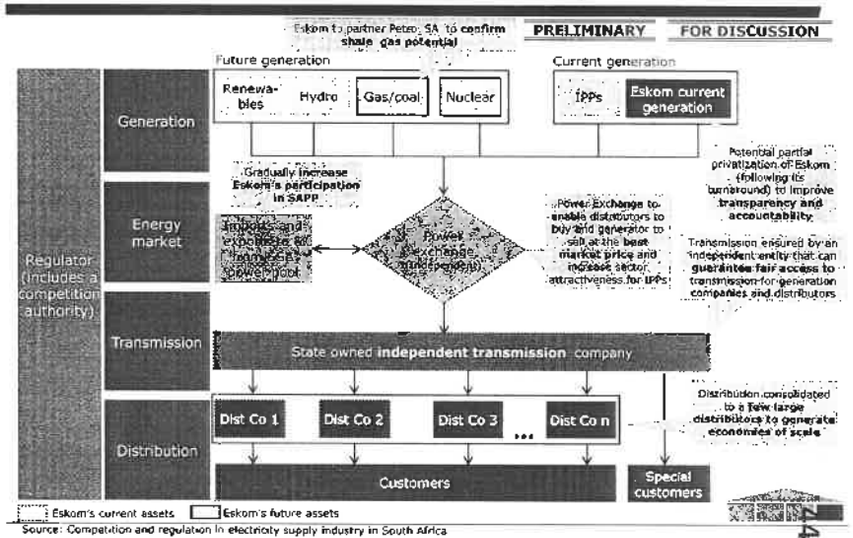
- **Lack of financing**
  - Capital investment required is very high. SAPP plan estimates ~$83B for 57GW by 2025
  - **Low tariffs** in some of the countries discouraging investment into the pool
  - Lack of clear energy policies making projects more risky and less bankable
- **Significant country risk**
  - High instability in some countries with high energy generation potential (DRC, Zimbabwe)
- **Country vs regional interests**
  - Country energy needs take priority over regional interest especially where countries have energy shortfalls and need urgent supply
- Lack of adequate **legal and regulatory framework**
- Under-developed **transmission network**

The power pool is key to energy security in Southern Africa but implementation requires significant effort, financing and coordination

PRELIMINARY

Source: South African Power Pool (SAPP) Transmission & Trading Case Study

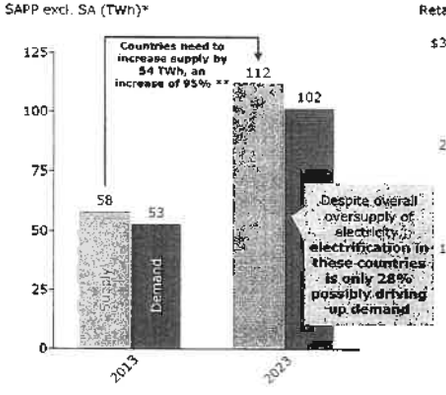
Potential end state (10 years)– Eskom could lead the energy sector **transformation** following its turnaround



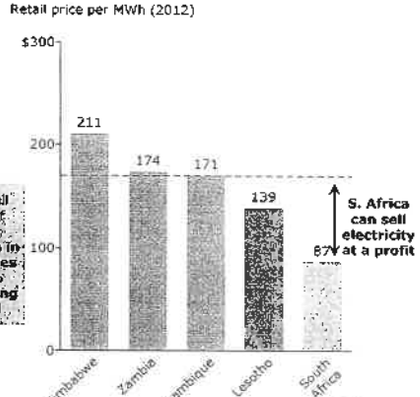
Source: Competition and regulation in electricity supply industry in South Africa

The **Southern African Power Pool's demand** presents an opportunity in which Eskom can sell at a premium

SAPP REQUIRES SIGNIFICANT ADDITIONAL CAPACITY



SOUTH AFRICA HAS A COST ADVANTAGE IN ELECTRICITY GENERATION



* Analysis includes Angola, Botswana, Mozambique, Namibia, Tanzania, Zambia, Zimbabwe but excludes South Africa, DRC, Malawi, Swaziland & Lesotho

Source: BMI Power Reports, Eskom; UCT; Econex

SARS-01-384

WW1-AW-374

ANNEXURE "AW62"

Phoenix - a fundamental program for a developmental State

- Giving birth to a **National and Regional ICT Champion:**
  - Close digital divide: guarantee access to broadband to 100% population by 2020
  - Drive innovation, employment, and efficiency
  - Provide security: get full control of strategic sectors of Telecom & IT
  - Strengthen SA regional "gateway to Africa" role: drive economic development in Africa
- Realizing the prerequisites (infrastructural and economic) for a **Bank of the People** with impact on inclusive banking, mobile payments, savings stimulus, SMEs financing. Synergies with DFAs (DBSA, IDC, NEF,..)
- Leapfrogging economic development and transformation in urban and rural areas for citizens and SMEs by **enhancing State presence and access to services:**
  - e-Government platform of services reaching directly to all citizens
  - e-Learning and e-Education for the younger generations
  - e-Health (diagnosis, prevention, follow-ups,..) for all citizens
  - Local procurement groups in the rural areas, with e-Commerce platform supported the Post Company
  - Support Smart Grid roll-out through broadband deployment & facilitation of energy saving targets
- Creating a **world-class generation of professionals, engineers, technicians** and world-class infrastructures serving the government and businesses
- Obtaining **full potential from State-owned assets:** maximum synergies, efficiencies and economies
  - Centralized infrastructures and procurement
  - Coordination and execution capabilities
  - Modernization of State organization and processes (GTC, GTB, GTG)

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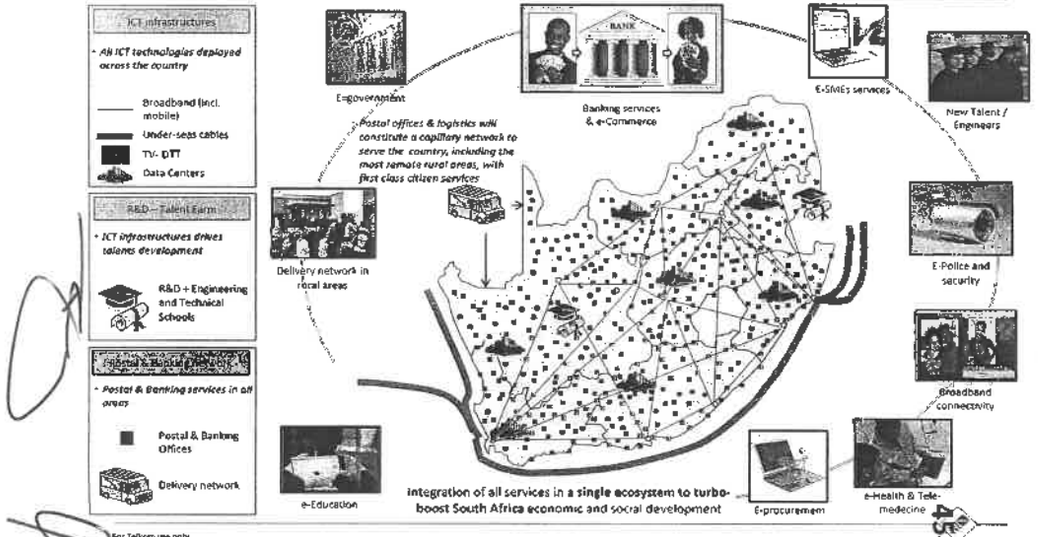
Project Phoenix:
Reshaping the South African Economy

Accelerating Implementation
Discussion Document

July 2014

Telkom

Overall vision and ambition - we will provide South Africa with first class infrastructure, services and e-government network



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Agenda

- Summarize Project Phoenix vision and ambition
- Discuss levers to accelerate implementation of Project Phoenix
- Review key milestones and immediate next steps

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AW62

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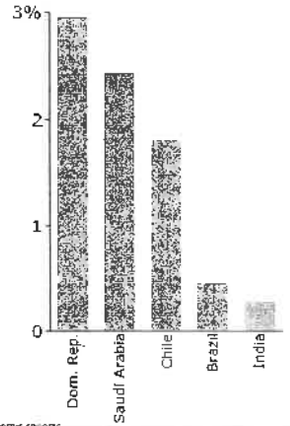
WW1-AW-376

... and **acceleration in job creation**

LESS DEVELOPED COUNTRIES ENJOY GREATER EMPLOYMENT BENEFITS

Impact on employment from 10% increase in Broadband penetration



Source: Academic reports

JOBS ARE CREATED IN MULTIPLE INDUSTRIES

- **Increasing the broadband penetration creates jobs:**
  - **Directly –** for broadband network creation and operation, e.g. construction workers, technicians, equipment manufacturing, etc.
  - **Indirectly –** for example, increased ability for upstream buying and selling within the metal and electrical industries
  - Through **inducement** – from increased household spending as a result of additional income generated from direct and indirect employment
- **For every 10% increase in broadband penetration, we might yield 30.000 - 40.000 additional SA jobs, directly and indirectly, in the next 5-7 years** (based on benchmarks)

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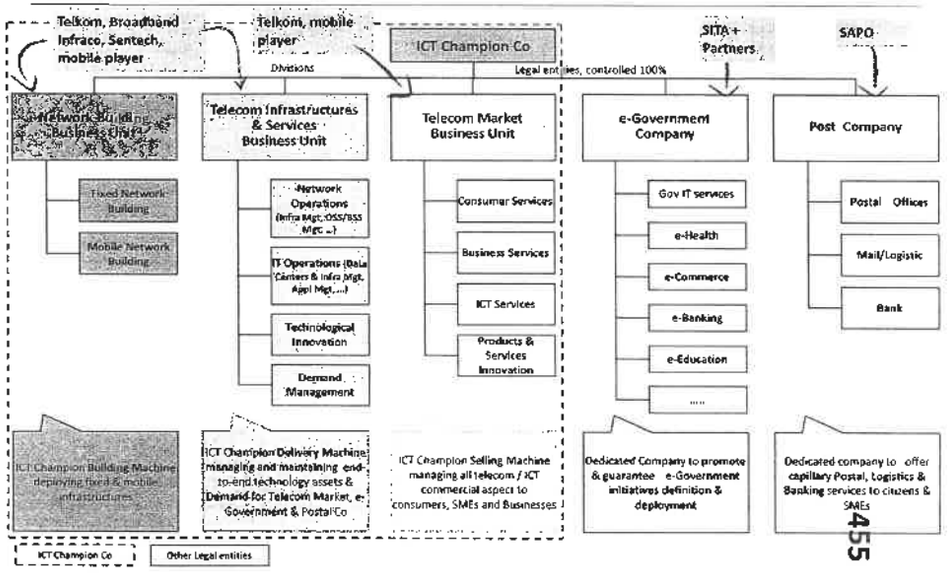
Point of arrival – Simplified organization structure



455

Just as a placeholder, an estimated total of R200-220Bn is required in the next 8-10 years to realise Phoenix vision

VERY PRELIMINARY

•Broadband Infrastructure *	140Bn
•e-Government	40-50Bn
•Telkom, SITA and SAPO turn-around	30Bn
•Possible acquisitions/mergers	To be defined

* expanded scenario

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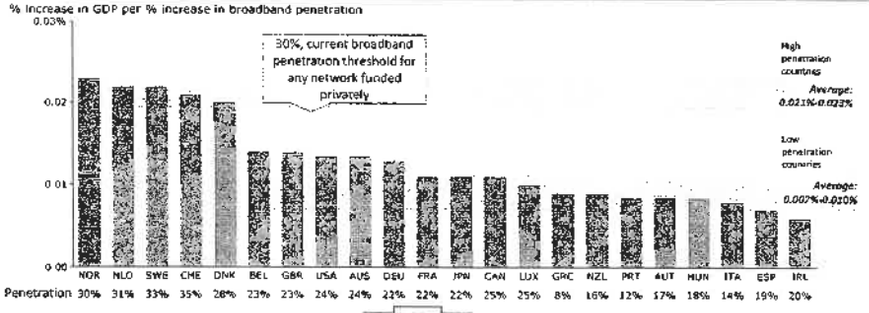
8

We expect the National Broadband Plan to have an **accelerating factor on SA economy resulting in GDP uplift...**



- There is a **direct correlation between increasing Broadband penetration and GDP growth**
- The **accelerated GDP growth** is driven by creation of **ICT infrastructure**, technology-driven **productivity gains**, growing **employment** (direct & indirect), and increasing **consumer surplus**
- **Broadband impact on GDP increases as its overall penetration increases – up to R150B for SA over the next 10 years**
  - In countries with **high broadband penetration** (over 30%), the impact of a **1 per cent increase in adoption of Broadband results in a direct growth of GDP of 0.022%**
  - In countries with **low broadband penetration** (less than 20% & where SA is today), the impact of **1% increase in adoption results in only 0.008% growth of GDP**

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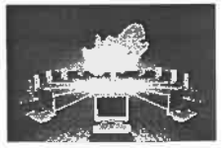
Source: *Impact of Broadband on the Economy*, ITU 2012

6

SARS-01-387
WW1-AW-377

Quick wins: vital to create early momentum in the 2014-2016 time frame

NOT EXHAUSTIVE



- Quick wins #1 – **national broadband**
  - 33K **Strategic Points of Presence** – hospitals, police/security, schools
  - 4-5 major **metro areas**
  - Selected **rural areas** – with shared access (e.g., kiosk)

- Quick wins #2 - **e-enabling government services**
  - **Local e-Government**
  - Initial e-enablement of access to **Health, Security, and Citizen service** clusters

- Quick wins #3 - **enterprise development**
  - **Field force and network services** delivery
  - Local IT **service delivery**

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Agenda

- Summarize Project Phoenix vision and ambition
- Discuss levers to accelerate implementation of Project Phoenix
- Review key milestones and immediate next steps

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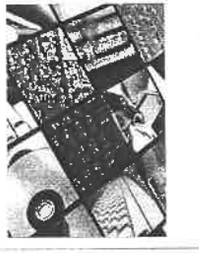
REGULATION AND POLICY

1 Give Telkom the formal mandate to become the National ICT Champion



- Affirm **Telkom as National ICT Champion** with Telkom as
  - The **delivery vehicle of choice** for national broadband (in-house)
  - Government's **broadband solution planning partner**
  - A **collaborator** with government to prioritise delivery of broadband to certain verticals (e.g. health and education)

- Ensure **coordination of local and provincial authorities**
  - Halt municipality construction of networks to prevent duplication of efforts
  - Enable financial management practices to stop irregular and unauthorised expenditure (currently estimated at ~R9.8B annually)
- Ensure **coordination across state departments** to ensure delivery of services to citizens

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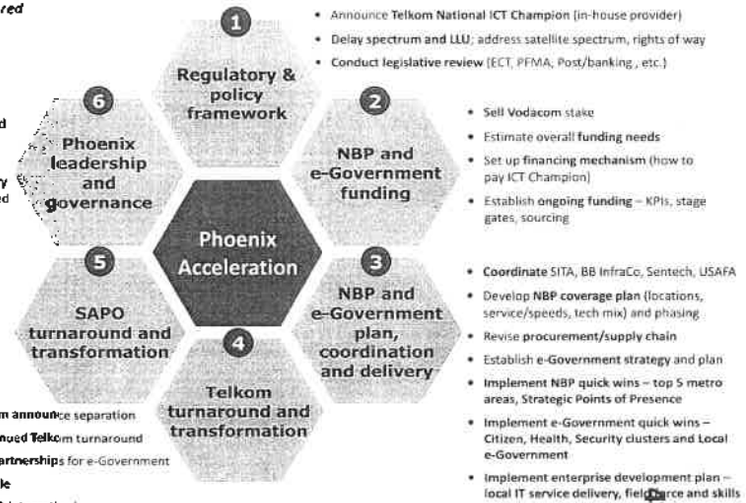
Accelerating Phoenix implementation – six key components

Quick wins highlighted in red



- Announce **Telkom National ICT Champion** (in-house provider)
- Delay spectrum and LLU; address satellite spectrum, rights of way
- Conduct legislative review (ECT, PFMA, Post/banking , etc.)

- **Ministerial mandate** and coordination of state departments
- **Align national, regional and local** governance and projects
- **Establish necessary delivery** clearances (e.g., streamlined planning permission, etc.)

- Sell Vodacom stake
- Estimate overall **funding needs**
- Set up financing mechanism (how to pay ICT Champion)
- Establish ongoing **funding** – KPIs, stage gates, sourcing

- Board/Exec leadership
- **Banking capabilities** and license
- **IT systems and branch ops** restructure

- **Coordinate** SITA, BB InfraCo, Sentech, USAFA
- Develop **NBP coverage plan** (locations, service/speeds, tech mix) and phasing
- Revise **procurement/supply chain**
- Establish **e-Government strategy and plan**
- Implement **NBP quick wins** – top 5 metro areas, Strategic Points of Presence
- Implement **e-Government quick wins** – Citizen, Health, Security clusters and Local e-Government
- Implement **enterprise development plan** – local IT service delivery, field force and skills transfer from vendors

- Telkom **announce** separation
- **Continued Telkom** turnaround
- **ICT partnerships** for e-Government
- **Mobile**
- (SAPO **integration**)

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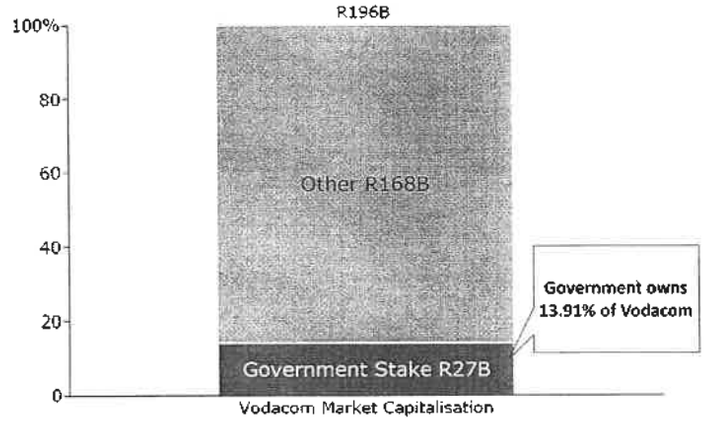
SARS-01-388
WW1-AW-378

2 Selling Vodacom could provide initial funding for Phoenix

PRELIMINARY

Government Stake in Vodacom Market Capitalisation as at 8 July 2014 (Billions of Rands)



Note: Government of SA owns 13.91% of Vodacom at 31 March 2014
Source: Bloomberg; Corporate announcements, JSE; Vodacom website

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1 In addition, a few other critical decisions will need to be addressed

Implemented

Local Loop Unbundling

- **Should Local Loop be unbundled**, e.g. equal access granted to incumbent's "last mile" copper for all service providers to promote competition?
- If yes, **how should LLU be regulated and executed?**
  - **Deployment process and location** of the alternative service provider equipment
  - **Regulations to ensure equal access and quality of service**

Tariffs and fees

- **Should the historically asymmetric fees be re-examined?**
  - Historically mobile termination fees have been set at 3X higher for mobile to "subsidize" development of mobile networks
  - However, should mobile fees continue to be higher given significant level of investment into the fixed fibre network?
  - Initial indications from int'l benchmarks show movement towards equalling mobile and fixed fees
  - If changes needed, what regulations should be examined?

Mobile spectrum allocation

- **How should the mobile spectrum be allocated** to provide LTE/WiMax wireless broadband coverage?
  - **Decision on Sentech's 50MHz @ 2.6Ghz**
  - **Choice of allocation** to Gov'tCo or auction to all service providers
- **If auction, how should it be regulated** and what proceeds could it bring?
  - **Key obligations**, e.g. nationwide coverage, quality of service, etc.
  - **Proceeds estimated at R6.5-7.5B based on int'l benchmarks**
  - Potential usage of proceeds

Satellite spectrum allocation

- **Is "vacant" satellite spectrum currently available?**
- **What regulations are needed** to allocate satellite spectrum and to whom?

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2 Funding mechanism: recommend direct subsidy-type model to enable acceleration while providing some control mechanisms over spending

	Capital infusion	Direct subsidy	Pay-for-performance
Description:	• Provide direct (yearly) capital infusion into Telkom's balance sheet	• Provide direct (yearly) subsidy (payment) to Telkom to build / manage network • Can set up as a 'fund' from which to draw down	• Define clear network rollout / mgmt KPIs • Pay only for what has been rolled-out / managed
Pros:	• Clear process for funding Phoenix network rollout • Enables faster rollout	• Clear yearly process to subsidize costs of building / operating national network • Enables faster rollout	• Aligned incentives / interests in network roll-out / mgmt
Cons:	• Lack of accountability / KPIs • May require full gov't control (e.g., de-listing)	• Lack of accountability / KPIs	• Commitment from Telkom to invest in network before being re-imbursed by gov't • Potentially slower

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1 Postbank requires several key policy changes

- Submit **Banking license** documentation to create a "bank of the people"
- **Prevent separation of Post Bank**
- Give SAPO **mandate for payment of salaries and grants**
- Amend the **Electronics Communications Act**
- Change Postal Act to formally recognize the **role of SAPO in delivery of government e-services**

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3 e-Services are expected to provide benefits that will play a significant role in transforming South Africa and delivering its vision for 2030

! = Immediate focus for 2014-16: 3 clusters

! Central Population Registry

- Repository of information on all citizens: **unique ID number associated with large amounts of demographic and biometric data** incl. name, birth date and place, gender, finger prints, eye colour, current address, etc
- **Foundation to support other central information systems** e.g. voting registry, e-health, police and security, etc.
- **Leverage / build on existing plan to issue citizens with new Smart ID Cards** that have fingerprint biometrics and biographic data embedded in card chip

! e-Health

- **Lower cost of care through increased provider productivity and improved health system planning**
- **Improved quality of care and reduced travel and wait times**
- **Healthcare reaching rural parts of SA that historically had limited access to healthcare**
- **Platform for National Health Insurance (NHI)**

! e-Education

- **Timely access to top teachers and course content for all pupils and students equally**
- **Creation of employment opportunities (new industry to be crafted)**
- **Increased motivation for both students and teachers**

! e-Government

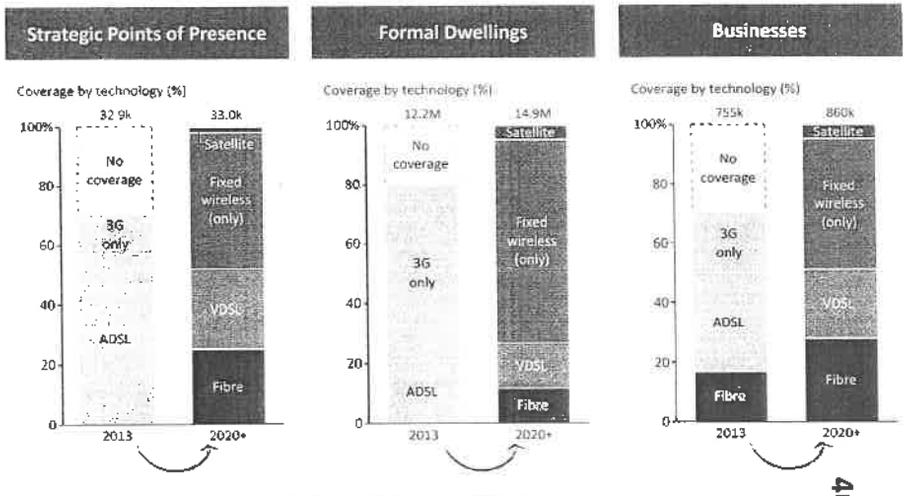
- **Efficiency and cost reduction in government service delivery**
- **Improved capacity of government**
- **Increased citizen participation in democratic processes**
- **Greater transparency and accountability**

! e-Security / Police / Justice

- **Increased monitoring of inflow and outflow of people, animals and goods at borders**
- **Greater community safety**

E-services are interconnected and underpinned by central population registry

3 National Broadband plan to **increase reach and speed** of current South Africa broadband coverage

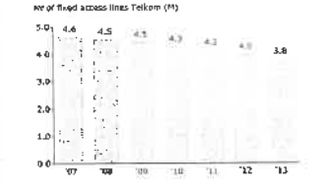


rage: if exchange area is ADSL enabled, VDSL coverage: if street cal
Fibre coverage: if fibre is rolled out to street level; 3G (and in 2020: LTE) coverage also includes areas with xDSL and/or Fibre

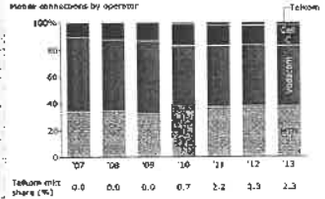
4 The situation in Telkom is worse than expected and requires a rapid and decisive turn-around process

OPERATIONAL INDICATORS ARE CONSISTENTLY UNDERPERFORMING...

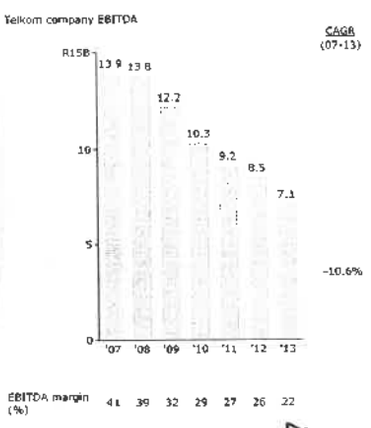
Telkom faces a declining base of fixed access lines



Telkom struggles to gain market share in consolidated mobile market



...RESULTING IN A CONSTANT DECLINE IN PROFITABILITY



Note: EBITDA restated for 2009 and before
Source: Telkom annual report 2013

3 Quick wins: initial focus on tangible, visible outcomes ahead of 2016

Stream 1: Connecting Government

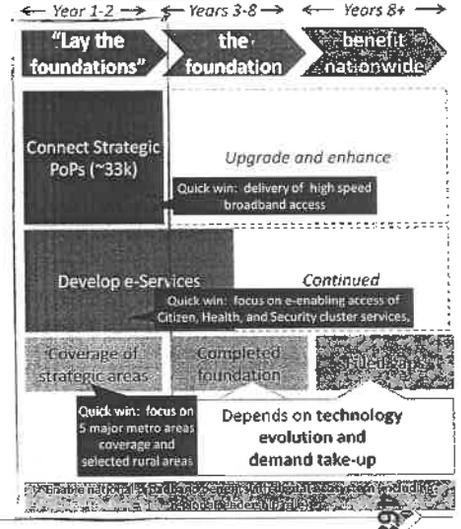
- Focus on **connecting all public buildings as strategic points of presence** to deliver e-Services to SA citizens
  - Can be expanded to critical communities (e.g. aids high penetration)

Stream 2: Launching e-Government

- **Develop key e-Services** and deliver them through the built broadband network (focus on most impactful ones)

Stream 3: Connecting Citizens and businesses

- Phased approach:
  - **Commercially viable areas and strategic communities first**
  - Cover simultaneously **areas adjacent to Strategic PoPs**
- **Multiple access technologies**



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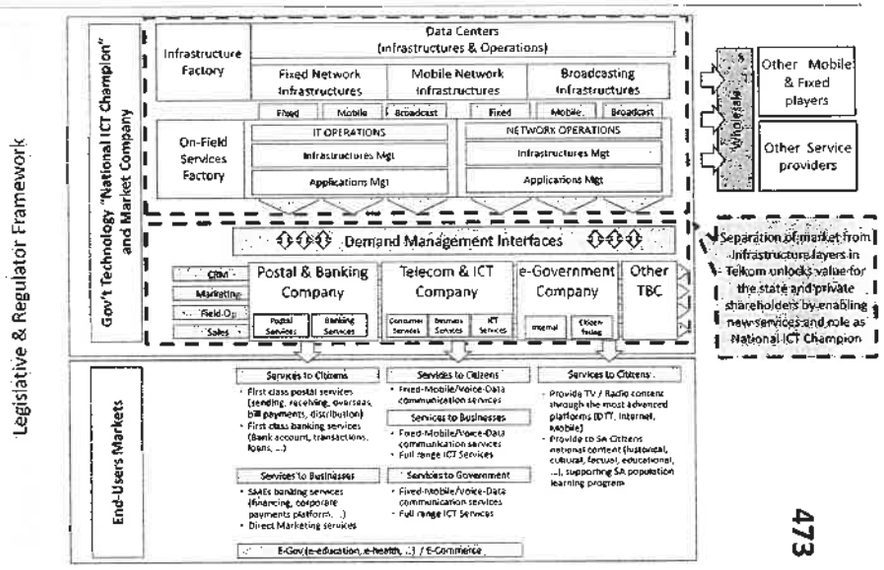
4 Operating model – separation of market and infrastructure layers



4 The strategy implementation and turn-around program are underway

1 Own the home	2 Strengthen leadership in B2B markets	3 Grow beyond the core	4 Drive to competitive costs	5 Enable the future
1. Design and deliver consumer and small business convergence propositions	1. Design and build an enterprise and public sector solutions business	1 Develop consumer content and VAS strategy	1. Overhaul approach to procurement to cut and contain external spend	1 Increase organisational effectiveness
2. Deliver a superior Customer Experience (CEX) and implement NPS	2. Design and implement propositions to drive aggressive growth in SMB market	2. Pursue partnerships/ acquisitions for scale and capability in IT infrastructure services	2. Partner in mobile for scale / lower cost	2. Align IT capability and costs to the new Telkom strategy
3 Optimise sales channels to increase ROI and reduce capital intensity	3 Secure deals DLDs to grow/defend our fixed infrastructure business	3. Define e-services solution set and GTM model for public sector	3. Transform contact centres to competitive cost and capability	3. Define wholesale/retail and network operating model boundaries and transfer pricing model
4. Deliver an integrated broadband plan to accelerate competitive NGN access capabilities	4. Increase Wholesale salesforce effectiveness by upgrading sales capabilities	4. Grow adjacent market opportunities in Wholesale	4. Terminate unprofitable products (prepaid, payphones, product rationalisation)	4 Increase capabilities to engage Regulators and the broader government
5. Align NGN deployment with GTM to drive take up in target segments and locations			5. Exit non-core (YP) and international activities	5. Lead National Broadband design and deployment, and secure leadership role in e-government
			6. Optimise the fixed network	6. Develop capabilities to pursue partnerships, alliances and M&A
			7. Increase field force productivity	

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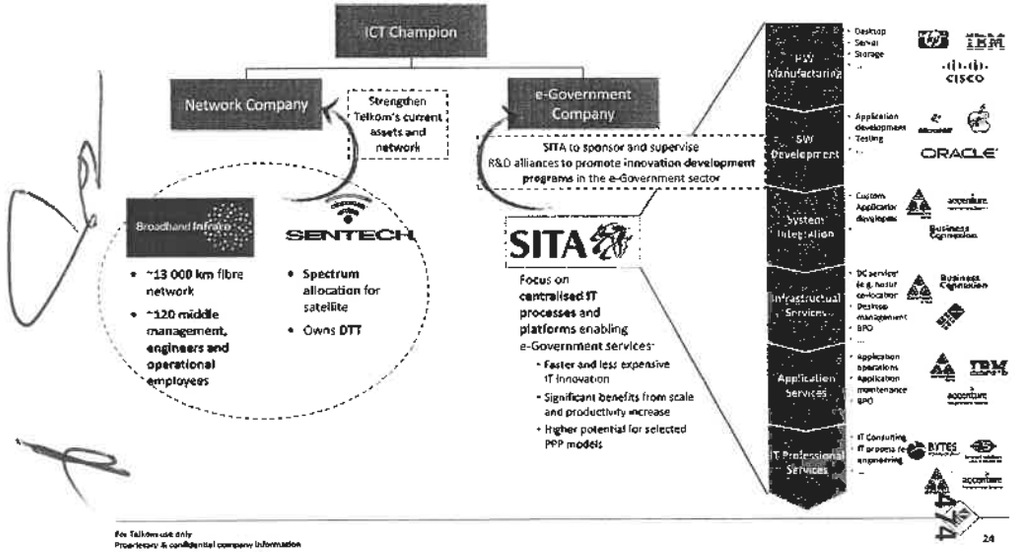
4 Coordination of other related players (SITA, Broad Band Infraco, Sentech,..) will drive higher efficiency



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4 The strategy implementation and turn-around program are underway and starting to show results

SEVERAL IMPORTANT ACTIONS HAVE BEEN TAKEN...

- **New Minister appointed** and DG reconfirmed
- **Chairman and new Board** appointed
- Agreement with the **Competition Commission**
- **Clean-up of the Balance Sheet** (impairment test)
- Agreement with most **important Union**
- Board Approval of the new **strategic direction**
- Redesign of the **organisation structure** and renewal of the leadership team
- Important savings in the **employee medical scheme** achieved
- **ICASA decision** on termination rates
- The **new strategy implementation and turnaround** program are underway, with 26 Projects/Initiatives around 5 Imperatives

... MARKET RECOGNISING TURNAROUND WITH MORE THAN TRIPLING OF TELKOM SHARE PRICE

Telkom Share Price History (ZAR)

Source: Bloomberg

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Critical enabler for Phoenix – "Bank of the People": everyone receiving the same treatment and conditions, everything guaranteed by the State

	Citizens	SOHO/SMEs
Banking services	• Basic banking services - Account - Payments (incl. Mobile) -... • Savings and Securities • Unsecured Loans (personal, car, furniture,..) • Secured Loans/Mortgages	• Basic banking services - Payments - Cash in advance - Working capital financing -.... • Start-up and Venture financing • Loans and Mortgages • .....
Other services	• Pensions distribution • Subsidies/grants payment • Life and Short term Insurances • All other E-Government services	• Subsidies grants (with IDC, NEF,..) • Consortium Procurement Services • Corporate Insurances • All other Corporate E-Government services (and ICT services)

SAPO summary: situation, role and requirements

- **SAPO 's potential is severely underdeveloped**
  - Distribution: a) Branches capillarity, formats and locations; b) Other channels. internet and call centers
  - Product/services portfolio and innovation
  - Level of services: efficiency, delivery performance, work hours,..
- **SAPO has a critical enabling role within Phoenix**
  - For the delivery of e-services through its branches
  - For the banking and financial services, i.e. "the bank of the people": a) inclusive banking and access to financing for individual and SMEs; b) mobile money and payment platforms; c) breaking the private banks oligopoly d) multiplier effect on the economy by lending to DFIs
  - For the logistic infrastructure and services , underpinning many of the above mentioned services: "South African Amazon"
- **There is a precise set of interventions and requirements necessary for SAPO to support Phoenix**
  - A strong and capable Board and Management team, to design and execute the strategic and operational turn-around and synchronise with Phoenix
  - Changes to the Postal Act to accommodate SAPO's broader role within e-Government
  - More specifically, an immediate injection of banking and financial services capabilities (also via M&A)
  - Substantial investments in IT systems (supported by Telkom) and in the restructuring and expansion of the branches in support of the e-Government initiative
  - Leverage IT, logistics capabilities, branches and bank to deliver e-Government services
  - A banking license, but delaying the separation between the Post Bank and the Mail/Parcels business to reduce the regulatory and capital requirements and allow for synergies
  - A fair and objective calculation of the Universal Service Obligations (USO) compensation

PostBank to play a critical role in mobilizing financial resources to expand access to cheap financing for the broader South Africa

CAPTURE SOURCES OF DEPOSITS...

Grants from SASSA beneficiaries
- Payment of social grants on Postbank accounts – R100bn p.a.
- Currently outsourced to Net1 (at a cost of R10bn for 5 years)

Civil servant salaries
- Payment of salaries and other external spend on Postbank accounts - ~R450bn p.a.

SOE and Government entities' cash & investments
- Managing treasury of SOE's and Government bodies through PostBank, e.g.
  - Eskom R19bn
  - Transnet R8bn
  - Telkom R3bn

Postbank
A member of the Post Office group
- An efficient and omnipresent bank, operating on a lean IT platform and operations, leveraging SAPO network...
- ...To reduce cost of running the bank and maximise ability to re-invest in the "real economy":
  - Increase interest paid to depositors
  - Reduce interest rates paid by specific categories of debtors:
    - DFI's
    - LSM1-5
    - Small companies

... TO REINVEST IN SA REAL ECONOMY

Funding DFI's
- Multiplier effect via Concessionary loans to DBSA, IDC...
- ... subsequently borrowed by M2/M3 Municipalities or SA companies

Lending to financially excluded
- Affordable loans (below NCA threshold of 32%) for those not addressed by commercial banks:
  - Unsecured loans for LSM1-5
  - Short & long term loans for small companies

Financing South Africa's growth
- Buying SA Bonds or Short term treasury bills (not accounted in national debt)
- Provide wholesale funding to "Big 4 banks"

A strong and capable Board and Management team are urgently required to design and execute a strategic and operational turn-around plan, supporting Phoenix

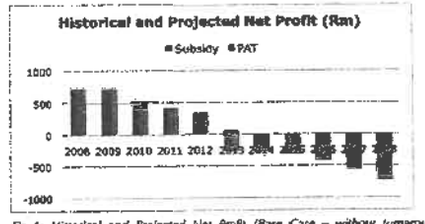

Fig 1: Historical and Projected Net Profit (Base Case – without turnaround interventions)[3]

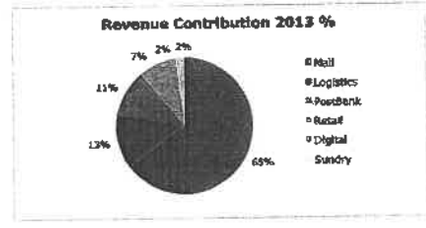

Fig 2: Revenue Contribution by Unit

- Revenue decrease and cost increase, with potential disaster case for public finances
- Dependence on declining Mail business
- Current strategic plan totally inadequate to respond to the situation

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WW1-AW-382

Immediate next steps

- **Sell government stake in VODACOM**
- Declare **Telkom as National ICT Champion**
- Create **coordination/integration mechanisms and processes of SITA, BB Infraco, Sentech, USAFA and launch quick-wins for NPB and e-Gov**
- Launch **SAPO turnaround**
- Initiate and announce **Telkom preparation for separation** into two "layers" - infrastructure BU and Market BU

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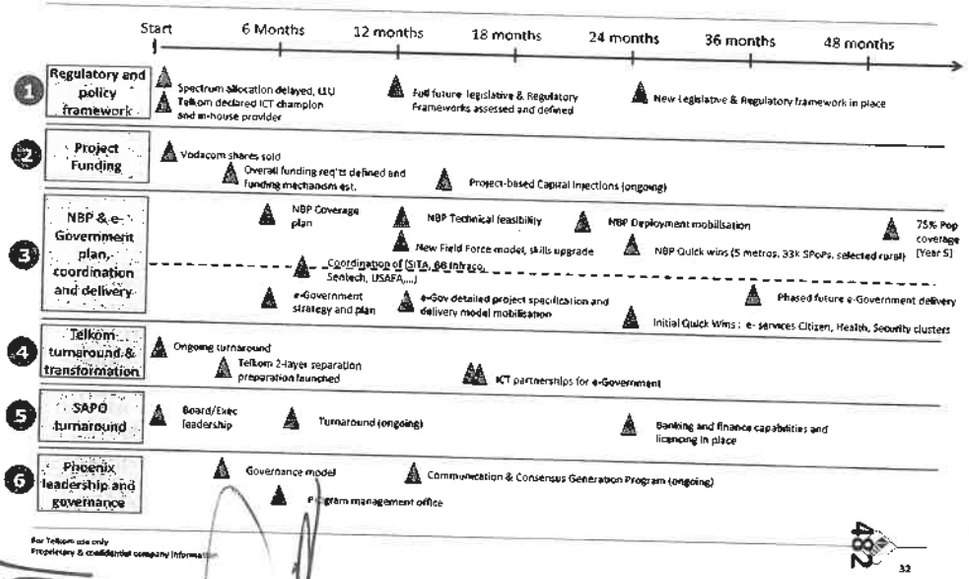
Sequencing: key milestones



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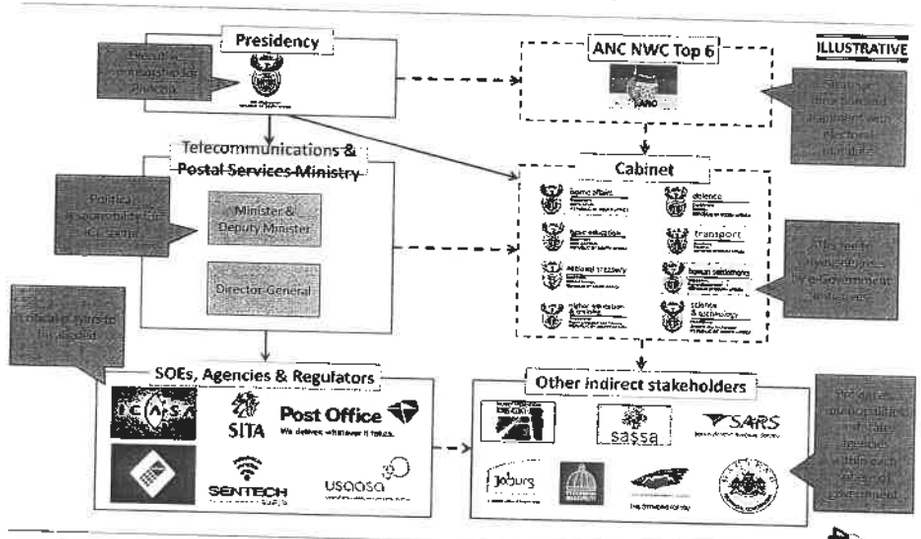
6 Phoenix success is dependent on a coordinated ICT ecosystem



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Agenda

- Summarize Project Phoenix vision and ambition
- Discuss levers to accelerate implementation of Project Phoenix
- Review key milestones and immediate next steps

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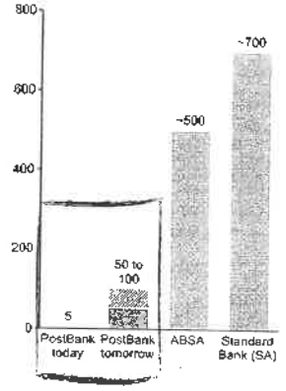
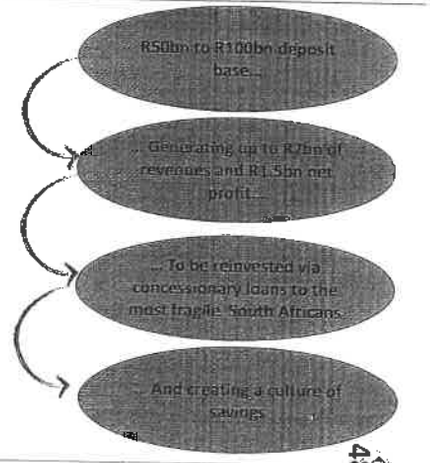
An aspiration for PostBank – R50 to 100bn deposits, to fuel SA growth

MULTIPLY DEPOSIT BASE BY 10X TO 20X...

Clients deposit base (Rbn)



... AND GENERATE SURPLUS TO BE REINVESTED IN SA ECONOMY



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Appendix Agenda

- Regulatory and policy framework
- NBP & e-Government funding
- NBP & e-Government plan, coordination & delivery
- Telkom turnaround
- SAPO turnaround
- Phoenix governance
- Milestones

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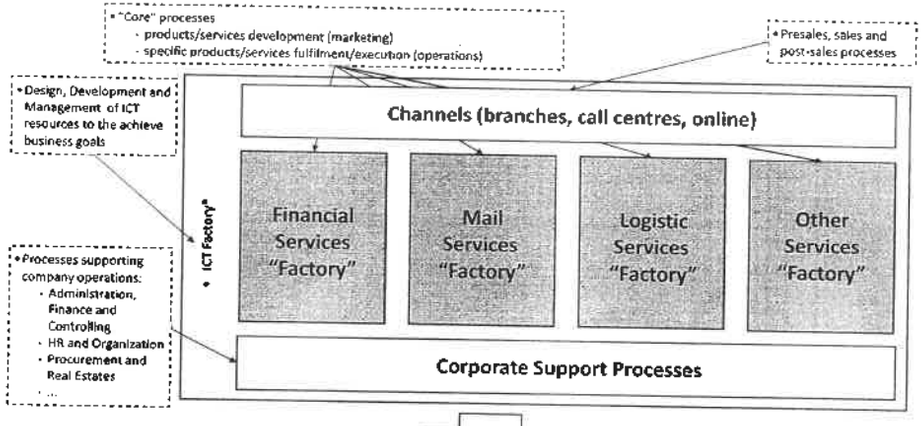
SAPO – Business model hypothesis: strong synergies between Divisions suggest a delay in the operational separation between SAPO and Post Bank



• *= in synergy with Telkom

All key Businesses are strongly interconnected and to be innovated through ICT driven projects (ICT as business enabler)

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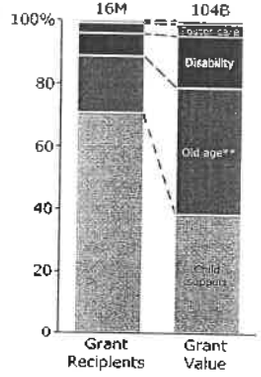
Significant potential for Postbank if processed a total of ~R600B of annual grants, public sector wages and government spend

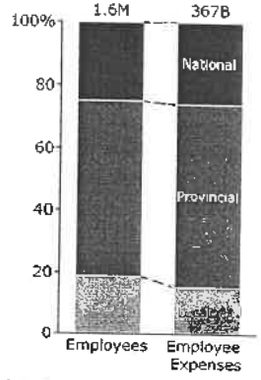
GRANTS OF ~R100B

Grant recipients and value (2012/13)



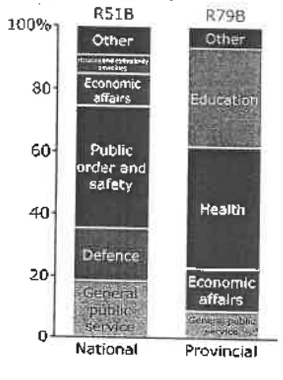
WAGE BILL OF ~R370B

Public sector employees and expenses (2012/13)



GOV'T SPEND OF ~130B

Goods and Services Expenses (2012/2013)



Note: * Grant value includes administration fees, **Old age grants include war veteran grants, *** Local gov't wage bill is estimated using actual 2008/10 allocation by sphere
Source: National Treasury, Mail and Guardian

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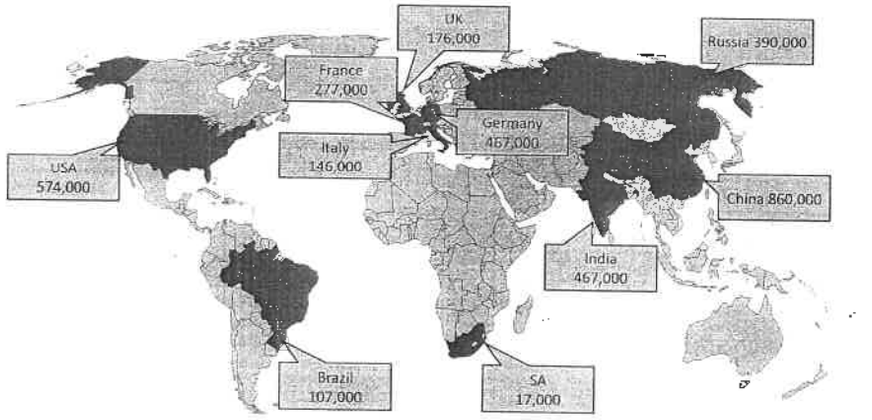
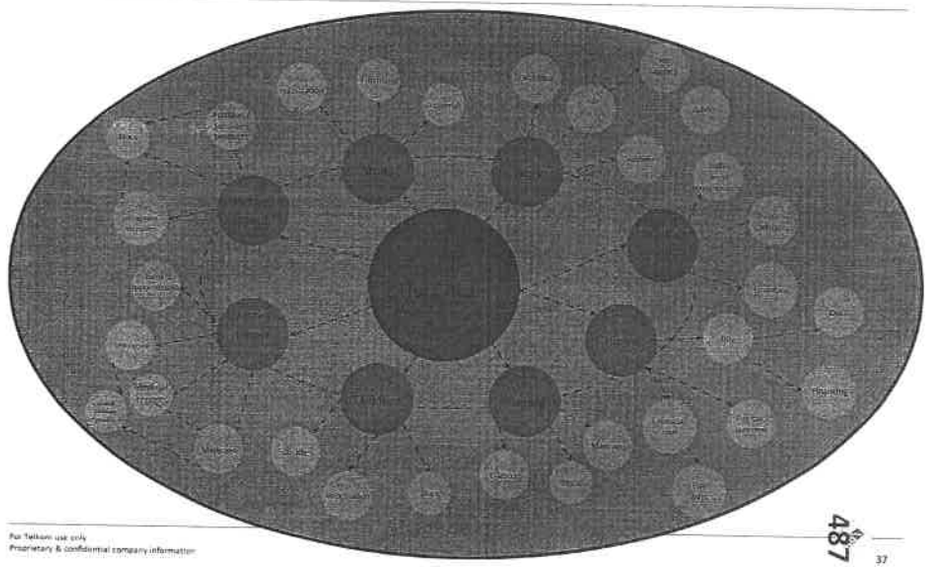
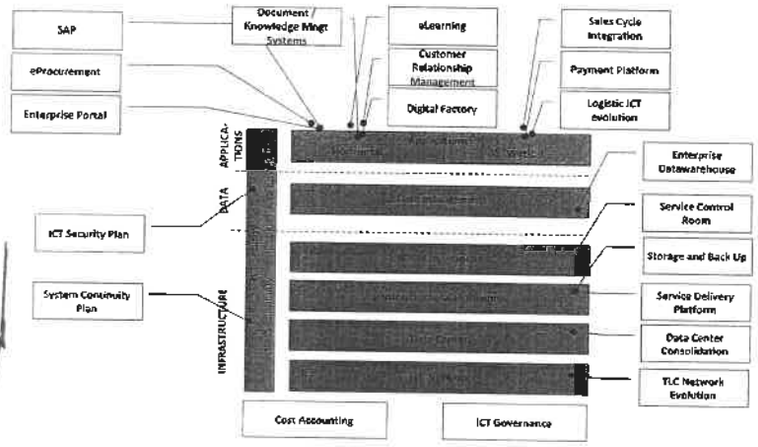
SAPO's employees base is 6 times smaller than the next profiled national post office



Postal & Banking Company will provide all relevant services to SA citizens, supported by a first class ICT infrastructure



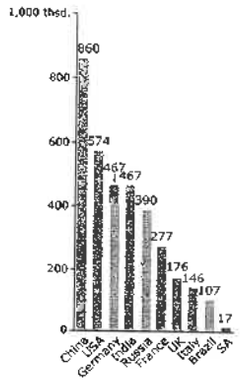
SAPO – possible ICT Projects overview



SAPO is severely understaffed compared to the Post Co. of other countries

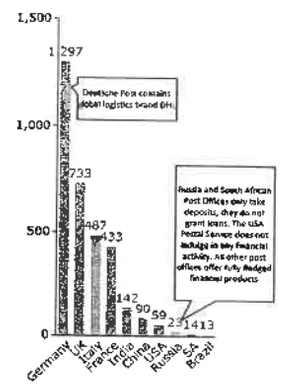
6 TIMES FEWER EMPLOYEES THAN BRAZIL

Employees in National Post Office



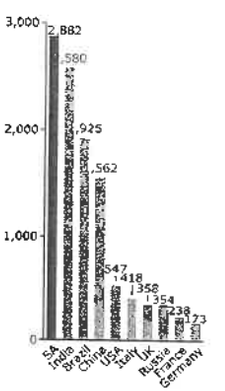
SECOND FEWEST EMPLOYEES PER SQ KM

Employees per sq km



SA HAS PROPORTIONALLY LESS STAFF THAN BRICS

Population per postal employee



Source: CIA Factbook, Company websites

SARS-01-395
WW1-AW-385

ICT will be a critical area for SAPO turn-around, to be delivered in synergy with Telkom -- case example of a Post Co. ICT structure/model

ANNEXURE "AW63"

AW63

To: Min, Stuart[Stuart.Min@Bain.com]; Chris Kennedy (Chris.Kennedy@Bain.com)[Chris.Kennedy@Bain.com]
From: Timpano, Stephane
Sent: Thur 9/6/2018 5:57:35 AM (UTC)
Subject: ANC Manifesto documents
140407 - ANC Manifesto - Industrial Sector development deep dive_vshared.pptx
140528_ANC Manifesto - Program Management_V0527 2200.pptx
140612_Project Prioritisation Output_V0612_1800.pptx
140612 Project Prioritisation V0612 1801.xlsx

Stuart, Chris,
Attached the ANC documents prepared by Bain (2014 period).
At the time, VM was helping some ANC officials which I do not know the name, to reorganise their 'agenda' and clarify ANC priorities.
Again, not my work. Had access to them because asked about my opinion about it.
The 2 persons working on it were Alexis and Monde. Both left.
Best
Stephane

ANNEXURE "AW64"

2014 ANC Manifesto Implementation – Discussion on way forward

Discussion document

April 2014

DRAFT

Objectives of this document

- Discuss proposed **process to support implementation of the ANC Manifesto goals** and prepare process launch:
  - Define **non-negotiables** to adhere to
  - Set **strategic goals for manifesto implementation**
  - Decide **how to prioritize projects** and **roles of Ministry Clusters** (and Chairs)
  - Discuss relevance of **results delivery office** and **special agency** to support implementation
- Agree on **next steps**

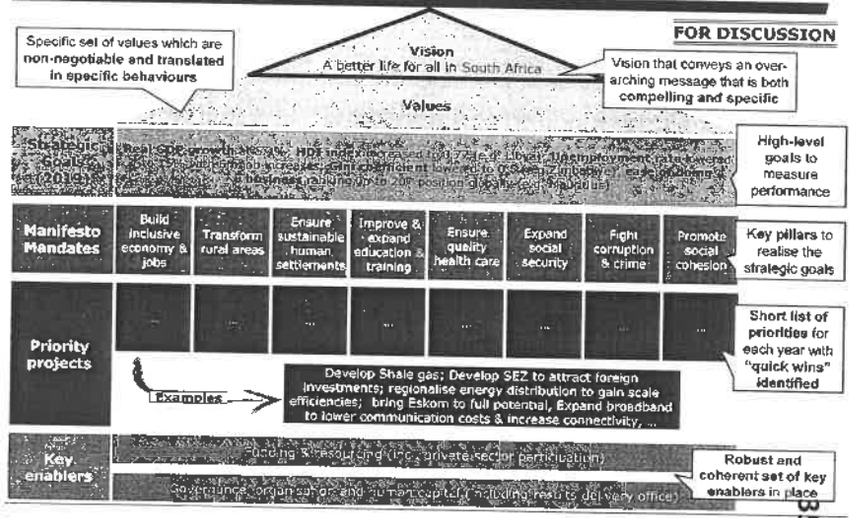
ANC Manifesto implementation process objectives: **step-change in Government effectiveness**

FOR DISCUSSION

FROM...	... TO BEST PRACTICE GOVERNMENT
• Ministries working in silos	• Cabinet Ministers and DGs working together as an **effective team under the leadership of the President**
• Lack of focus on key priorities	• **Prioritized strategic goals and transformational projects** that are stable through the legislation
• Interdependencies not systematically identified an managed	• **Clearly identified and managed interdependencies** between projects / Ministries
• Blame game	• Strong **accountabilities** and **results-orientation**
• Focus on administrative reporting	• **Simple and effective process** to manage implementation with **focus on issue-resolution** and **execution**

A comprehensive framework can be used to highlight the **key ingredients of the Manifesto implementation**

FOR DISCUSSION



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WW1-AW-390
AW64

A **compelling over-arching vision** should mobilize Ministers to support ANC Manifesto implementation

1

ILLUSTRATIVE

METAPHORS AND STORIES

FACTS AND DATA

BUILD AN INCLUSIVE ECONOMY THAT CREATES JOBS

- Establish capacity in the state to do long term planning, drawing where necessary on expertise that exists in wider society
- Promote local procurement by directing the state to progressively buy at least 75% of its goods and services from South African producers and support small enterprises, cooperatives and broad-based empowerment
- Accelerate the rollout of the massive economic and social infrastructure programme – especially in energy, transport, ICT and water – to unlock economic opportunities, create jobs and improve people's quality of life
- Empower, educate and create jobs for youth through job placement and internship schemes, allocating 60% of employment in infrastructure and other projects for youth, and promoting youth employment and training incentive schemes
- Promote investment and access to credit in the productive economy from the financial sector, including development finance institutions, through bolder and forward-reaching reforms
- Consolidate the public works programme, creating six million work opportunities by 2019, 3 Million of which will be of long duration
- Investigate the viability for the introduction of a national minimum wage as one of the key mechanisms to reduce income inequality
- Enforce measures to eliminate abusive work practices in atypical work and labour broking
- Promote decent work and strengthen measures to speed up employment equity

Current vision as laid out in Manifesto suggests a clear destination, however, opportunity exists to communicate this more widely in a crisp and clear manner

A **simple and comprehensive process** will enable ANC manifesto implementation

FOR DISCUSSION

May	June	July	2014>>2019
1 Cabinet workshop#1	2 Inter-ministerial working groups	3 Cabinet workshop#2	4 Inter-ministerial working groups
Vision & Accountabilities	***Project Definition***	***Prioritisation & Rollout Plan***	***Results Delivery***
• Align on **vision, non-negotiables** and **strategic goals** • Lay out foundations for **increased accountability** • Diagnose **key organisational risks** • **Align on process** to successfully drive ANC Manifesto (driven by inter-ministerial working group)	• Define manifesto mandate KPIs • List **projects** to deliver each manifesto mandate • Identify project/ministry **interdependencies** • **Prioritise projects** based on impact, cost and ease to implement	• **Agree final list of prioritized projects** across manifesto mandates (incl. clear identification of quick wins) • **Align on process for implementation** (incl. role of results delivery office)	• Implement **results delivery office** to support implementation of ANC manifesto • Develop project charters for each **prioritized project** • **Track results**, monitor risks and resolve roadblocks • Hold delivery teams and **lead ministries accountable**

NEC Top 6 Engagement

▲ *Approach confirmation and non-negotiable identification (one-off, prior to Workshop 1)* ▲ *Project approval and prioritisation (one-off, prior to Workshop 2)* ▲▲▲▲ *Progress monitoring (quarterly)*

Legend: ▲ Meeting with the NEC Top 6, led by the Office of the Presidency

A **clear set of non-negotiables** should support ANC manifesto implementation

1

FOR DISCUSSION

ANC VALUES

- Courage
- Service
- Self-sacrifice
- Human solidarity
- Integrity
- Humility
- Honesty
- Hard-work
- Self-discipline
- Mutual respect

IMPLEMENTATION NON-NEGOTIABLES

- We will **focus our resources** – both human and financial – where they matter most to our people
- We will be **disciplined in the use of our finances** and **optimise spend vs. results**
- We will maximise **beneficiation and job creation impacts** of our decisions
- We will incentivise **productivity** to support the **competitiveness** of our economy
- We will be **accountable** for our actions and always seek **better results for the country**
- We will privilege **private property** over nationalisation to promote competition
- We will ensure the **country stability**
- We will use **international cooperation** to improve our standing in the Region and to **gain expertise** from other countries

The first workshop will take place with the full Cabinet days after Ministers are sworn in

1

SPONSOR

LEAD / MODERATOR

PARTICIPATING MINISTERS

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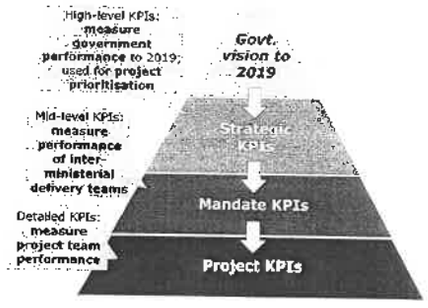
Measurable goals and **key performance indicators** are critical at government, mandate and project levels

1

KPIS SHOULD CASCADE THROUGH THREE LEVELS



KPIS SHOULD HAVE DIRECT LINKS (AS MUCH AS POSSIBLE)

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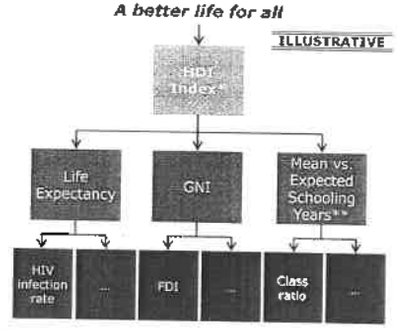

Success at each level is measured by performance against KPIs

*Composite index devised by UN comprising: life expectancy at birth, education levels, living standards (GNI/capita)
** Measure of educational attainment and access

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Successful delivery requires **accountability and coordination** of a broad range of stakeholders

1

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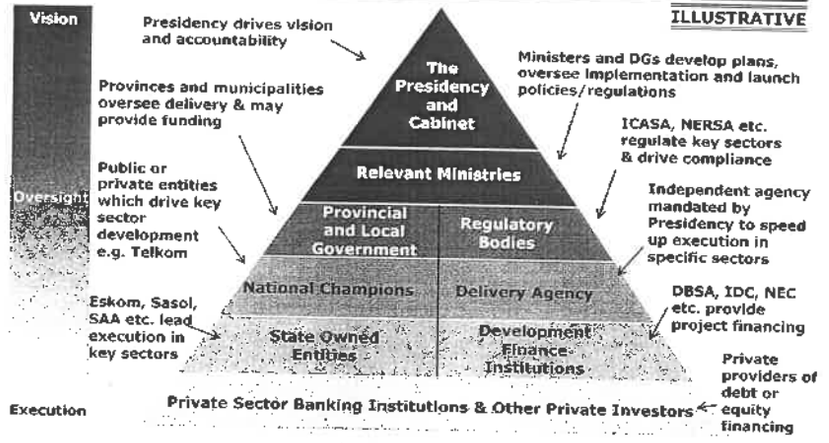

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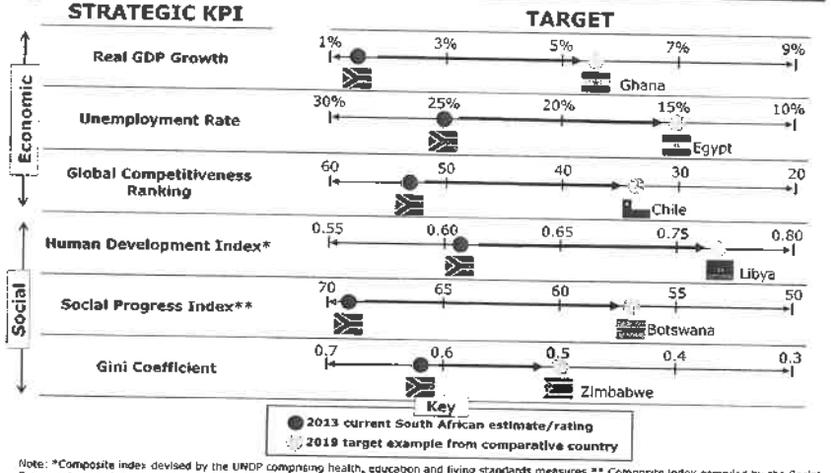
Overall government success should be measured against 3-6 strategic KPIs

1L

EXAMPLES PRELIMINARY



Note: *Composite index devised by the UNDP comprising health, education and living standards measures ** Composite index compiled by the Social Progress Imperative comprising 12 key indicators, including personal safety, shelter, water and sanitation
Sources: Department of Performance Monitoring & Evaluation; Statistics South Africa; World Bank; IMF; UNDP; WEF; Social Progress Imperative

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Triggers, Behaviors and Consequences play a key role in ensuring that results are achieved

1

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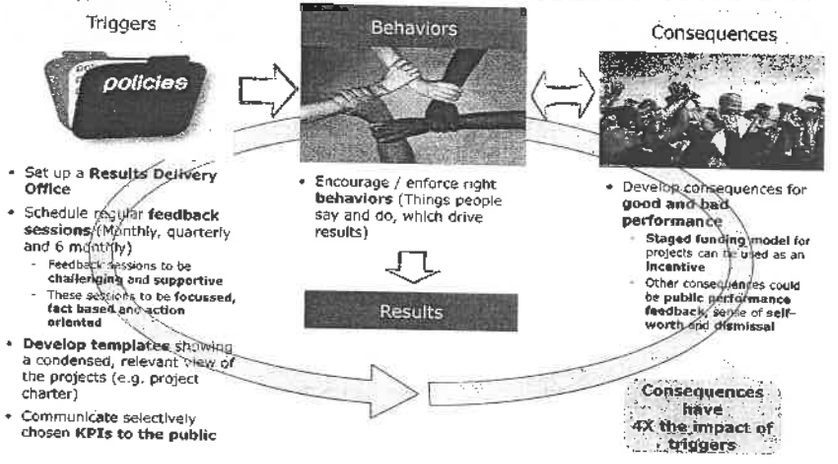

- Set up a **Results Delivery Office**
- Schedule regular **feedback sessions** (Monthly, quarterly and 6 monthly)
  - Feedback sessions to be **challenging** and **supportive**
  - These sessions to be **focussed, fact based** and **action oriented**
- **Develop templates** showing a condensed, relevant view of the projects (e.g. project charter)
- Communicate selectively chosen **KPIs to the public**

- Encourage / enforce right **behaviors** (Things people say and do, which drive results)

- Develop consequences for **good and bad performance**
  - **Staged funding** model for projects can be used as an **incentive**
  - Other consequences could be **public performance feedback**, sense of self-worth and dismissal

Source: Braksick, Leslie. Unlock Behavior, Unleash Profit - Second Edition. McGraw Hill, 2007

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Clear **principles** should guide the **creation of inter-ministerial working groups for each mandate**

2

Manageable team size	Working groups should be all **smaller than 10 people** (and facilitated by video conferencing when required)
Broad involvement	**Each national department should be involved** in shaping at least 1 manifesto mandate
Clear ownership	**Each working group should be led by a national department** with mandate responsibility, supported by departments that manage projects and provide input
Strong accountability	[illegible]
High collaboration	Each manifesto mandate should be supported by a working group comprised of several national departments to **manage interdependencies**

1-2 KPIs by mandate should allow to measure successful ANC manifesto implementation

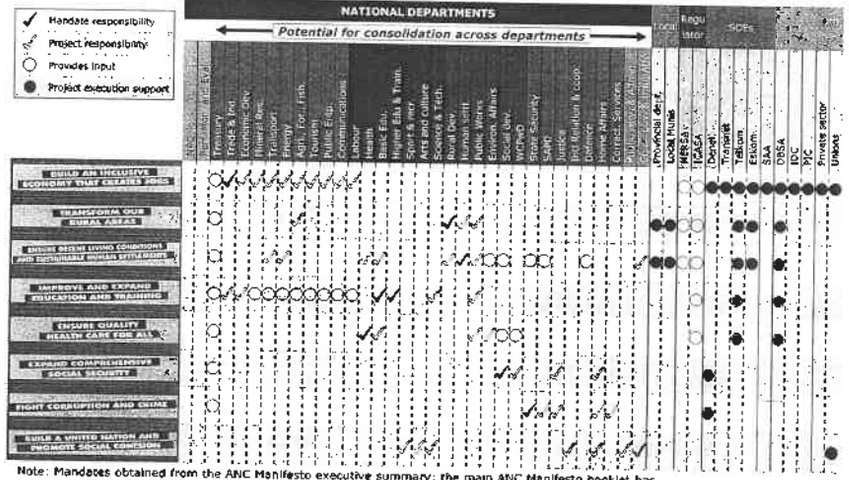
1 PRELIMINARY

	ANC MANIFESTO MANDATES[1]	POTENTIAL MANDATE KPIS
1	BUILD AN INCLUSIVE ECONOMY THAT CREATES JOBS	• Net new jobs created
2	TRANSFORM OUR RURAL AREAS	• Food production index • Value of land claims settled
3	ENSURE DECENT LIVING CONDITIONS AND SUSTAINABLE HUMAN SETTLEMENTS	• Number of RDP houses built • Access to electricity, sanitation & potable water[2]
4	IMPROVE AND EXPAND EDUCATION AND TRAINING	• School enrolment & completion rates • Literacy rate
5	ENSURE QUALITY HEALTH CARE FOR ALL	• Life expectancy at birth • Infant and child mortality
6	EXPAND COMPREHENSIVE SOCIAL SECURITY	• Poverty headcount index
7	FIGHT CORRUPTION AND CRIME	• Number of violent & contact crimes • Number of state qualified audits
8	BUILD A UNITED NATION AND PROMOTE SOCIAL COHESION	• "Confident in a happy future for all races" rating[3] • "Country going in the right direction" rating[3]

1) Mandates obtained from the Manifesto ANC executive summary; the main ANC Manifesto booklet has 2 more mandates (Building a democratic state and a better Africa) 2) Composite index 3) Currently tracked in bi-annual survey and monitored by Department of Monitoring & Evaluation
Source: ANC Manifesto summary; Department of Monitoring & Evaluation Development Indicators 2012; Statistics South Africa; World Bank Statistics Database

Each mandate should have an inter-ministerial delivery team led by a specific ministry

2 PRELIMINARY



Note: Mandates obtained from the ANC Manifesto executive summary; the main ANC Manifesto booklet has 2 more mandates (Building a democratic state and a better Africa)

Both priority and non-negotiable projects should be defined

1 FOR DISCUSSION

	PRIORITISED PROJECTS	NON-NEGOTIABLE PROJECTS
Definition	• Set of prioritised projects, the **sum of which** will allow the country to **achieve the strategic goals** of the ANC Manifesto • Prioritisation is the result of the **trade-off between value for the country and available resources** (time and budget) used to achieve them	• Set of **6-10 projects** which SA cannot avoid in order to achieve developed nation status
Examples	• Development of Special Economic Zones • Beneficiation of the automotive industry • Development of regional electricity distribution hubs	• 100% sewer coverage in rural and underprivileged areas • Build a primary school/clinic to ensure coverage of every child in a reasonable range (e.g. 10km)
	Define by mandate inter-ministerial working groups	**Defined by the Presidency and NEC Top 6**

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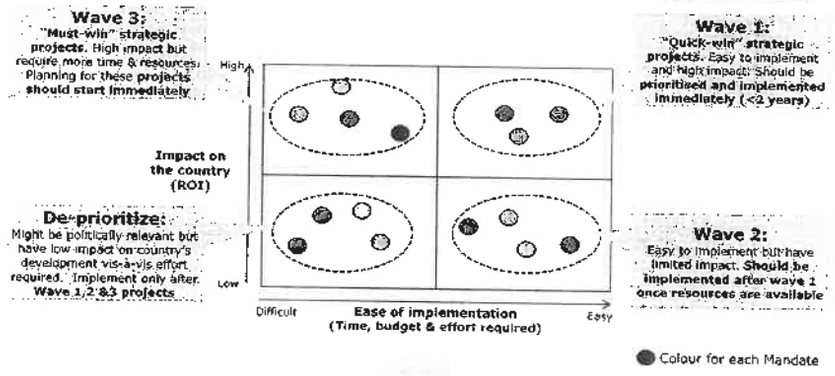
Projects should then be consolidated across mandates and categorized in **implementation waves**

3

ILLUSTRATIVE



~80% of the country's developmental budget should go to wave 1 & 3 projects – Is the government currently allocating enough budget to these projects?

Clear **rules of engagement** should support project definition by mandate

2

FOR DISCUSSION

Presidency	Performance Monitoring & Eval.	Inter-ministerial working Groups	National Departments
Vision & Executive Sponsorship	***Facilitation & Oversight***	***Mandate project prioritization***	***Mandate project definition***
• Attend key working group meetings and sign-off materials as required • **Communicate key strategic goals** to realise vision to 2019 • **Provide executive sponsorship** to project definition • **Sign-off mandate plans (incl. prioritization)** • Resolve **key issues/roadblocks**	• Supporting working group meeting preparation • **Support working group meeting facilitation**/moderation • **Oversee** development of mandate plans and prioritisation • **Advise Presidency on progress** and potential roadblocks	• **Deliver mandate and project plans** in time to Dept. of Performance Monitoring & Evaluation • **Prioritise projects** within each mandate • **Meet fortnightly at Director-General level** during strategy development • Proactively **communicate roadblocks**	• **Mandate Lead** Organise and Chair Working Groups. Collect input from relevant departments • **Project Lead** Attend Working Groups. Deliver project plans to mandate lead • **Input Provider** Attend key working groups meetings. Deliver input where requested by mandate/project lead

An optimal project implementation sequence will ensure **strong momentum in results delivery**

3

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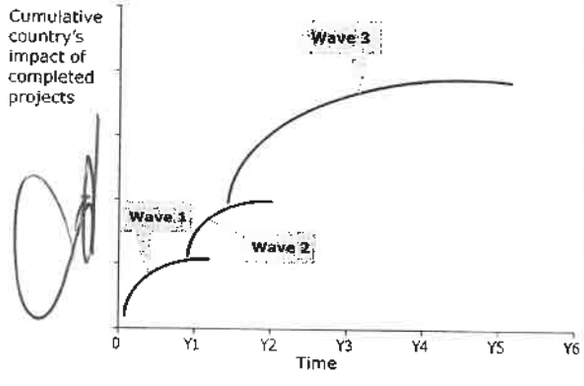

Wave 1:
- Quick win strategic projects
- Must start immediately
- Time to complete < 1 year
- High impact, easy projects

Wave 2:
- Start after wave 1 once resources/capacity has been freed up from wave 1
- Time to complete < 1 year
- Low impact, easy projects

Wave 3:
- Key strategic projects
- Start planning for resources & financing immediately
- Implement in phases as resources are secured
- Time to complete 3-5 years
- High impact, difficult projects

Each project should be analysed to assess its **impact, cost and ease of implementation**

2

ECONOMY & JOB MANDATE ILLUSTRATIVE

	Project examples	GDP growth	Unem-ployment	Global Compet-itiveness	Human Develop-ment	Social Progress	Gini Coefficient	CAPEX required	Time to implement
1	Source 75% of state goods & services procurement locally	◑	◕	○	○	○	◑	Low	<1 year
2	Set up special economic zones and other FDI incentives	◕	◑	◕	○	○	◔	Medium	1-2 years
3	Strengthen mining SOEs to promote beneficiation	◕	◕	◑	○	○	◔	Medium	2-3 years
4	Establish BRICS DFI to finance infrastructure development	◔	◔	◑	○	○	○	High	1-2 years
5	Build infrastructure in Limpopo & Mpumalanga to tap more minerals	◕	◑	◑	○	○	◑	High	3-5 years
6	Develop sustainable nuclear energy to meet future demand	◑	◔	◑	○	○	○	High	>5 years
7	Explore shale gas as a possible cheaper & cleaner energy source	◑	◔	◑	○	○	○	Medium	<1 years
8	Upgrade freight rail infrastructure to shift from road to rail transport	◑	◕	◕	○	○	○	High	2-3 years
9	Expand Ngqura, Durban & Cape Town ports to increase cargo capacity	◑	◔	◕	○	○	○	High	2-3 years
10	Expand broadband to lower comm costs & connect the country	◑	◑	◕	◔	◑	◔	High	2-3 years

Source: ANC Manifesto 2014

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Strict governance & senior support will be required to succeed; **Results Delivery Office** should be created

4

FOR DISCUSSION

KEY PRIORITIES DELIVERY TEAMS

Clear accountability structures within each of the Top 10 identified Key Priorities to ensure successful implementation

President

Accountable Minister

Responsible for providing overall direction and aligning leadership with strategy execution plans; directly accountable for mandate success

....

Director General

Responsible SOE Board / chairman / CEO

Assembles and leads a team to execute each Priority area; ensures integration of his or her area with the others

OVERALL PROGRAMME MONITORING & OVERSIGHT

Overall responsibility for programme mgmt & oversight, assists with change mgmt & communication expertise across all projects

Top 6

Provide advice, guidance & visibility

Minister of Performance Monitoring and Evaluation

Responsibilities to provide overall direction & co-ordination across Key Priorities, holding delivery teams accountable & taking action when required

Results Delivery Office

Office created within current or new Ministry to track the implementation across all key projects; provide change mgmt. & comms. expertise; and leverage current structures in Govt e.g. FOSAD

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For each prioritized project, a clear **charter and business plan** should to be developed

4

ILLUSTRATIVE

Initiative Overview			**Key Stakeholders**
• *What is the background & context for this project?*			• *Are the right skills and capabilities in place?* Sponsor: xxx Project Lead: yyy Team members:
Problem / Opportunity Statement		**Objectives / SMART Goals**	
• *What is the problem/opportunity that this project is looking to solve/flesh out?*		• *Are the objectives clearly defined?* • *Are they Specific, Measurable, Actionable, Relevant, Timely?*	
Scope	**Key Deliverables / Milestones**	**Responsible**	**Target Date**
• *What will fall within the parameter of the initiative, therefore will be tracked?*	• *What critical milestones and deliverables are there?*	• *Who is responsible?*	• *What are the target dates?*
Dependencies	**KPIs**	**Current FY13**	**Target FY18**
• *What dependencies does this project have on other projects or vice versa?*	• *What Key Performance Indicators are used to track if this project is successful?*	• *What is the baseline of performance?*	• *What is the target performance?*
Sponsor Sign-off and Date: • *Is there the right accountability for the overall project delivery?*		**Lead Sign-off and Date:** • *Is there the right responsibility for project delivery?*	

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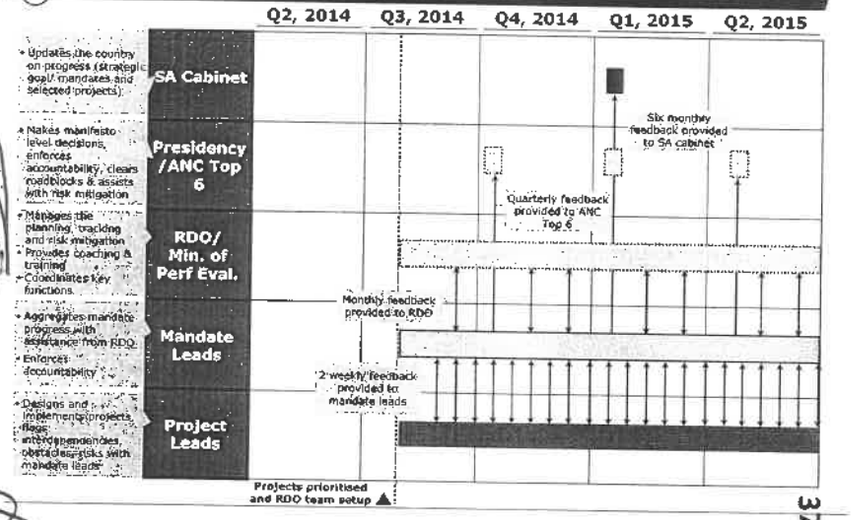
Results Delivery Office could support increased visibility, accountability and problem resolution

4

ILLUSTRATIVE



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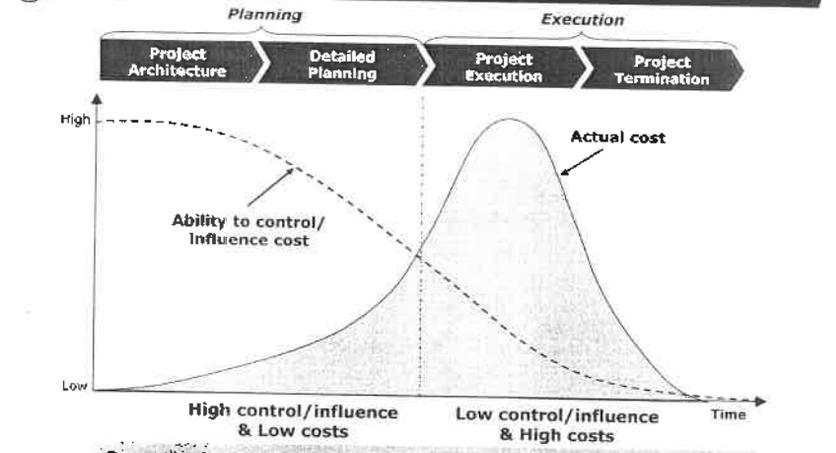
Up-front project cost management will allow **certainty and control on expected costs**

4



Correct planning allows to retain control of costs even in the execution phase

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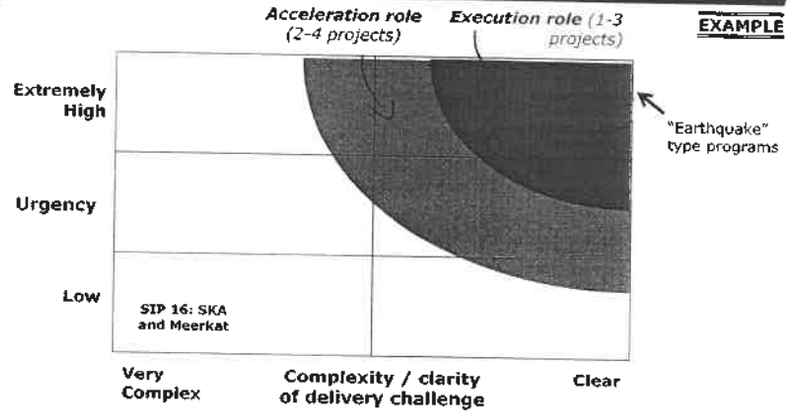
... but should be deployed very **selectively** based on project type (level urgency and complexity)

4



To be effective, Delivery Agency should lead execution of 3-7 projects at most

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Successful delivery will requires significant leadership capabilities & core skills

4

Leadership capabilities/ mobilisation

- To ensure success, the **right leaders** should be identified
  - 30-50 leaders from **public and private sector** will need to take responsibility of the success of key projects – we can help identify those
- **Incentive schemes** should be developed and a **culture of "pride for the country"** should be embedded to attract key leaders
- These leaders should have the **right capabilities to drive success**
  - Desired **core leadership skills must be** embedded within leadership teams via skills development programs (e.g. Bain Academy program)

Core skills

- **Identify technical and operational skills** necessary for successful implementation of all projects
  - E.g. Project Management, Finance, Engineering, etc.
- Critical to **develop a pipeline of skills** for long-term sustainability
  - Crucial to include private sector and educational institutes in development

Core group of ~30-50 leaders/strong CEOs should be identified and developed to support economic development

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Objectives of this document

- Discuss proposed **process to support implementation of the ANC Manifesto goals** and prepare process launch:
  - Define **non-negotiables** to adhere to
  - Set **strategic goals for manifesto implementation**
  - Decide **how to prioritize projects** and **roles of Ministry Clusters** (and Chairs)
  - Discuss relevance of **results delivery office** and **special agency** to support implementation
- Agree on **next steps**

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A **Delivery Agency** could be set-up to overcome execution roadblocks...

4

DELIVERY AGENCY ROLE, BENEFITS AND CHALLENGES

Strategic and controlling role

- Ensures **strategic alignment** between stakeholders
- Controls funding and approves rights for project spend
- **Supervises** project budgets and on-time progress
- Potentially has **power to intervene** in cases of failure and take over execution

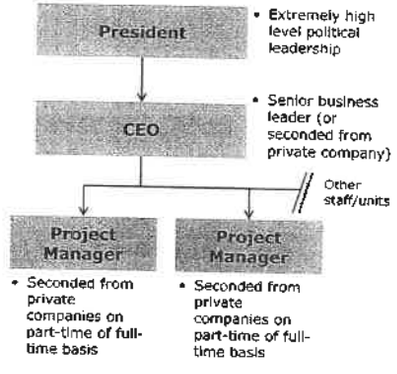
Benefits

- Combines **central control & direction with local context**
- Leverages **private sector**
- Optimizes **use of funding pool and human resources**

Challenges

- Requires **significant capacity-building** in co-ordination, procurement, financial management
- Requires right **level of authority** for effective coordination of various stakeholders

POTENTIAL ORGANISATIONAL FRAMEWORK



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Next steps

- Fine-tune **ANC manifesto implementation process** based on your feedback

- **Prepare 1st workshop**:
  - Engage with key Ministers/DGs prior to workshop (e.g., Performance Monitoring and Evaluation)
  - Develop workshop document

Bain could be actively involved throughout the process to ensure success of the project

FOR DISCUSSION

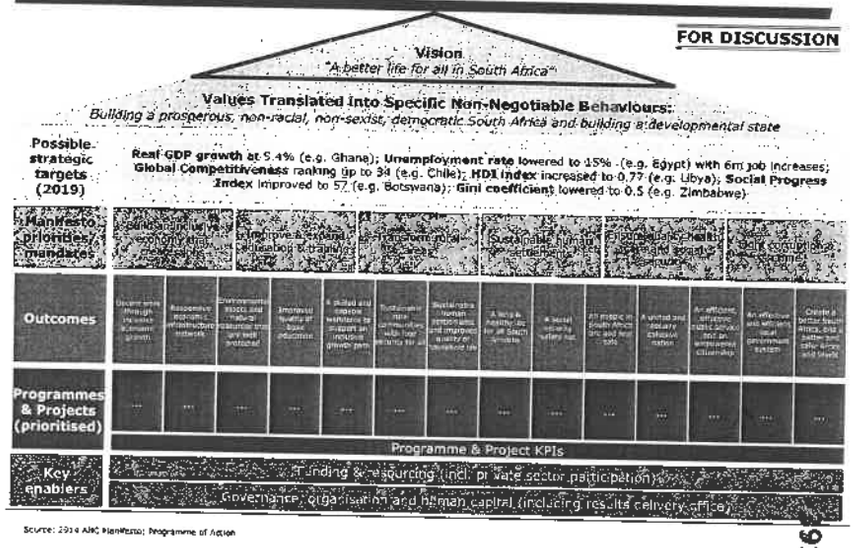
Bain potential support

① Cabinet workshop#1	② Inter-ministerial working groups	③ Cabinet workshop#2	④ Inter-ministerial working groups
Vision & Accountabilities	*Project Definition*	*Prioritisation & Rollout Plan*	*Results Delivery*
• Advise on manifesto implementation process based on international and South African best practice experience • Support articulation of clear and compelling vision and KPI definition • Prepare workshop material and prepare facilitation	• Advise and support selected inter-ministerial working groups or specific ministries to define, assess and prioritise projects based on existing policy documents (e.g., NDP, IPAP, MTSF etc.) • Provide holistic view of prioritised projects and impacts on strategic goals and mandate KPIs	• Prepare workshop material and prepare facilitation • Support mandate leads in communicating and presenting the final prioritised list of projects • Structure integrative implementation plan and roadmap	• Provide guidance to set up the Results Delivery Office to ensure implementation success • Support selected ministries in developing departmental strategic plans and charters / business plan for prioritised projects • Support execution of specific projects

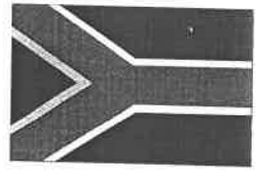
ANNEXURE "AW65"

A comprehensive framework highlights the **key ingredients of the Manifesto implementation**

FOR DISCUSSION



Source: 2014 ANC Manifesto; Programme of Action



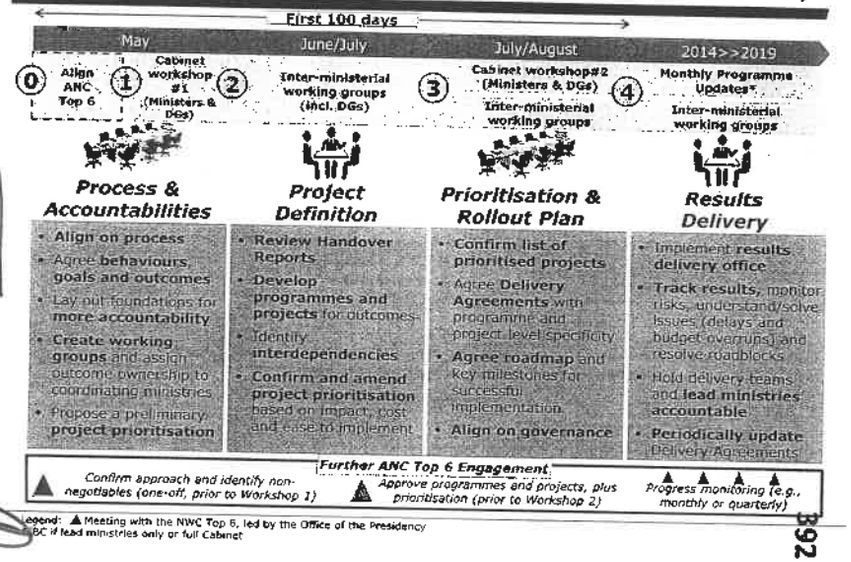
ANC Manifesto – Programme Management Proposal

Discussion Document

23 May 2014

DRAFT

A **simple and comprehensive process** will enable ANC manifesto implementation – first 100 days are key



Legend: ▲ Meeting with the NWC Top 6, led by the Office of the Presidency
EBC if lead ministries only or full Cabinet

ANC Manifesto – Programme Management proposal summary

- **Successful implementation of the ANC manifesto** hinges on numerous key factors:
  - **Coordinated action from the day Ministers are sworn-in**, cascading through to the Deputy-Ministers & DGs
  - **Clearly defined and agreed outcomes**, with detail on the programmes and projects that sit below (incl. funding & KPIs)
  - **Collaboration and alignment across the wide-range of stakeholders that** develop, execute and oversee programmes/projects (special focus on ensuring that Cabinet vision is aligned with party vision)
  - **Focused use of resources** driven by prioritisation of programmes / projects and funding only released after interim milestones are met
  - **Accountability** driven by transparent **performance monitoring with consequences**
- **We propose the following process to kick-off ANC Manifesto implementation**:
  - **The acceleration of Cabinet planning processes** to agree the strategic frameworks, outcomes, programmes and projects in the first 100 days
  - **The hosting of two Cabinet Workshops** (immediately after the Cabinet is sworn-in) to align on the new way of working
  - The modification of Implementation Forums **into smaller inter-ministerial working groups** that enable accountability
  - **The definition of new Delivery Agreements** that include detail on the "how" and consequences for non-performance
  - **The establishment of a Results Delivery Office within the Department of Performance Monitoring and Evaluation** and **periodic Programme updates** to manage roadblocks
- Design is paramount but, in addition, **it is key this process and Programme Management has the right and appropriate sponsorship from the Presidency and ruling Party**
- **Urgent action is required** for the Workshops to be successful and happen immediately after swearing-in: need to prepare the logistics and content, pre-wire key Ministers and brief Session Leads

AWGS

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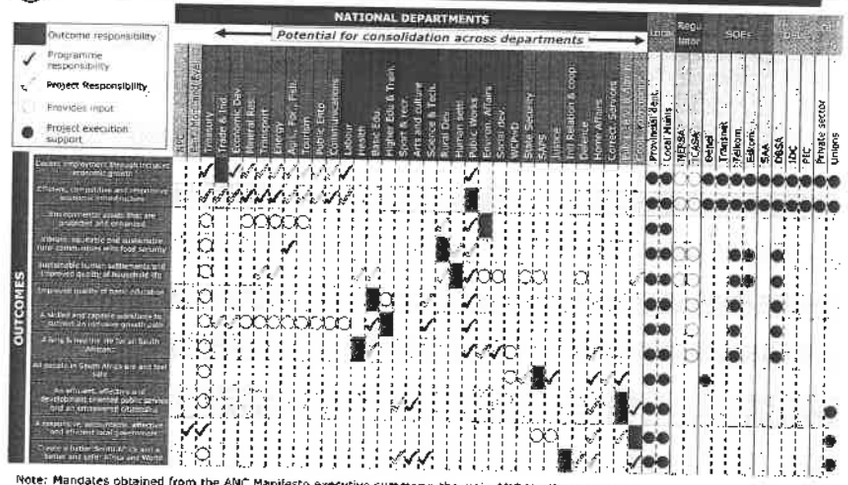
The process must **bring together all the key role players** in the delivery of the manifesto

PRELIMINARY



Note: Mandates obtained from the ANC Manifesto executive summary; the main ANC Manifesto booklet has 2 more mandates (Building a democratic state and a better Africa)

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Pre-requisite policies and rules for continuity and certainty of investors and public confidence (1 of 2)

Non-Negotiables Are...	***Non-Negotiables Are Not...***
☑ Specific and **actionable behaviours** derived from government values	☒ A set of high-level statements or values with **no clear link to action**
☑ A **checklist for each member of the Cabinet** to reference on an ongoing basis to drive their decisions and actions	☒ A list that is **created once-off** without a day-to-day purpose, and without driving decisions and actions
☑ An easily communicable **set of behaviours to which the Presidency can hold Cabinet accountable**	☒ **A secret list** that must not be communicated or distributed outside of the Cabinet or wider government

The Non-Negotiable behaviours represent actionable guidelines for the behaviour of all members of the Cabinet

Note: Executive Ethics Code used as reference

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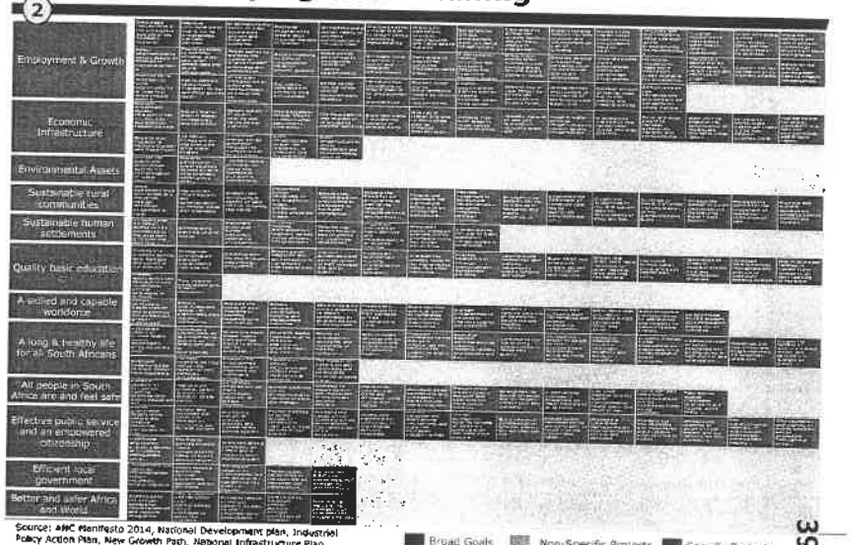
Currently **too many projects**, and many require **additional scoping and detailing**



Source: ANC Manifesto 2014, National Development plan, Industrial Policy Action Plan, New Growth Path, National Infrastructure Plan

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Pre-requisite policies and rules for continuity and certainty of investors and public confidence (2 of 2)

Focused use of resources	• We will **focus our resources** – both human and financial – where they matter most to our people
Financial discipline	• We will be **disciplined in the use of finances and optimise spend vs. results**
Job creation	• We will **maximise economic growth** as an driver of beneficiation and job creation
Economic – productivity	• We will promote balance between **productivity and equitable redistribution to stabilize labour relations**
Accountability	• We will be **accountable** for our actions and always seek **better results for the country**
Private property protection	• We will **adhere to the constitution in protecting private property** over nationalisation and we will **ensure sufficient communication and understanding of the country's policies** on this matter
Global co-operation	• We will ensure **South Africa's stability** • We will **co-operate internationally** to improve regional standing and expertise
From "financial" to "developmental" economy	• We will **redress social injustice** and build an inclusive economy
Service delivery	• We will ensure the **best quality of service delivery**, especially for the disadvantaged people and areas, and restore confidence in our abilities to execute
Public confidence	• We will **improve governance** as well as reaffirm and **adequately communicate the strength and fairness of our judicial system**

Note: Executive Ethics Code used as reference

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SARS-01-410

WW1-AW-400

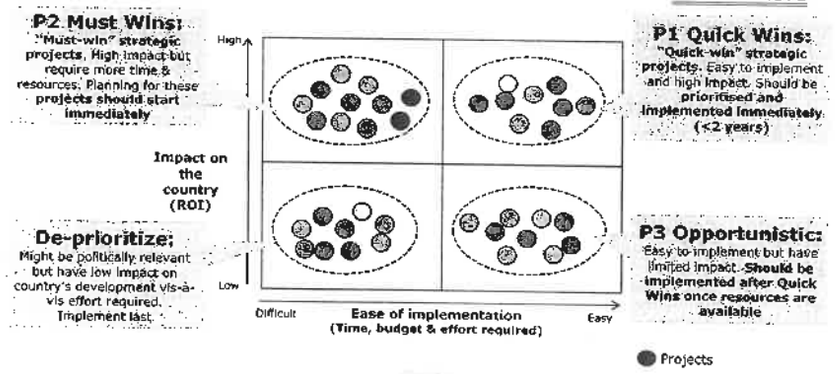
For each project, **detailed charters** must be developed

Initiative Overview			Key Stakeholders
• *What is the background & context for this project?*			• *Are the right skills and capabilities in place?* Sponsor: xxx Project Lead: yyy Team members:
Problem / Opportunity Statement		**Objectives / SMART Goals**	
• *What is the problem/opportunity that this project is looking to solve/flesh out?*		• *Are the objectives clearly defined?* • *Are they Specific, Measurable, Actionable, Relevant, Timely?*	
Scope	**Key Deliverables / Milestones**		**Responsible** / **Target Date**
• *What will fall within the parameter of the initiative, therefore will be tracked?*	• *What critical milestones and deliverables are there?*		• *Who is responsible?* / • *What are the target dates?*
Dependencies	**KPIs**		**Current FY13** / **Target FY18**
• *What dependencies does this project have on other projects or vice versa?*	• *What Key Performance Indicators are used to track if this project is successful?*		• *What is the baseline of performance?* / • *What is the target performance?*
Sponsor Sign-off and Date: • *Is there the right accountability for the overall project delivery?*		**Lead Sign-off and Date:** • *Is there the right responsibility for project delivery?*	

399

Projects must be prioritised based on their impact on the country and the ease of implementation

ILLUSTRATIVE



~80% of the country's developmental budget should go to P1 Quick Wins and P2 Must Wins

397

Project tasks must be converted into **roadmaps**

ILLUSTRATIVE

Activity	Responsible	2014 Q1	Q2	Q3	Q4	2015 Q1	Q2	Q3	Q4	2016 Q1	Q2	Q3	Q4
Strategic Redesign													
•Design turnaround strategy	Name, Position												
•Start quick win initiatives	Name, Position												
Operational turnaround													
•Implement asset strategy	Name, Position												
•Integrate new divisions	Name, Position												
Organisational turnaround													
•Implement talent strategy	Name, Position												
•Setup Transformation Office	Name, Position												
Risk Management													
•Develop Results Delivery risk mitigation strategy	Name, Position												
•Track project deliverables	Name, Position												
Milestones & Key Deliverables													

400

A sub-set of the P2 Must Wins must be identified as differentially important

FOR DISCUSSION

Foundational
Programmes that must be completed for South Africa to reach developed nation status

- **Basic Services Programme:** Eradicate all open-air toilets, eradicate pit toilets in educational institutions and ensure universal access to clean drinking water
- **Educational Infrastructure Programme:** Open 2 universities, 12 FET campuses and 1000 schools to expand access
- **Functional Literacy Programme:** Expand mass literacy programme to ensure Functional Illiteracy <5%
- **Health Infrastructure Programme:** Construct 43 new hospitals and 213 new clinics and community health centres to extend health coverage
- ...
- ...

Radical Socio-Economic Transformation Programmes
South Africa 2.0: Large cross-functional programmes that are composed of multiple projects with public and private stakeholders – basis of a modernised South Africa

- **ICT sector restructuring:** Expand broadband infrastructure to cover 90% of SA, develop e-government networks and give rise to a national and regional ICT Champion
- **Energy Programme:** Optimise energy capacity and mix to drive efficiency, extend electrification and create a national and regional Energy Champion
- **NHI Programme:** Establish publically funded and administered National Health Insurance
- ...
- ...

Source: 2014 ANC Election Manifesto; Medium-Term Strategic Framework

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SARS-01-411
WW1-AW-401

There are numerous **delivery risks** that should be mitigated against

4

FOR DISCUSSION

Lack of effective collaboration	• Unclear ownership within clusters leading to **silos or the "blame game"** • Difficulty **cascading the priorities to DGs and staff** leading to misalignment • Unidentified or poorly managed interdependencies, especially with provincial and local governments, leading to **conflicting work or duplication**
Unclear plans and agreements	• Insufficient detail on the "how" leading to **ineffective prioritisation and less focused use of resources** • Too many KPIs defined without an agreed ranking or hierarchy, making **measurement of success difficult**
Budget rigidity	• Departmental budgets leading to **difficulties implementing cross-departmental programmes and projects** • Difficulty of **acquiring required budget** if the priorities are not defined correctly and with sufficient **detail** upfront
Lack of consequences	• Difficulty creating **performance agreements for Ministers and DGs** leading to unclear accountability for the plans and delivery • Lack of **interim delivery hurdles** resulting in poor performance of projects not being picked up early enough to take corrective actions – **poor issue resolution**
Timing of planning processes	• Too long a window between selection of the Cabinet and finalisation of the Medium-Term Strategic Framework, Outcomes and Delivery Agreements, leading to **shortened timelines for the delivery of projects** • Prioritisation not being done upfront, leading to continuation of **business as usual**

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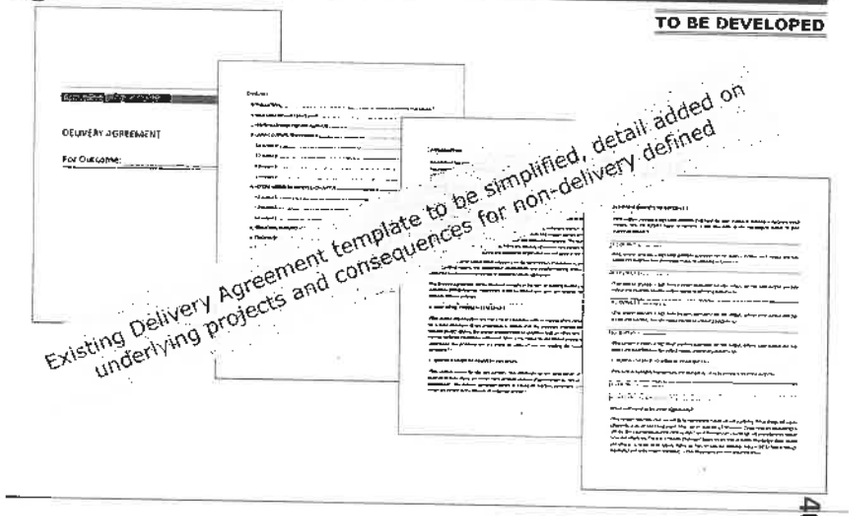
Process must culminate in **Delivery Agreements** that provide detail on the what and how of projects

3

TO BE DEVELOPED



401

Immediate next steps

- **Fine-tune the manifesto implementation process** based on your feedback
- Agree the process with the **ANC Top 6, Cabinet, Monitoring and Evaluation Minister and DGs in the Presidency**
- Assign a **Process Head and Workshop Facilitator**
- **Prepare key Workshop I materials and logistics**
- **Pre-wire key Ministers** to gather input on content and ensure a productive session

404

Strict governance & senior support will be required to succeed; **Results Delivery Office** should be created

4

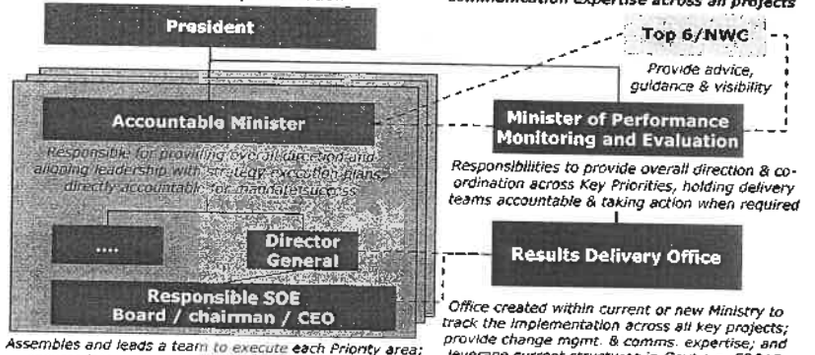
FOR DISCUSSION

DELIVERY TEAMS FOR KEY PRIORITIES (LEADERSHIP SPINE)

Clear accountability structures within each of the Top 10 identified Key Priorities to ensure successful implementation

OVERALL PROGRAMME MONITORING & OVERSIGHT

Overall responsibility for programme mgmt & oversight, assists with change mgmt & communication expertise across all projects



Assembles and leads a team to execute each Priority area; ensures integration of his or her area with the others

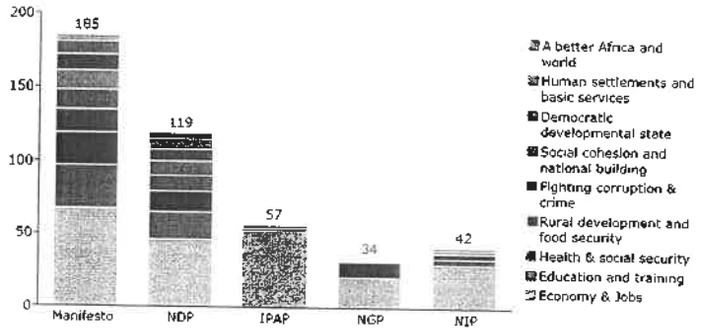
402

SARS-01-412
WW1-AW-402

Key policy documents should be used to specify the project list

BACKUP

Number of projects/initiatives per policy document aligned to manifesto mandates



	Manifesto	NDP	IPAP	NGP	NIP
% of projects matching ANC Manifesto projects	100%	69%	37%	65%	67%

Source: ANC Manifesto 2014, National Development plan, Industrial Policy Action Plan, New Growth Path, National Infrastructure P...

Critical questions

FOR DISCUSSION

Roles

- **Who is the primary contact** that we should work with to administer the process?
- **Who should present and lead sessions** in the Workshops?
- Which Ministries should be assigned **ownership of outcomes?**

Logistics

- **Where and on what date** should Workshop 1 be held?
- **Who should be invited** to this Workshop as attendees? Who should be invited as observers?
- **Who should review the content** prior to the Workshop?

Process

- Should the Workshops have a more **directive or consensus-driven approach?**
- Who should we work with to ensure that Programme priorities act as an input into the **Medium-Term Strategic Framework?**

Content

- Are there specific, measurable **strategic goals** for this Cabinet?
- Are the **outcomes** the same as that of the 2009 Administration?
- What are the ~10 **programmes that are differentially important?**
- What 5-10 **behaviours** are essential for success?

Backup

SARS-01-413

WW1-AW-403

ANNEXURE "AW66"

SARS-01-415

CONFIDENTIAL

FOR DISCUSSION

Reshaping South African economy

Discussion on a possible Central Procurement Service

March 2014

333

Summary

- A **Central Procurement Service** could be a very powerful tool in the hand of this Administration, bringing **massive financial and non-financial benefits** and becoming one of the keystones of the e-Government strategy
  - Important savings in the expenses and investments, through different levers
  - Improved quality of supplies and quality of service (to the internal customers)
  - Increased transparency on spend and investment
  - Become a vehicle for BBBEEE policies and stimulate foreign investments
- There are **different models** that can be put in place, depending on
  - scope ("what") and reach ("for whom") of the function
  - being its use obligatory or optional
  - the variety of the procurement tools adopted
  - The financial or business model adopted
- The above decisions will inform the **nature of the function/entity** to be created
  - A department in a ministry
  - An agency
  - A separate company
- **Execution of such a project is extremely complex** and will require strong political will and leadership, appropriate governance, high level capabilities and sufficient initial investments

AW66

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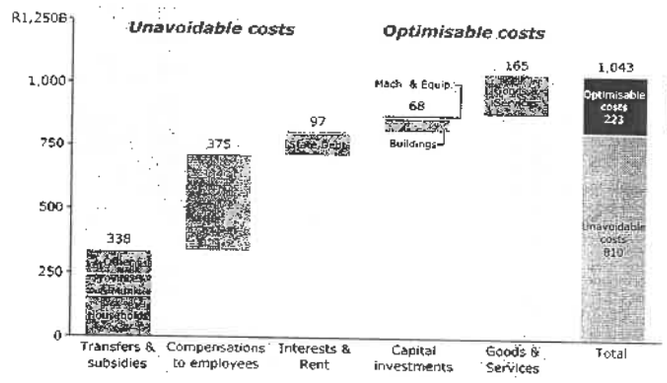
JOH Central Procurement Agency 2 2

In a very preliminary estimate, a Central Procurement Agency could create value in excess of 20-30 Bn per year

2012/13 Consolidated government expenditure



Every 10% optimisation on procured costs could save the country ~R23B per year

SOE*s' external spend is estimated at ~R500Bn

*= Eskom, Transnet, Petro SA, SARS,..
Note: Other Transfers & subsidies includes: Public & private enterprises; Non-Profit institutions; Department Agencies; Other minor allocations; Interest & Rent includes rents on land and payments for financial assets
Source: Medium Term Budget Policy Statement 2013

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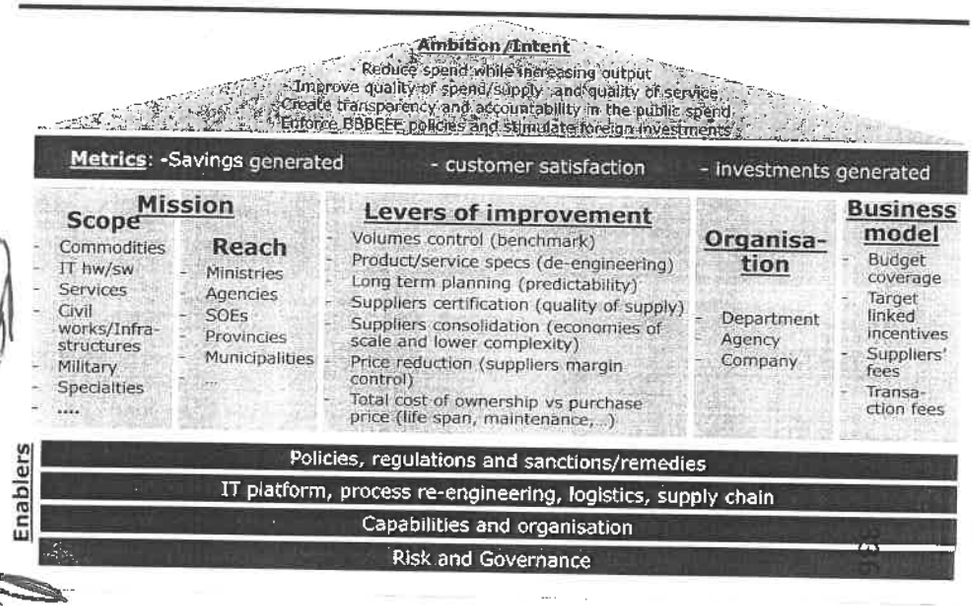
JOH Central Procurement Agency 2 3

Definition of a Central procurement function – conceptual framework



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WW1-AW-405

Reach and obligatoriness of action

- The **"reach" of the Central Procurement Service** identifies the different subjects or entities who would be required to be part of the program. Also in this case, "more" means greater impact but also increasingly higher difficulties and complexity. For example in responding to the exacts needs, providing high quality of service, guaranteeing continuity of supply
- The **list of entities can be summarized** as follows:
  - Central Government: Ministries
  - Central Agencies and fully owned Enterprises
  - Local Government: Provinces, Municipalities, Local Agencies and Enterprises
- **Obligatoriness is also an important design element** to be decided. Will the entities be obliged to buy through the Service or will it be facultative?
- Given all the above, the recommended approach would be for the **action to be mandatory only for Central Government** and to be facultative – but with the prices considered as benchmarks – for the other entities

Scope of action

- The **"scope" of the Central Procurement Service** identifies the Categories for which the entity will perform the procurement service. Clearly, the more Categories are included the higher the potential impact, but also the complexity of realization.
- Simplifying, the **typical categories of spend can be articulated in:**
  - Commodities: goods and services that are common across the different buyers and the needs are not diversified. Examples are car fleet, transportation, food & catering, fuel, utilities, facilities services, ...
  - ICT products and services: these tend to be very similar across buyers and with similar suppliers, but needs can vary
  - Specialties: these are categories of product or services that are specific to one or two buyers and require specific capabilities in order to be procured effectively and efficiently. Examples are: military spend, civil works,...
  - Among these, Health Care and Education external spend can be potentially very relevant, in terms of size and possible optimization
- In order to kick off the project and create momentum, probably the best approach would be to **start tackling the Commodities spend**. Future evolution, after a good results track, will include other categories and subjects (Local Government, SOEs,...)

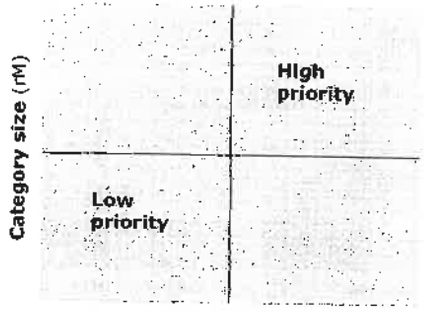
Levers of improvement (1/2)

- It is important to describe why and with what levers a Central Function can substantially **reduce the external spend and improve quality of the supply**

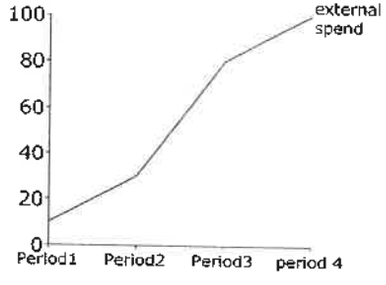
- **Consolidation of all internal procurement functions:** this will mean less people involved, more capable and specialized per category, with the most advanced tools and systems at disposal. Hence providing faster ad better service. This would be, by the way, a first example example of e-Government services (Phoenix project)
- **Volumes control**: the first and easier lever to use is reduce volumes. Controlling quantities requested by the different "clients" against budgets and applying benchmarks
- **Product/service specs (de-engineering):** often products and services specification are too high and sophisticated compated to the actual client needs. A proper needs segmentation and category management can substantially reduce prices. IT hardware and software is a typical example
- **Suppliers certification (quality of supply):** selecting a smaller number of "approved strategic suppliers" allows to better and more consistent quality of the supply, also introducing the right incentives
- **Long term planning (predictability):** planning procurement long term allows suppliers to make the right investments, appropriately sized and in conditions of relative stability. This allows them to be more efficient which results in lower prices for us

Categories will need to be prioritized and progressively "attacked"

Prioritization matrix



Tackled spend progression (%)



SARS-01-416
WW1-AW-406

Effective Governance will be determinant to ensure success of the program

For discussion

President
- A "President's program"
- Quarterly Reviews, (with other Cabinet members), with a structured process and dashboard

Minister of Finance (+ dedicated DG?)
- Board members appointment
- Monthly reviews on:
  - Policies and Regulatory framework
  - Approvals
  - Operating and financial milestones
- Stakeholder management and official public statements
- Conflict resolution, roadblocks removal and crisis management

- Strategic autonomy within approved Program framework
- Submission of plans and reports
- Broad operating autonomy
  - Executive team composition
  - Organisation structure and operating systems
  - Post-merger integration
  - Procurement and tenders
  - Marketing and technological choices
  - ...

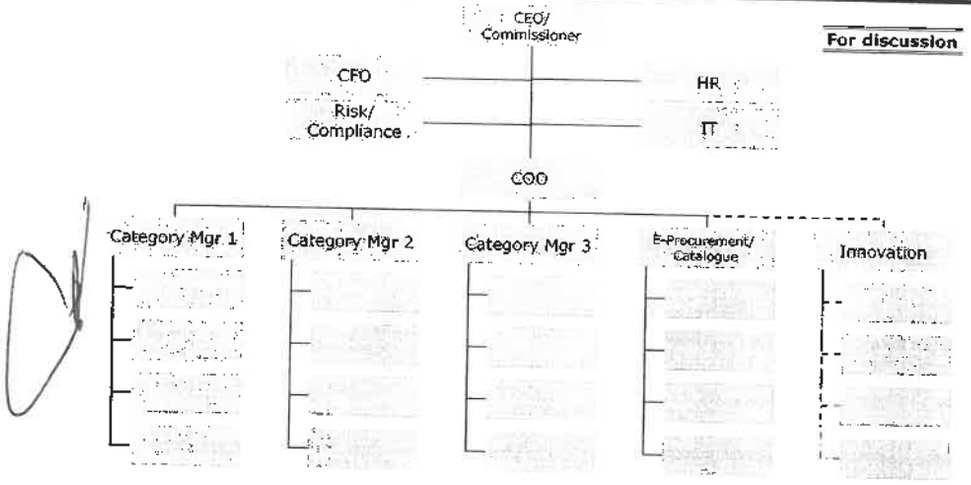
Levers of improvement (2/2)

- **Suppliers consolidation (economies of scale and lower complexity):** especially in certain industries with high fixed costs, fragmentation is very dangerous and creates high level of inefficiency and complexity. Consolidation, still maintaining a healthy level of competition, will push down prices
- **Price reduction (suppliers margin control and reverse engineering):** a deep understanding of a category and of an industry will allow stronger negotiating power with suppliers, resulting in lower prices, reducing suppliers' margins
- **Total cost of ownership vs purchase price (life span, maintenance,...):** in certain categories (ie cars, printers,...) the purchase cost is only a fraction of the total cost of ownership. An advanced procurement service will be able to work on and optimize the second, which is the most relevant one
- On basic commodities with recurring purchases (eg stationery, ...) advanced tools such as on-line auctions and catalogue e-procurement can also drive massive savings

- If properly designed, all the above measures can serve **economic development purposes**, favouring BEE companies and SMEs
- Finally, this consolidation will give **maximum transparency and visibility**, in real time, on all transactions happening in the country, with enourmous benefits in the struggle with corruption.

Possible organisation structure

For discussion

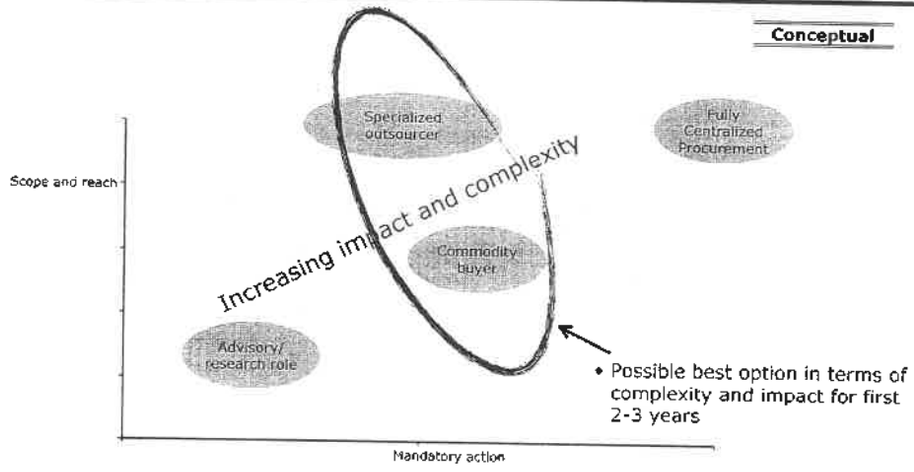


Organisation and business model

- The **type of organisation** will depend on the specific "mission" the Central Procurement will receive. We can identify three basic models:
  - Department of a Ministry (Finance, most likely)
  - Agency
  - Company
- In order to maximise agility, autonomy with transparency and control, the Agency model would probably constitute the best choice, but further studies will need to be done, including on the specific Governance model
- **In terms of business model**, the most consistent one with the Agency organisation is the budget cost coverage. Fundamental, though, to establish specific targets (rapidity of action, savings obtained, level of service,...), possibly linking them to incentives

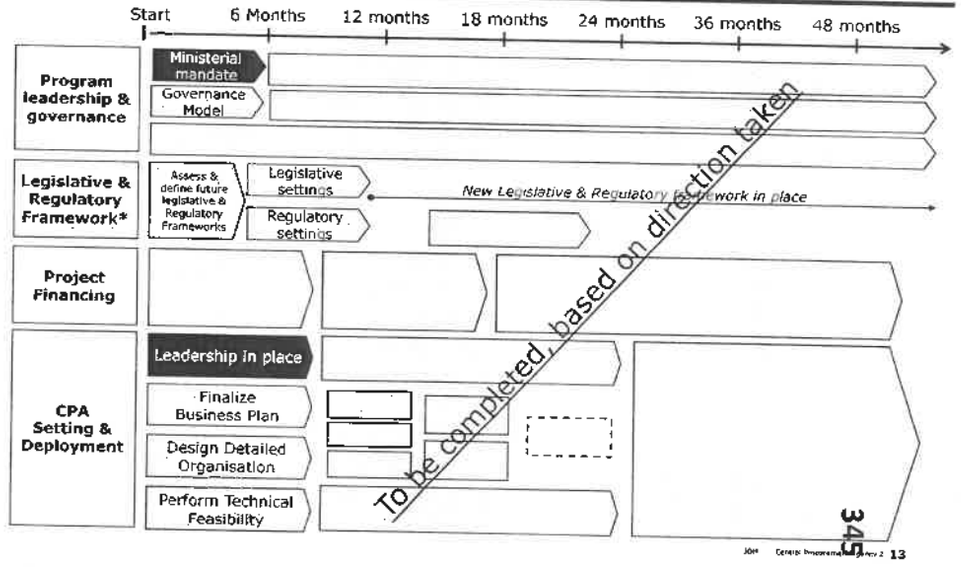
SARS-01-417
WW1-AW-407

Possible form of the Central Procurement Function



Key next steps: Project plan

PRELIMINARY DRAFT



Appendix

SARS-01-418
WW1-AW-408

ANNEXURE "AW67"

Partner Self Assessment:	**Vittorio Massone**
Date Submitted:	**06-Dec-2013**
Date Printed:	**13-Dec-2013**
Office:	**South Africa**
Reviewers:	**Blasberg, J.**
	Meehan, P.

SARS-01-420

WW1-AW-410

the Phoenix project will hopefully materialize in the next few months: among them the turn-around of the South African Post Office, which "per se" could represent a client similar in size to Telkom; but also others elements, which are less clear now in terms of consulting role for Bain, such as e-Government
It still to early to list results for what concerns Telkom, but so far - and with great challenge - we have created the basis for an effective turn-around: a) awareness on the financial and market situation and its root causes; b) consensus on the strategic ambition, the key imperatives and the list of the projects to be executed, c) initial cost cutting interventions. We are moving now into the consequent more operational phase with a) Reorganisation; b) CEX project; c) Integrated Broadband Plan d) a couple of M&A operations. The change in the management team is unfortunately not completed yet, so execution will be a challenge

As a **"halo effect"** of the relationship with Sipho and the role we played in the Phoenix project, we have been involved in preparing a high level, outside-in, "strategic turn-around" document on the **SA Revenue Service (SARS)**. The person we prepared the document with and who pitched it to the SA President - is most likely going to be appointed as Commissioner in the next few weeks/months and Bain will be assisting him, should he get the job. SARS is one the largest and highly estimated Government Agency and a large Bain client in the previous dispensation (90s').

Given the challenges on my time but also and more importantly on the available capacity of the Office, I have only maintained the relationship with **Thabo/Trudon**, with monthly lunches/coffees.

4) Practice areas

I haven't done much personally in terms of practice/capabilities, but I have led/encouraged in particular the MTN to develop original IP. Quite a number of submissions have been made, related to the various elements of the value chain and Customer Experience, as well as related to doing business in Sub-Saharan Africa

5) Business Development

Beyond what mentioned above, two broad streams of action here:

a) Government/State Owned Enterprise: the Partner group have collectively decided that we need a solid presence in this sector in order to consolidate our presence and a get to a balanced portfolio in South Africa. Therefore - also because of our leadership position in TMT - the only business development activity I pursued in 2013 was in that space. The opportunity was also created by Sipho being a promoter of Bain in that space and the other relationships I had the chance to develop during the first stage of the Phoenix project (some of them coming from the 3-4 hours spent every time in the President's waiting room). These are positioning now perfectly to replicate the Phoenix experience in other large State-Owned companies where there is change in CEO. The most immediate of them being SARS, mentioned above. But others may follow in the next 12-24 months, each of them potentially scale and multi-year clients

b) Bain brand awareness. I continued to be very visible in the "market" throughout the year, in the formal associations (BLSA, BUSA,..) and in many of the JHB social/business events. This is increasingly positioning Bain as a key player in the SA economic environment, beyond the pure role as consultants

6) People development

During 2013 I focused mostly on the cohesion and effectiveness of the Partners team, in particular:
- the continued integration and personal development of Innocent Dutiro as an effective Bain Partner
- the development and effectiveness of Fabrice Franzen and John Beaumont, in particular on the CD/networking side and in general in their sense of ownership of the Office
This was obtained though biweekly formal meetings and many other informal interactions with each of them
- the hiring and integration of 2 SOH-Partners committed to developing our SS Africa business, Christian Wessels and Oliver Merkel
- in ensuring that the last 12 months for Joachim Breidenthal and Peter Clearkin were offering them the right PD opportunities, also in order to have the "cleanest" possible Promotion recommendation for them

SARS-01-421
WW1-AW-411

ANNEXURE "AW68"

AW68

Cc: Mandla KaNozulu[mandla@kanozulu.co.za]; Massone, Vittorio[Vittorio.Massone@Bain.com]
To: Mathapelo[mathapelomm@gmail.com]
From: Duma Ndlovu
Sent: Thur 5/22/2014 4:28:03 AM (UTC)
Subject: meeting with the principal

Mathapelo,

kindly send a meeting request to vittorio, mandla and sipho maseko. there is a meeting with the principal at 5pm today to discuss a new venture Entrepreneurship and SMME. Sipho will present the document.

Vittorio, you should also have the new 100 days document (the final version that was discussed with Glen) the one that is ready to be presented next week. We should also present whatever questions we still have... Kindly e-mail me some of the questions so that I could see if we can't answer them before we get to Pretoria today.

But it is vital that we have the document that Sipho spoke about on Entrepreneurship!!! It is the main focus of the presentation today

ANNEXURE "AW69"

AW69

atholwilliams@hotmail.com

From: Athol Williams
Sent: 29 November 2018 11:34
To: Kennedy, Chris; Bernstein, Darryl; Demas, Reagan R
Subject: RE: Gupta links

Thanks Chris

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 29 November 2018 11:33
To: Athol Williams <atholwilliams@hotmail.com>; Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>; Demas, Reagan R <reagan.demas@bakermckenzie.com>
Subject: RE: Gupta links

On the Gupta trail, I am speaking with Amit next week. I waited until the initial investigation was over before setting it up.

Chris

From: Athol Williams <atholwilliams@hotmail.com>
Date: Thursday, 29 Nov 2018, 10:18 am
To: Kennedy, Chris <Chris.Kennedy@Bain.com>, Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>, Demas, Reagan R <reagan.demas@bakermckenzie.com>
Subject: Gupta links

Gentlemen

" ... **the Gupta's used to handle Zuma's diary" -** https://northcliffmelvilletimes.co.za/Inn/513862/ngoako-ramatlhodis-explosive-testimony-the-guptas-handled-zumas-diary/

For Vittorio's meetings with Zuma, do we know who Vittorio/Sharlene communicated with to set up the meetings. Through Ndlovu?

Chris, you were following a trail to the Guptas, did anything emerge?

This will have a significant bearing on claims of Bain SA being involved in the planning of state capture.

Athol

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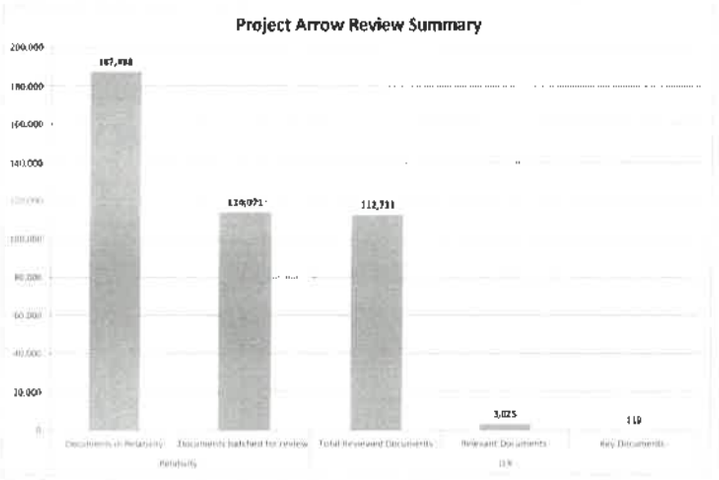
ANNEXURE "AW70"

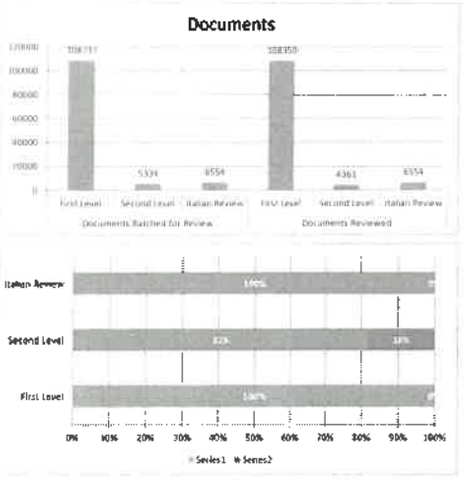
AW70

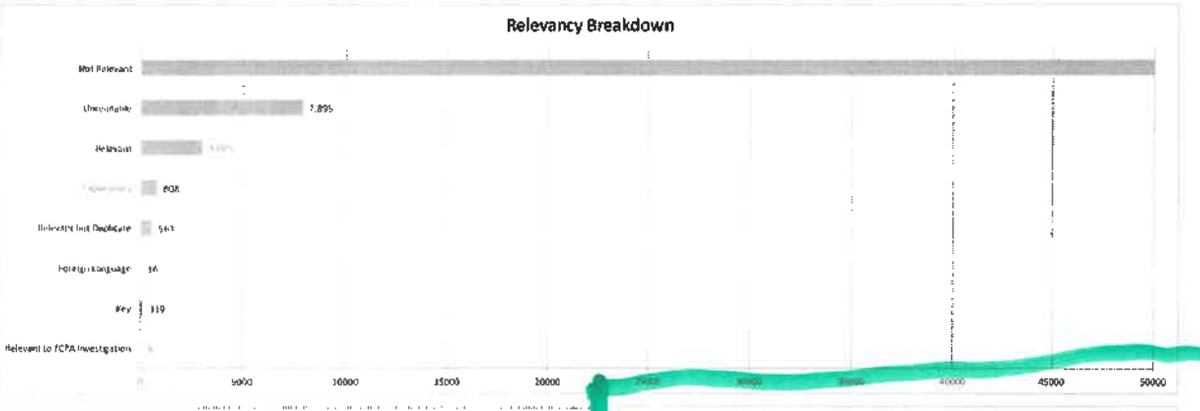
Baker McKenzie.

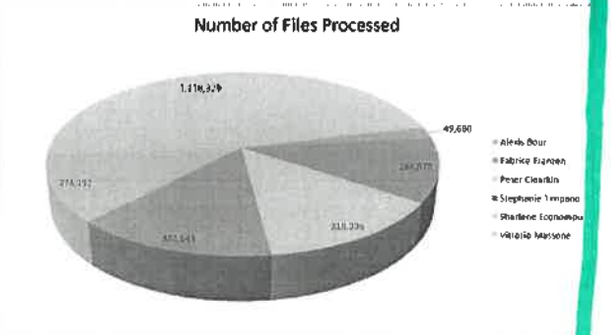
17/07/2020

Project Arrow Progress Report









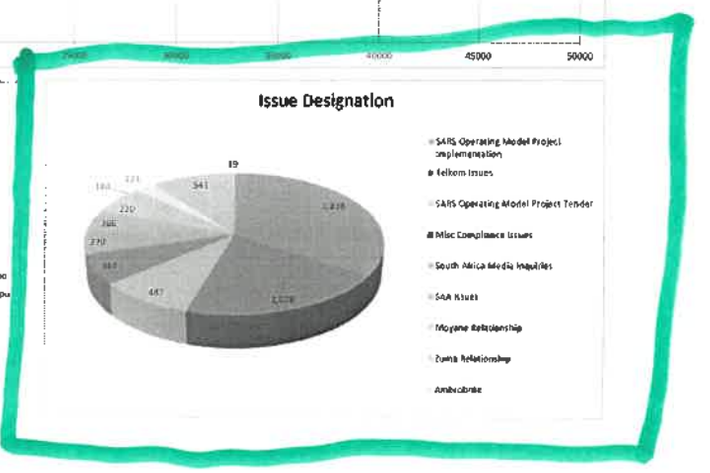


Chart 6
Issue Designation

Issue Designation	Grand Total
SARS Operating Model Project Implem	1,836
Telkom Issues	1,078
SARS Operating Model Project Tender	487
Misc Compliance Issues	364
South Africa Media Inquiries	270
SAA Issues	266
Moyane Relationship	220
Zuma Relationship	140
Ambrobrite	123
Nugent Commission Inquiry	541
Gupta Relationship	19

SARS-01-428

AW70

WW1-AW-418

ANNEXURE "AW71"

AW[redacted]71

atholwilliams@hotmail.com

From: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Sent: 27 November 2019 13:40
To: Athol Williams (atholwilliams@hotmail.com)
Subject: Zondo Commission

Hi Athol,

Following our discussion yesterday, I thought it would be helpful for you to have a few of the thoughts we discussed in writing in preparation for your discussion with the Zondo Commission.

As discussed, my sense is that the value you could add to the Commission would be limited on the basis that (a) you were not at Bain at the time of the SARS events and (b) your involvement after the fact was focused on the approach to the investigation into the work conducted by Bain's legal counsel.

Technically speaking, this would make your evidence second hand, so-called hearsay and may also expose you to the risk of waiving privilege, which you should not do and you would of course need to take your own legal advice on this issue before proceeding, as we discussed. The Commission understands that it is not entitled to privileged information.

Naturally, the approach to the Commission would be to:

1. ensure honestly and integrity at all times.
    a. This may seem trite but it is important to bear in mind that in respect of the work done at SARS, you do not have direct experience or knowledge of the work performed or the relationship with Moyane. I would avoid any form of speculation about the events, as such hearsay or speculation could open you up to cross examination. You may have seen that Moyane has applied and been granted the right to cross-examine Gordhan on allegations Gordhan made, so this isn't alarmist. If you're later cross examined on an allegation then you'll need to explain under oath why you think it and if you're just speculating you may end up being forced to concede that your opinion has no basis in fact.

    b. Some specific topics that may come up where this is important:
    - Procurement process
    - Actual work for SARS
    - Relationship with the Guptas
    - Meetings with Zuma or Moyane
    - Whether or not Bain assisted Moyane in state capture.

2. Avoid "theorizing", even where you make clear to the Commission that you're only speculating. For instance, if you were to speculate on what was said in a meeting between Moyane and Bain, it's quite possible that you might be asked to repeat that publically in evidence before the Commission, in the absence of any other witnesses. That might draw Moyane out and prompt him to make an application to cross examine you and drag you into the matter further. On the other hand, if you do have helpful knowledge, then you can and should volunteer that. For instance, you know much more about Bain's business than the Commission would, so you may have insights that are valuable in relation to how Bain does its work and, if these are your views, you might be well placed to explain how it is not in Bain's interests to assist Moyane in state capture.

3. If you have no personal knowledge or you don't remember, it's fine to say so, that's sometimes the most valuable thing a witness can do. The same applies to being unable to recall any detail, it's fine to say you don't know or don't remember.

4. If it comes up, be clear about the nature of your involvement in the investigation (i.e. BM conveyed to you it was structured in a way that enabled you to have oversight of all the materials but maintain legal privilege, you were told that you had sight of all the relevant materials located by the investigation, were taken through the methodology etc. but weren't included on legal calls and weren't given certain legal documents for privilege reasons). If it comes up, you can be clear that you won't hide behind your confidentiality clause, but you'd need to take advice about privilege.

5. Another likely topic is "Why has the media reported that you think Bain is hiding something about SARS"?
    a. For that, you should obviously answer honestly, if you think the media erroneously reported your statement, or you were blindsided and made a comment that was taken out of context or that you regret,

the conversation with the Commission would be the time to correct it because if you're asked to be an evidence witness on this point that would be a more public forum.

b. The media may not appreciate the importance and complexities of legal privilege, but the Commission would and the law applicable to the Commission is clear on the issue.

Let me know if you would like to discuss further.

Darryl Bernstein
Partner
Baker & McKenzie
1 Commerce Square, 39 Rivonia Road, Sandhurst
Johannesburg, 2196, ZA
Tel: +27 11 911 4367
Switchboard: +27 11 911 4300
Fax: +27 11 783 4177
Cell: +27 83 781 5907
darryl.bernstein@bakermckenzie.com

Baker McKenzie.

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ANNEXURE "AW72"

AW72

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Sat 1/18/2014 10:14:34 PM (UTC)
Subject: RE: follow up

Vittorio

Thank you. But please do not worry about that. I really appreciate your leadership and I know you have the best I interests of our firm and your RSA partners in mind at all times.

Best
Paul.

-----Original Message-----
From: Massone, Vittorio
Sent: Saturday, January 18, 2014 05:36 PM GMT Standard Time
To: Meehan, Paul
Subject: RE: follow up

Paul,

I also forgot to apologise with you for putting you in a difficult situation with Wendy/Bob/GOC

You clearly told me to check in with Wendy... I've been under enormous pressure the whole year and in particular the last few months with the challenges of the delivery on Telkom, so I surely lost lucidity on more than one thing... and clearly this thing seems more relevant and threatening now after the articles than then

Best,
Vittorio

From: Massone, Vittorio
Sent: Saturday, January 18, 2014 12:25 PM
To: Meehan, Paul
Subject: RE: follow up

Paul,

If we are not convinced this is the right thing to do, we can pull out of the contract in the space of a phone call. There is a relationship of trust, they'll understand.

The partner group is on board, Innocent and Fabrice in particular as they're also going to be involved in the target clients. The strategy session we had in November produced that "house" I sent you earlier which contains the Government sector as a pillar of the office strategy. We all recognize that we cannot have a sustainable scale business in SA without a decent presence in this sector. Duma is a fundamental tool to enter it. We tried for 4 years with zero – literally zero – results. We can continue to try and we may have some successes in a few years, who knows.

Rationale

PROS

1. This is an important, fundamental step in the establishment of the SA Office
    a. Government sector (SOEs in particular, plus a couple of agencies) is fundamental in the SA economy and in for the consulting spend
    b. Bain position is very weak (btw, NOT for any link with SAA) because it is a relationship market
    c. Mck is extremely solid there, having been around for decades and leveraging their research capacity and the international connections to continuously feed government members and CEOs. They are also clearly stronger IP/expertise wise in many of the specific industries (power, railways,...)

80

2. It is also an important strategic initiative, it's not just about "selling" to a couple of companies. The discussion with Duma on the target SOEs is consequent to a broader discussion on the country vision and strategy we had with the President, which sees some of the SOEs as key to achieve change and economic development in the country. Zuma's idea is to create a concrete legacy during his second mandate which will start in June this year. The Phoenix project was the first piece of this plan and where we were "tested". There are other fundamental pieces of that legacy, which will involve the Revenue Service (SARS), the power company (Eskom) and others. There also other components of that legacy (policies, laws,...), but we are clearly much less involved on that, Bain is key in the "industrial" component.
3. The list of companies we are targeting in the next 6-12 months and my conservatives estimates of their potential (per year Revs, number of years) are the following. In time other might come into the equation, for example SAA, or O&G, but there are not the right conditions at the moment. So those will be considered later.
    a. Post Office, ~5-10M USD, 4-5 years
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    c. Denel (Defence company), 2-3M, 1 year
    d. Eskom, 5-10M, 4-5 years

    As a comparison, Telkom will be ~20M in 2014
4. To clarify, in extreme synthesis, the mechanism is more or less the following. There is a current or potential CEO of a target company. Duma helps us understand his/the companies issues and introduces us to the person. We work with the person to create a high level strategy plan for the company. If the plan is approved, most likely we are going to work with the CEO in its detailing and implementation. Important to say that it is agreed that we'll work only with CEOs that are a) strong and competent in our judgment, b) willing to drive change and results, c) are empowered to do so. I feel very good about this and I've actually tested it already in one situation and they respect it.
5. There are other less commercial and more just "positioning" actions, where Duma can be instrumental. As an example, the idea of the 40th birthday with the 3 business associations (BUSA, BLSA, BBC which btw never meet) patronizing a dinner with CEOs/leaders and the President as the guest of honour

CONS

1. There are certainly some potential risks in doing this, being this South Africa. I cannot predict the probability of these to happen, but in my assessment I considered it quite low and more importantly for me, they passed the sunshine test in my mind
    a. Risk of being too associated with Zuma. This risk exists, but there is no real concrete link between Zuma and Duma. Duma is not a business or a political associate of the President. He is a listened counsellor, as probably many many others. By the way he is one the most private and less visible one. So the link would be anyway a weak one, not substantiated by facts. I wouldn't feel ashamed of an article associating us with Duma and the President, maybe I am wrong on this, but I wouldn't ... Possibly I believe it could be quite positive and strengthening as an association. Zuma will be in power at least another 3 years (they usually let go one year before the end of the mandate, when there are the ANC elections) and in the meantime we'll be able to build relationships with also the possible other parties – very difficult to predict now who will be the candidates. But being in the companies and having helped the CEOs for a few years I believe will make us indifferent to a change of President. Also, there is no spoil system in SA, so these CEOs might easily stay in place for another 2-3 years after the change in President
    b. Risk of being accused of manipulating the appointments of CEOs. Could happen, but it would really not be so credible that we can do that. They can say we worked with the individuals to "groom" them into the position, as they wrote about Sipho, but I wouldn't feel ashamed to have helped a potential CEO prepare for his pitch to get the job. Also, like in Sipho's case, the appointment processes tend to be quite rigorous and we'd very careful in making sure we don't appear in any way at any formal point.
2. More importantly, what would be the business and brand impact of being attacked publicly? I cannot say, but again my assessment is that would be very limited. On this Telkom story, for example, Innocent told me that every single person he met referred to the article. No one in negative terms, though... no one (that matters) believes that there is something unhealthy in the relationship we have with. They all agree that Telkom needs help from outside, need to reduce headcount,...
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ANNEXURE "AW73"

AW73

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Sat 1/18/2014 10:14:34 PM (UTC)
Subject: RE: follow up

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ANNEXURE "AW74"

AW74

atholwilliams@hotmail.com

From: [redacted]
Sent: 12 October 2018 12:38
To: atholwilliams@hotmail.com
Subject: Follow up

Hi Athol

Thanks again for taking the time to chat earlier.

As mentioned, I just wanted to disclose on record my discomfort about the client development work we did for Eskom last year – despite the fact that we ultimately pursue work with them beyond an initial discussion. My discomfort is materially around two aspects, based on my best recollection of the discussions and context at the time:

- We were working off of RFP documents which appeared to be incomplete/draft (which I still have copies of)
- I was asked to review the documents and provide feedback internally to the partners that could then be communicated to Eskom. My understanding of the task was that the feedback should inform how the content of the RFP could be tailored to help the chances of Bain being the successful bidder

If you feel relevant to the investigation I am fully prepared to disclose to the lawyers.

Best regards

[redacted]
Bain & Company, Inc. | 10 The High Street | Melrose Arch | Johannesburg | 2076 | South Africa
[redacted]

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ANNEXURE "AW75"

WW1-AW-431

AW75

CONFIDENTIAL

TM first 100 days

May 26th 2014

SARS-01-441

Proposed new Vision and Ambition for SARS – A new Transformation Agenda must be set up

SARS Transformation Agenda

Mission & Vision

SARS 2.0

Transform SARS in an innovative revenue and custom agency that enhances economic growth and social development, and supports the country's integration into the global economy in a way that benefits all South Africans

KPIs

Targets, Metrics & Incentives

- Revenues linked to outcomes
- Customer advocacy metrics
- Program performances monitoring

Imperatives

Increase economic value	**Integration & collaboration**	**Transparency & Fairness**
• Reach tax collection full potential: - High net worth individuals - Corporates - Customs - Enforcement - Cost to contribution optimisation	• Maximise SARS impact through increased collaboration with: - Relevant SA Ministries - Social security entities (UIF, SASSA, NSFAS, ...) - International counterparties	• Guarantee maximum transparency and fairness to taxpayers through: - Fair treatment of all cases based on clear rules and procedures - Zero corruption at all levels

Enablers

IT systems – Enhanced SA data base – Phoenix ecosystem

Enforcement – Structures & tools

Organisation & capabilities

SARS-01-442

WW1-AW-432

SARS 2.0 – achieve new ambitions to make a difference for SA

To achieve SA ambitions and make a difference, SARS needs to address key strategic concerns

- In order to **transform SARS into an innovative revenue & custom agency**, SA government will have to run a **profound strategy refresh** and **focus on execution to reach SARS real full potential:**

  - Define **clear KPIs to guarantee SARS focus** on relevant drivers

  - Deliver on the **3 main imperatives**:
    - **Increase economic value** for South Africa
    - **Integration** and **collaboration** with national and international counterparts
    - Full **fairness** and **transparency** to taxpayers

  - Develop the **critical enablers** to **support imperatives deployment**:
    - **IT systems**, and more specifically the **enhanced SA Data Base**, incorporated in the **Phoenix Ecosystem**
    - **Enforcement structures and tools** to support day-by-day imperatives respect
    - **Organisation and skills**

SARS-01-443

WW1-AW-433

Integration & collaboration: SARS is a key player with a core role to play in delivering SA's ambition

Integration & collaboration

PRELIMINARY

ILLUSTRATIVE

SA ministers

- national treasury
- the dti
- public enterprises
- international relations & cooperation
- mineral resources
- labour
- economic development
- home affairs

Civil Society

- Single view of taxpayers (including Social security contributions, dividends)
- Full access to financial information (including dividends, shareholdings, etc.)

Corporates

Bidvest, SAB Miller, Sasol, FNB

International counterparties

- Bilateral & multilateral agreements
- Increased control on financial trades
- Increased control on merchandise shipments

SARS

South African Revenue Service

- Efficient & centralized collection of info on taxpayers
- Efficient
- Centralized lollection of taxes
- Greater control on levies (regulation and forecast)

SA government agencies

sassa, UIF, BCOCC

State owned enterprises

- Utilisation of specialised skills to deliver Phoenix

Post Office

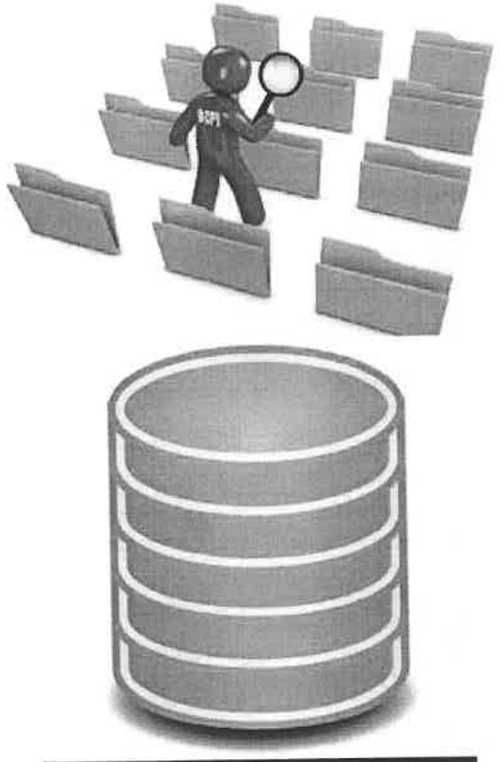
SARS-01-444

WW1-AW-434

Different bodies can contribute to the creation of an enhanced SA database - SARS can leverage it

ILLUSTRATIVE

South African National Centralised Database (citizens and companies)



PHOENIX ECOSYSTEM

Taxpayers

- SARS individual tax records
- SARS companies registration database (CIT, VAT, customs, etc.)

Social Security

- Unemployment status
- Social security grants
- Studies support
- Etc.

Assets registration

- Real estate holdings (within city councils)
- Car registrations (Motor Vehicle Department)

SA citizens / Home Affairs

- Household data (passport, marital status, demographics, etc.)
- Courthouse legal records (e.g. frauds)
- Foreigners data

Financial holding assets

- Cash holdings (Post Office bank accounts)
- Stock / bond holdings (JSE)
- Other financial assets (IFAs / banks registry)

Private company's holdings

- Intellectual properties registrations (CIPC)
- Industry Ministries (e.g. DTI, Agriculture, etc.)

SARS-01-445

WW1-AW-435

ANNEXURE "AW76"

AW786

To: Pace, Stan[Stan.Pace@Bain.com]; Beaumont, John[John.Beaumont@Bain.com]; Gerow, Derek[Derek.Gerow@Bain.com]; Verastegui, Chio[Chio.Verastegui@Bain.com]; Merkel, Oliver[Oliver.Merkel@Bain.com]
From: Massone, Vittorio
Sent: Sun 5/18/2014 5:13:57 PM (UTC)
Subject: Re: SAA

Excellent, thank you Stan, much appreciated
Speak soon
Vittorio

---- Original Message ----
From: Pace, Stan
Sent: Sunday, May 18, 2014 05:44 PM GMT Standard Time
To: Massone, Vittorio; Beaumont, John; Gerow, Derek; Verastegui, Chio; Merkel, Oliver
Subject: RE: SAA

Vittorio, Congratulations! Outstanding meeting. This is really a big deal. Need to make sure we fully support you on this including presence in SA if helpful. Very excited to support you in next steps. Best, Stan-----Original Message-----
From: Massone, Vittorio
Sent: Sunday, May 18, 2014 2:41 AM
To: Beaumont, John; Gerow, Derek; Pace, Stan; Verastegui, Chio; Merkel, Oliver
Subject: SAA

Dear all,

I met with Manwabisi (aka MK), the SAA ceo, yesterday morning

Apologies for writing only now but I had other 2 meetings at the same level yesterday, for a total of 5 hrs - and after the tour the force on friday - I really was completely exhausted.. (There must also be an age factor, as I'm not yet >50 when, as Innocent maintains, you are again refreshed!)

In synthesis, it went very well

The document was great, clear and to the point so that even I could present it nicely. Thank you for that! He agreed on everything. Was particularly interested in the point over moving the dial quickly at a P&L level (he's been there 1 year now and I'm sure he wants to show change)

MK buys into the transformation story with Bain. I was afraid he wanted to cherry pick the easy/cool things but he didn't. It seems he's going to a full transformation: routes, hubs, fleets, cost/capex, CEX, pricing and everything. Asked many questions on our headcount reduction project at Telkom

Sipho had met him last week (at MK's request) to brief him on Telkom's turnaround and Sipho was very clear on and complimentary of our work for him. This helped a lot, of course, in building our credibility

MK agrees on the next steps we are suggesting and added that he'd like to speak with some of our clients in a big event (didn't grasp the name, sorry) he said is about to happen. I think is more to learn about the transformation than to hear references about Bain, but of course both very relevant. If we could set up that, it'd be really great

The immediate concern for him - which will maybe slow down the process in the next couple of weeks - is the whole governance issue. Both his Board (change/add members, modify DOA,..) and even before that, his reporting Minister (Public Enterprises). I'm told there's going to be a change and that they'll try to make this a "President's project", like Telkom, so to eliminate the Minister's discretionary power. We'll see

876

on this.. Appointments are about 24-25th of may, so this will be quite quick

We'll set up the call/VC/meeting with you guys, as experts, so we'll go more in detail in the turnaround steps and content. I believe it'll happen in the next 2-3, maybe 4 weeks. We need to be a bit patient but this could allow us to prepare even better, he doesn't seem a details guy but he will clearly want to know a lot about the single actions and ideas, probably involving part of his team, too.

As a side note, he mentioned Mck doing org work (not Accountabilities, though, he said) - I told him to ask Sipho about Mck (Sipho had told him already, his reply) and how we always end up redoing their work. Plus KPMG doing some WC (or cost?) reduction, on which I didn't comment. But he said "just as a matter of transparency" not that this will impact significantly the story

To conclude, I mentioned the procurement process (as an issue due the rigid parastatal's process) - he downplayed the issue a bit, saying that we should be already on their consultants panel (I doubt it, unless it's the same since 2000!!) and that they just need to send out an RFP. I'm sure we'll need to strategize a bit about this to optimize steps, sizes, etc. Maybe an RFP for the full turnaround would be too visible and problematic..

That's it for now, thank you again for the support and everything you've done so far. It's really great when you can say we've got the largest/strongest practice globally and so many success stories to share!! The best has yet to come, quite exciting (a bit frightening too..)

We'll speak soon - enjoy the rest of your week end

Vittorio

ANNEXURE "AW77"

AW77

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Sat 1/18/2014 10:14:34 PM (UTC)
Subject: RE: follow up

Vittorio

Thank you. But please do not worry about that. I really appreciate your leadership and I know you have the best I interests of our firm and your RSA partners in mind at all times.

Best
Paul.

-----Original Message-----
From: Massone, Vittorio
Sent: Saturday, January 18, 2014 05:36 PM GMT Standard Time
To: Meehan, Paul
Subject: RE: follow up

Paul,

I also forgot to apologise with you for putting you in a difficult situation with Wendy/Bob/GOC

You clearly told me to check in with Wendy... I've been under enormous pressure the whole year and in particular the last few months with the challenges of the delivery on Telkom, so I surely lost lucidity on more than one thing... and clearly this thing seems more relevant and threatening now after the articles than then

Best,
Vittorio

From: Massone, Vittorio
Sent: Saturday, January 18, 2014 12:25 PM
To: Meehan, Paul
Subject: RE: follow up

Paul,

If we are not convinced this is the right thing to do, we can pull out of the contract in the space of a phone call. There is a relationship of trust, they'll understand.

The partner group is on board, Innocent and Fabrice in particular as they're also going to be involved in the target clients. The strategy session we had in November produced that "house" I sent you earlier which contains the Government sector as a pillar of the office strategy. We all recognize that we cannot have a sustainable scale business in SA without a decent presence in this sector. Duma is a fundamental tool to enter it. We tried for 4 years with zero – literally zero – results. We can continue to try and we may have some successes in a few years, who knows.

Rationale

PROS

1. This is an important, fundamental step in the establishment of the SA Office
    a. Government sector (SOEs in particular, plus a couple of agencies) is fundamental in the SA economy and in for the consulting spend
    b. Bain position is very weak (btw, NOT for any link with SAA) because it is a relationship market
    c. Mck is extremely solid there, having been around for decades and leveraging their research capacity and the international connections to continuously feed government members and CEOs. They are also clearly stronger IP/expertise wise in many of the specific industries (power, railways,...)

966

2. It is also an important strategic initiative, it's not just about "selling" to a couple of companies. The discussion with Duma on the target SOEs is consequent to a broader discussion on the country vision and strategy we had with the President, which sees some of the SOEs as key to achieve change and economic development in the country. Zuma's idea is to create a concrete legacy during his second mandate which will start in June this year. The Phoenix project was the first piece of this plan and where we were "tested". There are other fundamental pieces of that legacy, which will involve the Revenue Service (SARS), the power company (Eskom) and others. There also other components of that legacy (policies, laws,...), but we are clearly much less involved on that, Bain is key in the "industrial" component.
3. The list of companies we are targeting in the next 6-12 months and my conservatives estimates of their potential (per year Revs, number of years) are the following. In time other might come into the equation, for example SAA, or O&G, but there are not the right conditions at the moment. So those will be considered later.
    a. Post Office, ~5-10M USD, 4-5 years
    b. SARS 3-5M, 2-3 years
    c. Denel (Defence company), 2-3M, 1 year
    d. Eskom, 5-10M, 4-5 years

    As a comparison, Telkom will be ~20M in 2014
4. To clarify, in extreme synthesis, the mechanism is more or less the following. There is a current or potential CEO of a target company. Duma helps us understand his/the companies issues and introduces us to the person. We work with the person to create a high level strategy plan for the company. If the plan is approved, most likely we are going to work with the CEO in its detailing and implementation. Important to say that it is agreed that we'll work only with CEOs that are a) strong and competent in our judgment, b) willing to drive change and results, c) are empowered to do so. I feel very good about this and I've actually tested it already in one situation and they respect it.
5. There are other less commercial and more just "positioning" actions, where Duma can be instrumental. As an example, the idea of the 40th birthday with the 3 business associations (BUSA, BLSA, BBC which btw never meet) patronizing a dinner with CEOs/leaders and the President as the guest of honour

CONS

1. There are certainly some potential risks in doing this, being this South Africa. I cannot predict the probability of these to happen, but in my assessment I considered it quite low and more importantly for me, they passed the sunshine test in my mind
    a. Risk of being too associated with Zuma. This risk exists, but there is no real concrete link between Zuma and Duma. Duma is not a business or a political associate of the President. He is a listened counsellor, as probably many many others. By the way he is one the most private and less visible one. So the link would be anyway a weak one, not substantiated by facts. I wouldn't feel ashamed of an article associating us with Duma and the President, maybe I am wrong on this, but I wouldn't ... Possibly I believe it could be quite positive and strengthening as an association. Zuma will be in power at least another 3 years (they usually let go one year before the end of the mandate, when there are the ANC elections) and in the meantime we'll be able to build relationships with also the possible other parties – very difficult to predict now who will be the candidates. But being in the companies and having helped the CEOs for a few years I believe will make us indifferent to a change of President. Also, there is no spoil system in SA, so these CEOs might easily stay in place for another 2-3 years after the change in President
    b. Risk of being accused of manipulating the appointments of CEOs. Could happen, but it would really not be so credible that we can do that. They can say we worked with the individuals to "groom" them into the position, as they wrote about Sipho, but I wouldn't feel ashamed to have helped a potential CEO prepare for his pitch to get the job. Also, like in Sipho's case, the appointment processes tend to be quite rigorous and we'd very careful in making sure we don't appear in any way at any formal point.
2. More importantly, what would be the business and brand impact of being attacked publicly? I cannot say, but again my assessment is that would be very limited. On this Telkom story, for example, Innocent told me that every single person he met referred to the article. No one in negative terms, though... no one (that matters) believes that there is something unhealthy in the relationship we have with. They all agree that Telkom needs help from outside, need to reduce headcount,...
3. I also wonder what we would do differently in the SAA story, apart clearly deciding to not work for Coleman/SAA. I hear we did everything right; yes the revenues were huge, but we know we need critical mass. I tried to limit on Telkom, but it seems very difficult to be less than 4-5 teams and have tractions.. So maybe the only way to avoid those risks is to avoid the Government sector as a whole

ANNEXURE "AW78"

AW78

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Mokoape, Mangaliso
Sent: Thur 1/30/2014 9:18:55 AM (UTC)
Subject: RE: Feedback

Thank you Vittorio,

Noted. Will do so.

Thanks,
Mangaliso

From: Massone, Vittorio
Sent: Thursday, January 30, 2014 10:58 AM
To: Mokoape, Mangaliso
Subject: RE: Feedback

Thank you Mangaliso,

We discussed about keeping a very low key profile for the time being, both internally and externally, as we clearly define roles and actions between PR, Media and Corporate Affairs.

I'd appreciate we stick to that idea

Thank you
Vittorio

From: Mokoape, Mangaliso
Sent: Thursday, January 30, 2014 9:57 AM
To: Massone, Vittorio
Subject: Feedback

Goodmorning Vittorio

Following our last meeting, I've managed to make some progress on our government project.

According to advise from a reliable source, the office of the Treasurer General of the ANC is a good point of entry. I do know Dr Zweli Mkhize as a family friend. However, Iv contacted his office and the Head of the Department, Ms Dolly Tyrone has asked that we write an email stipulating the nature of the meeting and the agenda so it can be presented to Dr Mkhize.

Another point of contact I'm tapping into is the 'Friends of Zuma' platform. I know key people who are in the forefront of the trust and am in conversation with them. Will keep you updated with progress on the latter.

I need your input going forward.

Thanks,

Mangaliso Mokoape
Coordinator, Corporate Affairs
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9065 fax: +27 11 012 9101 mobile:+27 76 061 3364
mailto:mangaliso.mokoape@bain.com | web: www.bain.com

ANNEXURE "AW79"

AW79

atholwilliams@hotmail.com

From: Batonga, Marilyn <Marilyn.Batonga@bakermckenzie.com>
Sent: 08 November 2018 00:28
To: atholwilliams@hotmail.com; Min, Stuart (Stuart.Min@Bain.com); Kennedy, Chris (Chris.Kennedy@Bain.com) (Chris.Kennedy@Bain.com)
Cc: Bernstein, Darryl; Klinger, Jane C; Steyn, Wian
Subject: Project Arrow update
Attachments: Project Arrow Review Stats - Nov. 7. 18.xlsx; CTRL-00048957_native.pdf; 2018.11.07 Index of docs for client review-8445453-v1-WASDMS.XLSX

All:

Please see attached updated review stats on the SARS-focused review, as well as an updated index of documents of interest.

Please note that the stats do not include numbers on our Italian review. We have identified 5,599 documents that hit on Italian search terms. First level review for these documents began on Monday. We will update you on the progress of the Italian review next week.

I've also attached a document of interest, which our Italian-speaking reviewers identified today – an email chain between Massone and a resort in Zanzibar about travel arrangements for Sipho Maseko of Telkom.

Of particular interest is Massone's email to Emenelgildo Scarapicchia, which can be translated as follows: "I imagine Antonella has talked to you about the situation here - this Sipho I mentioned to you is the delegated administrator of Telkom, South African Telkom. In addition to being my client (the most important that I have), he also is a very important person. He sees and talks to the President almost every week and basically knows everyone here. Antonella is doing her best, but I would like to get you involved. I think you have a stronger ability to resolve the issue. I already wrote to Antonella letting her know that any additional cost you can agree to, to make him happy, I will cover it without any problems (and I will not tell him anything)."

Best regards,

A. Marilyn Batonga
Associate
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006
Tel: +1 202 835 6173
Fax: +1 202 416 7173
marilyn.batonga@bakermckenzie.com

Baker McKenzie.

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GLOBAL INVESTIGATIONS REVIEW 2017
Top 5 for Global Investigations

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to

ANNEXURE "AW80"

AW-80

Organizer:	Massone, Vittorio[Vittorio.Massone@Bain.com]
From:	Economou, Sharlene
Location:	Regina Mundi Soweto
Importance:	Normal
Subject:	Tom Moyane's Fathers Funeral
Start Time:	Sat 1/20/2018 5:30:00 AM (UTC)
End Time:	Sat 1/20/2018 8:00:00 AM (UTC)

ANNEXURE "AW81"

AW81

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Sat 1/18/2014 10:14:34 PM (UTC)
Subject: RE: follow up

Vittorio

Thank you. But please do not worry about that. I really appreciate your leadership and I know you have the best I interests of our firm and your RSA partners in mind at all times.

Best
Paul.

-----Original Message-----
From: Massone, Vittorio
Sent: Saturday, January 18, 2014 05:36 PM GMT Standard Time
To: Meehan, Paul
Subject: RE: follow up

Paul,

I also forgot to apologise with you for putting you in a difficult situation with Wendy/Bob/GOC

You clearly told me to check in with Wendy... I've been under enormous pressure the whole year and in particular the last few months with the challenges of the delivery on Telkom, so I surely lost lucidity on more than one thing... and clearly this thing seems more relevant and threatening now after the articles than then

Best,
Vittorio

From: Massone, Vittorio
Sent: Saturday, January 18, 2014 12:25 PM
To: Meehan, Paul
Subject: RE: follow up

Paul,

If we are not convinced this is the right thing to do, we can pull out of the contract in the space of a phone call. There is a relationship of trust, they'll understand.

The partner group is on board, Innocent and Fabrice in particular as they're also going to be involved in the target clients. The strategy session we had in November produced that "house" I sent you earlier which contains the Government sector as a pillar of the office strategy. We all recognize that we cannot have a sustainable scale business in SA without a decent presence in this sector. Duma is a fundamental tool to enter it. We tried for 4 years with zero – literally zero – results. We can continue to try and we may have some successes in a few years, who knows.

Rationale

PROS

1. This is an important, fundamental step in the establishment of the SA Office
    a. Government sector (SOEs in particular, plus a couple of agencies) is fundamental in the SA economy and in for the consulting spend
    b. Bain position is very weak (btw, NOT for any link with SAA) because it is a relationship market
    c. Mck is extremely solid there, having been around for decades and leveraging their research capacity and the international connections to continuously feed government members and CEOs. They are also clearly stronger IP/expertise wise in many of the specific industries (power, railways,...)

ANNEXURE "AW82"

AW82

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

[55] Clearly Bain and Mr Moyane were in deep collusion to restructure SARS, no matter what they might have found at SARS. Neither was concerned for the interests of SARS, but for their own interests, that were at least aligned with one another, though they might not have been quite the same.

[56] Meanwhile, the public servants at SARS were pursuing the 'higher purpose', oblivious to what was to come.

The Procurement of the Contract

[57] After his appointment, on 11 November 2014, Mr Moyane addressed a memorandum to the Minister of Finance, purporting to seek the Minister's approval to approach independent consulting companies to assist with an evaluation of all its operations, including its operational performance, its information technology infrastructure, and its organisation and governance.

[58] The only basis in the memorandum for undertaking that massive 'transformation and turnaround of SARS' was what was said to be 'the first crack' that had surfaced with allegations made against the former Commissioner Oupa Magashula', and a 'number of media articles over the course of the year and especially the Hathurani and Johan van Loggerenberg matters'. A copy of the memorandum is **Appendix 6**.

[59] To suggest that a major evaluation of SARS was required because of allegations that had been made concerning Mr Magashula, who had in any event long since resigned, and because of newspaper articles, is perfectly bizarre. His recommendation to the Minister was the following:

'I therefor request that the Minister considers the above matters and give his approval for me to approach as an initial step a number of consulting companies listed in the SARS database, our

ANNEXURE "AW83"

AW83

To: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Dutiro, Innocent[Innocent.Dutiro@Bain.com]; Timpano, Stephane[Stephane.Timpano@Bain.com]
From: Massone, Vittorio
Sent: Wed 2/26/2014 6:46:21 AM (UTC)
Subject: Quick note - please keep confidential

Guys,

Met President yesterday night in CT. All good.
There was also Tom (they guy we met re Sars) and it really seems he's getting that job, after elections.
He was very friendly with me and seems a smart guy to work with.

Best,
V

ANNEXURE "AW84"

AW84

To: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Min, Stuart[Stuart.Min@Bain.com]
From: Kennedy, Chris
Sent: Mon 9/3/2018 7:50:40 AM (UTC)
Subject: RE: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Thanks Fabrice - please be assured that we will keep this and all other contributions entirely confidential.

What is missing here is dates. Please could you spend some time thinking or looking in your diary and filling in the dates for us?

Thanks

Chris

From: Franzen, Fabrice <Fabrice.Franzen@Bain.com>
Date: Monday, 03 Sep 2018, 9:42 am
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Stuart, Chris,

As indicated earlier, I am at your disposal to engage on my own recollection of events around the SARS process.

- My recollection is that Vittorio was introduced to Moyane in H2-2013 by Duma, a paid advisor of Bain which Vittorio had decided to contract.
  - Vittorio never shared the advisor contract with the partner group, nor the details of the financial arrangements
  - As a partner group, we raised concerns about that advisor – Tiaan and Innnocent were particular vocal about it
  - Duma had been introduced to Vittorio by Jabu Mabuza and Sipho Maseko, respectively chairman and CEO of Telkom

- Following that introduction, there have been numerous meetings between Vittorio, Moyane, Duma, Jabu Mabuza. Some happened in plain sight in the office during business hours. Materials or these meetings were prepared by Stephane Timpano and Alexis Bour

- It was also known to all the partners that Vittorio was meeting with the resident in multiple occasions, including with Duma and Moyane – he was talking openly about it in partner meetings:
  - I don't know the specifics and timing of these Presidential meetings, except for a late Saturday night one, which I remember because Vittorio joined late a dinner party because of that

- In 2014, Vittorio also had multiple meetings with Jonas Makwakwa, the future head of BAIT. At that time head of internal audit at SARS.
  - These meetings were with Vittorio, Moyane and Makwkawa. They also happened in plain sight in the office
  - As Vittorio indicated during witness prep, Makwakwa was playing sort of a "deep throat" on evens happening at sars and feeding into Moyane

- After the appointment of Moyane in October, it was clear at the end of 2014 that Vittorio was expecting work to come – he asked to pre-identify teams, and asked me to play an OVP role on the project, should it become live

As far as I am concerned:

- I met Moyane twice before the beginning of our work at SARS (both in my diary and easily verified):
  - May 15 2014: Vittorio asked me to join a lunch he had with Moyane at a restaurant in Melrose Arch. They clearly knew each other very well already while Moyane was still Correctional services head, Vittorio spoke a lot about how to optimize a revenue service
  - June 2 2014: meeting in the office with Vittorio and Moyane. I was asked to come an explain the type of operating model work we had done at DBSA in the public sector

ANNEXURE "AW85"

AW85

To: Timpano, Stephane[Stephane.Timpano@Bain.com]
From: Massone, Vittorio
Sent: Fri 8/29/2014 12:59:37 PM (UTC)
Subject: Re:

Grazie

From: Timpano, Stephane
Sent: Friday, August 29, 2014 01:52 PM GMT Standard Time
To: Massone, Vittorio
Subject: RE:

Questo e'il piu recente

From: Massone, Vittorio
Sent: Friday, August 29, 2014 2:50 PM
To: Timpano, Stephane
Subject:

Mi mandi pf il vecchio document di SARS? Il primo presentato a Z. Ce l ho solo in pdf...
Grazie
V

1

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com | web:www.bain.com

ANNEXURE "AW86"

AW86

Message

From: Massone, Vittorio [/o=Bain/ou=exchGLOBALSERVICES/cn=Recipients/cn=09VMA]
on behalf of Massone, Vittorio [/o=bain/ou=exchglobalservices/cn=recipients/cn=09vma]
Sent: 4/4/2014 7:40:58 AM
To: Franzen, Fabrice [fabrice.franzen@bain.com]
Subject: RE:

Be ready for SARS!!!! Tom passes by for a coffee next Friday morning, if you want to say hi to him

-----Original Message-----
From: Franzen, Fabrice
Sent: Friday, April 04, 2014 9:38 AM
To: Massone, Vittorio
Subject: RE:

Congrats!

-----Original Message-----
From: Massone, Vittorio
Sent: Friday, April 04, 2014 9:37 AM
To: Franzen, Fabrice
Subject: Re:

Thank you Fabrice, it went very well

- Sars is aa go, right after the electtions
- central procurement agency: he loves it, wants an implementation plan
- wants to accelerate Phoenix
- asked us to organize a workshop with the new cabinet of ministries after the elections (sort of new strategy by sector + RDO/mobilization)

So I'd say very well..

I'll update the team on next call

Thank you
V

----- Original Message -----
From: Franzen, Fabrice
Sent: Friday, April 04, 2014 08:08 AM GMT Standard Time
To: Massone, Vittorio
Subject:

Ciao - just wanted to check how your "big meeting" went yesterday.
Take care

ANNEXURE "AW87"

WW1-AW-462

AW87

Partner Self Assessment:	**Vittorio Massone**
Date Submitted:	**06-Dec-2013**
Date Printed:	**13-Dec-2013**
Office:	**South Africa**
Reviewers:	**Blasberg, J.**
	Meehan, P.

the Phoenix project will hopefully materialize in the next few months: among them the turn-around of the South African Post Office, which "per se" could represent a client similar in size to Telkom; but also others elements, which are less clear now in terms of consulting role for Bain, such as e-Government
It still to early to list results for what concerns Telkom, but so far - and with great challenge - we have created the basis for an effective turn-around: a) awareness on the financial and market situation and its root causes; b) consensus on the strategic ambition, the key imperatives and the list of the projects to be executed, c) initial cost cutting interventions. We are moving now into the consequent more operational phase with a) Reorganisation; b) CEX project; c) Integrated Broadband Plan d) a couple of M&A operations. The change in the management team is unfortunately not completed yet, so execution will be a challenge

As a **"halo effect"** of the relationship with Sipho and the role we played in the Phoenix project, we have been involved in preparing a high level, outside-in, "strategic turn-around" document on the **SA Revenue Service (SARS)**. The person we prepared the document with and who pitched it to the SA President - is most likely going to be appointed as Commissioner in the next few weeks/months and Bain will be assisting him, should he get the job. SARS is one the largest and highly estimated Government Agency and a large Bain client in the previous dispensation (90s').

Given the challenges on my time but also and more importantly on the available capacity of the Office, I have only maintained the relationship with **Thabo/Trudon**, with monthly lunches/coffees.

4) Practice areas

I haven't done much personally in terms of practice/capabilities, but I have led/encouraged in particular the MTN to develop original IP. Quite a number of submissions have been made, related to the various elements of the value chain and Customer Experience, as well as related to doing business in Sub-Saharan Africa

5) Business Development

Beyond what mentioned above, two broad streams of action here:

a) Government/State Owned Enterprise: the Partner group have collectively decided that we need a solid presence in this sector in order to consolidate our presence and a get to a balanced portfolio in South Africa. Therefore - also because of our leadership position in TMT - the only business development activity I pursued in 2013 was in that space. The opportunity was also created by Sipho being a promoter of Bain in that space and the other relationships I had the chance to develop during the first stage of the Phoenix project (some of them coming from the 3-4 hours spent every time in the President's waiting room). These are positioning now perfectly to replicate the Phoenix experience in other large State-Owned companies where there is change in CEO. The most immediate of them being SARS, mentioned above. But others may follow in the next 12-24 months, each of them potentially scale and multi-year clients

b) Bain brand awareness. I continued to be very visible in the "market" throughout the year, in the formal associations (BLSA, BUSA,..) and in many of the JHB social/business events. This is increasingly positioning Bain as a key player in the SA economic environment, beyond the pure role as consultants

6) People development

During 2013 I focused mostly on the cohesion and effectiveness of the Partners team, in particular:
- the continued integration and personal development of Innocent Dutiro as an effective Bain Partner
- the development and effectiveness of Fabrice Franzen and John Beaumont, in particular on the CD/networking side and in general in their sense of ownership of the Office
This was obtained though biweekly formal meetings and many other informal interactions with each of them
- the hiring and integration of 2 SOH-Partners committed to developing our SS Africa business, Christian Wessels and Oliver Merkel
- in ensuring that the last 12 months for Joachim Breidenthal and Peter Clearkin were offering them the right PD opportunities, also in order to have the "cleanest" possible Promotion recommendation for them

ANNEXURE "AW88"

AW88

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

DAY 12 | 31 AUGUST 2018 | PAGES 1938 - 2126

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street, Brooklyn, Pretoria

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Guardians of the Record

Page 2098

comments that Minister Nene made this morning about the work they've done at DBSA so I can mention that. While it was the same team that work at SARS and I think the great work he is speaking about is the great work of his team. The leadership team at DBSA of which we were helping and I think when he criticises the work here, I don't want to put words in his mouth but that's my opinion, he's criticising the work of the people that actually executed it and the consultants weren't part of that. So in the same way I never took any, we never took any credit except asking for references maybe, for the work at DBSA I am taking a lot of pain for the work we have done at SARS. That's why, so I want to thank him for having said that. It was the same team.

MS STEINBERG: Judge I was going to go onto customs but I'm actually wondering now if it's necessary.

COMMISSIONER: I think so.

MS STEINBERG: Ja. I think we end up talking about -

COMMISSIONER: Ja, -

MS STEINBERG: The same issues.

COMMISSIONER: Ja.

MS STEINBERG: Regardless, ja. I think then we, you know there are a couple of those procurement

Page 2099

issues that came up this morning and I think we should just end with that, if that's alright with you. Mr Massone, have you met Mr Moyane before he started working here?

MR MASSONE: Yes.

MS STEINBERG: When was that?

MR MASSONE: I, as I was building the business in South Africa, I was meeting a lot of people, it must have been around 2012, 2013, something like that. I was meeting, ja all the possible leaders and I still do that in the country.

COMMISSIONER: Sorry he was the Commissioner of Correctional Services at that time?

MR MASSONE: He must have been, must have been.

COMMISSIONER: What would have been your relationship with the correctional services?

MR MASSONE: None.

COMMISSIONER: So where, in what way, context -

MR MASSONE: Meeting people at events and situations and so on.

COMMISSIONER: Carry on.

MS STEINBERG: Now the Treasury official -

COMMISSIONER: Sorry can I just ask

Page 2100

another question.

MS STEINBERG: Yes.

COMMISSIONER: Did you meet him at all in connection with SARS before you tendered?

MR MASSONE: Yes we had one meeting with him.

COMMISSIONER: When was that?

MR MASSONE: I don't remember exactly when was that, it must have been around, ja 2013, 2014 and we presented him an outside point of view on SARS, outside in, sorry.

COMMISSIONER: You say 2013/2014, you only started here on the 27th of September 2014?

MR MASSONE: Yes.

COMMISSIONER: You say in 13 it could have been in 2013?

MR MASSONE: Yes.

COMMISSIONER: You met him to talk about SARS?

MR MASSONE: Yes, he asked us about that.

MR KAHLA: Is that before he started working at SARS or after he had been at SARS?

MR MASSONE: I think it was before.

MS STEINBERG: So why was he asking about SARS while he was the Commissioner of Correctional

Page 2101

Services?

MR MASSONE: I don't know, he was still at the time Commissioner of Correctional Services, it might have been another position, I think his ambition was that and he want to have a point of view on that, on SARS and he was interested in our work for other state owned enterprise companies in the private sector and this is something that we do normally, we meet people and express points of views on companies, we do that all the time. So it wasn't -

MS STEINBERG: No, I understand that, I'm just interested that before he was Commissioner of SARS he was asking you your advice about SARS.

MR MASSONE: Yes.

PROF KATZ: Sorry, did you ask him why he was asking you that?

MR MASSONE: He said his ambition was that.

COMMISSIONER: Sorry his?

MR MASSONE: His ambition as to become the Commissioner of SARS which is something which it is absolutely normal to see, before having a position and maybe they are in the short phasing of the selection process they ask his point of view on companies and that's something we do normally.

COMMISSIONER: And what was your view

ANNEXURE "AW89"

AW89

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

be many, but of the 23 files submitted to the Commission, no more than a handful of documents were relevant.

[18] What is more, according to the report, 'while Mr Massone would certainly have had the most to offer the Inquiry', there are 'other senior Bain SA staff who could have shed some light on certain matters which may have been valuable to the Inquiry'. In fact, we are told in the report, the Bain investigation has conducted 'extensive interviews with key individuals who were known to be involved with the SARS projects or whose names surfaced during the document reviews', and 'the investigating team intends to conduct interviews with at least 17 individuals'. So much for the statement by General Counsel from Boston that 'at this time Bain believes there is no one who can provide meaningful information' to the Commission'. Even if some came to light only after that was written, it is apparent from the email correspondence, and their supporting affidavits accompanying that of Mr Massone, that at least Mr Stephane Timpano and Mr Fabrice Franzen, who were deeply involved in the project, and are still partners at Bain, could have provided 'meaningful information', which Bain is now withholding from examination by the Commission.

[19] While the Commission has not yet heard the full truth from Bain, the evidence before it tells a story that is disturbing enough.

[20] The affidavit of Mr Massone reveals that SARS was one of the first 'targets' in a campaign by Bain to get access to business in the public sector. Mr Massone met many times with Mr Zuma, and no less than seven times with Mr Moyane, before it bid for the contract. It reveals that Bain had planned in advance for the restructuring of SARS even before it had set foot in the organisation. And it reveals that the Minister of Finance, and the Bid Evaluation Committee and Bid Adjudication Committee of SARS, were misled by non-disclosure, which could amount to fraud.

ANNEXURE "AW90"

AW90

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Sat 1/18/2014 10:14:34 PM (UTC)
Subject: RE: follow up

Vittorio

Thank you. But please do not worry about that. I really appreciate your leadership and I know you have the best I interests of our firm and your RSA partners in mind at all times.

Best
Paul.

-----Original Message-----
From: Massone, Vittorio
Sent: Saturday, January 18, 2014 05:36 PM GMT Standard Time
To: Meehan, Paul
Subject: RE: follow up

Paul,

I also forgot to apologise with you for putting you in a difficult situation with Wendy/Bob/GOC

You clearly told me to check in with Wendy... I've been under enormous pressure the whole year and in particular the last few months with the challenges of the delivery on Telkom, so I surely lost lucidity on more than one thing... and clearly this thing seems more relevant and threatening now after the articles than then

Best,
Vittorio

From: Massone, Vittorio
Sent: Saturday, January 18, 2014 12:25 PM
To: Meehan, Paul
Subject: RE: follow up

Paul,

If we are not convinced this is the right thing to do, we can pull out of the contract in the space of a phone call. There is a relationship of trust, they'll understand.

The partner group is on board, Innocent and Fabrice in particular as they're also going to be involved in the target clients. The strategy session we had in November produced that "house" I sent you earlier which contains the Government sector as a pillar of the office strategy. We all recognize that we cannot have a sustainable scale business in SA without a decent presence in this sector. Duma is a fundamental tool to enter it. We tried for 4 years with zero – literally zero – results. We can continue to try and we may have some successes in a few years, who knows.

Rationale

PROS

1. This is an important, fundamental step in the establishment of the SA Office
    a. Government sector (SOEs in particular, plus a couple of agencies) is fundamental in the SA economy and in for the consulting spend
    b. Bain position is very weak (btw, NOT for any link with SAA) because it is a relationship market
    c. Mck is extremely solid there, having been around for decades and leveraging their research capacity and the international connections to continuously feed government members and CEOs. They are also clearly stronger IP/expertise wise in many of the specific industries (power, railways,...)

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2. It is also an important strategic initiative, it's not just about "selling" to a couple of companies. The discussion with Duma on the target SOEs is consequent to a broader discussion on the country vision and strategy we had with the President, which sees some of the SOEs as key to achieve change and economic development in the country. Zuma's idea is to create a concrete legacy during his second mandate which will start in June this year. The Phoenix project was the first piece of this plan and where we were "tested". There are other fundamental pieces of that legacy, which will involve the Revenue Service (SARS), the power company (Eskom) and others. There also other components of that legacy (policies, laws,...), but we are clearly much less involved on that, Bain is key in the "industrial" component.
3. The list of companies we are targeting in the next 6-12 months and my conservatives estimates of their potential (per year Revs, number of years) are the following. In time other might come into the equation, for example SAA, or O&G, but there are not the right conditions at the moment. So those will be considered later.
    a. Post Office, ~5-10M USD, 4-5 years
    b. SARS 3-5M, 2-3 years
    c. Denel (Defence company), 2-3M, 1 year
    d. Eskom, 5-10M, 4-5 years

    As a comparison, Telkom will be ~20M in 2014
4. To clarify, in extreme synthesis, the mechanism is more or less the following. There is a current or potential CEO of a target company. Duma helps us understand his/the companies issues and introduces us to the person. We work with the person to create a high level strategy plan for the company. If the plan is approved, most likely we are going to work with the CEO in its detailing and implementation. Important to say that it is agreed that we'll work only with CEOs that are a) strong and competent in our judgment, b) willing to drive change and results, c) are empowered to do so. I feel very good about this and I've actually tested it already in one situation and they respect it.
5. There are other less commercial and more just "positioning" actions, where Duma can be instrumental. As an example, the idea of the 40th birthday with the 3 business associations (BUSA, BLSA, BBC which btw never meet) patronizing a dinner with CEOs/leaders and the President as the guest of honour

CONS

1. There are certainly some potential risks in doing this, being this South Africa. I cannot predict the probability of these to happen, but in my assessment I considered it quite low and more importantly for me, they passed the sunshine test in my mind
    a. Risk of being too associated with Zuma. This risk exists, but there is no real concrete link between Zuma and Duma. Duma is not a business or a political associate of the President. He is a listened counsellor, as probably many many others. By the way he is one the most private and less visible one. So the link would be anyway a weak one, not substantiated by facts. I wouldn't feel ashamed of an article associating us with Duma and the President, maybe I am wrong on this, but I wouldn't ... Possibly I believe it could be quite positive and strengthening as an association. Zuma will be in power at least another 3 years (they usually let go one year before the end of the mandate, when there are the ANC elections) and in the meantime we'll be able to build relationships with also the possible other parties – very difficult to predict now who will be the candidates. But being in the companies and having helped the CEOs for a few years I believe will make us indifferent to a change of President. Also, there is no spoil system in SA, so these CEOs might easily stay in place for another 2-3 years after the change in President
    b. Risk of being accused of manipulating the appointments of CEOs. Could happen, but it would really not be so credible that we can do that. They can say we worked with the individuals to "groom" them into the position, as they wrote about Sipho, but I wouldn't feel ashamed to have helped a potential CEO prepare for his pitch to get the job. Also, like in Sipho's case, the appointment processes tend to be quite rigorous and we'd very careful in making sure we don't appear in any way at any formal point.
2. More importantly, what would be the business and brand impact of being attacked publicly? I cannot say, but again my assessment is that would be very limited. On this Telkom story, for example, Innocent told me that every single person he met referred to the article. No one in negative terms, though... no one (that matters) believes that there is something unhealthy in the relationship we have with. They all agree that Telkom needs help from outside, need to reduce headcount,...
3. I also wonder what we would do differently in the SAA story, apart clearly deciding to not work for Coleman/SAA. I hear we did everything right; yes the revenues were huge, but we know we need critical mass. I tried to limit on Telkom, but it seems very difficult to be less than 4-5 teams and have tractions.. So maybe the only way to avoid those risks is to avoid the Government sector as a whole

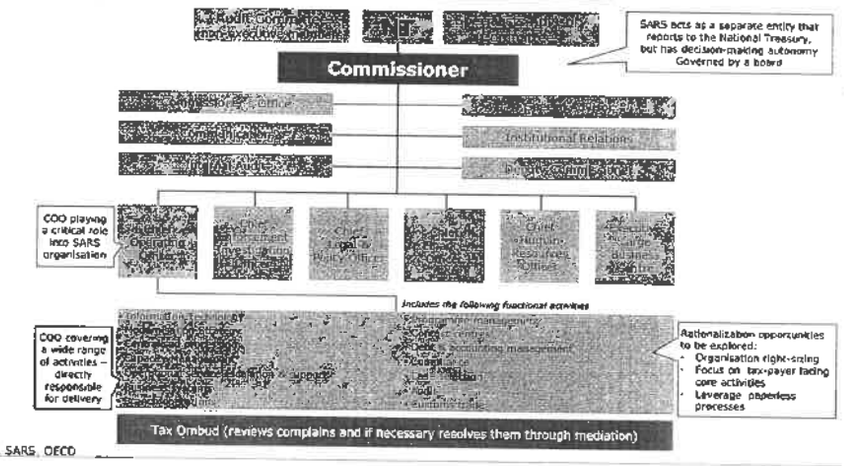
ANNEXURE "AW91"

SARS 2.0

Sunday 13th October 2013

SARS is structured as an independent body, reporting directly into NT and with a separate audit committee

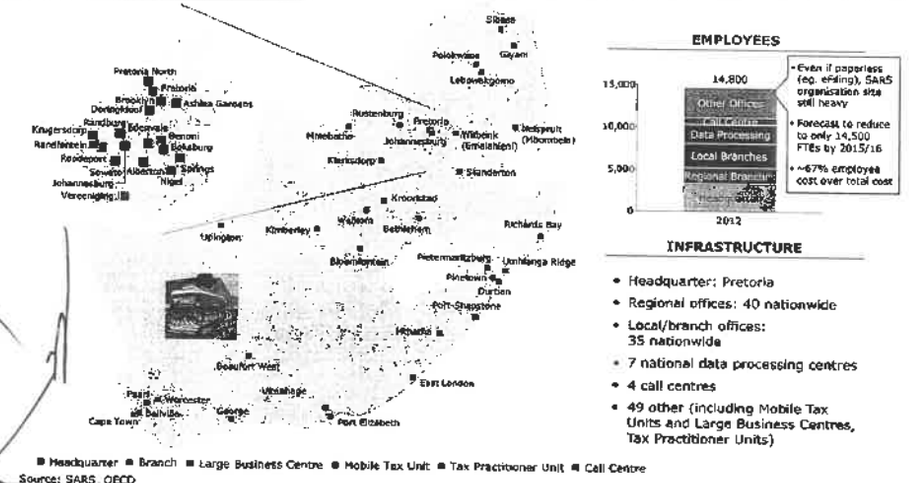
SARS profile



Source: SARS, OECD

Today SARS has a wide territorial presence in South Africa, through branches, mobile units and technical sites

SARS profile



Source: SARS, OECD

SARS 2.0 – Executive summary

In the decade, SARS modernisation program has delivered results...	• SARS has made a number of changes through the first *Modernisation Program*, eg.: - Relevant increase of individual & corporate taxpayers - Successful adoption of eFiling to facilitate collection process (>90% in SA) - Managed to run operations within the allocated government budget • But **significant challenges still need to be addressed**: - Even if eFiling is a great innovation, it **did not help to reduce cost of revenues ratio** (high compare to peers at 1.1%). Moreover questions arise on **potential discrimination** (access to internet) and need to be addressed - **Key SARS programs**, such as **Customs, still need to be delivered** – critical initiatives and structures to be put in place to support economic value creation, making customs a revenue machine (eg. US or Australia), - **Illicit economy not under control**
...but to achieve our ambition and make the difference, SARS needs to address key strategic concerns	• In order to **transform SARS** into an **innovative revenue & custom agency**, SA government will have to run a **profound strategy refresh** and **focus on execution to reach SARS real full potential:** - Define **clear KPIs to guarantee SARS focus** on relevant drivers - Deliver on the **3 main imperatives:** ‣ **Increase economic value** for South Africa ‣ **Integration** and **collaboration** with national and international counterparts ‣ **Full fairness** and **transparency** to taxpayers - Develop the **critical enablers** to **support imperatives deployment:** ‣ **IT systems**, and more specifically the **enhanced SA Data Base**, incorporated in the **Phoenix Ecosystem** ‣ **Enforcement structures and tools** to support day-by-day imperatives respect ‣ **Organisation and skills**

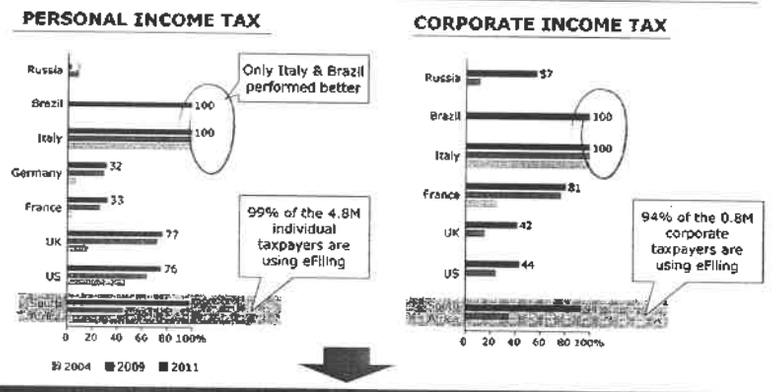
AW91

SARS-01-484
WW1-AW-474

Even if eFiling represents 90% of total filing, there are doubts about its real efficiency to drive tax collection

SARS profile

% OF EFILING OVER TOTAL FILING



SARS needs to go beyond the collection process, and focus on driving tax collection effectiveness

Source: OECD

57

Budget to SARS based on estimated expenditures (not performances) – rationalisation opportunities may exist

SARS profile

1.14 Government grants
SARS' main source of income is an annual grant from Parliament for its services, based on estimated expenditure for performing any specific act or function on behalf of Government in the collection of administered revenue.

- SARS was **sustainable** for the past year (**R880M surplus**) and **over time** (**R2.8B of accumulated surplus**), but **important questions arise:**

SARS P&L* (2012/13 RM)

FUNDS AVAILABLE		FUNDS ALLOCATION	
National treasury grants	9,149	Employee cost	5,873
Rendering of services	16	Administrative expenses	1,494
Other income	282	Professional and special services	751
Interest received	346	Depreciation and amortisation	509
		Impairment loss	71
		Finance cost	15
Total revenues	9,593	Total costs	8,713

Operating surplus^: R880M

- Funds allocation should be based on **tangible outcomes, generating economic value for SA**
- SARS organisation should be **incentivised to generate value efficiently and in a fair way**
- **Costs optimizations exist and need to be implemented**
  - Employee costs are the most important cost bucket
  - Wide & inefficient branch network
  - IT capability not at full potential (further cost savings through dematerialisation)

Note: * refers to the Economic Entity; ^ Actual surplus for the year of R872M after deduction of surrender of surplus funds, loss on disposal of assets and taxation; ** SARS 2013/14 budget
Source: SARS Annual Report 2012/13

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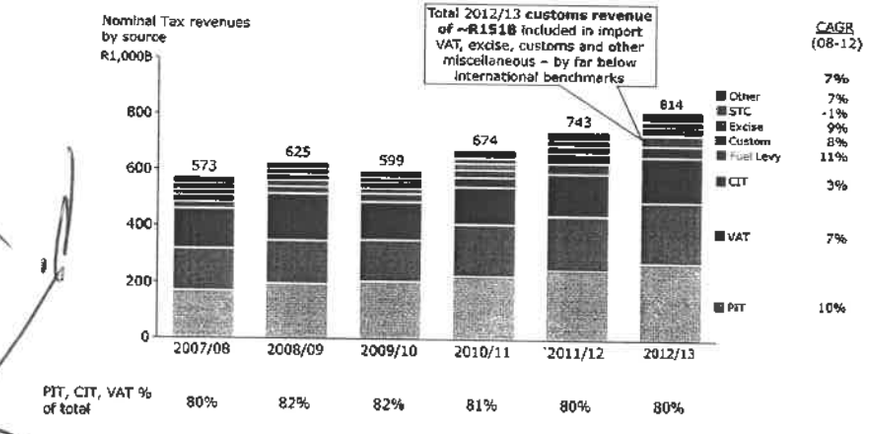
...but relevant aspects such as Customs are not delivering the expected economic results...

SARS profile



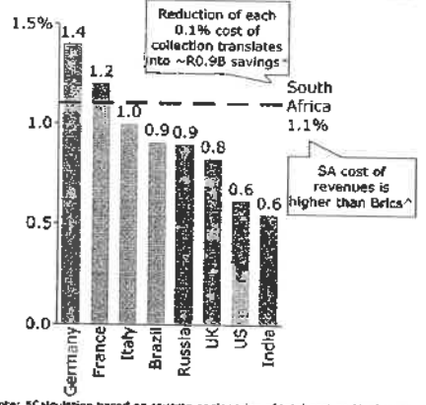
Source: SARS 2012 Tax Statistics; SARS 2012/13 Annual Report

60

SARS has higher costs for revenues ratio – Fixing the costs to contribution equation is a priority

SARS profile

COST OF REVENUES – SA VS. GLOBAL PEERS 2012



SARS REVENUES TO COSTS KEY EQUATION

Ensure streamlined operations while delivering operational improvement and increasing effectiveness of SARS

Costs
(cost of SARS)

Revenues
(tax contribution)

Ensure that ALL taxes are paid by contributors in a fair and transparent way

Note: *Calculation based on reverse engineering of total cost as % of revenues reduced by 0.1%; ^Excluding China (not reporting data)
Source: SARS, OECD

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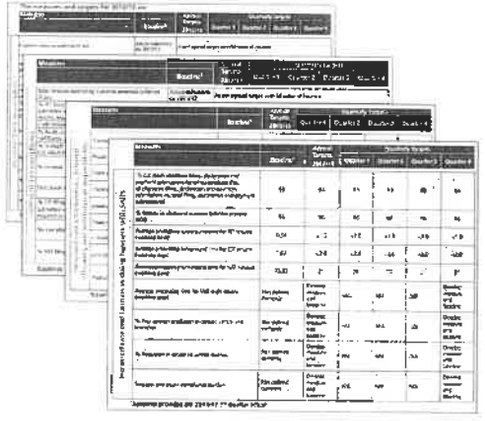
SARS-01-485

WW1-AW-475

Today SARS tracks many KPIs, focusing on outcome and process compliancy

KPIs

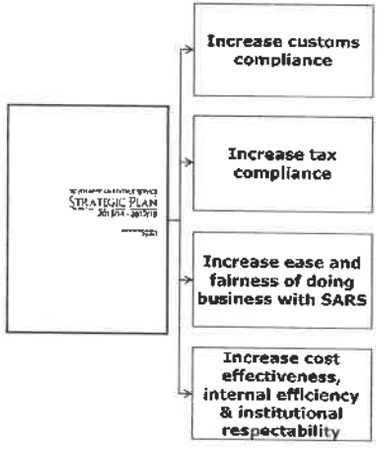


- KPIs track all relevant metrics for each outcome set by SARS
- Yet, **more specific and financial KPIs should be tracked:**
  - **Gap between actual vs full potential collection, to monitor the effective contribution to SA economic value creation**
  - **Performance against cost allocations towards new projects and initiatives**
  - **Customer satisfaction and advocacy to ensure buy-in of taxpayers and improvements on service delivery**

Source: SARS Annual Performance 2012/13

2013-2018 new strategic plan is challenging – Quality of execution will be a critical success factor

SARS profile

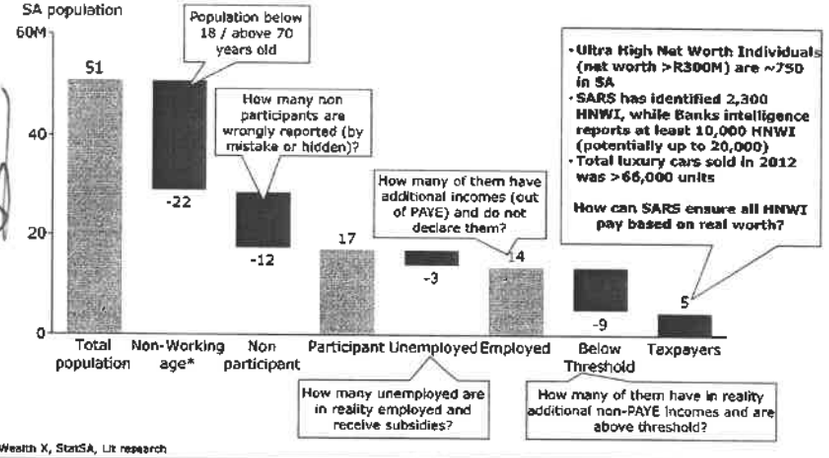


- To complete the initial Modernisation Program, SARS defined an additional program for the 2013-2018 period
- The new 2013-2018 plan will:
  - **Perform the uncompleted tasks** from the initial Modernisation Program (eg. Customs) and
  - **Focus on new strategic initiatives** (eg. Fairness of doing business)
- New plan is **challenging in terms of delivery** (24 major work stream to be ran parallel). Budget allocated to external support in the next 3 years seems not to be sufficient to sustain it (from R710M in 2013 down to R375M in 2016)

Several questions arise regarding taxpayers compliance – Can SARS increase his real individual taxpayers base?

Increase economic value

INDIVIDUAL TAXPAYERS



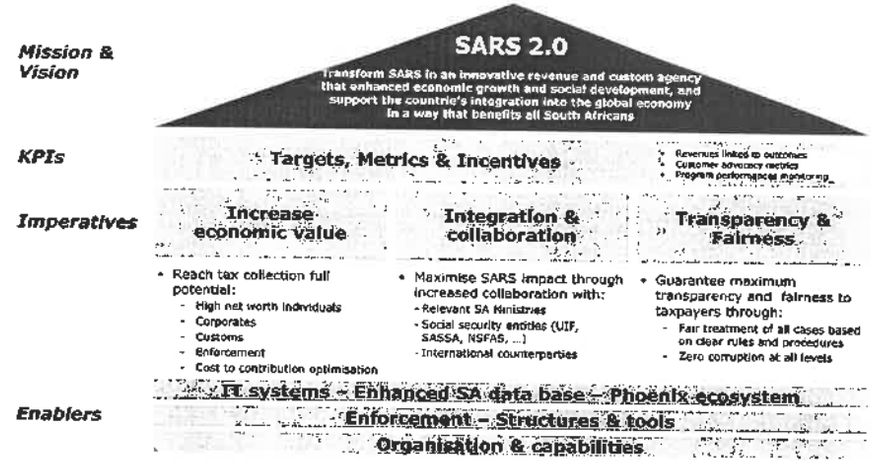
- **Ultra High Net Worth Individuals (net worth >R300M) are ~750 in SA**
- **SARS has identified 2,300 HNWI, while Banks intelligence reports at least 10,000 HNWI (potentially up to 20,000)**
- **Total luxury cars sold in 2012 was >66,000 units**

How can SARS ensure all HNWI pay based on real worth?

Source: Wealth X, StatSA, Lit research

Proposed new Vision and Ambition for SARS – A new Transformation Agenda must be set up

SARS Transformation Agenda

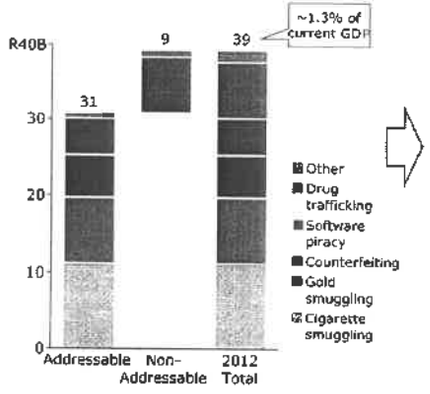


SARS-01-486
WW1-AW-476

Illicit economy estimated at R40B, tax loss superior to R6B. Opportunity to be measured & recovery plan to be launched

Increase economic value

ESTIMATED VALUE OF SA ILLICIT ECONOMY (RB)



- Considering Tax to GDP of ~28% this means a loss of R11B taxes
- Considering that:
  - Drugs are illegal -> 0 tax revenue
  - Cigarette tax rate includes excise (effective tax rate of ~45% in 2001, most likely higher now)
- **Total real loss for the country is ~R6.1B tax revenues** (after cost of collection)
- **This figure represents ~0.7% of taxes collected today**

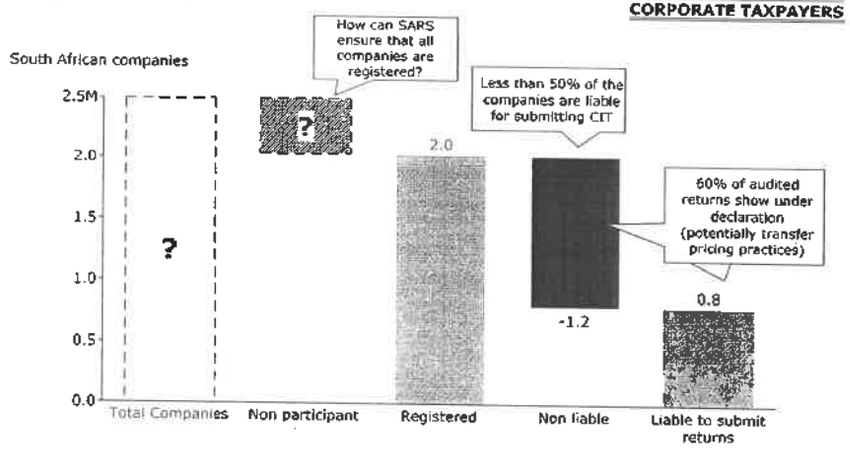
Source: Havoscope

67 15

Several questions arise regarding taxpayers compliance – Corporate taxpayers show clear tendency to under declare

Increase economic value

CORPORATE TAXPAYERS



Note: No relevant source is able to estimate the total number of companies in South Africa
Source: SARS

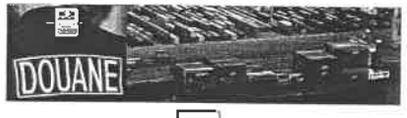
65 13

Border control needs to be efficient (to increase trade) and effective (to decrease illicit trades)

Increase economic value

FRENCH GOVERNMENT INCREASED EFFORTS TO PLAY A KEY ROLE AS A HUB FOR EUROPE

- One of the main goals of the French border control ("Douane") is to **increase European trade flow through France**
  - Become the hub for global merchandises entering Europe, making sure that procedure in place facilitate business
  - Ensure this comes in a sustainable way in order to allow only legal merchandise to enter



South Africa can play similar role for SADC / Sub-Saharan Africa

AUSTRALIAN GOVERNMENT ACTIVELY MANAGES BORDER CONTROLS TO FIGHT ILLEGAL IMPORTATIONS

- One of the main goals for Australian border control is to **protect Australians from illegal migration and merchandise smuggling**
  - Protect environment from alien diseases
  - Preventing the entry of people who are a direct or indirect threat to the Australian community
  - Significant income for the country derived from fines applied to illegal importations

SARS can decrease illegal trade inflow /outflow and "earn with punishments"

68 16

Critical programs such as Customs are behind completion – Short term opportunities to generate revenues for SA

Increase economic value

CUSTOMS PROGRAM

- SARS customs program active since 2009 but **still not effectively fighting against fraud, corruption & illegal imports**
- Customs service delivery is still **substandard** making the **process of importing / exporting very confusing & unattractive**

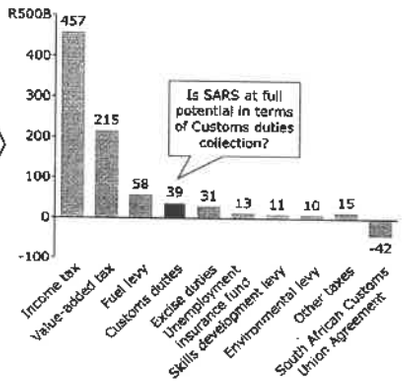
"Current law does not provide SARS with adequate information to determine any possible safety, security, fiscal and economic risks in relation to these goods. No value is declared [...]. This lack of information does not promote the application of efficient and effective customs controls and risk management at the port of entry"

All Africa on new Customs Bill submitted to Parliament, August 2013

"We, at [multinational company] haven't yet figured out how to quickly process imports and we still get double-taxed when we export in Africa through South Africa"

Marketing director, Multinational company

2012/13 SARS administered revenues



Source: Lit research

66 14

SARS-01-487

WW1-AW-477

For example, integrating Social Security Contribution into SARS can deliver significant upside

Integration & collaboration

TYPICALLY THE MERGE HAS LONG TERM ADVANTAGES

- **Commonality of core processes**
  - Identify and register contributors
  - Systems to collect information from employers
  - Withholding taxes from employers
  - Effective collection systems
  - Audit of accuracy of data
- **Efficiency of resources**
  - Economy of scale as the marginal cost for additional analysis is minimal
- **Core competencies of tax and social organisations**
- **Lowering government administration cost**
- **Lowering taxpayers and contributor compliance costs**
- **Unique tax data base**

YET IN THE SHORT TERM THE TRANSITION IS PAINFUL

- Implications to the registering, calculating and recoding systems may cause **difficulties due to new procedures** and the **introduction of new forms**
- Calculation of charges are different and require a **specific skill set**
- Typically before merge the taxpayers are registered with different codes and requires **reconciliation** of relevant tax information

International examples

- UK: elimination of administrative duplications; simplification of taxation and social security frameworks
- Netherlands: simplification of social security collections; reduction of overall employees

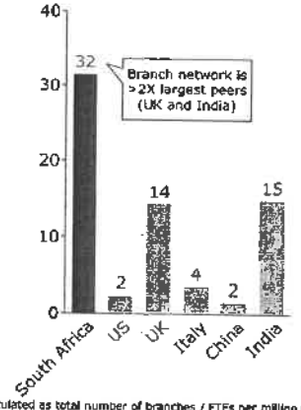
Source: OECD

71 19

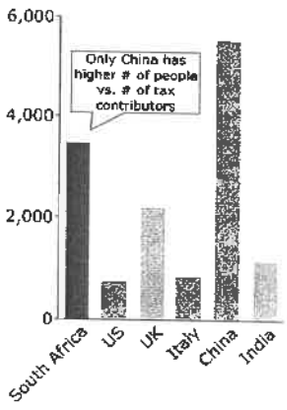
Even if eFiling usage is high (>90%), SARS branch & FTEs are substantially higher than peers

Increase economic value

# of branches per million active taxpayer (2012)



# of FTEs per million active taxpayer (2012)



Note: calculated as total number of branches / FTEs per million taxpayers
Source: Lit research, IMF, OECD

69 17

Transparency & fairness are key elements to on-board taxpayers and gain credibility

Transparency and Fairness

TRANSPARENCY

- Critical for tax bodies to report on service performance measurements and transparency of actions to citizens
  - Citizens want to know how well their efforts are utilised for a better South Africa
  - Listening to the voice of customers can un-leash opportunities to better service customers and therefore increase taxpayers compliance
  - **Today SARS does not survey taxpayers to understand what can be done better and differently**

International examples

- **New Zealand:** customer satisfaction helps understand how effective customer think the revenue authority is in delivering timely and appropriate services
- **Netherland:** Revenue authority made significant improvement in turnaround times as this was perceived week by customers

FAIRNESS

- Ensure that ALL taxpayers make their fair contribution to South Africa
  - While there has been an overall increase in taxes paid as a result of simplifications, there are still some individuals / companies trying to go around the system
  - A more professionalised enforcing towards those individuals / companies raises the overall level of fairness of the taxation system
  - **SARS first compliance report in 2012, but no information on gaps**

International examples

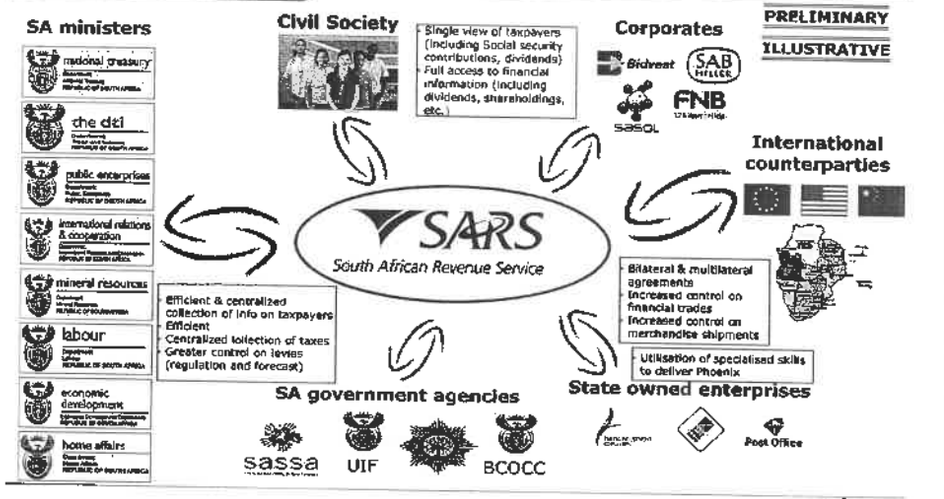
- **Italy:** Italian tax authority is supported by the "Guardia di Finanza" which is a national police special body dealing with financial crimes (tax evasion, customs protection, drugs trade)
  - GdF has tools and budget to ensure prevention, investigation and reporting of financial evasion and violations

Source: OECD; Lit research

72 20

SARS is a key player in the wider Government ecosystem – effective collaboration & integration to be further pursued

Integration & collaboration



70 18

SARS-01-488

WW1-AW-478

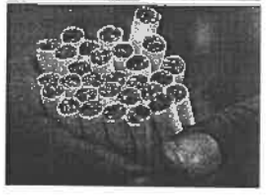
Establishment of enforcement units to fight illicit economy & tax evaders – Partnership with other governmental bodies necessary

Enforcement

BORDER UNITS

ANTI-DRUGS UNITS

ANTI-COUNTERFEIT GOODS UNITS



MARINE, AIR & TERRESTRIAL UNITS

FINANCIAL FRAUD UNITS

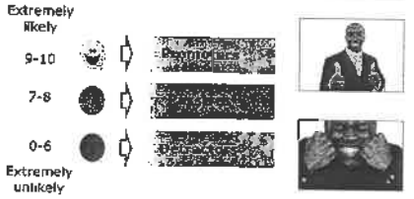
ELECTRONIC / MOBILE FRAUD UNITS

75 23

New relationship model with taxpayers - Leveraging their feedback and rewarding their compliance with rules

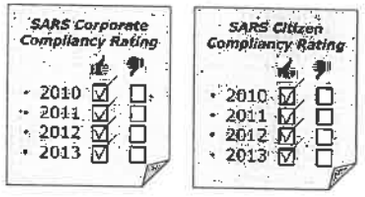
Transparency and Fairness

LEVERAGING TAXPAYER FEEDBACK



- Tracking and leveraging taxpayer feedback will drive substantial changes into SARS organisation and employees behaviours.
- A better knowledge and understanding of taxpayers experience will allow to improve the relationship at all critical touch points by .

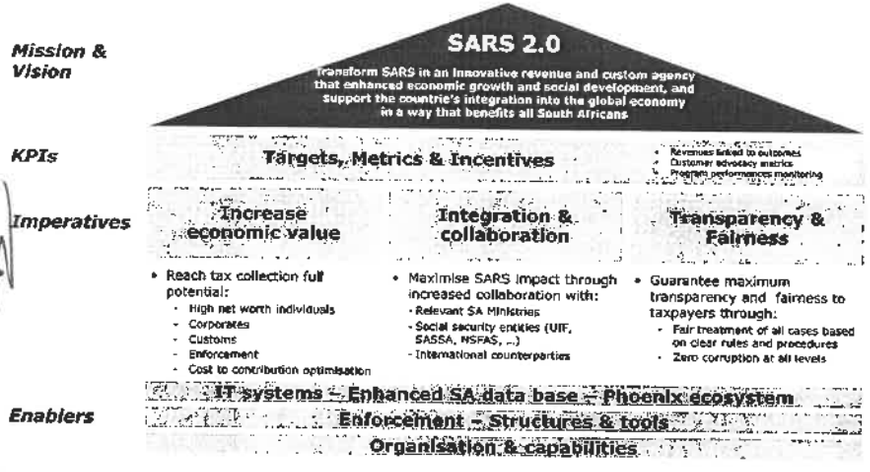
TAXPAYER HISTORICAL RATING TO REWARD LOYALTY



- SARS should recognise and reward individual & corporate taxpayers constantly compliant across time with SA tax regulation
- Recognition may result into lower tax rate or preferred treatment in case of litigation with SARS
- Repeat fraudsters will be traced and severely treated

73 21

SARS 2.0 – Future of SARS will depend on management & Government to deliver on key imperatives



76 24

Different bodies can contribute to the creation of an enhanced SA database - SARS can leverage it

IT systems – Enhanced SA DB

ILLUSTRATIVE

Taxpayers
- SARS individual tax records
- SARS companies registration database (CIT, VAT, customs, etc.)

Social Security
- Unemployment status
- Social security granted
- Studies support
- Etc.

Assets registration
- Real estate holdings (within city councils)
- Car registrations (Motor Vehicle Department

South African National Centralised Database (citizens and companies)

PHOENIX ECOSYSTEM

SA citizens / Home Affairs
- Household data (passport, marital status, demographics, etc.)
- Courthouse legal records (e.g. frauds)
- Foreigners data

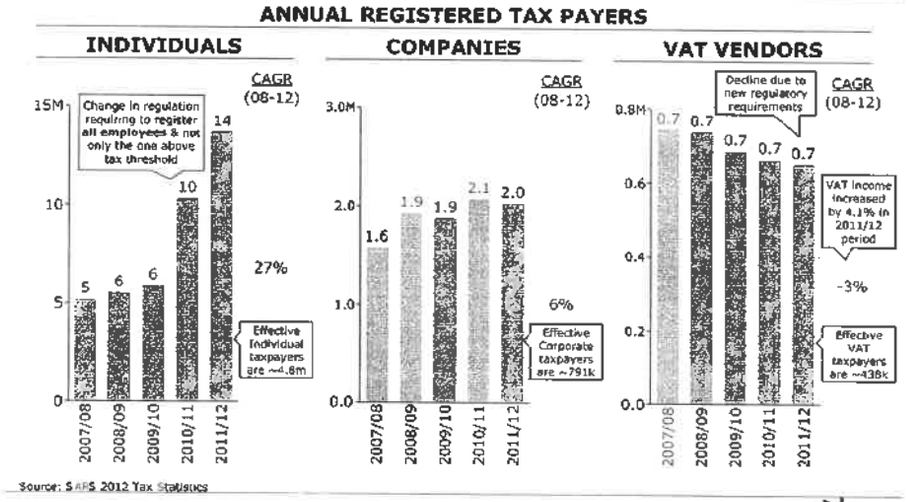
Financial holding assets
- Cash holdings (Post Office bank accounts)
- Stock / bond holdings (JSE)
- Other financial assets (IFAs / banks registry)

Private company's holdings
- Intellectual properties registrations (CIPC)
- Industry Ministries (e.g. DTI, Agriculture, etc.)

74 22

SARS-01-489
WW1-AW-479

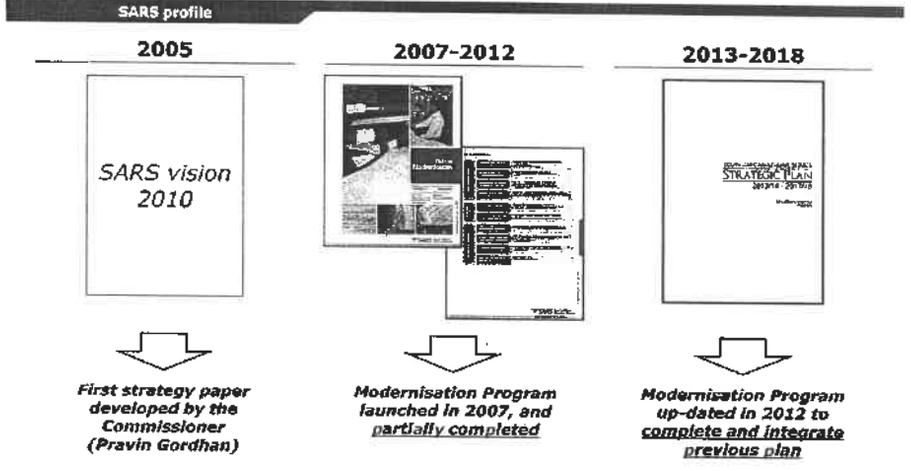
Except for VAT, SARS and regulator managed to increase substantially the registration of individuals & companies



Source: SARS 2012 Tax Statistics

Back-up

In the last decade, SARS Modernisation program has driven significant changes. Effort to be continued until 2018



Source: SARS documents; Lit research

SARS-01-490
WW1-AW-480

ANNEXURE "AW92"

CONFIDENTIAL

TM first 100 days

May 26th 2014

Objectives of the session

- **Identify the "big items"** (programs, highly leveraged activities,...) that will be fundamental to medium-term SARS transformation that need to be launched at the beginning, **plus some possible "quick-wins"**
- **Discuss and prioritize the most important factors** that will drive and determine the success of SARS tranformation and your personal success as a Commissioner
- **Deep-dive on the key components of a 100 day plan** (and the items to be addressed even before that)

Proposed new Vision and Ambition for SARS – A new Transformation Agenda must be set up

SARS Transformation Agenda

Mission & Vision

SARS 2.0

Transform SARS in an innovative revenue and custom agency that enhances economic growth and social development, and supports the country's integration into the global economy in a way that benefits all South Africans

KPIs

Targets, Metrics & Incentives

- Revenues linked to outcomes
- Customer advocacy metrics
- Program performances monitoring

Imperatives

Increase economic value	Integration & collaboration	Transparency & Fairness
• Reach tax collection full potential: - High net worth individuals - Corporates - Customs - Enforcement - Cost to contribution optimisation	• Maximise SARS impact through increased collaboration with: - Relevant SA Ministries - Social security entities (UIF, SASSA, NSFAS, ...) - International counterparties	• Guarantee maximum transparency and fairness to taxpayers through: - Fair treatment of all cases based on clear rules and procedures - Zero corruption at all levels

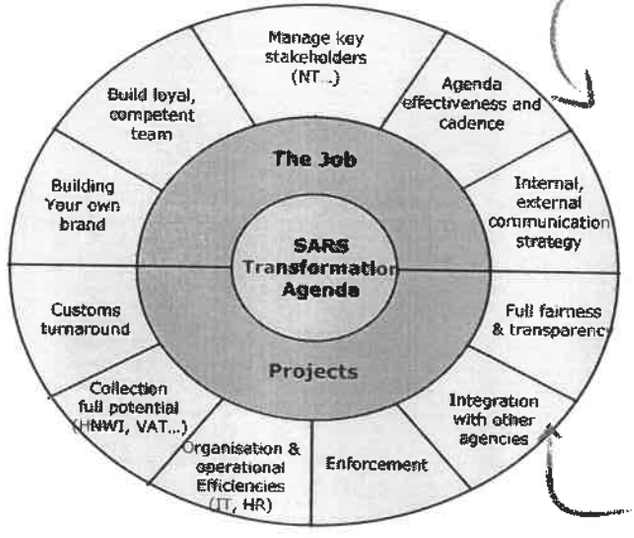
Enablers

IT systems – Enhanced SA data base – Phoenix ecosystem

Enforcement – Structures & tools

Organisation & capabilities

Your agenda should be a balance between "hard" projects and the soft day-to-day activities of the job



The Job

- Day-to-day running of the Institution including building loyalty and key relationships, building your brand of leadership internally and other "soft" tasks
- Your brand, your diary, your people and your legacy

The Projects

- Important ventures that you will undertake during tenure, including new strategic activities and restructuring functions

AW92

SARS-01-492

WW1-AW-482

SARS Commissioner is a tough job!

You must

- Reinforce values and set standards
- Attract and retain top management team
- Deliver financial results in a demanding environment
- Communicate a clear vision (sustainable, accountable)
- Foresee and prevent potential setbacks

While dealing with

- Greater focus on short-term results
- Less tolerance for real/ perceived standards violations
- Increasing demands from employees
- Greater public scrutiny

First 100 days: framework and key actions – for discussion

1- KEEP THE BALL ROLLING

- Create the fact base / baseline of current SARS performance:
  - Collections
  - Operational efficiency
- Require activities / current projects review (accelerate, stop, merge)
- Launch IT diagnostic
- Allocate specific tasks and short term objectives to existing leadership
- Testing BH and assessing performance of different components of COO perimeter

2- GAIN THE HIGH GROUND

- Review previous SARS strategic plan and assess reality of achievements
- Define SARS 2.0 detailed transformation agenda:
  - Collection full potential
  - Operational efficiency
  - Fairness & transparency
  - International integration
- Engage / communicate with stakeholders:
  - Staff
  - Media
  - Unions
  - Government entities

3- TAKE CONTROL

- Proactively manage hand-over period
- Forensic
- Clarify unconditioned mandate and governance from NT and assess Board composition and role
- Exec team assessment and reshuffle
- Define operational cadence (regular meetings and forums)
- Review Delegation of Authority and decisions rights (procurement,...)
- Set up transformation programme office

Not started · Delayed · On track

Key immediate actions – for discussion

1- KEEP THE BALL ROLLING

- Organize "bi-laterals" with all key departments
  - Assessment of the situation (numbers, performance,...
  - Programs in place and priorities
  - Challenges they see
- Immediately create the "pace", structuring the normal cadence of work (recurring meetings and agenda, but also the reporting you need)
  - 1-1s
  - Exco
  - Committees
- Allocate specific tasks and short term objectives to existing leadership

2- GAIN THE HIGH GROUND

- Launch a strategic, organisational and operational review
- Launch a technical IT diagnostic
- Immediately organize meetings to introduce yourself, listen to feedback/concerns and announce the guidelines of your mandate (a) increase economic value, b) collaboration and integration, c) fairness and transparency. But also land some reinsuring messages ("I'll work with you", "I'll listen to you" type)
  - Exco members meeting
  - Management meeting
  - "Townhall" meeting

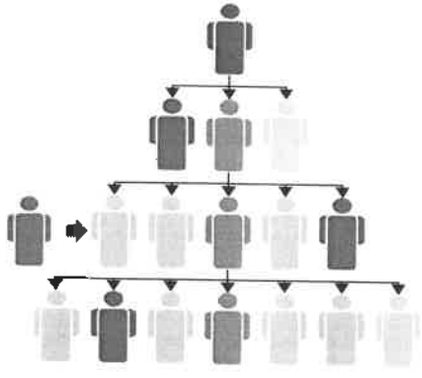
  But also informally
  - Unions
  - Government entities
  - Other stakeholders (BUSA, BLSA, BBC, Chamber of Commerce, AmCham,...)?

  To be assessed: media/pr strategy
- Identify 2-3 very visible quick-wins to ride
- Visit branches and Data Centres in the periphery (see yourself, speak with the people, recite your mantra)

3- TAKE CONTROL

- Clarify unconditioned mandate and governance from NT and assess Board composition and role
- Review Delegation of Authority and decisions rights (procurement,...): freeze all hiring and org changes and create Procurement Committee
- Testing BH and assessing performance of components of COO perimeter
- Launch Forensic investigation
- Create the leadership spine: quickly "colour-code" the Exec and Mgt team (top 100) and reshuffle.
- Assess key roles where to introduce new people
- Set up transformation programme office
- Hire a new Assistant

Build a healthy sponsorship spine to accelerate change and identify individuals to neutralize



Positive sponsorship spine · External influencers · Watch out · To neutralize

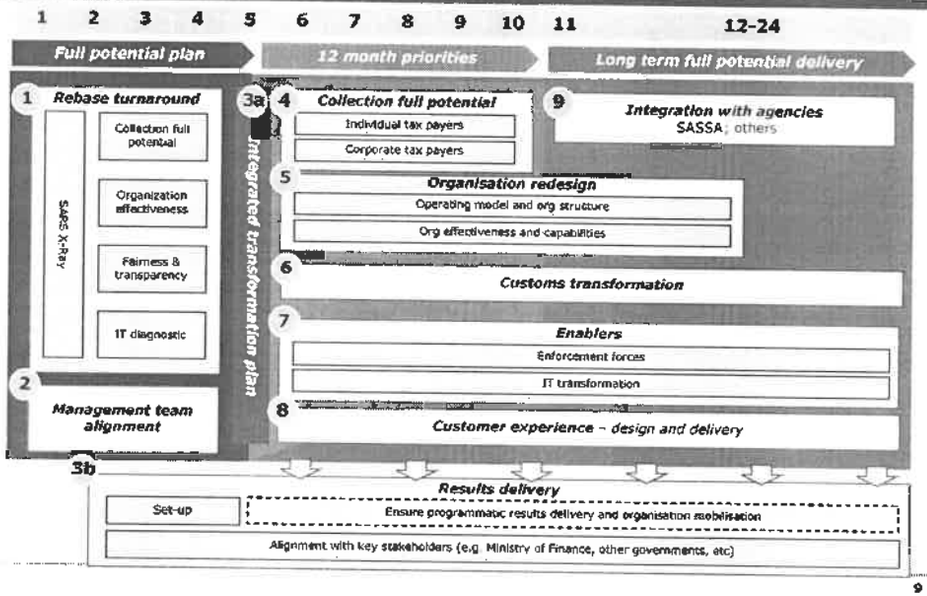
- Identify positive change sponsors bottom-up
- Leverage external influencers
- Identify individuals that could hamper change:
  - -Watch outs
  - -To neutralize

Quickly build and maintain a healthy sponsorship spine, while addressing obstacles to change

SARS-01-493

WW1-AW-483

Potential **integrated transformation plan**



Agenda

- Appendix
- SARS profile
  - Details on transformation initiatives

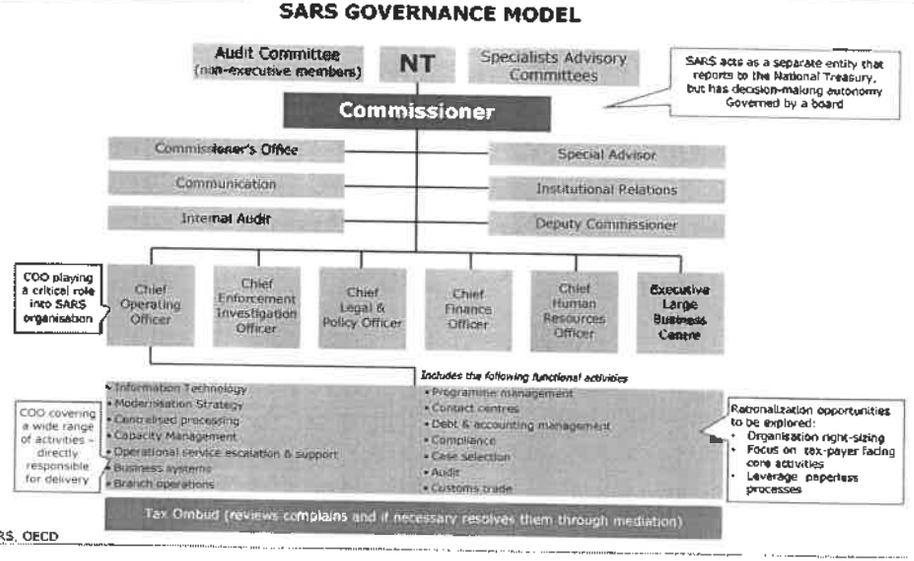
SARS point of departure

In the decade, SARS modernisation program has delivered results...

- SARS has made a number of changes through the first *Modernisation Program*, eg.:
  - Relevant increase of individual & corporate taxpayers
  - Successful adoption of eFiling to facilitate collection process (>90% in SA)
  - Managed to run operations within the allocated government budget
- But **significant challenges still need to be addressed**:
  - Even if eFiling is a great innovation, it **did not help to reduce cost of revenues ratio** (high compare to peers at 1.1%). Moreover questions arise on **potential discrimination** (access to internet) and need to be addressed
  - **Key SARS programs**, such as **Customs, still need to be delivered** – critical initiatives and structures to be put in place to support economic value creation, making customs a revenue machine (eg. US or Australia).
  - **Illicit economy not under control**

SARS is structured as an independent body, reporting directly into NT and with a separate audit committee

SARS profile

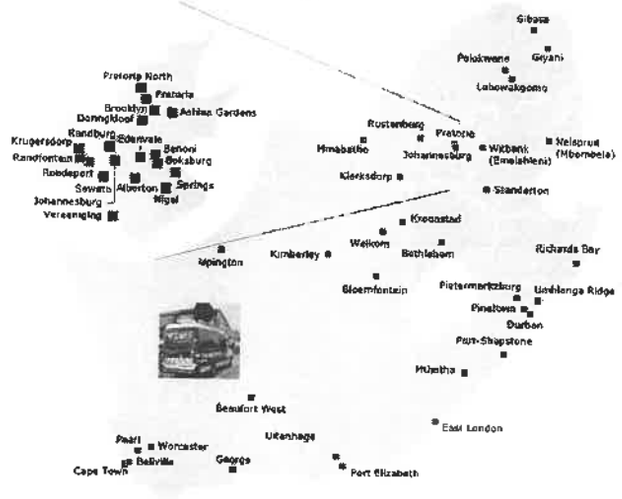


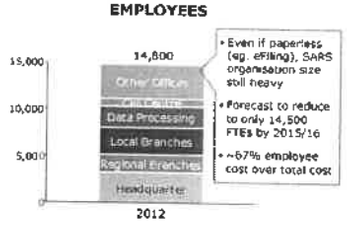
Source: SARS, OECD

SARS-01-494
WW1-AW-484

Today SARS has a wide territorial presence in South Africa, through branches, mobile units and technical sites

SARS profile





INFRASTRUCTURE

- Headquarter: Pretoria
- Regional offices: 40 nationwide
- Local/branch offices: 35 nationwide
- 7 national data processing centres
- 4 call centres
- 49 other (including Mobile Tax Units and Large Business Centres, Tax Practitioner Units)

■ Headquarter ■ Branch ■ Large Business Centre ■ Mobile Tax Unit ■ Tax Practitioner Unit ■ Call Centre

Source: SARS, OECD

13

Budget to SARS based on estimated expenditures (not performances) – rationalisation opportunities may exist

SARS profile

1.14 Government grants
SARS' main source of income is an annual grant from Parliament for its services, based on estimated expenditure for performing any specific act or function on behalf of Government in the collection of administered revenue.

SARS P&L* (2012/13 RM)

FUNDS AVAILABLE		FUNDS ALLOCATION	
National treasury grants	9,149	Employee cost	5,873
Rendering of services	16	Administrative expenses	1,494
Other income	282	Professional and special services	751
Interest received	146	Depreciation and amortisation	509
		Impairment loss	71
		Finance cost	15
Total revenues	**9.593**	**Total costs**	**8,713**

Operating surplus^: R880M

- SARS was **sustainable** for the past year (**R880M surplus**) and **over time** (**R2.8B of accumulated surplus**), but **important questions arise**:

- Funds allocation should be based on **tangible outcomes, generating economic value for SA**
- SARS organisation should be **incentivised to generate value efficiently and in a fair way**
- **Costs optimizations exist and need to be implemented**
  - Employee costs are the most important cost bucket
  - Wide & inefficient branch network
  - IT capability not at full potential (further cost savings through dematerialisation)

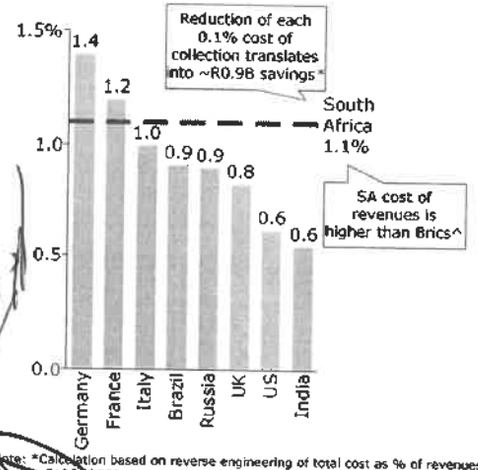
Note: * refers to the Economic Entity; ^ Actual surplus for the year of R872M after deduction of surrender of surplus funds, loss on disposal of assets and taxation; ** SARS 2013/14 budget
Source: SARS Annual Report 2012/13

14

SARS has higher costs for revenues ratio – Fixing the costs to contribution equation is a priority

SARS profile

COST OF REVENUES – SA VS. GLOBAL PEERS 2012



Reduction of each 0.1% cost of collection translates into ~R0.98 savings*

SA cost of revenues is higher than Brics^

SARS REVENUES TO COSTS KEY EQUATION

Ensure streamlined operations while delivering operational improvement and increasing effectiveness of SARS

Costs
(cost of SARS)

Revenues
(tax contribution)

Ensure that ALL taxes are paid by contributors in a fair and transparent way

Note: *Calculation based on reverse engineering of total cost as % of revenues reduced by 0.1%; ^Excluding China (not reporting data)
Source: SARS, OECD

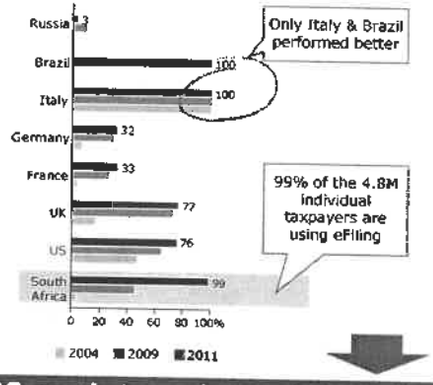
15

Even if eFiling represents 90% of total filing, there are doubts about its real efficiency to drive tax collection

SARS profile

% OF EFILING OVER TOTAL FILING

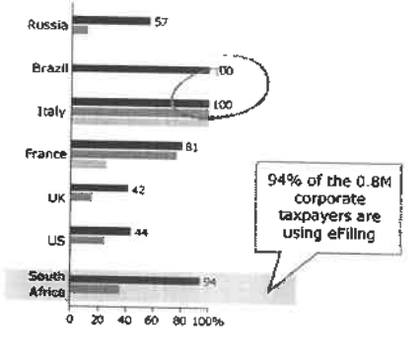
PERSONAL INCOME TAX



Only Italy & Brazil performed better

99% of the 4.8M individual taxpayers are using eFiling

CORPORATE INCOME TAX



94% of the 0.8M corporate taxpayers are using eFiling

SARS needs to go beyond the collection process, and focus on driving tax collection effectiveness

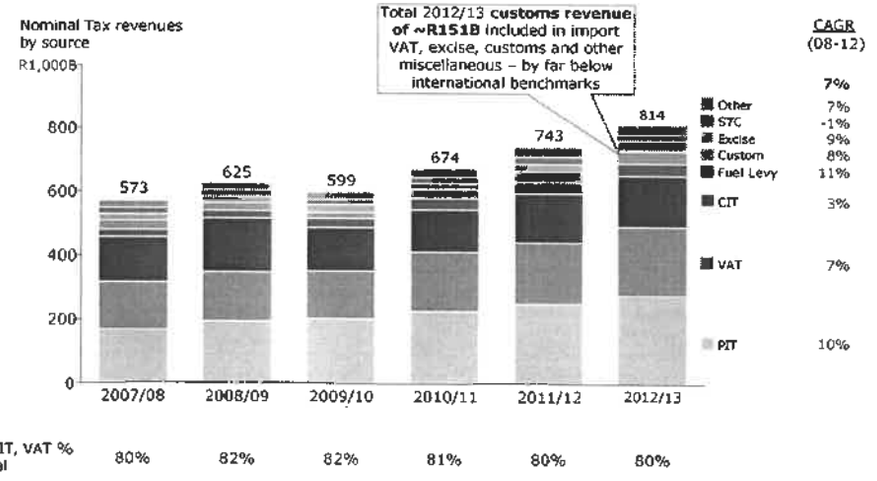
Source: OECD

16

SARS-01-495
WW1-AW-485

...but relevant aspects such as Customs are not delivering the expected economic results...

SARS profile



Source: SARS 2012 Tax Statistics; SARS 2012/13 Annual Report

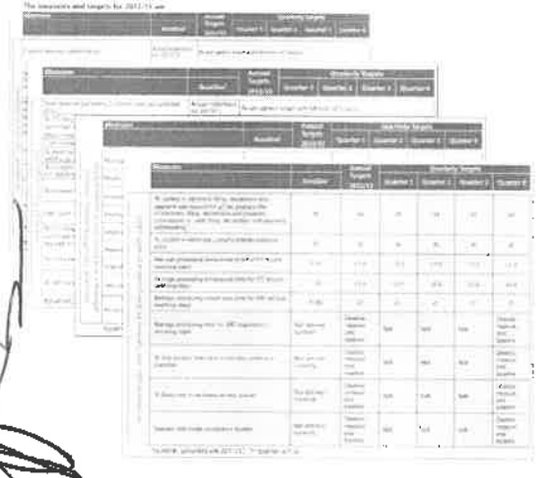
2013-2018 new strategic plan is challenging – Quality of execution will be a critical success factor

SARS profile

- To complete the initial Modernisation Program, SARS defined an additional program for the 2013-2018 period
- The new 2013-2018 plan will:
  - **Perform the uncompleted tasks** from the initial Modernisation Program (eg. Customs) and
  - **Focus on new strategic initiatives** (eg. Fairness of doing business)
- New plan is **challenging in terms of delivery** (24 major work stream to be ran parallel). Budget allocated to external support in the next 3 years seems not to be sufficient to sustain it (from R710M in 2013 down to R375M in 2016)

Today SARS tracks many KPIs, focusing on outcome and process compliancy

SARS profile



- KPIs track all relevant metrics for each outcome set by SARS
- Yet, **more specific and financial KPIs should be tracked:**
  - **Gap between actual vs full potential collection, to monitor the effective contribution to SA economic value creation**
  - **Performance against cost allocations towards new projects and initiatives**
  - **Customer satisfaction and advocacy to ensure buy-in of taxpayers and improvements on service delivery**

Source: SARS Annual Performance 2012/13

Agenda

- Appendix
  - SARS profile
- ➡ Details on transformation initiatives

SARS-01-496
WW1-AW-486

SARS 2.0 – achieve new ambitions to make a difference for SA

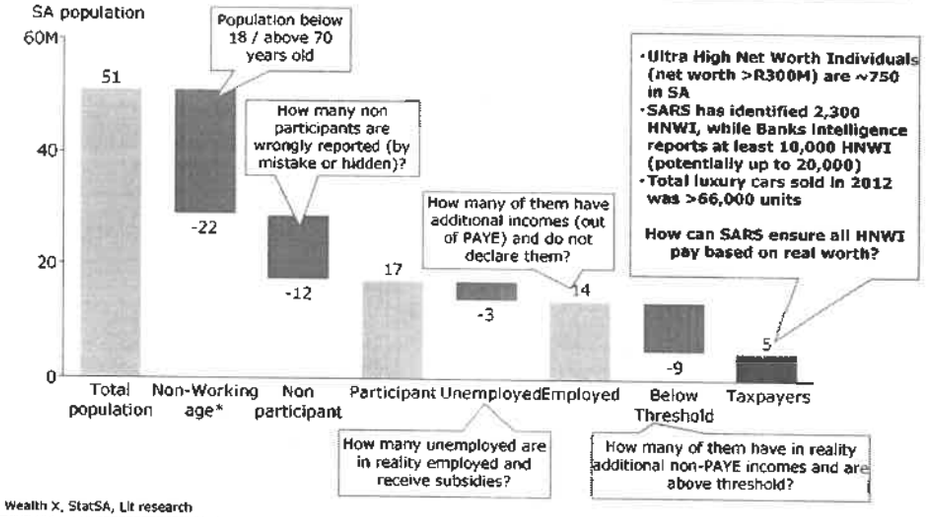
To achieve SA ambitions and make a difference, SARS needs to address key strategic concerns

- In order to **transform SARS into an innovative revenue & custom agency**, SA government will have to run a **profound strategy refresh** and **focus on execution to reach SARS real full potential:**
  - Define **clear KPIs to guarantee SARS focus** on relevant drivers
  - Deliver on the **3 main imperatives**:
    - **Increase economic value** for South Africa
    - **Integration** and **collaboration** with national and international counterparts
    - Full **fairness** and **transparency** to taxpayers
  - Develop the **critical enablers** to **support imperatives deployment**:
    - **IT systems**, and more specifically the **enhanced SA Data Base**, incorporated in the **Phoenix Ecosystem**
    - **Enforcement structures and tools** to support day-by-day imperatives respect
    - **Organisation and skills**

Increase economic value: ensure all tax payers contribute adequately (1/2)

Increase economic value

INDIVIDUAL TAXPAYERS

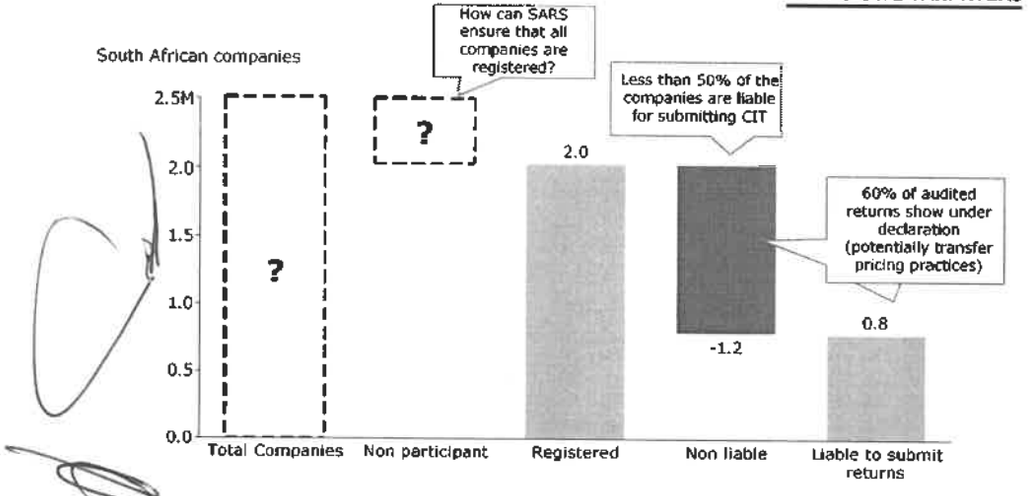


Source: Wealth X, StatSA, LR research

Increase economic value: ensure all tax payers contribute adequately (1/2)

Increase economic value

CORPORATE TAXPAYERS



Note: No relevant source is able to estimate the total number of companies in South Africa

Source: SARS

Increase economic value: critical Customs program to be accelerated

Increase economic value

CUSTOMS PROGRAM

- SARS customs program active since 2009 but **still not effectively fighting against fraud, corruption & illegal imports**
- Customs service delivery is still **substandard** making the **process of importing / exporting very confusing & unattractive**

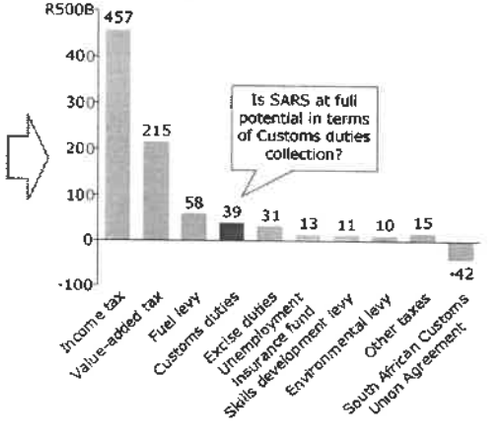
"Current law does not provide SARS with adequate information to determine any possible safety, security, fiscal and economic risks in relation to these goods. No value is declared [...]. This lack of information does not promote the application of efficient and effective customs controls and risk management at the port of entry"

All Africa on new Customs Bill submitted to Parliament, August 2013

"We, at [multinational company] haven't yet figured out how to quickly process imports and we still get double-taxed when we export in Africa through South Africa"

Marketing director, Multinational company

2012/13 SARS administered revenues

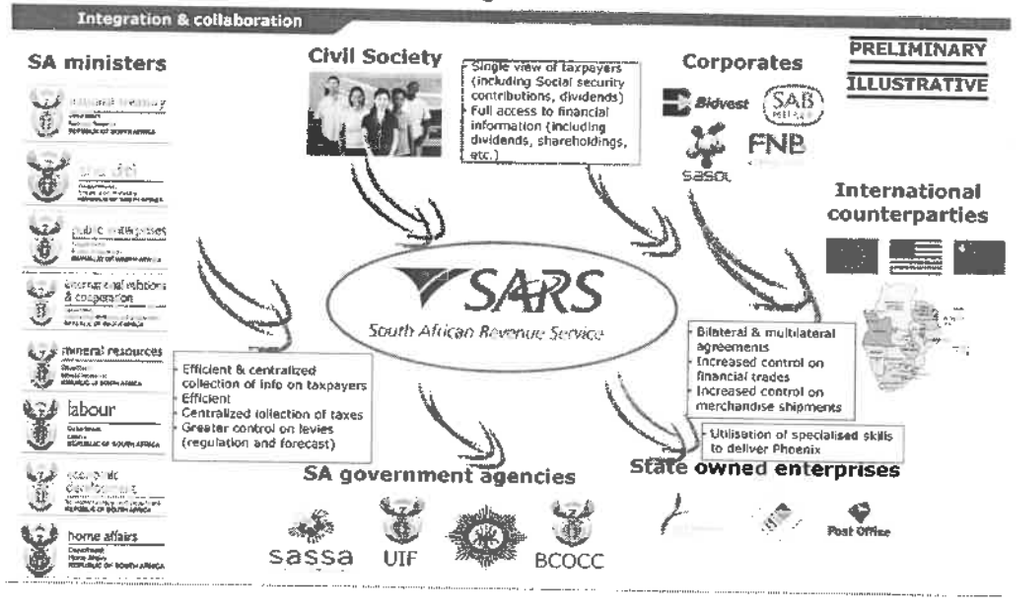


Source: LR research

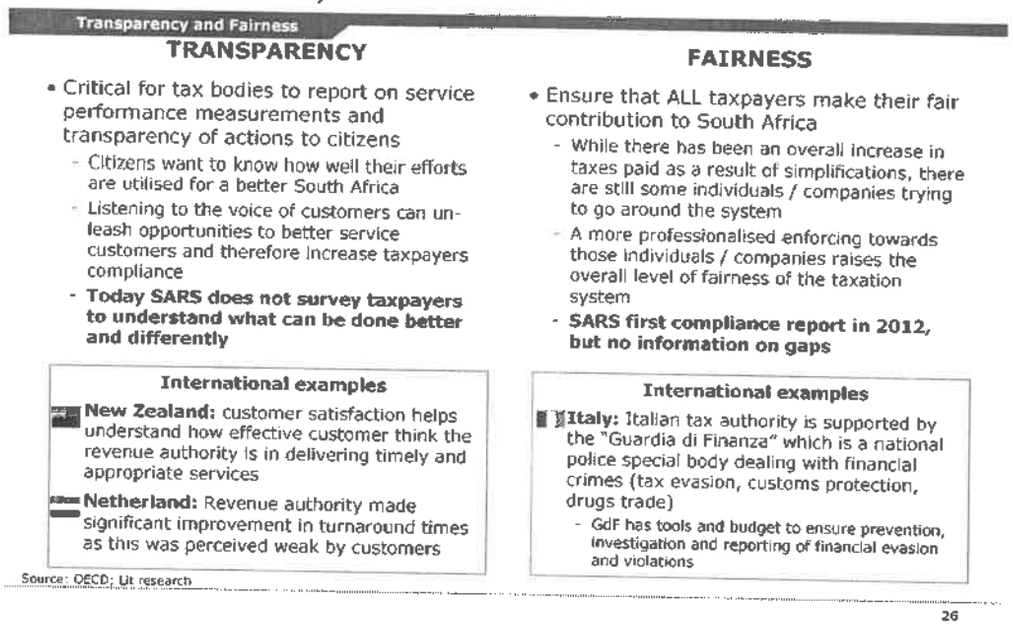
SARS-01-497

WW1-AW-487

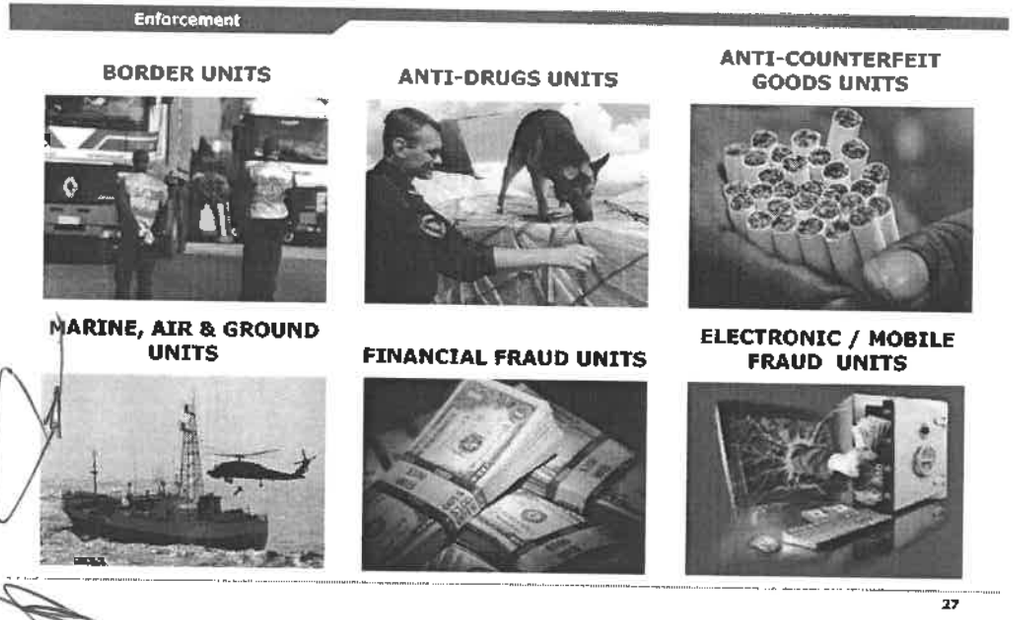
Integration & collaboration: SARS is a key player with a core role to play in delivering SA's ambition



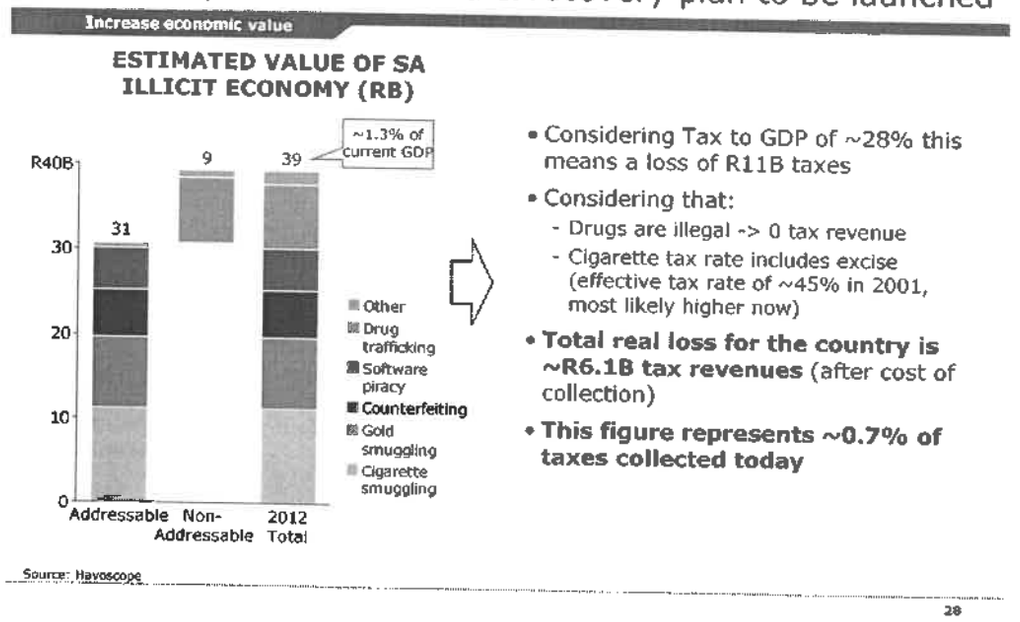
Transparency & fairness: critical to on-board taxpayers and gain credibility



Enforcement: need specific units to fight illicit economy & tax evaders



Illicit economy estimated at R40B, tax loss superior to R6B. Opportunity to be measured & recovery plan to be launched



SARS-01-498
WW1-AW-488

Border control needs to be efficient (to increase trade) and effective (to decrease illicit trades)

Increase economic value

FRENCH GOVERNMENT INCREASED EFFORTS TO PLAY A KEY ROLE AS A HUB FOR EUROPE

- One of the main goals of the French border control ("Douane") is to **increase European trade flow through France**
  - Become the hub for global merchandises entering Europe, making sure that procedure in place facilitate business
  - Ensure this comes in a sustainable way in order to allow only legal merchandise to enter

South Africa can play similar role for SADC / Sub-Saharan Africa

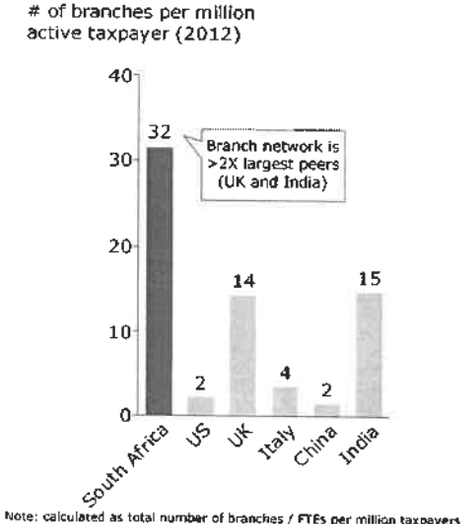
AUSTRALIAN GOVERNMENT ACTIVELY MANAGES BORDER CONTROLS TO FIGHT ILLEGAL IMPORTATIONS

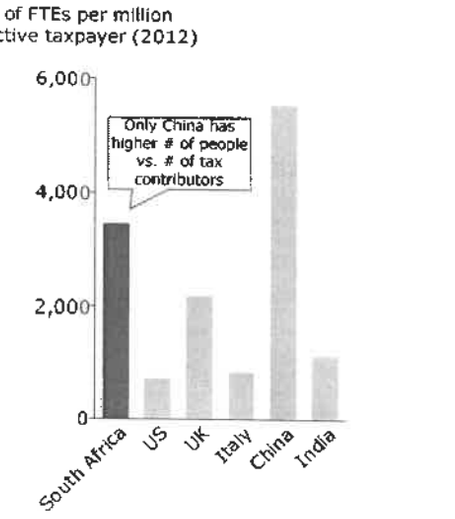
- One of the main goals for Australian border control is to **protect Australians from illegal migration and merchandise smuggling**
  - Protect environment from alien diseases
  - Preventing the entry of people who are a direct or indirect threat to the Australian community
  - Significant income for the country derived from fines applied to illegal importations

SARS can decrease illegal trade inflow /outflow and "earn with punishments"

Even if eFiling usage is high (>90%), SARS branch & FTEs are substantially higher than peers

Increase economic value





Note: calculated as total number of branches / FTEs per million taxpayers
Source: Lit research, IMF, OECD

For example, integrating Social Security Contribution into SARS can deliver significant upside

Integration & collaboration

TYPICALLY THE MERGE HAS LONG TERM ADVANTAGES

- **Commonality of core processes**
  - Identify and register contributors
  - Systems to collect information from employers
  - Withholding taxes from employers
  - Effective collection systems
  - Audit of accuracy of data
- **Efficiency of resources**
  - Economy of scale as the marginal cost for additional analysis is minimal
- **Core competencies of tax and social organisations**
- **Lowering government administration cost**
- **Lowering taxpayers and contributor compliance costs**
- **Unique tax data base**

Source: OECD

YET IN THE SHORT TERM THE TRANSITION IS PAINFUL

- Implications to the registering, calculating and recoding systems may cause **difficulties due to new procedures** and the **introduction of new forms**
- Calculation of charges are different and require a **specific skill set**
- Typically before merge the taxpayers are registered with different codes and requires **reconciliation** of relevant tax information

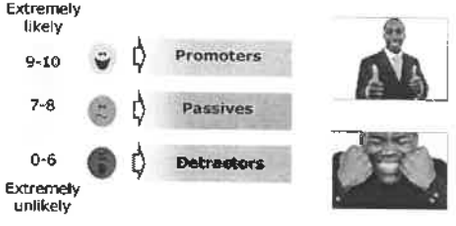
International examples

- UK: elimination of administrative duplications; simplification of taxation and social security frameworks
- Netherlands: simplification of social security collections; reduction of overall employees

New relationship model with taxpayers - Leveraging their feedback and rewarding their compliance with rules

Transparency and Fairness

LEVERAGING TAXPAYER FEEDBACK



- Tracking and leveraging taxpayer feedback will drive substantial changes into SARS organisation and employees behaviours.
- A better knowledge and understanding of taxpayers experience will allow to improve the relationship at all critical touch points

TAXPAYER HISTORICAL RATING TO REWARD LOYALTY

- SARS should recognise and reward individual & corporate taxpayers constantly compliant across time with SA tax regulation
- Recognition may result into lower tax rate or preferred treatment in case of litigation with SARS
- Repeat fraudsters will be traced and severely treated

SARS-01-499
WW1-AW-489

Different bodies can contribute to the creation of an enhanced SA database - SARS can leverage it

IT systems – Enhanced SA DB

ILLUSTRATIVE

Taxpayers
- SARS individual tax records
- SARS companies registration database (CIT, VAT, customs, etc.)

Social Security
- Unemployment status
- Social security grants
- Studies support
- Etc.

Assets registration
- Real estate holdings (within city councils)
- Car registrations (Motor Vehicle Department)

South African National Centralised Database (citizens and companies)

PHOENIX ECOSYSTEM

SA citizens / Home Affairs
- Household data (passport, marital status, demographics, etc.)
- Courthouse legal records (e.g. frauds)
- Foreigners data

Financial holding assets
- Cash holdings (Post Office bank accounts)
- Stock / bond holdings (JSE)
- Other financial assets (IFAs / banks registry)

Private company's holdings
- Intellectual properties registrations (CIPC)
- Industry Ministries (e.g. DTI, Agriculture, etc.)

BACK UP

TM's agenda: Do you agree with the key battlefields in the medium to long-term?

FOR DISCUSSION

		2014	2015	2016
SARS 2.0 program	• Master plan	→		
	• Monitor program execution	→	→	→
Customs turnaround	• Improve customs collection to global standards levels	→	→	
Collection full potential	• Individual tax payers (HNW)		→	→
	• Corporate tax payers (VAT and income tax)		→	→
Organisation & operational effciencies	• Review organization to drive accountabilities	→		
	• Optimize infrastructure (IT, geo. coverage, staffing model...)		→	→
Enforcement	• Set-up enforcement force (in sync with other forces)		→	→
Integration w/ other agencies	• SASSA integration opportunity		→	
	• Other agencies			→
Fairness & transparency	• Internal "Zero tolerance" program	→		
	• Engage with SARS customers to improve service		→	→
...?	• ...?			

First 100 days

SARS-01-500

WW1-AW-490

ANNEXURE "AW93"

AW93

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Timpano, Stephane
Sent: Wed 10/2/2013 3:58:20 AM (UTC)
Subject: Re: SARS opportunity

Ciao. Vittorio,
Ti rispondiamo asap con maggiori dettagli.

In termine di prossimi passi come vuoi muoverti internamente? Organizzo un meeting con innocent/tiaan/fabrice per discuterne?

Fammi sapere,
S

Sent from my BlackBerry 10 smartphone.

From: Massone, Vittorio
Sent: Tuesday, October 1, 2013 10:00 PM
To: Timpano, Stephane
Subject: Re: SARS opportunity

Grazie Stephane,

Ottimo, ben fatto. Qualche domanda:

Sarebbe interessante capire perche' il costo e' piu alto.. C'e' un problema di scala (perche confrontiamo con paesi molto piu grandi) o e' inefficienza?

Quando parli di social security intenti INPS? I contributi? In effetti c e molto lavoro in nero e quello sarebbe una opportunita..

Abbiamo sentito "esperti" per conoscere se ci sono "magagne" nel sistema? Mi dicono (amici di Innocent) che il livello di security del sistema - cioe' sicurezza che non ci siano breaches nei processi - e' bassa.. Cioe' paghi e I tuoi problemi di tasse svaniscono. Quindi secondo me bisogna menzionare il tema di governance e processi..

Ciao grazie
V

From: Massone, Vittorio
Sent: Tuesday, October 01, 2013 07:42 PM GMT Standard Time
To: Massone, Vittorio
Subject: Fw: SARS opportunity

From: Timpano, Stephane
Sent: Monday, September 30, 2013 09:38 PM GMT Standard Time
To: Massone, Vittorio; Franzen, Fabrice; Moolman, Tiaan; Dutiro, Innocent
Cc: Braggiotti, Francesco
Subject: SARS opportunity

Gentlemen,

As agreed last week please find attached a first set of analysis on SARS modernisation program and a tentative to identify potential areas of discussion with them.

Will be good to have your feedback / contribution in the coming days to be able to prepare a more solid discussion deck asap.

ANNEXURE "AW94"

AW94

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

111

27

CHAPTER 3: THE SEIZING OF SARS

[1] The transition of SARS from what it was to what it became was brought about by events that are shocking. We think what occurred can fairly be described as a premeditated offensive against SARS, strategized by the local office of Bain & Company Inc, located in Boston, for Mr Moyane to seize SARS, each in pursuit of their own interests that were symbiotic, but not altogether the same. Mr Moyane's interest was to take control of SARS. Bain's interest was to make money. This was not a plan for mere succession in public service.

[2] The Commission has no evidence that the parent corporation was complicit in what occurred, as the Commission was told by Bain's legal counsel it was not, but that does not put an end to the parent's responsibility. An international consultancy cannot lend its name and reputation to securing work in this country by the local office, and then leave the local office to its own devices. It secures the work through the reputation of the parent, and the parent is then obliged to see to it that the work meets its standards. If it wants to ignore what the local office does then it must leave the local office to secure work on such reputation as the local office might have. It cannot have both the benefit of its name and no responsibility for what is done in its name.

The Evidence of Bain and Co

[3] The head of the local office of Bain at the time was Mr Vittorio Massone. Soon after Mr Moyane took office, Bain was contracted, ostensibly to review, and later to re-structure SARS, which it did, with damaging consequences. Mr Massone said in his evidence that he was not aware of what was happening beneath the surface, and had he known he would have acted differently, but the facts show the contrary. Mr Massone and his local partners knew precisely what was going on, though perhaps they were not initially conscious of how brutal the process would be. An article written by one of its partners was at pains to say, correctly, that the first step in undertaking a project was to

ANNEXURE "AW95"

AW95

Message

From: Franzen, Fabrice [/O=BAIN/OU=EXCHPARIS/CN=RECIPIENTS/CN=06FFR]
Sent: 12/3/2014 6:32:48 AM
To: Massone, Vittorio [/O=BAIN/OU=EXCHGLOBALSERVICES/cn=Recipients/cn=09VMA]
Subject: RE: Alert: SARS

I agree.....

From: Massone, Vittorio
Sent: Wednesday, December 03, 2014 8:23 AM
To: Franzen, Fabrice
Subject: Re: Alert: SARS

Now I'm scared by Tom.. This guy was supposed to be untouchable and it took Tom just a few weeks to make him resign.. Scary..

From: Franzen, Fabrice
Sent: Wednesday, December 03, 2014 06:11 AM GMT Standard Time
To: Massone, Vittorio
Subject: FW: Alert: SARS

Goodbye Barry Hore...

From: emailednews@email.global.factiva.com [mailto:emailednews@email.global.factiva.com]
Sent: Wednesday, December 03, 2014 8:01 AM
To: Franzen, Fabrice
Subject: Alert: SARS

DOW JONES FACTIVA ALERTS

Scheduled Alert

Alert: SARS

News24.com | R3m worth of counterfeit goods seized

News24, Tuesday, 02 December 2014, 15:46 GMT, 196 Words, © 2014
(Document IVQ9835502.0141.0Zeac2302e6)

Johannesburg - Police last week seized counterfeit goods valued at around R3m and illicit cigarettes worth about R470 000, Western Cape police said on Tuesday

ANNEXURE "AW96"

AW96

To: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Min, Stuart[Stuart.Min@Bain.com]
From: Kennedy, Chris
Sent: Mon 9/3/2018 7:50:40 AM (UTC)
Subject: RE: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Thanks Fabrice - please be assured that we will keep this and all other contributions entirely confidential.

What is missing here is dates. Please could you spend some time thinking or looking in your diary and filling in the dates for us?

Thanks

Chris

From: Franzen, Fabrice <Fabrice.Franzen@Bain.com>
Date: Monday, 03 Sep 2018, 9:42 am
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Stuart, Chris,

As indicated earlier, I am at your disposal to engage on my own recollection of events around the SARS process.

- My recollection is that Vittorio was introduced to Moyane in H2-2013 by Duma, a paid advisor of Bain which Vittorio had decided to contract.
  - Vittorio never shared the advisor contract with the partner group, nor the details of the financial arrangements
  - As a partner group, we raised concerns about that advisor – Tiaan and Innnocent were particular vocal about it
  - Duma had been introduced to Vittorio by Jabu Mabuza and Sipho Maseko, respectively chairman and CEO of Telkom

- Following that introduction, there have been numerous meetings between Vittorio, Moyane, Duma, Jabu Mabuza. Some happened in plain sight in the office during business hours. Materials or these meetings were prepared by Stephane Timpano and Alexis Bour

- It was also known to all the partners that Vittorio was meeting with the resident in multiple occasions, including with Duma and Moyane – he was talking openly about it in partner meetings:
  - I don't know the specifics and timing of these Presidential meetings, except for a late Saturday night one, which I remember because Vittorio joined late a dinner party because of that

- In 2014, Vittorio also had multiple meetings with Jonas Makwakwa, the future head of BAIT. At that time head of internal audit at SARS.
  - These meetings were with Vittorio, Moyane and Makwkawa. They also happened in plain sight in the office
  - As Vittorio indicated during witness prep, Makwakwa was playing sort of a "deep throat" on evens happening at sars and feeding into Moyane

- After the appointment of Moyane in October, it was clear at the end of 2014 that Vittorio was expecting work to come – he asked to pre-identify teams, and asked me to play an OVP role on the project, should it become live

As far as I am concerned:

- I met Moyane twice before the beginning of our work at SARS (both in my diary and easily verified):
  - May 15 2014: Vittorio asked me to join a lunch he had with Moyane at a restaurant in Melrose Arch. They clearly knew each other very well already while Moyane was still Correctional services head, Vittorio spoke a lot about how to optimize a revenue service
  - June 2 2014: meeting in the office with Vittorio and Moyane. I was asked to come an explain the type of operating model work we had done at DBSA in the public sector

- I haven't met Moyane after that until January 2015 when our work had started at SARS
- I never met Makwakwa before January 2015 when our work had started at SARS
- I have never met Duma
- I have never been in a meeting with the President

When Vittorio became confident that work would come from SARS after Moyane's appointment, Vittorio asked me to play an OVP role on any future project. This was a request from my Office head and I didn't think I had much choice. He also asked me to draft some slides to describe a potential approach for a diagnostic. I was not present if and when he used these slides with Moyane.

When the RFP came in, in December 2014, I worked with Alexis to pull together a short proposal – leveraging external POV developed on SARS by Stephane and Alexis, and some slides on work plan and deliverables – hence the quick turnaround. Pricing was decided by Vittorio (only him, as OH, has the authority to decide on a 50% discount). I did not attend the pitch as I was on leave.

I remain at your disposal for any further clarification.

Fabrice Franzen
Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 (0)11 012 9117; fax: +27 (0)11 012 9101; mobile: +27 71 602 9964
fabrice.franzen@bain.com | web: www.bain.com

ANNEXURE "AW97"

AW97

atholwilliams@hotmail.com

From:	Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent:	30 October 2018 23:49
To:	Min, Stuart (Stuart.Min@Bain.com); Kennedy, Chris (Chris.Kennedy@Bain.com) (Chris.Kennedy@Bain.com); atholwilliams@hotmail.com
Cc:	Bernstein, Darryl; Klinger, Jane C; Steyn, Wian; Batonga, Marilyn
Subject:	Project Arrow Update
Attachments:	2018.10.29 Index of docs for client review-8440664-v4-WASDMS.XLSX; CTRL-00023247_native.pdf; Project Arrow Review Stats - 10.30.18.xlsx

All:

Please see attached updated review stats on the SARS-focused review, as well as an updated index of documents of interest.

I've also attached a document of particular interest we've identified this week – an Aug 2014 document created by Makwakwa and delivered to Bain pre-RFP. The review has found evidence in Massone's calendar that this document was delivered by Makwakwa on a flash drive directly to Massone. See below for document metadata details:

1

Author: Jonas Makwakwa
Custodian: Vittorio Massone
Date Last Modified: 2014-08-29 10:05 AM
Date Created: 2011-03-29 12:00 AM
Date Last Printed: 2013-04-22 07:22 AM

Best regards,
Reagan

Reagan R Demas
Partner
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, DC 20006-4078
United States
Tel: +1 202 452 7000
Direct: +1 202 835 1886
Fax: +1 202 452 7074
Direct Fax: +1 202 416 6992
reagan.demas@bakermckenzie.com

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AW97

REVIEW OF SARS'S OPERATING MODEL & STRUCTURE

August 2014

SARS
South African Revenue Service

Presentation Outline

1 **Overview of SARS's Current Structure** 3

2 **SARS's Operating Model** 12

3 **Measuring SARS's delivery** 17

SARS
South African Revenue Service

Overview of SARS's Current Operating Model & Structure

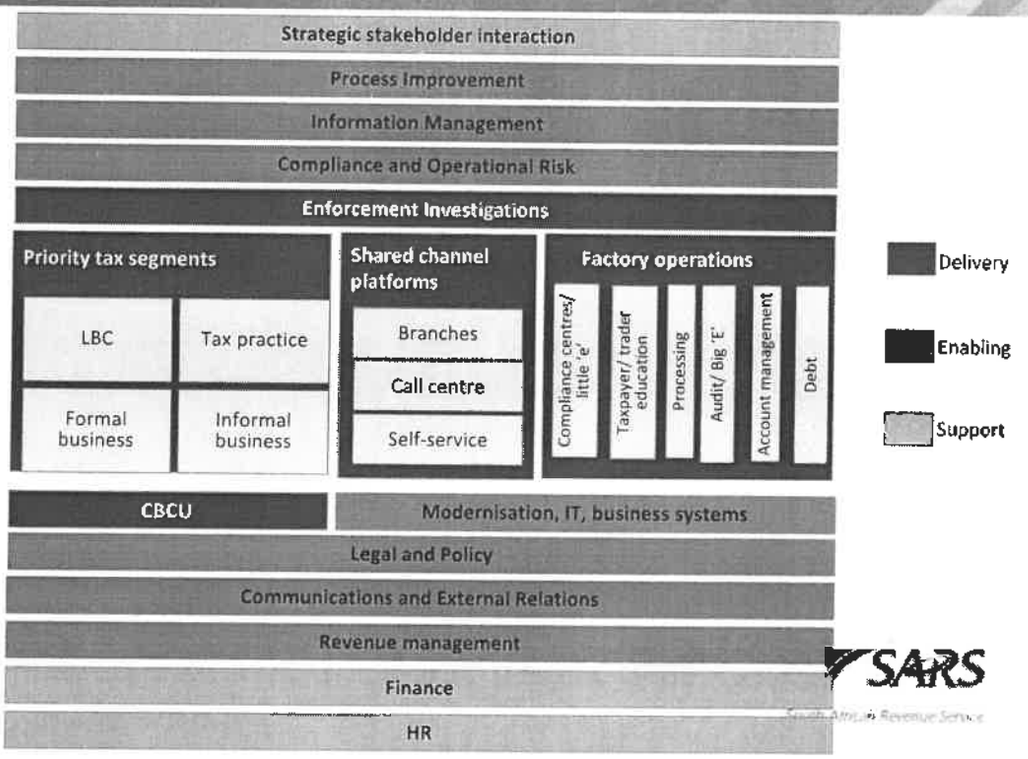
SARS
South African Revenue Service

SARS's Operating Model

SARS
South African Revenue Service

SARS's capability to deliver the strategy…

5



SARS's "Enabling" Capabilities…

6

- Process Improvement
- Information Management
- Compliance and Operational Risk
- Modernisation, IT and business systems
- Legal and Policy
- Communications and External Relations, and
- Revenue management

SARS

Critique of SARS's Current Operating Model and Structure

1. **80% of SARS is under the control of one person**
2. **The Chief Information Officer reports to the Chief Operations Officer**
3. **There is no separation of duties and the Division has carte blanche to do as they wish**
4. **IT Procurement is not controlled**
5. **The is no consistency in the application of organisational policies throughout SARS**
6. **There is a lack of communication throughout the organisation by the EXCO Leadership**
7. **There is a lack of control of the budgeting process**

SARS
South African Revenue Service

SARS's "Delivery" Capabilities...

- **Effective Enforcement Investigations**
- **Establishment of Priority tax segments**
  1. Large Business Centre
  2. Tax practice
  3. Formal businesses, and
  4. Informal businesses
- **Shared channel platforms**
  1. Branches
  2. Call centre
  3. Self-service, e.g. eFiling capability
- **Factory operations**
  1. Existing of compliance centres
  2. Taxpayer/ trader education
  3. Central Processing
  4. Audits
  5. Account management
  6. Debt management
- **A well established Customs Border Control Unit (CBCU)**

SARS
South African Revenue Service

SARS's "Support" capabilities...

9

SARS enjoys "support' capabilities from the following support units, each led by a senior executive of the organisation,

- **Strategic stakeholder interaction**, whose mandate is to ensure that all SARS stakeholders are duly engaged in appropriate forums and that they are treated with respect whilst doing so.
- **Finance,** whose mandate is to ensure SARS conducts its financial affairs on its expenditure accounting, revenue accounting and management accounting in line with all statutory requirements, such as the Public Finance Management Act (PFMA), and Treasury regulations and that due diligence is exercised.
- **Human Resources,** whose mission is to build relevant Human Capability for sustainable business performance

SARS

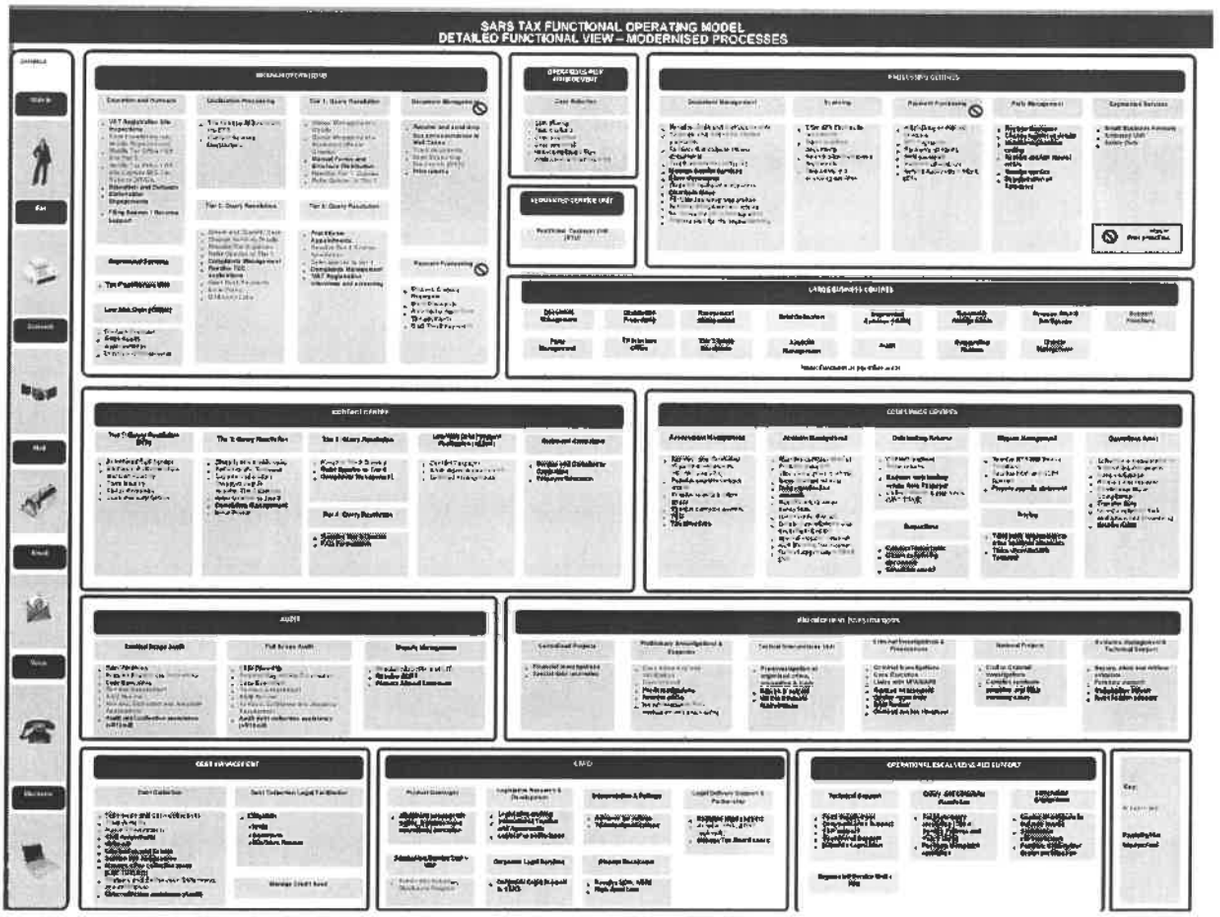
South African Revenue Service

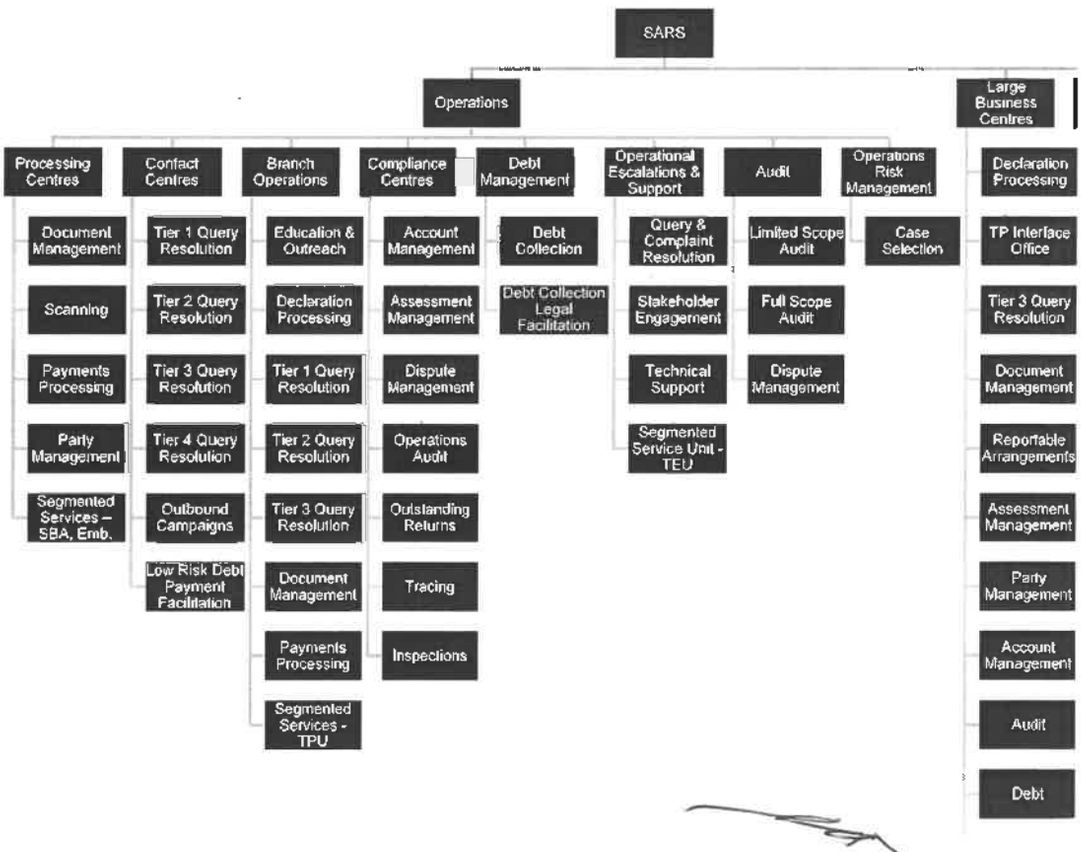
10

SARS's Current Structure

SARS

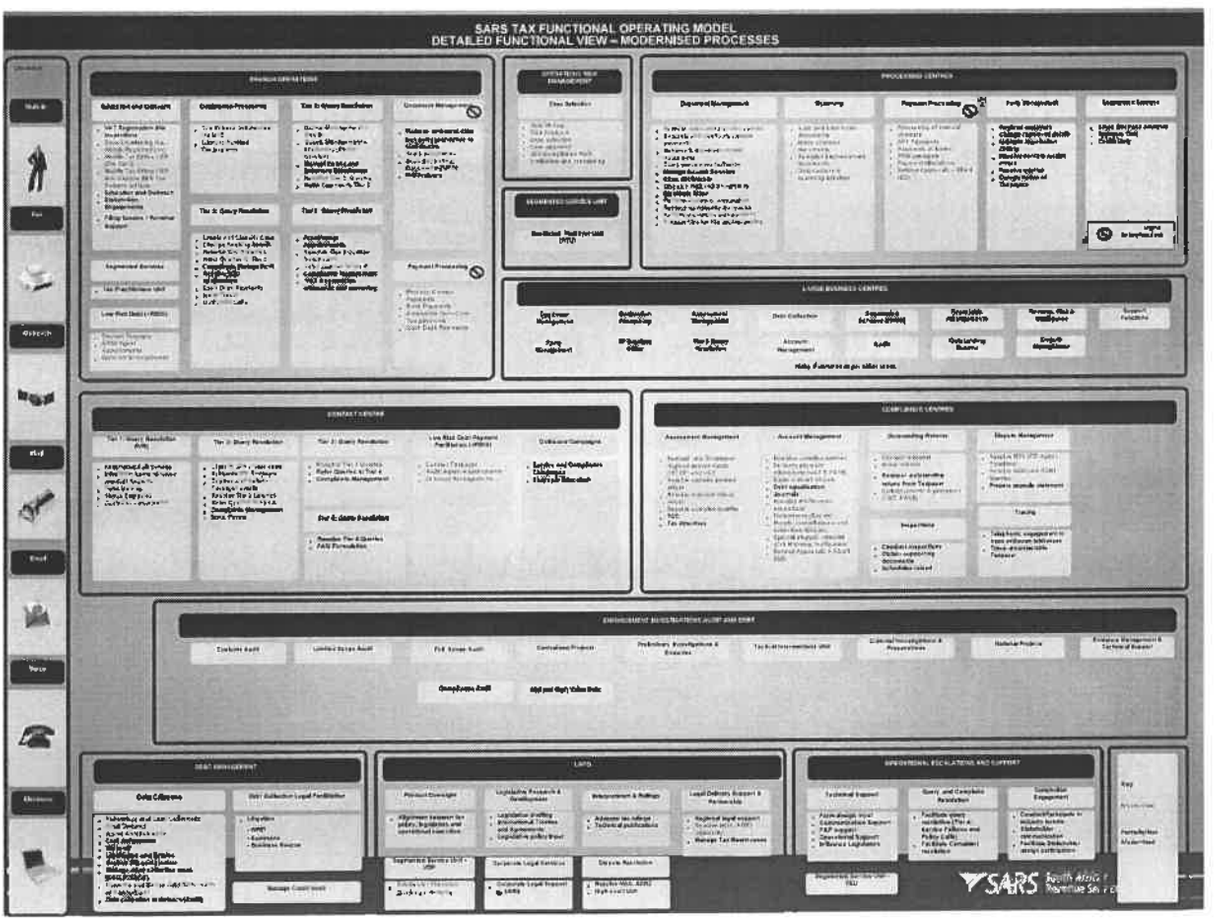
South African Revenue Service

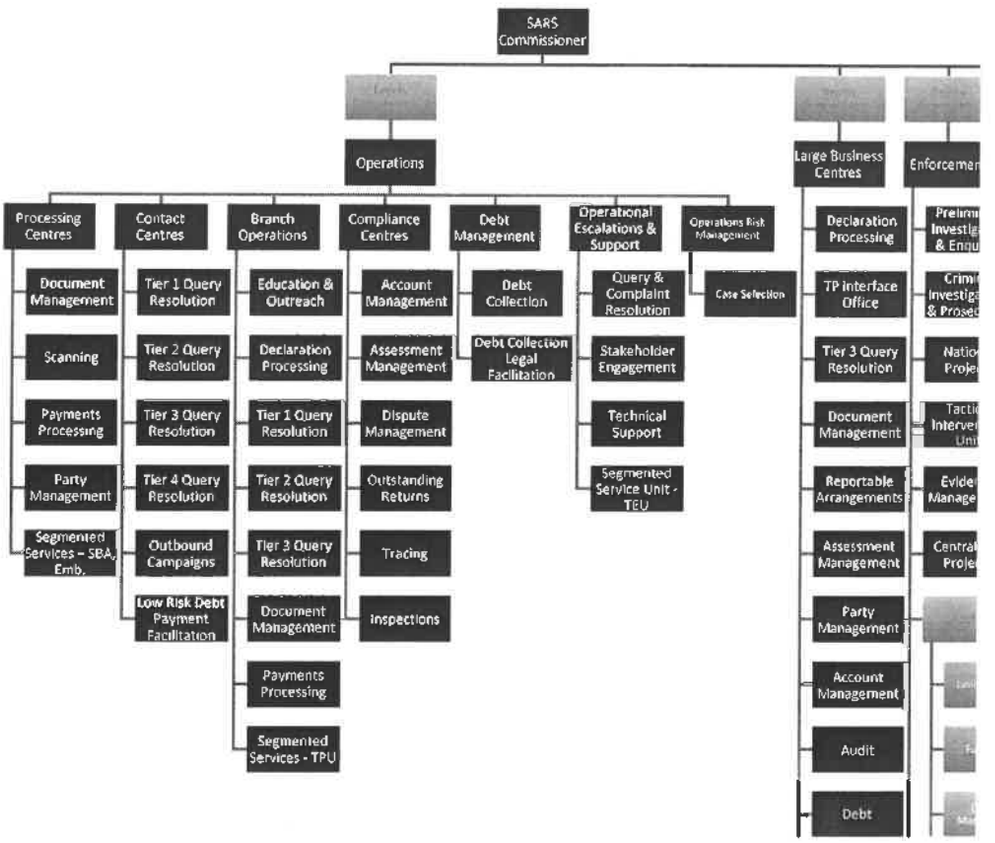

SARS TAX FUNCTIONAL OPERATING MODEL
DETAILED FUNCTIONAL VIEW – MODERNISED PROCESSES


SARS
Operations
Large Business Centres
Processing Centres
Contact Centres
Branch Operations
Compliance Centres
Debt Management
Operational Escalations & Support
Audit
Operations Risk Management
Declaration Processing
Document Management
Scanning
Payments Processing
Party Management
Segmented Services – SBA, Emb.
Tier 1 Query Resolution
Tier 2 Query Resolution
Tier 3 Query Resolution
Tier 4 Query Resolution
Outbound Campaigns
Low Risk Debt Payment Facilitation
Education & Outreach
Declaration Processing
Tier 1 Query Resolution
Tier 2 Query Resolution
Tier 3 Query Resolution
Document Management
Payments Processing
Segmented Services - TPU
Account Management
Assessment Management
Dispute Management
Operations Audit
Outstanding Returns
Tracing
Inspections
Debt Collection
Debt Collection Legal Facilitation
Query & Complaint Resolution
Stakeholder Engagement
Technical Support
Segmented Service Unit - TEU
Limited Scope Audit
Full Scope Audit
Dispute Management
Case Selection
TP Interface Office
Tier 3 Query Resolution
Document Management
Reportable Arrangements
Assessment Management
Party Management
Account Management
Audit
Debt

SARS's Proposed Structure

SARS
South African Revenue Service




SARS Commissioner
Operations
Large Business Centres
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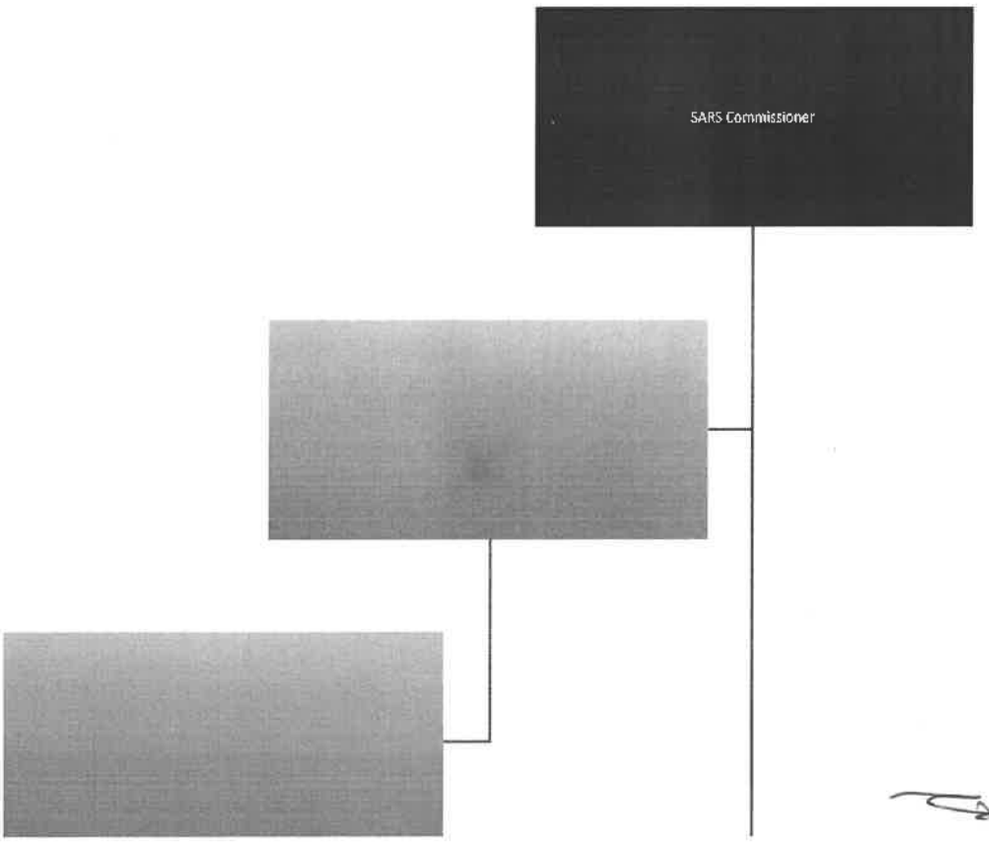
Payments Processing
Segmented Services - TPU
Account Management
Assessment Management
Dispute Management
Outstanding Returns
Tracing
Inspections
Debt Collection
Debt Collection Legal Facilitation
Query & Complaint Resolution
Stakeholder Engagement
Technical Support
Segmented Service Unit - TEU
Case Selection
TP Interface Office
Tier 3 Query Resolution
Document Management
Reportable Arrangements
Assessment Management
Party Management
Account Management
Audit
Debt


SARS Commissioner

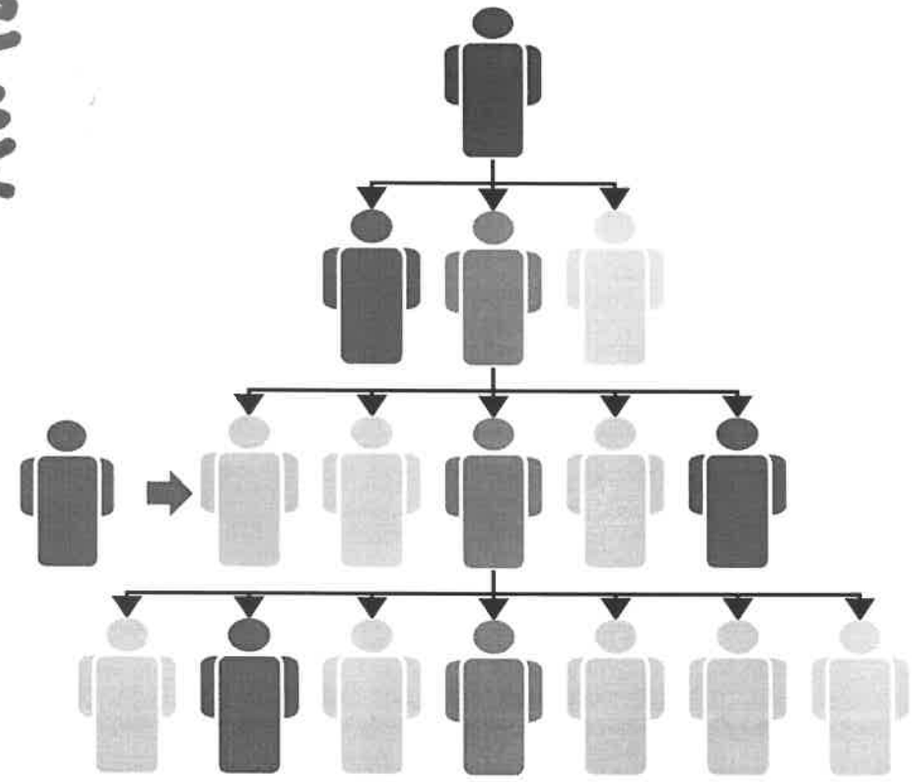
SARS

South African Revenue Service

ANNEXURE "AW98"

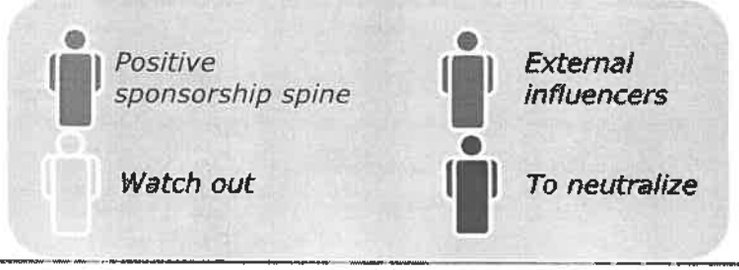
WW1-AW-513

Build a healthy sponsorship spine to accelerate change and identify individuals to neutralize



- Identify positive change sponsors bottom-up
- Leverage external influencers
- Identify individuals that could hamper change:
  - -Watch outs
  - -To neutralize

Quickly build and maintain a healthy sponsorship spine, while addressing obstacles to change



SARS-01-523

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9 September 2018

Hon. Judge Nugent
Commission of Inquiry into Tax Administration and Governance by SARS
Hilton House, 2nd Floor
570 Fehrsen Street
Brooklyn, 0181
South Africa

Dear Judge Nugent

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Stuart K. Min
Partner and General Counsel

Enc.

ANNEXURE "AW99"

AW99

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9 September 2018

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Enc.

ANNEXURE "AW100"

CONFIDENTIAL

SARS 2.0 – what has to be done

August 2014

AW100

122

SARS-01-534

WW1-AW-524

SARS 2.0 – Executive summary

In the decade, SARS modernisation program has delivered results...

- SARS has made a number of changes through the first *Modernisation Program*, eg.:
  - Relevant increase of individual & corporate taxpayers
  - Successful adoption of eFiling to facilitate collection process (>90% in SA)
  - Managed to run operations within the allocated government budget
- But **significant challenges still need to be addressed**:
  - Even if eFiling is a great innovation, it **did not help to reduce cost of revenues ratio** (high compare to peers at 1.1%). Moreover questions arise on **potential discrimination** (access)
  - **Important areas of Revenues generation**, both in Individual and Corporate Taxes, are currently unexploited
  - **Key SARS programs**, such as **Customs**, **still need to be delivered** – critical initiatives and structures to be put in place to support economic value creation
  - **Illicit economy not under control**

...but to achieve our ambition and make the difference, SARS needs to address key strategic concerns

- In order to **transform SARS into an innovative revenue & custom agency**, SA government will have to run a **profound strategy refresh** and **focus on execution to reach SARS real full potential:**
  - Define **clear KPIs to guarantee SARS focus** on relevant drivers
  - Deliver on the **3 main imperatives**:
    - **Increase economic value** for South Africa
    - **Integration** and **collaboration** with national and international counterparts
    - Full **fairness** and **transparency** to taxpayers
  - Develop the **critical enablers** to **support imperatives deployment**:
    - **IT systems**, and more specifically the **enhanced SA Data Base**, incorporated in the **Phoenix Ecosystem**
    - **Enforcement structures and tools** to support day-by-day imperatives respect
    - **Organisation and skills**

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SARS-01-535

WW1-AW-525

Objectives of the meeting

- Summarize the issues outlined during the "outside-in" review of SARS
- Share the highlights of the new vision and strategic plan
- Agree the immediate and medium term actions

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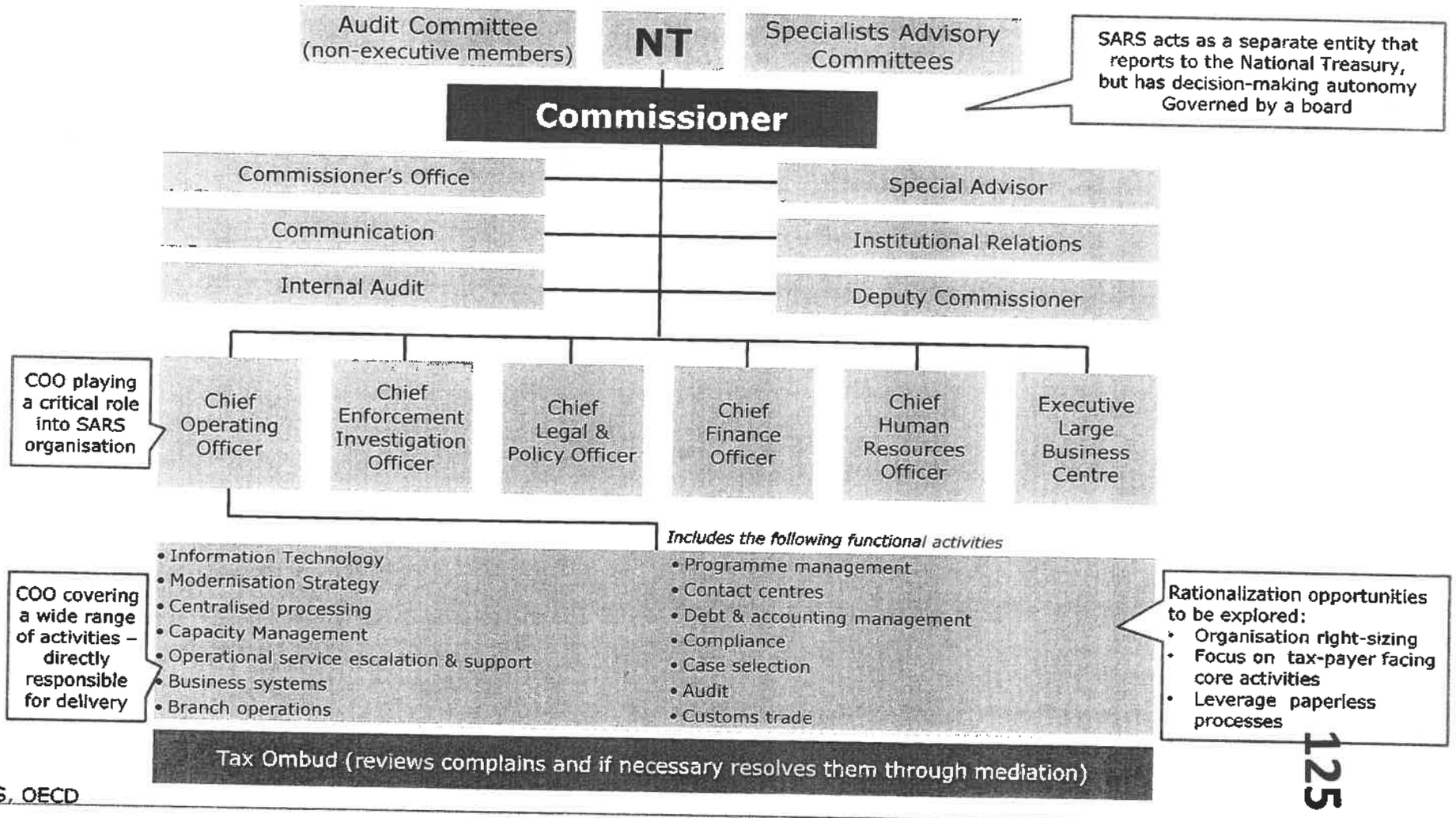
SARS-01-536

WW1-AW-526

Current SARS organisation is too "concentrated" and presents many duplications and inconsistencies

SARS profile

SARS GOVERNANCE MODEL



Source: SARS, OECD

SARS-01-537
WW1-AW-527

Clear space for rationalisation and efficiencies exist

SARS profile

1.14 Government grants
SARS' main source of income is an annual grant from Parliament for its services, based on estimated expenditure for performing any specific act or function on behalf of Government in the collection of administered revenue.

SARS P&L* (2012/13 RM)

FUNDS AVAILABLE		FUNDS ALLOCATION	
National treasury grants	9,149	Employee cost	5,873
Rendering of services	16	Administrative expenses	1,494
Other income	282	Professional and special services	751
Interest received	146	Depreciation and amortisation	509
		Impairment loss	71
		Finance cost	15
Total revenues	**9.593**	**Total costs**	**8,713**

Operating surplus^: R880M

- SARS was **sustainable** for the past year (**R880M surplus**) and **over time** (**R2.8B of accumulated surplus**), but **important questions arise**:

- Funds allocation should be based on **tangible outcomes, generating economic value for SA**

- SARS organisation should be **incentivised to generate value efficiently and in a fair way**

- **Costs optimizations exist and need to be implemented**
  - Employee costs are the most important cost bucket
  - Wide & inefficient branch network
  - IT capability not at full potential (further cost savings through dematerialisation)

Note: * refers to the Economic Entity; ^ Actual surplus for the year of R872M after deduction of surrender of surplus funds, loss on disposal of assets and taxation; ** SARS 2013/14 budget
Source: SARS Annual Report 2012/13

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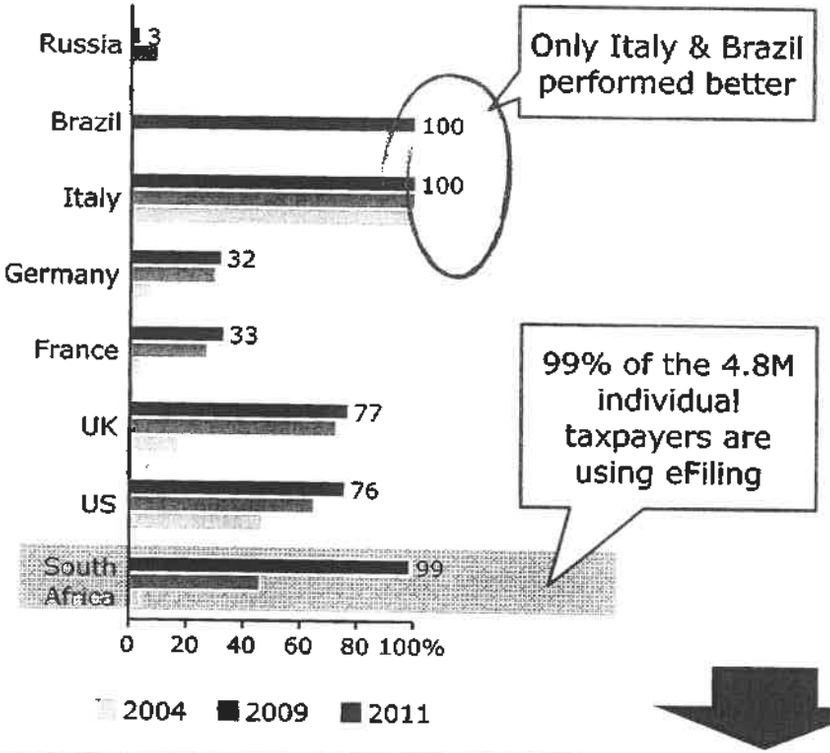
SARS-01-538
WW1-AW-528

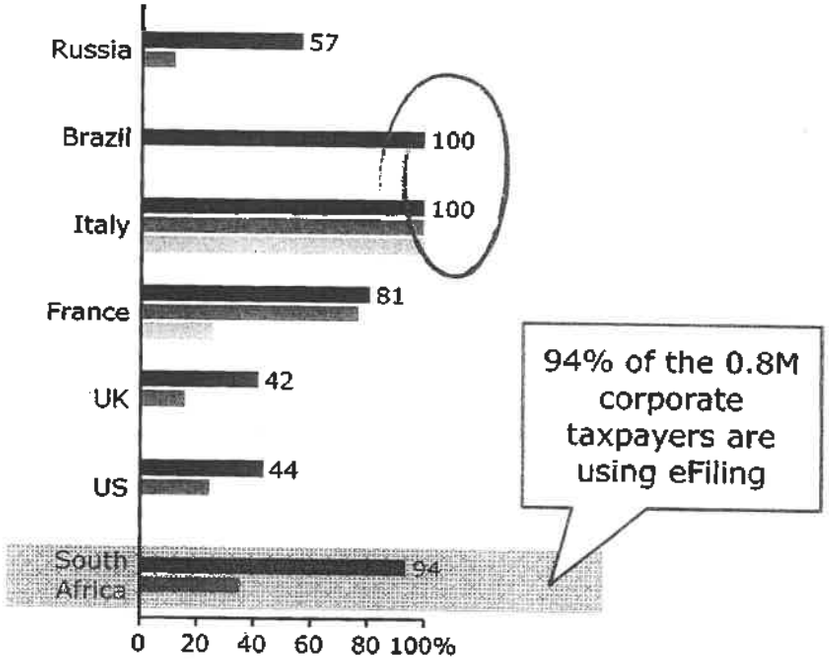
Even if eFiling represents 90% of total filing, there are doubts about its real efficiency to drive tax collection

% OF EFILING OVER TOTAL FILING

PERSONAL INCOME TAX



CORPORATE INCOME TAX



SARS needs to go beyond the collection process, and focus on driving tax collection effectiveness

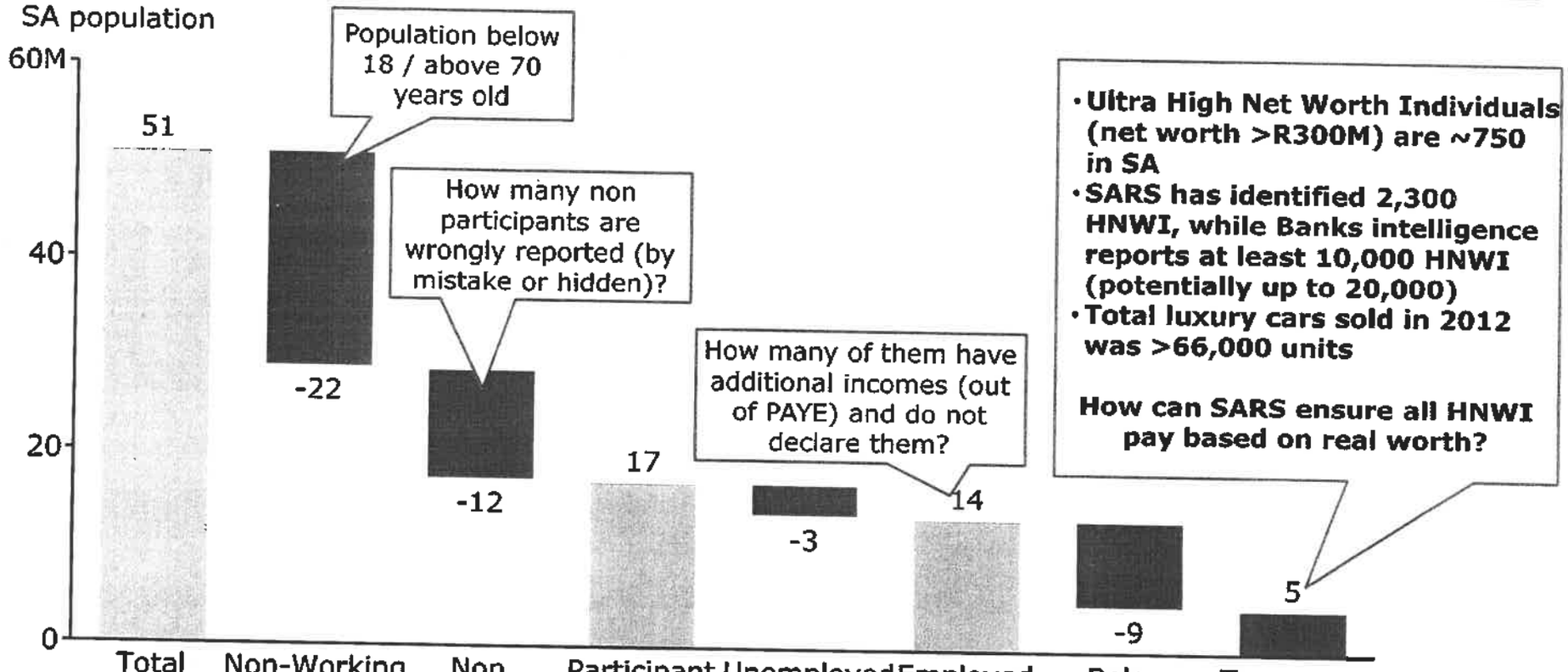
Source: OECD

SARS-01-539
WW1-AW-529

Individual taxpayers base probably underestimated

Increase economic value

INDIVIDUAL TAXPAYERS



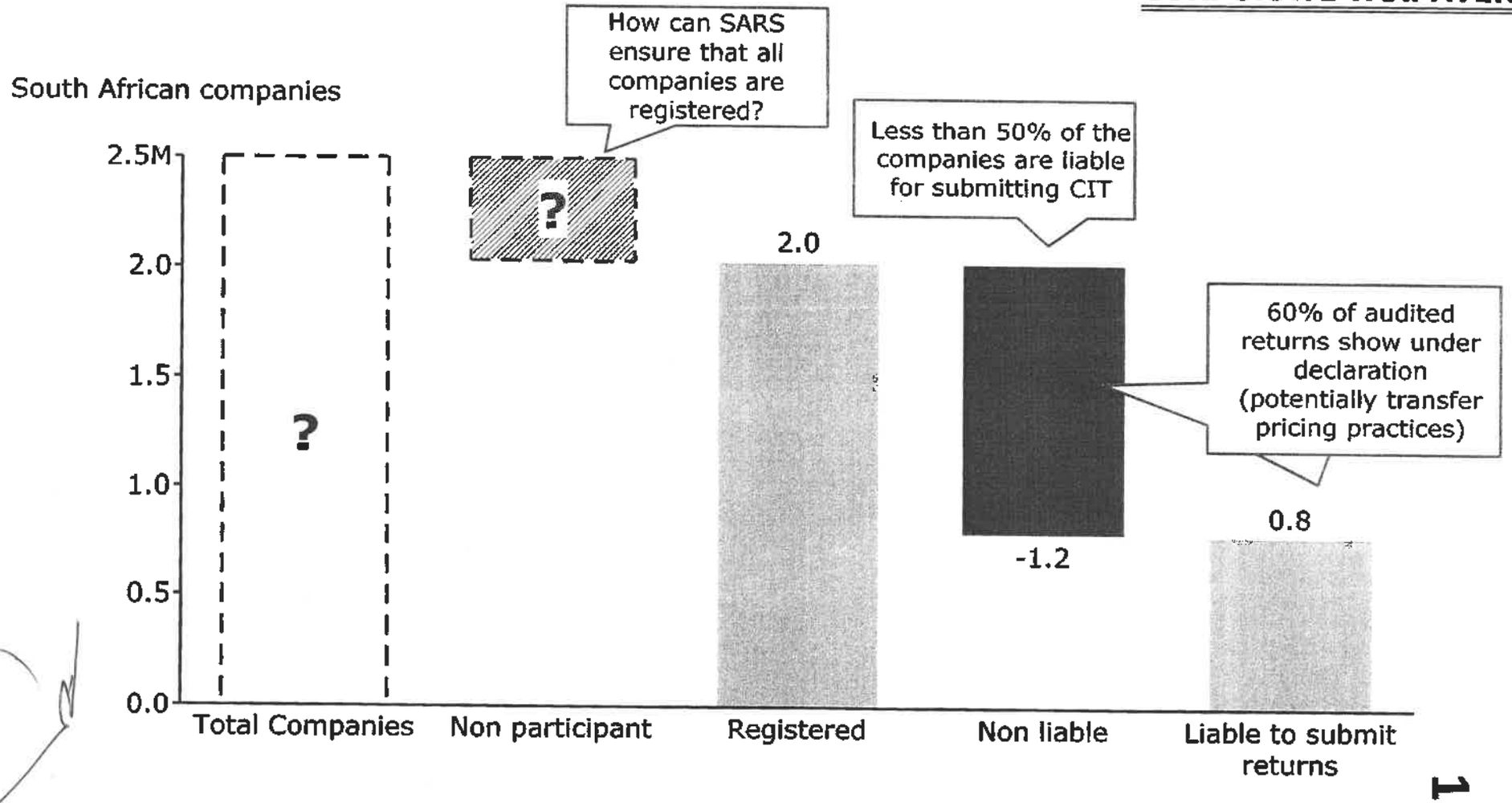
Source: Wealth X, StatSA, Lit research

SARS-01-540
WW1-AW-530

Corporate taxpayers show clear tendency to under declare

Increase economic value

CORPORATE TAXPAYERS



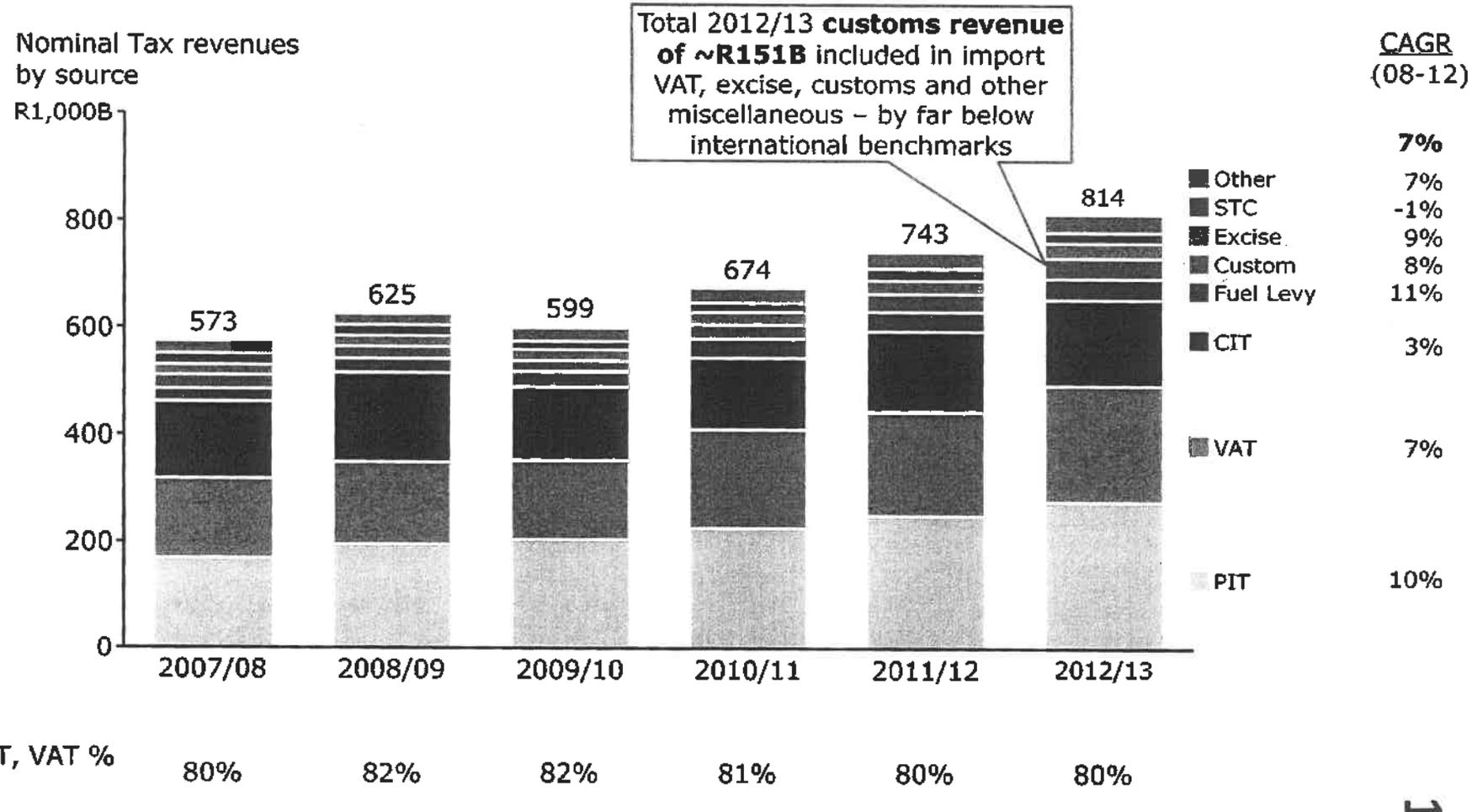
Note: No relevant source is able to estimate the total number of companies in South Africa
Source: SARS

129

SARS-01-541
WW1-AW-531

Customs is not delivering the expected economic results…

SARS profile



Source: SARS 2012 Tax Statistics; SARS 2012/13 Annual Report

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SARS-01-542

WW1-AW-532

Custom program is, in fact, running behind

Increase economic value

CUSTOMS PROGRAM

- SARS customs program active since 2009 but **still not effectively fighting against fraud, corruption & illegal imports**
- Customs service delivery is still **substandard** making the **process of importing / exporting very confusing & unattractive**

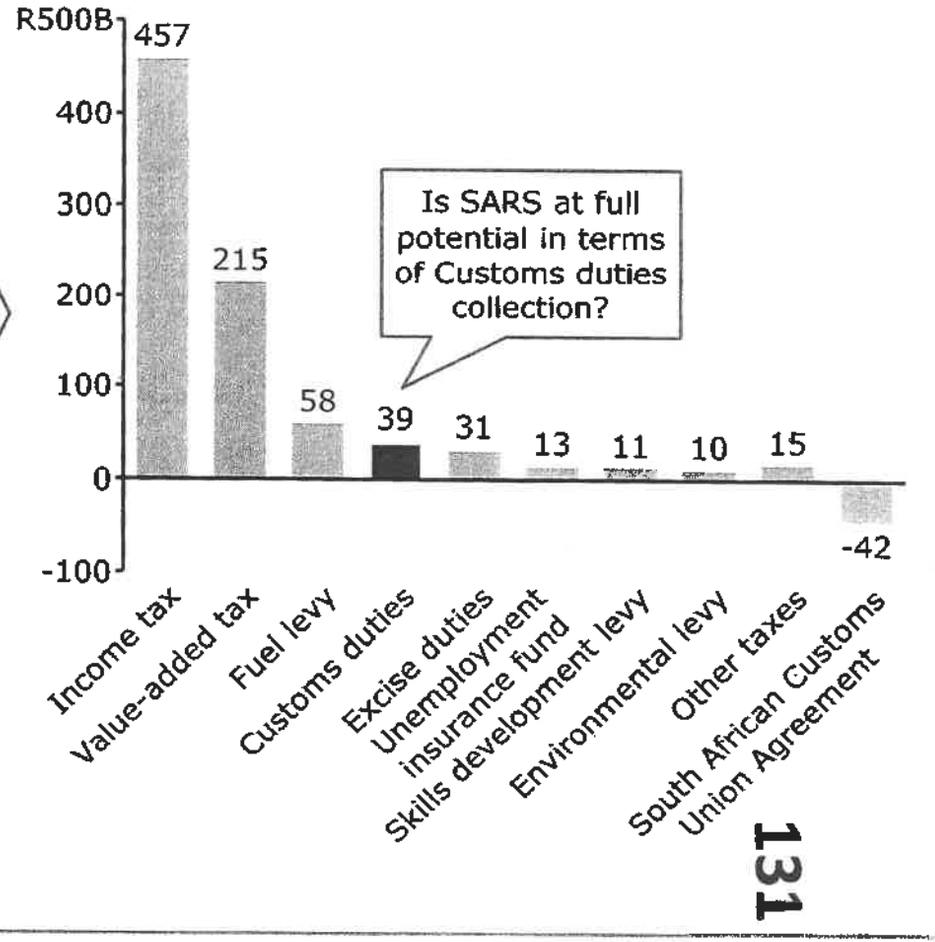
"Current law does not provide SARS with adequate information to determine any possible safety, security, fiscal and economic risks in relation to these goods. No value is declared [...]. This lack of information does not promote the application of efficient and effective customs controls and risk management at the port of entry"

All Africa on new Customs Bill submitted to Parliament, August 2013

"We, at [multinational company] haven't yet figured out how to quickly process imports and we still get double-taxed when we export in Africa through South Africa"

Marketing director, Multinational company

2012/13 SARS administered revenues



Source: Lit research

SARS-01-543
WW1-AW-533

Border control needs to be efficient (to increase trade) and effective (to decrease illicit trades)

Increase economic value

FRENCH GOVERNMENT INCREASED EFFORTS TO PLAY A KEY ROLE AS A HUB FOR EUROPE

- One of the main goals of the French border control ("Douane") is to **increase European trade flow through France**
  - Become the hub for global merchandises entering Europe, making sure that procedure in place facilitate business
  - Ensure this comes in a sustainable way in order to allow only legal merchandise to enter

South Africa can play similar role for SADC / Sub-Saharan Africa

AUSTRALIAN GOVERNMENT ACTIVELY MANAGES BORDER CONTROLS TO FIGHT ILLEGAL IMPORTATIONS

- One of the main goals for Australian border control is to **protect Australians from illegal migration and merchandise smuggling**
  - Protect environment from alien diseases
  - Preventing the entry of people who are a direct or indirect threat to the Australian community
  - Significant income for the country derived from fines applied to illegal importations

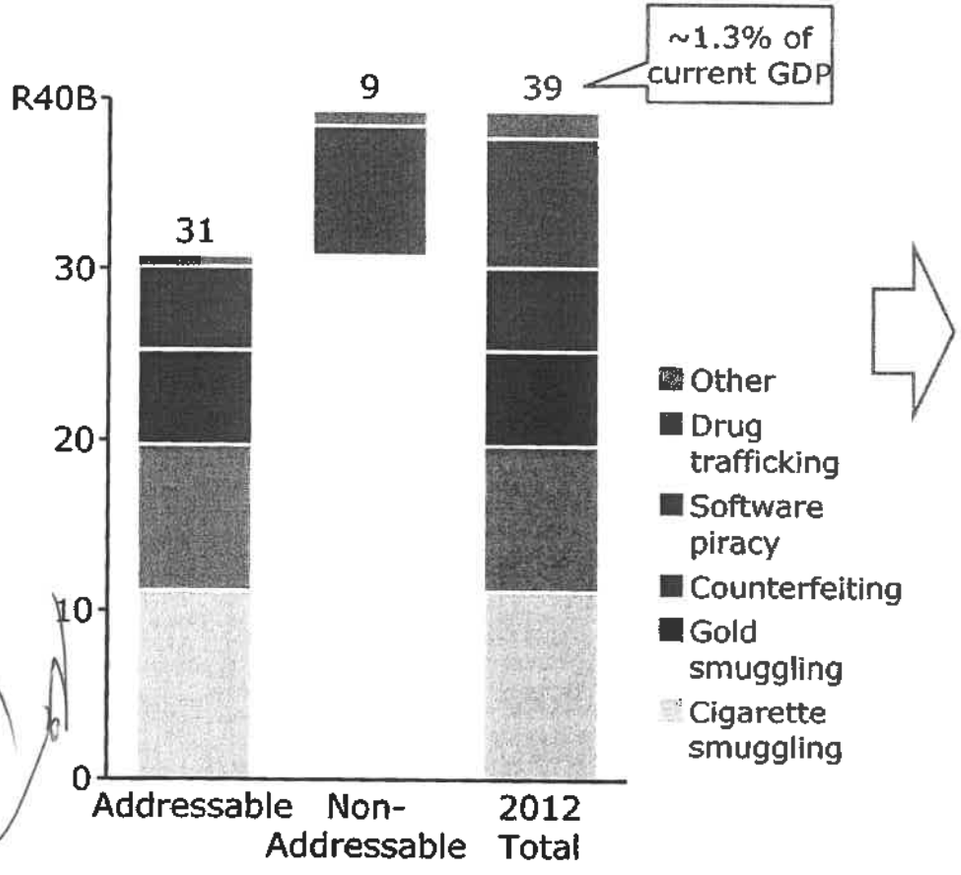
SARS can decrease illegal trade inflow /outflow and "earn with punishments"

SARS-01-544
WW1-AW-534

Illicit economy estimated at R40B, tax loss superior to R6B. Opportunity to be measured & recovery plan to be launched

Increase economic value

ESTIMATED VALUE OF SA ILLICIT ECONOMY (RB)



- Considering Tax to GDP of ~28% this means a loss of R11B taxes
- Considering that:
  - Drugs are illegal -> 0 tax revenue
  - Cigarette tax rate includes excise (effective tax rate of ~45% in 2001, most likely higher now)
- **Total real loss for the country is ~R6.1B tax revenues** (after cost of collection)
- **This figure represents ~0.7% of taxes collected today**

Source: Havoscope

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SARS-01-545

WW1-AW-535

Establishment of enforcement units to fight illicit economy & tax evaders – Partnership with other governmental bodies necessary

Enforcement

BORDER UNITS

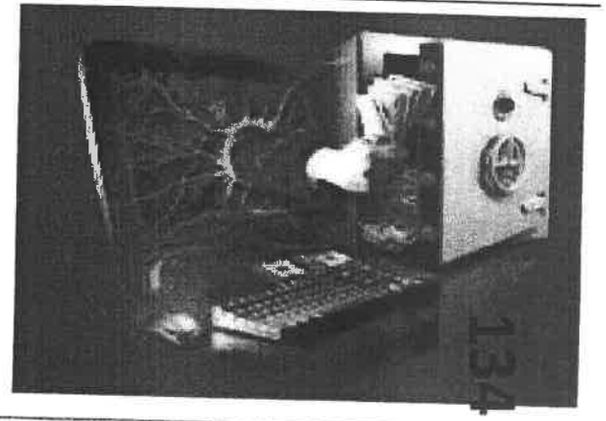
ANTI-DRUGS UNITS

ANTI-COUNTERFEIT GOODS UNITS

MARINE, AIR & TERRESTRIAL UNITS

FINANCIAL FRAUD UNITS

ELECTRONIC / MOBILE FRAUD UNITS



SARS-01-546

WW1-AW-536

SARS is a key player in the wider Government ecosystem – effective collaboration & integration to be further pursued

Integration & collaboration

PRELIMINARY

ILLUSTRATIVE

SA ministers

- national treasury – Department: National Treasury – REPUBLIC OF SOUTH AFRICA
- the dti – Department: Trade and Industry – REPUBLIC OF SOUTH AFRICA
- public enterprises – Department: Public Enterprises – REPUBLIC OF SOUTH AFRICA
- international relations & cooperation – Department: International Relations and Cooperation – REPUBLIC OF SOUTH AFRICA
- mineral resources – Department: Mineral Resources – REPUBLIC OF SOUTH AFRICA
- labour – Department: Labour – REPUBLIC OF SOUTH AFRICA
- economic development – Economic Development Department – REPUBLIC OF SOUTH AFRICA
- home affairs – Department: Home Affairs – REPUBLIC OF SOUTH AFRICA

Civil Society

- Single view of taxpayers (including Social security contributions, dividends)
- Full access to financial information (including dividends, shareholdings, etc.)

Corporates

Bidvest, SAB MILLER, sasol, FNB (175 Years of Help)

International counterparties

- Bilateral & multilateral agreements
- Increased control on financial trades
- Increased control on merchandise shipments

SARS

South African Revenue Service

- Efficient & centralized collection of info on taxpayers
- Efficient
- Centralized collection of taxes
- Greater control on levies (regulation and forecast)

SA government agencies

sassa, UIF, BCOCC

State owned enterprises

- Utilisation of specialised skills to deliver Phoenix

Post Office

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SARS-01-547

WW1-AW-537

Transparency & fairness are key elements to on-board taxpayers and gain credibility

Transparency and Fairness

TRANSPARENCY

- Critical for tax bodies to report on service performance measurements and transparency of actions to citizens
  - Citizens want to know how well their efforts are utilised for a better South Africa
  - Listening to the voice of customers can unleash opportunities to better service customers and therefore increase taxpayers compliance
  - **Today SARS does not survey taxpayers to understand what can be done better and differently**

International examples

- **New Zealand:** customer satisfaction helps understand how effective customer think the revenue authority is in delivering timely and appropriate services
- **Netherland:** Revenue authority made significant improvement in turnaround times as this was perceived week by customers

FAIRNESS

- Ensure that ALL taxpayers make their fair contribution to South Africa
  - While there has been an overall increase in taxes paid as a result of simplifications, there are still some individuals / companies trying to go around the system
  - A more professionalised enforcing towards those individuals / companies raises the overall level of fairness of the taxation system
  - **SARS first compliance report in 2012, but no information on gaps**

International examples

- **Italy:** Italian tax authority is supported by the "Guardia di Finanza" which is a national police special body dealing with financial crimes (tax evasion, customs protection, drugs trade)
  - GdF has tools and budget to ensure prevention, investigation and reporting of financial evasion and violations

Source: OECD; Lit research

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SARS-01-548

WW1-AW-538

New relationship model with taxpayers - Leveraging their feedback and rewarding their compliance with rules

Transparency and Fairness

LEVERAGING TAXPAYER FEEDBACK

Extremely likely

9-10 → Promoters

7-8 → Passives

0-6 → Detractors

Extremely unlikely

- Tracking and leveraging taxpayer feedback will drive substantial changes into SARS organisation and employees behaviours.
- A better knowledge and understanding of taxpayers experience will allow to improve the relationship at all critical touch points by .

TAXPAYER HISTORICAL RATING TO REWARD LOYALTY

- SARS should recognise and reward individual & corporate taxpayers constantly compliant across time with SA tax regulation
- Recognition may result into lower tax rate or preferred treatment in case of litigation with SARS
- Repeat fraudsters will be traced and severely treated

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SARS-01-549

WW1-AW-539

Objectives of the meeting

- Summarize the issues outlined during the "outside-in" review of SARS
- Share the highlights of the new vision and strategic plan
- Agree the immediate and medium term actions

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SARS-01-550

WW1-AW-540

Proposed new Vision and Ambition for SARS – A new Transformation Agenda must be set up

SARS Transformation Agenda

Mission & Vision

SARS 2.0

Transform SARS in an innovative revenue and custom agency that enhanced economic growth and social development, and support the countrie's integration into the global economy in a way that benefits all South Africans

KPIs

Targets, Metrics & Incentives

- Revenues linked to outcomes
- Customer advocacy metrics
- Program performances monitoring

Imperatives

Increase economic value

- Reach tax collection full potential:
  - High net worth individuals
  - Corporates
  - Customs
  - Enforcement
  - Cost to contribution optimisation

Integration & collaboration

- Maximise SARS impact through increased collaboration with:
  - Relevant SA Ministries
  - Social security entities (UIF, SASSA, NSFAS, ...)
  - International counterparties

Transparency & Fairness

- Guarantee maximum transparency and fairness to taxpayers through:
  - Fair treatment of all cases based on clear rules and procedures
  - Zero corruption at all levels

Enablers

IT systems – Enhanced SA data base – Phoenix ecosystem

Enforcement – Structures & tools

Organisation & capabilities

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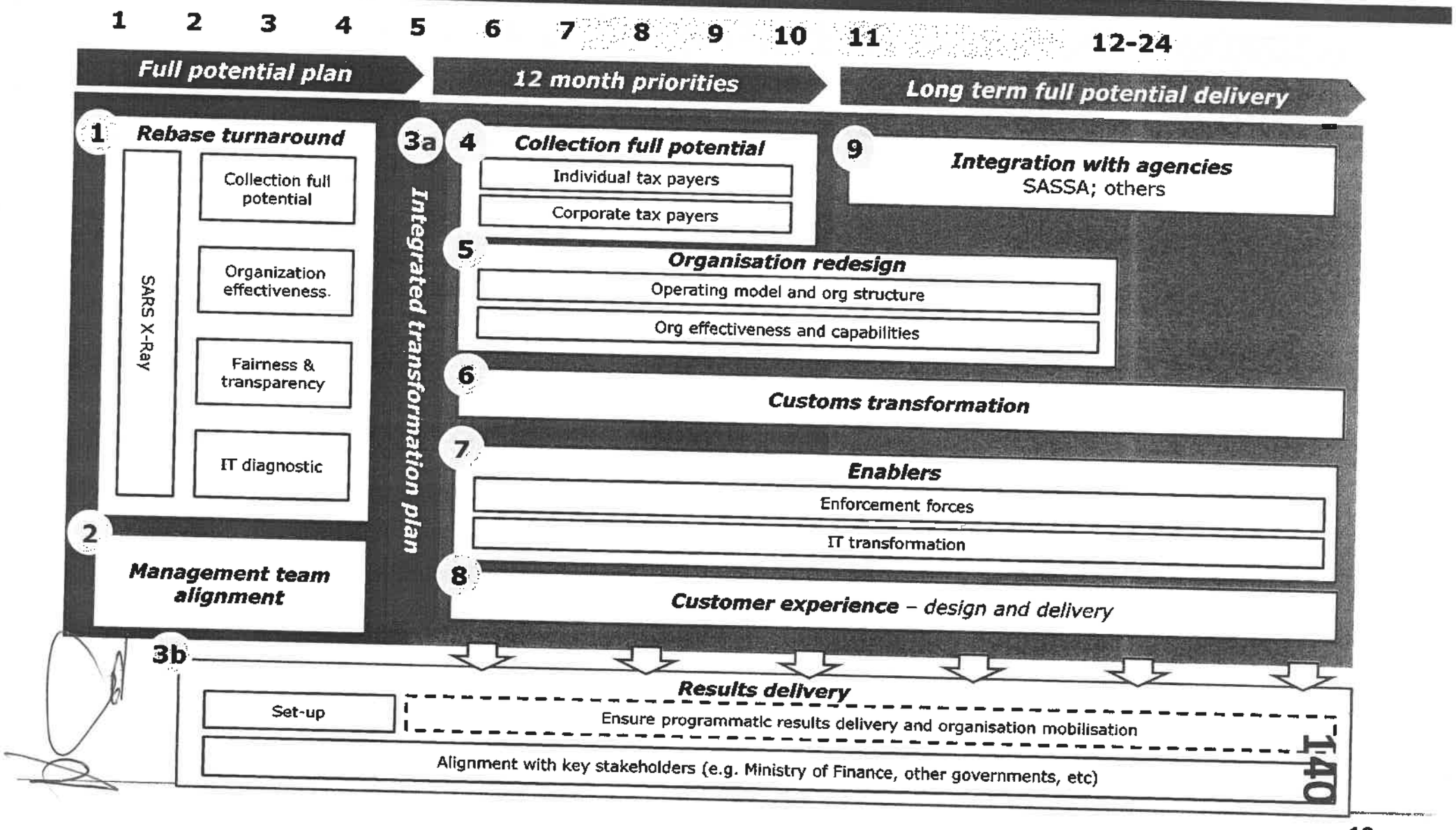
SARS-01-551

WW1-AW-541

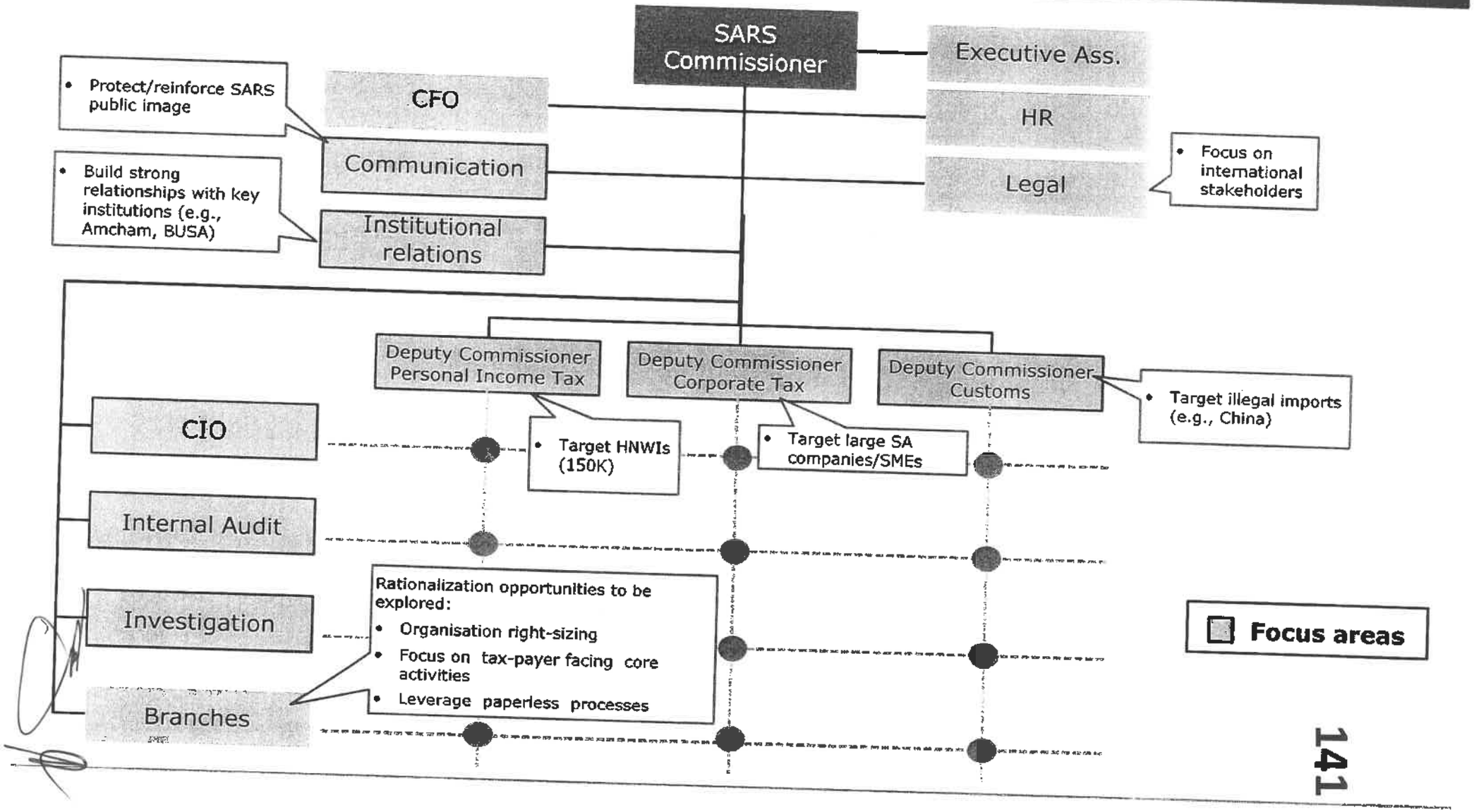
Potential **integrated transformation plan**



SARS-01-552
WW1-AW-542

Potential SARS organization chart and focus areas (end game)

NON-EXHAUSTIVE PRELIMINARY



SARS-01-553
WW1-AW-543

Objectives of the meeting

- Summarize the issues outlined during the "outside-in" review of SARS
- Share the highlights of the new vision and strategic plan
- Agree the immediate and medium term actions

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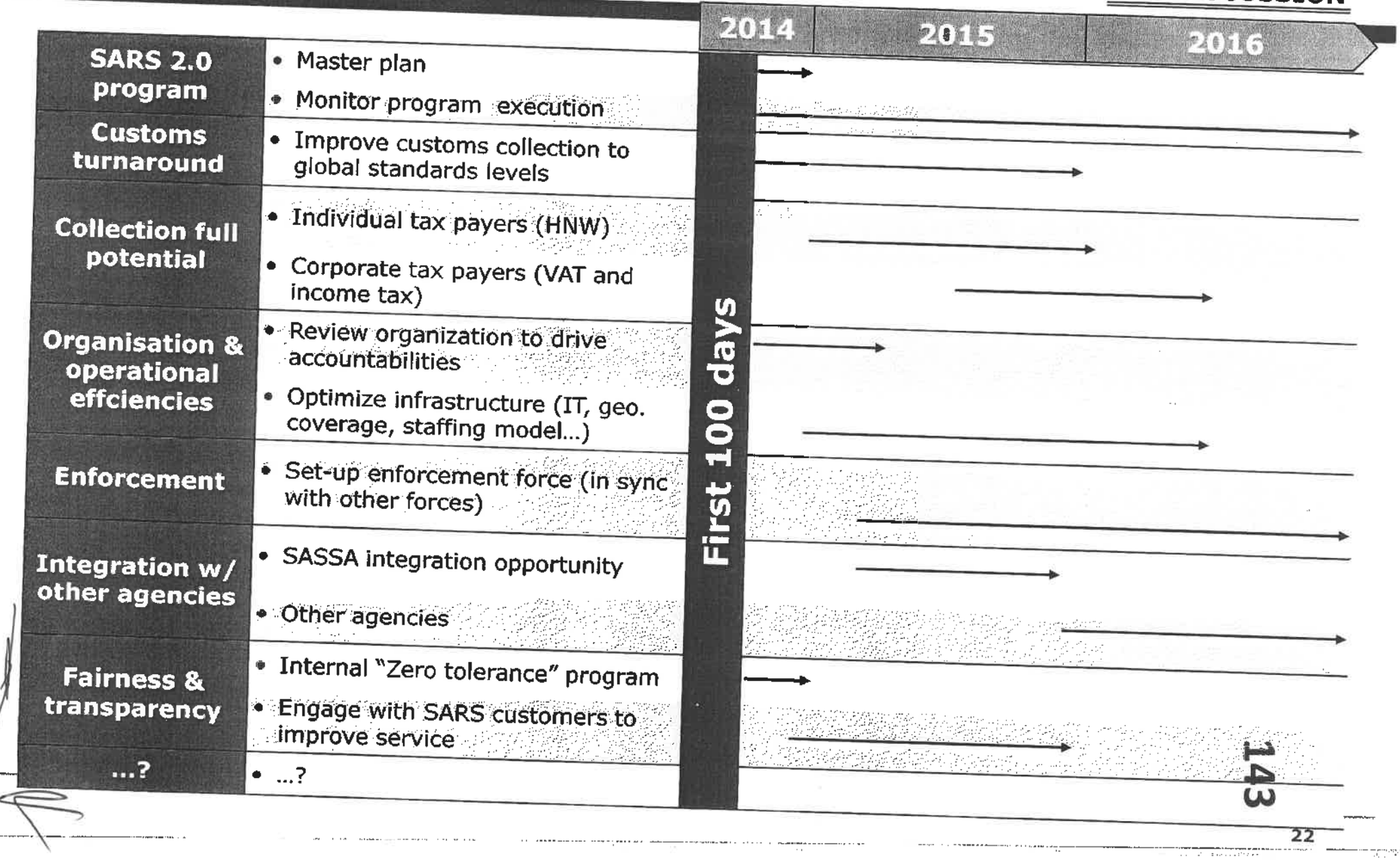
SARS-01-554

WW1-AW-544

Commissioner's agenda

FOR DISCUSSION



143

SARS-01-555

WW1-AW-545

First 100 days: key actions

1- KEEP THE BALL ROLLING

- **Create the fact base / baseline of current SARS performance:**
  - Collections
  - Operational efficiency
- **Review activities / current projects**
- **Allocate specific tasks and short term objectives to existing leadership**
- **Increase collaboration and integration with the rest of Government, also through Phoenix, and with other Countries**

2- GAIN THE HIGH GROUND

- **Redefine SARS strategic plan and detailed transformation agenda:**
  - Collection full potential
  - Operational efficiency
  - Fairness & transparency
  - International integration
- **Redesign the Organisation Structure, with an "immediate" solution and a 18 months end game**
- **Engage / communicate with stakeholders:**
  - Staff
  - Media
  - Unions
  - Government entities

3- TAKE CONTROL

- **Clarify unconditioned mandate and governance** from NT and assess Board composition and role
- **Exec team assessment and reshuffle**
- **Launch IT diagnostic**
- **Launch a Forensic investigation**
- **Review Delegation of Authority** and decisions rights (procurement,...)
- **Set up transformation programme office**

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SARS-01-556

WW1-AW-546

AW100 VM8.1

Nanri Labuschagne

121

From: Massone, Vittorio <Vittorio.Massone@Bain.com>
Sent: Monday, September 17, 2018 7:25 PM
To: Nanri Labuschagne
Cc: Kennedy, Chris
Subject: FW: SARS what has to be done Aug 2014 .pptx
Attachments: SARS what has to be done Aug 2014 .pptx

From: Massone, Vittorio
Sent: Friday, August 29, 2014 5:54 PM
To: duma@icon.co.za
Subject: SARS what has to be done Aug 2014 .pptx

Hi Duma,

Please find attached document for your meeting on Sunday.

Best,
Vittorio

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ANNEXURE "AW101"

AW106

To: Tom Moyane (hlekanius@yahoo.com)[hlekanius@yahoo.com]
Cc: Massone, Vittorio[Vittorio.Massone@Bain.com]; Timpano, Stephane[Stephane.Timpano@Bain.com]
From: Bour, Alexis
Sent: Fri 6/27/2014 10:17:15 AM (UTC)
Subject: Organisation
140627_SARS_potential organisation_confidential_AB.pptx

Hi Tom,

Thank you for the insightful discussion yesterday.

As discussed, please find attached the orgchart and focus areas we discussed about yesterday.

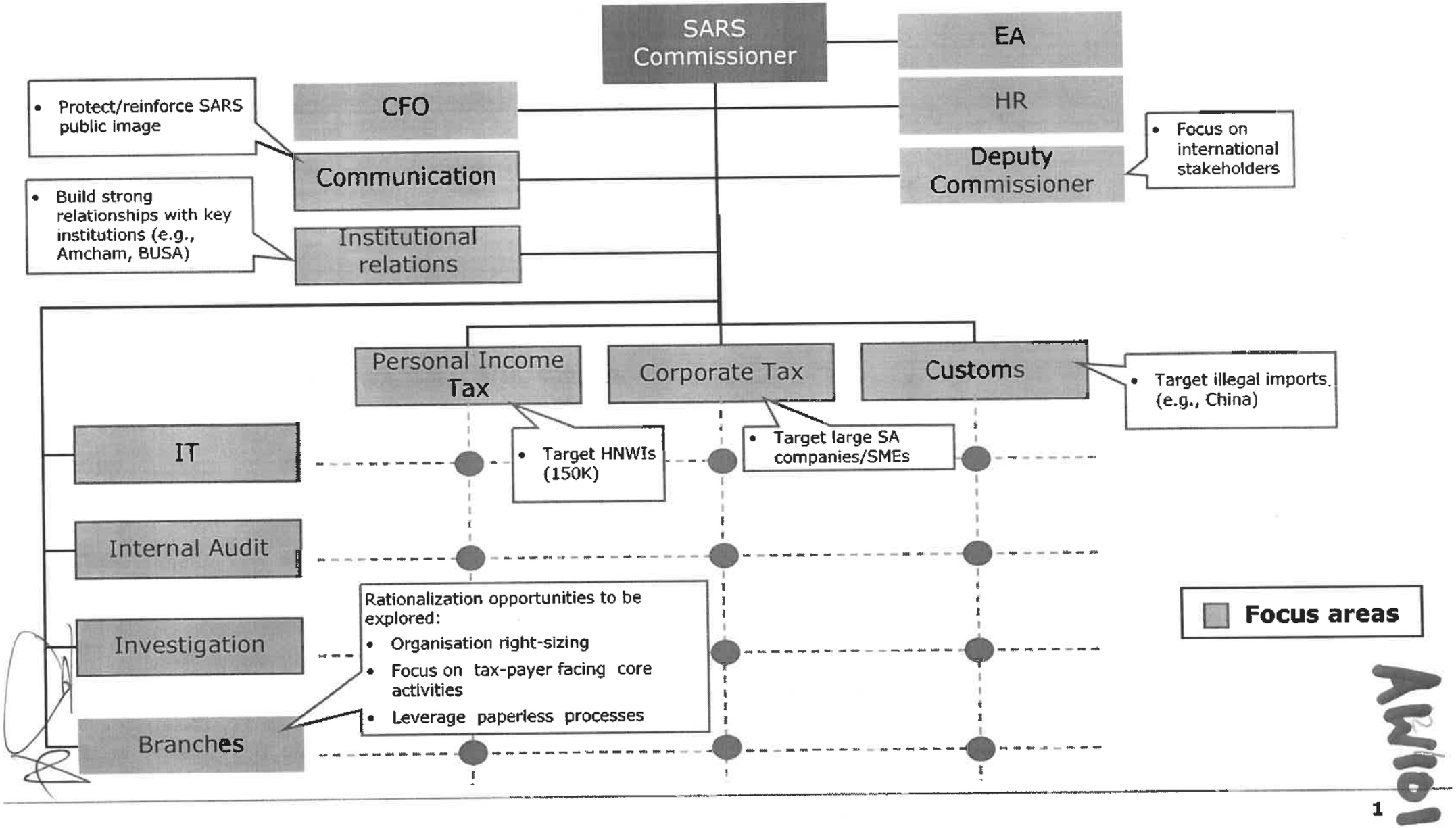
Have a great week-end,

Alexis

Alexis Bour
Manager
Bain & Company | 10 The High Street | Melrose Arch, 2076 | Johannesburg | South Africa
Mobile: +27 (0) 71 403 2599
mailto:alexis.bour@bain.com | web: www.bain.com

Potential SARS organisation chart and focus areas

NON-EXHAUSTIVE **PRELIMINARY**



SARS-01-560
WW1-AW-550

ANNEXURE "AW102"

AW102

To: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Min, Stuart[Stuart.Min@Bain.com]
From: Kennedy, Chris
Sent: Mon 9/3/2018 7:50:40 AM (UTC)
Subject: RE: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Thanks Fabrice - please be assured that we will keep this and all other contributions entirely confidential.

What is missing here is dates. Please could you spend some time thinking or looking in your diary and filling in the dates for us?

Thanks

Chris

From: Franzen, Fabrice <Fabrice.Franzen@Bain.com>
Date: Monday, 03 Sep 2018, 9:42 am
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Stuart, Chris,

As indicated earlier, I am at your disposal to engage on my own recollection of events around the SARS process.

- My recollection is that Vittorio was introduced to Moyane in H2-2013 by Duma, a paid advisor of Bain which Vittorio had decided to contract.
  - Vittorio never shared the advisor contract with the partner group, nor the details of the financial arrangements
  - As a partner group, we raised concerns about that advisor – Tiaan and Innnocent were particular vocal about it
  - Duma had been introduced to Vittorio by Jabu Mabuza and Sipho Maseko, respectively chairman and CEO of Telkom

- Following that introduction, there have been numerous meetings between Vittorio, Moyane, Duma, Jabu Mabuza. Some happened in plain sight in the office during business hours. Materials or these meetings were prepared by Stephane Timpano and Alexis Bour

- It was also known to all the partners that Vittorio was meeting with the resident in multiple occasions, including with Duma and Moyane – he was talking openly about it in partner meetings:
  - I don't know the specifics and timing of these Presidential meetings, except for a late Saturday night one, which I remember because Vittorio joined late a dinner party because of that

- In 2014, Vittorio also had multiple meetings with Jonas Makwakwa, the future head of BAIT. At that time head of internal audit at SARS.
  - These meetings were with Vittorio, Moyane and Makwkawa. They also happened in plain sight in the office
  - As Vittorio indicated during witness prep, Makwakwa was playing sort of a "deep throat" on evens happening at sars and feeding into Moyane

- After the appointment of Moyane in October, it was clear at the end of 2014 that Vittorio was expecting work to come – he asked to pre-identify teams, and asked me to play an OVP role on the project, should it become live

As far as I am concerned:

- I met Moyane twice before the beginning of our work at SARS (both in my diary and easily verified):
  - May 15 2014: Vittorio asked me to join a lunch he had with Moyane at a restaurant in Melrose Arch. They clearly knew each other very well already while Moyane was still Correctional services head, Vittorio spoke a lot about how to optimize a revenue service
  - June 2 2014: meeting in the office with Vittorio and Moyane. I was asked to come an explain the type of operating model work we had done at DBSA in the public sector

ANNEXURE "AW103"

AW103

To: Timpano, Stephane[Stephane.Timpano@Bain.com]; Olmesdahl, Nicolle[Nicolle.Olmesdahl@Bain.com]; Ngake, Lerato[Lerato.Ngake@Bain.com]
From: Massone, Vittorio
Sent: Thur 8/21/2014 3:58:19 PM (UTC)
Subject: RE: SA Pipeline & Supply-Demand 26.08.2014

Agree – thanks
V

From: Timpano, Stephane
Sent: Thursday, August 21, 2014 4:42 PM
To: Olmesdahl, Nicolle; Ngake, Lerato
Cc: Massone, Vittorio
Subject: RE: SA Pipeline & Supply-Demand 26.08.2014

I believe we need to be more cautious on SARS.

I believe we should push it back to October – Vittorio please confirm

Best
stephane

From: Olmesdahl, Nicolle
Sent: Thursday, August 21, 2014 4:37 PM
To: Timpano, Stephane; Ngake, Lerato
Cc: Massone, Vittorio
Subject: RE: SA Pipeline & Supply-Demand 26.08.2014

Thanks Stephane

What about SARS, we have a September start – is this still realistic?

From: Timpano, Stephane
Sent: Thursday, August 21, 2014 4:35 PM
To: Ngake, Lerato
Cc: Olmesdahl, Nicolle; Massone, Vittorio
Subject: RE: SA Pipeline & Supply-Demand 26.08.2014

Hi Lerato,
I confirm Galactica is 50% chance, M+4, until EOY.
We will have better visibility next week.
Best
s

From: Ngake, Lerato
Sent: Thursday, August 21, 2014 4:20 PM
To: Johannesburg Partners
Cc: Olmesdahl, Nicolle
Subject: SA Pipeline & Supply-Demand 26.08.2014

All,

Please advise of any changes to the attached pipeline and on the prospect cases probability
and start date showing on the staffing supply/demand slide and we will update for next week's material.

Regards
Lerato

ANNEXURE "AW104"

Partner Self Assessment:	**Vittorio Massone**
Date Submitted:	**06-Dec-2013**
Date Printed:	**13-Dec-2013**
Office:	**South Africa**
Reviewers:	**Blasberg, J.**
	Meehan, P.

SARS-01-566

WW1-AW-556

the Phoenix project will hopefully materialize in the next few months: among them the turn-around of the South African Post Office, which "per se" could represent a client similar in size to Telkom; but also others elements, which are less clear now in terms of consulting role for Bain, such as e-Government
It still to early to list results for what concerns Telkom, but so far - and with great challenge - we have created the basis for an effective turn-around: a) awareness on the financial and market situation and its root causes; b) consensus on the strategic ambition, the key imperatives and the list of the projects to be executed, c) initial cost cutting interventions. We are moving now into the consequent more operational phase with a) Reorganisation; b) CEX project; c) Integrated Broadband Plan d) a couple of M&A operations. The change in the management team is unfortunately not completed yet, so execution will be a challenge

As a **"halo effect"** of the relationship with Sipho and the role we played in the Phoenix project, we have been involved in preparing a high level, outside-in, "strategic turn-around" document on the **SA Revenue Service (SARS)**. The person we prepared the document with and who pitched it to the SA President - is most likely going to be appointed as Commissioner in the next few weeks/months and Bain will be assisting him, should he get the job. SARS is one the largest and highly estimated Government Agency and a large Bain client in the previous dispensation (90s').

Given the challenges on my time but also and more importantly on the available capacity of the Office, I have only maintained the relationship with **Thabo/Trudon**, with monthly lunches/coffees.

4) Practice areas

I haven't done much personally in terms of practice/capabilities, but I have led/encouraged in particular the MTN to develop original IP. Quite a number of submissions have been made, related to the various elements of the value chain and Customer Experience, as well as related to doing business in Sub-Saharan Africa

5) Business Development

Beyond what mentioned above, two broad streams of action here:

a) Government/State Owned Enterprise: the Partner group have collectively decided that we need a solid presence in this sector in order to consolidate our presence and a get to a balanced portfolio in South Africa. Therefore - also because of our leadership position in TMT - the only business development activity I pursued in 2013 was in that space. The opportunity was also created by Sipho being a promoter of Bain in that space and the other relationships I had the chance to develop during the first stage of the Phoenix project (some of them coming from the 3-4 hours spent every time in the President's waiting room). These are positioning now perfectly to replicate the Phoenix experience in other large State-Owned companies where there is change in CEO. The most immediate of them being SARS, mentioned above. But others may follow in the next 12-24 months, each of them potentially scale and multi-year clients

b) Bain brand awareness. I continued to be very visible in the "market" throughout the year, in the formal associations (BLSA, BUSA,..) and in many of the JHB social/business events. This is increasingly positioning Bain as a key player in the SA economic environment, beyond the pure role as consultants

6) People development

During 2013 I focused mostly on the cohesion and effectiveness of the Partners team, in particular:
- the continued integration and personal development of Innocent Dutiro as an effective Bain Partner
- the development and effectiveness of Fabrice Franzen and John Beaumont, in particular on the CD/networking side and in general in their sense of ownership of the Office
This was obtained though biweekly formal meetings and many other informal interactions with each of them
- the hiring and integration of 2 SOH-Partners committed to developing our SS Africa business, Christian Wessels and Oliver Merkel
- in ensuring that the last 12 months for Joachim Breidenthal and Peter Clearkin were offering them the right PD opportunities, also in order to have the "cleanest" possible Promotion recommendation for them

SARS-01-567
WW1-AW-557

ANNEXURE "AW105"

AW105

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

DAY 12 | 31 AUGUST 2018 | PAGES 1938 - 2126

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street, Brooklyn, Pretoria

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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@mweb.co.za
Web Address: http://www.realtimesa.co.za

NCRA
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and that Bain put in their proposal on the 12th and the question he said that that raised is whether Bain had prior information. His inference was that Bain would have had prior information because it wasn't possible to draw up your proposal that quickly. Did you have prior information?

MR MASSONE: No we did not.

MS STEINBERG: So you got, along with everyone else, you got the invitation on the 11th and you submitted on the 12th?

MR MASSONE: I don't remember the dates but I imagine so, yes. Most of these submissions are methodological material and I understand he said he wouldn't be able to compile but it's actually not very complicated and when you have methodology and you have, like I said a few out-siding view mostly there will be the submission.

COMMISSIONER: Sorry, how did you know that there were going to be an invitation to bid?

MR MASSONE: No we didn't know.

COMMISSIONER: But at some time you did know because you bid. How does that information come to your knowledge? Did someone phone you and say would you like to submit a bid?

MR MASSONE: I don't remember Judge,

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normally it's a mail, I don't remember Judge. Normally it is a mail from SARS.

PROF KATZ: Can I just go back slightly with one thing, Advocate?

MS STEINBERG: Yes.

PROF KATZ: When you had that discussion, Mr Massone, with the Commissioner and he asked you about your views about SARS, did he express any views where he thought SARS should be going, and what he would like to achieve in SARS?

MR MASSONE: No absolutely not.

MR KAHLA: Yes besides him, I'm just trying to think now, you spoke to Mr Moyane prior to him becoming a Commissioner, were there any other public office bearers you met with and discussed any matter relating to what could be done at SARS?

MR MASSONE: That I recollect, no. No.

PROF KATZ: Sorry, one more, I'm sorry Advocate, may I?

MS STEINBERG: No, carry on, ja.

PROF KATZ: Sorry Mr Massone, did you ever talk to the Commissioner about what his vision would be about SARS, what he would like to achieve in SARS?

MR MASSONE: No.

MS STEINBERG: The other red flag that

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the witness this morning raised was that with the 50% discount that you gave SARS, your bid came in fractionally under McKinsey's bid. Did anyone tell you what McKinsey had bid beforehand?

MR MASSONE: Absolutely not. Absolutely not.

MS STEINBERG: I'm wrapping up on procurement. If there are any other questions, please ask them.

COMMISSIONER: From my part not at the moment but there may come a time that we would ask you to come and talk to us again about procurement.

MS STEINBERG: Ja.

PROF KATZ: Sorry Mr Massone, you were here when Mr Tshitangano explained that whole process and his concerns. Did you have any views on that, what he said this morning?

MR MASSONE: If I may only one. Actually I have no comments on all the process, like I said I barely understand it. The one thing then I think I need to clarify is that he said that our fees – if I recollect and correct me if I'm wrong – our fees were double than the second competitor. So I don't know but my question would be because the fees of management consulting firms are very similar. There is a market and even if someone would like

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to have higher prices than eventually the market adjust that, and so I don't know exactly the fees of our competitors more or less are the same. What changes is the time and the number of people that you need to put on a project and a combination of the fees, call them per diem is the wrong term but call them per diem and the number of people and number of ways they find the price you eventually offer the client.

PROF KATZ: My recollection on that, sorry, was he said when the motivation was made for the appointment of the second phase, one of the points of motivation was that they were less, their competitor was double and that was one of the reasons why they are such a favourable party to get the contract. That's my understanding.

MS STEINBERG: Professor Katz, that's correct, but may I say that we haven't had sight yet of those documents. We were handed them today. So I think this is something we'd have to look at because I can't answer that now.

MR MASSONE: Can I finish my line of thinking?

MS STEINBERG: Please.

MR MASSONE: It's a more of reality of reality. So I would be very surprised that the

ANNEXURE "AW106"

AW1065.1

To: Timpano, Stephane[Stephane.Timpano@Bain.com]; Massone, Vittorio[Vittorio.Massone@Bain.com]
Cc: Franzen, Fabrice[Fabrice.Franzen@Bain.com]
From: Beaumont, John
Sent: Thur 8/28/2014 6:48:33 AM (UTC)
Subject: RE:

I would imagine Alexis would be the Manager.

Question for you Vittorio is Partner team and specifically do you want Neville to play OVP role

-----Original Message-----
From: Timpano, Stephane
Sent: Thursday, August 28, 2014 8:41 AM
To: Massone, Vittorio; Beaumont, John
Cc: Franzen, Fabrice
Subject: RE:

Vittorio,
that's a great news.

The last thinking was to start with 1 team (M+4 to +6), for 3 months to do fundamentally 2 things:

1) run a full operational / strategic assessment of SARS
2) assist Tom in starting properly his new role (direct "CEO" support work)

We will be then able, based on the operational / strategic assessment, to build up the platform for a broader SARS transformational program (6-12 months plan)

Let's discuss team face to face later

stephane

-----Original Message-----
From: Massone, Vittorio
Sent: Thursday, August 28, 2014 8:04 AM
To: Beaumont, John
Cc: Franzen, Fabrice; Timpano, Stephane
Subject:

Guys,

Just had a call and heard that the Sars announcement should happen tomorrow or monday

Meeting later in the office, to discuss also procurement process

Fabrice/Stephane, how many teams did we say? Can we please think about Managers, with and without Galactica? I guess we should have a few weeks to ramp up (procurement process) but we'll need to have a first contingent to start working asap..

Thank you
Vittorio

ANNEXURE "AW107"

AW107

South African Revenue Service

Strategy and Operations review

Request for Proposal

October 2014

1. Context of the Request for Proposal

The South African Revenue Service (SARS) is a South African Government agency, in charge of tax collections – including Personal Income Tax, Corporate Income Tax, VAT, Customs, Excise and Fuel levy. It reports to the National Treasury.

Over the last decade, SARS has conducted a number of initiatives to improve its performance and adapt to the increasing complexity and modernity of the South African Economy. In particular, it has launched a *Modernisation Program* which has delivered concrete results such as a significant increase in the number of individual and corporate tax payers; the successful adoption of eFiling to facilitate collection process (with an adoption rate above 90%). This has been delivered while managing costs within the envelope allocated in the Government budget.

On September 23rd, His Excellency the President of the South African Republic has appointed a new SARS Commissioner, M. Thomas Moyane, concluding a period of vacancy at the Commissioner level. The President has also reinforced the critical role for SARS to play in the socio-economic development agenda of the Government, by being an innovative revenue and customs agency supporting our Nation's economic growth, with a fairness that benefits all South Africans.

In this context, and in order to help the new Commissioner frame the next of SARS transformation agenda, the Service is considering the support of an external third party consulting firm, with the following three objectives:

- Assess current level of performance of SARS on core dimensions such as tax collection performance; operational efficiency; organisational effectiveness
- Identify the critical components of the next wave of SARS transformation to the benefit of the South African Nation and its citizens, building on what has been achieved so far. This should include
    - Mid to long term transformation initiatives to further improve efficiency
    - Short term "quick wins" to address most immediate gaps
- Develop the roadmap to deliver this new wave of transformation and the financial commitments from SARS (revenues and costs) that underpin that change. This new roadmap should build on the *2014-2018 SARS Strategic Plan* and amend it where necessary
- Link SARS mandate and future performance to the country's broader strategic priorities and outcomes, through the right strategy, business model, organisation and KPIs.

2. Scope of Work and deliverables

It is expected the review will cover the following dimensions:

- *Revenue Collection*:
    - How does SARS performance compare with other institutions across different tax categories, in terms of number of payers, amount collected and efficiency of the process?
    - What are the main areas for improvement for each tax category?

        - In particular for Customs, how to accelerate tax collected and speed of process to support SA economic development while protecting the local industry?
    - What is the desired level of integration with other South African agencies and international counterparties to improve SARS tax collection performance?
    - What is the performance of the litigation process?
        - How could it be improved?
        - Is there a need for a stronger enforcement force mechanism?

- *Operational performance*:
    - How does SARS cost structure compare with other international revenue services?
        - What are the opportunities for improvement?
        - In professional services in particular (IT providers, law firms, consulting), is there room for rationalisation of the spend?
    - How does SARS deliver on its core processes?
        - Intrinsic level of efficiency? Areas for improvement / streamlining?
        - How does it compare with international best practices?
    - Is SARS correctly measuring its performance?
        - Do we have the right KPIs? Are there too many?
        - Is SARS funding model adequate to push for continuous search of improvement?

- *SARS Infrastructure*:
    - Is the IT infrastructure adequate to sustain SARS continued development?
        - What are the gaps?
        - Is the IT roadmap adequate?
        - Are the current projects the right ones and are they correctly funded?
    - Is the network of branches fit for purpose?
        - How could it be optimised to further improve service to the South African citizens while controlling costs of operations?
        - Is there room to optimise SARS real estate assets?

- *Organisation and governance*:
    - How does SARS structure and sizing compare with other international best practices?
        - Is it the current structure fit for purpose?
        - How could it be improved?
    - Is SARS decision-making process efficient?
        - Is it supported by the right governance (internally and with the National Treasury)?
        - How could it be improved?
    - Does SARS face any capability gaps?
        - In which function? Of which nature?

- *SARS image and perception*:

- What is the general perception of SARS in the South African public (individuals and Corporates)?
- Does it convey the right image of fairness and efficiency?
- On which dimensions should it be improved and how?

The project should be structured along the following phases:

- Phase 1: initial review and diagnostic
- Phase 2: final review and recommendations
- Phase 3: quick wins implemented and long term transformation initiatives launched

At the end of the project, SARS expects – *inter alia* – the following deliverables:

- Detailed assessment of SARS current level of performance on the aforementioned dimensions (tax collection, organisation, operational performance, infrastructure and image/perception)
- Recommended SARS strategy to achieve its mandate and contribute to country's broader strategic priorities and outcomes
- Amended structure and operating model including decision rights, capabilities
- Recommended portfolio of initiatives to deliver the proposed strategy, differentiating quick wins from mid- to long term initiatives
- Recommended KPIs to measure SARS success to deliver its mandate.

3. Selection process and criteria

This process will be a closed tender. This RFP has been to a selected list of consulting firms that are part of SARS consulting panel.

For this specific project, SARS will be looking for consulting firms with the following characteristics:

- South Africa based, BB-BEE score of 3 or better
- Relevant experience working with South African Government agencies, departments and State-Owned Enterprises
- Relevant large scale transformation experiences (minimum 3 in last years) with JSE-listed companies
- Ability to bring global best practice and examples, leveraging international experience working with Revenue services, National Treasuries / Ministry of Finance
- Project management team with credible recent experience in the aforementioned areas

The selection process will run as follows:

- RFP issuance – Friday 10th October 2014
- Q&A session – Wednesday 13th October 2014
- Proposal submission date – Monday 20th October 2014
- Engagement to start no later than November 10th 2014

Interested parties are requested to submit a proposal that must include the following elements:

- Succinct presentation of the company and its South African operations (if international)
- Detailed credentials of the firm with South African Government departments, agencies and State-Owned Companies – references to be provided
- Detailed credentials of the firm driving large scale transformation with minimum 3 JSE listed companies
- Detailed credentials working with international Revenue Services / National Treasury / Ministry of Finance – references to be provided
- Proposed approach and timing for the assignment
- Description of proprietary methodologies to be used in the course of the assignment, in particular regarding strategy formulation, organisational design and project management
- Proposed project management team with detailed CV and relevant experience
- Project team structure and time allocation on the assignment, with names, seniority and experience of selected team members

- Financial considerations – to be provided in a separate document

- The candidates should also provide SARS with the following documents:

    - Original and Valid tax clearance certificate(s)
    - Certified copies of your CIPRO company registration documents listing all members with percentages, in case of a CC. Or latest certified copies of all share certificates in case of a company;
    - BEE Certificate verified by a SANAS accredited verification agency

ANNEXURE "AW108"

Project Arrow - Index of Key Documents
Privileged & Confidential

Filename: "2018.11.21 Index of docs for client review - 8448472 - v1 - WASDMS.XLSX"

Date	Document	Versions	Additional Comments
02/10/2013	RE "SARS Opportunity", a first set of analysis on SARS modernisation program. Massone asks if (Bain) has talked to "experts" to understand if there are "flaws" in the system. He specifies that Innocent's friends told him that the security levels are very low - i.e. you pay and your tax problems disappear.	CTRL-00046462	
10/11/2013	Email from Timpano to Massone with subject line 'sars 2 0' Italian translation: Almost all the points discussed yesterday were integrated, with the exception of revenues generated from custom in relevant countries (ie United States aggregates data very differently and is not comparable, China does not disclose data, ...). If we spend time, I do not think we would find much more on the subject in a short time. I think that what we have is enough for Sunday we have to talk about the fact that others can make more money on this. Let me know if it's fine if I send this to Tom when I arrive in Douala	BM-0000339	
10/11/2013	Email from Massone to Kanozulu with subject 'Re:Ambrobrite Invoices' Massone indicates, upon receiving invoices from Kanozulu, that he cannot pay invoices without having a valid contract in place	BM-0000685	
13/11/2013	Venter to Massone: "Since I have not done this before, I had a quick chat to Geoff for some guidance. He suggested the contract should be drafted by Ambrobrite and we should then check and also ensure our Legal team are happy." ... "I have also asked Dan Pinkney and his team to send through the Fleishman Hilliard contract for us to compare against if we want to." Massone to Venter (Cc: Smout): "Ok, no worries - I'll draft it and send it to you. What they do has not much to do with what Fleishman does (luckily)"	BM-0000918	
17/12/2013	Venter to Massone: "I think we are good on Mandla/Ambrobrite, although they will need to check/sign the attached contract and send an invoice before we can pay. **(Legal have OK'd it)**"	BM-0000672	
17/12/2013	Smout to Venter: "For some reason I don't trust this situation – I'd like to see their certificate of incorporation and VAT certificate too."	BM-0000926	
18/12/2013	Smout to Venter: **"This whole situation seems very dodgy. Do you know anything about the background of the people who run Ambrorite or who are named in the contract?"** Venter to Smout: "Well, I have just been to SARS who could not verify the TCC and suspect it's fraudulent! They have taken a copy and will get back to me later confirming whether it is a fake certificate or not."	BM-0000927	
07/01/2014	Massone to Smout: "I am very comfortable to do business with the people, which we've been doing for a few months already. That's why I've chosen them. We should however do all the appropriate verifications on the vehicle/entity. Actually, I wish we applied the same level of scrutiny in all our activities, as we're having with this."	BM-0000981	
21/08/2014	Timpano to Lerato Ngake, Nicole Venter (copying Massone): "I believe we need to be more cautious on SARS. I believe we should push it back to October – Vittorio please confirm" Massone responds: "Agree - thanks"	CTRL-00185970	
21/08/2014	Document: "Staffing Supply / Demand – VM update" The document indicates that the SARS project is only a 50% possibilty, and would only continue for a period of 6 month with a monthly rate of R4.4 million.	CTRL-00165977	
28/08/2014	Email from Massone to Timpano asking for Timpano to send Massone the 'Sars organization slides'	CTRL-00165964	
29/08/2014	Massone to Timpano [Italian]: "Could you please send me the old SARS document? The first one shown to Z. I only have it in PDF..." Timpano responds by providing Massone with the SARS 2.0 document.	CTRL-00185962	
25/09/2014	Dairy entry in Franzen's calender: "S. RFP"	CTRL-0018638	Franzen confirmed during his interview that he did in fact draft the "South African Revenue Service - Strategy and Operations review - Request for Proposal" dtaed Oct 2014

AW108

SARS-01-580
WW1-AW-570

AW108 25.2 C

atholwilliams@hotmail.com

From:	Batonga, Marilyn <Marilyn.Batonga@bakermckenzie.com>
Sent:	22 November 2018 01:27
To:	atholwilliams@hotmail.com; Min, Stuart (Stuart.Min@Bain.com); Kennedy, Chris (Chris.Kennedy@Bain.com) (Chris.Kennedy@Bain.com)
Cc:	Bernstein, Darryl; Demas, Reagan R; Steyn, Wian; Klinger, Jane C
Subject:	Project Arrow Update
Attachments:	Project Arrow Review Stats - 21.11.18.xlsx; 2700416_2018_11_21_10_48_PM.zip; 2018.11.21 Index of docs for client review-8448472-v1-WASDMS.XLSX

1

All:

Please see attached updated review stats on the SARS-focused review, as well as an index of key documents reviewed this past week. We have also attached the key documents in a zip file.

Please note that we have completed first level review of documents hitting on Italian search terms.

As you know, we have started conducting interviews. Following interviews we ran additional search terms against the data and batched additional documents for review. The updated dashboard reflects the new numbers.

Certain witnesses also forwarded to us documents as a follow-up to their interviews. These documents are being loaded onto the Relativity platform. They are not reflected in today's dashboard.

Best Regards,

A. Marilyn Batonga
Associate
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006
Tel: +1 202 835 6173
Fax: +1 202 416 7173
marilyn.batonga@bakermckenzie.com

Baker McKenzie.

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GLOBAL INVESTIGATIONS REVIEW 2017
Top 5 for Global Investigations

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ANNEXURE "AW109"

AW109

To: Carr, Richard[Richard.Carr@Bain.com]
Cc: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Tue 11/18/2014 3:09:10 PM (UTC)
Subject: FW: (No Subject)
20141118 Project High Ground - RFPr - Transformation Office.pdf

Richard – lets flag this on our OH call shortly....given the urgency we will need to sweat manager and principal options quickly.

Thanks,
Paul

From: Massone, Vittorio
Sent: Tuesday, November 18, 2014 2:39 PM
To: Meehan, Paul
Subject: FW: (No Subject)

Paul,

Sorry to bother – the rfp for that famous Separation project is out and actually includes the National Broadband plan and other staff (rfp attached). So it's huge. . We are putting 2 teams (maybe one now if we don't have the 2 and one added in Jan) on this, so easily this is 5-8M alone next year, as well as the most complicated project.

As much it is "designed for us" (and allowing for a piece of the work to be done by the Deloitte Regulatory team), we need to make sure they feel comfortable with the team and our expertise (and we know that we can't claim to have done much on the specific topic). The formal request is for bio and 2 managers for stream and then can decide which one.

This is to say that that discussion on the Principal to allocate to this project is absolutely key, not only on the delivery but also on the "selling"

They want to start next week and the proposal – with cvs etc - is due Thursday

See below correspondence with Antonio. If the Principal from Spain is not available and there aren't alternatives, we are really at risk (diplomatic and financial...)

Thank you for whatever you can do on this

Best,
Vittorio

From: Martinez, Antonio
Sent: Tuesday, November 18, 2014 2:22 PM
To: Massone, Vittorio
Cc: Bhak, Alex
Subject: RE: (No Subject)

Vittorio,
I need a bit more time as I have yet to finalize discussions with Javier and Pablo. I will revert asap.

Saludos

-----Original Message-----
From: Massone, Vittorio
Sent: Tuesday, November 18, 2014 11:15 AM GMT Standard Time

ANNEXURE "AW110"

AW110

To: Vorobyov, Andrei[Andrei.Vorobyov@Bain.com]; Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Eisenberg, Neville[Neville.Eisenberg@Bain.com]; York, Stephen[Stephen.York@Bain.com]
Cc: Massone, Vittorio[Vittorio.Massone@Bain.com]; Dutiro, Innocent[Innocent.Dutiro@Bain.com]
From: Olmesdahl, Nicolle
Sent: Tue 12/9/2014 10:03:26 AM (UTC)
Subject: RE: Potential PIC diligence
2014 Bain & Company BEE certificate.pdf
Tax Clearance Certificate expiring 07.07.15.pdf

There you go, current BEE and Tax Clearance certificates attached.

Let me know if you need anything further from me.

Thanks
Nicolle

From: Vorobyov, Andrei
Sent: Tuesday, December 09, 2014 11:52 AM
To: Franzen, Fabrice; Eisenberg, Neville; York, Stephen
Cc: Massone, Vittorio; Dutiro, Innocent; Olmesdahl, Nicolle
Subject: Potential PIC diligence

Hi Fabrice, Neville and Yorkie,

Just spoke with PIC's Thurstan Moodley regarding Takwa-2 – RFP is attached:

- They would like to go with Bain, instead of issuing full RFP and considering other providers – given: a) our prior DD of Takwa; b) quality of the DD (PIC was very impressed – well done Neville!); c) recommendation from Helios
- Scope is: SA, Zambia, Ghana with high-level on other markets
- Timelines are very tight:
  - Friday (or next Monday) kick-off with Takwa
    - Data request
    - Mgmt meetings
    - Primary research
  - DD start on January 5th
  - DD finish on January 30th
- PIC needs from us
  - NDA – I already sent to Bain Legal
  - Proposal – I am working on it
  - Data request, mgmt. meeting schedule – Neville/Yorkie – I would need your help – we should simply copy Takwa
  - BEE / tax certificates – Nicolle, can you please help?
- I'd like to talk to PIC team this week to make sure we better understand their key DD "wishes" – Fabrice/Neville/Yorkie – hope you can join?

Any thoughts / comments welcome,

Andrei

ANNEXURE "AW111"

AW111

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

service providers, to discuss the above matter with the view of enlisting proposals for a turnaround plan for SARS'.

[60] The memorandum was relied on by Mr Massone to suggest the Minister approved the project, but that is not correct. The former Minister, Mr Nene, said in evidence before us that as this was an operational matter he was required to endorse only the process, with the hope that the implementation would be reported back to him

[61] What Mr Moyane represented to the Minister was untrue, both in what was said and in what was not disclosed. The memorandum conveys an intention to approach consulting companies in order to select one. In truth the only approach that was to be made to consulting companies was to entice them to participate in a procurement sham. What he ought to have said to the Minister is that he had already colluded with Bain on a strategy to restructure SARS, for Mr Moyane to take control, and for Bain to increase its wealth.

[62] Approval having been given by the Minister, SARS (it seems to have been Mr Makwakwa) at first approached Telkom, with a request to participate in a contract that Telkom had with Bain for procurement of the consulting services of Bain. Why would SARS be wanting to secure services by participating in the contract between Telkom and Bain, asked Mr Tshitangano, unless SARS had already decided that Bain should be appointed?

[63] Mr Massone said he had known nothing of the approach to Telkom. Once again that was untrue. On 4 December 2014 he wrote to Mr Maseko of Telkom as follows:

'I received a call from SARS (the acting COO) who told me that they would like to use Telkom's contract to give a mandate to Bain – apparently law (or practice) says that they can piggyback another SOE. This will enable an immediate start avoiding long and complicated tender processes.

ANNEXURE "AW112"

AW112

To: Mogogodi Dioka[MDioka@sars.gov.za]
Cc: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Olmesdahl, Nicolle[Nicolle.Olmesdahl@Bain.com]
From: Massone, Vittorio
Sent: Tue 12/2/2014 2:06:29 PM (UTC)
Subject: RE: Public Entities Contract
SOE-GOV references.pptx

Dear Mogogodi,

Thank you for your mail

We have of course performed many projects for clients in the Government space globally and of in South Africa.

What I am including in the slide attached refers to active or extremely recent clients that are available to disclose that we've worked for them and provide reference for us. The names of the key members of the client organisation are in the slide, if you decide to contact them please revert back to me so I can pre-alert them and provide you with the contact details

Thank you

Kind regards,
Vittorio

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com | web:www.bain.com

From: Mogogodi Dioka [mailto:MDioka@sars.gov.za]
Sent: Tuesday, December 02, 2014 2:41 PM
To: Massone, Vittorio
Subject: Public Entities Contract

Hi Vittorio, just a note to request any current public entity relationships and references you have.

1

Kind regards

Mogogodi Dioka
Executive Procurement
SARS
0829202190
Please Note: This email and its contents are subject to our email legal notice which can be viewed at http://www.sars.gov.za/Pages/Email-disclaimer.aspx

ANNEXURE "AW113"

AW113

Message

From: Sipho Maseko (SN) [MasekoSN@telkom.co.za]
Sent: 12/6/2014 2:20:43 PM
To: Massone, Vittorio [/O=BAIN/OU=EXCHGLOBALSERVICES/cn=Recipients/cn=09VMA]
Subject: RE: Re:

Vittorio
Indeed let's try to meet before you leave
Its bene a rocky week
Sipho

-----Original Message-----
From: Massone, Vittorio [mailto:Vittorio.Massone@Bain.com]
Sent: 05 December 2014 03:21 PM
To: Sipho Maseko (SN)
Subject: Re:

Hi Sipho,

Sorry to hear that - they told me you had to move the meeting with Anamaria. Hope you get better soon

Ian told me exactly the same thing and I called back the COO who was very tranquil and said they have had confirmation from Treasury.

So I closed the loop with Ian anyway. Let's see what happens, clearly they know they need to check

Brian told us there's a strategy session (I believe on Enterprise), so the guys are going to send you during the weekend a few pages that might be helpful for you

We are also finalizing with Izaak the "high-ground" presentation for the meeting with the Min on tuesday

Shall I see you soon? I'm leaving for holidays next sunday..

Best,
Vittorio

----- Original Message -----
From: Sipho Maseko (SN) [mailto:MasekoSN@telkom.co.za]
Sent: Friday, December 05, 2014 01:14 PM GMT Standard Time
To: Massone, Vittorio
Subject: RE:

Hi Vittorio
I'm not too bad - just a bad flight from the US It appears that the specific provision does not apply with us - We are also listed and some aspects of PFMA don't apply or bind us I will call SARS Sipho

-----Original Message-----
From: Massone, Vittorio [mailto:Vittorio.Massone@Bain.com]
Sent: 04 December 2014 07:50 PM
To: Sipho Maseko (SN)
Subject:

Hi Sipho,

I believe you are croI hope your trip has gone well, am sure we'll see the results on the stock price monday morning..

I received a call from SARS (the acting COO) who told me that they would like to use Telkom's contract to give a mandate to Bain - apparently law (or practice) says that they can piggyback another SOE. This will enable an immediate start avoiding long and complicated tender processes

I hope that's ok with you, I gave them Ian's contacts as they want to contact Telkom tomorrow morning

Thank you!

Best,
Vittorio

ANNEXURE "AW114"

Page 2102

about SARS, what did you tell him?

MR MASSONE: Well it was an outside view, so, any public data that was available in the media and in the public reports so it was a, I remember a pretty position point of view and there was some description on modernisation and so that was the description. Maybe some numbers on how many people are there -

[14:52] COMMISSIONER: So he asked you about SARS?

MR MASSONE: Yes.

COMMISSIONER: What did you tell him about SARS?

MR MASSONE: This that I'm saying, so –

COMMISSIONER: Things that you read in the newspaper, you say?

MR MASSONE: That's what normally happens. You read public reports so there's a lot of information there, there is a lot on the website. You see what people are saying, institutions, etcetera and you create a five, six, ten pages summary on that.

COMMISSIONER: Just so we're clear. I'm not interested in what normally happens, I'm interested in what actually happened.

MR MASSONE: This is what happened.

PROF KATZ: But did you know he was going

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to ask you about SARS, that you'd prepared reading all these websites and reports?

COMMISSIONER: If you don't mind, please.

MR MASSONE: Can you repeat the question?

PROF KATZ: Did you know that when you were going to meet him that he would ask you about your views about SARS so that you had prepared and read all the websites and reports and everything?

MR MASSONE: Yes, he asked us about that, yes.

PROF KATZ: Yes but how did you know he was going to ask you about it?

MR MASSONE: No he called us and said, can I meet you on this topic?

COMMISSIONER: Okay. And so are you saying you then went and read up about SARS?

MR MASSONE: We spent, I don't know a few days to do that and we put together a document, yes.

COMMISSIONER: What was the document you put together? Do you have it?

MR MASSONE: I don't think I have it now but I certainly would like to find it. It was –

COMMISSIONER: Will it be in your offices, do you think?

MR MASSONE: In some PC yes, not in mine

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but I will try to find. It's quite a long time ago, yes. But it would be outside in data speaking about what, in this case I remember the modernisation was one of the topics that was quite a highly represented in the annual report and a few other public figures.

PROF KATZ: Sorry and that was quite a while before he was appointed as Commissioner?

MR MASSONE: I cannot locate the data in my mind. I wasn't prepared to have this discussion.

PROF KATZ: But before he was Commissioner?

MR MASSONE: I must believe, yes.

MS STEINBERG: Did he pay you for that work?

MR MASSONE: Sorry?

MS STEINBERG: Did he pay you for that work?

MR MASSONE: No. Like I said this is something that we normally do. We normally already have a lot of point of views in our desk research or many companies. We don't even need to do additional work, so absolutely not.

COMMISSIONER: What was the follow up after you had made your presentation?

MR MASSONE: Nothing.

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COMMISSIONER: Did you not see him again?

MR MASSONE: Well I bumped into him in places, residence of the American Ambassador in other situations like that but nothing specific.

MS STEINBERG: So we heard this morning that Mr Moyane had identified Bain even before the closed tender because he had requested from Telkom this transversal contract. Now the witness this morning said that Mr Moyane would have had to have approached Bain first before approaching Telkom in order to even make that possible. Did he do so?

MR MASSONE: Well that's what I just said. So he knew us, I think he heard our reputation in the market and possibly had spoken with other CEOs about that.

MS STEINBERG: So did he approach you about the possibility of him approaching Telkom?

MR MASSONE: No.

MS STEINBERG: No.

MR MASSONE: No. It's the first time I heard about that.

MS STEINBERG: Right. That was my question, yes. The next issue that the witness from Treasury raised was that the invitation to the five or six companies that SARS had identified was issued on the 11th

ANNEXURE "AW115"

Page 2042

letter that was submitted to the Minister of Finance and if you – I'll just read through the record so that you – the letter was dated 11 11 2014. He was requesting the Minister to approve the review, but what is relevant to procurement it's what I will read which is on page 2 of that letter. "To assist me in this endeavour I would like to approach independent consulting companies to assist with an analysis of the following with a view to making an enhancement in the main areas listed below." From there I'll read what he said in the recommendation. He says "I therefore request that the Minister considers the above matters and give his approval for me to approach as an initial step a number of consulting companies listed in the SARS database, our service providers to discuss the above matter with the view of enlisting proposals for a turnaround plan for SARS."

From there when you read and from the procurement point of view he indicated he's going to use SARS database to identify consultants. In other words he was not going to follow a competitive bidding. He will only deviate and invite those who have identified in the database. After receiving whatever approval from the Minister what you see next it's a letter which is dated the 5th of December. That letter is written to the Chief Executive Officer Telkom SA and in that letter, just to read the purpose, it says, "to

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request approval of Telkom SA to participate in the contract secured by Telkom SA with Messrs Bain & Company SA for the procurement of their consulting services." Already a service provider has been identified and for you to be able to know that Bain has a contract with Telkom obviously they will have done some analysis or market research, whatever, so that they will know. But here already a letter is going to Telkom, he has already deviated from what was said in the Minister's letter because the Minister's letter says we will identify. But here we've already identified a company and that company we are going to – in terms of the processes our Treasury regulations 16A6 will say if you want to participate in a contract arranged by another organ of state you write a letter to the institution that arranged the contract which is the case here. And from there you will now write a letter to the company, after receiving the approvals from both company, from the institution that arranged the contract and from the company you will decide whether you want to participate or not. The letter was signed by the Commissioner on the 5th of December 2014, but there was a space provided for the CEO of Telkom to sign which we don't have a copy that was signed. And what we don't know at this stage is whether Bain & Company was approached by SARS at that stage to request participating in the contract

Page 2044

which they signed with Telkom because that's how participation worked.

From the 5th of December up to the 10th of December we couldn't get any correspondence on this procurement. But what you will have expected to see was that because this was a deviation per se or how this participation was abandoned we don't have that information. But clearly the participation was abandoned because around the 11th of December between 9:00 and 10:00 there was what we call requests for proposal. They were sent to five companies including Bain. And when they were sent out between 9:00 and 10:00 in the morning the service providers were expected to come to attend a briefing on the 12th of December 2014. But you don't see how the five companies were identified, for example there should have been a deviation memo which would have been either prepared by users going to the relevant authority to say from our database we only identified five companies and why only five companies. And also why do you want to do this deviation because at that time, around the 11th of December most of the companies they are closing. And if you are going to run a tender during that time then you have a problem unless if you cannot postpone this tender because otherwise something will happen. Somebody is going to die then you can't postpone it then you will have to do it

Page 2045

during that period. But otherwise it's useless to run a tender during the period that we are talking about which was the 11th.

Now on the 12th of December there's a briefing session. We don't have a register of those companies who attended the session, but it's like all the five companies attended the briefing session. That briefing register is not there, we will still request SARS, maybe they will be able to locate it and give it to us. The plan was, if you look at the plan of the tender the tender it's issued on the 12th of December, it will close on the 18th of December and from there on the 19th there's going to be a presentation which was a very short notice. For the scope that was proposed there and for any potential supplier to be able to receive this document and do a proper assessment it's only very few suppliers which - if you read that SASSA CPS Constitutional Court judgment you only need what we call clever bidders who can be able to respond to that. Otherwise if you are not a clever bidder you won't be able to make it.

MS STEINBERG: Mr Tshitangano, if I'm not mistaken there are Treasury regulations that specify a minimum period that has to come between the time that invitation is given and tenders are closed. Is that not correct?

ANNEXURE "AW116"

AW.116

From: Eisenberg, Neville
Sent: Friday, March 13, 2015 02:05 PM GMT Standard Time
To: Massone, Vittorio; Franzen, Fabrice; Bour, Alexis
Subject: SARS procurement

All -

Spoke to Jonas, here is the situation on procurement:

- they have to run a procurement process for phase 2. In particular, they feel need to be bulletproof, Jonas mentioned they received some letters of complaint already from some of the losers of the original process
- they believe it will take 4-6 weeks
- in the meantime they want us to run 2 of our 4 streams as an extension of phase 1 - org stream and RDO setup but not collection full potential or network of the future / process improvement
- he understands that would mean 1 team not 2 during this period, and that it represents slower progress, and understands, but proposes to use our scope as proposed for the 1b activities
- he understands we need to lock down commercial terms for this phase 1b asap but says it can be done without going back to procurement
- Ronald can meet us on Monday to discuss the commercial side of phase 1b, with an aim to have it signed off & finalized by Jonas by Wednesday

I can add a bit more colour if needed.

Please advise:
- if anything different we want to push for?
- if we move ahead, on what basis should we discuss commercial terms? I'm sure their initial approach will be pro rata of the original phase 1 which I suspect is more discounted than we are comfortable with.
- if we move ahead on this basis, I will make a plan on ramping down team back to 1 team

Pl advise, thanks

Neville

-----Original Message-----
From: Massone, Vittorio
Sent: Thursday, March 12, 2015 7:52 PM
To: Franzen, Fabrice; Eisenberg, Neville; Bour, Alexis
Subject:

Gents,

Just spoke with Jonas

He said that the Comm met with Procurement today but haven't heard yet. He's going to feedback to us tomorrow morning but he doesn't see problem

He says also on org he's fine now, I guess he says that wants Enforcement together with the 2 tax divisions. I told him that the model this way doesn't change much (but maybe it does iro Customs) but that he has to clear it with the Comm

Thank you
Vittorio

ANNEXURE "AW117"

AW117

From: Eisenberg, Neville
Sent: Friday, March 13, 2015 02:05 PM GMT Standard Time
To: Massone, Vittorio; Franzen, Fabrice; Bour, Alexis
Subject: SARS procurement

All -

Spoke to Jonas, here is the situation on procurement:

- they have to run a procurement process for phase 2. In particular, they feel need to be bulletproof, Jonas mentioned they received some letters of complaint already from some of the losers of the original process
- they believe it will take 4-6 weeks
- in the meantime they want us to run 2 of our 4 streams as an extension of phase 1 - org stream and RDO setup but not collection full potential or network of the future / process improvement
- he understands that would mean 1 team not 2 during this period, and that it represents slower progress, and understands, but proposes to use our scope as proposed for the 1b activities
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I can add a bit more colour if needed.

Please advise:
- if anything different we want to push for?
- if we move ahead, on what basis should we discuss commercial terms? I'm sure their initial approach will be pro rata of the original phase 1 which I suspect is more discounted than we are comfortable with.
- if we move ahead on this basis, I will make a plan on ramping down team back to 1 team

PI advise, thanks

Neville

-----Original Message-----
From: Massone, Vittorio
Sent: Thursday, March 12, 2015 7:52 PM
To: Franzen, Fabrice; Eisenberg, Neville; Bour, Alexis
Subject:

Gents,

Just spoke with Jonas

He said that the Comm met with Procurement today but haven't heard yet. He's going to feedback to us tomorrow morning but he doesn't see problem

He says also on org he's fine now, I guess he says that wants Enforcement together with the 2 tax divisions. I told him that the model this way doesn't change much (but maybe it does iro Customs) but that he has to clear it with the Comm

Thank you
Vittorio

ANNEXURE "AW118"

AW118

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Beaumont, John
Sent: Thur 3/19/2015 6:21:06 PM (UTC)
Subject: RE: SARS

Ok disappointing.

-----Original Message-----
From: Massone, Vittorio
Sent: Thursday, March 19, 2015 05:42 PM GMT Standard Time
To: Beaumont, John
Subject: Re: SARS

He should go do that, if there are no other Ms.. I'm sick and tired.. Unfortunately this is no Telkom. We need to treat them as all other consultants do..

----- Original Message -----
From: Beaumont, John
Sent: Thursday, March 19, 2015 05:37 PM GMT Standard Time
To: Massone, Vittorio
Subject: RE: SARS

How should we think about alexis staffing -- hold for SARS? What about if we win this mining thing starting 1 April that Peter C is claiming we have been selected for?

JB

-----Original Message-----
From: Massone, Vittorio
Sent: Thursday, March 19, 2015 7:31 PM
To: Johannesburg Sales
Cc: Franzen, Fabrice
Subject: Fw: SARS

Fyi
V

----- Original Message -----
From: Eisenberg, Neville
Sent: Thursday, March 19, 2015 05:08 PM GMT Standard Time
To: Massone, Vittorio; Franzen, Fabrice
Subject: SARS

Ronald just called to inform me that they have decided they need to run an open tender process and that no extension is going to be possible.

They still aim to be ready to start with the successful provider by May 1st and he said they still hope that we are the winning bidder.

They are likely to write the tender based on ultimate deliverables without reference to timing or cost and allow the bidder's proposed plan to be part of the evaluation.

If you agree, I will let the team know in the morning and tomorrow we will wrap up any live conversations at SARS to preserve our good relationships with individuals. Then we will stand down the team.

Neville

ANNEXURE "AW119"

AW119

To: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Bour, Alexis
Sent: Wed 4/1/2015 6:42:46 PM (UTC)
Subject: RE:

Thank you Vittorio – this would be fantastic.

I learnt today that Jonas finally only agreed for a meeting next week. He is meeting the Minister tomorrow pm. Perhaps there is a link between the two events.

I also reached out separately to Ronald today who only agreed to meet "in a couple of weeks" … and said he would give me a call in the meantime.

Alexis

From: Massone, Vittorio
Sent: Wednesday, April 01, 2015 6:03 PM
To: Franzen, Fabrice; Bour, Alexis; Eisenberg, Neville
Cc: Beaumont, John; Olmesdahl, Nicolle
Subject:

Spoke with Jonas at Sars now – they might have found a way to legally resume work without tender process.

Commissioner needs to make a final call but we should be ready to restart for phase 2 by mid april

Please keep this confidential ie not share with people at Sars, should we speak with them

Best,
Vittorio

Vittorio Massone
Managing Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9188 fax: +27 11 012 9101 mobile: +27 83 643 8321
mailto:Vittorio.Massone@Bain.com | web:www.bain.com

ANNEXURE "AW120"

AW120

To: Bour, Alexis[Alexis.Bour@Bain.com]; Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Eisenberg, Neville[Neville.Eisenberg@Bain.com]
From: Massone, Vittorio
Sent: Thur 4/9/2015 3:29:16 PM (UTC)
Subject: Re: Update from meeting with Jonas

Excellent, well done Alexis!

Please ask Sharlene to freeze the relevant dates in our diaries

They're also trying to organize a 1-1 with the Commissioner

Thank you
V

From: Bour, Alexis
Sent: Thursday, April 09, 2015 04:22 PM GMT Standard Time
To: Massone, Vittorio; Franzen, Fabrice; Eisenberg, Neville
Subject: Update from meeting with Jonas

Dear all, please find below update from meeting with Jonas:

Procurement process:
- Procurement meeting will only happen next week as several people are out of the country (should happen Mon, Tue, or Wed)
- Jonas does not anticipate any issue. He said "there is one person that is making some noise but he is not even a voting member". They have had legal advice that it is ok to go through without an rfp.
- He said we should be "ready to run" when the decision is made. When I asked about when we should be prepared to start he wobbled a bit, then said all should be closed before end of April, and possibly by end of next week, so "possible start on April 20th"...

Advisory Board and Minister updates:
- The Advisory Committee's first priority is to deal with the rogue unit issue
- In the next meeting on April 28th, Bain should present the diagnostic, operating model principles and plan (Gartner will present as well)
- He is aligned that we should send detailed documents beforehand ("these people like to read") but do a much shorter presentation on June 28th (location of the meeting will be confirmed closer to the date)
- They will ask the Advisory Committee to what extent they want to be involved in the organization structure design (he said they would probably not be involved as they do not know the business and it is more important that they agree on the principles)
- As a next step we will need to prepare a presentation for the Minister

Organisation structure and transition process
- The organization structure should not change but groupings should be considered to reduce number of direct reports to the commissioner. He said that in any case we (specifically you Vittorio) would be part of these discussions.
- Their target is to announce the structure only in August. One of the main reasons is that they believe they can fill only 2-3 CO positions from inside. They are launching an executive search to identify external candidates
- Once the target organisation is announced they want a transition process that is as short as possible (in line with the transition principles that we shared with them)

Best regards,

Alexis

Alexis Bour
Principal
Bain & Company | 10 The High Street | Melrose Arch, 2076 | Johannesburg | South Africa
Mobile: +27 (0) 71 403 2599

ANNEXURE "AW121"

AW121

To: Bour, Alexis[Alexis.Bour@Bain.com]; Massone, Vittorio[Vittorio.Massone@Bain.com]
Subject: RE: Feedback from Ronald

Had a brief chat with Jed earlier today – he is also committed to continuing. Meeting with him when he is back Tuesday.

Vittorio, are you comfortable we hold the team for

Peter Clearkin
Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9109 fax: +27 11 012 9101 mobile: +27 82 303 0042
mailto:Peter.Clearkin@Bain.com | web:www.bain.com

From: Bour, Alexis
Sent: Thursday, June 09, 2016 10:57 AM
To: Massone, Vittorio <Vittorio.Massone@Bain.com>; Clearkin, Peter <Peter.Clearkin@Bain.com>
Subject: Feedback from Ronald

Feedback from Ronald:

- Said that we should not be concerned by the Procurement/Legal process. They still need to provide feedback to him and Jed on the way forward but if they cannot formally extend the contract they will copy/paste the information in a new agreement. This will not need to go through the typical process with RFP. Matsobane said there would be a deviation justified as in phase 2. (the difference with phase 2 is that they have all of the docs ready)
- Finance has confirmed the budget is available
- The NBAC tier 2 members will meet on June 22nd to decide on extension. Ronald said that this is the critical milestone but the members are essentially Exco, which have already approved the principle of an extension on customs
- Ronald repeated to me that Jed is keen and needs to do it.
- He said that while he is disappointed that there is this waiting period he does not feel that the Procurement process will be an issue

I would recommend we:

- Plan a couple of touch points with Jed to keep the pressure up to the 22nd
- Continue meeting with the other key players (eg. Mpho, Ronald + Jonas/Commissioner) before June 22nd
- Continue allocating at least part of the team to the codification on customs and tax (and reallocate the rest on urgent CD like we did with Kehar yesterday). A lot of them are anyway out for Bain World Cup
- Consider staffing Nomfundo on the case she wanted provided we can agree a couple of full days dedicated to handover (we went with her to ORTIA yesterday, I think we would need to do this again another time)... and under the agreement that if SARS shout very hard we have an option to get her back

Thoughts?

Alexis

ANNEXURE "AW122"

AW122

To: Moodley, Marlynie[Marlynie.Moodley@Bain.com]; Massone, Vittorio[Vittorio.Massone@Bain.com]; Clearkin, Peter[Peter.Clearkin@Bain.com]
Cc: Kennedy, Chris[Chris.Kennedy@Bain.com]
From: Franzen, Fabrice
Sent: Mon 7/2/2018 4:07:18 PM (UTC)
Subject: RE: SARS COI

Hi Marlynie

Third contract as continuation of implementation of customs operational improvement initiatives work. Not related to operating model. We can take out of the letter. Section 1 needs then to be cleaned from references to work from October 16 to March 17 and remove pricing of that piece of work. In which case you also need to remove from the fees schedule you have prepared.

I am also fine to remove the paragraph around tax collected vs GDP as this is not directly related to Bain work.

From: Moodley, Marlynie
Sent: Monday, July 2, 2018 5:58 PM
To: Franzen, Fabrice <Fabrice.Franzen@Bain.com>; Massone, Vittorio <Vittorio.Massone@Bain.com>; Clearkin, Peter <Peter.Clearkin@Bain.com>
Cc: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: FW: SARS COI

Hi all

Pls see BM revert on our submission, including my feedback.

Pls advise on the third contract - that was an extension to an earlier project right?

Pls also advise on paragraph relating to tax collection as mentioned by Darryl below - happy to proceed on that basis?

Thank you
Marlynie

From: Moodley, Marlynie <Marlynie.Moodley@Bain.com>
Date: Monday, 02 Jul 2018, 17:50
To: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Cc: Steyn, Wian <Wian.Steyn@bakermckenzie.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: SARS COI

Thank you Darryl.

I will touch base internally to confirm that the 3rd contract is an extension as I said, hence not seen as a third contract so to speak - I agree though, best we are clear to avoid any confusion.

We absolutely will be sending our submission to SARS as well as the commission, what we are sending through is a summary vs the final documents, with the offer for further details should they so require.

Will revert asap with any changes, further iterations.

Thank you
Marlynie

ANNEXURE "AW123"

AW123

To: Clearkin, Peter[Peter.Clearkin@Bain.com]; Bour, Alexis[Alexis.Bour@Bain.com]
Cc: Beaumont, John[John.Beaumont@Bain.com]
From: Massone, Vittorio
Sent: Thur 6/16/2016 8:47:58 AM (UTC)
Subject: Re: SARS

A new contract will need to be assigned via a tender process, which we won't win.. So not a viable option

1

From: Clearkin, Peter
Sent: Thursday, June 16, 2016 09:41 AM GMT Standard Time
To: Massone, Vittorio; Bour, Alexis
Cc: Beaumont, John
Subject: RE: SARS

Very irritating process on their side...even more so, given it is the second time they are doing it.
Fully aligned with Vittorio – team needs to be released from now, and re-staffed.

On a point of principal, I think we should continue conversations with Jed / SARS on helping them with customs, but I think we should seriously consider it as a new piece of work, with a new contract, not an extension. That means we can scope it appropriately, with ramp up of a team (lets see if we can find people with customs experience at that point), and most importantly, with current billing rates.

1

Alexis, can you find time for VM, me and you to chat Monday on how we handle things with SARS in terms of further work with Customs? Would like us to align on things before I chat with Jed.

P

Peter Clearkin
Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9109 fax: +27 11 012 9101 mobile: +27 82 303 0042
mailto:Peter.Clearkin@Bain.com | web:www.bain.com

From: Massone, Vittorio
Sent: Thursday, June 16, 2016 9:52 AM
To: Bour, Alexis <Alexis.Bour@Bain.com>; Clearkin, Peter <Peter.Clearkin@Bain.com>
Cc: Beaumont, John <John.Beaumont@Bain.com>
Subject: Re: SARS

Thank you Alexis. We may want to see it or not, but reality is that they screwed us again.. Voluntarily or not.. No regrets and no bad feelings..

And no worries - so we should just take stock of that and repurpose the entire team as of today. And plan as if there was no continuation. You'll see that in week time there'll be another very important reason for a delay or even worse for not going ahead. We need to limit losses, and there is also a question of principle at stake here - we are not anyone's puppets..

If and when they'll ask us to come back, we'll do the close-out you suggest. And at that moment we'll also need to assess how the change in team will require longer time to deliver what is scope

I'm ccing John so we can reallocate people at best (eg Sasol, CD,..).

We should cancel all meetings except the close out session with Jonas and the Commissioner and any other one dedicated to the way forward. Please involve me right upfront in any discussion about scope/duration redefinition

Thank you
V

ANNEXURE "AW124"

South African Revenue Service

BAIN & COMPANY

Technical proposal presentation

Extract of File 1 exhibits 2 and 3

Friday, December 19 2014

AW124 AW21

This information is confidential and was prepared by Bain & Company solely for the use of our client; it is not to be relied on by any 3rd party without Bain's prior written consent

SARS-01-614

WW1-AW-604

Our team today

INNOCENT DUTIRO

JOHN BEAUMONT

ALEXIS BOUR

	INNOCENT DUTIRO	JOHN BEAUMONT	ALEXIS BOUR
Pos.	• Partner • Member of Africa Financial Services practice	• Partner • Member of Africa Telecom practice, expert in organization design and customer experience	• Principal • Member of the Public Sector and Industrial Goods and Services practices
Relevant Expertise	• Over 20 years of consulting experience • Led restructure and mandate realignment of IDC • Carried out South African DFI landscape review on behalf of DBSA • Consulted to ESKOM on comprehensive review of group strategy and operating model design • Facilitated the South African DFI Forum • Former partner Deloitte Consulting, Managing Director Gemini Consulting • Deep and broad experience in Government institutions, including - Development Finance Institutions - State Owned Enterprises (e.g. utilities)	• 16 years' consulting experience with Bain – South Africa since 2006 • Leading turnaround for large strategic SA State Owned Company - Operating model and organisation design - Go to Market strategy including proposition and channel revamp - Customer experience delivery • Outside of SA, significant experience working with state owned institutions - Telco strategy – Eastern Europe - Financial Services turnaround – Australia • Deep organisation design and operating model experience (10+ projects) - Operating model for large SA state owned firm - Organisation structure / design for large Financial Services institution - IP on how large complex (x-border) firms organise to win	• 12+ years of experience • Main expertise: strategy development, organizational change and performance improvement incl. - Defining strategy, and supporting launch of results delivery office - Full potential transformation - Organization restructuring and process/headcount optimization - Operational performance improvement • Varied public and private sector experience (incl. Ministries, Development Agencies, Public Authorities)
Edu-cation	• MBA University of Witswatersrand • MS University of Manchester	• B Comm Honours in Accounting & Finance from RAU (cum laude) • LLB from RAU • Chartered Accountant, SAICA	• INSEAD, MBA • Bordeaux Business School / WHU – Otto Beisheim School of Management, BBA

SARS-01-615

WW1-AW-605

ANNEXURE "AW125"

AW125

To: Massone, Vittorio[Vittorio.Massone@Bain.com]; Franzen, Fabrice[Fabrice.Franzen@Bain.com]
Cc: Dutiro, Innocent[Innocent.Dutiro@Bain.com]; Beaumont, John[John.Beaumont@Bain.com]
From: Bour, Alexis
Sent: Fri 12/19/2014 8:09:05 AM (UTC)
Subject: Sars feedback

We just came out of the meetings: both the technical and price presentations went well. Sars questions were all well addressed, they in particular asked us if we could help them in a revenue hunt, were interested in our international credentials with revenue services, and in our rapid methodology.

To some extent, as Innocent noted, they seemed to be "going through the motions"...

Innocent, John, any other thoughts?

Best regards,

Alexis Bour
+27 71 403 2599

Sent from blackberry, please excuse any typos

ANNEXURE "AW126"

AW126

To: Massone, Vittorio[Vittorio.Massone@Bain.com]; Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Clearkin, Peter[Peter.Clearkin@Bain.com]
From: Bour, Alexis
Sent: Fri 6/5/2015 5:37:28 AM (UTC)
Subject: RE: Service agreement status

1

Indeed he has.... although he also severely underestimated what a bunch of losers they have in Procurement and Legal.

As we kick-off we will need to caution him strongly against over-optimism... as you mentioned in your email to him implementing the new org will not be easy, even more so with the team they have and the amount of newcomers who will arrive in the coming months.

-----Original Message-----
From: Massone, Vittorio
Sent: Friday, June 05, 2015 7:25 AM
To: Bour, Alexis; Franzen, Fabrice; Clearkin, Peter
Subject: Re: Service agreement status

Excellent, thank you Alexis

Good for us to become warmer with Ronald now.. he has proved to be in good faith..

V

----- Original Message -----
From: Bour, Alexis
Sent: Friday, June 05, 2015 05:27 AM GMT Standard Time
To: Massone, Vittorio; Franzen, Fabrice; Clearkin, Peter
Subject: Service agreement status

Ronald sent me a messages saying that Jonas agreed with the Head of Legal that Ronald would now own the document (while being advised by Legal). Ronald said he would wrap things up today.

Alexis Bour
Principal - Bain & Company
+27 71 403 2599

ANNEXURE "AW127"

AW127

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 18 December 2018 16:24
To: Bain Investigation; Kennedy, Chris (Chris.Kennedy@Bain.com); Min, Stuart (Stuart.Min@Bain.com)
Cc: Demas, Reagan R
Subject: Re: [EXTERNAL] Bain SARS investigation

Thank you Darryl. It is consistent with comments heard from numerous consultants. It would be interesting to know if the DC partner raised any concerns and how that was received.
Regards
Athol

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Bain Investigation <Bain.Investigation@bakermckenzie.com>
Date: 18/12/2018 16:17 (GMT+02:00)
To: "Kennedy, Chris (Chris.Kennedy@Bain.com)" <Chris.Kennedy@Bain.com>, "Min, Stuart (Stuart.Min@Bain.com)" <Stuart.Min@Bain.com>, "Athol Williams (atholwilliams@hotmail.com)" <atholwilliams@hotmail.com>
Cc: "Demas, Reagan R" <reagan.demas@bakermckenzie.com>
Subject: FW: [EXTERNAL] Bain SARS investigation

Chris, Stuart, Athol

I wanted to bring the whistle blower email below from Katherine Feeney to your attention. We have communicated with Katherine about a further discussion and will update you once we have had a chance to talk to her in more detail.

We will of course also need to test these allegations with those named below, which we will commence working on as well.

Darryl Bernstein
Partner
Baker & McKenzie
1 Commerce Square, 39 Rivonia Road, Sandhurst
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Switchboard: +27 11 911 4300
Fax: +27 11 783 4177
Cell: +27 83 781 5907
darryl.bernstein@bakermckenzie.com

Baker McKenzie.

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From: Katherine Feeney [mailto:feeney.katherine@gmail.com]
Sent: 18 December 2018 06:20
To: Bain Investigation
Subject: [EXTERNAL] Bain SARS investigation

Dear Baker McKenzie team.

I am a former Bain employee (2015-2018). Though primarily based in Washington, DC during my Bain tenure, I spent September 2016 through April 2018 in the Johannesburg office. I was staffed to a SARS case from September 2016 through early February 2017 while I was a second-year Consultant.

I have been following closely the developments of the SARS investigation, and I have intentionally delayed this email while the bulk of that investigation progressed. Having just reviewed the Commision report and Bain's response, I am reaching out with additional information. While this is likely less material than other information received by Baker McKenzie, I am hesitant to reach out to former colleagues directly for fear of damaging the relationship.

When I was staffed to the SARS case, it was almost immediately apparent to me that we were not, in fact, creating any value for the client and that the clients were largely uninterested in us. I soon got the sense that our work there was effectively a sham; something was simply not quite right, though I could not have conceived of the extent of the misbehavior. That our work was not real surprises no one at this point, but what is most important is that I tried to communicate this to management. I shared these sentiments with Eric Maltiel (Manager), Warren Chetty (Manager), and, perhaps most importantly, Alexis Bour (Partner) multiple times from November 2016 through January 2017. In early December 2016 I shared specifically with Eric and Warren that I felt the "work" we were doing was unethical and that I felt my personal ethics were being compromised by the position I was put in while serving on this project. I also shared this concern with a partner in Washington, DC in December 2016 and again in January 2017. I further voiced these concerns with a staffing manager in the Johannesburg office when I requested to be removed from the project in January 2017.

I share this information because I hope that, as part of its upcoming reforms, Bain creates some kind of procedure for junior- and mid-level employees to share ethical concerns. I told my supervisors that something wasn't right, and I told the partner that something wasn't right, and I was brushed aside. If there had existed some formal method to share these concerns with an oversight body in 2016, it's possible that neither Bain nor SARS would be in its current position. My complaints were dismissed then, but in the future I am hopeful that someone else's concerns will be taken more seriously so as to protect South Africa and other countries Bain may serve through its public sector practice.

I am not sure if this is the right way to share this information, or if there is another team with which I should be in contact. I apologize if this information is a distraction. Please feel free to reach out if I can provide any additional information.

Thank you.

--

Katherine Feeney

[redacted]

feeney.katherine@gmail.com

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ANNEXURE "AW128"

AW128

atholwilliams@hotmail.com

From: Bain Investigation <Bain.Investigation@bakermckenzie.com>
Sent: 06 November 2018 08:51
To: Marlon Bowman
Cc: Bain Investigation; atholwilliams@hotmail.com
Subject: RE: [EXTERNAL] BAIN-SARS Investigation

Dear Marlon,

Thank you for your email, which we are in the process of reviewing.

If you are amenable to discussing the issues raised below with us in more detail, please let us know if you would be available in the next two weeks and what times and dates would generally work best for you.

Kind regards

Darryl Bernstein
Partner
Baker & McKenzie
1 Commerce Square, 39 Rivonia Road, Sandhurst
Johannesburg, 2196, ZA
Tel: +27 11 911 4367
Switchboard: +27 11 911 4300
Fax: +27 11 783 4177
Cell: +27 83 781 5907
darryl.bernstein@bakermckenzie.com

Baker McKenzie.

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From: Marlon Bowman [mailto:marlon.bowman@gmail.com]
Sent: 05 November 2018 22:26
To: Bain Investigation
Subject: [EXTERNAL] BAIN-SARS Investigation

Hi Athol and Baker-Mackenzie team,

My name is Marlon Bowman and I was a Bain employee from Nov 2015 to Aug 2016. For that duration of my time at Bain I was 100% assigned to the SARS case and worked on three work-streams:
1) From Nov - Feb, as a C1, I was assigned to a continuous improvement work stream where I found cash flow savings for SARS by building a debt equalisation model
2) From Feb to Apr, still as C1, I was the supporting consultant to Sumeet Jain on the SARS org restructuring project with Ronald (surname I forget)
3) From Apr to Aug, still as a C1, I was the lead consultant on the SARS org restructuring working closely with Luther Lebelo
For the entire duration, my Manager was Onyinye Ibeneche Avbovbo (sp?) and Alexis Bour was the principal.
I left the organisation in Aug/Sep 2017 once it had been confirmed that I had again been assigned to a SARS work stream.

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I have wracked my brain to see if any specific events stand out from my time on the case and to the best of my knowledge they are summarised below. Should you require further information from me, please let me know

- SARS was my first case as a consultant but it was obvious early, even on the debt equalisation project, that senior SARS staff were highly skeptical of our presence at their offices. This was generally explained away as tension related to the org restructuring.
- Toward the end of the year (2015), the story began making the front page news. I was responsible for sharing articles with the broader team related to global tax coverage and SARS in the news. I shared articles by Pauli van Wyk and Marianne Thamm with the team. I remember feeling the leadership response at the time felt inadequate and arrogant and in general, I was discouraged from sharing these stories in my role beyond the first 2-3 emails where I did so. The discouragement came from both senior and junior team mates. There was a general sense that I "shouldn't go there", especially as a junior employee.
- The org restructuring phase of the project work was also challenging. It was obvious that summit, Luther and myself were tasked to land the new organisation over a 3 month period. Senior management resistance was obvious through the org work but again the perspective landed upon me was to power through and get it done.
- I had joined Bain as an MBA hire and had made it clear to the organisation that I had selected Bain and not its competitors because of its private sector orientation. I raised this with Alexis Bour in February and requested to be moved but was then handed the lead on the org work as Sumeet rolled off the case. As a junior member of the organisation, I did not feel I had sufficient tenure to challenge my placement. There was a general feel that Bain needed as many South Africans as possible working on SARS.

I would say that there was a general team awareness that the SARS case was tough and difficult work that wasn't that intellectually challenging and that strength of character was required to deliver your work stream goals. Without any other frame of reference, it was difficult to understand if this was worse than other cases. And even with hindsight, I don't think I can say this was that much harder/more painful than other work on the floor at the time.

However, with hindsight, what does stand out to me was the arrogance with which the Moyane-Zuma-Bain links were dismissed and the general acceptance that came from the floor as the project grew ever more work streams. The feeling that "we were smarter than them" and " we will have our facts ready if they come for us" was one I definitely felt was present throughout my time at Bain. I also felt leadership were dismissive of the reports when they first surfaced at end 2015.

I am unsure if these recollections will add any value to your investigation but if I am able to help in any way, please let me know.

kind regards,
Marlon Bowman
[redacted]

ANNEXURE "AW129"

SARS-01-627
WW1-AW-617

Diagnostic summary: a strong case for change for SARS

TAX GAP

1

- Collections steady at ~26% of GDP however **SA tax gap estimated in range of ~R120-200B**
  - Strong focus on compliance but less on overall collection, resulting in gaps in several key tax categories
  - HNWI, Large Corporate & SMEs (cash economy) appear largest – in part due to insufficient sophisticated capability
  - Customs & excise have been neglected and perceived to lack effective enforcement capability

OPERATIONAL PERFORMANCE

2

- If **SARS reached UK cost/income ratio** by growing revenue only, it would have collected **R150B more**
  - 0.97% cost/income is in mid-range of benchmarks but employees per active taxpayer ratio is higher than most
  - Opportunity to save ~R400m through efficiency improvement, to reinvest in enforcement to boost revenue
  - Verification activities boost collections 2.1% vs benchmark ~4% and ~75% of compliance audits lead to no action
  - Despite ~55% PIT e-filing, branch visits (7.2m) average >1 per taxpayer – most expensive channel for SARS

EASE & FAIRNESS

3

- **Taxpayers still experience poor service and red tape and perceive lack of fairness** at times
  - Channel integration is poor and taxpayer experience varies significantly across channels
  - SMEs spend 200 hours/year on tax compliance vs 100 for best benchmark and administrative burden increasing
  - Customs effectiveness rated in bottom quartile vs international peers
  - Aggressive communications, long payment delays and high profile settlements contribute to negative perceptions

ORG. STRUCTURE & GOVERNANCE

4

- **Organisation not structured for maximum effectiveness and major gaps in governance**
  - Senior management believe role definition, structure and leadership cohesion inhibit effectiveness of SARS
  - 70% of employees and multiple functions (customs, channels, IT) concentrated under operations
  - Governance policies either not in place or not implemented; essential separations of power mostly not in place

PEOPLE & LEADERSHIP

5

- **Senior employees have low belief in SARS** (NPS -18%) and **strong appetite for change** (3.3/4)
  - 25% of senior management would recommend SARS as a place to work whilst 43% would be actively discouraging
  - Performance management ineffective: 30% of employees get highest rating vs 5% in a normal distribution
  - Senior management believe strongly that SARS needs to change to be effective in the future

AW 1389

SARS-01-628
WW1-AW-618

ANNEXURE "AW130"

WW1-AW-620

The Bain team brings considerable experience and expertise to the table

	VITTORIO MASSONE	FABRICE FRANZEN	NEVILLE EISENBERG	ALEXIS BOUR
Position	• Managing Partner • Head of Johannesburg Office	• Partner • Leads Bain Financial Services practice in Sub-Saharan Africa	• Principal • Member of Bain's Africa Financial Services Practice	• Principal • Member of the Government and Industrial Goods and Services practice
Relevant Expertise	• 20 years of consulting experience. • Media/Telecom and Industrial Goods sectors • Deep and broad experience in Government institutions and SoEs (central procurement agency, postal service, national telecommunications incumbent operator) • Operated as a Client Head in various strategic transformations, reorganizations, growth strategy, mergers and acquisitions, and performance improvement cases	• 16 years of consulting experience in Europe, Africa and Australia • Has conducted several strategic planning an operating model redesign for banking institutions • Has recent experience working with South African Development Finance Institutions - DBSA strategy and organisation review (2012-2013) - IDC Prioritisation and organisation project (2014)	• 4 years at HM Treasury (London) • 3 years supporting private sector and broad economic development in emerging markets, 2 in Africa • 7 years' consulting in Europe and Africa in FS & public sector • Relevant projects include: - DBSA strategy and organisation review (2012-2013) - IDC Prioritisation and organisation project (2014) - Nigerian bank transformation - UK public sector agency diagnostic & transformation programme (x2) • Formerly with McKinsey & Co	• 12+ years of experience • Main expertise: strategy development, organizational change and performance improvement incl. - Defining strategy, and supporting launch of results delivery office - Full potential transformation - Organization restructuring and process/headcount optimization - Operational performance improvement • Varied public and private sector experience (incl. Ministries, Development Agencies, Public Authorities)
Education	• La Sapienza University, Rome • MBA, Bocconi University	• Business Administration, Solvay Business School, Belgium	• MA Physics & Philosophy, Oxford University, UK	• INSEAD, MBA • Bordeaux Business School / WHU – Otto Beisheim School of Management, BBA

This information is confidential and was prepared by Bain & Company solely for the use of our client; it is not to be relied on by any 3rd party without Bain's prior written consent

SARS-01-630

ANNEXURE "AW131"

AW131

To: Bour, Alexis[Alexis.Bour@Bain.com]; Beaumont, John[John.Beaumont@Bain.com]; Fajardo, Catalina[Catalina.Fajardo@Bain.com]
From: Clearkin, Peter
Sent: Fri 6/3/2016 2:07:47 PM (UTC)
Subject: RE: RED FLAG - Nomfundo...

Decision on this was taken, largely by Vittorio.

We have communicated it to the client.

I agree it is the wrong answer, on many dimensions, but given process that was followed, it is hardly surprising.

Peter Clearkin
Partner
Bain & Company, Inc. | 10 The High Street | Melrose Arch | 2076 | Johannesburg | South Africa
tel: +27 11 012 9109 fax: +27 11 012 9101 mobile: +27 82 303 0042
mailto:Peter.Clearkin@Bain.com | web:www.bain.com

From: Bour, Alexis <Alexis.Bour@Bain.com>
Date: Friday, 03 Jun 2016, 4:02 PM
To: Beaumont, John <John.Beaumont@Bain.com>, Fajardo, Catalina <Catalina.Fajardo@Bain.com>, Clearkin, Peter <Peter.Clearkin@Bain.com>
Subject: RE: RED FLAG - Nomfundo...

He is nowhere close to her knowledge on customs. Cannot compare.

> **From:** Beaumont, John
> **Sent:** Friday, June 03, 2016 3:54 PM
> **To:** Bour, Alexis <Alexis.Bour@Bain.com>; Fajardo, Catalina <Catalina.Fajardo@Bain.com>; Clearkin, Peter <Peter.Clearkin@Bain.com>
> **Subject:** RE: RED FLAG - Nomfundo...
>
> What about swapping Sumeet for Nomfundo ... out of the two of them wouldn't we rather retain Nomfundo?
>
> > **From:** Bour, Alexis
> > **Sent:** Friday, June 03, 2016 3:49 PM
> > **To:** Fajardo, Catalina <Catalina.Fajardo@Bain.com>; Clearkin, Peter <Peter.Clearkin@Bain.com>
> > **Cc:** Beaumont, John <John.Beaumont@Bain.com>
> > **Subject:** RE: RED FLAG - Nomfundo...
> >
> > Yes, we have had many back and forths on this. Agree with the risk, but we basically have no choice. We are selling 10 people with only 2 of them (Warren and Nom) having deep knowledge about the topic. (even with that the client might react badly to the team line-up)
> >
> > We are trying to mitigate as much we can in our conversations with her:
> > - We promised 6-8 weeks then organize handover (we would sensitize client about the fact that she will be off in the first weeks)
> > - She will be given an adjacent topic to work on so she develops new skills while the rest of the team taps in her knowledge
> > - She will be given an AC to manage which will be new for her
> > - I told her to come to me whenever she wants if she needs anything...
> >
> > I am available to chat from 4pm.
> >
> > > **From:** Fajardo, Catalina
> > > **Sent:** Friday, June 03, 2016 3:28 PM
> > > **To:** Clearkin, Peter <Peter.Clearkin@Bain.com>; Bour, Alexis <Alexis.Bour@Bain.com>

ANNEXURE "AW132"

AW132406

To: Carr, Richard[Richard.Carr@Bain.com]
Cc: Massone, Vittorio[Vittorio.Massone@Bain.com]
From: Meehan, Paul
Sent: Tue 11/18/2014 3:09:10 PM (UTC)
Subject: FW: (No Subject)
20141118 Project High Ground - RFPr - Transformation Office.pdf

Richard – lets flag this on our OH call shortly....given the urgency we will need to sweat manager and principal options quickly.

Thanks,
Paul

From: Massone, Vittorio
Sent: Tuesday, November 18, 2014 2:39 PM
To: Meehan, Paul
Subject: FW: (No Subject)

Paul,

Sorry to bother – the rfp for that famous Separation project is out and actually includes the National Broadband plan and other staff (rfp attached). So it's huge. . We are putting 2 teams (maybe one now if we don't have the 2 and one added in Jan) on this, so easily this is 5-8M alone next year, as well as the most complicated project.

As much it is "designed for us" (and allowing for a piece of the work to be done by the Deloitte Regulatory team), we need to make sure they feel comfortable with the team and our expertise (and we know that we can't claim to have done much on the specific topic). The formal request is for bio and 2 managers for stream and then can decide which one.

This is to say that that discussion on the Principal to allocate to this project is absolutely key, not only on the delivery but also on the "selling"

They want to start next week and the proposal – with cvs etc - is due Thursday

See below correspondence with Antonio. If the Principal from Spain is not available and there aren't alternatives, we are really at risk (diplomatic and financial...)

Thank you for whatever you can do on this

Best,
Vittorio

From: Martinez, Antonio
Sent: Tuesday, November 18, 2014 2:22 PM
To: Massone, Vittorio
Cc: Bhak, Alex
Subject: RE: (No Subject)

Vittorio,
I need a bit more time as I have yet to finalize discussions with Javier and Pablo. I will revert asap.

Saludos

-----Original Message-----
From: Massone, Vittorio
Sent: Tuesday, November 18, 2014 11:15 AM GMT Standard Time

ANNEXURE "AW133"

AW133

Privileged & Confidential
Attorney Client Privilege
Draft dated 10 Oct 2019

SARS External Communications - Legal Guardrails

1. With respect to Bain South Africa's work for SARS, **do not admit to any criminal wrongdoing on the part of Bain**. It's ok to talk about Bain mistakes, regrets about not walking away sooner and so on, but:

   a. Do not admit to any corruption or improper influence committed by any Bain employee in connection with Bain South Africa's work.

   b. Do not admit to any fraud, bid rigging, collusion or other misconduct in violation of South Africa's public procurement laws, even if minor ("i.e. don't say "*there were minor procurement issues, but that's it*").

   c. Do not admit to the use of any third party agents to carry out illegal or improper schemes on behalf of Bain. If raised, OK to talk about Ambrobrite in terms of the fact that we regret hiring a politically affiliated advisor and have since changed our global policies to prohibit it and use the opportunity to inform them that our contract with Ambrobrite expressly forbade them from any such behavior.

   d. Do not admit to any *quid pro quo* arrangements with any party to obtain or retain work on behalf of Bain. If you are asked about the CEO coaching, use that as an opportunity to expressly deny there was such an arrangement and inform them that, because Bain does a lot of CEO coaching of this kind, Bain's global policies on executive coaching expressly forbid any expectation of a *quid pro quo*.

   e. Clarify that Bain did **NOT** return the fees earned for the SARS work because of any finding or admission of legal wrongdoing. Per Bain's public statements, the reasons for returning the fees were based on the belief that its work "fell short of [Bain's] operating principles" which was later clarified to mean that Bain believed its work on the organization structure at SARS did not achieve positive results for the client.

2. When telling people "what happened at SARS", with respect to Baker McKenzie's investigation into Bain South Africa's work (for purposes of protecting the Attorney Work Product and Attorney Client Privilege):

   a. Do not state that you have seen, received or been involved in the preparation of any Baker McKenzie work product (for example, draft or final investigative findings reports, interview summaries, or legal opinion memoranda) – although note 2f below on this point

   b. Do not state that you have had any role or involvement in overseeing or directing Baker McKenzie's investigation.

   c. Do not commit or offer to provide copies of investigative reports or other Baker McKenzie or Bain Legal work product or materials.

   d. Do not disclose the details of any conversations you may have had with Bain Legal or Baker McKenzie.

e. **Remember: facts are not privileged so you can freely tell Bain's story, but the Baker McKenzie investigation work product and the legal advice it contains is only privileged so long as its confidentiality is maintained.**

f. We assume that senior Bain SA management or members of the Bain Africa Oversight Board will be the ones holding these meetings. In this capacity, they have seen the BMK report and it would be surprising to any outsider if they said they had not. Therefore, for these senior 1:1 meetings, it would also be OK (and probably more credible) for them to say something like "*I have obviously seen those reports and I have to be careful because they are legally privileged documents, but I am happy to tell you what happened because facts aren't privileged and what happened is this.*"

3. Regulator/Authority Engagement:

a. Do not disclose that any discussions with US enforcement authorities (DOJ/SEC) is taking place.

b. Do not speculate on the outcome of any ongoing investigations by authorities in South Africa.

c. If asked, just say "*I don't think the lawyers would want me to talk about that*".

ANNEXURE "AW134"

AW134

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 28 September 2018 22:01
To: Athol Williams
Subject: RE: 180926 - South Africa Investigation Plan (CK comments) (2).docx

Hi Athol

No worries. Basically:

- we self-reported a couple of weeks ago
- the reason to self report is primarily because you get an up to 50% discount on the fine if you report yourself before it is too late (too late is essentially the media already having broken the story and you having no option but to turn yourself in)
- Stuart made the decision, but I think what triggered it was all those rumours about cattle etc. The DOJ are known to read the newspapers and call up companies that are getting bad press so see what's going on
- the DOJ are happy to let a trusted external firm such as BM do the legwork on the investigation, but they expect a thorough job to be done with doc review, interviewing third parties and so on. The hammer they wield is that they step in if they think it's a serious matter and/or BM are not doing a proper job.
- The DOJ will mostly be interested in the quid pro quo, payments to Duma etc., because those are US law offences under the Foreign Corrupt Practices Act. They probably won't be too interested in domestic politics, save where it involves known corrupt people or corrupt acts. Zuma will get their attention, I'm sure.
- As contrast, the DOJ probably won't be thinking about state capture and deliberate schemes to destroy SARS, which is obviously a key focus of the Commission. That's why I suggested we cover those topics in an interim report for the Commission that has a narrower document review scope but wider questions that are more relevant to what we think the Commission wants to know
- The DOJ also expects the company to suggest and implement remedial measures in order to avoid a repeat, so I imagine you can expect to be involved in that down the road
- In short, the DOJ process will be slower, more thorough and less public than the process the Commission is running. If I were the Commissioner, I'd be more than happy to piggyback in a DOJ-standard investigation. I obviously don't want to speak for the judge, though.

Other than that, I don't know too much about it so far as it is early days. Although their investigation process is reasonably predictable, this is our first rodeo with the DOJ. Luckily Darryl and Reagan do it all the time. It's a great time to be in the investigations business in South Africa, I think...

Have a good weekend

Chris

From: Athol Williams <atholwilliams@hotmail.com>
Date: Friday, 28 Sep 2018, 9:16 pm
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: Re: 180926 - South Africa Investigation Plan (CK comments) (2).docx

Hi Chris, replying only to you.
Will tackle in the morning.
Have heard reference to DoJ investigation but don't know much about it. What is the quick summary?
Athol

Sent from my Samsung Galaxy smartphone.

ANNEXURE "AW135"

AW13554

atholwilliams@hotmail.com

From: Athol Williams
Sent: 10 January 2020 17:12
To: Moolman, Tiaan
Cc: Cottrell, Dale; Hutchinson, Greg; Senior, John; Kennedy, Chris; Hagey, Russ; Min, Stuart
Subject: RE: Your press statement of 20 December 2019

Thanks Tiaan.

We spoke in September, not the fall, must be a US colleague who wrote your email for you.

Someone among this group approved the statement which continues to be misleading. It proves again, as I've said to you and Dale, this group, let alone the rest of Bain staff, does not have the full facts of what transpired during my tenure so are comfortable accepting the false claim that I acted with malicious intent.

Best
Athol

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 10 January 2020 16:23
To: Athol Williams <atholwilliams@hotmail.com>
Cc: Cottrell, Dale <Dale.Cottrell@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>; Senior, John <John.Senior@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Hagey, Russ <Russ.Hagey@Bain.com>; Min, Stuart <Stuart.Min@Bain.com>
Subject: RE: Your press statement of 20 December 2019

Dear Athol

Thanks for your message. You're correct that I reached out to you in the fall of 2018 to play an advisory role in relation to SARS. I didn't see the statement of the 20th before it was published and we have now amended the statement on our website.

I also want you to know that we didn't share this with any media or disseminate it beyond just posting it on the local SA website.

Kind regards
Tiaan

From: Athol Williams <atholwilliams@hotmail.com>
Date: Thursday, 09 Jan 2020, 6:52 pm
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Cc: Cottrell, Dale <Dale.Cottrell@Bain.com>, Hutchinson, Greg <Greg.Hutchinson@Bain.com>, Senior, John <John.Senior@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>, Hagey, Russ <Russ.Hagey@Bain.com>, Min, Stuart <Stuart.Min@Bain.com>
Subject: Your press statement of 20 December 2019

Tiaan,

ANNEXURE "AW136"

AW136

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 19 September 2018 12:01
To: Moolman, Tiaan; Hutchinson, Greg; Kennedy, Chris
Subject: Update from Athol

Dear Tiaan, Greg, Chris

Am sending a status update.

Overview

1. I've been engaged at Bain for 12 days
2. My sense is that there is a genuine general intent to uncover the truth of what transpired during Bain's engagement with SARS but this intention has not been fully executed (yet). Execution often lags intention because execution requires time and resources, however, my impression is that there are other factors that contribute to this lag:
    a. There is no internal commonly shared and supported "Bain view." It is apparent that the VM affidavit of 17 September 2018 does not represent the "Bain view"
    b. There are different scopes of truth, i.e. different views to what we are telling the truth about.
    c. There are possible kinks in the unity of the Bain SA leadership and senior staff which slows down progress.
3. Bain needs to satisfy itself that there is full disclosure as outlined below – my sense is that we have two strikes against us in the Commissioner's mind ...

The Commissioner

1. The Judge has made it very clear that he will not tolerate Bain withholding information. I have seen no evidence of information being withheld but this is no guarantee since I have not seen everything that Bain knows.
2. My impression is that Bain faces massive reputational risk if there is even the slightest hint in the Judge's mind that information is being withheld.
    a. Judge to me: "One more incident of withholding information, or obfuscation or evasion, and their [Bain] reputation will be in desperate trouble"
3. As we'd expect, the Commission has information beyond what Bain has supplied – which reinforces the need to develop the comprehensive Bain view and consider sharing that with the Judge:
    a. Judge to me: "... when these things get out to the public, one finds further information coming to the fore, and I am not sure Bain fully understands that"
4. Bain is not the ultimate target of the inquiry, the Commission wants those who really masterminded the state capture but my read is that the Judge feels Bain may be protecting the real villains:
    a. Judge to me: "if there is indeed rot elsewhere, then Bain has the choice of exposing it, or not complaining if it falls by default upon themselves."
5. So Bain has to answer: Have we declared everything we know about everything that transpired and all those internally and externally who were involved?

Nkandla

1. Whether or not VM went to Nkandla is a hot issue. Where he met JZ ought to matter less than what was discussed but it is worth ensuring that this is not something that creates a surprise. My concern stems from:

   a. A former Bain partner has told me that VM was at Nkandla
   b. A journalist told me that she has a source who is a former Bain "Senior Manager" who says he/she was present at Nkandla with VM.
2. VM's affidavit states that he was not at Nkandla
3. I have no facts to defend or refute either view.

My role

1. Bain created an expectation (to the public and the Commission) of the role that I would play as chair of the oversight committee that had been created consisting of senior Bain partners and outside directors.
   a. Judge to me: "... the Commission is capable of calling upon you to disclose everything you see or hear in the position to which you have been appointed."
2. Bain has not fulfilled this expectation. This is problematic because my role was created as a powerful indication of transparency and display of intent to get to the full truth. Not fulfilling this role could potentially cast doubt on Bain's motives. It certainly has caused me concern because my presence could be considered farcical.
3. Notwithstanding a very productive discussion with GH on 18 September to scope out my role and move towards a contract, as of today I do not have a signed contract (other than a letter of intent) and no agreed upon terms of reference. I have no assurance from Bain of protection should I suffer legal liability or costs which may stem from my involvement, etc.
4. This situation leaves me exposed and presents a major exposure for Bain. By my measure this is poor governance, which ironically, is part of my hypothesis of what led to the situation we're in. Again, intention hasn't been matched with execution.
5. I feel let down by this uncertainty (not directed to any person at Bain) because I stepped in to help with very little to gain; the least I would have expected is urgency around gaining clarity on expectations and mitigation of my risk. Hopefully by the end of next week this gap will be closed.

Best regards

Athol

ANNEXURE "AW137"

AW137

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

be many, but of the 23 files submitted to the Commission, no more than a handful of documents were relevant.

[18] What is more, according to the report, 'while Mr Massone would certainly have had the most to offer the Inquiry', there are 'other senior Bain SA staff who could have shed some light on certain matters which may have been valuable to the Inquiry'. In fact, we are told in the report, the Bain investigation has conducted 'extensive interviews with key individuals who were known to be involved with the SARS projects or whose names surfaced during the document reviews', and 'the investigating team intends to conduct interviews with at least 17 individuals'. So much for the statement by General Counsel from Boston that 'at this time Bain believes there is no one who can provide meaningful information' to the Commission'. Even if some came to light only after that was written, it is apparent from the email correspondence, and their supporting affidavits accompanying that of Mr Massone, that at least Mr Stephane Timpano and Mr Fabrice Franzen, who were deeply involved in the project, and are still partners at Bain, could have provided 'meaningful information', which Bain is now withholding from examination by the Commission.

[19] While the Commission has not yet heard the full truth from Bain, the evidence before it tells a story that is disturbing enough.

[20] The affidavit of Mr Massone reveals that SARS was one of the first 'targets' in a campaign by Bain to get access to business in the public sector. Mr Massone met many times with Mr Zuma, and no less than seven times with Mr Moyane, before it bid for the contract. It reveals that Bain had planned in advance for the restructuring of SARS even before it had set foot in the organisation. And it reveals that the Minister of Finance, and the Bid Evaluation Committee and Bid Adjudication Committee of SARS, were misled by non-disclosure, which could amount to fraud.

- If resolution cannot be reached, Mr Williams has the liberty to share his concerns with the Commission'

[14] That is an extraordinary approach to be adopted by a major international consultancy that claims its commitment to transparency. It is not for Mr Williams to do the right thing for South Africa – though I have no doubt he will strive to do so – it is for Bain itself to do the right thing. And it is not for Bain to interpose Mr Williams between itself and the Commission to adjudicate whether Bain is behaving transparently towards the Commission. It is for Bain to demonstrate to the Commission that it is behaving transparently, which is clearly not the case. Indeed, since declining the opportunity to appear before the Commission, Bain has not engaged with the Commission at all.

[15] Should Bain wish to do the right thing, then it should be furnishing the Commission with all information in its possession, which includes the knowledge of its employees or partners, so that the material may be examined by the Commission in front of the South African people, and not confining its examination to one behind closed doors, with Mr Williams adjudicating whether the truth has been told.

[16] I must make it plain that any views Mr Williams might have do not carry any endorsement from the Commission. The Commission will decide for itself whether the truth has been told, and the way Bain has gone about things gives us no confidence that the full truth will indeed be told. Nothing makes it more plain that Bain has withheld, and continues to withhold, information from the Commission, than the preliminary report prepared by Mr Williams, from which it is apparent that even he has yet to be told where the truth lies.

[17] According to the report, Bain has located 3 000 documents that are relevant and 114 it has classified as 'heightened relevance documents', of which 'many, but not all' are said to have been submitted to the Commission. I am not sure what is considered to

ANNEXURE "AW138"

AW138

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 22 September 2018 10:51
To: Hutchinson, Greg; Moolman, Tiaan; Kennedy, Chris; Min, Stuart
Subject: Update from Athol
Attachments: Information Sharing.pptx

Greg, Tiaan, Chris, Stuart

1. I have not seen any of the letters to the Commission relating to VM's planned non-attendance at the Inquiry on Tuesday
2. I have established through email that Judge Nugent has received such letters
3. He has indicated that he has asked VM's lawyer to appear before the Inquiry on Tuesday to explain VM's absence
4. The Judge seems to have reached the end of his patience: Judge to me this morning: "I am not at all satisfied with the way Bain has conducted itself towards the Commission."
5. I have asked the Judge for specifics on his dissatisfaction and what Bain can do to remedy the situation.
6. I have indicated to the Judge that I have reservations about the scope of the Bain investigation to date but that I will seek to satisfy myself on this matter. The attached illustrative slide explains conceptually the source of my doubts.

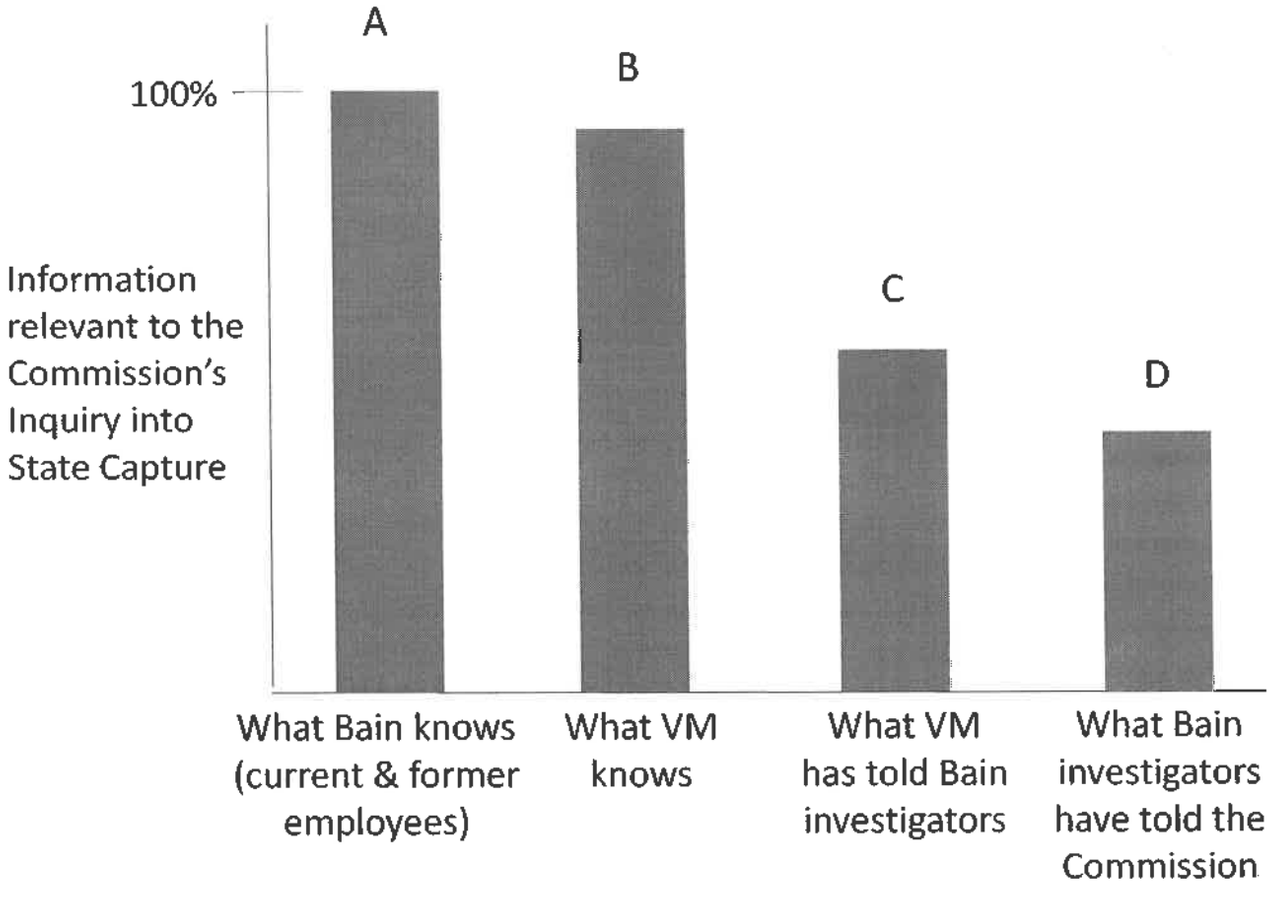
Happy to discuss
Best
Athol

WW1-AW-641

AW138

Sharing of Relevant Information with the Commission

Illustrative



- Bain investigators have presented what they assert to be the full scope of what Bain knows – this view asserts that A = B = C = D
- While it is reasonable to expect A = B, it is possible that Bain might know a bit more than VM; similarly B could be much larger than A
- Increasingly the Bain investigators are establishing that B > C
- While we would expect C = D, it is possible that some sensitive information is being withheld from the Commission
- If what VM hasn't told Bain investigators (B-C) can be discovered within Bain, then a true claim of cooperating with the Commission would require Bain investigators to gather the full picture from within Bain, including A-B if not equal to zero
- Furthermore, Bain would need to make deliberate decisions about whether C=D.

SARS-01-651

ANNEXURE "AW139"

AW139

TABACKS
ATTORNEYS

Our Ref **MASS1-LV1**

Email **lvs@tabacks.com/nl@tabacks.com**

Date **21 September 2018**

The Commission of Inquiry into Tax Administration and Governance by the
South African Revenue Service
Attention: The Commissioner: Honourable Retired Justice of Appeal Nugent
Email address: commission@inqcomm.co.za

Dear Judge

RE: MR VITTORIO MASSONE

1. The Commission's Regulation 6(11) directive dated 8 September 2018 to Mr Massone bears reference.

2. We have been consulting with Mr Massone over the past week for purposes of obtaining all the documentation requested by the Commission.

3. Mr Massone currently resides in Italy, having recently relocated from Dubai. For purposes of this inquiry, he has been commuting to South Africa. He was in South Africa during the week of 10 and 17 September 2018 and returned to Italy for the weekend of 10 September 2018 and likewise, was scheduled to return to Italy for the weekend of 17 September 2018.

4. For purposes of this inquiry, Mr Massone returned to South Africa on Monday, 17 September 2018, was scheduled to fly out of South Africa to Italy on 20 September 2018 and return on 24 September 2018.

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An [illegible] MG Fazi A Fuccaro NE [illegible] Istanbul
Mr Makoena MF Schepisi Sat Tumbo
Consultant M Tabacks

5. During the course of our consultation with Mr Massone on Thursday, 20 September 2018, we became concerned about Mr Massone's health and his state of mind. This consultation was abruptly interrupted to procure an urgent consultation for Mr Massone with a medical practitioner.

6. Mr Massone was duly examined by Dr Longano from the Melrose North Medical Centre on Thursday afternoon. I was present with Mr Massone for the first part of his consultation and waited for him at Dr Longano's reception area while he was being assessed for the remainder of approximately two hours. Dr Longano recommended that Mr Massone should receive immediate treatment and that such treatment should include both psychotherapy and prescribed medication. Dr Longano was made aware of the present inquiry and that Mr Massone is required to present himself on Tuesday, 25 September 2018 until excused. Dr Longano stated that Mr Massone is not currently fit to submit himself to examination before the inquiry. He has returned home to Italy last night (as scheduled), to be with his family. Mr Massone will receive the prescribed treatment in Italy and we will be kept abreast of his progress.

7. We expect to receive a medical report by Dr Longano shortly. We will immediately transmit a copy of that report to the Commission once in hand.

8. Consequently, we ask the Commission to excuse Mr Massone from being present at the proceedings on 25 September 2018.

9. The nature of Dr Longano's diagnosis is sensitive. We, therefore, also request the Commission to treat the details thereof confidentially in the interests of Mr Massone's dignity.

10. We are mindful that the Commission has deadlines. To assist the Commission, given these unfortunate and unforeseen events, we will respond to all requests for further information and documents that the Commission may seek from Mr Massone.

11. In the interim, we have agreed with Bain & Company and its legal representatives, Baker McKenzie, that it will provide the documents in its possession, requested from the Commission by close of business today.

12. Please:

12.1 confirm that Mr Massone is excused from being present at the inquiry on 25 September 2018; and

12.2 advise whether Mr Massone's legal representatives are required to attend at the commencement of the inquiry on 25 September 2018.

Yours faithfully

pp

L van Staden

MERVYN TABACK INC.

ANNEXURE "AW140"

AW140

atholwilliams@hotmail.com

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: 10 November 2018 01:26
To: atholwilliams@hotmail.com
Cc: Bernstein, Darryl; Kennedy, Chris
Subject: Re: [EXTERNAL] Two bits of information

Thanks Athol. As to the first point, this isn't terribly surprising to me but mental illness of course sometimes does not manifest itself physically at all times. In any event, we're interested primarily in ensuring his cooperation and interviews in the investigation - so we will know more Monday and Tuesday.

Although this will not be required for purposes of our investigation, the company might consider whether it wants to hire a private investigator to confirm that he is in fact going to the hospital every morning and in the condition that he states he is in. I'm not in a position to judge that, but if the company is concerned that he might be lying about this to avoid deeper cooperation they may choose to do that before paying him his severance.

His lawyers now say he needs a 10 minute break each hour for the two hours will have with him on Monday/Tuesday afternoon. Start time with him is getting shorter and shorter.

Thanks, Reagan

On Nov 9, 2018, at 12:52 PM, Athol Williams <atholwilliams@hotmail.com<mailto:atholwilliams@hotmail.com>> wrote:

Gents,

FYI. I had 2 pieces of info shared verbally today by Bain staff:

1. A consultant told me that she was at the same restaurant as Vittorio on 21 September where she saw him looking very healthy and in fact in a festive mood. I thought he was back in Italy by this date but may have it wrong.
2. A consultant who worked on the SARS project says that during Phase 1, it was known within the Bain team that Bain overstated the SARS revenue potential that could be derived from the transformation project. She seemed to think that, at first, this may have been an issue with the SARS data but when the data issue was resolved and it became known to Bain that the revenue potential was much smaller than what they presented, the Partners continued with the false number.

Regards
Athol

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit <https://eur01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C7fae0e4a34b043fbb05008d6469aecc9%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636774028536596809&sdata=huMpORK2XMhwIlD1fWNZX7gIXfyaUzYzHwRmUuXNwl4%3D&reserved=0> https://eur01.safelinks.protection.outlook.com/?url=www.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C7fae0e4a34b043fbb05008d6469aecc9%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636774028536596809&sdata=1SUmlogMCt4smILkwl3vipgNNIEv90UI0lNTazCRTj8%3D&reserved=0<https://eur01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C7fae0e4a34b043fbb05008d6469aecc9%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636774028536596809&sdata=huMpORK2XMhwIlD1fWNZX7gIXfyaUzYzHwRmUuXNwl4%3D&reserved=0> for other important information concerning this message.

ANNEXURE "AW141"

AW141

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

a representative to appear before the Commission to explain its conduct, having been cautioned that its failure to do would necessitate the Commission drawing its own inferences as to what had occurred, but the opportunity was declined. The explanation proffered by its General Counsel for declining the invitation was that 'at this time Bain believes there is no one other than Mr Massone who can provide meaningful information. Therefore, no other representative of Bain & Co will be attending the hearing on 22 October2018'. That was itself untrue.

Bain's Approach Towards the Commission

[12] Meanwhile, Bain had commenced its own inquiry, and announced it as follows in a media statement:

'To reinforce the independence of the investigation and Bain's commitment to addressing any new facts, we have established an oversight committee made up of senior global Bain partners and outside directors. Athol Williams, a Bain alumnus and a respected independent advisor, will chair this committee on an interim basis. He is a distinguished academic in the area of corporate responsibility, a corporate leader and lifelong social advocate. Bain's contract with Mr Williams calls for him to do what is right for South Africa, without restrictions' (emphasis in the original).

[13] As it turned out the committee was not established but Mr Williams was contracted to oversee Bain's investigation. The Commission has had some useful exchanges with Mr Williams, and he favoured me with a draft preliminary report he had prepared, in which he said his role was focused on aiding the Commission, which was enabled by the following clause in his contract:

'While engaged, should Mr Williams at any time determine that Bain is not behaving transparently with the Commission, Mr Williams will:

- First raise his concerns with the Bain South Africa Interim Office Head, Mr Tiaan Moolman, and seek resolution in good faith

ANNEXURE "AW142"

AW142

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 28 September 2018 15:32
To: Min, Stuart; Athol Williams; Bernstein, Darryl; Demas, Reagan R
Subject: RE: 180926 - South Africa Investigation Plan (CK comments).docx

Thanks Stuart

Darryl/Athol/Reagan - I wonder whether the way to thread the Commission vs DOJ needle on this is to scope the questions a bit more broadly to mirror what kinds of questions the judge would have, but then to narrow down the list of custodians and witnesses to those the judge would be interested in. I guess that would be Stephane, Fabrice and a handful of others. The Commission has already said that they don't think Ambrobrite is relevant and they have also said that the Zuma ones would not be to the extent that SARS/Moyane was not mentioned.

I suppose if the internal work we did was phase 1, this would be phase 2. Phase 3 would then be the full DOJ scope with Ambrobrite etc. included.

Do we think that could work?

Thanks

Chris

From: Min, Stuart <Stuart.Min@Bain.com>
Date: Friday, 28 Sep 2018, 2:59 pm
To: Athol Williams <atholwilliams@hotmail.com>, Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>, Demas, Reagan R <reagan.demas@bakermckenzie.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: FW: 180926 - South Africa Investigation Plan (CK comments).docx

Per our discussion. As Darryl said, let's aim to finalize by the end of this weekend.

Thanks all,
Stuart

From: Kennedy, Chris
Sent: Wednesday, September 26, 2018 8:31 AM
To: Min, Stuart <Stuart.Min@Bain.com>
Subject: 180926 - South Africa Investigation Plan (CK comments).docx

Hi Stuart

Here are my comments on the investigation plan, marked in track changes. They should be self-explanatory. The key parts are the scope at the start (questions to be answered) and also section 3.6 (independence safeguards).

Thanks

Chris

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ANNEXURE "AW143"

AW143

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 12 October 2018 00:04
To: atholwilliams@hotmail.com
Subject: FW: Short Update from BM call

This is the update I sent to Stuart on the BM call last Wednesday for your records – I didn't send it initially as you were on the call, but it was attached to the e-mail I sent to Tiaan.

Chris

Chris Kennedy
Senior Counsel
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany
tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Min, Stuart
Sent: Thursday, October 4, 2018 12:08 AM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Short Update from BM call

Chris,

Thanks for the update. All makes sense.

In terms of when BM can speak with Vittorio, I suppose we should ask Lourens? Last I heard, Greg is planning to meet with VM in Dubai next Tuesday or Wednesday.

Thanks,
Stuart

From: Kennedy, Chris
Sent: Wednesday, October 3, 2018 2:13 PM
To: Min, Stuart <Stuart.Min@Bain.com>
Subject: Short Update from BM call

Hi Stuart

Just thought I'd give you the key points from the call.

- Athol's list of additional witnesses does make sense in the context of the DOJ. According to Reagan, they will absolutely want to know what you, Paul and Wendy knew for the "governance failings" part of the report so I think it is highly likely you're going to be interviewed. I had originally thought Athol was going to be running the internal investigation so we could leave that to one side, but it seems that is not right as (1) Greg and Alan Bird have caused a change of plan and Athol won't be doing an internal investigation of that kind; and (2) the DOJ will want that covered in the BM investigation regardless of what we do.

- Reagan's revised version of the ToR removes the witness list. This is mainly to offer us flexibility. But also because the DOJ won't like the optics of the GC who is running the investigation being named as a witness.

161 b

- We were strongly advised against offering the Commission an interim written report. I pressure tested this quite hard and they persuaded me. Here are their arguments: (1) even if we buy what they say about the "information piecemeal" methodology, whatever we say will get ripped to shreds and if later documents come out that prove it wrong that will be worse; (2) the judge doesn't want written deliverables and argument from us - he wants documents and people to cross-examine and we either have those or we don't; and (3) there are privilege reasons why that interim report can't be Baker McKenzie branded, so whatever it is will look like more Bain smoke.

- what we can offer is emails and documents that we have found arranged in a helpful way, timelines, chronologically ordered and so on. We can also use what we find to prepare Fabrice for testimony if we decide to do that. I had originally thought that given the Judge has shown us that he is willing to subpoena people on short notice this may be a prudent precautionary measure regardless. It may be that his letter to you of today changes the calculation on that, since he seems to be saying that he won't subpoena anyone if we do not offer anyone and will instead just draw negative conclusions.

- That may give us an out in the sense that we might be able to decline to offer a witness and not immediately get a subpoena in response. Which gives us a choice. That being so, the questions are (1) do we think we have a witness that we can put on the stand who will make things better and not worse; and (2) how much do we think we can challenge adverse findings in his report? And of course, the question about how best we tell the Judge that we no longer believe Vittorio's testimony remains.

- They counselled against speaking to Fabrice until they'd been through the evidence. They also wanted to know when they can speak to Vittorio.

Happy to speak live on this to fill in the details.

Thanks

Chris

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ANNEXURE "AW144"

WW1-AW-657

AW144

BAIN AND THE WEAKENING OF SARS:

OVERSIGHT OBSERVATIONS AND SUGGESTED REMEDIAL FRAMEWORK

Interim Report

Submitted to the Commission of Inquiry into Tax Administration and Governance

Prepared by: Athol Williams

20 November 2018

161c

Comprehensiveness of the Investigation – Documents & Files

The investigation started with a deep forensic analysis of documents and communications found on servers and laptops of Bain SA staff involved in the SARS project. The investigating team searched through over two million files using relevant search terms. This search yielded 187,000 documents of which 3,000 were found to be relevant and 114 classified as heightened relevance documents. Many, but not all, of these documents were supplied to the Commission.

Note that the scope of Bain's internal investigation is broader than the scope of the Commission. Accordingly, certain documents found to be relevant for the purpose of the investigation do not relate to the matters under review by the Commission. In addition, the investigation team collected and reviewed data found on the work-issued cell phones of Bain SA staff involved in the SARS projects.

Comprehensiveness of the Investigation – People

The second phase of the investigation was to conduct extensive interviews with key individuals who were known to be involved with the SARS projects or whose names surfaced during the document reviews. The investigation team intends to conduct interviews with at least 17 individuals. The interviewees include current Bain SA and Bain Inc employees as well as former employees. Most of the interviews conducted to date ran for multiple hours and in one case ran over two days. Those interviewed are mainly at the Partner level, located in South Africa, Europe and the US. Included among the 17 was the former managing partner of Bain SA, Mr Massone.

Reporting & Cooperation

Judge Nugent has expressed to me what he considered to be Bain's lack of co-operation with his Inquiry. The Judge has occasionally urged me to remind Bain that he would not tolerate what he termed their "obfuscation" and "evasion." Bain would argue that they voluntarily submitted themselves to scrutiny by the Commission, that they have responded timeously to every information request, even offering the Commission open access to their offices. By this narrow definition of co-operation, Bain may rightly claim to have been co-operating. But the Commission has a broader, almost simpler requirement. It simply wanted to know everything

ANNEXURE "AW145"

AWI4S

From: Moolman, Tiaan
Sent: Wednesday, October 10, 2018 4:41 PM
To: Athol Williams (atholwilliams@hotmail.com) <atholwilliams@hotmail.com>
Subject: FW: Concerns about Athol's emerging views on the Independent Baker MK investigation

From: Kennedy, Chris
Sent: Tuesday, October 9, 2018 11:23 PM
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com>; Min, Stuart <Stuart.Min@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: Concerns about Athol's emerging views on the Independent Baker MK investigation

Hi Tiaan

Apologies that it has taken all of today to get to this. As Greg also said, thank you for passing these concerns on. As a matter of fact, Athol already mentioned them to me yesterday so I'd already had the chance to think about how we can address them. Here are my thoughts – hopefully they address the concerns. If they do not, I'm more than happy to go deeper on any of these points and if necessary we can approach BM about options for changing tack:

- At its heart, this is a question of prioritization and timing. All the things Athol is concerned about will be covered eventually. For instance, Paul, Stuart and Wendy will all be interviewed, just not until the documents have been reviewed. In fact, earlier today BM sent the first relevant document to us (they're escalating key documents in real time) and it was on exactly this topic. Likewise, governance is a key topic of the investigation and this will be covered by a combination of BM reviewing our policies (or lack thereof) on these topics and speaking to people to see what really happened.
- It's wrong to say the investigation is not making progress, though. They've processed over 1.75m documents so far.
- It's also important to note that BM have been at pains to say that there is no point in speaking to people until you have reviewed all the documents because (i) you don't know the right questions to ask; and (ii) you just have to go back to them again if you find something new. As external investigators, we can hurry them along but ultimately we have to respect their methodology because it is their investigation.
- The other reason for the delay is that - at our request - they are focusing those questions which the Judge has asked us to focus on by 22 October i.e. if VM cannot answer the questions the Judge has about VM's affidavit, then who else can (and if no one else can, what do the documents say?) This means fast tracking Fabrice's and Alexis's documents and interviews as well as pushing for more access to Vittorio.
- Athol raises a valid question about getting a report to the Judge by 22 June. On our call with BM last Wednesday, which Athol was on, they recommended against producing an interim report for the Judge. Instead, they recommended focusing on producing something useful for the Judge, namely documents in chronological order, timelines and so on. Please see the attached summary of the call ("short update") that I sent to Stuart, FYI.
- my mind, if there is no BM report delivered to the Judge on 22 Oct, then there is correspondingly no need for an Athol report saying that it was frank and independent.
- To be clear, exactly what we give to the Judge as a next step in response to his request for a witness who can testify on 22 Oct is still open and depends largely

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1

on what information we get from laptops/interviews with Fabrice, Alexis and Vittorio. The Athol report will still be important, but it will only be completed when the BM report is.
- I've added some additional specific responses in the text below
- Lastly, it's worth noting that the BM investigation hasn't found anything that didn't already come up in the high level internal investigation I did or the document review we did for the Judge. Candidly, that's a good thing as it means our accelerated review was well scoped and properly targeted. Once the review progresses onto previously uncovered ground, as it will soon, then I think we can expect to see more documents being uncovered.

I think the path forward here is:

- We need to get Athol some clarity from B&M on what has been done to date, how the investigation will proceed and what their plan is. I think Athol's criticism that we didn't get a clear sense of where this is going from the call last night is fair so I asked BM for a more fulsome and detailed update. I've attached what they sent to me and I'll share that with him tomorrow. I also asked them to offer an Athol/BM only call where Bain Legal is not present so he can ask candid questions without me on the line. That offer has already been made and accepted. Hopefully these two measures will give him more insight into progress so far and planned next steps.
- There are also some additional steps on widening the investigation that we should take place, specifically setting up a "whistleblowing hotline" and asking SARS themselves if they have any input (we discussed this at our meeting with them, you will recall). The whistleblowing hotline will be set up this week and Athol can publicise it at his update on Friday. The SARS input aspect at some point in the next few weeks as I'm still thinking about what that will look like.
- I do think we could do more to help everyone understand that the investigation won't be done overnight. It's a big job and if it is rushed we will regret it later when the investigation is criticised. Perhaps this is something we can cover at the Thursday partner meeting.

Please feel free to forward this to Athol, if you see fit. I cannot as the message is protected.

Kind regards

Chris

Chris Kennedy
Senior Counsel
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tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Moolman, Tiaan
Sent: Tuesday, October 9, 2018 9:53 AM
To: Min, Stuart <Stuart.Min@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: Concerns about Athol's emerging views on the Independent Baker MK investigation
Importance: High

Stuart, Chris & Greg

ANNEXURE "AW146"

AW146

atholwilliams@hotmail.com

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: 01 October 2018 23:50
To: Min, Stuart
Cc: Athol Williams; Kennedy, Chris; Bernstein, Darryl
Subject: Re: [EXTERNAL] RE: Investigation plan

On your other good points Athol - I don't want to put Stuart as a witness because DOJ would want him to take no part in overseeing the investigation if he is listed as a witness. I believe the vast majority, if not all, of his knowledge on the subject is recent and therefore would not qualify him as a witness to the underlying facts and activities under review.

I added the non-privileged point with respect to material shared with you based on my understanding that your engagement with Bain is not privileged. Putting in writing that you will be a part of all conversations with outside counsel would likely be viewed as a waiver if it ever came before a court. I don't see any practical limitation here for you - we will communicate to you all information you need in some form - but we want to ensure legal privilege over the investigation is protected (at least in form) while still ensuring you have full access to materials and can share with the commission as you see fit. Privilege protection extends well beyond the commission's activities and waiver would have potentially significant implications in the United States.

It might make sense to just take out those detailed sub-points in 3.6 since I'm not sure they are necessary, and would avoid the need to wordsmith them from a privilege standpoint. Happy to discuss in more detail.

Best regards,
Reagan

On Oct 1, 2018, at 5:35 PM, Min, Stuart <Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>> wrote:

Athol,

On point #2, I don't think an external law firm would be the right choice to investigate many of the items you've listed, perhaps with the exception of subitems c,g and h. We would presumably need a review by Bain consultants from outside of SA, familiar with how Bain does it consulting work, to review all the "operational" issues. I realistically think we have to prioritize the focus over the next three weeks on issues such as whether there was any "quid pro quo" in the dealings with Moyane, whether there was any collusion in shortcutting the procurement process, etc. These are the issues of concern to the Commission and presumably the DOJ.

Stuart

From: Athol Williams <atholwilliams@hotmail.com<mailto:atholwilliams@hotmail.com>>
Sent: Monday, October 1, 2018 5:28 PM
To: Demas, Reagan R <reagan.demas@bakermckenzie.com<mailto:reagan.demas@bakermckenzie.com>>; Kennedy, Chris <Chris.Kennedy@Bain.com<mailto:Chris.Kennedy@Bain.com>>; Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com<mailto:Darryl.Bernstein@bakermckenzie.com>>; Min, Stuart <Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>>
Subject: RE: Investigation plan

Dear All,

Still trying to get my head around the plan. A few points.

1. The document states that this investigation is a response to allegations by the Commission which is not consistent with the spirit of what I understood which was Bain's wish to understand the detail of everything that went wrong at SARS during and relating to Bain's involvement there. Is this a material difference?
2. Consistent with Point 1, I would expect that we'd be interested in knowing whether the Bain team at SARS met Bain & Co's global standards around:
a. Operating principles
b. Work quality standards
c. Contracting procedures
d. Scoping of work
e. Results delivery
f. Client development relationships/protocols
g. Contract governance
h. Response to ethical/legal/professional concerns raised internally
3. Again, consistent with Point 1, we would want to know if the Bain team at SARS met South African law, rules or codes covering commercial arrangements with the South African government, its agents or state-owned companies?
a. PFMA
b. Company law?
c. BEE codes?
d. Other

Perhaps these are too broad or they are implicitly captured in the specific questions?

4. On the list of Bain people to interview, my understanding is that the following people would have some insight into the arrangements at SARS or some of the points raised above:
a. Stephane Tempano
b. Chris Cameron
c. Paul Meehan
d. Stuart Min
e. Wendy Miller

5. I note in 3.6 that I will only have access to "non-privileged" correspondence. How is this defined and who decides what information falls into this category?

Apologies for only surfacing these questions now.

Best
Athol

From: Demas, Reagan R <reagan.demas@bakermckenzie.com<mailto:reagan.demas@bakermckenzie.com>>
Sent: 01 October 2018 22:41
To: Kennedy, Chris (Chris.Kennedy@Bain.com<mailto:Chris.Kennedy@Bain.com>)
(Chris.Kennedy@Bain.com<mailto:Chris.Kennedy@Bain.com>)
<Chris.Kennedy@Bain.com<mailto:Chris.Kennedy@Bain.com>>;
atholwilliams@hotmail.com<mailto:atholwilliams@hotmail.com>; Bernstein, Darryl
<Darryl.Bernstein@bakermckenzie.com<mailto:Darryl.Bernstein@bakermckenzie.com>>; Min, Stuart
(Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>) <Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>>
Subject: Investigation plan

I have attached a clean final version of the plan for final comment. Let us know if there are additional changes/suggestions, otherwise would be good to finalize it to have available when DOJ requests it. Thanks, Reagan

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit
https://nam01.safelinks.protection.outlook.com/?url=www.bakermckenzie.com%2Fdisclaimers&data=02%7C01%7C%7C6a08b5654a0e4e2f26d108d627e7da31%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C63674027

4077637329&sdata=FbxeDK%2FJzykYr2cW18joKsqnNHyAfRlnCE7y%2BpNnU%2Bg%3D&reserved=0<https://nam01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__eur01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.bakermckenzie.com-252Fdisclaimers-26data-3D02-257C01-257C-257Cbce1bf9111c64ddd0bc508d627de3a9c-257C84df9e7fe9f640afb435aaaaaaaaaaaa-257C1-257C0-257C636740233807677898-26sdata-3D1dDFIvRRZytdVlID9z2bIB3ULtd28OLwwY325RL-252BTz0-253D-26reserved-3D0%26d%3DDwMFAg%26c%3DYgvAunA6A5zFF9cMHqSY3cSQ3MG-auFOlwlB7e1Llto%26r%3D-prc_YAPqln7zDCMwz5LEX6x42KEOstcLjQUPeKZPYE%26m%3DiZiThD81Imymu3kFuwpQNdat2XlrHLCrblXFoCeYf-M%26s%3DB1K9loF8Df_oWGv4FUvvwJptS3WMR3ezlC5OvXJ8TN0%26e&data=02%7C01%7C%7C6a08b5654a0e4e2f26d108d627e7da31%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636740274077637329&sdata=yFc%2F%2BaHR0sV%2FzMd0hG%2B%2FpSlwJQSEiEnTI7cfiPKo7Sw%3D&reserved=0=> for other important information concerning this message.

From: Demas, Reagan R
Sent: Sunday, September 30, 2018 10:08 PM
To: Kennedy, Chris (Chris.Kennedy@Bain.com<mailto:Chris.Kennedy@Bain.com>) (Chris.Kennedy@Bain.com<mailto:Chris.Kennedy@Bain.com>); atholwilliams@hotmail.com<mailto:atholwilliams@hotmail.com>; Bernstein, Darryl; Min, Stuart (Stuart.Min@Bain.com<mailto:Stuart.Min@Bain.com>)
Subject: 30092018- South Africa Investigation Plan (DB amendments).docx

All – see attached a few revisions (working from Darryl's version today) to 3.6 and 3.7 to cover the privilege issue given Athol's engagement terms. I've made it clear that he will still have the visibility and ability to ensure thoroughness and independence of the review, but have made a few tweaks to allow for certain privileged communications between Bain and BM (requiring that he be cc'd on all BM and Bain emails would lead to a claim of privilege waiver with respect to our work on the investigation) and removed the previous note in 3.7 stating that Athol's engagement is a privileged one. Let me know if there are any questions. I'm happy to circulate a clean version in the absence of any additional revisions or comments. Best regards, Reagan

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ANNEXURE "AW147"

AW147

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 22 September 2018 10:51
To: Hutchinson, Greg; Moolman, Tiaan; Kennedy, Chris; Min, Stuart
Subject: Update from Athol
Attachments: Information Sharing.pptx

Greg, Tiaan, Chris, Stuart

1. I have not seen any of the letters to the Commission relating to VM's planned non-attendance at the Inquiry on Tuesday
2. I have established through email that Judge Nugent has received such letters
3. He has indicated that he has asked VM's lawyer to appear before the Inquiry on Tuesday to explain VM's absence
4. The Judge seems to have reached the end of his patience: Judge to me this morning: "I am not at all satisfied with the way Bain has conducted itself towards the Commission."
5. I have asked the Judge for specifics on his dissatisfaction and what Bain can do to remedy the situation.
6. I have indicated to the Judge that I have reservations about the scope of the Bain investigation to date but that I will seek to satisfy myself on this matter. The attached illustrative slide explains conceptually the source of my doubts.

Happy to discuss
Best
Athol

ANNEXURE "AW148"

AW148

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

say. The affirmation made by a witness is not only to tell the truth, but also to tell the whole truth, and that is not what Mr Massone did.

[8] In response to an invitation by the Commission to furnish written submissions on why certain findings should not be made, including that he had perjured himself, Mr Massone advised, through his attorney, that he had truthfully conveyed all he could recall at the time. We regret that we are not persuaded that when giving evidence Mr Massone could not recollect more of his engagements with Mr Moyane than he disclosed. He was deeply engaged and could not have forgotten.

[9] Mr Massone disclosed in his evidence, without elaboration, that at one stage Bain had produced a report for Mr Moyane. After he had given evidence Mr Massone was asked by the Commission to furnish a copy of the report, and an affidavit identifying and describing each occasion he, or any other person from Bain, had met or had contact with Mr Moyane, or with former President Zuma, before the contract was concluded with SARS.

[10] What followed was a period of obfuscation and evasion by Bain, as partners rushed from abroad to control the damage. Ultimately the report was produced, and an affidavit deposed to by Mr Massone was furnished to the Commission. Mr Massone was summoned to appear before the Commission once again, but he was said to have fallen ill and he returned to his home in Italy before that occurred. He did not appear again, notwithstanding that he was directed to do so by the Commission, and he is said still to be ill in Italy, though he has been able to consult extensively with Bain's advisers in Rome.

[11] Meanwhile, 23 lever-arch files of documents, most of which are irrelevant to matters that concern the Commission, but buried amongst which were certain internal emails I refer to presently, were delivered by Bain. Having furnished the affidavit, and dumped the documents, Bain decamped. It was afforded the opportunity once again for

ANNEXURE "AW149"

AW149

From: Moolman, Tiaan
Sent: Tuesday, October 9, 2018 9:53 AM
To: Min, Stuart <Stuart.Min@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: Concerns about Athol's emerging views on the Independent Baker MK investigation
Importance: High

Stuart, Chris & Greg

I have been checking in every couple of days with Athol to ensure he remains comfortable that both the investigation and his role is set up appropriately. The issues he raised previously on the scope has been well dealt with I believe.

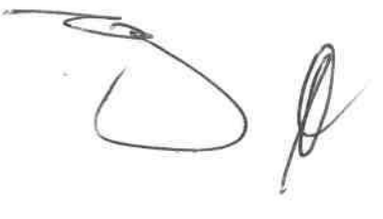
However, he is starting to raise the alarm on the Investigation itself. We have only around a week left before BM must draft their first report, to allow Bain to do an appropriate summary and Athol to draft his own independent report to Judge Nugent. If Athol was to write his own report today, it would create an issue for us and would absolutely confirm the Judge's views on Bain. His views currently would be:
-Despite the incredibly short timeframes, we are not moving at pace. BM as of last night had literally nothing to report. He is not questioning the dilligence or effort of anybody involved here, but is concerned that there is no emerging finding yet
-Information Athol is asking for is not forthcoming or he has to chase multiple times (example: Athol had to chase 3 times to just get copies of Stephane and Fabrice's affidavits and only got it after waiting a week)
-Any questions he is asking relating to Governance failures are not answered. His requests that for example Paul Meehan must be interviewed is being ignored in his view.
-He believes the investigation is in reality only focussing on criminality, and he fears a report that purely says no criminal acts were uncovered (with no reference of unethical or unprofessional behaviours) would fall far short of expectations.

Athol continues to want to help and support Bain, but will also take his own role as independent oversight over the investigation very seriously. He is questioning now if a submission of the finding of the Investigation, and his oversight report on it before the 22nd, will actually help Bain's cause with the commission (he used the phrase: Bain is bringing a knife to a gunfight).

As we previously agreed, myself and the local partner team are by design keeping our distance from the Investigation, but I felt I had to raise the alarm here, as this will end in tears if not carefully managed. Certainly our own legal strategy as it pertains to the Commission will be a subject to discuss in the Thursday partner meeting that Greg will attend and Stuart will dial in to.

I know Greg has time with Athol on Thursday, but I am very aware time is running out.

Best
Tiaan



ANNEXURE "AW150"

AW150

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 12 October 2018 00:04
To: atholwilliams@hotmail.com
Subject: FW: Short Update from BM call

This is the update I sent to Stuart on the BM call last Wednesday for your records – I didn't send it initially as you were on the call, but it was attached to the e-mail I sent to Tiaan.

Chris

Chris Kennedy
Senior Counsel
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany
tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Min, Stuart
Sent: Thursday, October 4, 2018 12:08 AM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Short Update from BM call

Chris,

Thanks for the update. All makes sense.

In terms of when BM can speak with Vittorio, I suppose we should ask Lourens? Last I heard, Greg is planning to meet with VM in Dubai next Tuesday or Wednesday.

Thanks,
Stuart

From: Kennedy, Chris
Sent: Wednesday, October 3, 2018 2:13 PM
To: Min, Stuart <Stuart.Min@Bain.com>
Subject: Short Update from BM call

Hi Stuart

Just thought I'd give you the key points from the call.

- Athol's list of additional witnesses does make sense in the context of the DOJ. According to Reagan, they will absolutely want to know what you, Paul and Wendy knew for the "governance failings" part of the report so I think it is highly likely you're going to be interviewed. I had originally thought Athol was going to be running the internal investigation so we could leave that to one side, but it seems that is not right as (1) Greg and Alan Bird have caused a change of plan and Athol won't be doing an internal investigation of that kind; and (2) the DOJ will want that covered in the BM investigation regardless of what we do.

- Reagan's revised version of the ToR removes the witness list. This is mainly to offer us flexibility. But also because the DOJ won't like the optics of the GC who is running the investigation being named as a witness.

169 a

- We were strongly advised against offering the Commission an interim written report. I pressure tested this quite hard and they persuaded me. Here are their arguments: (1) even if we buy what they say about the "information piecemeal" methodology, whatever we say will get ripped to shreds and if later documents come out that prove it wrong that will be worse; (2) the judge doesn't want written deliverables and argument from us - he wants documents and people to cross-examine and we either have those or we don't; and (3) there are privilege reasons why that interim report can't be Baker McKenzie branded, so whatever it is will look like more Bain smoke.

- what we can offer is emails and documents that we have found arranged in a helpful way, timelines, chronologically ordered and so on. We can also use what we find to prepare Fabrice for testimony if we decide to do that. I had originally thought that given the Judge has shown us that he is willing to subpoena people on short notice this may be a prudent precautionary measure regardless. It may be that his letter to you of today changes the calculation on that, since he seems to be saying that he won't subpoena anyone if we do not offer anyone and will instead just draw negative conclusions.

- That may give us an out in the sense that we might be able to decline to offer a witness and not immediately get a subpoena in response. Which gives us a choice. That being so, the questions are (1) do we think we have a witness that we can put on the stand who will make things better and not worse; and (2) how much do we think we can challenge adverse findings in his report? And of course, the question about how best we tell the Judge that we no longer believe Vittorio's testimony remains.

- They counselled against speaking to Fabrice until they'd been through the evidence. They also wanted to know when they can speak to Vittorio.

Happy to speak live on this to fill in the details.

Thanks

Chris

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ANNEXURE "AW151"

ANNEXURE "AW152"

AW152

atholwilliams@hotmail.com

From:	Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent:	23 October 2018 22:03
To:	Min, Stuart (Stuart.Min@Bain.com); atholwilliams@hotmail.com; Kennedy, Chris (Chris.Kennedy@Bain.com) (Chris.Kennedy@Bain.com)
Cc:	Bernstein, Darryl; Steyn, Wian; Klinger, Jane C; Batonga, Marilyn
Subject:	Bain South Africa - Investigation Update
Attachments:	Project Arrow Review Stats - 22.10.18.xlsx; CTRL-00051711_native.pdf; CTRL-00047581_native.pdf; CTRL-00126793_native (1).pdf; CTRL-00046719 _native.pdf; WASDMS-#8440664-v3-2018_10_16 _Index_of_docs_for_client_review.xlsx; CTRL-00051712_native (1).pdf

All:

Please see attached updated dashboard on status of email review, as well as several documents of interest we have identified this week. I am also attaching a chronological index of documents of interest, with new documents highlighted in yellow.

We have been expediting the SARS-focused review and now believe we will be in a position to finish the SARS email review in the next several weeks. Our goal now is to finalize the SARS focused email review and synthesize this evidence by mid-November, with the hope of conducting SARS-focused interviews in mid/late November. So we should be in a position to draw some conclusions on SARS based on at least the forensic email review in November, which could allow us to provide input into Nugent's report (if he's interested and we're willing).

We look forward to discussing on our update call this week.

Best regards,
Reagan

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ANNEXURE "AW153"

AW153

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OP-ED

What do we want from Bain?

By Athol Williams • 16 October 2018

Athol Williams

SARS-01-690

WW1-AW-680

154 Reactions

Watching Bain's testimony to the Nugent Commission of Inquiry into SARS in August left me angry and disappointed. I expressed this to Bain's senior leaders and to the media. Soon Bain reached out to me for help.

Listen to this article
4:43

After a 15-year association with Bain & Company, working in their Boston, New York, London and Johannesburg offices, I left the firm in 2010. I was saddened to hear that the firm had allegedly been caught up in the Commission of Inquiry's review of SARS, because I know that Bain globally had pushed to maintain high professional and ethical standards. That this may not have been the case in South Africa grieved me.

Watching Bain's testimony to the Commission in August left me angry and disappointed. I expressed this to Bain's senior leaders and to the media.

Soon Bain reached out to me for help. I was also contacted by the Commission, led by Judge Robert Nugent, to see whether I could assist it to establish the truth, which I was willing to do given my knowledge of management consulting and my expertise in the ethical challenges that businesses face.

In an unprecedented move of transparency, Bain invited me into their business with unfettered access and the freedom to reveal anything to the Commission that I saw fit, without restriction. I remain in this role and will continue until the end of November when the Commission submits its final report.

Judge Nugent has expressed to me what he considers to be Bain's lack of co-operation with his inquiry. The Judge has occasionally urged me to remind Bain that he would not tolerate what he termed their "obfuscation" and "evasion".

Bain would argue that they voluntarily submitted themselves to scrutiny by the Commission, that they have responded timeously to every information request, even offering the Commission open access to their offices.

By this narrow definition of co-operation, Bain may rightly claim to have been co-operating. But the Commission has a broader, almost simpler requirement. It simply wants to know everything that Bain knows about what transpired at SARS. The Commission wants the full truth to be reported proactively, which Judge Nugent has told me he considers Bain's managing partner not to have done when he gave evidence, and which he considers Bain not to have done since.

From my "outsider-insider" view I have seen Bain awake to this realisation, albeit slower than everyone expected. Bain has engaged outside counsel to conduct an independent investigation, and I am helping to oversee this review.

SARS-01-691
WW1-AW-681

The investigation now has a scope more reflective of what the Commission and South Africa demand to know. These results will be reported in due course, at which point I hope to be able to express my view to the Commission that Bain has reached the point of full co-operation, by the Commission's standard, not Bain's, though I appreciate that it will be for the Commission to decide whether it shares my view.

The reaction by South Africans to what we have learned about Bain's actions has left us rightly angry. We are all sick and tired of the injustices that have plagued our society for too long, and we are sick and tired of us bearing the cost while the perpetrators escape without consequences. Understandably some of this anger is now directed at Bain.

So what do we want from Bain?

Nothing short of acknowledgement of wrongdoing, an apology, some forms of reparation and change of behaviour, will be acceptable to South Africans, if Bain hopes to redeem itself in our country.

What we should avoid, however, is allowing our anger to overflow into the violence of wanting to see the business destroyed. I believe that South Africa can continue to benefit from Bain's expertise, and that we have an opportunity to harness their capabilities for our benefit. This will be the ultimate test of Bain's commitment to recovery, whether they will invest in South Africa in ways they have not done to date.

There can be little doubt that there were failures in Bain's SARS work, something that will need to be addressed with urgency. Some acted wrongly. Others might have looked the other way when instead they should have spoken up. This will be revealed through the investigation and the wrongdoers must be punished.

However, it is not fair to paint everyone at Bain with the same brush. There are many young South Africans there, starting out their careers, who are doing high quality, honest work. There are many foreign professionals who came here with the sincere intention of sharing their expertise and wanting to see South Africa prosper. We would do well to continue to offer a platform for these people to thrive.

South Africa demands something extraordinary of Bain right now. Out of the devastating experience of this disaster must emerge a company of which all South Africans and Bain globally can be proud. The ball is in Bain's court. **DM**

Athol Williams is Senior Lecturer, Allan Gray Centre for Values-Based Leadership, UCT GSB

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SARS-01-692

WW1-AW-682

ANNEXURE "AW154"

AW154

BAIN AND THE WEAKENING OF SARS:

OVERSIGHT OBSERVATIONS AND SUGGESTED REMEDIAL FRAMEWORK

Interim Report

Submitted to the Commission of Inquiry into Tax Administration and Governance

Prepared by: Athol Williams

20 November 2018

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About the Author

Athol Williams was contracted by Bain SA to provide independent oversight of the independent investigation into Bain SA's work at SARS (2014-2017), which has come under investigation by the Commission of Inquiry into Tax Administration and Governance.

Mr Williams is an Independent Advisor in Corporate Responsibility and Ethics, a Senior Lecturer at the Allan Gray Centre for Values-Based Leadership, UCT Graduate School of Business, and a Research Fellow at the Centre for Applied Ethics, University of Stellenbosch. He is a member of the Scholars and Practitioners Network for the Corporate Responsibility Initiative at Harvard University. He is a former Adjunct Professor at the Wits School of Governance and served on boards and committees at Wits University (Centre for Entrepreneurship, Convocation and Wits Enterprise).

He has over 20 years' business experience, mostly as a strategy advisor (Bain & Company[1], Taurus Associates) or senior strategy executive (Old Mutual, Rio Tinto, RMB Corvest). He has served on numerous boards and served as Chairman of the Family Life Centre and Shalamuka Capital. He is the founder and Chairman of Read to Rise, a youth literacy NGO that works in under-resourced communities. Mr Williams's work as a social advocate for education has earned him an Inyathelo Award in Education, a Lead SA award and recognition by the City of Cape Town with a bollard erected in his name.

Mr Williams holds Masters degrees from Harvard, Massachusetts Institute of Technology, London Business School, London School of Economics and Oxford University in public administration, business strategy, corporate finance, ethics, and political theory respectively, as well as a mechanical engineering degree from Wits University.

Web: www.atholwilliams.com

Email: atholwilliams@hotmail.com

[1] Employment was in multiple blocks as follows: 1995 (Boston), 1996-1997 (Boston), 1999-2001 (London, Boston, New York), 2009-2010 (Johannesburg). During 2017, Mr Williams supported the company's talent development efforts on a contractual basis.

Background

A note about references to *Bain*: Bain & Company South Africa (Bain SA) is the South African office of Bain & Company Inc (Bain Inc), a Boston-based management consulting firm that operates globally. In this report, when I write "Bain Inc" I am referring to the global Bain business headquartered in Boston, USA. When I write "Bain SA" I am referring specifically to the South African business. When I write "Bain" I mean the firm generally, referring neither to the global nor South African business specifically.

Bain SA engaged with, and provided consulting services to, the South African Revenue Service (SARS) between 2014 and 2017. Owing to a deterioration in the performance of SARS and allegations of state capture, in May 2018, President Cyril Ramaphosa established a Commission of Inquiry, headed by retired Judge Robert Nugent, to investigate SARS's decline with a focus on tax administration and governance. This inquiry included investigating Bain SA's relationship with SARS and the consulting work that Bain SA delivered at SARS, particularly relating to Bain SA's work to develop a new operating model.

Between May and August 2018, Bain SA's submissions to the Commission were led by Mr Vittorio Massone, managing partner for Bain's operations in South Africa, and head of Bain SA's consulting team that worked at SARS. Following Mr Massone's testimony at the Commission's public hearings on 30 and 31 August 2018, Bain Inc launched an internal investigation led by Bain's US-based and Europe-based legal counsel and an independent investigation led by external legal advisors. Both investigations cover the circumstances leading up to Bain SA entering the initial procurement process, subsequent procurement processes and all three phases of work.

Mr Massone was relieved of his duties of leading Bain's South African office so that he could focus on the Commission of Inquiry. Due to his ill health, Mr Massone was unable to appear at the Commission's public hearing on 25 September 2018. Mr Stuart Min, Bain's global head of legal, represented Bain at this hearing instead. The Commission offered Bain SA the opportunity to send representatives to appear before the Commission on 22 October 2018 – an offer which Bain SA did not accept. Subsequent to Mr Min's appearance at the Commission there have been several rounds of written exchanges between Bain and the Commission.

Mr Massone resigned from Bain on 9 November 2018.

Introduction

On 7 September 2018, Bain SA appointed me on a short-term contract to contribute to the Commission's and Bain's investigation processes by providing independent oversight of the company's investigation. I understand that the reasons I was hired was my knowledge of management consulting and my expertise in corporate governance and business ethics.

My agreement with Bain SA explicitly allows me to communicate with the Commission on an unrestricted basis without violating any confidentiality obligations or legal privilege. Annex A of my agreement states:

> "Mr Williams and the Commission are free to communicate directly on matters relating to the Commission's investigation, including any concerns that could not be resolved with Mr Moolman[2]. With respect to any such communication:
>
> - Bain agrees that it shall not deem any such communication by Mr Williams with the Commission to be a breach of Mr Williams' confidentiality obligations to Bain
> - Bain agrees that is shall not seek to assert a claim of legal privilege to prevent Mr Williams from bringing his concerns to the attention of the Commission"

This provision allows me to publish this report.

As part of this contract Bain SA covered my travel-related costs (flights, accommodation and incidental expenses) and paid me a professional fee. I have instructed Bain SA to pay half of this professional fee to charity.

This interim report relates to my independent oversight role from 7 September 2018 to 20 November 2018, the date of this report. The interim nature of this report reflects the fact that Bain's independent investigation is incomplete, and no findings have yet been made. I will revise this report upon the completion of the independent investigation.

[2] Mr Tiaan Moolman is Bain SA's interim Office Head. More details of my interactions with Mr Moolman follows

In addition to reporting on the investigation, I offer my independent views on Bain SA's involvement at SARS and what remedy Bain SA ought to make, and place these in the context of responsibilities that businesses bear to act to strengthen a society's weakened public institutions. I offer these as an independent observer, knowing full well that the Commission will form its own view of Bain SA's involvement and issue its own recommendations as to remedial action.

The report is divided into three parts as follows: **Part 1** reports on the process of my oversight of Bain's independent investigation. I report on the comprehensiveness of this investigation and the transparency and truthfulness of the subsequent reporting, as well as Bain's fulfilment of its transparency and cooperation commitments to the Commission. In **Part 2**, I reflect upon the role Bain played in the set of events that led to the weakening of SARS. I base this reflection upon my experience during and exposure to the evidence of the ongoing independent investigation. Given the role that I deem Bain to have played in the weakening of SARS, in **Part 3**, I offer my independent view of what remedy Bain owes SARS and South Africa more broadly by suggesting a 6-step remedy programme and I offer a brief argument that it is not just companies like Bain, who have erred, who bear a responsibility to our society, but that businesses in general ought to step up to defend our public institutions and advance social justice.

This report represents my independent views as a scholar and advisor. I submit this report voluntarily in support of the work of the Commission of Inquiry into Tax Administration and Governance, Bain's efforts to determine what transpired at SARS and in the interest of the people of South Africa in our efforts to rid our society of corruption and state capture.

Part 1

INDEPENDENT OVERSIGHT OF BAIN'S INVESTIGATION INTO BAIN SA's WORK AT SARS (2014 – 2017)

1.1 Introduction

In a press statement on 10 September 2018, Bain announced my appointment as follows:

> "To reinforce the independence of the investigation and Bain's commitment to addressing any new facts, we have established an oversight committee made up of senior global Bain partners and outside directors. Athol Williams, a Bain alumnus and a respected independent advisor, will chair this committee on an interim basis. He is a distinguished academic in the area of corporate responsibility, a corporate leader and lifelong social advocate. Bain's contract with Mr Williams calls for him to do what is right for South Africa, without restrictions."

While the oversight committee was not established, I was contracted to play an oversight role to Bain's independent investigation into Bain SA's work at SARS. My role was focused on aiding the work of the Commission of Inquiry into Tax Administration and Governance headed by Judge Nugent which was enabled by the following clause in Annex A of my contract:

> "While engaged, should Mr Williams at any time determine that Bain is not behaving transparently with the Commission, Mr Williams will:
>
> - First raise his concerns with the Bain South Africa Interim Office Head, Mr Tiaan Moolman, and seek resolution in good faith
> - If resolution cannot be reached, Mr Williams has the liberty to share his concerns with the Commission"

This section of the report proceeds as follows: I start with a summary of the scope of the independent investigation. This is followed by the objectives of my oversight role and what I set out to achieve, followed by the activities that I undertook in my best efforts to meet these objectives. Lastly, I offer an assessment of the outcomes of my oversight role and the extent to which Bain fulfilled its commitment to support the Commission's work.

1.2 Scope of Independent Investigation

I had oversight of Bain's SARS-related investigation, whose scope was as follows (for the review period 2012 to 2017):

- All SARS procurement processes in which Bain SA participated and all contracts that Bain SA entered into with SARS, including the three-phased SARS project at the

focus of the Commission's inquiry, and including the pre-contractual "CEO coaching" sessions with Mr Moyane.

- Bain SA's interactions, communications, and dealings with government officials, related associates, and third party intermediaries in connection with the contracts referenced above.
- Whether Bain SA improperly supported Mr Moyane, prior to his appointment as Commissioner of SARS, in exchange for future work from SARS.
- Whether anything of value was improperly provided to any government official, directly or through a third party, in connection with the business under review.
- Whether Bain SA had prior knowledge of the tender and/or tender requirements for the review of the SARS operating model.
- The relationship between Mr Massone and former President Zuma and any other government official, with a focus on the evidence provided to the Commission.

1.3 Objectives of My Oversight Role

In order to ultimately comment on the quality of the investigation, I set the following broad objectives and tasks: (words are underlined for emphasis)

1. ***Monitor the comprehensiveness of the investigation:*** My two main questions were (a) Are the right sources being reviewed with sufficient rigour? (b) Are the right questions being asked of the right people with sufficient rigour?
2. ***Monitor cooperation and truthfulness of reporting:*** This relates to Bain SA's cooperation with the Commission and to reports submitted to the Commission. My main question was: Is all the relevant information uncovered by the investigation being truthfully shared with the Commission?
3. ***Assist the Commission***, where I can, in establishing the truth.

Note that I did not perform any investigations of my own, rather, I engaged directly with the investigation team and relied on the findings of their investigation. I have taken the results of the external counsel's investigation at face value so have not audited nor verified these.

My work has been guided by the commitment on my part, and that of Bain, that I **do what is right for South Africa**, without restrictions. I have interpreted this commitment to mean that I will contribute to ensuring that the truth is revealed and that where trade-offs are to be made or tensions emerge, they are to be resolved in the favour of South Africa's interest.

I have also been guided by the principle of fairness in all my deliberations.

1.4 Activities to Fulfil the Objectives of My Role

Activities relating to objectives 1 and 2: Comprehensiveness, reporting and cooperation:

To provide independent oversight, my agreement with Bain SA stipulated that I:

- Have full access to findings of the investigation and have weekly meetings with the leads of the investigation.
- Have access to all communications between Bain and the Commission.
- Attend all meetings that relate to Bain's preparation for meetings with the Commission and all meetings that relate to Bain's preparation for submissions to the Commission.
- Review all documentary submissions to the Commission before submission.

Throughout the investigation I have had multiple update meetings per week and had access to relevant communications. I've reviewed documents reporting progress on the investigation, affidavits and legal agreements. I have reviewed the evidence and materials submitted to the Commission and reviewed the transcripts of Bain SA's testimony. I have reviewed the relevant media reports and the Commission's interim report.

I recommended a whistle-blower email address be distributed to Bain staff and alumni which has borne some fruit.

On occasion I have advised Bain on courses of action. While this might seem to go contrary to my role as independent overseer, it is more aligned with my commitment to see Bain do the right thing by SARS and South Africa.

Activities Relating to Objective 3: Assist the Commission of Inquiry: In pursuing Objectives 1 and 2 I have been indirectly furthering Objective 3. The more I could ensure that Bain's investigation is comprehensive, and their results reported truthfully, the more I was assisting the Commission in its pursuit of the truth of what transpired at SARS. Additionally, I also had periodic communications directly with Judge Nugent via emails and two in-person meetings to support its efforts to uncover everything that Bain knows about what transpired at SARS.

Beyond these activities, I have provided periodic updates to Bain SA and members of Bain Inc verbally, via email and through presentations to staff. I have chosen to engage with the media only to give the public assurances that I am performing this role and by way of update.

1.5 Outcomes of my oversight

The outcomes of my oversight actions are summarised in the table below and discussed in the text that follows. The table and discussion tie back to the objectives of my oversight role.

I have had the opportunity to provide input into the scope of the investigation. As far as I can tell, the actual execution of the investigation is run fully independent of Bain. Bain legal representatives join in weekly update meetings and I also have a weekly update meeting with external counsel which excludes any Bain representatives.

OUTCOMES OF MY OVERSIGHT		
Comprehensiveness – Documents & files		
Right questions	Yes	Appropriate set of search terms used for electronic searches
Sufficient rigour	Yes	Searched over 2 million files
Comprehensiveness - People		
Right questions	Yes	I did not attend the interviews but am aware of the scope of questions
Right people	Yes	Interviews with 17 current or former Bain staff, including Mr Massone
Sufficient rigour	Yes	I did not attend but know the rigour of external counsel's process
Reporting & Cooperation		
All relevant information	No	Not all relevant documents were shared with the Commission
Truthfully reported	Somewhat	Generally but some doubts about Mr Massone's affidavit
Cooperation with Commission	Somewhat	Responsive to requests but not as proactive as Commission would like
Enabling my ability to perform oversight		
Access to investigation findings	Yes	Updates and will see full final findings, expected in December
Weekly meetings with investigation team	Yes	Separate meetings - Bain, Bain/external counsel & external counsel
Access to comms with Commission	Yes	All relevant ones
Attend preparation meetings	Yes	All relevant ones
Review submissions	Yes	All relevant ones

Comprehensiveness of the Investigation – Documents & Files

The investigation started with a deep forensic analysis of documents and communications found on servers and laptops of Bain SA staff involved in the SARS project. The investigating team searched through over two million files using relevant search terms. This search yielded 187,000 documents of which 3,000 were found to be relevant and 114 classified as heightened relevance documents. Many, but not all, of these documents were supplied to the Commission.

Note that the scope of Bain's internal investigation is broader than the scope of the Commission. Accordingly, certain documents found to be relevant for the purpose of the investigation do not relate to the matters under review by the Commission. In addition, the investigation team collected and reviewed data found on the work-issued cell phones of Bain SA staff involved in the SARS projects.

Comprehensiveness of the Investigation – People

The second phase of the investigation was to conduct extensive interviews with key individuals who were known to be involved with the SARS projects or whose names surfaced during the document reviews. The investigation team intends to conduct interviews with at least 17 individuals. The interviewees include current Bain SA and Bain Inc employees as well as former employees. Most of the interviews conducted to date ran for multiple hours and in one case ran over two days. Those interviewed are mainly at the Partner level, located in South Africa, Europe and the US. Included among the 17 was the former managing partner of Bain SA, Mr Massone.

Reporting & Cooperation

Judge Nugent has expressed to me what he considered to be Bain's lack of co-operation with his Inquiry. The Judge has occasionally urged me to remind Bain that he would not tolerate what he termed their "obfuscation" and "evasion." Bain would argue that they voluntarily submitted themselves to scrutiny by the Commission, that they have responded timeously to every information request, even offering the Commission open access to their offices. By this narrow definition of co-operation, Bain may rightly claim to have been co-operating. But the Commission has a broader, almost simpler requirement. It simply wanted to know everything

that Bain knew about what transpired at SARS with regard to the circumstances surrounding Bain SA being awarded the contracts and the damage to SARS that occurred during its tenure there. The Commission wanted the full truth to be reported proactively, which Judge Nugent has told me he considers Bain SA's managing partner not to have done when he gave evidence, and which he considers Bain not to have done since.

Bain has expressed some reluctance about sharing information with the Commission because of the access the media has had to information submitted and the damaging reports that have emerged given the media's use of this information without any context. The reluctance is also understandable for a business motivated to protect its interests and to avoid vulnerability should future investigations emerge.

Despite Bain expressing their intent to help the Commission, intent which I don't doubt, Mr Massone's failure to testify at the follow-up hearing hampered the inquiry and deprived Bain of the opportunity to state its case. While Mr Massone would certainly have had the most to offer the Inquiry, there were other senior Bain SA staff who could have shed some light on certain matters which may have been valuable to the Inquiry. Bain SA determined that these potential witnesses would not offer the Inquiry any information of value and so forewent the opportunity to appear at the public hearings of 22 October, although they did submit affidavits to the Commission.

Having Mr Massone oversee Bain SA's response to the Commission was unhelpful to the Commission and unhelpful to Bain SA's relationship with the Commission. This action wasted valuable time as Mr Massone presented information that did not address the Commission's real concerns. As I understand events, Mr Massone initially withheld information from Bain Inc about the Inquiry, including the very fact that Bain SA was part of the Inquiry, only informing them about it as he was finalising the first written submission. A more forthright approach from Mr Massone may have ensured that Bain SA cooperated with the Commission more fully and timeously. Furthermore, Bain was slow to include senior employees in its investigation. Understandably, in a business structured as a partnership and built on trust, it was inconceivable for some partners to suspect improper behaviour on the part of others. This slowed down the process of focusing the investigation searches. As I've already written, decisions to withhold certain information also caused delays. While the independent investigation was adequately scoped and comprehensively executed, my opinion is that Bain continues to fall short of the Commission's expectations, especially with regard to making available to the Commission all

relevant information that has been uncovered during the investigation. The investigating team has not shared all relevant findings with the Commission partly in response to the Commission's stance more recently of wanting to see witnesses rather than additional documents or explanations. Where the Commission has requested specific information, Bain has provided that information where it had access to the required information. The biggest inhibitor to reaching full disclosure is Mr Massone's unavailability to appear before the Commission.

Since the independent investigation was still ongoing at the time of writing this report, no investigation findings have been reported upon which I could base my assessment of truthful reporting. I will make this final assessment upon reviewing the findings of the investigation and Bain's reporting of these findings. Other than doubts about the truthfulness of Mr Massone's affidavit, I have not seen anything to suggest that Bain's reporting to the Commission has been untruthful.

Enabling my ability to perform oversight

In establishing my role, Bain SA committed itself to independence of its investigation, and transparency in its dealing with the findings. It also committed to allowing me freedom to provide independent oversight and to communicate any concerns with the Commission. As indicated in the table above I am satisfied that Bain SA met all the requirements of my terms of reference to allow me to perform my role without restrictions.

Bain should be commended for taking the unprecedented step of appointing an independent overseer with the access and rights that I had. This appointment demonstrated intent to be fully transparent with the Commission and the South African public, and to get to the bottom of what transpired at SARS.

This section has commented on the process of the investigation. In the next section I offer my independent opinion on the substantive issues being considered by the Commission, that is, the role Bain SA may have played in the weakening of SARS's institutional capability.

Part 2

BAIN AND THE WEAKENING OF SARS'S INSTITUTIONAL CAPABILITY

2.1 Introduction

The loss of skilled staff and organisational functionality, and the resultant reduction in SARS's ability to collect taxes, are widely reported and are core to what prompted the establishment of the Commission of Inquiry. In this section I consider what contribution Bain SA might have made to weakening SARS's institutional capability.

My goal here is to offer a synthesis of what I have seen and heard, along with my interpretation as they relate to the issues under consideration. I reiterate that I have not conducted my own investigation; rather what I present here is my own synthesis based on my view of Bain's independent investigation and my access to Bain SA staff. These remarks are not based on any report by the investigating team and do not replace any report that the investigating team or the Commission of Inquiry will produce. Both the independent investigation and the Commission of Inquiry are ongoing so these remarks are based on what I have observed to date and a set of assumptions. I will revise these views if the investigation or Commission reveal information that sheds new light on what I have observed, introduces new relevant information or calls for a change in my assumptions.

I present this view in two sections. I start with a brief outline of the background and key events to the overall engagement between Bain SA and SARS, then present my view of where Bain SA erred and contributed to the weakening of SARS's institutional capability.

By way of summary, I close with descriptions of two narratives, the first which sees Bain SA as intimately part of a state capture plan, and an alternative which sees Bain SA as unwitting enablers of a hidden plan to damage SARS.

2.2 Background and Key Events

In South Africa, as globally, Bain ordinarily focuses on serving clients in the private sector. In South Africa, Bain saw a commercial opportunity in the public sector, both in terms of serving government departments and state-owned companies. While it had served clients in this sector before, this had not been the case in recent years. Despite pursuing growth in the public sector, it has remained a small part of Bain SA's business.

To facilitate meeting public sector leaders, Bain SA contracted the services of Ambrobrite, a company headed by Mr Duma Ndlovu. While there were some within Bain SA and Bain Inc, including the global head of legal, who raised concerns about this relationship and the nature of the contract, the relationship with Ambrobrite proceeded. This relationship yielded numerous public sector introductions across the spectrum. During this period Bain SA, through their managing partner, Mr Vittorio Massone, also met with the President of South Africa, Mr Jacob Zuma. Evidence shows that there were at least 12 separate meetings between Mr Massone and Mr Zuma. As a management consultant, it is unusual to be meeting with the president of a country, although it is every consultant's dream to be advising a country's most senior public official. Meeting the president 12 times is even more unusual. Doing so unaccompanied is counter to Bain's usual practice, as I understand it, of having partners meet with senior external parties in pairs or more. When a president is embroiled in corruption scandals and linked to state capture allegations, such meetings and their quantity rightly raise important questions about what was discussed in these meetings and the nature of the relationship that had developed between Mr Massone and Mr Zuma. While Mr Massone broadcast the fact of his meetings to anyone that he could, including internally, I get the impression that most internal senior staff imagined that the two met two to three times, not the number of times we now know.

One of the relationships that developed from the Ambrobrite contract was that between Bain SA and Mr Tom Moyane. There is speculation that Mr Massone's relationships with Mr Moyane and Mr Zuma are connected, given the strong relationship between the latter pair, but this has not been confirmed. Expressing his ambition to fill the job as Commissioner of SARS and requesting Bain SA's support, Bain SA set out to offer Mr Moyane support in his preparation for the role and to share ideas relating to SARS, including discussions about possible reorganisation at SARS. It is not unusual for a Partner at a consulting firm to meet with prospective senior executives ahead of them filling a position. Consulting firms offer such support to CEOs who are between jobs, those thinking of moving or newly appointed CEOs. It is mostly done in the context of an existing relationship to further strengthen this relationship, and ultimately such a strengthened relationship improves the firm's odds of being hired to deliver consulting work if the CEO was to hire consultants. Mr Massone described his approach in an internal email: "We work with the person to create a high level strategy plan for the company. If the plan is approved, most likely we are going to work with the CEO in its detailing and implementation." While this concept of "CEO coaching" is common, and consulting firms

routinely allocate resources to deliver this coaching, a number of factors make this particular situation unusual. It is unlikely that Bain SA would have invested in Mr Moyane for the length of time that it did had it not had some certainty that Mr Moyane would be appointed as Commissioner. This is strange since the appointment ordinarily follows a rigorous public process before the President makes an appointment. We can only surmise that Mr Moyane had been given some assurance that he would get the job and that this assurance was shared with Mr Massone such that he was willing to allocate company resources to investing in Mr Moyane. More significantly though, as seen in the email extract above, is that Mr Massone seems to pre-emptively believe that Bain SA would be hired as a consultant; he makes no mention here of the fact that as a public institution, SARS would most likely need to follow a tender process to hire consultants. Mr Massone's bet paid off because, as we know, Bain SA was appointed as consultants by Mr Moyane once he took the role as SARS's Commissioner.

Not only did various members of Bain SA's staff meet with Mr Moyane multiple times before he was appointed to SARS, Bain SA also met with or received internal information about SARS from senior SARS officials. This seems to be a precursor to a potentially irregular tender process that led to Bain SA being awarded the contract to deliver an organisational diagnostic. Evidence seems to point to communications between Bain SA and SARS, relating to the tender process, even before the process had formally begun and there is evidence that appears to point to Bain SA contributing to the content of the Request for Proposal (RFP) document that SARS eventually issued.

That Bain SA offered SARS a 50% discount on their fee for the diagnostic work (Phase 1) has received much attention on the suggestion that this was done to undercut the price of the next-highest bidder. I have not seen any evidence to support this claim and find nothing sinister in the idea of offering a price discount to win a piece of work when the possibility exists for future work. Since SARS wanted a diagnostic, it was always likely that there would be additional phases of work. In virtually every project-based business where projects are delivered in multiple phases, service providers follow this approach. There is nothing unethical or sinister about it. That Bain SA would act to ensure that there *would be* future phases and that they were hired to deliver them should receive greater attention than the price discount issue.

Bain SA was eventually hired to perform the organisational diagnostic. This was a short intervention to gauge the health of the SARS organisation and determine what interventions may be required to get SARS to the state required for it to deliver on its mandate. That the Bain SA team only spoke to a small sample of managers, all selected by the Commissioner is in and

of itself not unusual. Because diagnostics are by design quick assessments, only a sample of people can be interviewed. Coming in from the outside, the consultant may know which officers it would want to speak to but the consultant would naturally rely on the senior executive to guide this phase of the work. It is not unusual for a new senior executive to arrive and have some people hostile to his/her arrival and so they may exclude the hostile members from the diagnostic. Again, it is not the sample size of the interviews or the fact that Mr Moyane selected the interviewees per se which is concerning but the *significance of the recommendations* made by Bain SA given the brief diagnostic. That Bain SA could identify the need for a "profound strategy refresh"[3] of a high-functioning state institution, based on their cursory diagnostic is astounding. In this way Bain SA made the case for change at SARS, and established the need for a major organisational transformation, that opened the door to the destructive actions that were to come.

Bain SA's *intention* matters here. I have seen no evidence to suggest that the firm made the case for transformational change to support any plan to damage SARS. It is my opinion that it was entirely Bain SA's commercial interests that drove this decision. This is not intended to be an excuse – there can be no excuse for exaggerating the need for change in any organisation, especially when the party making the recommendation stands to gain from it. Bain SA's incentive to establish the need for a major transformational change programme was the consulting fees that it would derive from delivering such a programme. Some may object, claiming that if SARS didn't need the change then any change recommended by Bain SA would lead to damage at SARS. But this isn't necessarily the case – unnecessary change does not necessarily mean damage. A tyre shop could recommend that I change the tyres on my car when I don't really need the change. This wouldn't damage my car but would certainly be an unethical way of the tyre shop gouging money from me and making me spend unnecessarily. My read of the evidence is that this what happened at SARS particularly with the operating model part of the project.

However, for those actors determined to damage SARS, Bain SA's overstated recommendations for change provided the opportunity to cause their damage. With Bain SA they found perfect alignment of incentives – Bain SA wanted fees so exaggerated the need for

[3] This language was used even before Bain started working at SARS – the themes continued when they started working at SARS, ultimately recommending that a major transformational change programme was needed.

change, and they wanted the go-ahead that major change was needed - even though intentions were different. This is a significant point which I will return to in the next section.

The transformation project proceeded for 27 months. It is important to note that across the three phases of the project, only Phase 1 and some of Phase 2 related to the operating model. The bulk of Bain SA's work at SARS was in Customs where Phase 2 and Phase 3 were concentrated. The work on the operating model is estimated to constitute only a quarter of Bain SA's work and around a quarter of the fees earned.

Along the way and subsequent to the project a wide range of changes were made to the organisation, many of which we now know caused damage to SARS. This knowledge has led to the public narrative that Bain "broke" or "damaged" SARS. This may be a step too quick. Bain is an advisory firm and can only offer advice and recommendations. Ultimately management at SARS would have to implement recommendations. A more accurate statement might be that the implementation of Bain SA's recommendations caused damage to SARS, but even this statement would not reflect what appears to have happened. It is acknowledged that SARS ignored many of Bain SA's recommendations. There is evidence of significant back-and-forth between Bain SA and SARS management on organisation design elements, often to the frustration of Bain SA staff. In fact, Bain SA recorded over 130 changes to its design recommendation based on feedback from SARS. We can then lay at Bain SA's door that they accommodated or facilitated many of the changes at SARS that might have caused damage to the organisation. Had they realised that a hidden plan to damage SARS was unfolding, Bain SA should have walked away. Staying true to its stated mission of only working with clients where together they can create positive results, Bain SA should have terminated its arrangement with SARS. I acknowledge that this is much easier said than done since doing so would most likely have had significant business, contractual and reputational costs.

2.3 Where Bain Went Wrong

Bain Inc employs 8,000 people in 36 countries and has for 45 years advised many of the CEOs of the Global 500 companies, generating around $4 billion in fees in its most recent financial year. Globally and in South Africa, Bain regularly tops rankings of the best company to work for and reports that its listed clients generate returns that are four times that of the US stock market. How then does an organisation with Bain's global stature and track record, a company

seen as one of the most prestigious and preeminent management consulting firms in the world, get it so wrong at SARS? Before I get to *how* they got it wrong, I want to summarise *what* I believe they got wrong, leading them to the position of contributing to the harm at SARS. I offer four ways in which Bain SA acted to damage SARS:

***Poor choice of business associates*:** Bain SA would have known that Mr Zuma faced extensive charges of fraud and corruption. It is difficult to understand why a firm of its stature would engage with someone this embroiled in improper behaviour. The firm should either have stayed far away from Mr Zuma and his associates (such as Duma Ndlovu of Ambrobrite) or implemented extra measures to guard against contamination. Judging from the materials discussed at the meetings with Mr Zuma, Mr Massone had grand ideas of engineering macro changes to many aspects of the South African economy and even offered advice on matters relating to Mr Zuma's political party, the ANC. Mr Massone appears to have made a political bet of aligning with the Zuma faction, including working with Nkosazana Dlamini-Zuma who he referred to as "the future President of South Africa," according to internal sources. The commercial potential for Bain SA of this relationship would have been astronomical which, in my view, explains why they may have been blinded to the risks. It does appear that Mr Massone saw no risk in the Zuma association, rather seeing it as an asset as he wrote in an internal email: "I wouldn't feel ashamed of an article associating us with Duma and the President … I believe it could be quite positive and strengthening as an association."

Bain SA should also have been circumspect about developing a close relationship with Mr Moyane knowing his close proximity to Mr Zuma. Nor should Bain SA have met with senior SARS officials and accepted confidential information on SARS as Mr Massone did from Mr Jonas Makwakwa in August 2014. Note that this information was shared prior to the tender process, and in it Mr Makwakwa outlines organisational problems within SARS which could be deemed useful for a consultant preparing a proposal. It is unknown whether this information was shared with other consultants bidding for the work at SARS.

While these relationships per se didn't cause damage at SARS, they were a precursor to the damage to come and by growing these relationships, Bain, perhaps inadvertently, lent its prestigious global brand to legitimising their actions.

Actively participated in a potentially flawed procurement processes: Evidence suggests that SARS went through great lengths to ensure that Bain SA were the winning bidder for all three phases. While the investigation is ongoing into the propriety of the tender processes, Bain SA were willing participants in these processes. Furthermore, it appears that Bain SA may have contributed to the content of the RFP document before it was ultimately issued which, in my view, would constitute serious impropriety. Knowing that regulations such as PFMA govern procurement by public entities and observing what should have appeared to be an unusual if not irregular tender process, I believe Bain SA should have disengaged from the tender process.

At each new phase of the project, regulations covering public procurement would typically require that SARS enter a new tender process, with certain limited exceptions allowing for single sourcing. Bain SA would have known this yet actively sought to find ways to avoid a tender process, ultimately succeeding with respect to the work extensions following the initial tendered work. This shows, in my view, disregard for South Africa's procurement laws, lack of interest in fair competition which the tender process seeks to facilitate and lack of commitment to getting SARS the best value for money which a competitive tender process is intended to yield.

Some might see Bain SA's participation in the potentially flawed tender processes as evidence that it was in cahoots with Mr Moyane and others to damage SARS. Alternatively, I argue, it was Bain SA's commercial interests in earning significant fees that led them to willingly participating in these processes.

Enabled the damage by overstating the initial case for change: I made reference to this point earlier. While it is generally true that every organisation has room for improvement and that when a leader calls in consultants it is usually because something in the organisation is deemed to require improvement, we'd be hard pressed to find anyone who would claim that SARS was in need of a major transformation. In fact, SARS had been on a path of quite substantial improvement for some years and needed to continue on that path, perhaps at best with isolated tweaks. Instead Bain SA argued for a change on the scale of a "profound strategy refresh" as Mr Massone wrote in one of his documents to Mr Moyane before he became Commissioner. This to me sounds like Bain SA saw SARS as completely dysfunctional and needing to be rebuilt from the ground up, at least in terms of its strategy. Bain SA appears to have planted and continuously watered the seed in Mr Moyane's mind that SARS needed transformational change by overstating the problems and the upside. That Bain SA spoke of a profound strategy refresh before both Mr Moyane or Bain SA arrived at SARS, and that Bain SA's diagnostic

yielded recommendations which amounted to such profound change may be interpreted as premeditation on Bain SA's part to cause damage at SARS. Why else would major change be pre-meditated? While I cannot know what Mr Moyane's intentions were, there is a possible alternate, more likely explanation, and that is Bain SA's commercial interest. The bigger the gaps and opportunities the more consulting services would be needed and this more fees for Bain. This is a common (mis)selling technique in business in most industries. In following this technique Bain SA not only flouted ethical business behaviour and its own operating principles so that it could gouge fees from SARS, but provided the platform for those within SARS intent on undermining the organisation. With the plan to make major change at SARS rubberstamped by a prestigious global consulting firm, Mr Moyane and his associates could get on with the business of making the changes that suited them, which is why they ignored many of Bain SA's later recommendations. As I read the situation, this is the turning point and the start of the damage at SARS – *the overstated case that Bain SA makes for change*, not the new operating model that it eventually proposes. By acting in its selfish interests, rather than to create positive results for its client, Bain SA unwittingly endorsed the hidden plan to damage SARS.

Those claiming that Bain "broke SARS" by implementing a flawed operating model fall into the same trap that Bain SA fell into of overstating matters. Consultants present recommendations based on their analysis and relying on their experience, they do not *implement* changes in organisations. Only the client can implement recommendations. So Bain SA's recommendations could reasonably be criticised, which interestingly doesn't seem to receive much attention, but the responsibility for implementation lies squarely with clients, even though consulting firms and client organisations typically share the burden of success and failure, and consultants worth their salt would stand by their recommendations. The fact that SARS ignored many of Bain SA's operating model recommendations further points to the fallacy of Bain SA's work per se causing damage at SARS.

It is important to note that assertions of SARS being a world-class organisation refer mainly to the tax collection part of the organisation. It is here where I believe it was an overstatement to argue that major change was required. However, my understanding is that this was not the case at Customs, quite the contrary. Customs did require significant change, and this is where the majority of Bain's time was spent and fees earned, roughly three-quarters of the total fees was earned here. Available evidence suggests that SARS implemented most of Bain SA's recommendations in the Customs part of the organisation and that this implementation has yielded positive results.

***Stood by while SARS got damaged*:** When SARS rejected many of Bain SA's recommendations and designed their own operating model solution, Bain SA should not have continued to support the implementation of the latter design. Bain SA should have recognised that this was no ordinary transformation programme by the scale of the internal resistance and the individual agendas at play evidenced by the clear jostling for positions in the organisational structure design. Bain SA was not achieving the positive results they claim guides their work and client engagements and so should have disengaged if the situation could not be changed.

But rather than leave, Bain SA continued with the programme, accommodating the many changes. This gave legitimacy to the hidden plan and enabled its implementation using Bain's resources and intellectual property. Even when Bain SA's junior consultants raised concerns about the quality of the work being done and its receptiveness, they were ignored by Bain SA's senior staff. Even as media reports emerged of sinister happenings at SARS, Bain SA's senior staff directed junior staff to ignore media reports and stay focused on the work at hand.

The best explanation that I have for this behaviour is that Bain SA was not acting in the interest of SARS but in its commercial interests, not only at SARS but the broader set of opportunities that Mr Massone had been discussing with the President.

If anyone could have protected or rescued SARS from those intent on damaging the organisation it was Bain because they were on the inside, had the ear of the new SARS leadership and had enormous power to speak up given its prestigious global reputation. This is the tragedy of the situation – the very ones who were in a position to rescue SARS took advantage of its weakness.

From what I have seen and heard, and understanding their motivations, Bain was not party to the macro-plan to cause damage to SARS. They were initially unwitting accomplices and then later, as they became aware of what was transpiring, became knowing by-standers.

Earlier I asked the question about how an organisation with Bain's global reputation as one of the most prestigious and preeminent management consulting firms could get it so wrong at SARS? Having shared my thoughts of what Bain SA got wrong, I now answer this question of how this came to be, that is, what underpinned Bain SA's behaviour.

Blind commercial interests: I have already mentioned Bain's commercial interests as their driving force. I have encountered nothing that suggests Bain SA entered SARS to cause it damage. Bain SA entered SARS with commercial interests. Ordinarily there is nothing wrong with that. As a service provider it is acceptable to seek to earn fees in exchange for providing a valuable service. However, Bain SA did not always provide a valuable service. It allowed its commercial interest to blind it to what was happening at SARS, that is, its work being used to justify damage at SARS. Blinded by the economic opportunities that lay ahead, Bain SA simply behaved in ways unbecoming of an ethical service provider and went along with the damage that others were causing.

A cavalier culture dominated by arrogance and fear: Bain SA might offer to concede that there were lapses in their governance while working at SARS. This suggests that perhaps a rule or two needs to be tightened or that an additional rule is required. In my view, what went wrong was more than a failure of governance but a cultural failure, that is, something endemic to the culture of Bain's business in South Africa. It is too easy and far too simplistic to conclude that Mr Massone acted alone and should be identified as a lone rogue within the company. There is little doubt that he is the main protagonist in the saga – he was the head of the South African business and led the client relationship at SARS. It was he who developed the relationship with Mr Moyane. And it was he who directed or endorsed many of the actions the Bain SA teams took during the 27-month long engagement. It was also he who failed to coherently explain Bain SA's involvement at SARS and answer basic questions during his public testimony in August, and then fail to appear at the follow-up hearing. There is evidence as well that he may have misstated facts during his testimony and in his affidavit to the Commission. Mr Massone has a lot to answer for.

However, Mr Massone was supported from below and endorsed from above. Any wrongdoing deemed to have been committed by Mr Massone was done with some awareness of Bain's South African leadership, notwithstanding my observation that some members of the leadership were intimidated by him so would not have challenged the wrongdoing. While Bain Inc might not have been aware of Mr Massone's actions, he was fully endorsed in his role by Bain's global leadership. I am not suggesting that Bain Inc or the rest of Bain SA necessarily endorsed Mr Massone's *actions* – there is evidence to suggest that most people were unaware of most of Mr Massone's activities; even his diary was vague with cryptic meeting descriptions.

What I am suggesting is that Bain Inc endorsed Mr Massone as the *leader of Bain SA* by appointing him to the role and keeping him there for 9 years despite concerns being raised by senior Bain SA staff – this is one of the longest Office Head tenures at Bain globally. By their long-term endorsement of Mr Massone as Office Head of Bain SA, I suggest that Bain Inc acquires some responsibility for the consequences of Mr Massone's behaviour. Similarly the Bain SA leadership bear some responsibility as well.

Bain SA, and particularly Mr Massone as the leader for 9 years, inculcated a culture where questionable professional and ethical behaviour was tolerated or when there were dissenters, they were ignored or penalised. As I've already mentioned, the concerns of junior consultants were disregarded at SARS. But even senior members of staff, partners in the firm, were chastised or penalised for challenging Mr Massone, such that eventually, some senior staff were too afraid to speak up. Other senior staff simply disengaged from what Mr Massone was doing. In a range of different ways, the firm culture ensured that Bain would be placed at the disposal of those with ill-intent at SARS.

This is not to suggest that Mr Massone didn't have any supporters in South Africa; and he certainly had supporters within Bain Inc as gauged by his long tenure as Office Head and the fact that when South African partners raised concerns with Mr Massone's superiors about his behaviour no actions were taken.

Ultimately the local and global leadership became knowing beneficiaries of what transpired at SARS and bystanders while SARS got damaged. Many insiders report a culture of arrogance towards clients and even a dismissive attitude towards South Africa. Coupled with a culture that rewards commercial performance over much else and you have a recipe for disaster.

Bain espouses what they term "True North values" as their moral guide – "our unwavering commitment to always do the right thing by our clients, our people and our communities." At SARS Bain SA appears to have strayed significantly from these stated values. An organisation's actual values are revealed when they are in tension with something else – Bain SA, and the broader Bain Inc, might need to reflect upon the fact that while claiming to operate with integrity, the SARS example shows, with the prospect of significant fees (both from the current project and the broader projects with the President), Bain SA showed that when it came to a trade-off, it placed profit above principle. Even with all the concerns about unethical behaviour at SARS, concerns being raised about the culture being created and questions over

his leadership style, Mr Massone was still celebrated within the global firm and received a standing ovation at the local office's retreat in recognition of his leadership.

It should be cause for great concern for Bain Inc's global leadership that consistently across the South African business, staff talk about fear of speaking up or asking probing questions. Besides being an awful environment in which to work, a culture of fear is a constraint to doing the right thing because it stifles innovation and silences those with conviction to challenge unethical behaviour. This case shows that an organisational culture of arrogance and fear will erode the meaning and effectiveness of any values or principles by which an organisation may have set out to guide its behaviour.

Even with the best intentions, this experience highlights the gap between intent and action. I have no reason to doubt Bain's intent but its actions at SARS and even some aspects of the investigation, do point to the considerable work required to close this gap if it hopes to regain trust in South Africa.

I have had to keep reminding myself that what I was observing was not Bain Inc but Bain SA since there appears to have been a departure in this office from the global Bain culture and operating standards. Even within the firm I could observe the bewilderment as "Bain" was described as unethical and unprofessional. I do not believe this to be true of the global firm. This case demonstrates the difficulty that multinational companies face in ensuring that all offices operate according to its core principles. With the South African office representing only a small fraction of Bain Inc's global business, it is likely that monitoring of the office was insufficient, something that Bain Inc would need to address going forward.

I will summarise this section by presenting two narratives of Bain SA's involvement at SARS.

2.4 The Two Narratives

I draw a distinction between the public narrative which has been developed in the public domain over recent months, and the alternative narrative which I have laid out in this report. Both

narratives rely on the same facts and present reasonable arguments built on different interpretation and stringing together of the facts.

The public narrative proceeds as follows: Bain SA met with the president and Mr Moyane to design a plan to weaken SARS's institutional capability as part of a broader state capture plan and as a way to halt investigations into Mr Zuma's tax affairs and those of his associates. Bain SA developed the detailed plans to damage SARS and shared an overview of these plans with Mr Moyane months before he started at SARS so that even before either of them entered SARS they had already set out what they would do once they got in. Bain SA, through Mr Massone and others, met repeatedly with Mr Moyane to coach him in this plan and prepared him for his role to lead the damage to SARS. To ensure that Bain SA could support him with the implementation of the plan, Mr Moyane manipulated the SARS tender process to ensure that Bain SA got hired. Bain SA cooperated with the manipulated tender process including offering a 50% discount on its fees for the first phase of work. Once at SARS, Bain SA produced low quality work because the script had already been written for what the outcomes needed to be – the weakening of the institutional capability of SARS. Bain SA's diagnostic for example was a sham during which Bain SA superficially interviewed a group of individuals hand-picked by Mr Moyane, and then presented their pre-determined recommendations to the effect that SARS needed a major transformation, which SARS did not need. Bain SA continued to cooperate with the tender process rigging to ensure that it could continue at SARS through phases 2 and 3, to implement its recommendations and operating model design. Bain SA proceeded to implement its recommendations which ultimately resulted in the large-scale damage to SARS.

The alternative narrative would proceed as follows:

Bain SA met with the president numerous times to discuss project ideas, for example Project Phoenix. These meetings did not include Mr Moyane but SARS may have been discussed. A state capture plan and a plan to weaken SARS may have existed, it certainly seems that Mr Moyane acted as though according to such a plan, but Bain was not part of its design or knowingly part of its execution.

Upon the request of Mr Moyane, Bain SA developed a set of materials, using public information and their experience, to offer possible ideas of what an improvement agenda may look like for a new SARS Commissioner.

Bain SA, through Mr Massone and others, met repeatedly with Mr Moyane to offer a form of CEO coaching to help him prepare for the role as Commissioner should he get it. Bain used its standard materials for new CEOs in which it lays out a plan of action for the first 100 days, the key period for a new CEO to establish himself/herself in the new organisation. This CEO coaching is standard practice for Bain and other management consulting firms and most of the materials used are generic. Bain SA would have customised some of the materials based on the external view of SARS that they had developed. Bain SA also shared with Mr Moyane a vision of a new SARS, without having entered the organisation, the details of which would be subject to actual data and further analysis.

Seeing that Bain SA could be a useful partner in his new role, Mr Moyane set out to do all that he could to ensure that Bain SA was hired. At this stage Mr Moyane's motives probably parted with that of Bain. Nevertheless, Bain SA cooperated with Mr Moyane and others at SARS in this process. Bain SA offered SARS a 50% discount on its fees for the first phase of work as a competitive tactic to ensure that at least on price, they would be the preferred candidate. Offering discounts on the first phase of a multi-phase project is common in virtually every sphere of business. It was known that the project at SARS would entail multiple phases as envisaged in the RFP.

Once at SARS, Bain SA produced work below its usual quality, particularly in the operating model part of the overall project. Although Bain did resist a number of SARS recommendations, their arrogance led them to ignore legitimate objections or resistance to their work and their blind commercial interests saw them bow to Mr Moyane and his associates. While management consultants co-create solutions for their clients to ensure most likely chances of success and results, it is not usual management consulting practice to allow the client to ignore recommendations or make significant changes to the recommendations, as happened at SARS. A situation where a client made as significant changes to a consultant's recommendations as SARS did would be a sure indicator of a failed consulting engagement. Bain SA would have known this.

That Bain SA's diagnostic only engaged with a sample of executives is itself not unusual. By definition a diagnostic is a "dipstick" into the organisation and while the consultant would have some idea of which managers they would want to interview, it is not unusual to rely on the guidance of the CEO for who to speak to. I consider it strange for example that Bain SA did not interview the CFO of SARS during the diagnostic but from Bain SA's standpoint it

would not be unreasonable for them to assume that Mr Moyane had good reason for this. As I noted earlier, it was not so much the nature of the diagnostic that surprises me but the scale of the recommendations derived from this diagnostic. That Bain SA could conclude that SARS needed a major transformation when it is well-established that SARS was a high-functioning organisation is surprising.

Bain SA continued to cooperate with Mr Moyane and his associates inside SARS to ensure that it could continue at SARS through phases 2 and 3, to develop the details of the transformation plan and to establish the organisational capability to guide and monitor the implantation, for example, by creating the RDO.

It is known that SARS did not implement any of the operating models that Bain SA designed. While Bain SA did offer some resistance to what Mr Moyane set out to do, ultimately they opined and supported the implementation. It is my view that Bain SA's commercial interests, particularly as they related to the large projects that were being discussed with the president, and knowing Mr Zuma and Mr Moyane's closeness, led them to drop their usually high professional standards to go along with Mr Moyane's plan even when Bain SA began to realise that all was not well.

Bain SA provided the perfect, if unwitting, partner for those intent on damaging SARS. Overstating the case for change opened the door for Mr Moyane to rip apart the organisation as he had planned, and remaining at SARS even as the organisation rejected its recommendations, legitimised the damage.

This second narrative agrees with the first in that Bain SA contributed to the damage at SARS but differs on the point of being part of the hidden plan to damage SARS, and differs on the point that Bain SA's operating model solution caused the damage.

Part 3

WHAT DOES BAIN SA OWE SARS AND SOUTH AFRICA FOR ITS ROLE IN THE WEAKENING OF SARS?

3.1 Introduction

Bain SA has already repaid to SARS the fees that it earned during the period under consideration. Is this the full account of what Bain SA owes SARS and South Africa?

The Commission will no doubt make recommendations for the consequences of what it deems to be Bain SA's role in the weakening of SARS. What I present here is not a legal view but a broad conceptual programmatic approach, that of an applied ethics scholar and an advocate for the remedying of social harms.

If it is ultimately shown to be true that Bain SA contributed to the weakening of SARS, what should we expect from the company by way of remedy? A framework for systematically determining remedy for social harms caused by companies has not been well developed in South Africa. This is a major oversight given the numerous companies that have been involved in social injustices in our country for many decades. Criminal activity must be dealt with in our criminal justice system, but there are matters of justice that sit outside the criminal justice system, matters of social and economic justice. We have not developed a framework to guide our claims of remedy from these companies, and equally, society has not presented these companies with guidelines on how they can regain our trust. What follows here may be a step towards such a framework, which I demonstrate using the case of Bain.

3.2 *True* Corporate Responsibility

Ask any business executive about the scope of their responsibility to society and you'll hear that business should focus on driving the economy, pay taxes and leave the rest to the state[4]. But what if the state itself is being attacked? And what if the state is unable or unwilling to offer social protections or to restore justice where there is injustice? This has been the situation in South Africa for at least the last century and certainly over the last decade as our state institutions have systematically come under the influence of parties with private interests. What should businesses do in such situations? I believe that simply carrying on with business-as-usual is a failure of *true* corporate responsibility.

[4] I would offer contrary arguments to this response, but this is not relevant to the matters at hand.

In a situation in which state institutions are weakened, and particularly where the integrity of these institutions has been compromised, as is the case in South Africa, business has a responsibility to proactively act to strengthen our state institutions, even if this comes at the expense of profit.[5] This responsibility derives from business's responsibility to do no harm, which entails avoiding doing harm itself and supporting those institutions which prevent harm. When state institutions are weakened, businesses run the risk of committing harms themselves, even in the normal course of business, when state institutions are unable to act to prevent harm.

In South Africa we've been paying lip service to ethical behaviour, social and ethics monitoring and corporate responsibility. The wave of corporate scandals are just the tip of the iceberg. Corporate South Africa has largely adopted the cynical approach of "do as little social good as you can get away with." We don't have corporate social responsibility, we have corporate social *optionality*, that is, corporations don't behave as though they bear a moral responsibility to society, rather than behave as though they have a charitable option to do some good, on *their* terms rather than what society needs. The reality is that corporations bear specific tangible moral obligations to remedy injustices that they have caused or are party to, yet this is not the frame used when companies approach their social obligations nor is it the frame used when society assesses their behaviour. Large companies wield significant power to act to shore up our institutions, yet most have failed to act. Yet real people continue to suffer the injustices at the hands of business's neglect. The idea of doing no harm, which ought to govern all our actions, speaks not only of direct actions that cause harm, but also not contributing to conditions that can cause harm and not weakening public institutions that provide social protections and serve the common good. Both actions that cause these harms, and omissions that fail to avoid these harms, fall into this category.

This is an area of unethical corporate behaviour often overlooked. Companies view their responsibility to society to entail making voluntary contributions to charities; they view any social responsibility as optional or even supererogatory, something that may be good but not morally required. They make a 'business case' for corporate responsibility arguing that if a social intervention benefits the business then it is good to do. This approach causes companies to ignore desperate social needs, even when they have the ability and resources to help, because

[5] This may strike most business people as odd since they'd consider their responsibility to shareholders as paramount. I acknowledge fiduciary duty and responsibility to shareholders but suggest that in the situation where state institutions are weakened, or injustices have been caused through some social scheme in which businesses have participated, the order of their moral duties are rearranged such that remedy to restore justice becomes paramount.

such interventions offer no business benefit. Furthermore, every business bears a responsibility to uphold the integrity of state institutions – to fix where it has been damaged, to defend where it is being attacked, to build defences against future attacks, and certainly not to take advantage of its weakness. In fulfilling their responsibility, we would expect for example that companies would speak out or act against our current scourge of state capture, yet very few have. Instead, many are taking advantage of our weak public institutions.

A responsibility cannot be optional, it is an obligation. What we need in South Africa is for companies to begin living up to these obligations to our society.

In the case of Bain, not only did Bain SA not act to fulfil its responsibility to contribute to strengthening our weakened institutions, it supported efforts to harm these institutions and took advantage of the institutional weakness at SARS and our broader state vulnerability due to state capture.

3.3 Remedying Harms Caused by Corporate Irresponsibility

I propose a *6-step remedy programme* that a company can implement to remedy the social harms of its action whether it has been the wrongdoer or allowed other to act wrongly, or in many cases where it has been a beneficiary of a wrong by others. There are many cases where companies are not actual perpetrators but participate in the social scheme that causes, upholds or perpetuates harms done to individuals, other organisations or our broader society.

For each of the steps I first provide a general description of the requirement and then apply it to the case of Bain SA.

Step 1 – Identify the harm(s) caused and the harmful acts

The first step to any remedial programme is to gain a factual understanding of who performed which harmful acts, who the victims were and what the nature of the harms were. This can be a complex and time-consuming process that may require forensic investigations and the input of expert advisors. The longer the elapsed time between the actual events and the present, the even more complex this fact-finding process becomes. A company serious about remedy would

need to invest adequately in this step, since all subsequent steps in the remedial programme rely substantially on what is discovered here.

Bain SA has already begun its investigation into what happened at SARS. We expect that findings will be known in December. These findings will inform the scope and scale of the remedy that Bain SA ought to make.

Perhaps it should become standard practice in South Africa, that in the face of allegations of fraud, corruption or massive social harm that companies are required to appoint an independent oversight advisor, similar to the role I played at Bain SA, to give the public assurances of the rigour of the investigation and to vouch for truthful reporting especially when the full findings of such investigations cannot be made public for legal reasons. Such a role also keeps the company honest since the independent oversight advisor is free of confidentiality constraints so can reveal to the public any improper behaviour.

Step 2 – Acknowledge the company's role in the harm

This should be in the form of internal and public announcements which highlight specific actions and contributions to harmful outcomes. At best we see companies make vague acknowledgements but in most cases there is no acknowledgement at all. In the absence of concrete specific acknowledgment everything that a company does rings hollow and inhibits its progress to social trust and legitimacy.

Bain SA's behaviour has significantly eroded its social legitimacy in South Africa. While it has made a first step towards remedy by returning to SARS the fees it earned, it will always bear a moral debt to our society until it acknowledges the wrongs it did. A significant contributor to this acknowledgement would be to determine exactly what happened at SARS and report this truthfully. I have reported in Part 1 of this report the extent to which Bain has done and is still doing this.

Step 3 – Issue an apology to the victims of the harm done

The company needs to issue a public apology to the victims of the social harms to which it was a party. The connection between its specific actions or contributions to harm need to be made

with specific victims, if possible. Where the general society has been victim this should be acknowledged.

Once Bain SA has acknowledged its specific wrongs, it needs to issue an apology for these wrongful acts or harmful outcomes. The victims to whom apologies are owed would include the South African society, SARS, in general, and specific individuals, Bain SA's clients and its staff.

Step 4 – Implement a programme of reparations

The first three steps of the remedy programme offer credibility to what comes in this fourth step. Often companies rush to show some act of contrition but neglect to acknowledge specific wrongs and issue specific apologies, thus never fully repaying its debt to society. Similarly, fulfilling Steps 1 to 3 without reparation, especially where there has been tangible harm, will be insufficient.

Reparation might be considered to have two constituent parts, namely *restitution* and *compensation*. Restitution seeks to remedy the harmful act, while compensation seeks to remedy opportunity cost or deprivation suffered by a victim. If A stole B's truck, then restitution requires that A returns the truck to B, while compensation requires that A pay to B any loss of income and any inconvenience suffered due to B not having his truck. Determining what constitutes adequate restitution must start with the consideration of the harms done to victims. Who is worse off as a result of the wrong action, what is the nature of this harm that makes them worse off, and how can the company eliminate this harm? In the case of Bain SA and SARS we would need to determine the total harm done – to SARS's institutional capability, to SARS individuals and to the broader South African society – and then determine Bain SA's share of this harm. This is not a simple exercise but can be done to yield meaningful results.

Bain SA's repayment of fees and interest could be considered over-payment when we consider that only Bain SA's operating model work is being questioned not the work it did for Customs, which has delivered tangible benefit to SARS. But perhaps the 'over-payment' covers other areas where Bain SA may bear a justice debt – the damage to SARS, to individual careers and perhaps to our broader society. With regard to harm to the broader society, some have claimed that Bain should bear the full burden of the tax collection shortfall. This claim overlooks the fact that numerous factors contribute to a tax collection shortfall, including

macro-economic factors. While SARS's tax collections capability is reported to have been diminished, this diminished capability would explain only part of the tax collection shortfall. If we agree, as I have argued, that Bain is only partly responsible for the weakening of SARS and that a weakened organisation only partly explains the tax shortfall, then is seems overly and unfairly demanding on Bain to have to fill the tax shortfall. At the same time, it is plausible that Bain may bear *some* responsibility for the shortfall. The same would be true of other areas where harm has been done, that Bain would bear some of the responsibility.

In determining what Bain SA owes we should not overlook that it has access to two valuable resources, other than cash, namely IP and skilled professionals. Especially for those areas of SARS or our broader society where we cannot quantify the harm done or where cash won't necessarily repair the harm, we could call on Bain SA to make these two resources available. Perhaps Bain SA could offer consulting teams at no cost to contribute to the institutional repair at SARS. Perhaps they could broaden the scope of the Bain Academy, which now upskills potential executives, to focus on SARS employees, or public sector employees more generally, and establish a permanent source of funding for the Bain Academy to give it greater financial stability. Or perhaps Bain SA could offer a set number of consulting teams per year to address social challenges South Africa faces, challenges that would benefit from Bain SA's skills.

In my Daily Maverick op-ed on 16 October 2018 titled 'What do we want from Bain?' I issued a challenge to Bain SA that they would need to do something extraordinary to gain South Africa's trust. It is not for me to decide what constitutes 'extraordinary' but what I have described above may be the first steps towards something extraordinary. It is important to note that what may be required is not necessarily a once-off act – I have used the term remedial *programme* consciously, to reflect the need for a sustained effort.

Step 5 – Commit to and demonstrate change of behaviour

A question certain to be asked of any company involved in harmful behaviour is how they will ensure that this will never happen again. This will require a demonstration of changed behaviour. But this change of behaviour is also critical to the meaningfulness of the apology in Step 3. An apology without change of behaviour is meaningless. There is absolutely no value in a company issuing an apology for harm done and then continuing with the same behaviour or continuing to operate in the same way.

I have pointed to Bain SA's internal operations that may have led to the harmful outcome, namely blind commercial interest and their cavalier culture. Internally, Bain may need to rethink its incentive structures and its governance procedures to ensure that the events at SARS are not repeated. Culturally, it would need to begin rooting out the arrogance and fear that seems pervasive, and create space for dissent and whistleblowing.

But this needs to have an external component as well, such that society can observe the commitment to change. In addition to reporting on internal changes, perhaps all senior members of the Bain office in South Africa should sign an annual pledge to be more constructive contributors to South Africa. Perhaps introducing a governance board with independent representation will be meaningful.

Step 6 – Commit to delivering products or services at high quality and fair prices

In this sixth step of the remedy programme, the company must commit to delivering the best that it can. This is particularly relevant to multinationals who may have lowered the quality of their products or services in South Africa. These companies need to commit and deliver the same quality of work in South Africa as they deliver in other markets.

Other than in Phase 1 of the SARS project there is no indication that Bain SA has not been providing consulting services of the highest standard to their clients, although the Phase 1 experience does demonstrate that this standard can slip. As part of Bain SA's commitment to behaviour changes (per Step 5) and a culture overhaul to root out the arrogance, it would be expected that lapses in delivery of client results, as happened at SARS, would not recur.

It is important to note that *all 6 steps **must** be delivered* to start the process of remedying the harm done. The scale of each part must match the social harm done. This is not a PR exercise, but an exercise in pursuit of social justice and public trust.

Conclusion

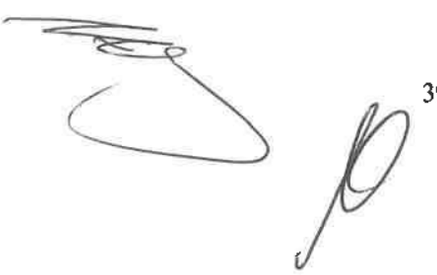
It is right that the South African public is angry about corporate corruption, public corruption and state capture. Coordinated plunder of our public resources must not be tolerated and must be punished. These destructive and despicable behaviours contribute significantly to the suffering many South Africans face by depriving our public programmes of the resources needed and retard our social and economic progress. In addition, they undermine our democracy and our faith in our public institutions, never mind the loss of confidence we suffer in the international arena.

Given what we know about Bain SA's role in the weakening of SARS, one of South Africa's key public institutions, we are right to be angry at the company and to call for justice. As I have outlined, Mr Massone, Bain SA and Bain Inc have a lot to account for. So too do some who held leadership positions at SARS at the time, particularly Mr Moyane.

What I have sought to do with my oversight of Bain SA's investigation, and in writing this report, is to convey as objectively as I can what I have observed and my best interpretation of the facts to form a coherent picture of what transpired during Bain SA's engagement at SARS. I have tried to be fair to all parties but have pointed firmly to wrongdoing where I have seen evidence of it.

It is my hope that this report will serve as meaningful input to the Commission of Inquiry's deliberations and serve to provide the South African public with a richer understanding of what transpired at SARS.

Those who have done wrong must be punished. However punishment is insufficient to achieve social justice. Our pursuit of social justice must extend beyond punishment to remedy. In this pursuit I have offered a suggested 6-Step remedy programme that Bain could follow, and hopefully one that can serve as a guide for any company seeking to sincerely remedy social harm that it may have been party to. Corporate SA has some way to go to fulfil its true corporate responsibility to our society, that of contributing to the remedy of the harms it has perpetrated in the past and acting to prevent these from recurring. This requires a significant departure from the current superficiality of CSI which in most cases sets us back rather than advances our society towards social justice.



Ultimately it is my hope that this report contributes in some small way to eradicating corruption in South Africa and freeing us of the burden of the suffering caused when a few elites abuse their positions to exploit public resources for their private gain.

ANNEXURE "AW155"

AW155

BAIN AND THE WEAKENING OF SARS:

OVERSIGHT OBSERVATIONS AND SUGGESTED REMEDIAL FRAMEWORK

FINAL REPORT

Prepared by: Athol Williams

20 December 2018

(This report follows the *Interim Report* submitted to the Nugent Commission on 20 November 2018)

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About the Author

Athol Williams was contracted by Bain SA to provide independent oversight of the independent investigation into Bain SA's work at SARS (2014-2017), which has come under investigation by the Commission of Inquiry into Tax Administration and Governance.

Mr Williams is an Independent Advisor in Corporate Responsibility and Ethics, a Senior Lecturer at the Allan Gray Centre for Values-Based Leadership, UCT Graduate School of Business, and a Research Fellow at the Centre for Applied Ethics, University of Stellenbosch. He is a member of the Scholars and Practitioners Network for the Corporate Responsibility Initiative at Harvard University. He is a former Adjunct Professor at the Wits School of Governance and served on boards and committees at Wits University (Centre for Entrepreneurship, Convocation and Wits Enterprise).

He has over 20 years' business experience, mostly as a strategy advisor (Bain & Company[1], Taurus Associates) or senior strategy executive (Old Mutual, Rio Tinto, RMB Corvest). He has served on numerous boards and served as Chairman of the Family Life Centre and Shalamuka Capital. He is the founder and Chairman of Read to Rise, a youth literacy NGO that works in under-resourced communities. Mr Williams's work as a social advocate for education has earned him an Inyathelo Award in Education, a Lead SA award and recognition by the City of Cape Town with a bollard erected in his name.

Mr Williams holds Masters degrees from Harvard, Massachusetts Institute of Technology, London Business School, London School of Economics and Oxford University in public administration, business strategy, corporate finance, ethics, and political theory respectively, as well as a mechanical engineering degree from Wits University.

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[1] Employment was in multiple blocks as follows: 1995 (Boston), 1996-1997 (Boston), 1999-2001 (London, Boston, New York), 2009-2010 (Johannesburg). During 2017, Mr Williams supported the company's talent development efforts on a contractual basis.

Introduction

References to Bain: Bain & Company South Africa (Bain SA) is the South African office of Bain & Company Inc (Bain Inc), a global management consulting firm. In this report, reference to "Bain Inc" refers to the global Bain business headquartered in Boston, USA, whereas "Bain SA" refers specifically to the South African business, while "Bain" is a general reference to the firm, referring neither to the global nor South African business specifically.

Bain SA engaged with, and provided consulting services to, the South African Revenue Service (SARS) between 2014 and 2017. Owing to a deterioration in the performance of SARS and allegations of state capture, in May 2018, President Cyril Ramaphosa established a Commission of Inquiry, headed by retired judge, Robert Nugent, to investigate SARS's decline with a focus on tax administration and governance. This inquiry included investigating Bain SA's relationship with SARS and the consulting work that Bain SA delivered at SARS, particularly relating to Bain SA's work to develop a new operating model.

Between May and August 2018, Bain SA's submissions to the Commission were led by Mr Vittorio Massone, managing partner for Bain's operations in South Africa, and head of Bain SA's consulting team that worked at SARS. Following Mr Massone's testimony at the Commission's public hearings on 30 and 31 August 2018, Bain Inc launched an internal investigation led by Bain's US-based and Europe-based legal counsel and an independent investigation led by global law firm, Baker McKenzie. Both investigations cover the circumstances leading up to Bain SA entering the initial procurement process, subsequent procurement processes and all three phases of work at SARS.

On 7 September 2018, Bain SA appointed me on a short-term contract to contribute to the Commission's and Bain's investigation processes by providing independent oversight of the company's independent investigation being conducted by external counsel. My understanding of Bain's objective for appointing me was to give the Commission and the South African public assurance that Bain's independent investigation had done all it could to uncover the truth and that Bain was open and transparent in reporting the findings.

My agreement with Bain SA explicitly allowed me to communicate with the Commission on an unrestricted basis without violating any confidentiality obligations or legal privilege. Annex A of my agreement states:

"Mr Williams and the Commission are free to communicate directly on matters relating to the Commission's investigation, including any concerns that could not be resolved with Mr Moolman[2]. With respect to any such communication:

- Bain agrees that it shall not deem any such communication by Mr Williams with the Commission to be a breach of Mr Williams' confidentiality obligations to Bain
- Bain agrees that is shall not seek to assert a claim of legal privilege to prevent Mr Williams from bringing his concerns to the attention of the Commission"

The intent of my engagement was neither to defend nor attack Bain but that I would do what was right for South Africa in terms of uncovering the truth of Bain's involvement with the weakening of SARS. This intent was underscored in Bain's press statement of 10 September 2018 and in my contract. In addition to my contractual requirement, the aforementioned provisions allow me to publish this report.

As specified in my contract, Bain SA covered my travel-related costs (flights, accommodation and incidental expenses) and paid me a professional fee. I have instructed Bain SA to pay a portion of this professional fee to a non-profit organisation.

In September 2018 Mr Massone was relieved of his duties of leading Bain's South African office so that he could focus on the Commission of Inquiry. Due to purported ill health, Mr Massone did not appear at the Commission's public hearing on 25 September 2018. Mr Stuart Min, Bain's global head of legal, represented Bain at this hearing instead. The Commission offered Bain SA the opportunity to send representatives to appear before the Commission on 22 October 2018 – an offer which Bain SA did not accept. Subsequent to Mr Min's appearance at the Commission there have been several rounds of written exchanges between Bain and the Commission. Mr Massone resigned from Bain on 9 November 2018.

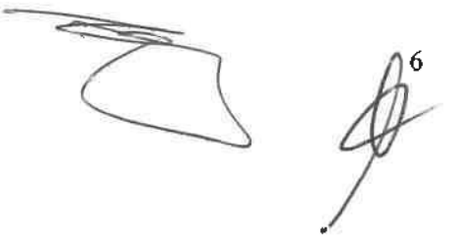
On 27 September 2018 the Commission submitted its Interim Report to the President. I shared my Interim Report with Judge Nugent on 21 November 2018. Since Bain had not concluded its independent investigation I could not conclude my oversight function by the time the Commission was concluding its work, hence the decision to produce an Interim Report as

[2] Mr Tiaan Moolman is Bain SA's interim Office Head till 31 December 2018. More details of my interactions with Mr Moolman follows.

input to the Commission's work. The Commission considered my Interim Report in its deliberations and referenced the report in its Final Report that was submitted to the President on 14 December 2018. While I have read the Commission's Final Report, I do not make reference to its findings in this report.

This report covers the period 7 September 2018 to 20 December 2018. My contract termination date is 30 December 2018. In this report, in addition to reporting on the investigation, I offer my independent views on Bain SA's involvement at SARS and what remedy Bain SA ought to make, and place these in the context of responsibilities that businesses bear to act to strengthen a society's weakened public institutions. The report is divided into three parts as follows: **Part 1** reports on the process of my oversight of Bain's independent investigation. I report on the comprehensiveness of this investigation and the transparency and truthfulness of the subsequent reporting, as well as Bain's fulfilment of its transparency and cooperation commitments to the Commission and the South African public. In **Part 2**, I reflect upon the role Bain played in the set of events that led to the weakening of SARS. I base this reflection upon my experience during, and exposure to the evidence, of the ongoing independent investigation. Given the role that I deem Bain to have played in the weakening of SARS, in **Part 3**, I offer my independent view of what remedy Bain owes SARS and South Africa more broadly by suggesting a 6-step *Corporate Remedy Programme* and I offer a brief argument that it is not just companies like Bain, who have erred, who bear a responsibility to our society, but that businesses in general ought to step up to defend our public institutions and advance social justice.

This report represents my independent views as a scholar and advisor. I submitted my Interim Report voluntarily to the Nugent Commission of Inquiry into Tax Administration and Governance, in support of their work. I now submit this final report to the South African public in fulfilment of my contractual arrangement, my commitment to reveal what I saw and heard, all in the interest of ridding our society of corporate corruption and state capture.



Part 1

INDEPENDENT OVERSIGHT OF BAIN'S INVESTIGATION INTO BAIN SA's WORK AT SARS (2014 – 2017)

1.1 Introduction

In a press statement on 10 September 2018, Bain announced my appointment as follows:

> "To reinforce the independence of the investigation and Bain's commitment to addressing any new facts, we have established an oversight committee made up of senior global Bain partners and outside directors. Athol Williams, a Bain alumnus and a respected independent advisor, will chair this committee on an interim basis. He is a distinguished academic in the area of corporate responsibility, a corporate leader and lifelong social advocate. Bain's contract with Mr Williams calls for him to do what is right for South Africa, without restrictions."

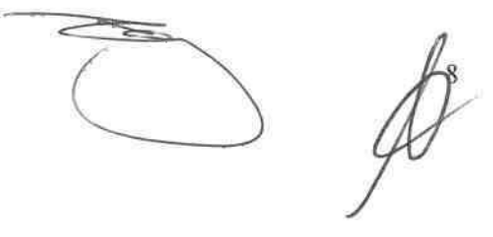
While the oversight committee was not established, I was contracted to play an oversight role to Bain's independent investigation into Bain SA's work at SARS. My role was focused on monitoring Bain's investigation and the transparency of its interactions with the Commission to ensure that they were aiding the work of the Commission. An important aspect of my role is outlined in the following clause in Annex A of my contract:

> "While engaged, should Mr Williams at any time determine that Bain is not behaving transparently with the Commission, Mr Williams will:
>
> - First raise his concerns with the Bain South Africa Interim Office Head, Mr Tiaan Moolman, and seek resolution in good faith
> - If resolution cannot be reached, Mr Williams has the liberty to share his concerns with the Commission"

In this section I report on the fulfilment of the requirements of my role. I start with a summary of the scope of the independent investigation. This is followed by the objectives of my oversight role and what I set out to achieve, followed by the activities that I undertook in my best efforts to meet these objectives. Lastly, I offer an assessment of the outcomes of my oversight role and the extent to which Bain fulfilled its commitment to support the Commission's work and be open and transparent with the South African people.

1.2 Scope of Independent Investigation

I had oversight of Bain's SARS-related investigation, whose scope was as follows (for the review period 2012 to 2017):



- All SARS procurement processes in which Bain SA participated and all contracts that Bain SA entered into with SARS, including the three-phased SARS project at the focus of the Commission's inquiry, and including the pre-contractual "CEO coaching" sessions with Mr Moyane.
- Bain SA's interactions, communications, and dealings with government officials, related associates, and third party intermediaries in connection with the contracts referenced above.
- Whether Bain SA improperly supported Mr Moyane, prior to his appointment as Commissioner of SARS, in exchange for future work from SARS.
- Whether anything of value was improperly provided to any government official, directly or through a third party, in connection with the business under review.
- Whether Bain SA had prior knowledge of the tender and/or tender requirements for the review of the SARS operating model.
- The relationship between Mr Massone and former President Zuma and any other government official, with a focus on the evidence provided to the Commission.

From what I saw, this scope, which I deemed to be adequate, was defined in Bain's contract with Baker McKenzie.

1.3 Objectives of My Oversight Role

In order to ultimately comment on the quality of the investigation and the reporting thereof, I set the following broad objectives and tasks:

1. ***Monitor the comprehensiveness of the investigation:*** My two main questions were (a) Are the right sources being reviewed with sufficient rigour? (b) Are the right questions being asked of the right people with sufficient rigour?
2. ***Monitor cooperation and truthfulness of reporting:*** This relates to Bain SA's cooperation with the Commission, the information submitted to the Commission and its public reporting. My main question was: Is all the relevant information uncovered by the investigation being truthfully shared?
3. ***Assist the Commission***, where I can, in establishing the truth.

Note that I did not perform any investigations of my own, rather, I engaged directly with the investigation team and relied on the findings of their investigation. I have taken the results of the external counsel's investigation at face value in accordance with the definition of my role, so have not audited nor verified these.

1.4 Activities to Fulfil the Objectives of My Role

Activities relating to objectives 1 and 2: Comprehensiveness, reporting and cooperation:

To provide independent oversight, my agreement with Bain SA stipulated that I:

- Have full access to findings of the investigation and have weekly meetings with the leads of the investigation.
- Have access to all communications between Bain and the Commission.
- Attend all meetings that relate to Bain's preparation for meetings with the Commission and all meetings that relate to Bain's preparation for submissions to the Commission.
- Review all documentary submissions to the Commission before submission.

Throughout the investigation I had multiple update meetings per week. I've reviewed documents reporting progress on the investigation, affidavits and legal agreements. I've had access to materials submitted to the Commission and reviewed the transcripts of Bain SA's testimony. I have reviewed the relevant media reports and the Commission's interim report.

I recommended a whistle-blower email address be distributed to Bain staff and alumni which bore some fruit. On occasion I have advised Bain on courses of action. While this might seem to go contrary to my role as independent overseer, it is more aligned with my commitment to see Bain do the right thing by SARS and South Africa.

Activities Relating to Objective 3: Assist the Commission of Inquiry: In pursuing Objectives 1 and 2 I have been indirectly furthering Objective 3. The more I could ensure that Bain's investigation is comprehensive, and their results reported truthfully, the more I was assisting the Commission in its pursuit of the truth of what transpired at SARS. Additionally, I also had

periodic communications directly with Judge Nugent via a series of email exchanges and two in-person meetings.

Beyond these activities, I have provided periodic updates to Bain SA and members of Bain Inc verbally, via email and through presentations to staff. I have chosen to engage with the media only to give the public assurances that I am performing this role and by way of update.

1.5 Outcomes of my oversight

The outcomes of my oversight actions are summarised in the table below and discussed in the text that follows. The table and discussion tie back to the objectives of my oversight role. My work has been guided by the commitment to do what is right for South Africa, without restrictions. I have interpreted this commitment to mean that *I will contribute to ensuring that the truth is revealed and that where trade-offs are to be made or tensions emerge, they are to be resolved in favour of South Africa's interest*. I have also been guided by the principle of fairness in all my deliberations.

As far as I can tell, the execution of the investigation was run independent of Bain with occasional input from Bain in terms of approach or line of questioning, particularly relating to the interviews of Bain staff. Bain's legal team joined weekly update meetings and I also had a weekly update meeting with external counsel that excluded any Bain representatives.

OUTCOMES OF MY OVERSIGHT		
Comprehensiveness – Documents & files		
Right questions	Yes	Appropriate set of search terms used for electronic searches
Sufficient rigour	Somewhat	Searched over 2 million files; not all devices
Comprehensiveness - People		
Right questions	Yes	I did not attend the interviews but am aware of the scope of questions
Right people	Yes	Interviews with 17+ current or former Bain staff
Sufficient rigour		Unable to assess - did not have access to interview notes
Reporting & Cooperation		
All relevant information	No	Not all relevant documents were shared with the Commission
Truthfully reported	No	Doubts about affidavits; No final report of findings
Cooperation with Commission	Somewhat	Responsive to requests but not as proactive as Commission would like
Enabling my ability to perform oversight		
Access to investigation findings	No	Have not seen all collected evidence. Denied access to the final report
Weekly meetings with investigation team	Yes	Separate meetings - Bain, Bain/external counsel & external counsel
Access to comms with Commission	Yes	All relevant ones
Attend preparation meetings	Yes	All relevant ones
Review submissions	Yes	All relevant ones

Comprehensiveness of the Investigation – Documents & Files

The investigation started with a deep forensic analysis of documents and communications found on the laptops of Bain SA staff involved in the SARS project, and the company server. The investigating team searched through over two million files using relevant search terms. This search yielded 187,000 documents of which 3,000 were found to be relevant and 114 classified as heightened relevance documents. Many, but not all, of these documents were supplied to the Commission.

Note that the scope of Bain's investigation is broader than the scope of the Commission since it includes non-SARS work done by Bain. Accordingly, certain documents found to be relevant for the purpose of Bain's broader investigation do not relate to the matters under review by the Commission, i.e. they are not SARS-related. In addition, the investigation team collected and reviewed data found on the work-issued cell phones of Bain SA staff involved in the SARS projects – this review was incomplete at the time of writing this report.

Comprehensiveness of the Investigation – People

The second phase of the investigation was to conduct extensive interviews with key individuals who were known to be involved with the SARS projects or whose names surfaced during the document reviews. The investigation team conducted 27 interviews with 21 individuals. The interviewees include current Bain SA and Bain Inc employees as well as former employees.

Most of the interviews conducted ran for multiple hours and in one case ran over two days. Those interviewed were mainly at the Partner level, located in South Africa, Europe and the US. Included among those interviewed was the former managing partner of Bain SA, Mr Massone.

I cannot comment on the rigour of the interviews since I was not present at any of the interviews and Bain has regrettably denied me access to the interview notes.

Reporting & Cooperation

Judge Nugent has expressed to me what he considered to be Bain's lack of co-operation with his Inquiry. The Judge has occasionally urged me to remind Bain that he would not tolerate what he termed their "obfuscation" and "evasion." Bain would argue that they voluntarily submitted themselves to scrutiny by the Commission, that they have responded timeously to every information request, even offering the Commission open access to their offices. By this narrow definition of co-operation, Bain may rightly claim to have been co-operating. But the Commission has a broader, almost simpler requirement. It simply wanted to know everything that Bain knew about what transpired at SARS with regard to the circumstances surrounding Bain SA being awarded the contracts and the damage to SARS that occurred during its tenure there. The Commission wanted the full truth to be reported proactively, which Judge Nugent has told me he considers Bain SA's managing partner not to have done when he gave evidence, and which he considers Bain not to have done since.

Bain has expressed some reluctance about sharing information with the Commission because of the access the media has had to information submitted and the damaging reports that have emerged given the media's use of this information without any context. The reluctance is also understandable for a business motivated to protect its interests and to avoid vulnerability should future investigations emerge.

Despite Bain expressing their intent to help the Commission, intent which I don't doubt, Mr Massone's failure to testify at the follow-up hearing hampered the inquiry. While Mr Massone would certainly have had the most to offer the Inquiry, there were other senior Bain SA staff who could have shed some light on certain matters which may have been valuable to the Inquiry. Bain SA determined that these potential witnesses would not offer the Inquiry any

information of value and so forewent the opportunity to appear at the public hearings of 22 October, although they did submit affidavits to the Commission.

Having Mr Massone oversee Bain SA's response to the Commission was unhelpful to the Commission and unhelpful to Bain SA's relationship with the Commission. This action wasted valuable time as Mr Massone presented information that did not address the Commission's real concerns. As I understand events, Mr Massone initially withheld information from Bain Inc about the Inquiry, including the very fact that Bain SA was part of the Inquiry, only informing them about it as he was finalising the first written submission. A more forthright approach from Mr Massone may have ensured that Bain SA cooperated with the Commission more fully and timeously. Furthermore, Bain was slow to include senior employees in its investigation. Understandably, in a business structured as a partnership and built on trust, it was inconceivable for some partners to suspect improper behaviour on the part of others. This slowed down the process of focusing the investigation searches. While the independent investigation was adequately scoped and comprehensively executed, my opinion is that Bain continued to fall short of the Commission's expectations, especially with regard to making available to the Commission all relevant information that had been uncovered during the investigation. Where the Commission had requested specific information, Bain provided that information where it had access to the required information. The biggest inhibitor to reaching full disclosure was Mr Massone's unavailability to appear before the Commission.

Substantial confusion has prevailed over whether Bain would produce a report of its investigation findings. As I understand it, Bain has produced a Powerpoint presentation of its findings although I have not been given access to this presentation. It is my understanding that these findings will not be made public.

Since I have not read the findings of the investigation, I am unable to comment on the truthfulness of those findings, as required by my contract.

I share Judge Nugent's view of Bain's obfuscation and evasion because this has been my experience at times in seeking to gain access to information. It is my conclusion that Bain has not fulfilled its commitment expressed in its press statement of 2 September 2018 to be "completely open and transparent," with the people of South Africa.

Enabling my ability to perform oversight

In establishing my role, Bain SA committed itself to independence of its investigation, and transparency in its dealing with the findings. It also committed to allowing me freedom to provide independent oversight and to communicate any concerns with the Commission and the public. As indicated in the table above I am satisfied that Bain SA met all the requirements of my terms of reference to allow me to perform my role **except for the most critical one** – that of access to the final report. Without access to the findings of Bain's investigation I was unable to perform the role for which I was contracted, that of ensuring that the investigation was fair and independent, and reported truthfully. Bain's refusal to grant me access to the final report violated their commitment to openness and transparency and restricted my ability to adequately provide independent oversight. While Bain should be commended for taking the unprecedented step of appointing an independent overseer with the access and rights that I had, ultimately their lack of openness and transparency with me, means that their objective of giving assurance to the public of their honesty has failed.

This section has commented on the process of the investigation. In the next section I offer my independent opinion on the substantive issues being considered by the Commission, that is, the role Bain SA may have played in the weakening of SARS's institutional capability.

Part 2

BAIN AND THE WEAKENING OF SARS'S INSTITUTIONAL CAPABILITY

2.1 Introduction

The loss of skilled staff and organisational functionality, and the resultant reduction in SARS's ability to collect taxes, are widely reported and are core to what prompted the establishment of the Commission of Inquiry. In this section I consider what contribution Bain SA might have made to weakening SARS's institutional capability.

My goal here is to offer a synthesis of what I have seen and heard, along with my interpretation as they relate to the issues under consideration. I reiterate that I have not conducted my own investigation; rather what I present here is my own synthesis based on my view of Bain's independent investigation and my access to Bain SA staff. These remarks are not based on a report by the investigating team (because I've been prevented from seeing it) and do not replace any report that the investigating team or the Commission of Inquiry has or will produce.

I present this view in two sections. I start with a brief outline of the background and key events to the overall engagement between Bain SA and SARS, then present my view of where Bain SA erred and contributed to the weakening of SARS's institutional capability.

By way of summary, I close with descriptions of two narratives, the first which sees Bain SA as intimately part of a state capture plan, and an alternative which sees Bain SA as unwitting enablers of a hidden plan to damage SARS.

2.2 Background and Key Events

My experience of Bain is that in South Africa, as globally, they mainly focus on serving clients in the private sector. In South Africa, Bain saw a commercial opportunity in the public sector, both in terms of serving government departments and state-owned companies. While it had served clients in this sector before, this had not been the case in recent years. Despite pursuing growth in the public sector, it had remained a small part of Bain SA's business.

To facilitate meeting public sector leaders, Bain SA contracted the services of Ambrobrite, a company headed by Mr Duma Ndlovu. While there were some within Bain SA and Bain Inc, including the global head of legal, who raised concerns about this relationship and the nature of the contract, the relationship with Ambrobrite proceeded. This relationship yielded

numerous public sector introductions across the spectrum. During this period Bain SA, through their managing partner, Mr Vittorio Massone, also met with the President of South Africa, Mr Jacob Zuma. Evidence shows that there were at least 12 separate meetings between Mr Massone and Mr Zuma. As a management consultant, it is unusual to be meeting with the president of a country, although it is every consultant's dream to be advising a country's most senior public official. Meeting the president 12 times is even more unusual. Doing so unaccompanied is counter to Bain's usual practice, as I understand it, of having partners meet with senior external parties in pairs or more. When a president is embroiled in corruption scandals and linked to state capture allegations, such meetings and their quantity rightly raise important questions about what was discussed in these meetings and the nature of the relationship that had developed between Mr Massone and Mr Zuma. Mr Massone was not secretive about these meetings and took great pride in his access to the President of South Africa, including mentioning them to me on an occasion a few years ago.

One of the relationships that developed from the Ambrobrite contract was that between Bain SA and Mr Tom Moyane. Upon Mr Moyane's request, Bain SA set out to offer Mr Moyane support in his preparation for the SARS Commissioner role and to share ideas relating to SARS, including discussions about possible reorganisation at SARS. It is not unusual for a Partner at a consulting firm to meet with prospective senior executives ahead of them filling a position. Consulting firms offer such support to CEOs who are between jobs, those thinking of moving or newly appointed CEOs. It is mostly done in the context of an existing relationship to further strengthen this relationship, and ultimately such a strengthened relationship improves the firm's odds of being hired to deliver consulting work if the CEO was to hire consultants. Mr Massone described his approach in an internal email to his reporting line, the head of Bain's Europe, Middle East, Africa (EMEA) region: "We work with the person to create a high level strategy plan for the company. If the plan is approved, most likely we are going to work with the CEO in its detailing and implementation." While this concept of "CEO coaching" is common, and consulting firms routinely allocate resources to deliver this coaching, a number of factors make this particular situation unusual. It is unlikely that Bain SA would have invested in Mr Moyane for the length of time that it did had it not had some certainty that Mr Moyane would be appointed as Commissioner. This is strange since the appointment ordinarily follows a rigorous public process before the President makes an appointment. We can only surmise that Mr Moyane had been given some assurance that he would get the job and that this assurance was shared with Mr Massone such that he was willing to allocate company resources to investing

in Mr Moyane. More significantly though, as seen in the email extract above, is that Mr Massone seems to pre-emptively believe that Bain SA would be hired as a consultant; he makes no mention here of the fact that as a public institution, SARS would need to follow a tender process to hire consultants. Mr Massone's "bet" paid off because, as we know, Bain SA was appointed as consultants by Mr Moyane once he took the role as SARS's Commissioner.

Not only did various members of Bain SA's staff meet with Mr Moyane multiple times before he was appointed to SARS, Bain SA also met with or received internal information about SARS from senior SARS officials. This seems to be a precursor to a potentially irregular tender process that led to Bain SA being awarded the contract to deliver an organisational diagnostic. Evidence seems to point to communications between Bain SA and SARS, relating to the tender process, even before the process had formally begun and there is evidence that appears to point to Bain SA contributing to the content of the Request for Proposal (RFP) document that SARS eventually issued.

That Bain SA offered SARS a 50% discount on their fee for the diagnostic work (Phase 1) has received much attention on the suggestion that this was done to undercut the price of the next-highest bidder. I have not seen any evidence to support this claim and find nothing sinister in the idea of offering a price discount to win a piece of work when the possibility exists for future work. Since SARS wanted a diagnostic, it was always likely that there would be additional phases of work. In virtually every project-based business where projects are delivered in multiple phases, service providers follow this approach. There is nothing unethical or sinister about it. That Bain SA would act to ensure that there *would be* future phases and that they were hired to deliver them should receive greater attention than the price discount issue.

Bain SA was eventually hired to perform the organisational diagnostic. This was a short intervention to gauge the health of the SARS organisation and determine what interventions may be required to get SARS to the state required for it to deliver on its mandate. That the Bain SA team only spoke to a small sample of managers, all selected by the Commissioner is in and of itself not unusual. Because diagnostics are by design quick assessments, only a sample of people can be interviewed. Coming in from the outside, the consultant may know which officers it would want to speak to but the consultant would naturally rely on the CEO to guide this phase of the work. It is not unusual for a new CEO to arrive and have some people hostile to his/her arrival and so they may exclude the hostile members from the diagnostic. Again, it is not the sample size of the interviews or the fact that Mr Moyane selected the interviewees per se which is concerning but the *significance of the recommendations* made by Bain SA given the brief

diagnostic. That Bain SA could identify the need for a "profound strategy refresh"[3] of a high-functioning state institution, based on their cursory diagnostic is astounding. In this way Bain SA made the case for change at SARS, and established the need for a major organisational transformation, that opened the door to the destructive actions that were to come.

Bain SA's *intention* matters here. I have seen no evidence to suggest that the firm made the case for transformational change to support any plan to damage SARS. It is my opinion that it was entirely Bain SA's commercial interests that drove this decision. This is not an excuse – there can be no excuse for exaggerating the need for change in any organisation, especially when the party making the recommendation stands to gain from it. Bain SA's incentive to establish the need for a major transformational change programme was the consulting fees that it would derive from delivering such a programme. Some may object, claiming that if SARS didn't need the change then any change recommended by Bain SA would lead to damage at SARS. But this isn't necessarily the case – unnecessary change does not necessarily mean damage. A tyre shop could recommend that I change the tyres on my car when I don't really need the change. This wouldn't damage my car but would certainly be an unethical way of the tyre shop gouging money from me and making me spend unnecessarily. My read of the evidence is that this is what happened at SARS particularly with the operating model part of the project.

However, for those actors determined to damage SARS, Bain SA's overstated recommendations for change provided the opportunity to cause their damage. With Bain SA they found perfect alignment of incentives – Bain SA wanted fees so exaggerated the need for change, and they wanted the go-ahead that major change was needed - even though intentions were different. This is a significant point which I will return to in the next section.

The transformation project proceeded for 27 months. It is important to note that across the three phases of the project, only Phase 1 and some of Phase 2 related to the operating model. The bulk of Bain SA's work at SARS was in Customs where Phase 2 and Phase 3 were concentrated. The work on the operating model is estimated to constitute only a quarter of Bain SA's work and around a quarter of the fees earned.

[3] This language was used even before Bain started working at SARS – the themes continued when they started working at SARS, ultimately recommending that a major transformational change programme was needed.

Along the way and subsequent to the project a wide range of changes were made to the organisation, many of which we now know caused damage to SARS. This knowledge has led to the public narrative that Bain "broke" or "damaged" SARS. This may be a step too quick. Bain is an advisory firm and can only offer advice and recommendations. Ultimately management at SARS would have to implement recommendations. A more accurate statement might be that the implementation of Bain SA's recommendations caused damage to SARS, but even this statement would not reflect what appears to have happened. It is acknowledged that SARS ignored many of Bain SA's recommendations. There is evidence of significant back-and-forth between Bain SA and SARS management on organisation design elements, often to the frustration of Bain SA staff. In fact, Bain SA recorded over 130 changes to its design recommendation based on feedback from SARS. We can then lay at Bain SA's door that they accommodated or facilitated many of the changes at SARS that might have caused damage to the organisation. Had they realised that a hidden plan to damage SARS was unfolding, Bain SA should have walked away. Staying true to its stated mission of only working with clients where together they can create positive results, Bain SA should have terminated its arrangement with SARS. I acknowledge that this is much easier said than done since doing so would most likely have had significant business, contractual and reputational costs.

2.3 Where Bain Went Wrong

Bain Inc employs 8,000 people in 36 countries and has for 45 years advised many of the CEOs of the Global 500 companies, generating around $4 billion in fees in its most recent financial year. Globally and in South Africa, Bain regularly tops rankings of the best company to work for and reports that its listed clients generate returns that are four times that of the US stock market. How then does an organisation with Bain's global stature and track record, a company seen as one of the most prestigious and preeminent management consulting firms in the world, get it so wrong at SARS? Before I get to *how* they got it wrong, I want to summarise *what* I believe they got wrong, leading them to the position of contributing to the harm at SARS. I offer four ways in which Bain SA acted to damage SARS:

***Poor choice of business associates*:** Bain SA would have known that Mr Zuma faced extensive charges of fraud and corruption. It is difficult to understand why a firm of its stature would

engage with someone this embroiled in improper behaviour. The firm should either have stayed far away from Mr Zuma and his associates (such as Duma Ndlovu of Ambrobrite) or implemented extra measures to guard against contamination. Judging from the materials discussed at the meetings with Mr Zuma, Mr Massone had grand ideas of engineering macro changes to many aspects of the South African economy and even offered advice on matters relating to Mr Zuma's political party, the ANC. Mr Massone appears to have made a political bet of aligning with the Zuma faction, including working with Nkosazana Dlamini-Zuma who he referred to as "the future President of South Africa," according to internal sources. The commercial potential for Bain SA of this relationship would have been astronomical which, in my view, explains why they may have been blinded to the risks. It does appear that Mr Massone saw no risk in the Zuma association, rather seeing it as an asset as he wrote in an internal email: "I wouldn't feel ashamed of an article associating us with Duma and the President … I believe it could be quite positive and strengthening as an association."

Bain SA should also have been circumspect about developing a close relationship with Mr Moyane knowing his close proximity to Mr Zuma. Nor should Bain SA have met with senior SARS officials and accepted confidential information on SARS as Mr Massone did from Mr Jonas Makwakwa in August 2014. Note that this information was shared prior to the tender process, and in it Mr Makwakwa outlines organisational problems within SARS which could be deemed useful for a consultant preparing a proposal. It is unknown whether this information was shared with other consultants bidding for the work at SARS.

While these relationships per se didn't cause damage at SARS, they were a precursor to the damage to come and by growing these relationships, Bain, perhaps inadvertently, lent its prestigious global brand to legitimising their actions.

Actively participated in a potentially irregular procurement processes: Evidence suggests that SARS went through great lengths to ensure that Bain SA were the winning bidder for all three phases. Bain SA appear to be willing participants in these processes. Furthermore, it appears that Bain SA may have contributed to the content of the RFP document before it was ultimately issued. Knowing that regulations such as PFMA govern procurement by public entities and observing what should have appeared to be an irregular tender process, I believe Bain SA should have disengaged from the tender process.

At each new phase of the project, regulations covering public procurement would typically require that SARS enter a new tender process, with certain limited exceptions allowing for

single sourcing. Bain SA would have known this yet actively sought to find ways to avoid a tender process, ultimately succeeding with respect to the work extensions following the initial tendered work. This shows, in my view, disregard for South Africa's procurement protocols, lack of interest in fair competition which the tender process seeks to facilitate and lack of commitment to getting SARS the best value for money which a competitive tender process is intended to yield.

Some might see Bain SA's participation in the potentially flawed tender processes as evidence that it was in cahoots with Mr Moyane and others to damage SARS. Alternatively, I argue, it was Bain SA's commercial interests in earning significant fees that led them to willingly participating in these processes.

***Enabled the damage by overstating the initial case for change*:** I made reference to this point earlier. While it is generally true that every organisation has room for improvement and that when a leader calls in consultants it is usually because something in the organisation is deemed to require improvement, we'd be hard pressed to find anyone who would claim that SARS was in need of a major transformation. In fact, SARS had been on a path of quite substantial improvement for some years and needed to continue on that path, perhaps at best with isolated tweaks. Instead Bain SA argued for a change on the scale of a "profound strategy refresh" as Mr Massone wrote in one of his documents to Mr Moyane before he became Commissioner. This to me sounds like Bain SA saw SARS as completely dysfunctional and needing to be rebuilt from the ground up, at least in terms of its strategy. Bain SA appears to have planted and continuously watered the seed in Mr Moyane's mind that SARS needed transformational change by overstating the problems and the upside. That Bain SA spoke of a profound strategy refresh before both Mr Moyane or Bain SA arrived at SARS, and that Bain SA's diagnostic yielded recommendations which amounted to such profound change may be interpreted as premeditation on Bain SA's part to cause damage at SARS. Why else would major change be pre-meditated? While I cannot know what Mr Moyane's intentions were, there is a possible alternate, more likely explanation, and that is Bain SA's commercial interest. The bigger the gaps and opportunities the more consulting services would be needed and this more fees for Bain. This is a common (mis)selling technique in business in most industries. In following this technique Bain SA not only flouted ethical business behaviour and its own operating principles so that it could gouge fees from SARS, but provided the platform for those within SARS intent on undermining the organisation. With the plan to make major change at SARS rubberstamped by a prestigious global consulting firm, Mr Moyane and his associates could get on with the

business of making the changes that suited them, which is why they ignored many of Bain SA's later recommendations. As I read the situation, this is the turning point and the start of the damage at SARS – *the overstated case that Bain SA makes for change*, not the new operating model that it eventually proposes. By acting in its selfish interests, rather than to create positive results for its client, Bain SA unwittingly endorsed the hidden plan to damage SARS.

Those claiming that Bain "broke SARS" by implementing a flawed operating model fall into the same trap that Bain SA fell into of overstating matters. Firms like Bain present recommendations based on their analysis and experience, they do not *implement* changes in organisations. Only the client can implement recommendations. So Bain SA's recommendations could reasonably be criticised, which interestingly doesn't seem to receive much attention, but the responsibility for implementation lies squarely with clients, even though consulting firms and client organisations typically share the burden of success and failure, and consultants worth their salt would stand by their recommendations. The fact that SARS ignored many of Bain SA's operating model recommendations further points to the fallacy of Bain SA's work per se causing damage at SARS.

It is important to note that assertions of SARS being a world-class organisation refer mainly to the tax collection part of the organisation. It is here where I believe it was an overstatement to argue that major change was required. However, my understanding is that this was not the case at Customs, quite the contrary. Customs did require significant change, and this is where the majority of Bain's time was spent and fees earned, roughly three-quarters of the total fees was earned here. Available evidence suggests that SARS implemented most of Bain SA's recommendations in the Customs part of the organisation and that this implementation has yielded positive results.

Stood by while SARS got damaged: When SARS rejected many of Bain SA's recommendations and designed their own operating model solution, Bain SA should not have continued to support the implementation of the latter design. Bain SA should have recognised that this was no ordinary transformation programme by the scale of the internal resistance and the individual agendas at play evidenced by the clear jostling for positions in the organisational structure design. Bain SA was not achieving the positive results they claim guides their work and client engagements and so should have disengaged if the situation could not be changed.

But rather than leave, Bain SA continued with the programme, accommodating the many changes. This gave legitimacy to the hidden plan and enabled its implementation using Bain's

resources and intellectual property. Even when Bain SA's junior consultants raised concerns about the quality of the work being done and its receptiveness, they were ignored by Bain SA's senior staff. Even as media reports emerged of sinister happenings at SARS, Bain SA's senior staff directed junior staff to ignore media reports and stay focused on the work at hand.

The best explanation that I have for this behaviour is that Bain SA was not acting in the interest of SARS but in its commercial interests, not only at SARS but the broader set of opportunities that Mr Massone had been discussing with the President.

If anyone could have protected or rescued SARS from those intent on damaging the organisation it was Bain because they were on the inside, had the ear of the new SARS leadership and had enormous power to speak up given its prestigious global reputation. This is the tragedy of the situation – the very ones who were in a position to rescue SARS took advantage of its weakness.

From what I have seen and heard, and understanding their motivations, Bain was not party to the macro-plan to cause damage to SARS. They were initially unwitting accomplices and then later, as they became aware of what was transpiring, became knowing by-standers.

Earlier I asked the question about how an organisation with Bain's global reputation as one of the most prestigious and preeminent management consulting firms could get it so wrong at SARS? Having shared my thoughts of what Bain SA got wrong, I now answer this question of *how* this came to be, that is, what underpinned Bain SA's behaviour.

Blind commercial interests: I have already mentioned Bain's commercial interests as their driving force. I have encountered nothing that suggests Bain SA entered SARS to cause it damage. Bain SA entered SARS with commercial interests. Ordinarily there is nothing wrong with that. As a service provider it is acceptable to seek to earn fees in exchange for providing a valuable service. However, Bain SA did not always provide a valuable service. It allowed its commercial interest to blind it to what was happening at SARS, that is, its work being used to justify damage at SARS. Blinded by the economic opportunities that lay ahead, Bain SA simply behaved in ways unbecoming of an ethical service provider and went along with the damage that others were causing.

A cavalier culture dominated by arrogance and fear: Bain SA might offer to concede that there were lapses in their governance while working at SARS. This suggests that perhaps a rule or two needs to be tightened or that an additional rule is required. In my view, what went wrong was more than a failure of governance but a cultural failure, that is, something endemic to the culture of Bain's business in South Africa. It is too easy and far too simplistic to conclude that Mr Massone acted alone and should be identified as a lone rogue within the company. There is little doubt that he is the main protagonist in the saga – he was the head of the South African business and led the client relationship at SARS. It was he who developed the relationship with Mr Moyane. And it was he who directed or endorsed many of the actions the Bain SA teams took during the 27-month long engagement. It was also he who failed to coherently explain Bain SA's involvement at SARS and answer basic questions during his public testimony in August, and then fail to appear at the follow-up hearing. There is evidence as well that he may have misstated facts during his testimony and in his affidavit to the Commission. Mr Massone has a lot to answer for.

However, Mr Massone was supported from below and endorsed from above. Any wrongdoing deemed to have been committed by Mr Massone was done with some awareness of Bain's South African leadership, notwithstanding my observation that some members of the leadership were intimidated by him so would not have challenged the wrongdoing. While Bain Inc might not have been aware of Mr Massone's actions, he was fully endorsed in his role by Bain's global leadership. I am not suggesting that Bain Inc or the rest of Bain SA necessarily endorsed Mr Massone's *actions* – there is evidence to suggest that most people were unaware of most of Mr Massone's activities; even his diary was vague with cryptic meeting descriptions. What I am suggesting is that Bain Inc endorsed Mr Massone as the *leader of Bain SA* by appointing him to the role and keeping him there for 9 years despite concerns being raised by senior Bain SA staff – this is one of the longest Office Head tenures at Bain globally. By their long-term endorsement of Mr Massone as Office Head of Bain SA, I suggest that Bain Inc acquires some responsibility for the consequences of Mr Massone's behaviour. Similarly the Bain SA leadership bear some responsibility as well.

Bain SA, and particularly Mr Massone as the leader for 9 years, inculcated a culture where questionable professional and ethical behaviour was tolerated or when there were dissenters, they were ignored or penalised. As I've already mentioned, the concerns of junior consultants were disregarded at SARS. But even senior members of staff, partners in the firm, were chastised or penalised for challenging Mr Massone, such that eventually, some senior staff were

too afraid to speak up. Other senior staff simply disengaged from what Mr Massone was doing. In a range of different ways, the firm culture ensured that Bain would be placed at the disposal of those with ill-intent at SARS.

This is not to suggest that Mr Massone didn't have any supporters in South Africa; and he certainly had supporters within Bain Inc as gauged by his long tenure as Office Head and the fact that when South African partners raised concerns with Mr Massone's superiors about his behaviour no actions were taken.

Ultimately the local and global leadership became knowing beneficiaries of what transpired at SARS and bystanders while SARS got damaged. Many insiders report a culture of arrogance towards clients and even a dismissive attitude towards South Africa. When coupled with a culture that rewards commercial performance over much else, one can see how Bain SA's culture led to what transpired at SARS.

Bain espouses what they term "True North values" as their moral guide – "our unwavering commitment to always do the right thing by our clients, our people and our communities." At SARS Bain SA appears to have strayed significantly from these stated values. An organisation's actual values are revealed when they are in tension with something else – Bain SA, and the broader Bain Inc, might need to reflect upon the fact that while claiming to operate with integrity, the SARS example shows, with the prospect of significant fees (both from the current project and the broader projects with the President), Bain SA showed that when it came to a trade-off, it placed profit above principle. Even with all the concerns about unethical behaviour at SARS, concerns being raised about the culture being created and questions over his leadership style, Mr Massone was still celebrated within the global firm and received a standing ovation at the local office's retreat in July 2018 in recognition of his leadership.

It should be cause for great concern for Bain Inc's global leadership that consistently across the South African business, staff talk about fear of speaking up or asking probing questions. Besides being an awful environment in which to work, a culture of fear is a constraint to doing the right thing because it stifles innovation and silences those with conviction to challenge unethical behaviour. This case shows that an organisational culture of arrogance and fear will erode the meaning and effectiveness of any values or principles by which an organisation may have set out to guide its behaviour.

Even with the best intentions, this experience highlights the gap between intent and action. I have no reason to doubt Bain's intent but its actions at SARS and even some aspects of the

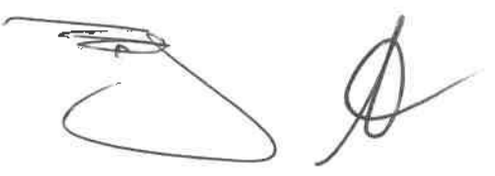
investigation, do point to the considerable work required to close this gap if it hopes to regain trust in South Africa.

I will summarise this section by presenting two narratives of Bain SA's involvement at SARS.

2.4 The Two Narratives

I draw a distinction between the public narrative which has been developed in the public domain over recent months, and the alternative narrative which I have laid out in this report. Both narratives rely on the same facts and present reasonable arguments built on different interpretation and stringing together of the facts.

The public narrative proceeds as follows: Bain SA met with the president and Mr Moyane to design a plan to weaken SARS's institutional capability as part of a broader state capture plan and as a way to halt investigations into Mr Zuma's tax affairs and those of his associates. Bain SA developed the detailed plans to damage SARS and shared an overview of these plans with Mr Moyane months before he started at SARS so that even before either of them entered SARS they had already set out what they would do once they got in. Bain SA, through Mr Massone and others, met repeatedly with Mr Moyane to coach him in this plan and prepared him for his role to lead the damage to SARS. To ensure that Bain SA could support him with the implementation of the plan, Mr Moyane manipulated the SARS tender process to ensure that Bain SA got hired. Bain SA cooperated with the manipulated tender process including offering a 50% discount on its fees for the first phase of work. Once at SARS, Bain SA produced low quality work because the script had already been written for what the outcomes needed to be – the weakening of the institutional capability of SARS. Bain SA's diagnostic for example was a sham during which Bain SA superficially interviewed a group of individuals hand-picked by Mr Moyane, and then presented their pre-determined recommendations to the effect that SARS needed a major transformation, which SARS did not need. Bain SA continued to cooperate with the tender process rigging to ensure that it could continue at SARS through phases 2 and 3, to implement its recommendations and operating model design. Bain SA proceeded to implement its recommendations which ultimately resulted in the large-scale damage to SARS.



The alternative narrative would proceed as follows:

Bain SA met with the president numerous times to discuss project ideas, for example Project Phoenix. These meetings did not include Mr Moyane but SARS may have been discussed. A state capture plan and a plan to weaken SARS may have existed, but Bain was not part of its design or knowingly part of its execution.

Upon the request of Mr Moyane, Bain SA developed a set of materials, using public information and their experience, to offer possible ideas of what an improvement agenda may look like for a new SARS Commissioner.

Bain SA, through Mr Massone and others, met repeatedly with Mr Moyane to offer a form of CEO coaching to help him prepare for the role as Commissioner should he get it. Bain used its standard materials for new CEOs in which it lays out a plan of action for the first 100 days, the key period for a new CEO to establish himself/herself in the new organisation. This CEO coaching is standard practice for Bain and other management consulting firms and most of the materials used are generic. Bain SA would have customised some of the materials based on the external view of SARS that they had developed. Bain SA also shared with Mr Moyane a vision of a new SARS, without having entered the organisation, the details of which would be subject to actual data and further analysis.

Seeing that Bain SA could be a useful partner in his new role, Mr Moyane set out to do all that he could to ensure that Bain SA was hired. At this stage Mr Moyane's motives probably parted with that of Bain. Nevertheless, Bain SA cooperated with Mr Moyane and others at SARS in this process. Bain SA offered SARS a 50% discount on its fees for the first phase of work as a competitive tactic to ensure that at least on price, they would be the preferred candidate. Offering discounts on the first phase of a multi-phase project is common in virtually every sphere of business. It was known that the project at SARS would entail multiple phases as envisaged in the RFP.

Once at SARS, Bain SA produced work below its usual quality, particularly in the operating model part of the overall project. Although Bain did resist a number of SARS recommendations, their arrogance led them to ignore legitimate objections or resistance to their work and their blind commercial interests saw them bow to Mr Moyane and his associates. While management consultants co-create solutions for their clients to ensure most likely

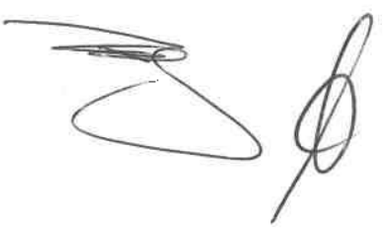
chances of success and results, it is not usual management consulting practice to allow the client to ignore recommendations or make significant changes to the recommendations, as happened at SARS. A situation where a client made as significant changes to a consultant's recommendations as SARS did would be a sure indicator of a failed consulting engagement. Bain SA would have known this.

That Bain SA's diagnostic only engaged with a sample of executives is itself not unusual. By definition a diagnostic is a "dipstick" into the organisation and while the consultant would have some idea of which managers they would want to interview, it is not unusual to rely on the guidance of the CEO for who to speak to. I consider it strange for example that Bain SA did not interview the CFO of SARS during the diagnostic but from Bain SA's standpoint it would not be unreasonable for them to assume that Mr Moyane had good reason for this. As I noted earlier, it was not so much the nature of the diagnostic that surprises me but the scale of the recommendations derived from this diagnostic. That Bain SA could conclude that SARS needed a major transformation when it is well-established that SARS was a high-functioning organisation is surprising.

Bain SA continued to cooperate with Mr Moyane and his associates inside SARS to ensure that it could continue at SARS through phases 2 and 3, to develop the details of the transformation plan and to establish the organisational capability to guide and monitor the implantation, for example, by creating a programme management office.

It is known that SARS did not implement any of the operating models that Bain SA designed. While Bain SA did offer some resistance to what Mr Moyane set out to do, ultimately they opined and supported the implementation. It is my view that Bain SA's commercial interests, particularly as they related to the large projects that were being discussed with the president, and knowing Mr Zuma and Mr Moyane's closeness, led them to drop their usually high professional standards to go along with Mr Moyane's plan even when Bain SA began to realise that all was not well.

Bain SA provided the perfect, if unwitting, partner for those intent on damaging SARS. Overstating the case for change opened the door for Mr Moyane to rip apart the organisation as he had planned, and remaining at SARS even as the organisation rejected its recommendations, legitimised the damage.



This second narrative agrees with the first in that Bain SA contributed to the damage at SARS but differs on the point of being part of the hidden plan to damage SARS, and differs on the point that Bain SA's operating model solution caused the damage.

Part 3

WHAT DOES BAIN SA OWE SARS AND SOUTH AFRICA FOR ITS ROLE IN THE WEAKENING OF SARS?

3.1 Introduction

Bain SA has already repaid to SARS the fees that it earned during the period under consideration. Is this the full account of what Bain SA owes SARS and South Africa?

What I present here is not a legal view but a conceptual programmatic approach, that of an applied ethics scholar and an advocate for the remedying of social harms.

If it is ultimately shown to be true that Bain SA contributed to the weakening of SARS, what should we expect from the company by way of remedy? A framework for systematically determining remedy for social harms caused by companies has not been well developed in South Africa. This is a major oversight given the numerous companies that have been involved in social injustices in our country for many decades. Criminal activity must be dealt with in our criminal justice system, but there are matters of justice that sit outside the criminal justice system, matters of social and economic justice. We have not developed a framework to guide our claims of remedy from these companies, and equally, society has not presented these companies with guidelines on how they can regain our trust. What follows here may be a step towards such a framework, which I demonstrate using the case of Bain.

3.2 *True* Corporate Responsibility

Ask any business executive about the scope of their responsibility to society and you'll hear that business should focus on driving the economy, pay taxes and leave the rest to the state[4]. But what if the state itself is being attacked? And what if the state is unable or unwilling to offer social protections or to restore justice where there is injustice? This has been the situation in South Africa for at least the last century and certainly over the last decade as our state institutions have systematically come under the influence of parties with private interests. What should businesses do in such situations? I believe that simply carrying on with business-as-usual is a failure of *true* corporate responsibility.

In a situation in which state institutions are weakened, and particularly where the integrity of these institutions has been compromised, as is the case in South Africa, business has a

[4] I would offer contrary arguments to this response, but this is not relevant to the matters at hand.

responsibility to proactively act to strengthen our state institutions, even if this comes at the expense of profit.[5] This responsibility derives from business's responsibility to do no harm, which entails avoiding doing harm itself and supporting those institutions which prevent harm. When state institutions are weakened, businesses run the risk of committing harms themselves, even in the normal course of business, when state institutions are unable to act to prevent harm.

In South Africa we've been paying lip service to ethical behaviour, social and ethics monitoring and corporate responsibility. The wave of corporate scandals are just the tip of the iceberg. Corporate South Africa has largely adopted the cynical approach of "do as little social good as you can get away with." We don't have corporate social responsibility, we have corporate social *optionality*, that is, corporations don't behave as though they bear a moral responsibility to society, rather than behave as though they have a charitable option to do some good, on *their* terms rather than what society needs. The reality is that corporations bear specific tangible moral obligations to remedy injustices that they have caused or are party to, yet this is not the frame used when companies approach their social obligations nor is it the frame used when society assesses their behaviour. Large companies wield significant power to act to shore up our institutions, yet most have failed to act. Yet real people continue to suffer the injustices at the hands of business's neglect. The idea of doing no harm, which ought to govern all our actions, speaks not only of direct actions that cause harm, but also not contributing to conditions that can cause harm and not weakening public institutions that provide social protections and serve the common good. Both actions that cause these harms, and omissions that fail to avoid these harms, fall into this category.

This is an area of unethical corporate behaviour often overlooked. Companies view their responsibility to society to entail making voluntary contributions to charities; they view any social responsibility as optional or even supererogatory, something that may be good but not morally required. They make a 'business case' for corporate responsibility arguing that if a social intervention benefits the business then it is good to do. This approach causes companies to ignore desperate social needs, even when they have the ability and resources to help, because such interventions offer no business benefit. Furthermore, every business bears a responsibility to uphold the integrity of state institutions – to fix where it has been damaged, to defend where

[5] This may strike most business people as odd since they'd consider their responsibility to shareholders as paramount. I acknowledge fiduciary duty and responsibility to shareholders but suggest that in the situation where state institutions are weakened, or injustices have been caused through some social scheme in which businesses have participated, the order of their moral duties are rearranged such that remedy to restore justice becomes paramount.

it is being attacked, to build defences against future attacks, and certainly not to take advantage of its weakness. In fulfilling their responsibility, we would expect for example that companies would speak out or act against our current scourge of state capture, yet very few have. Instead, many are taking advantage of our weak public institutions.

A responsibility cannot be optional, it is an obligation. What we need in South Africa is for companies to begin living up to these obligations to our society.

In the case of Bain, not only did Bain SA not act to fulfil its responsibility to contribute to strengthening our weakened institutions, it supported efforts to harm these institutions and took advantage of the institutional weakness at SARS and our broader state vulnerability due to state capture.

3.3 Remedying Harms Caused by Corporate Irresponsibility

I propose a *6-step corporate remedy programme* (CRP) that a company can implement to remedy the social harms of its action whether it has been the wrongdoer or allowed other to act wrongly, or in many cases where it has been a beneficiary of a wrong by others. There are many cases where companies are not actual perpetrators but participate in the social scheme that causes, upholds or perpetuates harms done to individuals, other organisations or our broader society.

For each of the steps I first provide a general description of the requirement and then apply it to the case of Bain SA.

Step 1 – Identify the harm(s) caused and the harmful acts

The first step to any remedial programme is to gain a factual understanding of who performed which harmful acts, who the victims were and what the nature of the harms were. This can be a complex and time-consuming process that may require forensic investigations and the input of expert advisors. The longer the elapsed time between the actual events and the present, the even more complex this fact-finding process becomes. A company serious about remedy would need to invest adequately in this step, since all subsequent steps in the remedial programme rely substantially on what is discovered here.

Bain SA has already begun its investigation into what happened at SARS. We expect that findings will be known in December. These findings will inform the scope and scale of the remedy that Bain SA ought to make.

Perhaps it should become standard practice in South Africa, that in the face of allegations of fraud, corruption or massive social harm that companies are required to appoint an independent oversight advisor, similar to the role I played at Bain SA, to give the public assurances of the rigour of the investigation and to vouch for truthful reporting especially when the full findings of such investigations cannot be made public for legal reasons. Such a role also keeps the company honest since the independent oversight advisor is free of confidentiality constraints so can reveal to the public any improper behaviour.

Step 2 – Acknowledge the company's role in the harm

This should be in the form of internal and public announcements which highlight specific actions and contributions to harmful outcomes. At best we see companies make vague acknowledgements but in most cases there is no acknowledgement at all. In the absence of concrete specific acknowledgment everything that a company does rings hollow and inhibits its progress to social trust and legitimacy.

Bain SA's behaviour has significantly eroded its social legitimacy in South Africa. While it has made a first step towards remedy by returning to SARS the fees it earned, it will always bear a moral debt to our society until it acknowledges the wrongs it did. A significant contributor to this acknowledgement would be to determine exactly what happened at SARS and report this truthfully. I have reported in Part 1 of this report the extent to which Bain has done and is still doing this.

Step 3 – Issue an apology to the victims of the harm done

The company needs to issue a public apology to the victims of the social harms to which it was a party. The connection between its specific actions or contributions to harm need to be made with specific victims, if possible. Where the general society has been victim this should be acknowledged.

Once Bain SA has acknowledged its specific wrongs, it needs to issue an apology for these wrongful acts or harmful outcomes. The victims to whom apologies are owed would include the South African society, SARS, in general, and specific individuals, Bain SA's clients and its staff.

Step 4 – Implement a programme of reparations

The first three steps of the remedy programme offer credibility to what comes in this fourth step. Often companies rush to show some act of contrition but neglect to acknowledge specific wrongs and issue specific apologies, thus never fully repaying their debt to society. Similarly, fulfilling Steps 1 to 3 without reparation, especially where there has been tangible harm, will be insufficient.

Reparation might be considered to have two constituent parts, namely *restitution* and *compensation*. Restitution seeks to remedy the harmful act, while compensation seeks to remedy opportunity cost or deprivation suffered by a victim. If A stole B's truck, then restitution requires that A returns the truck to B, while compensation requires that A pay to B any loss of income and any inconvenience suffered due to B not having his truck. Determining what constitutes adequate restitution must start with the consideration of the harms done to victims. Who is worse off as a result of the wrong action, what is the nature of this harm that makes them worse off, and how can the company eliminate this harm? In the case of Bain SA and SARS we would need to determine the total harm done – to SARS's institutional capability, to SARS individuals and to the broader South African society – and then determine Bain SA's share of this harm. This is not a simple exercise but can be done to yield meaningful results.

Bain SA's repayment of fees and interest could be considered over-payment when we consider that only Bain SA's operating model work is being questioned not the work it did for Customs, which has delivered tangible benefit to SARS. But perhaps the 'over-payment' covers other areas where Bain SA may bear a justice debt – the damage to SARS, to individual careers and perhaps to our broader society. With regard to harm to the broader society, some have claimed that Bain should bear the full burden of the tax collection shortfall. This claim overlooks the fact that numerous factors contribute to a tax collection shortfall, including macro-economic factors. While SARS's tax collections capability is reported to have been diminished, this diminished capability would explain only part of the tax collection shortfall. If we agree, as I have argued, that Bain is only partly responsible for the weakening of SARS and

that a weakened organisation only partly explains the tax shortfall, then is seems overly and unfairly demanding on Bain to have to fill the tax shortfall. At the same time, it is plausible that Bain may bear *some* responsibility for the shortfall. The same would be true of other areas where harm has been done, that Bain would bear some of the responsibility.

In determining what Bain SA owes we should not overlook that it has access to two valuable resources, other than cash, namely IP and skilled professionals. Especially for those areas of SARS or our broader society where we cannot quantify the harm done or where cash won't necessarily repair the harm, we could call on Bain SA to make these two resources available. Perhaps Bain SA could offer consulting teams at no cost to contribute to the institutional repair at SARS. Perhaps they could broaden the scope of the Bain Academy, which now upskills potential executives, to focus on SARS employees, or public sector employees more generally, and establish a permanent source of funding for the Bain Academy to give it greater financial stability. Or perhaps Bain SA could offer a set number of consulting teams per year to address social challenges South Africa faces, challenges that would benefit from Bain SA's skills.

In my Daily Maverick op-ed on 16 October 2018 titled 'What do we want from Bain?' I issued a challenge to Bain SA that they would need to do something extraordinary to gain South Africa's trust. It is not for me to decide what constitutes 'extraordinary' but what I have described above may be the first steps towards something extraordinary. It is important to note that what may be required is not necessarily a once-off act – I have used the term remedial *programme* consciously, to reflect the need for a sustained effort.

Step 5 – Commit to and demonstrate change of behaviour

A question certain to be asked of any company involved in harmful behaviour is how they will ensure that this will never happen again. This will require a demonstration of changed behaviour. But this change of behaviour is also critical to the meaningfulness of the apology in Step 3. An apology without change of behaviour is meaningless. There is absolutely no value in a company issuing an apology for harm done and then continuing with the same behaviour or continuing to operate in the same way.

I have pointed to Bain SA's internal operations that may have led to the harmful outcome, namely blind commercial interest and their cavalier culture. Internally, Bain may need to rethink its incentive structures and its governance procedures to ensure that the events at SARS

are not repeated. Culturally, it would need to begin rooting out the arrogance and fear that seems pervasive, and create space for dissent and whistleblowing.

But this needs to have an external component as well, such that society can observe the commitment to change. In addition to reporting on internal changes, perhaps all senior members of the Bain office in South Africa should sign an annual pledge to be more constructive contributors to South Africa. Perhaps introducing a governance board with independent representation will be meaningful.

Step 6 – Get on with its corporate purpose and being a good corporate citizen

In this sixth step we need companies to get on with what they set out to do and make their contributions to society. They should commit to delivering products or services of high quality and at fair prices, and operate as ethical businesses. This step acknowledges that our society and economy needs successful businesses, so ultimately we need companies to get back to their corporate purpose but ensure that it is pursued ethically.

Other than in Phase 1 of the SARS project there is no indication that Bain SA did not provide consulting services of the highest standard, although the Phase 1 experience does demonstrate that this standard can slip. As part of Bain SA's commitment to behaviour changes (per Step 5) and a culture overhaul to root out the arrogance, it would be expected that lapses in delivery of client results, as happened at SARS, would not recur.

It is important to note that *all 6 steps **must** be delivered* to start the process of remedying the harm done. The scale of each part must match the social harm done. This is not a public relations exercise or a reputation management project, but an exercise in pursuit of remedy for real harms done to real people, which should be the objective of any reparations programme and social justice effort.

Conclusion

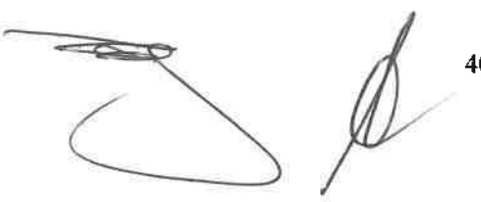
It is right that the South African public is angry about corporate corruption, public corruption and state capture. Coordinated plunder of our public resources must not be tolerated and must be punished. These destructive and despicable behaviours contribute significantly to the suffering many South Africans face by depriving our public programmes of the resources needed and retard our social and economic progress. In addition, they undermine our democracy and our faith in our public institutions, never mind the loss of confidence we suffer in the international arena.

Given what we know about Bain SA's role in the weakening of SARS, one of South Africa's key public institutions, we are right to be angry at the company and to call for justice. As I have outlined, Mr Massone, Bain SA and Bain Inc have a lot to account for. So too do some who held leadership positions at SARS at the time, particularly Mr Moyane.

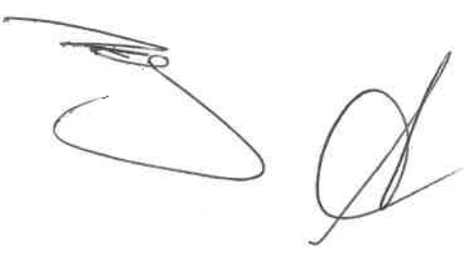
What I have sought to do with my oversight of Bain SA's investigation, and in writing this report, is to convey as objectively as I can what I have observed and my best interpretation of the facts to form a coherent picture of what transpired during Bain SA's engagement at SARS. I have tried to be fair to all parties but have pointed firmly to wrongdoing where I have seen evidence of it.

I am glad that the interim version of this report provide useful to the Commission. I hope this final report offers some insight to the South African public to what transpired at SARS and during Bain's investigation.

Those who have done wrong must be punished. However punishment is insufficient to achieve social justice. Our pursuit of social justice must extend beyond punishment to remedy. In this pursuit I have offered a suggested 6-Step corporate remedy programme that Bain could follow, and hopefully one that can serve as a guide for any company seeking to sincerely remedy social harm that it may have been party to. Corporate SA has some way to go to fulfil its true corporate responsibility to our society, that of contributing to the remedy of the harms it has perpetrated in the past and acting to prevent these from recurring. This requires a significant departure from the current superficiality of CSI which in most cases sets us back rather than advances our society towards social justice.



Ultimately it is my hope that this report contributes in some small way to eradicating corruption in South Africa and freeing us of the burden of the suffering caused when a few elites abuse their positions to exploit public resources for their private gain.



ANNEXURE "AW156"

AW156

Baker McKenzie.

Memorandum

PRIVILEGED AND CONFIDENTIAL

Date: September 25, 2018

To: Bain & Company

From: Baker McKenzie

Re: **Bain South Africa Investigation Plan**

1. Background

1.1 This plan governs the investigation of Bain & Company South Africa Inc.'s (**Bain**) contracts with the South African Revenue Service (**SARS**), which is to be conducted by Baker McKenzie (the **Investigation**). Bain commenced the Investigation in response to questions raised at the Commission of Inquiry into Tax Administration and Governance by SARS (also known as the Nugent Commission of Inquiry) (**Commission**), which is probing corporate governance and revenue collection at SARS. The Investigation is being led by Baker & McKenzie.

1.2 Bain conducted an initial internal investigation in the week immediately following when the allegations below were first made by the Commission on 30 and 31 August 2018. BM supported Bain in this internal investigation. In addition, BM also subsequently assisted Bain and Tabacks (legal counsel for Massone) by conducting the document review process that was necessary in order to provide documents requested by the Commission. BM performed this role at the request of Bain because they had access to the relevant documentation and because of the subject matter overlap with the Investigation.

1.3 The Investigation will address a number of questions that have arisen to date from the testimonies at the Commission:

(a) Whether Bain, through Vittorio Massone (**Massone**), Bain's former managing partner in South Africa, provided Tom Moyane (**Moyane**) with a free technical analysis and related CEO coaching of SARS to assist him in securing his appointment as the Commissioner of SARS as a *quid pro quo* of Moyane directing future opportunities at SARS to Bain;

(b) In providing these services to Moyane, whether Bain stepped beyond the services it would typically provide to a CEO who is being "CEO coached" in a material way;

(c) To the extent that Moyane had a pre-determined plan to take control of SARS (as has subsequently been alleged), the extent to which individuals at Bain were aware of this pre-determined plan and whether this awareness could reasonably be attributed to "mere" CEO coaching;

(d) Whether Bain had prior knowledge of the tender as well as the tender requirements for the review of the SARS operating model (RFP 26/2014), which prior knowledge afforded it a competitive advantage in the process for RFP 26/2014; and

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(e) Whether Bain underquoted the first phase of its work for SARS and misdiagnosed SARS, a high functioning institution, as "broken" in order to implement an expensive, unnecessary restructuring process.

1.4 Additionally, the Investigation will review the relationship between Bain and **Ambrobrite (Pty) Ltd (Ambrobrite)**, a third party that allegedly helped Bain secure the SARS contracts. The Investigation will initially review Bain's work for entities that Ambrobrite and its principals introduced to Bain, and expand to other public sector work, as necessary.

1.5 Finally, the Investigation will examine allegations that individuals within SARS used Bain to achieve a goal other than the contracted-for structural improvement of SARS. As part of this, the Investigation will consider whether there is any contemporaneous evidence that members of the SARS teams raised concerns with senior individuals at Bain regarding the work at SARS (this is the allegation made by the Commission that Bain should have walked away).

2. Scope of Investigation

2.1 The review period is 2012 to 2017 **(Review Period)** and will focus on the following:

(a) All SARS procurement processes in which Bain participated and all contracts that Bain entered into with SARS during the Review Period, including the three-phased SARS project at the focus of the Commission's inquiry **(SARS Restructuring Project)**:

(i) Pre-contractual "CEO coaching" sessions with Moyane from October 2013 to August 2014;

(ii) Consultancy Services to Review the SARS Operating Model (January 2015 to March 2015) **(Phase 1)**;

(iii) Continuation of the Review of the SARS Operating Model, and design and implementation of a revised SARS Operating Model (April 2015 to June 2016) **(Phase 2)**; and

(iv) Continuation of the Implementation of Operating Model Review and Implementation for Custom & Excise (September 2016 to March 2017) **(Phase 3)**.

(b) Bain's interactions, communications, and dealings with government officials, related associates, and third party intermediaries in connection with the contracts referenced in section 2.1(a) above, including:

(i) former President of South Africa Jacob Zuma;

(ii) suspended Commissioner of SARS, Tom Moyane;

(iii) suspended COO of SARS, Jonas Makwakwa;

(iv) CEO of Telkom, Sipho Maseko;

(v) Ambrobrite co-owner and director, Duma Ndlovo; and

(vi) Ambrobrite co-founder, Mandla Kheswa.

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(c) Whether Bain improperly supported Moyane, prior to his appointment as Commissioner of SARS, in exchange for future work from SARS and/or with knowledge of Moyane's intention, following his appoint as SARS Commissioner, to appoint a consultancy firm to review the SARS operating model.

(d) Whether anything of value was improperly provided to any government official, directly or through a third party, in connection with the business under review.

(e) Whether Bain had prior knowledge of the tender and/or tender requirements for the review of the SARS operating model (RFP 26/2014).

(f) Agreements entered into between Bain and any third parties (such as consultants, agents, sales representatives, brokers, vendors, suppliers, commission payees, subcontractors, joint ventures, or other business affiliates or their representatives), which relates directly or indirectly to Bain's efforts to obtain the contracts referenced in section 2.1(a), above.

(g) The relationship between Massone and former President Jacob Zuma and any other government official, with a particular focus on the evidence provided to the Commission.

(h) Bain's work for public sector clients that Ambrobrite and its principals introduced to Bain.

3. Investigation Methodology

3.1 Initial steps undertaken/underway

(a) As part of the preliminary internal investigation described above, Baker McKenzie and Bain conducted preliminary interviews and reviewed initial project and accounting data for certain custodians and preliminarily reviewed certain limited project documents.

3.2 Securing and Organizing Evidence

(a) Mailbox holds have already been put in place for relevant active users, including Massone, Bour, Clearkin and Franzen.

(b) Litigation hold notices will be issued to relevant employees of Bain directing that all information and documents be retained.

(c) The electronic devices, including laptops and mobile devices, of relevant custodians will be secured (**Secured Devices**). Steps will be taken to preserve the confidentiality of all documents collected during the course of the Investigation by keeping them in a secure location and indicating that the documents are confidential.

(d) A "whistleblower" e-mail address will be established whereby people within Bain can reach out to BM and provide information to the BM investigating team on an anonymous basis. This will be publicized within Bain.

(e) The following documents will be collected:

(i) any documents or information provided by Bain to Moyane prior to and in anticipation of Moyane's appointment at SARS as the Commissioner;

(ii) Bain's tender submission for Phase 1 in December 2014;

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(iii) any documents submitted to, and correspondence exchanged with, SARS in support Bain & Company's bid for the Phase 2 and 3 contracts;

(iv) any agreements entered into between SARS and Bain between 2012 and 2017, including the Phase 1, 2 and 3 agreements;

(v) the Phase 1 diagnostic prepared by Bain in 2015, including any other work product relating to Phase 1, 2 and 3;

(vi) the due diligence and other relevant policies related to Bain's relationship with Ambrobrite;

(vii) any agreements entered into between Bain and Ambrobrite;

(viii) accounting detail on payments made to Ambrobrite;

(ix) any work product, including documents and presentations, prepared, received and/or utilised during meetings with Moyane and/or his associates;

(x) any work product, including documents and presentations, prepared, received and/or utilised during meetings with Ambrobrite and/or its associates;

(xi) any work product, including documents and presentations, prepared, received and/or utilised during meetings with Jacob Zuma and/or his associates;

(xii) any agreements entered into between Bain and any South African organ of state, government department, or State Owned Entity between 2012 and 2017;

(xiii) documents related to Bain's compliance program, including compliance policies and procedures; and

(xiv) employment policies, especially electronic device policies, as well as the employment contracts with relevant employees.

(f) Email and Document Review

(i) The data on the Secured Devices will be decrypted (if necessary), imaged, and uploaded onto the Relativity e-discovery platform, where possible.

(ii) The data will be filtered using key words to conduct a targeted search for relevant documents, expediting the review as well as preparation for additional interviews with Bain employees and final reporting.

3.3 Interviews

(a) Interviews of relevant individuals will be conducted in parallel with the document review process.

(b) Interviews will be conducted in accordance with the following procedures:

(i) Employees will be given Upjohn warnings and advised to maintain confidentiality; and

(ii) At least two Baker McKenzie attorneys will be present for each interview.

3.4 Third Party Audits

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(a) As appropriate, Baker McKenzie will conduct interviews of key third parties, in accordance with the procedures set forth above. The following third parties have been identified to date:

(i) Duma Ndlovu (Ambrobrite)

(ii) Mandla Kheswa (Ambrobrite)

(b) To the extent Bain has audit rights with respect to key third-party service providers and promoters, it will consider exercising such rights, as appropriate.

3.5 Forensic Accounting Review

During the course of the review, Baker McKenzie, together with Bain, will determine whether forensic review of Bain's relevant books and records is needed to complete a comprehensive review.

3.6 Reporting of Findings and Independence

The findings will be reported on an ongoing basis to a Committee with assigned oversight of this Investigation. The chair of this Committee is Athol Williams. Chris Kennedy shall also sit on this Committee.

To ensure that the Investigation and the resulting reporting of findings be fully transparent and independent, and having been conducted at arm's length, the following measures shall be implemented:

(a) Final reporting of findings shall be provided to Athol Williams and Bain simultaneously.

(b) Athol Williams will be included on non-privileged correspondence between Bain and Baker McKenzie in respect of the Investigation.

(c) Whilst the Investigation is ongoing, Athol Williams shall be invited to each of the check in meetings with Bain.

(d) As well as the scheduled check-in meetings, Athol Williams shall be entitled to request an independent check-in meeting or update from Baker McKenzie at any time.

In the event that Baker McKenzie is requested by Bain to assist with any further document review exercise that is being conducted in order to assist Bain in providing documents to the Commission, Bain and Athol Williams shall meet and discuss what additional measures (if any) are required in order to ensure the independent nature of the Investigation is not compromised.

3.7 Clarification of roles

Bain is Baker McKenzie's client. Athol Williams is an adviser to Bain for purposes of ensuring the independence of the investigation.

ANNEXURE "AW157"

AW157

Telkom Ltd ("TKG")
17th Flr., Telkom Towers North
152 Johannes Ramokhoase St.
Pretoria, 0002.

Wednesday, 04 December 2013

Ref.: Attached letter to Telkom's Co. Secretary/Bain SA's Ethics & Other Matter Infringement

Attention: Mr. Bob Becheck
The CEO
Bain & Company, Inc.
131 Dartmouth Street
Boston, Massachusetts
02116
USA

Dear Sir, Mr. Becheck

The attached confidential letter refers.

Under protection of the RSA law we write to you about the above infringement involving your RSA Bain team.

Whilst the attached letter is addressed to the Telkom Co. Secretary & TKG's Board, we specifically draw your attention to Bain's involvement under "Complaint/ Charge 2: GCFO Appointment Manipulation" in the letter (at Pg. 4), and call for your action to protect your company's values, mage and brand.

As this matter is directed at Telkom Board's intervention we do not require a reply. If need be you can communicate with the noted Telkom Co. Secretary and the Chairpersons of Risk Committee and Social & Ethics Committee, who are Mr Louis von Zeuner and Dr Clive Fynn, respectively.

All the best & looking forward to unprejudiced action

The Group of 6 Telkom Whistle-blowers/employees

Telkom Offices (Pretoria & Centurion)

Wednesday, 04 December 2013

Ref.: Report on Unethical Behaviour of Telkom's GCEO & Other Matters

The Co. Secretary/Mrs. Xoliswa Makasi Mpongoshe
Ethics Office/Governance Unit
Postal Address: Private Bag X881, Pretoria 0001, South Africa
Street Address: Telkom Towers North, 17th Flr., 152 Johannes Ramokhoase St. Pretoria, 0002.
Email: MakasiXM@telkom.co.za / BY POSTAGE

Dear Xoliswa

The above heading refers.

We are staff working in finance, sponsorship, secretarial/administration, legal, ethics and we write this letter as a group of six/6 Telkom whistle-blowers.. At 1st in early July 2013 we wanted to send this letter to Mr Jeff Molobela when he was Social & Ethics Committee ("SoCom") Chairman. But he is no longer a Director after the August 2013 AGM.

We also have strong views on the culture of "silencing" employees. Added to that in Telkom the fraud/corruption line is also not really trusted. It is also seen as a way of silencing people. Therefore on advice of our outside lawyers we contacted Telkom's ethics unit end Sept 2013. Colleagues there also initially said that because of the very sensitive nature of our claims it would be better to send our complaints via you, to get to SoCom and to the Board of Directors ("Board"). In fairness the ethics unit also said that Mr Sipho Maseko, Group CEO ("GCEO"), has an open door. But going to the very person against who we in this letter also have claims would not work. Added to that your secretariat office's constant interaction with the GCEO is very worrying to most employees. That interaction may have purpose at the time. But it is restrictive in terms of the sensitive issues we would like to raise with you.

Given these above 2 concerns our lawyers further indicated that we were to find out when we could meet Mr. Louis von Zeuer (Chairperson of Risk Committee), and Dr Clive Fynn the new Chairperson of SoCom. We were planning to meet Clive after his meetings on Mon, 03 Dec. Before we could get contact him, ethics unit said his meetings were cancelled.

This was very disappointing for us because they happened while we were still waiting on our lawyers' advice on the 4 issues & approach to take up with Dr. Fynn. With our lack of trust & our

fears of people being "silenced" by executive management including GCEO, we requested our lawyers to research whether we could hand this matter to you, Mr von Zeuner and Dr Fynn without this letter being covered up as happened to Lerato Mablane's whistle blower letter. Nevertheless they replied very confidently. They indicated that

"... We have investigated and respond to your four questions on fairness of treatment and intended confidentiality handling by the Chairpersons of Risk and Social & Ethics Committee, respectively.

As with your collectives previous request iro "confidence that the group's whistleblowing efforts will not be blocked when reaching Mr von Zeuner", our advices hereunder are provided along the same guidelines w.r.t Dr Fynn.

Note further that as in the report on Mr von Zeuner which we provided you three weeks ago, advice on credibility of Chairperson in relation to work noted, is given with due understanding of non – infringement of the all rights, including those to privacy, of either Mr von Zeuner and/or Dr Fynn as individuals and as Telkom Ltd Directors.

We consequently advise as follows:

1. *In response to your 2nd issue and in ascertaining whether your Telkom whistleblowing team's concerns would be handled, by noted Dr Fynn, with fairness, urgency and confidentially, it would be inappropriate for our practice to offer views on personality as that verges on imposing on one's constitutional right to privacy. That notwithstanding and because our Johannesburg office is aware of and has encountered some of his corporate forensics' work, we advise further thereto that*

1.1. *Besides other publicly known work in which Dr Fynn is involved, said Dr. Fynn is also a reputable IT forensics' practitioner. Recent (i.e. FY 2008/9 – 2011/2) research indicates that he provided IT forensics and company forensics' support work in six (6) of the leading fraud prevention cases. We therefore do not believe that he is one that can be easily swayed by corporate "deviant behaviours".*

1.2. *Whilst observing his and his employers' (CFIT (Pty) Ltd's) rights to confidentiality, Dr Fynn's services were, and continue being sourced, for some of the EU companies located in RSA in 2013. Emphases here remain on "Fair Competition" and "Business Awareness" as risk management guidelines.*

2. *In 2005/6, one of our senior partners (then a partner in another leading Johannesburg practice) encountered Dr Fynn presenting support to Cliff Frazier (SC) in the World Bank Treasury matter for Internet Bonds. Opinion summarised here indicates that such advisory support was to ensure that acceptable disclosure and vigilance rules as were agreed to in the 2000 launch and subsequent stages of the Internet Bond transaction were observed. (This being a first of such work for a South African).*

2.1. *As global honorary professor we assure you (collectively) that noted Dr Fynn understands Fraud Risk Management. Aside from lecturing in Innovation and Entrepreneurship in IT, he also lectures in (a) Corporate Forensics, Ethics & Vigilance and (c) the Economics of Corruption. To that extent recent works are noted for three UK universities and, locally in Cape Town as Visiting Scholar.*

2.2. *In the FY2005/6 – 2007/8, Dr Clive Fynn was an independent Non – Executive Director and an Ethics & Risk Committee member of the New Nations' Youth Development Trust, whose benefactors were/are The Prince of Wales' Trust and the Nelson Mandela Foundations, respectively. In that three person committee he was ably assisted by Mr David Brink (former ABSA Bank Ltd Chairman & now Lead Independent Director at Steinhoff Ltd) and, by Prof. Willie Esterhuysen (former Ethics' & Philosophy Professor at University of Stellenbosch & a former Sanlam Ltd Director). All three herein noted persons later became advisors to both then Pres. Mandela and later to then the Pres. T. Mbeki governments. In July 2006, whilst at Cisco Systems, Prof. Fynn chaired a JIPSA meeting attended by Cisco Systems, Mr. Gwede Mantashe, COSATU and Pres. T Mbeki's office.*

We believe that we have provided you with sufficient confidence in respect of your issue on the Social & Ethics Committee Chairperson's "work character".

Whilst the decision on action remains yours collectively, we consequently also assure you that in the light of your protection under law and the above related evidence on independance of your referenced Chairpersons of Risk and Social & Ethics Committee, the issues you intended to be raised would not be misplaced with your Company Secretary and herein noted Chairpersons".

Therefore Co. Secretary, while we apologise to Dr Fynn for prying into his 'life' without permission we just needed to ensure that when we send this letter to you we could also back it up by sending it to a reputable Chairman. The distrust generated by management's actions over past 5 months run deep, & we are still left with the speculation that he/Dr Fynn was somehow "blocked" from meeting us. This is because we also know who in Telkom's Foundation & Sponsorship unit saw our noted lawyer's draft letter & realised that it may implicate them too.

Below are our claims which require thorough investigation and some immediate action:

Complaint/charge 1: Sponsorship Manipulation

As noted above evidence exists of sponsorship manipulation we would want the above sponsorship issue to be thoroughly investigated. To help you here are a few questions for the Co. Secretary and/or Board and/or SoCom Chairperson to investigate:

a) Is there any reason for shareholders to believe that their monies are being incorrectly used in and by the sponsorship unit?

b) Outside of Sipho (as ex-Officio Director) and Jabu Mabuza (as Chairman of the Board), which of the Telkom Board members were invited to the Sun City Million Dollar Golf Day challenge (Golf Day) early this month?

   (i) If none attended, why was this the case?

   (ii) Who were the guests attending the Golf Day? Who approved their attendance?

   (iii) Why were Sipho's/the GCEO's friends, not Telkom clients, hosted in the Lost City Hotel at Telkom's expense?

   (iv) Who of the latter insisted on Sipho's PA/Secretary, Marti Beukes, having to pay for their dinner when this was never Telkom's bill in the 1st place? Why did Marti refuse?

   (v) If none of the Telkom Board members were invited to the Golf Day, how was it possible that the spouses and/or partners of PAs, Sponsorship staff, other junior people were allowed to attend and live in Sun City at Telkom's expense?

GCEO, was top candidate. Because the results did not favour Sipho Maseko, we believe that the Round 2 tests were done. What was the intention here?

These tests were done under the Spencer Stuart Executive Search Consultants/recruiters ("Spencer Stuart"). Four ethical issues are raised here:

a) Was it not obvious that this was manipulation of a critical appointment process? Why did the rest of Nomco not object? Did they know? Were they in collusion? Was the Board informed that such a 2nd tests was aimed at getting Sipho appointed? ("Ethics Issue 2.6")
b) Like in the Bain case above, senior Spencer Stuart people were involved. What did they think would happen in terms of the US Foreign Corrupt Practices' Act and the Prevention and Combating of Corrupt Activities Act, 2003 of South Africa? ("Ethics Issue 2.7")
c) Did both Bain & Spencer Stuart believe that through collusion and "silence" they would also be exempt from the Johannesburg Securities Exchanges' rules on non - corrupt activities amongst others? ("Ethics Issue 2.8")
d) Did Jabu and Sipho consciously blind-side the rest of the Directors? ("Ethics Issue 2.9").

Besides the above 4 ethical dilemma issues created for the Board, in prejudicing Dr. Brian Armstrong there is also the matter of the Labour Relations Act 1995 as amended ("LRA").

a) Why did the Nomco not address this matter directly? Was offering Brian the consolation job of COO a cop - out of fiduciary duty by Nomco? Note that this consolation position too was never advertised.
b) We are informed by former directors that because of differing Board members views on Sipho's appointment Jabu suggested that a 2nd set of "closed minutes" be kept. Why? Does this happen in other listed companies?
c) Why were directors later asked to see you/the Company Secretary? Was it to review those closed minutes and to change earlier positions taken in relation to discussion on Sipho's appointment? Was this both Sipho and Jabu's way of subverting Telkom's Business Code of Ethics and Conflict of Interest Policies? ("Ethics Issue 2.10")

Complaint/ Charge 3: Corrupt Activities & Relationships

We understand from former Board Directors that Jabu and Sipho were friends way before the interviews. That may be true. In that regard did Jabu tell the Board that Sipho, Jabu and 8 other executives had meet with various ANC government officials & Ministers to discuss "Project Phoenix" before either of them was even appointed in Telkom?

a) Could it also be that Sipho's appointment was and remains part of fulfilling the objectives of that "Project Phoenix"?

Lerato Mabalane (a whistle blower, whose letter we also now have and to who we referred above) wrote a complaint letter to Board about this last year.

b) Was Sipho's involvement in the "Project Phoenix" brought before the Board?

c) If it was, and if we are led to believe that the principles of the King III Code apply to Telkom, did both Jabu Mabuza and Sipho mention the detail, intent and extent of the Project Phoenix to the Board? The argument that Nkandla (meaning Pres. Zuma) approved it, as we are told Jabu told some Board members before Sipho's then pending appointment as GCEO, begs many questions. It also asks for greater suspicion and investigation. ("Ethics Issue 3.1.1").

d) The former Min of Communications Dina Pule said to the "Sunday Times" newspapers there were business people who were trying to manipulate their way into her portfolio. Was that including Jabu & Sipho because through the 2nd meeting on the mentioned Project Phoenix they had met with Dina Pule. Some people in Communications' Dept can 100% verify this meeting took place even before Sipho was appointed GCEO. Why would Sipho have been in such a meeting if he was not in Telkom already? Communications' Dept people are prepared to give investigators transcripts. These too begs many questions. ("Ethics Issue 3.1.2").

The intent is far more critical here for us. When you start investigations the full Project Phoenix document would also have been given to Board via you Co Secretary.

Board is to also note that even before his final appointment Sipho went to tell the Vodacom Executives that he already had the Telkom GCEO's job and that as they had "kicked him out" of Vodacom SA he was coming back for them once his Telkom appointment was confirmed. ("Ethics Issue 3.2" – Behaviour Complaint 1)

Notwithstanding other reservations noted above & his unecceptable constant swearing when in Telkom meetings, is this how a leader is supposed to act? ("Ethics Issue 3.2" – Behaviour Complaint 2)

The appointment of Dr. Miriam Altman as head of strategy in a specialist field like ICT while she is strategy generalist is also a puzzling one. Besides no employee outside of Sipho seeing her

true value in Telkom the market is also as amazed. Add to that then, there are 4 other related ethical issues that we raise for investigation here:

a) How was it possible that her position and appointment were discussed with her even before the same option had been given to other internal Telkom candidates? Was the LRA processes being ignored in favour of expediency and friendship?

b) Who says that the GCEO's delegation of authority and the existence of such a post before Sipho's arrival at Telkom justified her automatic appointment? Is this because she had worked with Sipho at Vodacom and therefore qualified without any due appointment process being followed?

c) As with the GFCO we would like an investigation on this and proof given to the Board wherein it is shown that for the GCEO to consider the proposals of any other strategy consultant for such engagement an invitation to a competitive process was followed in accordance with Section 217(1) of the Constitution? ("Ethics Issue 3.3").

d) If today in Telkom we have Bain and other ICT strategy people doing strategy work and we continue paying those contractors millions of dollars, what was the GCEO appointed to do? Isn't driving strategy supposed to be one of his imperatives? Why then would the GCEO still have Dr. Altman around? Are our shareholders unnecessarily paying her? If that is true and if Telkom is a "Schedule 2" noted SoC could her employment contract be seen as wasteful expenditure in terms of the Public Finance Management Act No 1 of 1999? ("Ethics Issue 3.4").

e) If as a SoC Section 217(1) of the Constitution envisages that when a public entity like Telkom contracts for goods or services "*it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.*"; is it fair to assume that this did not happen with Ms. Altmann? If so, why?

While observing respect for all Directors there is also the conflict of interest matter when it comes to exchange of sensitive matters between the Board Director, Mr Leslie Maasdorp, and the same Dr Altman. As she is his common law wife/life partner how can we or the Board be sure that sensitive matters that affect Dr Altman, as discussed herein and in others such issues that affect Telkom, will not be deliberated between Leslie & Dr Altman? The point in time is evident here: While we are calling for an investigation on the above Leslie remains her partner. Does this mean that he gets a copy of this letter? Does this situation not leave the Board in a compromise position on the related deliberations & investigation? How does he act independently in such a matter? ("Ethics Issue 3.5")

Add to the above we would also like Sipho's unprofessional attitude of discussing and talking down at Directors to be noted. The Board/ Co. Secretary will recall how he called Mr Molobela's issue at AGM "a storm in a tea cup". Recently at our offsite meeting and another external meeting he was again unprofessional about Directors. The question here is who reports to whom? Does his friendship and cover under Mr Mabuza make him see himself above the Board? This is a separate matter and not necessarily ethical but a professional conduct issue for investigation and action ("Claim Issue 2").

Under normal circumstances and as is the case in other JSE companies this letter should have been sent to the Ethics' Office. In such companies, outside of its non - executive directors/ Board, no management director including CEO would have controlling rights over Ethics' Office/your activity. This is why we spoke about our concern about your office's interactions.

With the listed claims/issues we also wanted to give SoCom/its Chairman proof of manipulation in our sponsorship portfolio. But we now understand from Fainos Maguto in your office that all SoCom/Board meetings are only due in February 2014. We are therefore asking you to deal with this letter in a way that does not compromise the content or expected investigations. Because of the allegations/claims and because we want to ensure that this time the issues are not swept under the carpet we are giving you sufficient time to deal with it appropriately but with urgency. Should we not see action by 20 Jan 2014 we will take it to the international & local media.

We are also now sending this letter to the head offices of Bain, and Spencer Stuart because we believe that these companies MUST act against their employees. If we don't see true action sooner later we will send it to the JSE, USA Security Exchange Commission & to Merrill Lynch. Latter will be copied because of shareholder deposits and noted Maasdorp/Altman conflict.

All the best & looking forward to unprejudiced action

The Group of 6 Telkom Whistle-blowers/employees

ANNEXURE "AW158"

AW158

atholwilliams@hotmail.com

From: Athol Williams
Sent: 10 December 2018 18:49
To: Kennedy, Chris
Cc: Moolman, Tiaan
Subject: Update

Hi Chris,

I just had an update call with Reagan and Darryl of BM. I am meeting with Darryl again tomorrow to go through their planned presentation to DoJ on Friday.

As I understand it, BM will not produce a detailed report that captures the findings of the SARS investigation. I need your guidance as to what this means for me.

As I understood it, the original plan for dealing with the BM report was that the full detailed BM report would not be made public, only a synthesised version, but that I would see the full detailed report. I would comment on whether the synthesised version is a fair reflection of the detailed report and the findings of the investigation and I would produce my final report based on this exercise. This was communicated to the office and probably to other parties. If BM are not producing a final report then the process that I've just described falls away. Is this your understanding of where we are?

If this is the case, then I will meet with Darryl tomorrow and then produce my final report, which will be my interim report with any tweaks. I will circulate this final report to Bain and BM for comment as I have before.

Regards
Athol

ANNEXURE "AW159"

AW159

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 10 December 2018 19:42
To: Athol Williams
Cc: Moolman, Tiaan
Subject: RE: Update

Hi Athol

I think that's right and the process you suggest seems correct.

Thanks

Chris

From: Athol Williams <atholwilliams@hotmail.com>
Date: Monday, 10 Dec 2018, 5:49 pm
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Subject: Update

Hi Chris,

I just had an update call with Reagan and Darryl of BM. I am meeting with Darryl again tomorrow to go through their planned presentation to DoJ on Friday.

As I understand it, BM will not produce a detailed report that captures the findings of the SARS investigation. I need your guidance as to what this means for me.

As I understood it, the original plan for dealing with the BM report was that the full detailed BM report would not be made public, only a synthesised version, but that I would see the full detailed report. I would comment on whether the synthesised version is a fair reflection of the detailed report and the findings of the investigation and I would produce my final report based on this exercise. This was communicated to the office and probably to other parties. If BM are not producing a final report then the process that I've just described falls away. Is this your understanding of where we are?

If this is the case, then I will meet with Darryl tomorrow and then produce my final report, which will be my interim report with any tweaks. I will circulate this final report to Bain and BM for comment as I have before.

Regards
Athol

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ANNEXURE "AW160"

AW160
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atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 11 December 2018 10:07
To: Athol Williams
Cc: Moolman, Tiaan
Subject: RE: Update

Hi Athol

Yes, that question has been well discussed. It was the very clear advice from BM - perhaps worth raising on your call, if you haven't already had it. Otherwise, I'm happy to fill you in.

Thanks

Chris

From: Athol Williams <atholwilliams@hotmail.com>
Date: Tuesday, 11 Dec 2018, 6:46 am
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Subject: RE: Update

Thanks Chris.

I think Bain not releasing investigation findings will kick up a media shitstorm. Presumably Bain's PR guys are all over this.

Best
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 10 December 2018 19:42
To: Athol Williams <atholwilliams@hotmail.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Subject: RE: Update

Hi Athol

I think that's right and the process you suggest seems correct.

Thanks

Chris

From: Athol Williams <atholwilliams@hotmail.com>
Date: Monday, 10 Dec 2018, 5:49 pm
To: Kennedy, Chris <Chris.Kennedy@Bain.com>

ANNEXURE "AW161"

AW161

COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY SARS

FINAL REPORT

MR PRESIDENT

HEREWITH THE FINAL REPORT OF THE COMMISSION OF INQUIRY.

JUDGE R NUGENT

COMMISSIONER

DATE: 11 DECEMBER 2018

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CHAPTER 3: THE SEIZING OF SARS

[1] The transition of SARS from what it was to what it became was brought about by events that are shocking. We think what occurred can fairly be described as a premeditated offensive against SARS, strategized by the local office of Bain & Company Inc, located in Boston, for Mr Moyane to seize SARS, each in pursuit of their own interests that were symbiotic, but not altogether the same. Mr Moyane's interest was to take control of SARS. Bain's interest was to make money. This was not a plan for mere succession in public service.

[2] The Commission has no evidence that the parent corporation was complicit in what occurred, as the Commission was told by Bain's legal counsel it was not, but that does not put an end to the parent's responsibility. An international consultancy cannot lend its name and reputation to securing work in this country by the local office, and then leave the local office to its own devices. It secures the work through the reputation of the parent, and the parent is then obliged to see to it that the work meets its standards. If it wants to ignore what the local office does then it must leave the local office to secure work on such reputation as the local office might have. It cannot have both the benefit of its name and no responsibility for what is done in its name.

The Evidence of Bain and Co

[3] The head of the local office of Bain at the time was Mr Vittorio Massone. Soon after Mr Moyane took office, Bain was contracted, ostensibly to review, and later to re-structure SARS, which it did, with damaging consequences. Mr Massone said in his evidence that he was not aware of what was happening beneath the surface, and had he known he would have acted differently, but the facts show the contrary. Mr Massone and his local partners knew precisely what was going on, though perhaps they were not initially conscious of how brutal the process would be. An article written by one of its partners was at pains to say, correctly, that the first step in undertaking a project was to

ANNEXURE "AW162"

AW162

atholwilliams@hotmail.com

From: Athol Williams
Sent: 11 December 2018 10:41
To: Wilson, Nicola
Cc: Moolman, Tiaan
Subject: Ruling and BM report

Hi Nicola,

I'm sure you've read that the high court has dismissed Moyane's application so Nugent's report will go to the President (hopefully).

I understand from Baker McKenzie and Chris K that Baker McKenzie's investigation findings will not be documented in a report. This is a significant change and complicates things for me. Would have appreciated being informed of this change proactively by someone at Bain rather than have me deduce it from discussions with Baker McKenzie. I have communicated to Baker McKenzie and Chris that I will finalise my report based on what I know and including this new development.

Chat later
Athol

ANNEXURE "AW163"

AW163

atholwilliams@hotmail.com

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 11 December 2018 11:01
To: Athol Williams; Wilson, Nicola
Subject: RE: Ruling and BM report

Athol

I just landed. I am surprised at the news that BMK won't be producing a report. I am trying to get to the bottom of this ASAP.

Tiaan

From: Athol Williams <atholwilliams@hotmail.com>
Date: Tuesday, 11 Dec 2018, 8:40 AM
To: Wilson, Nicola <Nicola.Wilson@Bain.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Subject: Ruling and BM report

Hi Nicola,

I'm sure you've read that the high court has dismissed Moyane's application so Nugent's report will go to the President (hopefully).

I understand from Baker McKenzie and Chris K that Baker McKenzie's investigation findings will not be documented in a report. This is a significant change and complicates things for me. Would have appreciated being informed of this change proactively by someone at Bain rather than have me deduce it from discussions with Baker McKenzie. I have communicated to Baker McKenzie and Chris that I will finalise my report based on what I know and including this new development.

Chat later
Athol

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ANNEXURE "AW164"

AW164

atholwilliams@hotmail.com

From: Athol Williams
Sent: 11 December 2018 14:45
To: Moolman, Tiaan
Cc: Kennedy, Chris
Subject: BM output

Hi Tiaan,

Just spoke to Chris. Chris, thanks for the call, and do comment on anything I write here if needed.

1. Chris advises me that BM's investigation findings are documented in the **presentation** that they will present to the US DOJ on Friday. This presentation is the only document that they will produce on their findings.
2. BM have invited me to have sight of this presentation.
3. For privilege reasons, BM/Bain would prefer that I make no reference to this presentation, i.e. not say something like "I have seen the BM final report / presentation"
4. I'd rather not see something if I cannot make reference to having seen it so will decline BM's invitation.
5. I will make reference to Bain's narrative on the investigation once this is public – could I please see a current copy if appropriate. I understand that Bain's narrative will be the only document to be made public, that is, the BM presentation will not be made public.

Regards
Athol

ANNEXURE "AW165"

AW165

atholwilliams@hotmail.com

From: Athol Williams
Sent: 13 December 2018 01:23
To: Demas, Reagan R; Batonga, Marilyn
Cc: Bernstein, Darryl; Steyn, Wian; Klinger, Jane C; Kennedy, Chris
Subject: RE: Project Arrow Update

Hi Reagan,

Thank you for your prompt response.

Re: the interview notes, I have no particular interest. I was hoping to see the notes as part of having sight of all the evidence that BM has collected.

Best
Athol

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: 13 December 2018 01:18
To: Athol Williams <atholwilliams@hotmail.com>; Batonga, Marilyn <Marilyn.Batonga@bakermckenzie.com>
Cc: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>; Steyn, Wian <Wian.Steyn@bakermckenzie.com>; Klinger, Jane C <jane.klinger@bakermckenzie.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Project Arrow Update

Hi Athol - I believe we stopped the updates once the Phase I document review at 1LR level ceased. We will circulate a status update in the next few days since we have collected some additional documents (VM devices, etc). There were a few additional docs of interest identified since November 22 but nothing groundbreaking.

On interview notes, we would not plan to share those as they are attorney work product and privileged. We'd be happy to chat through particular interviewees' statements if you have an interest.

Many thanks,
Reagan

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Wednesday, December 12, 2018 6:14 PM
To: Batonga, Marilyn <Marilyn.Batonga@bakermckenzie.com>
Cc: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>; Demas, Reagan R <reagan.demas@bakermckenzie.com>; Steyn, Wian <Wian.Steyn@bakermckenzie.com>; Klinger, Jane C <jane.klinger@bakermckenzie.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: [EXTERNAL] RE: Project Arrow Update

Hi Marilyn,

Two questions if I may:

1. Has a project update been compiled since the one of 22 November?
2. Will interview notes be shared, as well as key documents submitted by interviewees?

Kind regards
Athol

ANNEXURE "AW166"

AW166.1a

atholwilliams@hotmail.com

From: Athol Williams
Sent: 14 December 2018 17:29
To: Moolman, Tiaan
Cc: Kennedy, Chris; Senior, John; Hutchinson, Greg
Subject: A request

Tiaan,

Sorry to burden you with this as I know you're on vacation. I am cc'ing Chris, John and Greg because they have all the context and also because you may not be checking emails. This is time-sensitive.

Since the beginning of September, in dealing with the SARS crisis, I've heard you repeatedly say that Bain is committed to doing the right thing, and that you wanted to look back at this time and be proud of the way Bain responded. I understood "doing the right thing" to mean that Bain would be "completely open and transparent," as Bain wrote in the press statement of 2 September, "as we believe that is what the people of South Africa deserve." I think the latest development of Bain (Baker McKenzie) not producing a comprehensive report of investigation findings and not sharing some version of it with the public goes counter to what Bain promised. I have not seen a recent version of Bain's "master narrative" so I don't know how much of the investigation findings will be contained therein.

One aspect, among others, of Bain's response to the SARS crisis that I found particularly commendable, and something that you could certainly be proud of as you looked back, was the creation of the independent oversight role which you asked me to fill. This was a positive step in demonstrating Bain's commitment to being completely open and transparent, particularly since my role required me "to do what is right for South Africa, without restrictions." (Bain press statement of 10 September; Bain's emphasis). Unfortunately, I find that I am now being restricted from performing my role, firstly by not having access to a final investigation report and secondly by not having access to all the investigation evidence, e.g. notes from interviews conducted. I have been offered "sight" of a presentation and the interview notes by viewing them on someone's laptop screen but not being able to get access to a copy that I can study. Even if I did see these materials I've been informed by Bain legal that I should not make reference to the fact that I've seen it – as I've indicated in a previous email, I cannot proceed on this basis.

I appreciate the fact that the US Dept of Justice (DoJ) process complicates what can be shown to whom. But I cannot forgo the interests of the people of South Africa because of this complication, nevermind the fact that doing so would amount to me failing to fulfil my contractual responsibilities.

My request: I would like to urge Bain to fulfil the promise made to the South African people to be "completely open and transparent" by making a version of the investigation findings public and allowing me to access to all relevant evidence and documented findings so that I can act "without restrictions." This access will allow me to conclude my oversight role and write my final report.

You asked me to stand in front of the Joburg office on a few occasions to describe the role that I would play during this process and how I would deal with the final investigation findings – I would like to be able to say to them, and to anyone else, that I followed True North by acting true to my mandate in ensuring that Bain acted as promised.

Best

Athol

ANNEXURE "AW167"

AW167

Athol

Apologies for not responding earlier. I am indeed on holiday, but have "resurfaced" now that the Nugent Report is out.

Attached please find the latest version of the master narrative. Once Manny has signed it off, we intend to publish it on our website at 4pm tomorrow (Saturday). Please keep it confidential to yourself until then.

On the BMK investigation, I will catch up with Chris to understand where we are.

Regards

Tiaan

From: Athol Williams [mailto:atholwilliams@hotmail.com]
Sent: Friday, December 14, 2018 5:48 PM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>; Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Cc: Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: A request

Hi Chris,

Even with access to the master narrative document I will not be able to determine whether it fairly reflects the investigations findings and evidence collected if I don't have the ability to study the findings and evidence (particularly interview notes as per my email below). Flipping through the slides at BM's office will not allow me to do this.

Regards

Athol

From: Athol Williams
Sent: 14 December 2018 17:38
To: 'Kennedy, Chris' <Chris.Kennedy@Bain.com>; Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Cc: Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: A request

Hi Chris,

I saw an early version but I understand it is now on version 20 so don't know what it contains.

Thanks

Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 14 December 2018 17:34
To: Athol Williams <atholwilliams@hotmail.com>; Moolman, Tiaan <Tiaan.Moolman@Bain.com>

ANNEXURE "AW168"

AW168

atholwilliams@hotmail.com

From: Athol Williams
Sent: 14 December 2018 18:23
To: Kennedy, Chris; Wilson, Nicola; Munuz, Erol (KC)
Cc: Moolman, Tiaan; Senior, John
Subject: RE: Master Narrative

Chris

I am sympathetic to Bain's concerns re: legal privilege, however, I find myself in a position where being sympathetic to Bain's position is at odds with what Bain has hired me to do.

I have raised my concerns regarding Bain fulfilling its promises to the South African people, and I have raised my concern that I have not had unfettered access. As I have done throughout this process, I have offered my thoughts on these issues, it is for Bain to decide how you will act upon them.

Regards
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 14 December 2018 18:09
To: Wilson, Nicola <Nicola.Wilson@Bain.com>; Munuz, Erol (KC) <Erol.Munuz@Bain.com>; Athol Williams <atholwilliams@hotmail.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>; Senior, John <John.Senior@Bain.com>
Subject: RE: Master Narrative

Thanks

Athol - the thinking behind this document is that Bain can be fully transparent about what happened but without risking a waiver of privilege on the BM report. There is no restriction on disclosing facts; we just have to say "Bain says" rather than "the report says". There would be no restriction on you saying some version of "the Bain document matches all the evidence I saw". We just need to leave the BM report out of it if we are to maintain privilege. As you know, not having privilege on the BM report would be a huge disadvantage if we are investigated by the Hawks, DOJ or if anyone brings a lawsuit.

Happy to have a call on this, if helpful.

Thanks

Chris

From: Wilson, Nicola <Nicola.Wilson@Bain.com>
Date: Friday, 14 Dec 2018, 4:44 pm
To: Kennedy, Chris <Chris.Kennedy@Bain.com>, Munuz, Erol (KC) <Erol.Munuz@Bain.com>, Athol Williams <atholwilliams@hotmail.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>, Senior, John <John.Senior@Bain.com>
Subject: RE: Master Narrative

Sure – here it is.

Best,

ANNEXURE "AW169"

AW169

atholwilliams@hotmail.com

From: Athol Williams
Sent: 15 December 2018 15:16
To: Kennedy, Chris; Demas, Reagan R; Moolman, Tiaan
Cc: Bernstein, Darryl
Subject: RE: [EXTERNAL] FW: Final Documents for Approval

Thanks for looping me in Chris, and thanks Reagan for your call and email.

My ideal would be:

1. Findings presentation:
    a. Darryl and/or Reagan run me through the findings presentation. Darryl and Reagan have already offered this, although I understand that Darryl has already gone on leave.
    b. I am left with the presentation to study it closely. Chris's "data room" idea sounds good. I would not take a copy of the presentation but would have adequate time to absorb it.
2. All evidence that I have not yet seen:
    a. Someone runs me through any evidence that I have not yet seen – Reagan mentioned that the Project Arrow dashboard would be updated in a few days so there may be documents that I haven't seen as well as interview notes which I identified. I would appreciate it if we could be proactive in identifying relevant evidence that I have not seen.
    b. Perhaps this could also be in the data room for me to review. Again I would not take a copy of any evidence or notes.
3. Reference to the findings presentation:
    a. If I am going to review the Baker McKenzie findings presentation I need to have no restrictions in referring to it. It does not serve Bain or me to have me be vague about whether I've seen the final findings presentation or not.

I will travel to Joburg to do this of if Baker McKenzie have a CT office we can do it here.

Best regards
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 15 December 2018 15:02
To: Demas, Reagan R <reagan.demas@bakermckenzie.com>; Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Cc: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>; Athol Williams <atholwilliams@hotmail.com>
Subject: RE: [EXTERNAL] FW: Final Documents for Approval

Thanks Reagan (and bringing in Athol)

Have you both managed to connect on the issue of giving Athol sight of your materials as we discussed on Thursday? As discussed, we should give Athol as much sight/access as possible, with the only handbrake being things necessary to maintain privilege. Tiaan suggested one option being to make a data room available for Athol in order that he might have time to review everything in detail; I don't know if that would work of whether you've discussed that with Athol.

It would also be helpful if you could work with Athol to see if you can find a way that he can describe his work that makes him comfortable as I am aware that this is one of his concerns. Athol - please keep me in the loop on that and if there are any roadblocks let me know.

Thanks

Chris

ANNEXURE "AW170"

AW170

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Date: Saturday, 15 Dec 2018, 1:48 pm
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Cc: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: Re: [EXTERNAL] FW: Final Documents for Approval

Tiaan, many thanks for sharing these materials.

I have only one revision (applies to several of the documents). In the shorter press release and the note to partners, reference is made to Athol's "oversight" role of Baker's investigation. We have sought to avoid language suggesting he controlled or oversaw our investigation, which could result in privilege waiver. The language in the longer narrative - that Athol was engaged to provide his opinion on the independence and adequacy of the Baker investigation - works well and conveys the same concept without suggesting control or oversight by a non-privileged party. Yesterday, DOJ actually inquired about the nature of Athol's role in our investigation and we explained it as such, so would also be important to be consistent in a public message.

So I would suggest on the last page of the press release, in the next steps section, revise to say "to contribute to Bain's investigation processes and provide his opinion on the independence and adequacy of the company's investigation." And in the email to partners, I would revise that similar statement to say "who was appointed to provide his opinion on the independence and adequacy of the company's investigation."

Let us know if any concerns, and thank you for sharing these in advance.

Best regards,
Reagan

On Dec 14, 2018, at 6:48 PM, Moolman, Tiaan <Tiaan.Moolman@bain.com<mailto:Tiaan.Moolman@bain.com>> wrote:

Dear Darryl and Reagan

Attached please find the final versions of all the communications we intend to publish and distribute tomorrow. Given that the Nugent report was very much in line with what we expected, there has not been many changes in the Master Narrative (and all the other comms that are based on the Master Narrative). Please let Chris know if you have any concerns. We intend to go "live" tomorrow at 4pm SA time.

Regards
Tiaan

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.bakermckenzie.com_disclaimers&d=DwIF-g&c=YgvAunA6A5zFF9cMHqSY3cSQ3MG-auFOlwIB7e1LIto&r=If8LIz2jl-g5x1t4k2lGaOPTcNxqOpKaHoiG36W7xBA&m=MEZicoYbY91ap76Z5ZlsXxlFjN4sHK5T5wO_itgnKig&s=RiI5T7MU-PDRxpsF_M8x5tgeHdwXDgGeDoozWLw1xZE&e=> https://urldefense.proofpoint.com/v2/url?u=http-3A__www.bakermckenzie.com_disclaimers&d=DwIF-g&c=YgvAunA6A5zFF9cMHqSY3cSQ3MG-auFOlwIB7e1LIto&r=If8LIz2jl-g5x1t4k2lGaOPTcNxqOpKaHoiG36W7xBA&m=MEZicoYbY91ap76Z5ZlsXxlFjN4sHK5T5wO_itgnKig&s=RiI5T7MU-PDRxpsF_M8x5tgeHdwXDgGeDoozWLw1xZE&e=<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.bakermckenzie.com_disclaimers&d=DwIF-g&c=YgvAunA6A5zFF9cMHqSY3cSQ3MG-auFOlwIB7e1LIto&r=If8LIz2jl-g5x1t4k2lGaOPTcNxqOpKaHoiG36W7xBA&m=MEZicoYbY91ap76Z5ZlsXxlFjN4sHK5T5wO_itgnKig&s=RiI5T7MU-PDRxpsF_M8x5tgeHdwXDgGeDoozWLw1xZE&e=> for other important information concerning this message.

From: Wilson, Nicola
Sent: Saturday, December 15, 2018 12:31 AM
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com<mailto:Tiaan.Moolman@Bain.com>>
Subject: Final Documents for Approval

Hi Tiaan,

ANNEXURE "AW171"

AW171

atholwilliams@hotmail.com

From: Demas, Reagan R <reagan.demas@bakermckenzie.com>
Sent: 15 December 2018 15:22
To: Kennedy, Chris
Cc: Moolman, Tiaan; Bernstein, Darryl; Athol Williams
Subject: Re: [EXTERNAL] FW: Final Documents for Approval

Thanks Chris - we reached out to Athol yesterday by phone and email but we haven't yet connected. Athol do you have time to chat today? My mobile is 202-459-1100.

We've discussed various iterations of describing Athol's role publicly with him. Athol let us know if the below description causes you concerns - I believe this is consistent with our prior discussions regarding the "oversight" and control language vis a vis Baker's investigation, and also consistent with your interim report if I recall correctly. Another option we've used before I believe is to mention Athol having oversight of the "company's investigation" without mentioning Baker, which can be read more broadly and not necessarily interpreted as an oversight role over counsel's work specifically.

A data room/sharepoint of relevant emails collected would be easy, as would a read out of our DOJ presentation which we could do over the phone or you could sit with Darryl in his office as we discussed earlier this week. Definitely want you to get what you need to be comfortable Athol while we walk the fine line of privilege protection. Since I know the concept of legal privilege can seem a bit amorphous and the actual impact unclear, I'd also like to share with you a couple of potential future scenarios under which the privilege protection could have real impact on Bain in this matter.

Note below Athol that DOJ was interested in your role and asked specifically whether you were a lawyer - not because they thought you weren't playing an important role, but simply so they knew whether we were waiving privilege in which case he could ask for far more materials from us (internal work product, etc). He asked that we send him all materials we have provided to you (he fortunately accepted our requested limitation that our emails with you be excluded, although technically he could request those as well).

Best regards,
Reagan

On Dec 15, 2018, at 8:01 AM, Kennedy, Chris <Chris.Kennedy@bain.com<mailto:Chris.Kennedy@bain.com>> wrote:

Thanks Reagan (and bringing in Athol)

Have you both managed to connect on the issue of giving Athol sight of your materials as we discussed on Thursday? As discussed, we should give Athol as much sight/access as possible, with the only handbrake being things necessary to maintain privilege. Tiaan suggested one option being to make a data room available for Athol in order that he might have time to review everything in detail; I don't know if that would work of whether you've discussed that with Athol.

It would also be helpful if you could work with Athol to see if you can find a way that he can describe his work that makes him comfortable as I am aware that this is one of his concerns. Athol - please keep me in the loop on that and if there are any roadblocks let me know.

Thanks

Chris

ANNEXURE "AW172"

AW172

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 27 September 2018 15:25
To: Kennedy, Chris
Cc: Min, Stuart
Subject: RE: Investigation Plan

Hi Chris,

Have you managed to finalise the BM terms of reference?

What is the timetable for updates from them?

Thanks for your comments below – please see my responses.

Stuart, per the discussion with you, John and Tiaan yesterday – any update?

Many thanks
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 26 September 2018 14:46
To: Athol Williams <atholwilliams@hotmail.com>
Cc: Min, Stuart <Stuart.Min@Bain.com>
Subject: RE: Investigation Plan

Hi Athol

My thoughts below. Stuart and I are just finalizing some changes to the document and then we'll send to you for review.

Kind regards

Chris

Chris Kennedy
Senior Counsel
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany
tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Wednesday, September 26, 2018 9:17 AM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Investigation Plan

Hi Chris,

5 points:

1. The attachment describes an "internal investigation" … shouldn't this say "external"? **I've changed references to the BM investigation to the defined term "Investigation". Where we talk about the internal investigation we did, this is "investigation" – little i.** As long as it is clearly independent
2. The investigation should ultimately talk to Bain's involvement or not, in the big scheme and the small scheme – I'm not sure this is captured **I agree. I have tweaked the scope to cover these wider**

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issues but I still think we can make it better. Let me know your thoughts. I do want to balance this with making the Investigation unnecessarily broadly scoped, as that will just add too much time and we would like it done asap. Will provide thoughts once I see the revised version

3. Who is BM's client? If it is Bain, then how does my role as independent overseer interact with their client? **See clause 3.7 for a clarification. Essentially, Bain is the client but as an advisor to Bain you have full access and rights to updates, briefing etc. I've also added a mechanism whereby you can give them instructions.** Will provide thoughts once I see the revised version
4. I would like to submit a report to the Commission on 22 October when Bain testifies – how does this fit into the scheduler for BM? **No idea – we'll have to ask them. I've already asked them what is possible by 22 Oct – not heard back yet. My guess is they won't be ready on all of it, but a preliminary deliverable will be possible.** If not completed by 22 October I can't see it being of much use to the Commission.
5. The advocate who visited us at the office (Tiaan's uncle) indicated that BM might be seen externally to be "contaminated" as an independent investigator, given that they've been involved with Bain already. Are you comfortable that this is not the case and that this might not undermine the results of the investigation? **Yes, I'm comfortable. I've clarified in the document that BM assisted us on some related workstreams but that these worstreams are a separate matter and are not part of the Investigation. BM is a sophisticated independent law firm and I've included in the terms that the Investigation must be at arm's length. We have WW advising us as regards how we interact with the Commission so there should be no conflict on that, whether real or apparent. I'm sure the Commission will accept this structure but if they (or you) have concerns then we can address them.** Thanks
6. The attachment describes BM's external investigation, but my understanding is that there is also an internal investigation that is going on – or is this incorrect? **Kind of. To the extent we do an internal investigation, it will be more ad hoc. For instance, the matters raised by JB last night and anything required for us to get ready for 22 October. Perhaps also the discussions with partners you said you would like to have, to the extent that Bain is involved.** I will want to ultimately comment on whether Bain has left no stone unturned to find the truth about the big scheme, small scheme or any other scheme that Bain might have been involved in. If you think BM's investigation will do that then I will restrict my oversight to their work.

I have met Darryl from BM, so probably no need for a further introduction.

Regards
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 25 September 2018 22:28
To: Athol Williams <atholwilliams@hotmail.com>
Subject: FW: Investigation Plan

Hi Athol

See below. As it happens, I'd like to take you to meet Baker & McKenzie tomorrow afternoon. You got time?

Thanks

Chris

From: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Date: Tuesday, 25 Sep 2018, 9:26 pm
To: Min, Stuart <Stuart.Min@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>

ANNEXURE "AW173"

AW1733

atholwilliams@hotmail.com

From: Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>
Sent: 27 November 2019 13:40
To: Athol Williams (atholwilliams@hotmail.com)
Subject: Zondo Commission

Hi Athol,

Following our discussion yesterday, I thought it would be helpful for you to have a few of the thoughts we discussed in writing in preparation for your discussion with the Zondo Commission.

As discussed, my sense is that the value you could add to the Commission would be limited on the basis that (a) you were not at Bain at the time of the SARS events and (b) your involvement after the fact was focused on the approach to the investigation into the work conducted by Bain's legal counsel.

Technically speaking, this would make your evidence second hand, so-called hearsay and may also expose you to the risk of waiving privilege, which you should not do and you would of course need to take your own legal advice on this issue before proceeding, as we discussed. The Commission understands that it is not entitled to privileged information.

Naturally, the approach to the Commission would be to:

1. ensure honestly and integrity at all times.
    a. This may seem trite but it is important to bear in mind that in respect of the work done at SARS, you do not have direct experience or knowledge of the work performed or the relationship with Moyane. I would avoid any form of speculation about the events, as such hearsay or speculation could open you up to cross examination. You may have seen that Moyane has applied and been granted the right to cross-examine Gordhan on allegations Gordhan made, so this isn't alarmist. If you're later cross examined on an allegation then you'll need to explain under oath why you think it and if you're just speculating you may end up being forced to concede that your opinion has no basis in fact.

    b. Some specific topics that may come up where this is important:
    - Procurement process
    - Actual work for SARS
    - Relationship with the Guptas
    - Meetings with Zuma or Moyane
    - Whether or not Bain assisted Moyane in state capture.

2. Avoid "theorizing", even where you make clear to the Commission that you're only speculating. For instance, if you were to speculate on what was said in a meeting between Moyane and Bain, it's quite possible that you might be asked to repeat that publically in evidence before the Commission, in the absence of any other witnesses. That might draw Moyane out and prompt him to make an application to cross examine you and drag you into the matter further. On the other hand, if you do have helpful knowledge, then you can and should volunteer that. For instance, you know much more about Bain's business than the Commission would, so you may have insights that are valuable in relation to how Bain does its work and, if these are your views, you might be well placed to explain how it is not in Bain's interests to assist Moyane in state capture.

3. If you have no personal knowledge or you don't remember, it's fine to say so, that's sometimes the most valuable thing a witness can do. The same applies to being unable to recall any detail, it's fine to say you don't know or don't remember.

4. If it comes up, be clear about the nature of your involvement in the investigation (i.e. BM conveyed to you it was structured in a way that enabled you to have oversight of all the materials but maintain legal privilege, you were told that you had sight of all the relevant materials located by the investigation, were taken through the methodology etc. but weren't included on legal calls and weren't given certain legal documents for privilege reasons). If it comes up, you can be clear that you won't hide behind your confidentiality clause, but you'd need to take advice about privilege.

5. Another likely topic is "Why has the media reported that you think Bain is hiding something about SARS"?
    a. For that, you should obviously answer honestly, if you think the media erroneously reported your statement, or you were blindsided and made a comment that was taken out of context or that you regret,

the conversation with the Commission would be the time to correct it because if you're asked to be an evidence witness on this point that would be a more public forum.

b. The media may not appreciate the importance and complexities of legal privilege, but the Commission would and the law applicable to the Commission is clear on the issue.

Let me know if you would like to discuss further.

Darryl Bernstein
Partner
Baker & McKenzie
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ANNEXURE "AW174"

AW174

Whatapp Messages between Athol Williams and Tiaan Moolman 17 – 21 December 2018

17/12/2018, 15:10 - Tiaan Moolman: Let's plan on talking in the coming days on the right way forward, if you are available

17/12/2018, 15:11 - Athol Williams: Definitely available. Got session with BM on Wed to run through slides.

19/12/2018, 18:48 - Athol Williams: Spent 2 hours with BM and Chris. Didn't see a single slide. I told them there's no point having this discussion. You and Chris are NOT aligned. This needs to be resolved through a discussion that includes you, me, Chris and BM.

19/12/2018, 18:53 - Athol Williams: I can't help but feel that I am being procedurally manipulated regarding BM's output. I'm not happy about it and don't understand why Bain would take such risk.

19/12/2018, 20:22 - Tiaan Moolman: Exasperated! Let me check what's going on.

19/12/2018, 20:27 - Athol Williams: Exasperated too!

20/12/2018, 18:30 - Tiaan Moolman: Have you seen Chris' email yet? It feels like there is a good way forward now, but you need to be the judge of that. Please let me know your thoughts or if it is easier to do a call, let me know.

20/12/2018, 18:52 - Athol Williams: Will have a look

20/12/2018, 21:04 - Tiaan Moolman: Thanks. Let me know.

21/12/2018, 11:52 - Athol Williams: Have replied. Happy to chat. This puts you in a difficult position which I know you have been working hard to avoid.

21/12/2018, 12:23 - Tiaan Moolman: It does. Let me call you later. I completely understand that you feel Bain legal is changing the rules all the time. I have worked very hard behind the scenes the last few days to now secure access to the full BM report + all interview notes etc on SharePoint. I still hope that you will view the report before you make up your mind.

ANNEXURE "AW175"

AW175

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 19 December 2018 21:15
To: Moolman, Tiaan
Subject: RE: A request
Attachments: RE: [EXTERNAL] FW: Final Documents for Approval

Hi Tiaan,

I have reached a very sad point in our long process. I have serious doubts about Bain's willingness to be open and transparent with me let alone the SA public. It is absurd that I am going back and forth trying to get Bain to allow me to do what you've asked me to. I have documented my thoughts in emails to you and others in an effort to establish clarity over tricky and complex matters – I've had no substantive written replies, only separate phonecalls that contradict each other.

It seems Bain is trying to get away with not showing me something and hoping that I will say something akin to admitting that I have seen it.

We set up today's call with BM so that they could go through their final presentation with me. I don't see how anyone could be confused about what the objective was. I sent an email (attached) describing my ideal requirements to complete the mandate I received from Bain, and by phonecall it was agreed that we would take it one step at time, with today's discussion being the first step. Well, on today's call, everyone but I seemed to expect that I would see the presentation. Alas I did not. I am disappointed that anyone would think I would agree to having someone read slides to me, that I haven't seen, and then report that I have seen it because I trust the people who read it to me.

I am now ready to complete my final report. My conclusion will be that I cannot vouch for Bain's honesty and transparency in its investigation and reporting thereof because I have not seen any final output. I will continue to offer my positive view on the comprehensiveness of the investigation.

It is apparent to me that there are numerous forces within Bain pulling in different directions with regard to revealing the truth – this worries me, because it appears that some of these forces prefer keeping the truth hidden.

I had hoped that I could stand on any platform and confidently say "You should believe Bain's side of the story; they are telling the truth, I can say this because I have seen everything they know and they have been open and transparent with me." Sadly, I cannot say this.

Regards

Athol

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 15 December 2018 02:16
To: Athol Williams <atholwilliams@hotmail.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: A request

ANNEXURE "AW176"

AW176

atholwilliams@hotmail.com

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 19 December 2018 23:35
To: Athol Williams
Subject: RE: A request

I absolutely agree that it is not acceptable. You are probably right that a call at this stage won't resolve anything.

When were you thinking of finalising and publishing? To be honest, if there is no particular urgency from your side, I would love to wait until the new year. I am very tired of pushing the legal team while (supposedly) on holiday. I'm sure that when both John and myself are back in Jhb in the new year we can resolve it. I frankly don't know why we need to hold on to privilege as there is nothing in the BMK finding that is worrying. We certainly don't want to change your mandate - that would make all parties look silly.

If you want to chat tomorrow, let me know.

Your very tired friend
Tiaan

From: Athol Williams <atholwilliams@hotmail.com>
Date: Wednesday, 19 Dec 2018, 9:09 PM
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Subject: RE: A request

Tiaan,

Not walking away. I will complete the final report as agreed but can base it only on what I have experienced and seen. I see no value in a call with Bain legal and BMK because we are going to circle around the same issues. I can only assume that BMK's behaviour follows instructions from Bain. If we want to see different actions by BMK, Bain will need to change their instructions. You don't need me for that. Alternatively, you can change my mandate and ask me not to comment on the reporting aspect of the investigation but playing the games that are being played that could make me look like an absolute fool is not acceptable. This is not the first time that I have been played in this way, where I have to deduce that things have changed without anyone having the courtesy to tell me explicitly. It is offensive Tiaan.

Athol

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 19 December 2018 22:48
To: Athol Williams <atholwilliams@hotmail.com>
Subject: RE: A request

Athol

I hope that you have not reached the point where you just want to walk away. I was very irritated with Chris that despite us being clear on the expectations of today, between himself and BMK they saw fit to change it. I have been

ANNEXURE "AW177"

AW177

atholwilliams@hotmail.com

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 20 December 2018 16:55
To: atholwilliams@hotmail.com
Cc: Moolman, Tiaan; Min, Stuart; Hutchinson, Greg; Meehan, Paul; reagan.demas@bakermckenzie.com
Subject: Viewing/Referring to the BM Report in Athol's Report

Athol

I hope all is well with you.

I understand from our call yesterday that having the BM report read out to you isn't a sufficient level of access for your purposes. Tiaan also called me and shared the same. Whilst it's a disappointment that we couldn't square the circle on this, I appreciate the importance of your report to Bain so we're doing what we can to resolve the difficulty. There are two key issues, as I see it:

- **Full access to the report**
  - I have arranged with Baker McKenzie to place a copy of the report on Sharepoint site (locked for printing and download) for as long as you need to review it. BM got comfortable with sharing the report with you on this basis because it effectively mirrors the approach taken with the DOJ.
  - If you need anything else, let me know.
- **How you may refer to the BM report in your report/public statements etc.**
  - This public reference is the main thing that moves the needle on privilege. A statement in your report "I have reviewed the Baker McKenzie report" is a statement to the whole world that the BM report is not legally privileged. Therefore, we'd need to give a copy to the DOJ and we can expect the Hawks to write to us asking for a copy, Vittorio may sue us asking for a copy and so on.
  - For completeness, I've pasted below an extract of BM's note to us on the risks of losing privilege.
  - In terms of the wording you will use in your report, the exact details will need to be agreed with Reagan (there really are magic words when it comes to privilege) but broadly these are the two options:
    - **Lower Risk Option** - In your report you don't directly refer to the BMK report, but BMK help you with language around how you can reference the access you had to the actual investigation and conclusions. When asked by journalists you tell them you have seen the report, with BMK assisting you in advance with some BDP phrasings for the answers. [High risk of losing privilege, but strongly mitigated by the fact that this waiver isn't referenced publicly in your report]
    - **High Risk Option** - In your report you directly refer to having had access to the BMK report. When asked by journalists you tell them you have seen the report, with BMK assisting you in advance with some BDP phrasings for the answers. [High risk of losing privilege; public nature of waiver strongly amplifies risk to Bain]
- **Suggested way forward** – once you have finished going through the BM report, please can you work with Reagan on the "lower risk option" and if you can't land on some wording that is acceptable, please revert to this group. For the reasons stated, Bain's clear preference is the lower risk option.

LEGAL RISK OF WAIVING PRIVILEGE – ADVICE NOTE

- Public Statement By Williams that he Viewed the Baker Report

If Williams views Baker's findings report and makes a public statement that he has seen Baker's report, the waiver of legal privilege will be made public. Potential consequences of such a statement could include (and are not limited to):

- Once alerted, government-related third parties (e.g., Hawks, Nugent Commission, State Capture Commission) could request access to Baker's findings report, and the company would no longer be able to withhold the presentation on legal privilege grounds.
    - In addition, a government entity could also ask to see Baker's interview notes and any other work product or communications between Baker and Bain that relate to the content included in the presentation, or even work product from Baker's Phase II work relating to other public sector Bain clients. Although a court may not ultimately determine that this other work product was included in the waiver, there is a risk that any and all work product by Baker relating to the South Africa review would ultimately be accessible by these government agencies and enforcement authorities.
        - This information could be used to support a civil prosecution or other enforcement action against the company or its employees, and potentially a criminal action if additional evidence is uncovered suggesting such violations occurred.
    - Authorities could also issue a subpoena asking Williams to testify about his knowledge of the report and its contents.
- Private third parties (e.g., media, Massone, NGO or activist groups) could also demand access to the report, and could file litigation against the company. These parties could seek the report (and potentially other work product including interview notes) as part of litigation discovery, and a court would likely determine that the report and its contents were not privileged and therefore could not be withheld from the other party.
    - Once obtained, this information could be used to criticize other Bain South Africa partners or global Bain employees, or otherwise criticize the process or findings of the investigation.
    - Once public, Bain would have no control over how the report and related evidence was disseminated or interpreted.

Please keep me in the loop and let me know if any questions.

Kind regards

Chris

Chris Kennedy
Senior Counsel
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany
tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
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ANNEXURE "AW178"

AW178b

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 21 December 2018 09:12
To: Kennedy, Chris
Cc: Moolman, Tiaan; Min, Stuart; Hutchinson, Greg; Meehan, Paul; reagan.demas@bakermckenzie.com
Subject: RE: Viewing/Referring to the BM Report in Athol's Report

Chris,

Things have moved beyond the issues that you address in your email. It is clear to me that Bain has had intentions of not being open and transparent with me and only when I call this out do you try to find creative solutions. For the length of my involvement I have been operating fully with the expectation that BM would produce a detailed written report of their findings. No one from Bain proactively communicated to me that there would not be a detailed written report but a set of slides, I had to deduce this and then seek explanations. Also for the length of my involvement I understood and communicated to others, that I would have full access to BM's final findings. No one from Bain communicated the significant change that I would not have this access, again I had to deduce this and then ask for explanations. In relation to the call with you and BM two days ago, someone changed the plan of what was going to be shared with me but no one bothered to tell me about the change. Even as we were on the call no one had the courtesy to point out that I would not see the presentation. Only an hour into the call when I asked for a process check and enquired about when I would see the presentation was I told that you guys had decided that I would not see it.

We have many emails now where I have written that I am sympathetic to Bain's difficult position. Please, I don't need it explained to me!

I am not in a position to conclude that Bain has been open and transparent with me. I feel distinctly that I have been played and manipulated, as I've written to Tiaan, I find this offensive. I am insulted that Bain would ask me, as you've done before today, to accept that I have seen BM's final presentation when in fact I haven't but only had it read to me over the phone.

I feel that I have gone beyond the requirements of my role - I have had countless meetings with Bain staff to offer guidance, to listen to their concerns, to offer them encouragement. I have spoken at office meetings. I have tried my best to advise and offer guidance that would allow me to do what you asked me to do while avoiding undue harm to Bain. I have engaged with respect but the last few days Bain has not offered me the same.

I will take a few days to reflect and then will complete my final report.

Regards
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 20 December 2018 16:55
To: atholwilliams@hotmail.com
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>; Min, Stuart <Stuart.Min@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>; Meehan, Paul <Paul.Meehan@Bain.com>; reagan.demas@bakermckenzie.com
Subject: Viewing/Referring to the BM Report in Athol's Report

Athol

I hope all is well with you.

ANNEXURE "AW179"

AW179

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 21 December 2018 16:00
To: Moolman, Tiaan; Kennedy, Chris
Cc: Min, Stuart; Hutchinson, Greg; Meehan, Paul; reagan.demas@bakermckenzie.com
Subject: RE: Viewing/Referring to the BM Report in Athol's Report

I agree. Let's pick this up in the new year.

Have a good festive season everyone.

Best regards
Athol

From: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Sent: 21 December 2018 13:54
To: Athol Williams <atholwilliams@hotmail.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Min, Stuart <Stuart.Min@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>; Meehan, Paul <Paul.Meehan@Bain.com>; reagan.demas@bakermckenzie.com
Subject: RE: Viewing/Referring to the BM Report in Athol's Report

All

I had a long talk with Athol. He is feeling incredibly frustrated at the moving goalposts, and at the attempts this week to 'manage him' to accept a form of access to the BMK findings that was different to what was explicitly agreed with him before.

We agreed that the right thing to do now is to put pens down, not do anything / make any decisions now, but to reconvene in the new year after everybody had a decent Xmas break.

Athol, please feel free to add.

Regards
Tiaan

From: Athol Williams <atholwilliams@hotmail.com>
Date: Friday, 21 Dec 2018, 7:11 AM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Moolman, Tiaan <Tiaan.Moolman@Bain.com>, Min, Stuart <Stuart.Min@Bain.com>, Hutchinson, Greg <Greg.Hutchinson@Bain.com>, Meehan, Paul <Paul.Meehan@Bain.com>, reagan.demas@bakermckenzie.com <reagan.demas@bakermckenzie.com>
Subject: RE: Viewing/Referring to the BM Report in Athol's Report

Chris,

Things have moved beyond the issues that you address in your email. It is clear to me that Bain has had intentions of not being open and transparent with me and only when I call this out do you try to find creative solutions. For the length of my involvement I have been operating fully with the expectation that BM would produce a detailed written report of their findings. No one from Bain proactively communicated to me that there would not be a detailed written report but a set of slides, I had to deduce this and then seek explanations. Also for the length of my involvement I understood and communicated to others, that I would have full access to BM's final findings. No one

ANNEXURE "AW180"

AW180

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 15 January 2019 18:00
To: Moolman, Tiaan
Subject: Re: BM Presentation Review

It was quite thin on info, only about 30-40 of the 115 pages had content, the rest appendices and background. No surprises. Quite a firm view that Bain has done nothing wrong legally.

-------- Original message --------
From: "Moolman, Tiaan" <Tiaan.Moolman@Bain.com>
Date: 2019/01/15 15:27 (GMT+02:00)
To: Athol Williams <atholwilliams@hotmail.com>
Subject: RE: BM Presentation Review

Any surprises?

> **From:** Athol Williams <atholwilliams@hotmail.com>
> **Sent:** Tuesday, January 15, 2019 1:48 PM
> **To:** Moolman, Tiaan <Tiaan.Moolman@Bain.com>
> **Subject:** BM Presentation Review
>
> Tiaan,
>
> I have been through the BM presentation.
>
> Regards
> Athol

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ANNEXURE "AW181"

AW181

OPINION

Criminal justice after corporate corruption is just the beginning

Companies must also repair the damage done by their actions – and this requires a lot more than vague apologies and returning ill-gotten gain

19 FEBRUARY 2019 05:05 By ATHOL WILLIAMS

Picture: 123RF

Most South Africans applaud the arrest of those alleged to be involved in the Bosasa corruption scandal. There is a strong sense that st long overdue and that many more in corporate SA need to be held accountable for their involvement in corruption, state capture and c ethical misconduct.

While it is correct that our pursuit of justice starts with criminal justice, criminal justice alone is inadequate to achieve complete justic society to the moral state before the misconduct. We have fallen into the trap of believing that once a company has been fined or exec prosecuted, that justice has been served. This is not complete justice because it leaves other injustices and social harms unremedied.

To illustrate this point: If someone steals a farmer's truck and gets sent to jail for the theft, we might feel that justice has been done. Bu the farmer? He is still without a truck and perhaps unable to earn a living without this transport. In this case, complete justice is only d thief, in addition to serving his punishment for breaking the law, also returns the farmer's truck and compensates him for lost income a inconveniences.

The focus on social harms is particularly relevant when corporate misconduct breaks no law yet causes suffering. In such cases harms unremedied (and unnoticed) if we relied on criminal justice alone.

" Any such programme needs to be victim-focused rather than solely focus on the company, which is the typical approach. "

To remedy the effects of their misconduct, companies must put in place a programme to repair the social harms caused by their actior more than a vague apology and return of ill-gotten gains. Consider the examples of McKinsey, Bain and KPMG, which issued forms of a

returned the fees they earned. Is this enough for stakeholders to trust them and offer them a social licence to operate? By my account, fall way short.

For a company board or management team that finds their company embroiled in a corruption scandal or another form of ethical misc suggest a six-step corporate reparations programme (6CRP), adapted from political atrocities reparations programmes, that they can f remedy the social harms caused and to put the company on a path to regaining public trust.

While companies reasonably respond to scandals by employing the services of legal and public relations experts to manage their down reparations require that they also gain input from ethics or reparations experts who can advise them on remedying the harm caused. T Bain did in hiring me to oversee their investigation into their work at the SA Revenue Service as well as advise them on a programme to social harm.

Any such programme needs to be victim-focused rather than solely focus on the company, which is the typical approach. 6CRP seeks t individuals, groups or organisations, or even whole communities, who have suffered as a result of the corporate misconduct and then s process of reparation which requires acknowledgement of the harm, apology for the harm done, followed by restoration of victims to a the misconduct, or where they would have been today had the misconduct not occurred.

Step 1 in the programme is to establish the facts of wrongdoing and harms caused. Most companies conduct internal investigations but focus on their behaviour, ignoring the negative effects of their actions. Establishing the facts of what went wrong requires that the con the victims, what harm they have suffered and importantly, identify the internal and external enablers of these harms.

In the case of Bain for example, weak governance oversight was one of the internal enablers of its wrongful actions and remedying this became a core part of their reparations programme. Establishing the facts is complex and time-consuming and involves internal engag as extensive engagement with victims and stakeholders.

Only with these facts in hand can companies move to the second step of designing solutions. Again a mistake that many companies ma on solutions too quickly, without a comprehensive understanding of the harms caused. Two types of solutions are required, firstly, a re which focuses on compensation to victims and returning ill-gotten gains, and secondly, a change plan which punishes internal wrongd focuses on organisational change to ensure that misdeeds are not repeated. Where necessary, the change plan must include external c companies can contribute to, such as strengthening public oversight institutions or establishing industry oversight bodies.

Steps 3 to 6 involve implementation. Reparation does not only require tangible compensation but importantly needs to repair damage dignity. In many cases, victims suffer emotional anguish or feel disrespected, which cannot be healed by tangible compensation alone. step 3 and 4 so vital. Step 3 requires that the company acknowledge its wrongful acts and the harms caused, while step 4 requires that issue an apology for these wrongful acts and resultant harms. While these can be private or public, the main requirement here is that t directed at specific harms and as specific victims as possible. A blanket apology for "our mistakes" or "your feelings" are grossly inadeq sets the company back in its reparation efforts.

In the fifth step, companies make tangible restoration by implementing their restoration plan. While it often does require financial pay not always the case. If a company has engaged thoroughly and sincerely with victims, the appropriate restoration package can be deve the company can enact its change plan, which may involve changes to its structure, policies and even incentives.

The six steps do not have to be enacted strictly sequentially. Circumstances may dictate a different ordering. For example, at the outse company may want to issue an apology for unspecified harms and then issue more specific apologies later. Or the company could repa and then make broader reparations later.

No reparations programme is perfect but companies can develop plans that can reasonably be accepted by their stakeholders and the l The worst thing a company can do after a scandal is make random gestures and declarations of contrition. This does nothing but contr distrust of business and hampers companies' efforts to move beyond the scandal, never mind the fact that it leaves victims to suffer th unremedied corporate harms.

• *Williams is a senior lecturer at the UCT Graduate School of Business and a research fellow at the Centre for Applied Ethics at Stellenb University.*

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ANNEXURE "AW182"

AW182

BAIN & COMPANY
Media Center

Press release

Norman Mbazima to chair Bain Africa Oversight Board; Athol Williams rejoins Bain & Company to oversee the implementation of the firm's remedy plan

June 25, 2019 • 5 min read

Johannesburg - 25 June 2019 - Through the Nugent Commission of Inquiry last year it became evident that Bain & Company's involvement with SARS beginning in 2015 was a failure, for SARS, South Africa, and Bain.

Following the firm's own investigations as well as the release of the Commission's report on SARS in December 2018, Bain recognised multiple points of failure on our part. Since then, the firm has taken several concrete actions and created a remedy plan under the guidance of Athol Williams, who has been working with Bain since September 2018, first to provide his own opinion on the independence and adequacy of the Baker McKenzie investigation into Bain, and then as an advisor on the development of our remedy plan.

The remedy plan focuses on three important objectives:

1. **To make amends for Bain's role in the harm caused** to the specific affected parties, including SARS and its employees, our clients, our employees, our alumni and South Africa
2. **To become a leader in corporate responsibility**, reaffirming Bain's commitment to ethical business and being a force for good in South Africa
3. **To ensure the mistakes we made are not repeated** in the future.

The firm has already taken several actions including:

- Acknowledging that our SARS work did not meet our standards, which led to the decision to **return all fees** plus interest that we received for our engagement. The repayment was discussed with SARS during the course of October and effected in early November.
- **Resetting the leadership of the South African business** with the appointment of John Senior, a highly experienced Bain partner, as the head of Bain Africa.
- **Establishing a global Public Sector Risk Function**, independent of line leadership and accountable to our global Board with a chief risk officer reporting to Bain's global managing partner
- **Creating a Bain Africa Oversight Board** to provide risk oversight of client and project selection. The Board will comprise seven directors: four independent directors, two local Bain partners and one global Bain partner, and will help ensure that Bain properly manages its relationship with a broad set of societal stakeholders.

Additionally, we are pleased to announce that, as part of the leadership and governance enhancements at Bain, Norman Mbazima, a highly regarded business leader, has agreed to chair the Bain Africa Oversight Board. Williams has also agreed to rejoin Bain & Company as a partner in the firm's Johannesburg office, where he will lead the firm's Corporate Responsibility practice locally and oversee the implementation of Bain's remedy plan. He will also serve on the Bain Africa Oversight Board.

Mbazima said: "Bain has learnt the lessons from what happened with SARS and implemented significant remedial steps. I have great confidence in the quality of the firm and its people, and believe Bain can make a significant, positive contribution to the South African business community and society more generally. We will benefit from having a healthy Bain working in South Africa, and I look forward to working with the other members of the Board to help guide the firm's future."

Commenting on his appointment Williams said: "Leveraging the insights gained from my previous work as well as my expertise in corporate governance and corporate responsibility, over the past five months I have worked closely with the

new leadership team to formulate a remedy plan that goes beyond the measures already announced by the firm.

"My decision to rejoin Bain was heavily influenced by my own belief that I can better effect these remedies from the inside and, over time, help Bain & Company regain trust as a one of the pre-eminent consulting firms in Africa, while continuing to contribute to promoting the positive role that business must play to advance social justice"

Managing Partner for Bain Africa, John Senior, said: "Bain & Company is committed to ensuring that we do what it takes to regain South Africa's trust. We want to be regarded as responsible corporate citizens and understand that we need to make amends for our role at SARS and face the consequences of our errors. The appointments of Norman and Athol are an indication of our commitment to this."

Editor's Note:

About Norman Mbazima

Norman Mbazima is the deputy chairman of Anglo American South Africa and a member of the Group Management Committee (GMC). He retires on 30 June 2019.

From 2012 to 2016 he served as CEO of Kumba Iron Ore. He joined Anglo American in 2001 at Konkola Copper Mines plc and was subsequently appointed global CFO of Coal. He became finance director of Anglo American Platinum in 2006 and later stepped in as joint acting CEO. Norman was CEO of Scaw Metals from 2008 and later CEO of Thermal Coal from 2009 to 2012.

Mbazima is a Fellow of the Association of Chartered Certified Accountants.

About Athol Williams

Athol Williams is an experienced senior executive and an expert in corporate responsibility and business strategy, and a regular public commentator on social justice and nation-building.

He previously worked in Bain's Boston, London and Johannesburg offices for varying periods between 1996 and 2010, and more recently provided his own opinion

on the independence and adequacy of the Bain investigation by Baker McKenzie.

A multi-award winning author of 11 books, youth literacy activist through Read to Rise, the NGO he founded in 2013, he holds Masters degrees from Harvard, MIT, Oxford, LSE and London Business School, as well as undergraduate degree from Wits.

Williams will split his time between Bain & Company and UCT, where he currently works as Senior Lecturer at the Allan Gray Centre for Values-Based Leadership in the Graduate School of Business. He is also a Research Fellow in the Centre for Applied Ethics, Stellenbosch University.

# # #

About Bain & Company

Bain & Company is a global consultancy that helps the world's most ambitious change-makers define the future. Across 58 offices in 37 countries, we work alongside our clients as one team with a shared ambition: to achieve extraordinary results that outperform their competition and redefine their industries. We complement our tailored, integrated expertise with a curated ecosystem of digital innovators to deliver better, faster and more enduring outcomes to our clients. Since our founding in 1973, we have measured our success by the success of our clients. We proudly maintain the highest client advocacy in the industry, and our clients have outperformed the stock market 4:1. Learn more at www.bain.com and follow us on Twitter @BainAlerts.

ANNEXURE "AW183"

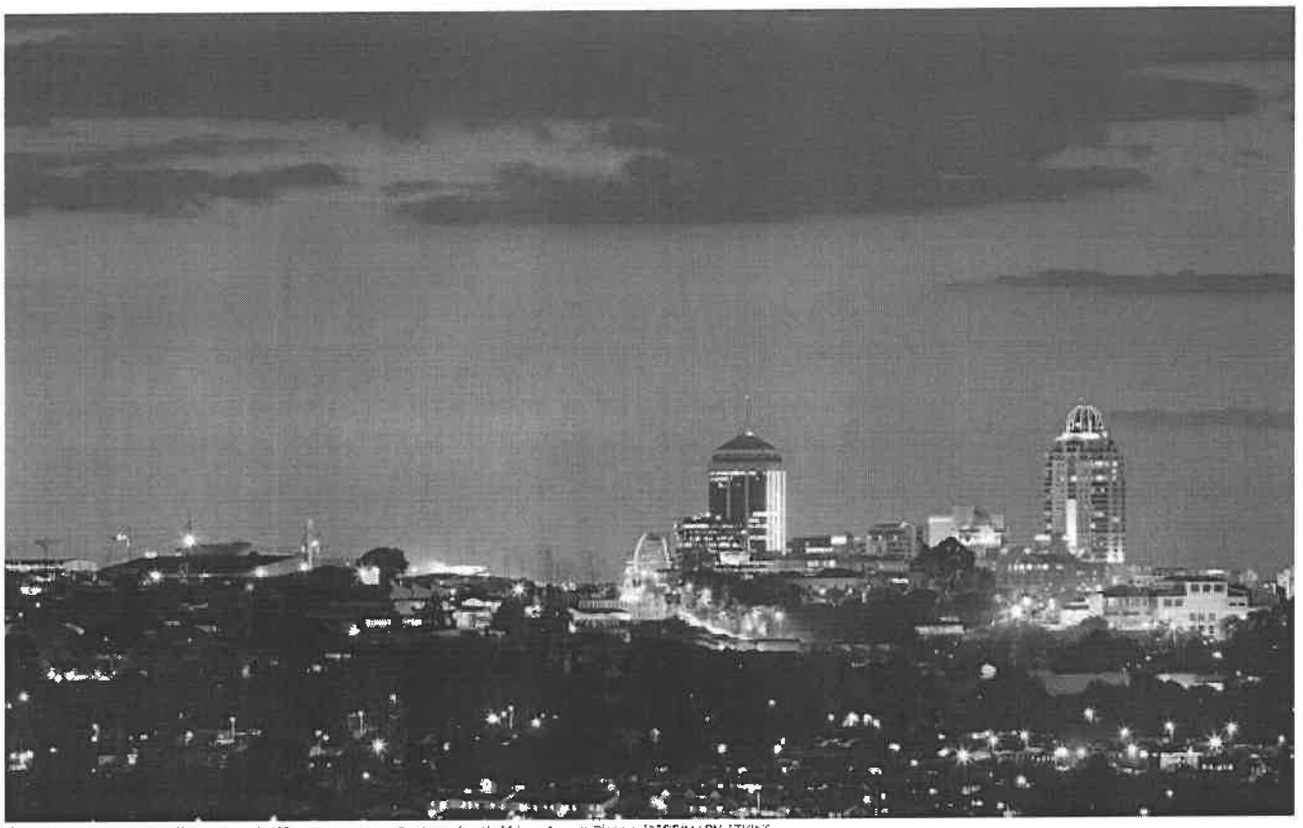
AW183

OPINION

Jump into the fray to remedy corporate wrongs

Sitting on the sidelines and criticising misdeeds is far less effective than ensuring corrections can be made

27 JUNE 2019 - 05:07 by ATHOL WILLIAMS



The skyline of Sandton, an affluent suburb of Johannesburg in Gauteng, South Africa, at dusk. Picture: REUTERS/MARK ATKINS

Few will deny that an enormous fire of corruption and unethical behaviour is raging through corporate SA, one that threatens to destroy many companies, careers and livelihoods and shatter our already fragile economy.

Just as our natural instinct is to run from fire, many have, understandably, distanced themselves from companies alleged to have been involved in wrongdoing. Since the revelations at the Nugent commission last year of Bain's involvement in the weakening of the SA Revenue Service (Sars), the management consultancy has experienced an exodus. Advisers have parted ways with the firm, but most costly has been the departure of clients. Within just a few months, Bain's business in SA suffered severely.

This is the cost of involvement in corporate wrongdoing, whether intentional or not. So, while it appears many are running from Bain, why would someone who vigorously espouses corporate ethics choose to join them?

I've asked this question of other executives who have gone into a business after or during a scandal, and their answers are often simila they can contribute to making the bad situation right. This is my answer too, but the target of my efforts at a remedied outcome is not the broad set of parties affected by Bain's actions at Sars. I find myself in a unique position to bring about such an outcome.

From September to December 2018 I was contracted by Bain to provide my opinion on the investigation of its work delivered at Sars fr Bain's subsequent response once that work was deemed inadequate. This culminated in a detailed report that I shared with the Nugent which referenced my role and report in its final submission to the president. In my report I drew on my corporate ethics and managem knowledge to outline what I believed Bain ought to do to remedy the bad situation to which they had contributed.

At the beginning of 2019 Bain asked me to develop these ideas into a remedy plan to instal safeguards to prevent repeats of what trans and also, importantly, to make amends to those parties that were affected. Unsurprisingly, the remedy plan was developed following th remedial process I first outlined in Business Day on February 19 2019 and have described at events organised by the Ethics Institute, th Governance Academy and the Graduate School of Business at UCT.

I then faced the choice of which path to follow to bring about the change I wanted to see. I believe we're at an inflection point in SA an capitalism, a point at which business has to seriously rethink its role in society and where society needs to rethink how it will hold busi

accountable. Addressing these issues has been my focus in recent years and continues to be my mission.

So, I had to decide whether I'd be most effective as an adviser and external commentator, or if I went into the business to drive the imp the plan that I had developed. I wrestled with this decision but drew courage from others who have followed similar routes and I decid the greatest effect in advancing corporate ethical responsibility from inside business. How else do we rehabilitate businesses if none o ethical people are willing to go where the need is most acute?

The reality is that making amends for harms is not a perfect science. I have discovered that even leaders with the best intentions strug out the best path. Rather than vague apologies and actions, remedy requires, as far as is practical, specific actions to fix specific harms affected parties. But this is not always straightforward. With one foot in academia and the other in management consulting, I hope to h develop and deliver tools to businesses to fill this gap.

Civil society must continue its intolerance of unethical business practices, but business leaders must not wait for external sanction to committed itself to a path of remedy and change in its service to SA. Time will tell how effective this will be and whether public trust is What I do know is that Bain's leadership — locally and globally — is committed to this path. I hope many more businesses will start to p develop and implement remedy plans for current and past harms caused. Our people, and our country, deserve nothing less.

As for me, I have indeed run towards the fire when all logic dictates that I should be going in the opposite direction. But if we are to se of flawed business and remedy of harms caused, I believe some of us need to get off the sidelines and get stuck into the game. Hopefull this as we reform our business sector.

• *Williams is a senior lecturer at the Allan Gray Centre for Values-Based Leadership at UCT and a partner in Bain & Company's Johanne where he leads the local corporate responsibility practice.*

ANNEXURE "AW184"

AW184

PRIVILEGED & CONFIDENTIAL – NOT FOR EXTERNAL DISTRIBUTION

Q&A FOR DAILY MAVERICK/BLSA EVENT ON THURSDAY, 27 JUNE 2019
26 June 2019 | FINAL

Q: Do you think it is appropriate for Bain to be talking about corruption in business? Surely a bit more humility would be appropriate?
Through the Nugent Commission of Inquiry last year it became evident that Bain & Company's involvement with SARS beginning in 2015 was a failure, for SARS, South Africa, and Bain. Following our own investigations as well as the release of the Commission's report on SARS in December 2018, we recognised multiple points of failure on our part.

Since then, the firm has taken several concrete actions and created a remedy plan under my guidance. We are here at the invitation of BLSA to engage on the steps we have taken since December, and are here to listen and share perspectives, certainly not to prescribe or lecture.

Q: Athol, how do you think Bain shapes up against your own "six steps reparations" approach?
I think Bain has made a good start. My six-step approach, which I have been sharing publicly, is quite demanding and it needs to be. It talks about how to identify wrong actions and harm, acknowledging solutions to specific parties to specific harms. It's about: who are the parties you have harmed, what harm was done, and how do you ensure that this does not get repeated. It involves apologising directly to those who have been harmed and designing the right solutions.

Q: Has Bain adequately identified the harm it caused?
Following the firm's own investigations as well as the release of the Commission's report on SARS in December 2018, Bain recognised multiple points of failure on our part. Since then, the firm has taken several concrete actions and created a remedy plan to make amends for Bain's role in the harm caused to the specific affected parties, including SARS and its employees, our clients, our employees, our alumni and South Africa

Q: What about issuing apologies to the people who you caused harm to?
Following the firm's own investigations as well as the release of the Commission's report in December 2018, Bain recognised multiple points of failure on our part. We developed a remedy plan – in part – to fulfil our commitment to make amends for our role in harms caused and to give our stakeholders, including the broader South African society, our best assurance that we have taken steps to ensure that events, such as what happened at SARS, will not be repeated. As far as is practical, we will seek to remedy specific harms suffered by specific parties with specific remedial actions.

Q: What about restitution and forfeiting of benefits?
The firm has acknowledged that our SARS work did not meet our standards, which led to the decision to return all fees plus interest that we received for our engagement. The repayment was discussed with SARS during the course of October and effected in early November.

Q: What is Bain doing by way of helping strengthen public institutions?
We acknowledge that our work at SARS contributed to the weakening of the organisation. We acknowledge that we may not have the credibility yet to do so but hopefully in time SARS will accept our offer to engage with them.

Q: What did the Baker McKenzie investigation establish?
While the findings have been shared with the legal team, they certainly pointed to certain aspects of our business that required attention, in particular in respect of our engagements with the public sector. This has informed our remedy plan and are key to our ability to move forward and ensure that this does not happen again.

If pressed (on the findings): I'm unable to comment further on this. Pivot to remedy plan.

Q: Why have you not shared its contents? Did you not commit to being transparent with the South African public?
I think there is already a very good and very comprehensive report that goes into great detail of what happened at SARS, and that is the Nugent Report. Bain gave a lot of input into that. My focus now is to ensure that this type of conduct never repeats itself and to ensure that our remedy plan is comprehensively implemented.

If pressed (on the findings): I'm unable to comment further on this. Pivot to remedy plan.

Q: You – Athol – were mandated to provide your opinion on the adequacy of the Baker McKenzie report. What did that report find? Did not Bain commit to publish its findings?
That's right – my role was to oversee the methodology and to make sure that Baker McKenzie had full access to everything they needed. In terms of the findings, I think there is already a very good and very comprehensive report that goes into great detail of what happened at SARS, and that is the Nugent Report. Bain gave a lot of input into that. Having played my role, my focus now is to ensure that this type of conduct never repeats itself and to ensure that our remedy plan is comprehensively implemented.

Q: What did you report to Judge Nugent, as you were committed to do and what is your opinion of the work done by BM?
My report was sent to Judge Nugent in December 2018, and he references this in the Commission's final report.

The Baker McKenzie review was used internally to explore what went wrong with the work we did for SARS and it has extensively informed our remedy plan.

Q: Do you feel you have fulfilled your commitment to do what is right for SA, without restrictions, and been transparent?
There is no blueprint for the role I played. The decision I took was to go into business and lead the way for a meaningful remedy – there is no rule book or guidelines for this. I am committed to ensuring that corporate South Africa, including Bain, implements ethical behaviour. The focus now is on what how Bain is making amends and our remedial actions.

Q: The Nugent Commission recommended that the National Director of Public Prosecutions should consider prosecutions in connection with the award of the Bain & Co. contracts. Have you heard anything in relation to this?
We do not believe that comment is directed at Bain. However, the firm, through Baker McKenzie, has reached out to the DCPI.

Q: Mr Williams, how can you believe it is appropriate to be both poacher and gamekeeper? How can you one day be laying down the law about best practice for companies and then going to work for one of the main sinners?
I thought long and hard about the decision to join Bain – it was not one that I made lightly. It's worth pointing out that I recommended to Bain that I come in and play a leading role and implement Bain's remedy plan. The decision I took was to go into the business and lead the way for a meaningful remedy – there is no rule book or guidelines for this. I am relying on my expertise in corporate ethics, and I remain committed to ensuring that corporate SA implements ethical behavior.

Q: Don't you think Bain should be prosecuted for corruption?
As we acknowledged in December, Bain made a number of mistakes around the SARS assignment. These include overstating the case for change and not walking away when the scope of the assignment changed and it became clear that the Commissioner had a different agenda. But, no I don't not believe Bain should be prosecuted.

Q: What contact have you had with legal authorities in the SA or US? Has the DOJ been in touch with Bain?
I cannot comment on legal issues.

Q: What is the point talking about your activities doing good in South Africa, what is good for SA is good for Bain, etc. when you go and get involved in a project like this?
While highly regrettable, the SARS assignment is in no way representative of the firm's activities in South Africa where it has a track record of being a valued partner across several different clients and assignments.

SARS has been a humbling episode for Bain. We have let South Africa and ourselves down, and it is our earnest desire to make good our wrong. This will take time, but we are determined to show again the better face of the firm.

Q: How much damage to do you estimate your work with SARS caused SA, and how do you plan to pay this back?
The firm has acknowledged that our SARS work did not meet our standards, which led to the decision to return all fees plus interest that we received for our engagement. The repayment was discussed with SARS during the course of October and effected in early November.

Q: In your December 17 response you said that you had participated in a procurement process that may have been irregular. What did BM find in this regard? Are you expecting to be fined or prosecuted?
From our investigations, we acknowledged that Bain's participation in this procurement process may have been irregular as the firm had prior knowledge of the RFP. But, no I don't not believe Bain should be prosecuted.

Q: Do you think your former office head Mr Massone should be prosecuted for trying to corrupt President Zuma with gifts of cattle?
This is a mischievous rumour. I'm not going to comment further on this.

Q: How have you addressed the Failures of governance, absence of public sector protocols, naïveté on SA politics that you acknowledged in your response to Nugent?
The firm has established a global Public Sector Risk Function, independent of line leadership and accountable to our global Board with a chief risk officer reporting to Bain's global managing partner. Further, we have also created a Bain Africa Oversight Board to provide risk oversight of client and project selection. The Board will comprise seven directors: four independent directors, two local Bain partners and one global Bain partner, and will help ensure that Bain properly manages its relationship with a broad set of societal stakeholders.

Ends.

ANNEXURE "AW185"

AW185

atholwilliams@hotmail.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: 27 August 2019 13:23
To: atholwilliams@hotmail.com
Subject: FW: A chance to catch up?

From: Williams, Athol
Sent: Thursday, August 8, 2019 6:22 PM
To: Hagey, Russ <Russ.Hagey@Bain.com>
Subject: RE: A chance to catch up?

Hi Russ,

Apologies for not replying sooner. Have been avoiding the "how are you doing?" conversations because they're very difficult. The last 2 months have been a heavy burden. The personal cost of being caught up on the "wrong" side of state capture and a political faction fight, has been far greater than I expected. Friends have turned their back on me, am facing family pressure, respected advisors have expressed disappointment, even my business school students take regular pot-shots. I do not expect anyone else to understand how deeply painful this is.

My start was poorly handled administratively leaving me to figure things out for myself or to call out for help to get things settled. We desperately need a planned way of onboarding senior people. All is settled now.

We find ourselves in an unfortunate and non-ideal situation in so many ways here in SA. The mood in the country is negative, there is a negative public attitude towards Bain and morale in the office is very volatile. I've been surprised at the number of partners who have left since I agreed to join.

I've kept my focus on advancing our remedy plan and developing a POV on corporate responsibility. I continue to support other partners on proposals (FS and Chemicals), am taking leadership roles in a number of areas (public sector risk, oversight board, Blacks at Bain, stakeholder engagements, etc) and generally trying to keep positive momentum.

There are many bright spots – the people are amazing, many clients really want to work with us and the continued support from Bain global has been phenomenal.

A chat on the phone over the next month would be good.

Best
Athol

From: Hagey, Russ <Russ.Hagey@Bain.com>
Sent: Tuesday, August 6, 2019 5:48 PM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: A chance to catch up?

Athol,

Remarkably, it is August already!

And I just wanted to drop you a note to say hello and perhaps find a chance to catch up – nothing pressing and nothing urgent but more just to see how the early months are going (and I know part of that will be in the 'bummer' category with SARS and Bain back in headlines ~

ANNEXURE "AW186"

AW186

atholwilliams@hotmail.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: 27 August 2019 13:30
To: atholwilliams@hotmail.com
Subject: FW: A conversation would be better ...

From: Williams, Athol
Sent: Tuesday, August 20, 2019 12:03 PM
To: Senior, John <John.Senior@Bain.com>
Subject: RE: A conversation would be better ...

John

Can we meet in the office on Thursday or Friday?

I have told you, Dale and Russ that things are very tough for me. In 2 weeks I have not heard from Russ. Have never heard from Dale. I am highlighting this again to you and don't know how else to say it. Right now the cost to me of being at Bain is extremely high and will become harder for me to justify to myself let alone others. I accept that my situation is unique, and that we all have our unique challenges with where things stand. I am surprised by the silence in response to my reaching out.

Am keen to see what I can do to turn this around.

Chat soon
Athol

From: Senior, John <John.Senior@Bain.com>
Sent: Tuesday, August 20, 2019 9:05 AM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: RE: A conversation would be better ...

Can you talk this today?

John Senior
Partner
Bain & Company, Inc. | 10 The High Street, Melrose Arch | Johannesburg 2076 | South Africa
T: +27 11 012 9189 M: +27 60 991 5071
mailto:John.Senior@bain.com | web: www.bain.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: Tuesday, August 20, 2019 8:23 AM
To: Senior, John <John.Senior@Bain.com>
Subject: A conversation would be better ...

John,

The emails are useful to get our ideas down. Would be great to connect face to face. I know I missed our meeting last week.

Athol

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ANNEXURE "AW187"

AW187

atholwilliams@hotmail.com

From: Senior, John <John.Senior@Bain.com>
Sent: 20 February 2019 06:19
To: Athol Williams
Subject: RE: HLAs

Athol

Your HLAs look good to me. I have time with Greg this week to discuss how to put the right contract in place for you.

John

John Senior
Partner
Bain & Company, Inc. | 10 The High Street, Melrose Arch | Johannesburg 2076 | South Africa
T: +27 11 012 9189 M: +27 60 991 5071
mailto:John.Senior@bain.com | web: www.bain.com

> **From:** Athol Williams <atholwilliams@hotmail.com>
> **Sent:** Tuesday, February 19, 2019 5:20 PM
> **To:** Senior, John <John.Senior@Bain.com>
> **Subject:** RE: HLAs
>
> Hi John,
>
> Will you have time over the next two days to pick up on this and our contractual arrangements?
>
> Regards
> Athol
>
> **From:** Athol Williams <atholwilliams@hotmail.com>
> **Sent:** 17 February 2019 09:29
> **To:** Senior, John <John.Senior@Bain.com>
> **Subject:** HLAs
>
> John,
> First crack at HLAs for the year attached.
> Regards
> Athol

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AW187

atholwilliams@hotmail.com

From: Senior, John <John.Senior@Bain.com>
Sent: 21 February 2019 09:47
To: Athol Williams
Subject: Quick update

Athol,

I spoke to Greg this morning and I now understand the process to formalise your contract. I think it's going to take about 2 – 3 weeks to get everything done, so in the meantime can we continue on the current basis, as I'd like to get our reparations plan and advisory board charter finalised by end of Q1.

Sorry I was a party pooper last night – for some reason I began to feel quite unwell at around 9. Hope you and Taryn enjoyed the evening as much as we did.

John

John Senior
Partner
Bain & Company, Inc. | 10 The High Street, Melrose Arch | Johannesburg 2076 | South Africa
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AW187

atholwilliams@hotmail.com

From: Senior, John <John.Senior@Bain.com>
Sent: 14 March 2019 06:16
To: Athol Williams
Subject: RE: Checking in

Athol,

I have agreement from Russ and just need to work through the contract with him. He's here on the 25th and we plan to work this through then, so I hope we can have a contract ready for the end of March. Is that sufficient information for you to make your plans? If not, let's talk on the phone.

Sorry for the delay. You know how these things can take some time ☺

John

John Senior
Partner
Bain & Company, Inc. | 10 The High Street, Melrose Arch | Johannesburg 2076 | South Africa
T: +27 11 012 9189 M: +27 60 991 5071
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> **From:** Athol Williams <atholwilliams@hotmail.com>
> **Sent:** Wednesday, March 13, 2019 9:06 PM
> **To:** Senior, John <John.Senior@Bain.com>
> **Subject:** Checking in
>
> HI John,
>
> Just checking in regarding contract. Don't mean to be harassing you – am needing to make some big decisions so knowing our plans would help me a ton.
>
> Regards
> Athol

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ANNEXURE "AW188"

AW188

atholwilliams@hotmail.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: 27 August 2019 13:28
To: atholwilliams@hotmail.com
Subject: FW: Kieswetter engagement options

From: Williams, Athol
Sent: Monday, August 26, 2019 9:54 AM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Kieswetter engagement options

Hi Chris,

Getting to the questions you posed yesterday – answers below.

A point to add: our remedy plan has 3 components – SARS, SA, Internal. If we decide not to make amends with SARS now, we can definitely still make progress on the other two - in fact, we would double down there.

Best
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: Sunday, August 25, 2019 5:25 PM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: RE: Kieswetter engagement options

Hi Athol

Thanks for your message. I'm pleased it's a helpful exchange. I definitely see your position and I always appreciate the frank dialogue/wrestling match. I agree that we'll come up with something that ticks both boxes.

Good luck with the paper! I am having a beer and enjoying the cricket.

Thanks

Chris

From: Williams, Athol <Athol.Williams@Bain.com>
Date: Sunday, 25 Aug 2019, 4:04 pm
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Kieswetter engagement options

Hi Chris,

Sorry that you have to deal with this while on holiday. I will respond to your questions but just wanted to say quickly that this exchange has been massively valuable for me. Even if I think you're overly cautious I fully understand your position. And perhaps you think I'm too optimistic/idealistic/reckless ☺ I suspect you also see my position. I am confident that we will come up with something sensible.

Kind of fun to be "wrestling" with you again over these very complex issues. Am busy writing a paper on the "idea" of South Africa for a book being edited by Ramaphosa's chief of staff. Oh the charmed life I lead ☺

Best
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: Sunday, August 25, 2019 4:38 PM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: RE: Kieswetter engagement options

Thanks Athol

You are entirely correct that this is exactly where the friction is. Just to dig into it a bit, what is your view on the following questions:

- Do you think SARS will agree to have two fully compartmentalised dialogues (non-legal and legal)? I don't know but am suggesting we make the offer. If they decline our remedy offer then that's the end of the discussion and we focus on the legal route. If they accept our offer of remedy then we are taking major steps forward in terms of building a relationship. I can't see this playing out well for SARS leadership to have refused an offer of remedy from us. They might say, let's focus on the legal route first and then let's discuss your remedy plan. Again, I am happy with this because we have fulfilled our duty by offering remedy.

- assuming yes, would you personally be comfortable in having a dialogue in that spirit with SARS (I.e. where you had to say "I'm sorry; I'm not allowed to talk about that" whenever the conversation went anywhere near whether we would plead guilty, what exactly we are apologising for, what exactly happened during the project and so on.) I would be comfortable Chris. We would set it up as two separate initiatives and teams. Chris leads the legal engagement with SARS, Athol leads the remedial engagement with SARS. Questions and comments are referred to the appropriate Bain person.

- assuming you are, what do you think the reaction might be? Is it possible that such an approach might make things worse? (E.g. another round of media articles about how Bain approached him and we're still not coming clean etc.) This is possible, especially since we don't really know his mind yet. If we get this far it would mean that he has accepted that we have two different engagements with them. The coming clean issue will be directed at the legal team. The remedy team can still get on with its work.

- in general, what do you think the risks/benefits are of making that kind of non-legal approach vs not doing anything and telling our other clients and the market that we'd love to talk to SARS and make them this offer, but we can't do it because of their threat to prosecute? I can't claim to assess the legal risks. I am trying to build a non-legal case that says we have committed to making amends and we made all reasonable efforts to make amends at SARS. The non-legal risks are low with huge benefits to rebuilding our reputation by showing SARS, staff, clients, SA that we are staying true to what we said we would do.

In terms of the remedy plan, I'll verify but other than checking exactly what we apologise for I don't think we have any substantive legal concerns with what we're offering in the remedy plan. We're more worried about unintended consequences of making the approach. I agree that we would have to be crystal clear on what we apologise for. And I think it is right that we consider the unintended consequences.

I appreciate that you think I'm probably being over cautious on this, but if it happens prosecution would be such a big deal that I think we need to make sure everything is fully thought through and the relevant folks are aligned before we do anything.

Kind regards

Chris

From: Williams, Athol <Athol.Williams@Bain.com>
Date: Sunday, 25 Aug 2019, 2:31 pm
To: Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: RE: Kieswetter engagement options

Hi Chris,

Thanks for this email. This all turns on your second bullet point under "Complication".

We are pursuing 2 paths – legal (avoid prosecution etc) and remedy (make amends, avoid repeat of wrongdoing). The concern you outline is that offering remedy somehow increases the prospect of prosecution. Our proposed remedy to SARS consists of an apology, offer of Bain Academy for their top management and collaboration of social good projects they're involved in (could be education, even tax compliance education, etc). Which of these is of particular concern and are there ways to mitigate this concern? Or is it the very fact of communicating to SARS that concerns us?

I have in mind communication with SARS along the lines of the 2 paths – (i) Legal – we will cooperate, we have been in touch with Hawks, etc, (ii) Remedy – regardless of legal process we are committed to making amends – we propose the following but are completely open to co-creating this. If they come back and say they're not interested in remedy until the legal path is followed then fine, we have at least done our part by offering remedy. We did not develop the remedy plan in response to Kieswetter's comments about prosecution, as a way to distract him. It is public knowledge that we've had a remedy plan way before he made his comments. This discussion with SARS does not require us to reveal anything about BMK's findings.

Perhaps we are differing because you are focused on avoiding prosecution and I am focused on making amends?

Best
Athol

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: Friday, August 23, 2019 3:25 AM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: RE: Kieswetter engagement options

Hi Athol

I'm looking forward to engaging with you on this. I think some robust discussion between both sides of the issue will really help us clarify the moving parts in what is a very thorny problem. I'm completely clear that there are risks to all

possible options (including doing nothing) and it will be important to capture that in our document. Of course, please feel free to disregard all of this if you think this is the wrong track. If you think I have got something wrong, misunderstood something, you bump against anything in there at all or think I'm just plain wrong, let's have a call so you can put me right.

In terms of structure of the deliverable, what about something like the following?

1) **Problem Statement** (this is largely so you and I can be sure at the outset that we're on the same page)

- **Situation:**
  - Bain's business in South Africa is suffering dramatically and our reputation is in tatters following the Nugent Report and the events of the SARS Inquiry in 2018. Bain's work at SARS was certainly a misadventure and the possibility of prosecution is real.
  - A prosecution would be bad for Bain's business globally, not just in South Africa, because Bain is also being investigated by the DOJ and we are advised that an SA prosecution would likely cause them to extend and expand that investigation.
  - We have an information asymmetry problem in that there is a real sense in the market that Bain has "yet to come clean", whereas our own investigation identified no issues of the same order of magnitude as were alleged in the Nugent Report or the media.
  - Baker McKenzie has engaged with the Hawks ("Legal Route") to offer cooperation in the form of suggesting a without prejudice meeting with SARS (Kieswetter), the DPCI, NPA and us, but this has yet to be accepted.
  - In order to make amends in South Africa, Bain has developed a remedy plan and a key part of this is to make contact with SARS and co-create a way in which Bain can make things right.
  - Bain would like to approach SARS and discuss our remedy plan ("Non-legal route") and begin the process of making amends and executing on the remedy plan

- **Complication:**
  - Bain's legal advisers in both SA and the USA advise that making contact with SARS in any way is a high risk strategy as they are worried that it might increase the chances of prosecution.
  - This is because it is very difficult to tell Bain's side of the story without relying on and showing the Baker McKenzie investigation, but doing so would risk constituting a privilege waiver that would weaken our ability to defend a prosecution and thereby make us a more attractive target. It's also possible that telling SARS that we have no evidence on Moyane effectively takes SW off the table, which leaves them the option of prosecute or walk away.
  - Despite this, it's the assessment of Bain SA that they can't carry out their remedy plan without approaching Kieswetter (and if it is an island hopping campaign, then he's the first island and not the last one so there is some urgency to reach out)

- **Question:** Is there a strategy that can meet the twin objectives of building a bridge with Kieswetter and not increasing the chances of a prosecution?

2) A MECE one pager on **Possible Outcomes,** with some commentary on how likely each is, effect on Bain's business in SA if it transpires, effect on Bain's global business:

   - **Bain is prosecuted -** we defend the action, court case takes many months and:
     - We are found guilty

        - Serious crime (e.g. bribery, some kind of conspiracy) vs less serious crime (some kind of procurement violation)
        - Are co-accused with Tom Moyane vs sole accused
    - We are acquitted
- **Not prosecuted**
    - due to playing state's witness
    - due to carefully executed stakeholder campaign (but no formal cooperation)
- **It all just goes away quietly**
    - occasional media mention but we are never prosecuted. No public exoneration or common media acceptance of "our side of the story"
    - Variant: as above but business community generally accepts our side of the story
- **Exoneration** – we are not prosecuted, but with public media acceptance that this is not because of state inefficiency but rather because we are not guilty (Note: this is probably fanciful in the near to medium term)

3) Options on how to approach Kieswetter

a. Start a conversation in "listening mode" only
b. Start a conversation to convince him there is no smoking gun and offer Baker McKenzie to talk through findings (note: this will almost certainly be a privilege waiver)
c. Start a conversation but attempt to "box" legal matters ("*we'd love to talk about the remedy plan but the lawyers say I can't talk about legal issues without threat of prosecution being lifted*"; can tell our side of the story but can't rely on BMK as support)
d. Indirect approach (i.e. have conversation with another intermediary party first, who then advocates for us in some way)
e. No approach at all
f. Something else

The idea would be to assess each option for benefits and risks. If possible, we might put an assessment of the likely outcome of each course (admittedly extremely difficult)

Final thought: the real problem we have here is that we don't have enough information on what SARS/the NPA are thinking and without that, it's hard to act. To borrow your analogy from the call, if he wants war then lowering the drawbridge and reaching out to Kieswetter would be a mistake. But if he does not, then not doing so is at best a missed opportunity and at worst a mistake. Until we know what the other side is thinking, I'd argue that caution is the best approach. That also begs the question of whether there is any way we can find out. The meeting we offered on 24 July is our attempt to answer this question but if there was another way to get this information safely, that would be attractive.

Once we are aligned, what's the process for getting this into slide format? Do you have someone in your team who could assist? I'm not in the office at the moment so am at something of a disadvantage.

Kind regards

Chris

Chris Kennedy
Senior Counsel, EMEA
Bain & Company Germany, Inc. | Karlsplatz 1 | 80335 Munich | Germany

tel: +49 89 5123 1177 | fax: +49 89 5123 1113 | mobile: +49 151 5801 1177
mailto:chris.kennedy@bain.com | web: www.bain.com

From: Senior, John <John.Senior@Bain.com>
Sent: Thursday, August 22, 2019 10:49 AM
To: Williams, Athol <Athol.Williams@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>
Cc: Wilson, Nicola <Nicola.Wilson@Bain.com>; Hendricks, Saadiqa <Saadiqa.Hendricks@Bain.com>
Subject: Kieswetter engagement options

Chris, Athol,

Thanks for agreeing to lead the way on the engagement plan with Kieswetter. I think this is the most important conversation we can have on the 3rd and having some options for people to look at with potential outcomes will be helpful to get everyone aligned and enable us to take some actions.

I think we should get Norman's input into this as well, once we have something on paper, but can I suggest the following:

1. You put together the scenarios as you see them
2. We get together middle of next week on the phone to discuss (Tue)
3. We review with Norman and Greg and revise as necessary (Fri)
4. We distribute on Monday to the broader group for the meeting on Tuesday.

Does that work?

If so I'll ask Saads to set up the meetings.

John

John Senior
Partner
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ANNEXURE "AW189"

AW189

Follow up

Williams, Athol
Sent: 24 August 2019 10:50 AM
To: ekieswetter@sars.gov.za

Dear Edward,

I am following up my last email and our brief discussions at the Business Against Corruption conference, where I can't shake the feeling that you had something to do with Chester Missing picking on me ☺

I am writing in my personal capacity as a committed South African to remain true to my promise to act in the interest of SA. I am writing without the knowledge of anyone at Bain which could be considered unprofessional but I feel this is my duty.

My main interest is to explore ways that I can facilitate Bain's making amends in SA more broadly, and SARS specifically. This may not be possible or useful from your standpoint, but I feel that I must at least make this effort. There are 2 categories of amends that I see:

1. Facilitate what you and others have called "come clean" - what information would you want to see? Even Judge Nugent's report indicated that he felt that while he didn't doubt my integrity, he did think that Bain hid information from me. I would like to lay out clearly to them what it is that South Africa expects them to reveal.

2. I am driving a number of efforts for Bain to contribute positively to social needs in SA, for example, have got them to allocate consulting resources to support the effort to turn around University of Fort Hare which is crumbling. I do think there are meaningful things that Bain could do to make amends at SARS - perhaps the timing isn't right and these aren't the best ideas but perhaps we could start the conversation to co-create the right set of actions. Some ideas:

- Bain senior team meet with your executive or broader staff to apologise
- Bain offers leadership development training for your top 200 managers through the Bain Academy which offers a "mini-MBA" to senior executives and board members, delivered by global partners and external experts
- Bain makes consulting resources available to you to support initiatives you're pursuing that could benefit from Bain's skill set
- Bain contributes to your staff wellness programmes
- Bain contributes to SARS initiatives around tax awareness and compliance
- Bain contributes to SARS CSI initiatives. I am particularly interested in schools (books, libraries, toilets, sanitary products) but would love to collaborate on initiatives that you've already got going or ideas you're looking to bring to fruition.

This would be at no cost to SARS and I think should happen regardless of what legal process ensues. Perhaps the timing of implementation would be influenced by the legal process but we can start developing plans now already.

My number is [redacted] if you'd like to discuss.

If you'd like to get a reference on me perhaps Trevor Manuel would be willing to offer it. We spoke for an hour at the airport recently where he started the conversation by saying "so you've joined those crooks" ... so who knows what he might say about me now.

Regards
Athol

ANNEXURE "AW190"

AW190

Re: Follow up

Edward Kieswetter [EKieswetter@sars.gov.za]
Sent: 26 August 2019 12:43 PM
To: Williams, Athol

Dear Athol,

Thank you for your mail. Before any meaningful discussions can take place between Bain and SARS/Treasury. You are unfortunately caught between a rock and a hard place, but this is entirely your choice.

To be clear, as stated before, we would require nothing short of a full statement of total disclosure as to the roll of Bain, the conversations that took place between themselves and the former President and Mr Moyane. When did these conversations start. What were their purpose etc. until such time as an affidavit by them, on the public record, there is no basis for trust. Without trust, there is no grounds for a bona ride conversation.

My personal advice to you as a professional, is that the best service you can render to South Africa and SARS, is to persuade them to come clean. The longer you associate yourself with the firm, the more, I'm afraid, you will be seen as being part of their continued tactical and defensive approach to minimize their collateral damage, rather than to own up to the fact that, in the view of many members of the public, they were complicit in state capture.

Bain is running out of time. It may soon be too late!

Regards

Edward Chr Kieswetter
Commissioner

Sent from my iPad

ANNEXURE "AW191"

AW191

From: Senior, John <John.Senior@Bain.com>
Sent: Wednesday, August 28, 2019 7:38 AM
To: Cottrell, Dale <Dale.Cottrell@Bain.com>; Williams, Athol <Athol.Williams@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>
Subject: FW: Kieswetter email

Dale,

Helpful thoughts from Norman.

John

John Senior
Partner
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mailto:John.Senior@Bain.com | web: www.bain.com

From: Mbazima, Norman <norman.mbazima@angloamerican.com>
Sent: Tuesday, August 27, 2019 9:52 PM
To: Senior, John <John.Senior@Bain.com>
Subject: RE: Kieswetter email

Hi John

I think Athol's analysis is sound. I was on the phone with Greg Hutchinson yesterday and we discussed a lot of these issues.

In certain, very important quarters of state, there is a belief based mainly on chapter 3 of the Nugent report, that Bain was 'complicit' in state capture. In their eyes, state capture is a heinous offence although it may not be in the statute books as such.
Complicit suggests people got together, strategized, and implemented the strategy to do something harmful. It seems that we do not fully know what VM may have got up to or promised people, perhaps besides the SARS work itself. Thus Greg and I discussed the following aspects for further consideration:

- It is clear that the Bain organisation was desperately trying to determine what had been going on, at exactly the same time that Nugent was doing his commission. It was thus difficult to put a face to that commission that suggested Bain was 'co-operating fully'. One needed to be in a position of full knowledge to be able to present that face. I am not sure that this is being taken in by the state sector stakeholders. 'Coming clean', from what I have gathered from interaction with you and your colleagues, is actually not possible unless someone can 'down load' VM. I do not believe the stakeholders know that it would probably be difficult if not impossible for Bain to arrange for VM to be available for downloading.
- How much 'culpability' does VM have versus what 'culpability' Bain has. In the eyes of stakeholders both have equal culpability and often, in their view, Bain has overall culpability. This is an intractable problem in our quest but one we must at least get the stakeholders to think about.

The threats must be taken seriously of course. There is the legal aspect to which Chris has consistently and clearly spoken about. One must also consider non legal actions such as a concerted campaign against Bain. Perhaps we can discuss the latter when we meet.

I think the principle stakeholders we need to engage with as previously agreed remain important. We also classified them as private sector and state sector. I think the action for the former is clear and simple (not easy!), but the latter requires very careful consideration regarding each stakeholder, timing, sequencing, messaging, and messengers.

When are we having coffee?

Norman Mbazima D +27 (11) 638 4878 M +27 (0) 72 418 7862

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From: Senior, John <John.Senior@Bain.com>
Sent: Tuesday, August 27, 2019 10:48 AM
To: Williams, Athol <Athol.Williams@Bain.com>; Cottrell, Dale <Dale.Cottrell@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: Kieswetter email

Athol,

I think you're making an important point. As I re-read Kieswetter's email, he's not asking for us to come clean about our involvement in SARS specifically. He's asking us to come clean about our involvement with Zuma and Moyane and the purpose of the conversations Bain had with them. I interpret that as he wants to us to come clean about any involvement in state capture with Zuma and with Moyane.

So I think we all need to have a crystal clear understanding about what we actually know about the discussions VM had and also about what we do not know to create the right legal strategy. I fear we can be found guilty by association and don't have the evidence we need to disprove this charge.

John

John Senior
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> **From:** Williams, Athol <Athol.Williams@Bain.com>
> **Sent:** Monday, August 26, 2019 9:40 PM
> **To:** Cottrell, Dale <Dale.Cottrell@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
> **Subject:** RE: Kieswetter email
>
> Dale,
> To your question on BM's findings and what we'd have to believe re: complicity in state capture, I think this is central. As I understand it, BM found no illegal activity. However, as Chris explained at the Oversight Board, there is no legal framework for 'state capture' or even clarity around what 'damage to SARS' means. I think there is enough evidence, and I haven't seen everything, to suggest that VM held M and Z in high esteem (email to Paul M saying he would not be embarrassed to see an article talking about Bain being friends with Zuma and Duma, and that he thought this would actually be a good thing), drew very close to them (numerous meetings, even attended M's father's funeral in Soweto), was willing to be part of political discussions (prepared materials relating to the ANC manifesto), clearly chose a 'side' in the Zuma-Ramaphosa faction fight (which is why I think Gordhan is so antagonistic, VM apparently referred to Dlamini-Zuma as the next President of SA) and thus could conceivably have been willing to support their plans to advance their political agenda. Chris gave us comfort that what matters here is that there is no illegal activity since this is what would be required for a charge sheet to be completed. I'd like us to step back and take another look at everything we now know and refresh our view of VM's involvement in the big scheme and the small scheme. I am not so sure he was only involved in the latter.

Athol

From: Williams, Athol
Sent: Monday, August 26, 2019 9:19 PM
To: Cottrell, Dale <Dale.Cottrell@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: Kieswetter email

Some reactions to his email:

His response sounds similar in substance to what Nugent would say. He seems to be echoing Nugent's views.

"a full statement of total disclosure as to the roll of Bain, the conversations that took place between themselves and the former President and Mr Moyane. When did these conversations start. What were their purpose etc." - **he obviously believes that what we shared with the Commission isn't everything. This is Nugent's view as well and the media rhetoric.**

"their continued tactical and defensive approach to minimize their collateral damage" – **the word "continued" is key ... reminiscent of Nugent who claimed that Bain was not forthcoming**

"in the view of many members of the public" - **interesting that he does not express this as his or SARS's view – perhaps he's not so confident?**

"complicit in state capture" - **this is essentially what Nugent alleged – this is what's at stake. Chris and I talked of the big scheme (Bain strategized with M & Z) and the small scheme (Bain unwittingly contributed etc etc). We believed the small scheme. Nugent, K and many others believe the big scheme – this is what we have to disprove, I think.**

"Bain is running out of time. It may soon be too late!" - **NPA action drawing near?**

From: Williams, Athol
Sent: Monday, August 26, 2019 8:59 PM
To: Cottrell, Dale <Dale.Cottrell@Bain.com>; Kennedy, Chris <Chris.Kennedy@Bain.com>; Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: Kieswetter email

It certainly tells us what's on his mind. In terms of one of our broad question of whether he'd be interested in our remedy plan I think the answer is a clear No. My take is that he's saying that he wants to follow the legal route first/only, not in parallel with remedy, which is what Chris suspected.

Just as an FYI, we will continue with the non-SARS parts of the remedy plan

Athol

From: Cottrell, Dale <Dale.Cottrell@Bain.com>
Sent: Monday, August 26, 2019 8:48 PM
To: Kennedy, Chris <Chris.Kennedy@Bain.com>; Williams, Athol <Athol.Williams@Bain.com>; Senior, John <John.Senior@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: Kieswetter email

I agree this is very helpful

Greg – what process would you suggest for us to finalise the approach to the discussion on 3 sept for the legal and stakeholder issues so we make the most of that time (and any before then)?

Would be good for us to talk through what is meant in this email, particularly...

- What would you have to believe for Bain to be 'complicit in state capture'? What did the B&M investigation find in relation to these beliefs? I think he would have to believe that the initial M and Z conversations were about causing damage to SARS which the B&M investigation found no evidence of.
- What are the options around some form or affidavit or similar? Could a B&M letter around Bain not being complicit be a solution? He is looking for something on the public record... is there any avenue to have Vittorio make a statement – my sense is he was the only person in those key meetings and he is no longer an employee (I don't think K or others realise that..)
- Why does he say Bain is running out of time? What does he mean by 'it may soon be too late'?

I don't have the answers here and simply raise the issues that jump out to me. But would be good to have others' views as well and work through the options on the best path forward as we discussed last week..

Dale

Dale Cottrell
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Tel: +39 02 582881 | Fax: +39 02 58288887 | Mobile : +39 3451632382
mailto:dale.cottrell@bain.com | web: www.bain.com

Executive Assistant : Preeti Grover | Email : Preeti.Grover@bain.com | Mobile : +971529182582

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: Monday, August 26, 2019 8:29 PM
To: Williams, Athol <Athol.Williams@Bain.com>; Senior, John <John.Senior@Bain.com>; Cottrell, Dale <Dale.Cottrell@Bain.com>; Hutchinson, Greg <Greg.Hutchinson@Bain.com>
Subject: RE: Kieswetter email

Thanks Athol

We can talk about this on our call in the morning. I think Kieswetter's email is very helpful indeed and it's a very useful insight. Regrettably, my reading of the email is that he expects nothing less than the company admitting to state capture. What is your take?

Kind regards

Chris

From: Williams, Athol <Athol.Williams@Bain.com>
Date: Monday, 26 Aug 2019, 5:59 pm
To: Senior, John <John.Senior@Bain.com>, Kennedy, Chris <Chris.Kennedy@Bain.com>, Cottrell, Dale <Dale.Cottrell@Bain.com>, Hutchinson, Greg <Greg.Hutchinson@Bain.com>

ANNEXURE "AW192"

WW1-AW-871

AW192

Hypothesis: What might the Commission be thinking?

- A scheme existed to do damage to/take control of SARS
  - Bain's upside was "to milk the cow" – fees for years with no competitive process
  - Moyane's upside was political / personal gain
- Bain was consciously/knowingly part of this scheme
- Support for point 2 is:
  - Bain met with Moyane before he became Commissioner
  - Bain met with Zuma on this topic
  - Moyane was trying to hire Bain without an RFP process
  - Bain had communication with SARS about the RFP outside the formal RFP process
  - Bain did things that it wouldn't normally do
    - > Rushed org diagnostic (didn't bother to have full understanding of COmpany
    - > Had a pre-conceived idea of what the new structure should be (a script)
    - > Insufficiently scoped (just the structure vs full operating model "the software")
- To implement the scheme:
  - The RFP process was rigged in Bain's favour (e.g. advance knowledge, 50% discount, Telkom RFP avoidance attempt)
  - Bain went in with "a script" to damage SARS that it developed with Moyane
- The scheme was implemented/enabled by the work Bain did
- And the result is that SARS is damaged "Bain broke SARS"

It is probably not a coincidence that the questions the Commission has asked us are exactly on these topics

How to rebut

Explain Moyane meetings

Explain Zuma meetings not connected with SARS (incl. Duma)

Explain RFP process and involvement

Explain that Bain's execution against the scope was "normal"

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SARS-01-881

ANNEXURE "AW193"

AW193

atholwilliams@hotmail.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: 28 August 2019 07:56
To: atholwilliams@hotmail.com
Subject: FW: Resignation

From: Senior, John <John.Senior@Bain.com>
Sent: Wednesday, August 28, 2019 7:33 AM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: RE: Resignation

Athol,

Let's catch up this morning. I'm free from 11:30.

John

John Senior
Partner
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mailto:John.Senior@bain.com | web: www.bain.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: Wednesday, August 28, 2019 6:53 AM
To: Senior, John <John.Senior@Bain.com>
Subject: Resignation

John,

Following our discussion yesterday, I have decided to leave Bain. We find ourselves in a very unfortunate situation in South Africa. Within this unfortunate situation, it is apparent that our interests are not aligned. The lack of support from Bain during this difficult time has made this even harder for me. I am deeply saddened.

Let's discuss how best to proceed - I think it's best that we move swiftly.

Best regards
Athol

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ANNEXURE "AW194"

AW194

atholwilliams@hotmail.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: 29 August 2019 07:27
To: Hagey, Russ
Cc: Senior, John; Moolman, Tiaan; Cottrell, Dale; atholwilliams@hotmail.com
Subject: RE: Chance to apologize and catch up?

Hi Russ,

Thank you for your email. The silence was consistent from all those at Bain who I reached out to for help as I was struggling. Thankfully I am not struggling anymore. And there was, and continues to be, silence too, Russ, when I ask for clarity around what Bain really knows about what happened in South Africa under Vittorio's leadership. As you know, I sent an email of resignation to John yesterday because I have lost confidence in Bain's leadership, particularly around what I have now seen in terms of approach to Bain's involvement in the harm to the South African people through state capture, Bain's view that ethical considerations have no place in corporate responsibility (based on discussions with the global head of S&CR) and Bain's dealing with local partners who have reached out in states of fear and worry – this includes others in Africa not only me.

I joined Bain because I believed that there was sincerity around doing the right thing for South Africa. I no longer believe this. I joined Bain because I believed Bain could be a force for ethical good in the world and offer me a platform to contribute to this good. I have been told directly that this is not Bain's intention and that "we take a pragmatic approach." I joined Bain because I believed that I could grow but am discovering that my association with the firm I once loved so dearly, is now threatening my reputation and my physical safety, with no apparent concern from anyone else. And sadly, that when I was wrapped in fear and worry, and spoke up repeatedly in emails, text messages, meetings, and the offsite, not a single person from Bain leadership reached out to help.

The incident in December, where Bain tried to manipulate me into saying I had seen the Baker McKenzie report when it was actively withheld from me, has been running over and over in my mind. Even then my concerns were met with silence. Taken all together, a picture emerges that says I should be careful, which is what my friends and family have been saying, so it is time for me to take their advice.

As I said in my email to John, I am deeply saddened. This experience and decision brought me to tears, and even now I write this with a heavy heart. I now need to focus on my welfare, that of my family, and continue the work I've been doing to uplift the people of South Africa.

Happy to schedule time to discuss.
Best regards
Athol

PS: I hope you don't mind that I cc others – will save me having to repeat this.

From: Hagey, Russ <Russ.Hagey@Bain.com>
Sent: Wednesday, August 28, 2019 7:17 PM
To: Williams, Athol <Athol.Williams@Bain.com>
Subject: Chance to apologize and catch up?

Athol,

My assumption that I might see you in Paris next week … and hence chat 'live/in-person' vs email exchange might have been a poor assumption on my part and I certainly didn't communicate well … and I've let sit the message that you returned to me --- and I owe you an apology for not asserting that plan and hope on my part and just saying something directly

And so you are likely assuming I'm not attentive nor caring … which is the farthest from the truth … but I am truly sorry

I hear the pain right now … and I equally know it is causing you to reflect and I did hear from John today … and so I'd like to talk

So I hope you'll accept my apology and allow me to try again here – and might I find a window to chat this week … and my EA is hearing you aren't planning to be in Paris next week and so that is the second reason to connect

Thanks Athol

Russ

Russ Hagey
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AW194

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: Thursday, 29 August 2019 13:16
To: Hagey, Russ <Russ.Hagey@Bain.com>
Cc: Senior, John <John.Senior@Bain.com>; Moolman, Tiaan <Tiaan.Moolman@Bain.com>; Cottrell, Dale <Dale.Cottrell@Bain.com>; atholwilliams@hotmail.com <atholwilliams@hotmail.com>
Subject: RE: Chance to apologize and catch up?

Hi All

Had a long conversation with Dale, in which he understandably expressed concern about some of the points in my email. I will apologise for any of my statements if I've misunderstood or over-reacted. Perhaps some facts should be gathered:

- For reference to the incident in December 2018 – I refer to Tiaan and Chris Kennedy. I can gather emails if needed
- For reference to me reaching out for help with my personal struggle – I refer to email to Russ (8 August), text message/email/conversations with John, and the LT offsite session with Dale and Chris Kennedy attended bt LT and CSS managers
- For the point about Bain's approach to corporate responsibility – I refer to engagements with Jenny Davis-Peccoud and Chris Mitchell, particularly our call on 7 August
- For concerns about whether we're acknowledging the possibility of Bain/VM involvement in state capture refer to the email attached, the call with John/Chris K on 27 August and stakeholder plan call on 22 August. I suggested to Dale that our comfort in the BM report is well-placed when considering the question of illegal activity but misplaced when considering the issue of state capture.
- I also mentioned to Dale my bad start-up experience which is well-known to John and mentioned to Russ

Please let me know what you find and I will retract and apologise accordingly.

Best
Athol

ANNEXURE "AW195"

AW195

atholwilliams@hotmail.com

From: Williams, Athol <Athol.Williams@Bain.com>
Sent: 25 September 2019 17:18
To: atholwilliams@hotmail.com
Subject: FW: Potential future role
Attachments: 190925-Athol Potential Future Role.docx

From: Cottrell, Dale <Dale.Cottrell@Bain.com>
Sent: Wednesday, September 25, 2019 2:35 PM
To: Williams, Athol <Athol.Williams@Bain.com>
Cc: Senior, John <John.Senior@Bain.com>; Hagey, Russ <Russ.Hagey@Bain.com>
Subject: Potential future role

Athol

Hope you are well...

Attached is a draft memo that captures the essence of the conversations we have been having and pulls them together into a recommended plan of action

Please read through when you get a chance over your break and we can talk when you are back

Enjoy your break!

Regards,
Dale

Dale Cottrell
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To: Athol Williams
From: John Senior, Dale Cottrell and Russ Hagey
Subject: Future role
Date: 25 September 2019

Athol,

I have tried to summarize the various conversations that have taken place between you, Dale, Russ, Domenico and John over the past several weeks, and outlined a proposal for your future role, the transition process and timing.

During our conversations, we heard the following from you:

1. It has become increasingly difficult for you personally to continue as a full time Bain partner, due to the increased level of SARS press activity regarding potential prosecution, and this situation is not likely to become easier in the near future

2. However, you want to continue to stay connected to Bain and play a role in helping Bain South Africa to implement the Remedy plan, which you have created. You clearly recognize how important implementing the Remedy Plan is to Bain, you and South Africa. Given the circumstances, you believe that you can be most effective in achieving this through setting up an independent corporate responsibility institute, which would work to further Bain's corporate responsibility agenda and would be funded, in part, by Bain

3. You would also like to continue to serve on the Bain South Africa oversight board, as this is a critical pillar of the Remedy plan

4. You would like to take a break from Bain for a period of time to complete your PhD

We appreciate the personal pressures you have been under and thank you immensely for the significant contribution you have made to our business. We want to support you in setting up the corporate responsibility institute and recommend the following path forward.

- Bain supports you to develop a proposal for the corporate responsibility institute over the next three months, which we can then sign off with a steering committee of John, Russ and Dale and then the Bain board. This could include:
    - Developing a business plan and funding model which might include exploring the Bridgespan / Bain model which could be an interesting analogy to replicate for the corporate responsibility institute
    - A 3 to 4 day trip to Australia (plus a weekend) for you and your wife to meet Greg and study the ACF and SVA as other relevant models
    - Defining objectives and desired outcomes for the institute and a process to evaluate progress against these goals
    - Support from a small team and information services in your evaluation of best practice and model options to help you develop the business plan, operating model, funding proposal and charter

- We would still want you to continue to play an active role in the Johannesburg office until the end of the year, and engage with our teams on corporate responsibility. We would also like you to commit to spending 20% of your time in the Johannesburg office, in your role as the director of the Corporate Responsibility Institute, and we will provide you with an office for this purpose. Staying 'connected' to people and the office will signal that you will play an ongoing role with Bain and will help at the time

of transition to your ongoing role with a continuing Bain association. John would agree some specific HLAs with you for the rest of 2019

- We complete the end of year compensation process and you transition formally out of the Bain partnership at the end of 2019
- You take the first 6 months of 2020 to complete your PhD
- From July 2020 you take on the role as the director of the corporate responsibility institute and resume your position on the Bain oversight board

We propose that we announce your future role and transition plan together internally to the South Africa office over the next few weeks, but we do not communicate externally until January 2020, when your transition is effective. John will work up the 'talking points' together with you and will take a first cut at them for when he is back in the office

John will find some time in early October, when you are back from holiday to discuss this in more detail and then we can finalize these plans.

ANNEXURE "AW196"

AW196

WHATSAPP MESSAGES AW-TM 2

Whatsapp Messages between Athol Williams & Tiaan Moolman: 28 August 2019 - 5 February 2020

Resignation

2019/08/28, 22:00 - Athol Williams: I assume John told you about the miserable outcome here. Happy to chat tonight or tomorrow. Dale is calling tomorrow ... will no doubt cement my decision

2019/08/28, 23:27 - Tiaan Moolman: I'll call in the morning. I'm sorry to hear it's been so tough.

Explore future role

2019/09/05, 07:53 - Athol Williams: Am flexible this morning till noon. It could actually be a very positive outcome if my proposal is supported in some form. I feel energised by the prospect.

2019/09/05, 17:20 - Tiaan Moolman: Any possibility to talk now / later today?

2019/09/05, 17:21 - Athol Williams: Got Russ in 10 min. I will message you after so we can talk?

2019/09/05, 17:24 - Tiaan Moolman: Great.

2019/09/05, 18:24 - Athol Williams: Very positive discussion with Russ. Can chat if you've got time

1

Going public

2019/10/17, 10:16 - Athol Williams: Tiaan, sent John an sms ... at Finance Indaba this morning I mentioned that I have resigned. See you shortly

2019/10/17, 14:15 - Athol Williams: Tiaan, was at the conference on UCT ticket. The university has lined up interviews following my talk ... one is 702. I will not be able to control the questions

2019/10/17, 14:16 - Athol Williams: If there is still scope for coordinated comms lets pursue

2

Press statements and oversight board

2019/10/07, 19:33 - Athol Williams: Am not going to the Barcelona meeting so probably doesn't make sense to go to London just for the board meeting? Happy to go if you think otherwise.

2019/10/14, 16:17 - Athol Williams: Tiaan, can hardly hear anything. Dropped off. Will board see risk assessments? Concerned about Multichoice given their ANN7 / Gupta links. Looking forward to catching up next week. I have confirmed to Dale, Russ and John that I will stay to the end of the year but then clean break. Happy to stay on oversight board if required.

3

2019/10/23, 09:54 - Tiaan Moolman: Athol. Thank you for the clarifications in your press statement yesterday. I know you must be going through a tough time yourself. Keep strong. Tiaan

2019/10/23, 10:01 - Athol Williams: Thanks Tiaan. I'm deeply sorry for the aggravation I've caused you and many others. I have offered to contribute to undoing undue damage. And I remain a friend of Bain. But I think Bain and I need a 'time out'. Like you said, we traveled unchartered territory and had good intentions. I fully accept my part in things not going as intended. Be well my friend.

4

2019/10/24, 09:34 - Tiaan Moolman: Thanks Athol. Maybe a time out is a very good idea. As part of that, I suggest that we don't include you on the Oversight Board going forward. You and I have come a long way, and when the dust settles it would be good to catch up as friends.

2019/10/25, 20:41 - Athol Williams: Tiaan, would be good to receive comms on my future on the oversight board from the Chairman. Looking forward to catching up when the dust settles.

2019/10/25, 21:24 - Tiaan Moolman: Athol. I agree that communication on your future role on the Oversight Board should come from the Chair. Have a good weekend.

15

2019/10/30, 19:35 - Athol Williams: I conclude that I'm not as tough as you. I give up, can't keep fighting. Hoping to sort out separation terms asap and then erase the last 14 months from memory. Ok, rant over. Hope you're surviving. Athol

2019/10/30, 19:37 - Tiaan Moolman: Barely my friend. Feel like a boxer well beyond his prime who has taken way too many punches!

2019/10/30, 19:39 - Athol Williams: You're a fine poet sir ... like the boxer metaphor.

2019/10/30, 19:40 - Athol Williams: Still talking to Dale and Russ. In 20 years time (if we're both alive) hopefully we'll have a few stiff drinks and reflect on this time.

Separation and silence discussions

16

2019/11/13, 08:16 - Athol Williams: Tiaan, I hope you've been following my discussions with Bain because you know you're going to be the one who has to call me if the shit hits the fan. Am astounded by Bain's approach. Athol

2019/11/13, 08:43 - Tiaan Moolman: Athol. Good to hear from you. I haven't actually been close to the discussions, aside from knowing that Dale is leading it.

17

2019/11/13, 08:53 - Athol Williams: Would be great to catch up but I don't want to interfere with Dale's process. Am seeing a repeat of many of the mistakes that Bain made last year when driven by arrogance and led by lawyers. I am already being portrayed as Prime Evil and want to be sure you are aware of where things stand. I see a looming crisis for Bain which Dale doesn't seem to see. Please ask to see his settlement offer to me and maintain your sense of humour while reading it ●

2019/11/13, 08:55 - Tiaan Moolman: I will do that! But let's find a time to catch up anyway and promise not to talk about Bain at all.

18

2019/11/21, 11:47 - Athol Williams: Had a call with Dale set up this morning but he didn't show. I have no word from Bain on next steps. You know what's going on?

2019/11/21, 11:52 - Tiaan Moolman: No idea. I'm a little out of the loop, as I'm mostly in London at the moment. I will find out. Do you have time later for a phone call? We haven't talked in ages, and don't have to talk about Bain at all!

2019/11/21, 11:55 - Athol Williams: Its hard not to talk about Bain my friend since it is all-consuming for me right now - all I think about and talk about is how I can deal with the chaos Bain is causing me and my family.

2019/11/21, 11:58 - Athol Williams: I've told Dale that I have a long line of people calling me everyday wanting to get info or offer help or to use me to attack Bain ... media, NGOs, book

publishers, Zondo Commission, Peter Hain etc. I don't know what the hell to do. Just like Bain was silent for 2 months after I resigned, till I spoke publicly, now again you're silent.

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2019/11/21, 12:03 - Athol Williams: From the calls and emails I get from Bainies I can tell that my situation is being poorly handled internally ... hard for me to keep telling people all is well when it clearly isn't

2019/11/21, 12:15 - Tiaan Moolman: Ok. I am going to get involved. Clearly not progressing as it should.

2019/11/21, 13:08 - Athol Williams: This can be wrapped up in an hour.

2019/11/21, 13:11 - Athol Williams: Am being supported by UCT and meeting with Corruption Watch on Monday who will facilitate dealings with authorities. I can tell that Bain's lawyers are driving the agenda which means common sense does not prevail

2019/11/21, 13:13 - Athol Williams: Dale's last emails have pointed to clauses in contracts that dictate confidentiality. Misses the point entirely

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2019/11/21, 13:18 - Athol Williams: The strategy of telling me to shut up and go away is not going to work. Let's chat this eve if you want

2019/11/21, 13:28 - Tiaan Moolman: Let's do that. I think Dale is trying to talk to you today too.

2019/11/21, 13:29 - Athol Williams: Ok will reach out to him

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2019/11/21, 16:39 - Athol Williams: Speaking to Dale at 5:30pm. I will pay back the money he wants from me and be on my way

2019/11/21, 16:40 - Tiaan Moolman: Shall we talk after that?

2019/11/21, 16:40 - Athol Williams: Perfect!

2019/11/21, 17:52 - Athol Williams: Hi Tiaan, done with Dale.

2019/11/21, 17:55 - Tiaan Moolman: Give me 10 Mon, then I'll call. Works?

2019/11/21, 17:56 - Athol Williams: 👍

New discussions, options and wavering

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2019/11/22, 07:25 - Athol Williams: Hey Mr Problemsolver! The Oxford option is going to be tricky - Taryn not keen and I have got lecturing commitments at UCT already starting in Jan. As I understand it, Bain's biggest immediate need is to stay out of the media. I am willing to commit to that. We can then let the situation cool down and then come to a mutually beneficial arrangement when neither party wants to strangle the other. Deep breath!

2019/11/22, 07:30 - Athol Williams: Please keep the amateur colonial-style negotiators away from me ⚫

2019/11/22, 08:37 - Tiaan Moolman: I already started speaking to some of the Bain people in the chain last night. If Oxford was an option, I am confident I could make it work. Maybe the best thing to do is to put two options from Bain on the table: a. Oxford and b. Remain in SA but parting as friends. Are you ok for me to work on both?

2019/11/22, 10:20 - Athol Williams: Just sent you an email.

Zondo Commission

2019/11/25, 15:23 - Athol Williams: Tiaan, I hope you're sitting down ... got a call from the Zondo Commission. They want to speak to me on Wednesday

2019/11/25, 19:08 - Athol Williams: Is there a way to verify that Lettie Monyane is with the Commission?

2019/11/25, 19:09 - Athol Williams: She is the person who called

2019/11/25, 20:35 - Athol Williams: In contact with Darryl. Will chat tomorrow

2019/11/25, 20:35 - Tiaan Moolman: Great to hear

2019/11/26, 11:00 - Athol Williams: Spoke with Darryl. His biggest 'watch out' is around privilege. His guess is that they're speaking to lots of people to see who knows what - most likely following a particular line of enquiry based on their worksreams

2019/11/26, 11:27 - Tiaan Moolman: Thanks for the update. Do you know who Lettie M is? Let me know once you have talked to her.

2019/11/26, 11:28 - Athol Williams: Darryl is scouting for info on her. Not much online

2019/11/26, 19:29 - Tiaan Moolman: Hi. Just wanted to check in how you are doing. Did you speak to Lettie or somebody from the Commission? What is the plan for tomorrow? Happy to chat by phone if easier

2019/11/26, 21:43 - Athol Williams: Hey Tiaan, hope you're good. Haven't heard from Darryl about Lettie's authenticity. Her response to my questions about tomorrow is that it is a discussion about my resignation, nothing to prepare.

2019/11/26, 22:02 - Tiaan Moolman: That sounds straightforward, I hope. Good luck for tomorrow. Let me know how it goes.

2019/11/27, 19:05 - Athol Williams: Tiaan, survived discussion. They've asked that it be kept confidential.

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Playing games?

2019/11/25, 20:36 - Athol Williams: Just to go back to our earlier call ... the point about me being an employee ... I don't follow

2019/11/25, 20:39 - Tiaan Moolman: I was thinking about it again. It's actually irrelevant if you are still technically an employee or not.

2019/11/25, 20:42 - Athol Williams: You guys asked me to stay till the end of the year, I agreed, then you decided otherwise. Dale's been arguing over the date of my resignation ... The 'facts' are hard to follow ...

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2019/11/25, 20:46 - Athol Williams: Was asked my SA staff why I'm cowardly refusing to address the office. Obviously this is what they are being told. Fact: Have made numerous offers to numerous partners to do a Q&A with partners or the office ... silence.

2019/11/25, 20:49 - Athol Williams: Not an employee technically or otherwise ●

2019/11/25, 20:50 - Tiaan Moolman: My comment about still being an employee had to do with legal protection. When I thought about it afterwards I realised it is irrelevant to the discussion with Zondo. I wasn't trying to make any other point. I agree that you are not an employee

2019/11/25, 20:51 - Athol Williams: Got it!

New discussions, options and wavering ... continued ... reject offer

2019/11/27, 19:34 - Tiaan Moolman: We must also get back to the Oxford thing. Will you have time tomorrow to put together your thoughts as we discussed last Sunday (before Zondo interjected)?

2019/11/27, 21:42 - Athol Williams: Was hoping you'd have a first draft. The Zondo development makes things very uncertain

2019/11/27, 22:32 - Tiaan Moolman: Ok. I will put something together tomorrow.

2019/11/28, 18:21 - Tiaan Moolman: Athol. I put together a first draft as promised. I'm just getting internal signoff. With Thanksgiving in the US, I will probably only get the go-ahead to share tomorrow, but wanted you to know things are progressing.

2019/11/28, 18:24 - Athol Williams: Great Tiaan, thanks for the update. Am worried about Bain

2019/11/28, 18:25 - Tiaan Moolman: Anything specific?

2019/11/28, 18:29 - Athol Williams: The approach to the crisis seems very tactical. Perhaps you've got the bases covered in ways I don't know. From what I can tell the authorities now have international resources at their disposal and are taking Bain far more seriously than Darryl seems to think.

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2019/11/28, 18:30 - Athol Williams: Even the approach to me ... spent a month pestering me with minuture rather than seeing how I could be an ally

2019/11/28, 18:31 - Athol Williams: As I've said so many times, the focus is not on Sars at all but much broader

2019/11/28, 18:32 - Tiaan Moolman: I have to say I am increasingly removed from the strategy on how to deal with it. As with you, the best outcome for me is distance and a time-out

2019/11/28, 18:34 - Athol Williams: Makes sense! Sorry to have drawn you in ... it was my last gasp effort to find something sensible.

2019/11/28, 18:35 - Tiaan Moolman: No problem. We will have a sensible agreement, as you and I have discussed in principle already

2019/11/29, 10:01 - Tiaan Moolman: I got internal sign off. I just emailed you the draft outline.

2019/11/29, 11:02 - Athol Williams: Great! Will take a look

2019/11/30, 10:39 - Athol Williams: Have not forgotten to get back to you. The Zondo issues have complicated my situation. Will revert asap

2019/11/30, 17:04 - Athol Williams: Tiaan, will shoot an email to you and Dale shortly. All things considered I think its best that we part ways with a clean break. I appreciate your last gasp efforts. Best Athol

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Bizarre offer and clean break

2019/12/04, 11:54 - Tiaan Moolman: Athol. What are your movements today? Would love to chat. I have another idea (maybe).

18

2019/12/04, 19:00 - Tiaan Moolman: Missed voice call

2019/12/04, 19:02 - Tiaan Moolman: Athol. Looks like we won't be able to connect before my flight. Are you able to talk tomorrow morning?

2019/12/04, 21:52 - Athol Williams: Hi Tiaan, I can chat in the morning. Sorry to miss your call

2019/12/05, 08:01 - Tiaan Moolman: Just landed. Can you talk now?

2019/12/10, 10:35 - Tiaan Moolman: Athol. Hope you had a good weekend. I just want to confirm that as per our conversation end of last week, and for the reasons we discussed, you definitely don't want to explore the UK study option any more. I said I would check in early this week. Tiaan

2019/12/10, 11:34 - Athol Williams: Hi Tiaan. All good. Hope your travels have been good. Thanks for following up. Nothing has changed on my side regarding making a clean break from Bain. Regards Athol

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More games

2019/12/11, 08:14 - Athol Williams: Hi Tiaan, will there be any formal comms from Bain to finalise my departure or does my email of 30 Nov suffice? Athol

2019/12/16, 18:07 - Tiaan Moolman: Athol. I have been in contact with Dale, Russ etc. They have updated the proposed separation agreement. I think you will have it in the next day

2019/12/16, 18:07 - Athol Williams: Fantastic, thanks Tiaan. Hope you're well.

2019/12/17, 18:01 - Athol Williams: On 17 Dec I get a letter from Bain requiring payment on 20 Dec. As we say here, Eish.

20

2019/12/17, 19:19 - Athol Williams: The lines are drawn I guess. Will go public with this and crowdfund to pay Bain.

2019/12/17, 19:37 - Tiaan Moolman: Athol. Just got off a plane. The short repayment period is a surprise to me to. I am sure Russ will change it if you ask him to. O didn't think it was Bain's intention to draw any lines? What did you think about the rest of the proposed separation contract?

2019/12/17, 19:39 - Athol Williams: Almost every step Bain takes surprises you ... surprises me too.

2020/01/07, 19:21 - Athol Williams: Tiaan. Only just saw the Bain press statement of 20 Dec. The facts have become quite fluid ...

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2020/01/09, 10:07 - Athol Williams: As an FYI, as I respond to Bain's claims in the press statement I will have to reveal some of the comms that you and I shared.

2020/01/09, 11:30 - Tiaan Moolman: What in the press statement is contradicted in Comms between us? I would of course prefer that my name stays out of the press.

2020/01/09, 11:31 - Athol Williams: Have you read the press statement Tiaan?

2020/01/09, 11:31 - Tiaan Moolman: I have not seen it - will read it now

2020/01/09, 11:31 - Athol Williams: I would prefer my mame also be kept out of the press especially when cast in negative light

2020/01/09, 19:20 - Athol Williams: Have sent an email cc others involved. This is a big issue

2020/01/09, 19:22 - Tiaan Moolman: Athol. I have read the press statement now and understand the concern. I am trying to understand where the statement came from, and will make sure we do the right thing.

2020/01/09, 19:24 - Athol Williams: Thanks Tiaan!

2020/01/10, 11:56 - Tiaan Moolman: We will amend the statement, hopefully before EOD today, as it was not accurate

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2020/01/10, 13:16 - Tiaan Moolman: I checked, the 20th statement was not sent to the press or disseminated beyond posting it on Bain's website.

Connecting

2020/02/04, 11:59 - Athol Williams: Tiaan. Am in Jhb tomorrow morning if you're up for a coffee. No negotiating just coffee

2020/02/05, 09:59 - Tiaan Moolman: Athol. Meeting up and chatting would be good. Unfortunately I am in Cape Town for the Mining Indaba, flying back to London tonight. Do you have any plans to be in London in the coming months?

2020/02/05, 10:03 - Athol Williams: Tiaan. I am planning to be in London. Will let you know when. Best. Athol

ANNEXURE "AW197"

AW197

Privileged & Confidential
Attorney Client Privilege
Draft dated 10 Oct 2019

SARS External Communications - Legal Guardrails

1. With respect to Bain South Africa's work for SARS, **do not admit to any criminal wrongdoing on the part of Bain**. It's ok to talk about Bain mistakes, regrets about not walking away sooner and so on, but:

   a. Do not admit to any corruption or improper influence committed by any Bain employee in connection with Bain South Africa's work.

   b. Do not admit to any fraud, bid rigging, collusion or other misconduct in violation of South Africa's public procurement laws, even if minor ("i.e. don't say "*there were minor procurement issues, but that's it*").

   c. Do not admit to the use of any third party agents to carry out illegal or improper schemes on behalf of Bain. If raised, OK to talk about Ambrobrite in terms of the fact that we regret hiring a politically affiliated advisor and have since changed our global policies to prohibit it and use the opportunity to inform them that our contract with Ambrobrite expressly forbade them from any such behavior.

   d. Do not admit to any *quid pro quo* arrangements with any party to obtain or retain work on behalf of Bain. If you are asked about the CEO coaching, use that as an opportunity to expressly deny there was such an arrangement and inform them that, because Bain does a lot of CEO coaching of this kind, Bain's global policies on executive coaching expressly forbid any expectation of a *quid pro quo*.

   e. Clarify that Bain did **NOT** return the fees earned for the SARS work because of any finding or admission of legal wrongdoing. Per Bain's public statements, the reasons for returning the fees were based on the belief that its work "fell short of [Bain's] operating principles" which was later clarified to mean that Bain believed its work on the organization structure at SARS did not achieve positive results for the client.

2. When telling people "what happened at SARS", with respect to Baker McKenzie's investigation into Bain South Africa's work (for purposes of protecting the Attorney Work Product and Attorney Client Privilege):

   a. Do not state that you have seen, received or been involved in the preparation of any Baker McKenzie work product (for example, draft or final investigative findings reports, interview summaries, or legal opinion memoranda) – although note 2f below on this point

   b. Do not state that you have had any role or involvement in overseeing or directing Baker McKenzie's investigation.

   c. Do not commit or offer to provide copies of investigative reports or other Baker McKenzie or Bain Legal work product or materials.

   d. Do not disclose the details of any conversations you may have had with Bain Legal or Baker McKenzie.

e. **Remember: facts are not privileged so you can freely tell Bain's story, but the Baker McKenzie investigation work product and the legal advice it contains is only privileged so long as its confidentiality is maintained.**

f. We assume that senior Bain SA management or members of the Bain Africa Oversight Board will be the ones holding these meetings. In this capacity, they have seen the BMK report and it would be surprising to any outsider if they said they had not. Therefore, for these senior 1:1 meetings, it would also be OK (and probably more credible) for them to say something like "*I have obviously seen those reports and I have to be careful because they are legally privileged documents, but I am happy to tell you what happened because facts aren't privileged and what happened is this.*"

3. Regulator/Authority Engagement:

a. Do not disclose that any discussions with US enforcement authorities (DOJ/SEC) is taking place.

b. Do not speculate on the outcome of any ongoing investigations by authorities in South Africa.

c. If asked, just say "*I don't think the lawyers would want me to talk about that*".

ANNEXURE "AW198"

AW198

Athol press statement
V4
21 October, 2019
Strawman for discussion

NOTE TO ATHOL: this is just a draft statement based on your conversation with Dale on Sunday. Given the fast-moving circumstances, we thought this might be helpful to you but we recognize that your statement must be your own and there is no intention to "put words into your mouth". It's been carefully crafted to minimize the risk of inviting journalistic attacks on either Bain or you.

The purpose of this statement is to clarify some assertions currently circulating in the media that are patently false. As a Professor of Ethics, I take seriously the need for accuracy in both my words and intentions so that statements attributed to me do not result in unanticipated or unwarranted damage to others. This, I fear, is what has occurred in the most recent news cycle and I feel it's essential that I make clear what constitutes fact versus fiction.

On Thursday 17 October, 2019 I publicly announced my resignation from Bain & Company after previously letting Bain know of my intention to resign earlier this year.

I resigned from Bain for two reasons:

- South Africa wasn't being receptive to someone going into a company alleged of doing wrong and trying to help from the inside. For me that's very sad and I think it's an indictment on us. We seem to have blood on our hands all the time, or bloodthirsty all the time, because we want to take people out. We seem to want to demonize people rather than what's doing right for the country.

- I felt I could be far more effective in helping South Africa, helping Bain do the right thing from the outside

I am proud of the contributions I made, including [Athol to include, if he wishes. Bain has included similar language in its press release regarding the remediation plan, which has been well-received]

I want to make clear my position on two important points to ensure I am represented accurately and fairly:

- I possess no facts or evidence to suggest that Bain was involved in any scheme to damage SARS

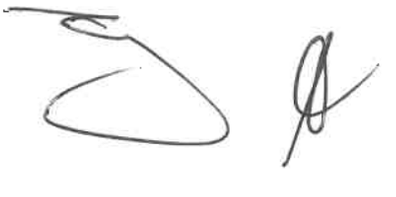
- I have no 'sensitive data' that related to Bain not being transparent or untruthful.

I feel it's important that I clarify my statements because I don't want them to be misconstrued and cause unintended consequences. As I said in my Radio 2 presentation on Thursday night, , I believe Bain is an ethical company with good people and I don't feel Bain is a malicious company. We just need to help them make amends.

There is a difference between unintentional bad choices and intentional bad behavior. It is my belief that Bain's actions fall into the former category. Therefore, I still want to support Bain in the future, as I believe it is fundamentally an ethical organisation, which can make a positive contribution to South Africa.

My ongoing focus as a professor in Ethics is to play a leadership role in the debate around how to move through the crisis we are in and make South Africa a better, strong society for all South Africans.

# # #



ANNEXURE "AW199"

AW199

SARS-01-907

Media Quotes since Thursday, 17 October 2019

DRAFT

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WW1-AW-897

Quotes/assertions: 'reasons for resigning'

- *I resigned from Bain for two reasons. One was, South Africa wasn't being receptive to someone going into a company alleged of doing wrong and trying to help from the inside. Right, for me that's very sad and I think it's an indictment on us. We seem to have blood on our hands all the time, or bloodthirsty all the time, because we want to take people out … But secondly also, I felt I could be far more effective in helping South Africa, helping Bain do the right thing from the outside."* (Athol Williams, Facebook, 17 October)
- *"Williams also blamed 'the danger and pressure he was facing' for his decision … According to remarks sent to the media, Williams told the summit that 'people threatened me or refused to take my meetings, and the entire remedy plan fell flat because no one would engage with me. Public officials pointed me out as the face of corruption in corporate South Africa' … SA wasn't being receptive to someone 'going into a company [accused] of doing wrong and trying to help from the inside', he said … Williams said it was a 'sad reflection' of the state of SA society that the public appeared unable to accept that someone could return to a company accused of wrongdoing with a bona fide desire to help."* (Fin24, 17 October)
- *"Williams, a University of Cape Town lecturer, said he publicly announced his resignation without informing Bain, a move that indicates that his departure was not on happy terms. In giving reasons for his surprise resignation, Williams said he was facing an 'amount of danger and pressure' linked to Bain's role in accounting for its role in the destruction of the tax authority under the reign of former SARS commissioner Tom Moyane."* (Daily Maverick, 18 October)

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SARS-01-908

WW1-AW-898

Quotes/assertions: '…part of scheme'

- *"The Nugent commission's report of 2018 said there were two corruption schemes that Bain was part of at Sars. The smaller scheme was Bain's attainment of the tender to restructure the tax agency irregularly. And the bigger scheme 'can be described as a premeditated offensive against Sars, strategised by the local office of Bain & Co, located in Boston, for Mr Moyane to seize Sars' …. Williams said it was Bain's refusal to answer questions about this alleged strategising with Moyane that made him walk away … 'When I ask questions, I get shut down. As an internal person, as a partner who has to stand up publicly and say 'they are doing the right thing', for my own credibility, my own conscience and also for the good of SA, I couldn't be part of that.' … Williams said he still does not believe Bain was involved in 'the big scheme', but it was 'somewhere in between'."* (Business Day, 18 October)

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SARS-01-909

WW1-AW-899

Quotes/assertions: 'information withheld'

- *"That announcement has, the reasons were two really: one was just the amount of danger I was facing, and pressure I was facing to try and actually be effective in what I was trying to do, but secondly it was, I still stand by my conclusion that I gave in my report to Judge Nugent that Bain is still withholding and not in my mind by my measure of ethical behavior and full revelation not doing what I think they need to do [for] South Africa. And again that public statement you will know has implications for me and many other people in South Africa and around the world."* (Public Finance Indaba, 17 October)
- *"In an interview with Business Maverick on the sidelines of the Finance Indaba, Williams said Bain was withholding crucial information about its role in enabling the State Capture project … 'I believe that Bain is withholding information about the restructuring of SARS and not being truthful about what it did in South Africa. Bain knows more than what they have told the public'."* (Daily Maverick, 18 October)
- *"When I ask questions, I get shut down. As an internal person, as a partner who has to stand up publicly and say 'they are doing the right thing', for my own credibility, my own conscience and also for the good of SA, I couldn't be part of that."* (Business Day, 18 October)
- *"I really believed that Bain wanted to do the right thing when they hired me to develop ideas for remedy and developing a proper plan. I thought they were serious and were going to do the right thing … Then I was hired. I got in the company and I got to ask questions and they were uncomfortable with the questions I asked. I am not getting the answers and it made me uncomfortable."* (Daily Maverick, 18 October)
- *"The big finding in my report was that, indeed, as Judge Nugent had concluded, not all relevant documents that Bain had access to where shared with the commission."* (Fin24, 17 October)

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SARS-01-910

WW1-AW-900

Quotes/assertions: 'information withheld'

- *"Athol Williams, who was supposed to help straighten out Bain after its controversial role at SA Revenue Service, publicly announced his resignation during a speech on Thursday, accusing the American consultancy of 'withholding'."* (Fin24, 17 October)
- *"On Thursday [Williams] resigned during a speech at the 2019 Finance Indaba, held at the Sandton Convention Centre. Before he announced his resignation, he talked about the Bain report he submitted to the commission 'for the first time' ... 'The big finding in my report was that, indeed, as Judge Nugent had concluded, not all relevant documents that Bain had access to where shared with the commission.' ... He believed the organisation was still 'withholding', and 'by my measure of full revelation, not doing what they need to do for South Africa'."* (Fin24, 17 October)
- *"The revelation by Williams that Bain was withholding information is a blow to the US firm's efforts to contain the fallout from the 2015 consulting work ... It is also likely to present the Treasury with more ammunition to bar Bain from doing work for the government again."* (Business Day, 18 October)

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SARS-01-911

WW1-AW-901

Quotes/assertions: 'information withheld'

- *"Civil society group Corruption Watch is pushing for the criminal prosecution of Bain executives, including Massone, instead of Bain paying back the R217-million it received for the SARS tender as a remedy for its wrongdoing. Corruption Watch's executive director, David Lewis, said Williams' disclosure about Bain withholding information constitutes more grounds for law enforcement authorities to investigate the modus operandi of the firm. 'If they are hiding stuff from the person [Williams], who is one of their partners and was mandated to undertake an investigation, then the public has no chance of knowing the full extent of Bain's involvement in SARS … I think that the inference to draw from this is that there is much to hide. If the partner cannot get information out of them, then a subpoena could achieve that,' said Lewis."* (Daily Maverick, 18 October)
- *"Corruption Watch CEO David Lewis said Bain and all the other firms that were complicit in state capture have not completely come clean and they should perhaps be handed over to the Hawks to force them to reveal more details."* (Business Day, 18 October

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SARS-01-912

WW1-AW-902

Quotes/assertions: 'Sensitive information possessed by Athol'

- "Williams, whose job at Bain was to restore its tainted reputation and credibility, said he was also concerned that he was "used to legitimise the organisation as I was now one of the good guys … *When asked exactly what Bain was not being truthful about, he said he'd rather not discuss it in public as the information is 'sensitive'. Williams said he would be available to support Bain 'to do the right thing' when it is ready to do so.* (Daily Maverick, 18 October)

- *"[Williams] said he could not share publicly what kind of information Bain was withholding, given the sensitivity of his investigation, and he first needed to check with Nugent what he wants to do with the information."* (Business Day, 18 October)

- *"Treasury tax and financial sector policy deputy director-general Ismail Momoniat, who has in the past also accused Bain of not telling the whole truth, said Williams's resignation was long overdue. 'Bain needs to disclose to Sars and National Treasury the whole truth and provide all their internal investigation reports as well as all documents and communication with all Sars officials during the 2013-2018 period, as well as all meetings its former head in SA, Mr [Vittorio] Massone, held with Mr Moyane and others, including in Nkandla,' Momoniat said."* (Business Day, 18 October)

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SARS-01-913

WW1-AW-903

ANNEXURE "AW200"

AW200

< Inbox

Athol

October 17, 2019 at 11:50 AM

Restrictions: Do Not Forward

Joburg and Lagos offices,

As many of you already know Athol has decided to leave Bain at the end of this year. I'm incredibly grateful to Athol for everything he has done to help us through the last 14 months and the personal sacrifices he has made to do so. He has made a huge contribution to our business in the last year, not least designing and implementing the Remedy plan.

He's been instrumental in managing our response to the SARS situation, including engaging in difficult conversations with key stakeholders, setting up our Whistleblower line, creating our Integrity Pledge, which is now displayed in our office, and putting in place the Oversight Board to help us manage our business better.

One of Athol's great passions is corporate responsibility and we hope to continue to work with him on this in the future, as it's a key pillar of our Remedy plan. He also plans to devote more of his time to finishing his PhD, which has been a challenge for him while working at Bain.

Please join me in thanking Athol for his contribution to Bain and wishing him well with his future endeavours.

John

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ANNEXURE "AW201"

AW201

Press Statement

22 October 2019

I'd like to clarify some statements circulating in the media relating to my resignation from Bain & Company.

During my keynote address at the Finance Indaba (17 October 2019) on the moral crisis facing our country, I publicly announced my resignation from Bain, after previously informing the company that I was resigning. I believe I can be far more effective in contributing to an ethical and prosperous South Africa from outside Bain. This is the work I have been doing and what I will continue focusing my energy on going forward.

Additionally, it is important to note that I possess no evidence that Bain was involved in a scheme to damage SARS, and I have no additional information that relates to Bain being untruthful.

I believe now more than ever in the need for all South Africans to stand up and be counted at this time of moral crisis in our country. I will continue my academic work to train ethical leaders and I have offered my advisory services to Bain and other companies to support them in doing the right thing in South Africa.

Athol Williams

atholwilliams@hotmail.com

ANNEXURE "AW202"

AW202

atholwilliams@hotmail.com

From: Athol Williams
Sent: 22 October 2019 12:31
To: Cottrell, Dale; Munuz, Erol (KC)
Subject: My position
Attachments: Athol Williams Claims and Conclusion 22 October 2019.docx

Hi Dale and KC,

I've taken a step back from the detail of the press statement and reflected upon my position in the simplest terms that I can. This is attached. I think this should form the core of my public statements, if any. The wording could be amended.

Regards
Athol

AW202

Athol Williams

22 October 2019

My claims and conclusion

What I am NOT claiming:

- I **am not** claiming that Bain was involved in a scheme to cause harm in South Africa.
- I **am not** claiming that I've seen or have in my possession any evidence that Bain was involved in such a scheme.

What I AM claiming

- I **am** claiming that I believe Bain possesses evidence that might help me form a view of whether Bain was involved in such a scheme.
- I **am** claiming that when asked to see such evidence or when asked for full disclosure about what Bain knows relating to its potentially harmful actions in South Africa, my requests were met with silence or refusal.

Conclusion

- Bain's reactions to my requests led me to conclude that they are hiding relevant information and aroused my suspicions about their involvement in a scheme to cause harm in South Africa.
- Added to the external pressure I was facing, this context rendered me ineffective in advancing my mission at Bain which was to ensure remedy for the damage at SARS that Bain had admitted to. By my reckoning, remaining at the firm would have made me complicit to whatever they may have been hiding. So I left.
- I am encouraged that Bain are engaging with the South African authorities, so hopefully the full truth will emerge.

ANNEXURE "AW203"

AW203

atholwilliams@hotmail.com

From: [redacted]
Sent: 22 October 2019 19:29
To: Athol Williams
Subject: kitchen cabinet

Athol,

Good connecting with you this week. I wanted to give you my personal email per our conversation about your platform today. My willingness to help you frame and build the next stage of your public intellectual life was not an empty offer. I think you have good things to say and can be an important voice and are worth it as a human being.

Hopefully, I can help you shape and add discipline to this next important part of your life/career.

As for now, tune out the noise which invariably will come on the heels of this week. You might get some criticism as well as praise so I would just stay in that middle ground and don't listen to any of it. You turned a corner today and now are ready to begin laying the groundwork, for what I would argue, is a much richer and meaningful conversation.

If the media continues to press you, just ignore, no matter how persistent they can be. You've said your piece and after a period of quiet, take that paragraph we spoke about and begin to build the narrative that will anchor your advocacy and philosophy.

It's a real pleasure to have had the change to work with you up to this point, and I look forward to helping you in whatever way I can (I suspect you won't need all that much but if nothing else I can be a sounding board).

Thanks my friend.

KC

ANNEXURE "AW204"

AW204

atholwilliams@hotmail.com

From: Cottrell, Dale <Dale.Cottrell@Bain.com>
Sent: 07 November 2019 17:30
To: Athol Williams
Subject: Follow up...

Athol,

Payments owed to Bain

As requested, below is a summary of the amounts owing to Bain per your partner agreement. In summary you owe Bain **R2,645,702** made up as follows:

- R2,000,000 signing bonus. You owe 100% of this as the vesting period only began with R1M at the 12 month mark and the remaining R1M after 24 months
- R98,077 base salary. Resigned 17 October and paid for whole month. Annual salary of R2.55M; daily rate of 9,807 x 10 days
- R179,625 bonus advance. Paid R539,000. Earned protected compensation assuming 3,450,000 x 5/12 x 25% = 359,375 earned. Overpaid 179,625 being 539,000 – 359,375. Note: Bonus payments only payable if a partner is employed when advance bonus is payable
- R368,000 travel expense sign-on. This travel expense up-front payment related to employment over time and is aligned to the period of protected compensation ie 19 months. Amount owed of R368,000 is 5/19 x R500,000

I trust this is helpful to provide a 'baseline' for the full amount owed to Bain based on your resignation dated 17 October 2019

Please note that you agreed to a high level of 'ethical obligation' when you joined Bain which were enshrined in your partnership agreement and the relevant confidentiality protocols. This includes not talking about your time as a Bain partner and employee and not sharing any data or perspectives relevant to clients or Bain

Oxford PHD Option

You separately raised an option to move to Oxford full-time to complete your PHD and return in 2 or 3 years to focus on helping South Africa through the broader crisis it is now facing. You felt this could help as you would likely not have reach-outs from the media asking about Bain while you are abroad

I have thought more and worked through some aspects with Russ and would like to test if you would like me to take a proposal around this back to our management team?

Under this scenario where you physically relocate to Oxford for the next 2 years, I would be willing to put forward a proposal internally to support you as follows:

- Retain the full amount of the advance bonus payment made in June 2019 for the 2019 year
- Waive repayment requirements for the R2M sign-on bonus – 1M which was due to vest in May 2020 and 1M which was due to vest in May 2021 per the original contract
- In addition, pay one more quarterly bonus payment in the same order of magnitude as the Sept 2019 payment which is in effect the 'final' 2019 bonus payment (R539,000)
- This would be done subject to you signing the partner separation paperwork including
    - Your commitment to move to UK to complete your PHD over the 2 years ending December 2021
    - Agreement not to talk publicly about Bain in the future. Again, you should be aware that the level of confidentiality we are asking for here is simply a level that is consistent with the ethical commitments included in your signed partnership agreement. Specifically we would ask you to confirm the following:
        - Avoid public situations where you could be asked to comment about Bain
        - If asked, respond with: 'I have a set of confidentiality protocols in place and am not at liberty to talk about my time at Bain'

        - And if pressed, as a last resort, redirect to the 'broader set of issues facing South Africa'
    - The relinquishment of the monies owing and any additional payments would be based on 'no new public comments referring to Bain' over this 2 year period. We could put in place a simple confirmation process each 2 months to confirm to you that you are 'in good standing' based on no new commentary
    - Return of all data and materials relating to Bain (as per your partner agreement)
- In addition to this, Russ and I have thought more and would be open to putting forward some additional elements:
    - Make an additional payment of R1,000,000 that would in effect provide you with your 'protected compensation' for your first year at Bain. This would be paid half at end of year 1 and half at end of year 2
    - Continue to stay connected and invest behind you developing your Ethics Institute and continuing to provide guidance and counsel for the Bain remedy plan
        - Pay for consulting support over the 2 year period for the equivalent of 1 day per month – which could be in 'blocks of time' which could amount to R380,000 over the 2 years. This would be paid 'as earned' on a quarterly basis
    - Provide airfares and hotel expenses for you and your wife to visit Australia in year 2 for a full week to explore options to build an Ethics Institute in South Africa and leveraging Greg and his contacts to work through options – we previously discussed this and think it could be a great initiative where we could make a positive difference together to South Africa. Lets say this is ~R400K (say US$10K airfares and hotels ... may be less). This would allow you to develop a business plan and funding model which might include exploring the Bridgespan /Bain model as an interesting analogy to replicate for the corporate responsibility institute
    - In addition we would provide support from a small team and information services in your evaluation of best practice and model options to help you develop the business plan, operating model, funding proposal and charter. Note I have not values this team resource as part of the economics here

In total our support for you under this scenario would total **~R4.965M** over the 2 year period – not paying back monies owed plus additional payments per above..

Lets talk again tonight or tomorrow and explore whether you are comfortable with the level of support under this alternative scenario and whether you would like me to put forward this option to our management team

Regards,
Dale

Dale Cottrell
Partner
Bain & Company (Milan) | Via Crocefisso, 10, 20122 Milano MI, Italy
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ANNEXURE "AW205"

AW205

atholwilliams@hotmail.com

From: Athol Williams
Sent: 08 November 2019 16:31
To: Cottrell, Dale
Subject: RE: Follow up...

Dale,

No need to discuss. I follow the intent of the email.

Just to correct two statements in your emails:

1. I resigned on 28 August not 17 October. Bain asked me to remain in the business till the end of the year. I agreed to do this and think it fair that I be paid till the end of the year.
2. The 'Oxford PhD Option' is not an 'ask' by me, it is an option in response to your ask that I not speak about Bain.

I take my employment obligations seriously as well as my obligations to the pursuit of truth. The challenge for the ethical leader is to know how to prioritise these when they are in conflict. This is what I've done at great cost to myself and the social projects that I fund in South Africa. So, just as you're reminding me of my 'ethical obligations' to Bain, may I remind you of your ethical obligations to truth and to the people of South Africa.

Best
Athol

PS: Handed over laptop, phone and access card to the Bain driver today

From: Cottrell, Dale <Dale.Cottrell@Bain.com>
Sent: 07 November 2019 18:41
To: Athol Williams <atholwilliams@hotmail.com>
Subject: RE: Follow up...

Athol

Thanks for your note

Do you want to grab a quick call for me to provide context for the email elements? And walk through some of them and you can then think more over the next day or weekend?

Just to provide context for the email - we are trying hard to find ways support you in your ask around PhD and also to find ways to stay connected on topics that are of interest to both you and us around corporate responsibility and the remedy plan – so this is all meant to be in that spirit

We are also asking for your help to support our efforts at retaining and supporting our ~150 people in South Africa. We think a period of minimal new PR would help to rebuild our business and accelerate our ability to rebuild client demand – which would keep people motivated around a career at Bain

On the ethical obligations, they were simply the commitments you made as part of the partnership agreement. And they centred around confidentiality. Happy to talk more if helpful

Regards,
Dale

Dale Cottrell
Partner

ANNEXURE "AW206"

AW206

atholwilliams@hotmail.com

From: Cottrell, Dale <Dale.Cottrell@Bain.com>
Sent: 15 November 2019 21:10
To: Athol Williams
Subject: Follow up on confidentiality obligations; Oversight role time period
Attachments: 2018.09.07%20Athol%20Williams%20-%20signed%20Contract.pdf

Athol

In advance of us speaking Sunday, I wanted to circle back on the issue of return of data and confidentiality regarding your time playing the oversight role with Bain

Attached is the agreement that Stuart sent through to me (signed version). I have had a chance to read through it and there are 2x relevant clauses that outline the confidentiality obligations in relation to the oversight engagement:

- **Clause 5:** obligation to keep the information confidential and not disclose to any third party
- **Clause 8, para 2** … plus the Records Management Policy in Exhibit A: clear obligation to give everything back to Bain following termination

My sense is this helps address one of the risks you raised ie simply returning all documents and information in accordance with the agreement seems straightforward. It is also easy to position in future that you 'simply returned all information in accordance with the terms of your agreement with Bain'

I have been thinking through more in relation to the risks we discussed and we can discuss them in more detail Sunday..

Regards,
Dale

Dale Cottrell
Partner
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ANNEXURE "AW207"

AW207

atholwilliams@hotmail.com

From: Athol Williams on behalf of atholwilliams@hotmail.com
Sent: 22 November 2019 10:29
To: Moolman, Tiaan
Subject: FW: For discussion

An additional thoughts (and I'm sure there'll be many) - with these options, my location is irrelevant and we don't waste money on UK expenses

From: Athol Williams
Sent: 22 November 2019 10:20
To: Moolman, Tiaan <Tiaan.Moolman@Bain.com>
Subject: For discussion

Tiaan

Can we kick this around?

Athol

My objectives

1. Support (and nudge) Bain to act for the good of SA in all dealings (investigations and operations)
2. In my writing and public speaking, draw lessons from my Bain experience and Bain's experience in SA

How can I achieve this? Options ...

1. Support (and nudge)
    a. External agitator?
    b. Independent advisor?
    c. **Oversight board member (with public mandate)?**
2. Write and speak
    a. Independent?
    b. **Collaboratively with Bain (with my scholarly independence)?**

Bolded options preferable?

Terms:

- I abide by all confidentiality agreements
- We have a process to review my writings. I am free to speak about and write about what is public and what we agree through this review process
- We place a moratorium on media engagements about anything related to Bain
- Our final settlement is the protected 2020 remuneration (since I will not be able to replace this income) less the R1million I owe Bain
- I earn a fee for Oversight board role

ANNEXURE "AW208"

AW208

atholwilliams@hotmail.com

From: Athol Williams
Sent: 29 November 2018 11:34
To: Kennedy, Chris; Bernstein, Darryl; Demas, Reagan R
Subject: RE: Gupta links

Thanks Chris

From: Kennedy, Chris <Chris.Kennedy@Bain.com>
Sent: 29 November 2018 11:33
To: Athol Williams <atholwilliams@hotmail.com>; Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>; Demas, Reagan R <reagan.demas@bakermckenzie.com>
Subject: RE: Gupta links

On the Gupta trail, I am speaking with Amit next week. I waited until the initial investigation was over before setting it up.

Chris

From: Athol Williams <atholwilliams@hotmail.com>
Date: Thursday, 29 Nov 2018, 10:18 am
To: Kennedy, Chris <Chris.Kennedy@Bain.com>, Bernstein, Darryl <Darryl.Bernstein@bakermckenzie.com>, Demas, Reagan R <reagan.demas@bakermckenzie.com>
Subject: Gupta links

Gentlemen

" ... **the Gupta's used to handle Zuma's diary" -** https://northcliffmelvilletimes.co.za/lnn/513862/ngoako-ramatlhodis-explosive-testimony-the-guptas-handled-zumas-diary/

For Vittorio's meetings with Zuma, do we know who Vittorio/Sharlene communicated with to set up the meetings. Through Ndlovu?

Chris, you were following a trail to the Guptas, did anything emerge?

This will have a significant bearing on claims of Bain SA being involved in the planning of state capture.

Athol

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ANNEXURE "AW209"

AW209

Draft for discussion; subject to contract: 28 November 2019

Outline of potential elements in separation agreement (in addition to standard partner separation terms)

Bain's commitment:

- No repayment of any monies already paid. Payments include:
  - R2M Signing bonus with 2 year vesting period
  - Salaries and travel expenses paid
  - 2019 bonus advance in September
  - Note: Repayment obligation would be relinquished 50% after year 1 and 50% after year 2 based on adherence to agreed commitments
- Payment for living and tuition expenses relating to completion of Oxford PhD.
  - 2020: GBP75,000
  - 2021: GBP75,000
  - Note: Payments made in January each year. Athol responsible for any personal taxes related to these payments
- Retainer amount paid for advisory services to Bain on Corporate Responsibility topics
  - 2020: GBP50,000
  - 2021: GBP50,000
- Funding of Corporate Responsibility institute: R2,000,000 as a founding investor and strategic partner in 2022 (post PHD)

Athol's commitment:

- Move to UK full time to complete PHD over the 2 years ending December 2021
- Commitment to provide Bain with advisory services for up to 2 days per month during 2020 and 2021 (compensation covered by the retainer amount)
- Agreement not to talk publicly about Bain during the period up to December 2021. Specifically:
  - Moratorium on all media engagements about anything related to Bain
  - Abiding by all existing confidentiality agreements, noting that the confidentiality commitments would continue beyond 2021
- Signing the standard partner separation documents
- Return of all data and materials relating to Bain (as per partner agreement and your oversight role agreement) and written confirmation that you have deleted all soft copy materials (emails, documents etc) from your laptop and/or other devices

ANNEXURE "AW210"

AW210

atholwilliams@hotmail.com

From: Athol Williams on behalf of atholwilliams@hotmail.com
Sent: 30 November 2019 18:23
To: 'Cottrell, Dale'; 'Moolman, Tiaan'
Subject: Clean break

Tiaan, Dale,

I was immensely proud to be associated with Bain in September 2018 when, in the face of serious allegations, Bain adopted the public position of being "completely open and transparent" and asking me to "act in South Africa's interest without restriction" – a commitment I gladly made. This was Bain at its *True North* finest!

But sadly so much has changed since then.

I will remain true to my commitment to act in South Africa's interest without restrictions. This means that I cannot remain silent about my experience of Bain over the last 14 months, as you've requested, in fact, I consider it my duty to speak up. I doubt there'll be any reason for me to speak to the media about Bain in the coming months so will avoid this where I can.

I agree with Dale's characterisation of the outcome of our discussions, during our last call, as "disappointing." I suggest we draw a line under our relationship and go our separate ways.

Regards
Athol

ANNEXURE "AW211"

AW211

BAIN & COMPANY

Bain & Company South Africa, Inc.
10 The High Street
Melrose Arch, 2076
Johannesburg
South Africa

Tel: +27 11 012 9100
Fax: +27 11 012 9101

December 12, 2019

Athol Williams
Via e-mail

Dear Athol:

This letter agreement (the "Separation Agreement") will confirm the terms of the termination of your employment with Bain & Company South Africa, Inc., Bain & Company, Inc. and any of its affiliates (collectively, "Bain").

1. You have informed us that you have resigned from Bain effective as of October 31, 2019 (the "Separation Date") and withdrawn as a limited partner of BainCompany Partners, L.P (the "Partnership") as of such date. You also hereby agree to resign your position as a Director or Managing Director of any Bain affiliated entity, effective no later than the Separation Date. Bain hereby accepts such resignations and withdrawals effective as of the Separation Date. You agree to provide us with any additional resignation and withdrawal letters or documentation that we may request and otherwise cooperate fully with Bain to effectuate all such resignations and withdrawals.

2. Effective as of the Separation Date, you will cease to be a participant in any of Bain's benefit plans in accordance with the specific terms of each plan. You will, however, be entitled to exercise, at your election and at your cost, any extension rights to which you may be entitled under law with respect to group health and dental coverage and any conversion rights to which you may be entitled under law with respect to life insurance coverage. To the extent that you have any vested assets in any employee savings or retirement plan, the status and treatment of such assets shall be governed by the applicable terms of any such plan. If applicable, information concerning your rights, coverage and election and life insurance conversion options will be sent to you under separate cover.

3. Effective as of the Separation Date, you will no longer be eligible to participate in any future Bain-sponsored investment vehicles. Any existing investments you may have with or through any Bain-sponsored investment vehicles shall be governed by the applicable terms of any such investment vehicle, as they may be amended from time to time.

4. You are obligated to repay to Bain your unvested signing bonus in the amount of ZAR 2,000,000. You and Bain agree that you shall repay ZAR 1,000,000 by no later than December 20, 2019.

5. Bain and you agree that in full payment, satisfaction and discharge of all right, title and interest you may have in Bain and any of its affiliates and assets of any nature, in full release of all claims you may have against Bain as further set forth below, and also in consideration for the agreements set forth herein, the following (collectively, the "Contingent Obligations"):

   a. Given your resignation from Bain on October 31, 2019, you are obligated to repay to Bain ZAR 1,143,688, comprised of (i) the remaining ZAR 1,000,000 of your unvested signing bonus and (ii) overpayment of your September 2019 bonus advance in the amount of ZAR 143, 688. Bain shall forgive this repayment obligation in its entirety on May 31, 2021, but only if Bain determines in its reasonable judgment that you have complied with your confidentiality obligations under this Separation Agreement, your Service Agreement with Bain & Company South Africa, Inc., dated as of September 7, 2018, your Employment Contract with Bain & Company South Africa, Inc.., dated as of July 11, 2019, and your Global Confidentiality, Intellectual Property and Non-Competition Agreement with Bain & Company, Inc., dated as of May 12, 2019 (collectively, the "Bain Agreements"). If Bain notifies you in writing any time prior to May 31, 2021 that it has determined in its reasonable judgment that you have not complied with your confidentiality obligations under the Bain Agreements, then you shall repay to Bain the ZAR 1,143,688 owed to Bain within ten (10) business days of the date of any such written notice.

6. Bain retains the right to deduct and withhold from any payments to you all sums that it may be required to withhold pursuant to applicable tax withholding laws or regulations. You shall be solely responsible for any and all income or other taxes due by you or assessed against you on payments made to you under this Separation Agreement.

7. Subject to applicable law, any outstanding personal advances, vacation time advances, expenses or other liabilities you may have to Bain or any of its affiliates will be deducted from any payments made to you. Bain will provide you with a statement documenting any such deductions.

8. In addition to your obligations under your Bain Agreements, which are incorporated herein by reference, you agree to keep the existence, terms and negotiations of this Separation Agreement strictly confidential and shall not disclose these matters to anyone, in words or in substance, except: (a) to your attorneys, financial advisors, and immediate family members, provided that they first agree to keep all such matters confidential; (b) to any taxing authority; and (c) to the extent required or allowed by law or to the extent necessary to enforce rights under this Separation Agreement. Nothing in this Separation Agreement shall limit the rights of any government agency or any party's right of access to, or participation or cooperation with, any government agency.

9. You will deliver to Bain, and you will retain no copies of, any written materials, records and documents (including all copies of computerized databases, electronic and related materials) made by you or coming into your possession during the course of your employment with Bain which contain or refer to any proprietary or confidential information. Nothing in this Section shall prevent you from retaining and utilizing copies of benefit plans and programs in which you retain an interest, personal office furnishings or such other records and documents as may be expressly approved by Bain. You also agree to return immediately to Bain, on the Separation Date or upon Bain's request, all keys, security passes, Bain identification cards, credit cards, telephone charge cards, computer or other office equipment and any other property of Bain.

10. As a material inducement to Bain to enter into this Separation Agreement and in exchange for the payment of the Contingent Obligations, to which you agree you are not otherwise entitled, and the other benefits and privileges provided to you under this Separation Agreement, you release and waive all claims, charges, complaints, liens, demands, causes of action, promises, obligations, damages, liabilities, expenses (including legal expenses and attorneys fees) or the like (all hereafter referred to as "Claims") that you had, now have or may claim to have against Bain or any of its past and present partners, directors, officers, employees, shareholders, affiliates and all of their successors and assigns (collectively, the "Bain Released Parties"), whether now known or unknown, up to and including the date you sign this Separation Agreement. This general release of Claims shall include, without limitation, Claims relating to your employment and separation from employment with Bain and the treatment of you by Bain while in Bain's employ, Claims of discrimination under the common law or any federal, state or local statute, Claims for wrongful discharge, Claims for the payment of any salary, wages, bonuses, commissions, vacation pay, severance pay or benefits, Claims of detrimental reliance, and all other statutory, common law or other claims of any nature whatsoever, to the fullest extent permitted by law. This general release of Claims does not apply to any claims concerning a breach of this Separation Agreement or any claims arising after the date you sign this Separation Agreement. In addition, this general release of Claims shall not affect your rights under the operative documents of any Bain-sponsored investment vehicles or the Partnership or your rights with respect to vested benefits to the extent provided by applicable law. With respect to the Claims you are waiving herein, you acknowledge that you are waiving your right to receive money or any other relief in any proceeding instituted by you or on your behalf by any other person, entity or government agency.

11. To the fullest extent permitted by law, you agree not to sue or institute or cause to be instituted any action in any federal, state or local court or agency against any of the Bain Released Parties, including, but not limited to, any of the claims released in Section 10 of this Separation Agreement.

12. Your execution of this Separation Agreement shall not prevent you from benefiting from any indemnification or directors' and officers' insurance provisions for the period of your active service with Bain that may be available generally to officers and employees of

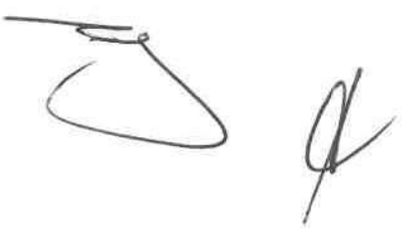
Bain pursuant to the Certificate of Incorporation and By-laws of Bain or directors' and officers' insurance procured by Bain.

13. It is mutually understood and agreed that this Separation Agreement and the other Bain Agreements shall constitute the entire understanding between you and Bain relating to the subject matter of this Separation Agreement and no one at Bain has made any oral or written promises or commitments to you that are not fully and accurately set forth in this Separation Agreement; provided that the terms of the operative documents governing your interest in the Partnership and any investment vehicles in which you may have participated shall control with respect to such matters. This Separation Agreement and the other Bain Agreements supersede all other agreements, understandings, representations or warranties, whether oral or written, made between the parties hereto with respect to the subject matter of this Separation Agreement and the other Bain Agreements (other than the terms of any Bain-sponsored investment vehicles in which you participate), including without limitation any prior employment agreements between you and Bain and any amendments thereto; provided that the terms of the operative documents governing your interest in the Partnership and any investment vehicles in which you may have participated shall control with respect to such matters.

14. This Separation Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to the conflicts or choice of laws principles thereof. Exclusive venue for all disputes arising out of or in connection with this Separation Agreement shall be Boston, Massachusetts and you agree that service of process may be made upon you by mail at the address set forth in this Separation Agreement or at an alternate address designated by you. You further consent to be subject to the personal jurisdiction of the courts located in Boston, Massachusetts and waive any objection you might have based upon lack of personal jurisdiction, improper venue or forum nonconveniens.

15. This Separation Agreement may be executed in counterparts and each copy so executed and delivered shall be deemed an original. The provisions of this Separation Agreement shall be binding upon the parties' successors, assigns, heirs, administrators and/or executors. In the event of your death, all amounts payable to you hereunder shall be paid to your estate.

16. Any amendments of, supplements to or notices affecting the existence or contents of this Separation Agreement must be in writing signed by the parties hereto. The parties agree that the failure of any party at any time to require performance of any provision of this Separation Agreement shall not affect, diminish, obviate or void in any way the party's full right or ability to require performance of the same or any other provision of this Separation Agreement at any time thereafter. The invalidity or unenforceability of any provision of this Separation Agreement shall not affect the validity or enforceability of any other provision of this Separation Agreement. The provisions of this Separation Agreement shall be deemed severable and if any provision of this Separation Agreement shall be held invalid or unenforceable in part, the remaining portion of such provision, together with all other provisions of this Separation Agreement, shall remain valid and



enforceable and continue in full force and effect to the fullest extent consistent with law, and the invalid or unenforceable provision shall be deemed to have been redrafted as if in the original, so as to be valid and enforceable to the fullest extent permissible under applicable law.

17. You are advised to consult with an attorney before executing this Separation Agreement. In any event, you should thoroughly review and understand the effect of this Separation Agreement and the general release of claims before taking action upon them.

If this Separation Agreement is acceptable to you, please sign the enclosed copy and return it to us, which shall thereupon constitute our legally binding agreement.

Very truly yours,

Bain & Company South Africa, Inc.

By: _____
Name:
Title:

Bain & Company, Inc.

By: _____
Name:
Title:

Accepted and agreed to:

By: _____
Name: Athol Williams

Address:

Date: _____

ANNEXURE "AW212"

AW212

atholwilliams@hotmail.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: 20 December 2019 16:12
To: Cottrell, Dale
Subject: RE: Amount owed to Bain
Attachments: Payment Confirmation.pdf

Dale

I have paid the settlement amount. Proof of payment attached.

Athol

-------- Original message --------
From: Athol Williams <atholwilliams@hotmail.com>
Date: 2019/12/18 18:00 (GMT+02:00)
To: "Cottrell, Dale" <Dale.Cottrell@Bain.com>
Subject: Amount owed to Bain

Dale,
It would be better that Bain get the refund from SARS. I will pay this outstanding amount by Friday per your letter.

	Rand (thousands)	
Signing bonus	1156	(amount paid, estimate^)
Salary (Nov & Dec)	-425	
Benefits (Nov & Dec)	-40	
December bonus	-539	
Untaken leave	-42	
	110	

Untaken leave calculated as (7/12 * 15 days) – 4.5 days taken, at R9,807 per day
^ I don't have actuals since I don't have any of my payslips

Athol

ANNEXURE "AW213"

AW213

Out of the Ordinary®

Investec

Investec Bank Limited

100 Grayston Drive Sandown Sandton 2196
PO Box 785700 Sandton 2146 South Africa
T +27 (0) 11 286 7000 F +27 (0) 11 286 9555
www.investec.co.za

To whom it may concern

Investec hereby confirms that the following payment has been made:

Payment From	Mr Athol Eden Williams
Amount	110000.00
Payment Date from Investec	2019-12-21
Payment Reference	UP0026825955
Beneficiary Account Name	Bain & Company South A
Beneficiary Bank	NEDBANK LIMITED
Beneficiary Branch Number	190805
Beneficiary Bank Account Number	1908645431
Beneficiary Reference or Account Number	A Williams settlemen

Should there be any problems with the payment detailed above please contact:

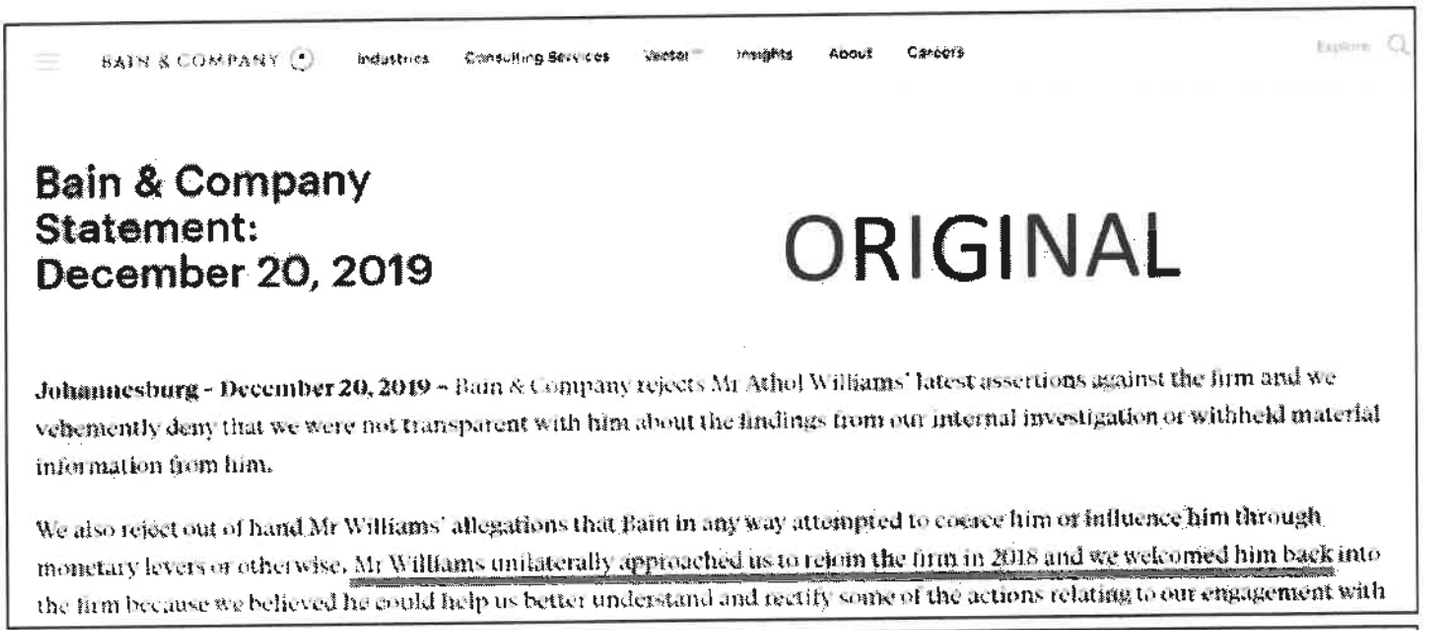
Athol Eden Williams

Day Phone	0828286346
Cell	0828286346
E-mail	atholwilliams@hotmail.com

Investec Specialist Bank, a division of Investec Bank Limited registration number 1969/004763/06. Investec Specialist Bank is committed to the Code of Banking Practice as regulated by the Ombudsman for Banking Services. Copies of the Code and the Ombudsman's details are available on request or visit www.investec.co.za. A registered credit provider registration number NCRCP9.

ANNEXURE "AW214"

AW214



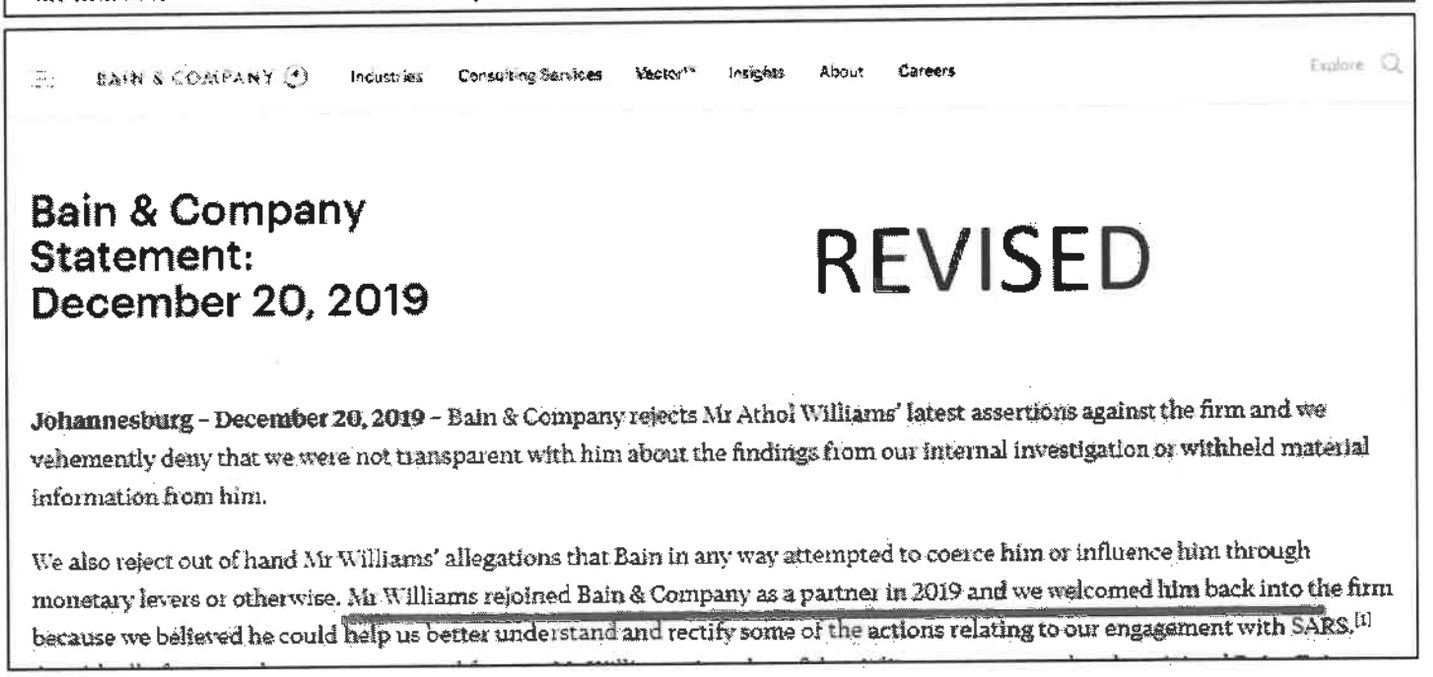
BAIN & COMPANY Industries Consulting Services Vector™ Insights About Careers Explore

Bain & Company Statement: December 20, 2019

ORIGINAL

Johannesburg – December 20, 2019 – Bain & Company rejects Mr Athol Williams' latest assertions against the firm and we vehemently deny that we were not transparent with him about the findings from our internal investigation or withheld material information from him.

We also reject out of hand Mr Williams' allegations that Bain in any way attempted to coerce him or influence him through monetary levers or otherwise. Mr Williams unilaterally approached us to rejoin the firm in 2018 and we welcomed him back into the firm because we believed he could help us better understand and rectify some of the actions relating to our engagement with



BAIN & COMPANY Industries Consulting Services Vector™ Insights About Careers Explore

Bain & Company Statement: December 20, 2019

REVISED

Johannesburg – December 20, 2019 – Bain & Company rejects Mr Athol Williams' latest assertions against the firm and we vehemently deny that we were not transparent with him about the findings from our internal investigation or withheld material information from him.

We also reject out of hand Mr Williams' allegations that Bain in any way attempted to coerce him or influence him through monetary levers or otherwise. Mr Williams rejoined Bain & Company as a partner in 2019 and we welcomed him back into the firm because we believed he could help us better understand and rectify some of the actions relating to our engagement with SARS.[1]

https://www.bain.com/offices/johannesburg/sars-statement-dec20/

ANNEXURE "AW215"

AW215

atholwilliams@hotmail.com

From: Athol Williams
Sent: 09 January 2020 17:19
To: Cottrell, Dale
Subject: RE: Amount owed to Bain

Dale,

Which soft copy documents? I don't think its appropriate for you to ask me to delete emails, the only proof of my engagements with Bain, especially at a time when Bain is challenging my integrity.

I consider the financial matter settled.

Regards
Athol

From: Cottrell, Dale <Dale.Cottrell@Bain.com>
Sent: 08 January 2020 17:48
To: Athol Williams <atholwilliams@hotmail.com>
Subject: RE: Amount owed to Bain

Athol

Thanks for your emails

I can confirm return of the hard copy documents.

Would be good if you can confirm you have also deleted the soft copy documents you previously mentioned

In relation to the final settlement amount, we are reviewing the amounts you owe Bain and we will revert to you with any outstanding amounts

Regards,
Dale

Dale Cottrell
Partner
Bain & Company (Milan) | Via Crocefisso, 10, 20122 Milano MI, Italy
Tel: +39 02 582881 | Fax: +39 02 58288887 | Mobile : +39 3451632382
mailto:dale.cottrell@bain.com | web: www.bain.com

Executive Assistant : Preeti Grover | Email : Preeti.Grover@bain.com | Mobile : +971529182582

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Tuesday, January 7, 2020 12:16 AM
To: Cottrell, Dale <Dale.Cottrell@Bain.com>
Subject: RE: Amount owed to Bain

Dale

Attached is the courier slip for the 2 documents that I sent to John Senior in December. Just wanted to confirm that he received the documents.

ANNEXURE "AW216"

AW216

atholwilliams@hotmail.com

From: Senior, John <John.Senior@Bain.com>
Sent: 16 April 2019 13:30
To: Athol Williams
Subject: RE: Moving forward

No problem. I've dropped Russ a note and will get back to you as soon as he responds.

I'm not in tomorrow, so have a great break over Easter.

John

John Senior
Partner
Bain & Company, Inc. | 10 The High Street, Melrose Arch | Johannesburg 2076 | South Africa
T: +27 11 012 9189 M: +27 60 991 5071
mailto:John.Senior@bain.com | web: www.bain.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Tuesday, April 16, 2019 12:28 PM
To: Senior, John <John.Senior@Bain.com>
Subject: Re: Moving forward

John,

Just to clarify, there is no change in my commitment to Bain and what we are setting out to achieve in Africa and I fully intend to accept the offer to rejoin when I receive it even though I have no indication at this stage of what the offer might look like.

I am just trying to be fair to my wife and UCT with whom I have numerous commitments already in place - undoing these at the last minute will cause havoc and hurt my reputation.

There is no sudden change because I have been trying to get clarity for months. Russ was very clear when he would get back to me and when he didn't I sent him an email and spoke to you. I respect the fact that folks are massively busy but I don't think I've had any unreasonable expectations.

My proposal was merely to release some of the pressure I'm feeling. Apologies for the anxiety caused.

Anyway, you've asked me to trust you and I do. Looking forward to chatting soon.

Athol

-------- Original message --------
From: "Senior, John" <John.Senior@Bain.com>
Date: 2019/04/16 10:42 (GMT+02:00)

To: Athol Williams <atholwilliams@hotmail.com>
Subject: RE: Moving forward

May be closer to 11.30

John Senior
Partner
Bain and Company
M: +27 60 9915071

From: Athol Williams <atholwilliams@hotmail.com>
Date: Tuesday, Apr 16, 2019, 9:01 AM
To: Senior, John <John.Senior@Bain.com>
Subject: RE: Moving forward

John,

Happy to chat on the phone or when I'm in the office tomorrow and Thursday. Not a change and I remain on the path to rejoining, just suggesting the timing change which I think is actually beneficial. Also trying to bring some certainty into my life.

Athol

From: Senior, John <John.Senior@Bain.com>
Sent: 16 April 2019 08:04
To: Athol Williams <atholwilliams@hotmail.com>
Subject: RE: Moving forward

Athol,

Why the sudden change of direction? Russ and I thought we were on a path for you to rejoin Bain. Could we chat on the phone.

John

John Senior
Partner
Bain & Company, Inc. | 10 The High Street, Melrose Arch | Johannesburg 2076 | South Africa
T: +27 11 012 9189 M: +27 60 991 5071
mailto:John.Senior@bain.com | web: www.bain.com

From: Athol Williams <atholwilliams@hotmail.com>
Sent: Tuesday, April 16, 2019 7:59 AM
To: Senior, John <John.Senior@Bain.com>
Subject: Moving forward

John,

I propose that I remain as an Adviser for the remainder of the year and serve on the Board. This allows me to do all that we discussed while still offering Bain my independence which will be valuable in the short-term as we work through the rebuild and is beneficial to the Board which would be dominated by Bain in the short-term if I'm not independent. I suggest that we review the situation at the end of the year with regard to me joining permanently. I am also happy to serve as a Bain Academy trustee and on the advisory board of Bridgespan.

This arrangement would offer me short-term certainty around work and will allow me to fulfil the commitments I've made to UCT and others.

Best

Athol

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ANNEXURE "AW217"

AW217

BAIN & COMPANY

Bain & Company South Africa, Inc.
10 The High Street
Melrose Arch, 2076
Johannesburg
South Africa

Tel: +27 11 012 9100
Fax: +27 11 012 9101

May 9, 2019

Athol Williams
Via e-mail

Dear Athol:

We are pleased that you've decided to re-join the Partnership as a Vice President of Bain & Company. We will affiliate you with the South Africa office and as a member of our Strategy, Financial Services and Sustainability & Corporate Responsibility practices, though you will join a global partnership that thrives on a culture of teamwork and collaboration across boders and clients.

Throughout the shared process and conversations with our team, we trust we built your excitement and commitment to our mission of delivering results and working with change-oriented senior executives to make their companies and organizations more valuable. We take great pride in working with clients to set new standards of excellence in our respective industries. We cherish our multi-year or 'balance sheet' approach to clients and teams. Our core values around mentorship and apprenticeship of our people, continuous learning, meritocracy, teamwork and trust will hopefully be part of your decision to join our distinctive partnership.

My colleagues and I are excited to welcome you and invest in your integration and success. We have great confidence in your fit with our values as well as your ability to contribute and build an accelerated career here at Bain & Company.

Please see the following letter that details our compensation and benefits offer and is accompanied by our standard Worldwide confidentiality and non-compete agreement, CDC summary and Use of Partner Title memo. This should mirror our conversation outlining our principles and specific initial terms (though we recognize the standard documents tend to wrap that in long paragraphs.) We would need your signature on both documents to acknowledge your acceptance of our offer. I certainly stand ready to answer any questions.

We are thrilled to welcome you to our global team and partnership. We believe it is an incredibily fulfilling place to grow one's career, make an impact as a seasoned executive and professional, and develop lifelong mentors and friendships. I look forward to being part of that journey with you.

Once again, let me know if we can answer any questions for you or your family, and I'll close with my hope that we are soon saying "Welcome Partner!"

Best regards,

Russ Hagey

BAIN & COMPANY

Dear Athol:

Outlined below are the details regarding your compensation and benefits as a Vice President of Bain & Company ("Bain" or the "Company"). We've mutually agreed that you will start on May 15, 2019 with a part-time allocation of 60%.

COMPENSATION

The Vice Presidents' compensation review cycle is based on Bain's fiscal year, which commences January 1 and ends on December 31. Compensation for Vice Presidents consists of two elements: (1) base salary, which is set each January and is paid monthly; and (2) a discretionary performance bonus based on, among other criteria, firm, regional, office and individual performance. These elements are explained in more detail below:

1. Base Salary

   Upon joining, your annualized base salary adjusted for your sixty percent (60%) allocation will be ZAR 2,550,000 paid monthly less required withholdings and other authorized deductions, beginning with first paycheck. It is expected that this base will not be subject to change until January 1, 2021, at the earliest, unless there is a general change in base salary levels for the Director and Vice President group before then. Please note that base salary may be reviewed periodically and adjusted at the firm's discretion to meet our business needs.

2. Global Partner Discretionary Performance Bonus

   You will be eligible for an annual discretionary performance bonus, subject to the factors mentioned above as well as your continued active employment. The performance bonus will be determined and communicated to you shortly after the financial close of the fiscal year. Generally, Vice Presidents receive an advance payment on this performance bonus award on September 30th and December 31st. The amount of each advance payment is at the discretion of the Board of Directors and in general will be up to twenty five percent of your estimated performance bonus award. You must be actively employed by the firm 30 days preceding the payment date as well as on the pay date itself, in order to receive the September and December advances. Typically, on March 31st you will then receive a bonus payment equal to an amount that will bring the total performance bonus payments made to date (Sept and Dec advances, plus March) to seventy five percent of your annual performance bonus award. The remaining twenty five percent of the performance bonus award will normally be paid on June 30th. Interest will be added to the March and June payments and you must be actively employed on the pay date in order to receive the March and June bonus payments. This payment schedule (including timing and allocation) may be changed at any time, at the firm's discretion. Finally, regular or repeated bonus payments should not be construed as a commitment of future payments.

BAIN & COMPANY

SIGNING BONUS

When you start work (currently assumed to be May 15, 2019) you will receive a signing bonus of ZAR 2,000,000. Signing bonuses are processed in the normal payroll schedule. Assuming a May 15, 2019 start date, you can expect the bonus to be paid in the the first full payroll cycle following your start. 50% of the signing bonus will vest after 12 complete months of service; and the final 50% will vest after 24 complete months of service. Should you terminate your employment with Bain within the first 24 months, you will be required to repay in full the gross total of any unvested amounts.

When you start work you will also receive an additional one time signing bonus of ZAR 500,000 to offset local travel and housing expenses. Signing bonuses are processed in the normal payroll schedule. Assuming a May 15, 2019 start date, you can expect the first installment to be paid in the first full payroll cycle following your start date.

FIRST AND SECOND YEAR COMPENSATION

In our experience, the key to a successful long-term career with Bain is to use the first two years to integrate fully. To support that objective, we believe it is appropriate to modify our normal meritocratic compensation system through your first 19.5 months of employment. Through December 31, 2020, you will have a protected level of compensation, assuming continued employment at a 60% allocation on bonus installment payment dates as described in Section 2 and in the illustration below.

Your annualized total protected annualized compensation (base salary plus performance bonus) adjusted for your 60% allocation will be ZAR 6,000,000 (ZAR 10,000,000 full-time) for your first 19 months of employment.

For illustrative purposes, assuming a performance bonus award is approved by the firm for the entire Director and Vice President group, your annualized 2019 bonus will be ZAR 3,450,000. The award will be pro-rated by approximately 7.5/12 for the months worked in 2019, and will therefore be approximately ZAR 2,156,250. The award will be paid in four installments in: September and December 2019, and March and June 2020, subject to any changes in the timing of bonus payments agreed to for the entire Director and Vice President group.

In 2020 your total compensation will be calculated in accordance with our normal procedures. However, assuming a performance bonus award is approved by the firm for the entire Director and Vice President group, and assuming continued employment at a 60% allocation, you will have a protected annualized floor (base salary and performance bonus) of ZAR 6,000,000 through December 31, 2020. The bonus award will be paid in four installments in: September and December 2020, and March and June 2021, subject to any changes in the timing of bonus payments agreed to for the entire Director and Vice President group.

In 2021 your total compensation will be calculated in accordance with our normal procedures.

We reserve the right to reduce any bonus payment in the event of deterioration of the firm's global finances or the finances of the region in which you are located. This linkage to our global partnership is reflective of our values around partner teaming and the application of our meritocracy and judgment principles as applied to all compensation by the compensation and promotion committee.

INVESTMENT OPPORTUNITIES

As a Vice President, you will be offered the same opportunity as other Directors and Vice Presidents to participate in future Bain sponsored investment opportunities, subject to applicable securities laws.

BAIN & COMPANY

TITLE

As a Vice President, you will be known internally and externally for marketing purposes as a 'Partner'. Attached is a memo that details the usage of this title.

BENEFITS

Bain makes available to its employees (and their eligible dependents) participation in many attractive benefit plans including private medical, long-term disability, group term life, accidental death and business travel accident insurance. Upon your arrival you will receive additional information regarding these benefits.

ADDITIONAL VICE PRESIDENT BENEFITS

1. Vacation

   You will be entitled to an annual vacation of 15 working days based on a 60% allocation (25 days full-time). All calendar days which are not Saturdays, Sundays, or statutory public holidays shall be deemed working days.

2. Executive Physical Examination Program

   The company will reimburse Vice Presidents/Directors under the age of 35 for one complete executive physical examination every other fiscal year. Upon reaching age 35, Vice Presidents/Directors will be reimbursed by the company for annual executive physicals.

3. Technology Program

   As a Vice President, the company will provide you a suite of products to assist you in your role.

BACKGROUND CHECKS

Bain is committed to doing top caliber work for our clients and the firm, and as such, we take great care in recruiting outstanding individuals to be members of our team. Part of our recruitment process is conducting relevant pre-employment background checks on those individuals to whom we extend an offer. All offers are extended contingent upon successful completion of a background check. Please also note that future background checks may be required throughout the course of your employment to meet client or other business need such as case assignments or access to client sites. Such screens could include, but not be limited to, updated and/or new criminal and/or credit screens (where legally permitted); updated employment and education verification as well as drug tests (where legally permitted). By accepting this offer of employment, therefore, you are accepting that such screens may become a condition of your employment and/or work assignments at Bain and agree to cooperate in providing the appropriate authorizations.

PRIOR RESTRICTIONS

By executing a copy of this letter, you are representing to Bain that there are no contractual or other restrictions which you are subject to which would prohibit you from accepting our offer or performing the services contemplated by this letter (for example, a non-compete provision in a prior employment contract) which you have not disclosed to Bain. Bain expects that you will observe any confidentiality obligations to your prior employers or clients.

BAIN & COMPANY

As with all Directors and Vice Presidents, you will be required to sign a binding confidentiality and non-compete agreement.

MOBILITY

As a Vice President, you will work in jurisdictions other than your home location, which may result in you incurring individual taxes in several jurisdictions. In this event, you will be responsible for any individual incomes taxes incurred and for the preparation and filing of appropriate tax returns. As client and firm needs change, Bain reserves the right to make adjustments to our practices regarding your payroll designation or other conditions of your employment and benefits. Changes of this type may be guided by changes in tax or regulatory requirements, our own guiding principles regarding tax policy, the firm's risk stature and/or overall firm economics.

Citizens and Permanent Residents of the United States will participate in the United States Social Security and Medicare programs (FICA) while employed in South Africa and as such will be responsible for the employee co-share.

ACCEPTANCE DEADLINE

This offer letter will remain in effect and must be accepted on or before May 14, 2019.

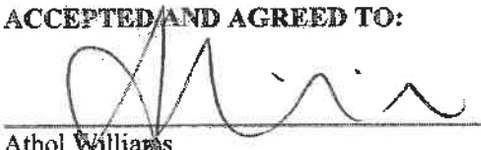
We are pleased to extend this offer to you and look forward to the possibility of your re-joining Bain. While you are making your decision, if there are any further questions, please do not hesitate to contact me.

Sincerely,

Russ Hagey
Director

Enclosure

ACCEPTED AND AGREED TO:



Athol Williams

MAY 12, 2019

Date

ANNEXURE "AW218"

AW218

Global Confidentiality, Intellectual Property and Non-Competition Agreement (Global)

I ATHOL WILLIAMS, am an individual residing at ASHTON PARK, CAPE TOWN, entering into this agreement (the "Agreement") this 21K day of MAY, 2019 with Bain & Company, Inc. and its subsidiaries, affiliates and assignees (together, "Bain").

I make this Agreement in consideration of my employment with Bain. I acknowledge and agree that my covenants in this Agreement are given in exchange for, among other things, my employment, the terms and conditions of such employment, and my access to Bain's Confidential Information (as defined below within this Agreement). My covenants made in accordance with this Agreement are not exclusive to my present role, title, compensation, location, or responsibilities. The terms of this Agreement survive any change in my role, title, responsibilities, compensation, benefits, location, or any other term or condition of my employment, and continue in full force and effect subsequent to the end of my employment for any reason.

I understand that the purpose of this Agreement is to safeguard Confidential Information, Intellectual Property Rights, and Bain's legitimate business interests, professional goodwill, reputation, and objectives as a global consulting firm. With this understanding, I agree as follows:

1. Confidential Information. During and following my employment with Bain, I agree to: (i) treat as confidential all Confidential Information; (ii) not use Confidential Information except in furtherance of the services I provide to Bain as an employee, and in no event will I use Confidential Information for my own benefit; (iii) take all necessary measures to prevent the unauthorized use, disclosure, duplication or misuse of Confidential Information; (iv) not disclose, communicate, publish, or disseminate Confidential Information to any unauthorized third party; and (v) comply with all applicable data privacy and security laws. I also understand this provision is not intended to prevent the proper use and/or disclosure of Confidential Information that falls within legally protected rights provided I am acting in good faith and such use and/or disclosure is done as prescribed by applicable laws.

"Confidential Information" means any and all technical, business, client or proprietary information disclosed to me, directly or indirectly, by Bain, any Bain client or any party acting on behalf of Bain or its client, in any manner, whether or not marked or declared as "Confidential" or "Proprietary" including, but not limited to, information regarding Bain's business strategies and practices, operations, advice, solutions, methodologies, analytics, frameworks, trade secrets, know-how, technology, software, source code, plans or intentions, services, approaches, financial data, relationships with any third party, client lists and/or information regarding Bain's employees, clients, vendors, consultants, and/or affiliates. Confidential Information also includes any information that should reasonably be expected to be treated as confidential or proprietary.

Confidential Information shall not, however, include any information which I can demonstrate by documented evidence is: (i) known or available by publication, commercial use or otherwise other than as a result of unauthorized publication or disclosure; (ii) known and has been reduced to tangible form by me before Bain's disclosure to me and is not subject to restriction; (iii) independently developed by me where I did not have access to Confidential Information; (iv) lawfully obtained by me from a third party unrelated to the work being performed by

Bain and who has the right to make such disclosure to me; or (v) released, in writing, for public disclosure by Bain.

I acknowledge Confidential Information is the exclusive property of Bain, is valuable, and Bain has a legitimate need to protect it from disclosure. I agree that (i) in addition to any other remedies available at law or in equity, Bain shall be entitled to obtain equitable relief, including, without limitation, temporary restraining orders and temporary and permanent injunctive relief and specific performance (without the requirement of posting a bond or other security or proof of actual damages) as well as to an equitable accounting of earnings, profits and other benefits arising from a violation of any such restrictions; and (ii) no claimed breach of contract or violation of law by Bain shall operate to extinguish my obligations under this Agreement.

Upon Bain's written request or otherwise upon my departure from Bain's employment (even absent a formal request from Bain), I shall promptly return or destroy, at Bain's option, all Confidential Information (and copies thereof) in my possession or control retained in any form.

Notwithstanding anything contained in this Agreement to the contrary, I understand that I will not be held legally liable under any trade secret law within the United States or elsewhere (as applicable) for the disclosure of a trade secret that (a) is made (i) in confidence to a government official within the United States or elsewhere (as applicable), either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. I understand that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

2. Intellectual Property Rights. "Intellectual Property Rights" means copyright and related rights, trademark rights (and goodwill associated therewith), copyright in database compilations, software, source code, frameworks, industry data and insights, design rights, patent rights, processes, techniques, discoveries, analyses, methodologies, trade secrets, database rights, moral rights, right of publicity, authors' rights, reports, contract and licensing rights, applications, inventions, improvements in procedure made or discoveries conceived or entitlements to apply for any of the foregoing and all other intellectual property rights or proprietary rights that exist currently or in the future whether registered or not and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the United States or any other state, country or jurisdiction, which are conceived, created or developed by me during my employment with Bain and relate to the business of Bain as determined by Bain in its sole discretion, whether I conceive of or develop it during or after regular business hours or on my own or with others (together, the "Bain Works").

I agree to cooperate in good faith to immediately facilitate the full exercise and ownership by Bain of such Bain Works and do all acts and procedures required to obtain Bain's ownership in all Bain Works. I agree that I will refrain from any actions or from any abuse of rights including moral rights, which would prejudice such exercise, exploitation or ownership by Bain. I also acknowledge that the entire right, title and interest in and to the Bain Works shall remain in the full ownership of Bain & Company, Inc., regardless of the Bain entity or affiliate through which I may be employed and regardless of the jurisdictions in which such entities or affiliates exist.

I appoint Bain as my legal authority to act on my behalf to execute and complete patent, trademark and copyright applications,

registrations, and related documents as described above. Bain shall have the right to exercise this power of attorney when I am not available, able or willing and it shall continue in effect after my employment with Bain terminates for any reason.

I have designated on the attached Schedule A all pre-existing inventions and works that I have conceived of, or developed, or acquired solely or jointly with others prior to the execution of this Agreement (the "Pre-Existing Works"). I agree not to assert ownership or other rights against Bain or Bain's clients in items that are not specifically identified in Schedule A. I agree that I shall not incorporate any Pre-Existing Works into any Bain Works without the written approval of Bain in each instance. As requested by Bain, I also agree to enter into an appropriate license agreement with Bain in the event Bain seeks or approves the use of any of the Pre-Existing Works identified on Schedule A.

3. Employee Publications. I agree during my employment and for one (1) year after my employment ends for any reason to first submit to Bain for review prior to publication, copies of all business-related writings and materials which I propose to publish in business related publications ("Publications"). I agree that Bain has a right to require me to delete from such writings and materials any references to Bain and any Confidential Information and/or Bain Works concerning Bain or its clients and that Bain's determination in these matters will be in its sole and absolute discretion and thus final and binding on me. I understand that, as stated in Section 1, I am not to disclose Confidential Information and/or Bain Works in any writing or material which I propose to publish at any time. I further acknowledge and agree that any Publications conceived or developed in whole or in part during the course of my employment with Bain and/or related to the business of Bain shall constitute Bain Works.

4. Restrictions on Employment and Business Relationships.

4.1 I acknowledge the duty to advance the interests of Bain faithfully and to refrain from taking any action inconsistent with its interests. I further acknowledge the nature of Bain's business and the efforts it undertakes to develop, preserve, and protect its competitive advantage. I agree that during the course of my employment with Bain and for a period of one (1) year after my employment ends for any reason, I will not be employed by, be associated with, have an ownership interest in or otherwise have a business relationship with any person or company that is a Bain competitor, identified on the attached Schedule B. I understand that Schedule B may be modified from time to time by Bain as a result of changes in the industry, in its sole and absolute discretion, without my agreement and consent.

4.2 I acknowledge that Bain takes significant steps to develop, preserve, and protect the relationship it has with its clients and that these relationships are critical to its business. I agree that for a period of one (1) year after my employment with Bain ends, I will not directly or indirectly on behalf of myself or on behalf of any other person or entity provide consulting services similar to what I performed as a Bain employee to any person, company or organization that is or was a Bain client or prospective client for which I performed services or participated in solicitation or client development on behalf of Bain during the three (3) year period preceding the end of my employment for any reason.

The one (1) year period in this Section 4 of this Agreement is referred to as the "Restrictive Period." I understand that only to the extent applicable, should I be eligible for and undertake a leave of absence during which no active employment with Bain occurs and such leave is in connection with the ending of my Bain employment, the Restrictive Period shall be reduced by the time I have spent on

such leave of absence (rather than the date on which my employment ends).

I understand that this Agreement shall not prevent my beneficial ownership for investment purposes of two percent (2%) or less of any class of equity securities of any company that are registered under the Securities Exchange Act of 1934, as amended, or comparable organization outside of the United States.

5. Non-solicitation of Bain Employees or Clients.

5.1 I acknowledge that Bain takes significant steps to develop, preserve, and protect the relationship it has with its employees and/or independent contractors and that these relationships are critical to its business. Except with Bain's prior written approval, I agree that for one (1) year after my employment with Bain ends, I will not, nor will I assist another company, individual or organization to, solicit or hire, or attempt to solicit or hire, any employee or independent contractor who was employed or engaged by Bain as of the date my employment ends, and who: (a) was in possession of or had access to Confidential Information belonging to Bain; or (b) was likely to be able to influence the client relationship(s), trade connections or workforce of Bain.

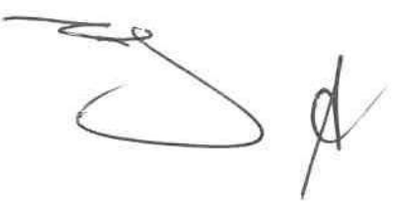
5.2 I reaffirm my acknowledgment in Section 4.2. I agree that for one (1) year after my employment ends, I will not directly or indirectly on behalf of myself or on behalf of any other person or entity solicit, call-on, divert, take away or do business with (or attempt to solicit, call-on, divert, take away or do business with) any person, company or organization that is or was a Bain client or prospective client for which I performed services or participated in solicitation or client development on behalf of Bain during the three (3) year period preceding the end of my employment.

The one (1) year period in this Section 5 also falls under the Restrictive Period. I understand that only to the extent applicable, should I be eligible for and undertake a leave of absence during which no active employment with Bain occurs and such leave is in connection with the ending of my Bain employment, the Restrictive Period shall be reduced by the time I have spent on such leave of absence (rather than the date on which my employment ends).

6. Remedies.

6.1 I agree that if I violate any of the terms of this Agreement, I will provide an accounting to Bain and repay Bain for all of the profits, compensation, commissions, remuneration, or other benefits that I directly or indirectly realize or may realize as a result of such violation. I acknowledge and agree that this remedy shall be in addition to and not a limitation on any other rights or remedies to which Bain may be entitled.

I acknowledge that, in view of the nature of Bain's business, the restrictions and limitations contained in this Agreement are reasonably necessary to protect the legitimate business interests of Bain and its clients, its key business connections and to ensure the stability of its workforce, and that Bain would not have entered into this Agreement unless I agreed to the restrictions and limitations contained in it, and that any violation of such restrictions may result in irreparable injury to Bain and for which damages may not be an adequate remedy. I therefore acknowledge and agree that, in addition to any other remedies available at law or in equity, Bain shall be entitled to obtain equitable relief, including, without limitation, temporary restraining orders and temporary and permanent injunctive relief and specific performance (without the requirement of posting a bond or other security or



proof of actual damages) as well as to an equitable accounting of earnings, profits and other benefits arising from a violation of any such restrictions. I further acknowledge and agree that no claimed breach of contract or violation of law by Bain shall operate to extinguish my obligations under this Agreement. If a court of competent jurisdiction or arbitrator determines that any provision of this Agreement is invalid or unenforceable, the court or arbitrator shall have the authority to modify and/or "blue pencil" this Agreement to render it enforceable and to effect the intent of the parties to the fullest extent permitted by law.

I also acknowledge and agree that in the event I breach any of the terms of this Agreement including, but not limited to, the Restrictive Period, the Restrictive Period shall be extended automatically. The duration of such extension shall equal the period of time between the date of the first violation and the date of the last violation. I further acknowledge and agree that in the event I breach any of the terms of this Agreement, and Bain is successful in whole or in part in any legal or equitable action to defend its rights under or to enforce any terms of this Agreement, I shall be required to reimburse Bain for all costs, expenses and reasonable attorneys' fees associated with such action.

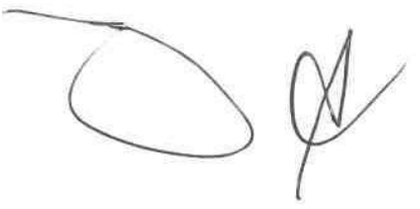
6.2 I agree that (a) except as provided in Section 6.3, any claim or controversy arising out of or relating to this Agreement shall be settled by arbitration before a single arbitrator who shall be an attorney at law; (b) such claims or controversies may include but are not limited to claims by Bain that I have violated any one or more of the restrictions in this Agreement; (c) such arbitration shall take place in Boston, Massachusetts in accordance with the Employment Arbitration Rules of the American Arbitration Association, unless otherwise agreed by Bain; (d) if the arbitrator finds that I have violated any of the provisions of this Agreement or that my actions threaten to violate such provisions, the arbitrator may order me to desist from such violation or threatening actions and in addition, may make an award like the award provided for in Section 6.1, and that the arbitrator's order will be valid whether or not a similar order would be valid in the same circumstances if issued under the equity powers of a court; and (e) judgment upon the arbitrator's award may be entered in any court having jurisdiction.

6.3 I acknowledge and agree that Bain at its option shall have the right to submit a claim arising from or relating to a violation of this Agreement to a court having jurisdiction, in lieu of or in addition to the procedure set forth in Section 6.2. I agree that Bain is entitled to obtain injunctive relief from such court to enforce the terms of the Agreement in addition to any other remedies available to it from such court. I hereby consent to the personal jurisdiction of such court.

7. Severability. I agree that if any provision of the Agreement is found by a court to be unenforceable in whole or in part, the remainder of the Agreement shall be enforced to the fullest extent permitted by law.

8. Waivers and Amendments. I understand that any waiver or amendment of this Agreement by Bain will be effective only if it is in writing. I agree that if Bain waives any provision of this Agreement such a waiver will be limited to the time and circumstances to which the waiver applied. I agree not to construe such a waiver as a waiver of the provision at any other time or circumstance.

9. Governing Law. I acknowledge and agree that this Agreement itself and my performance



hereunder shall be governed by the laws of the State of New York (without regard to its conflicts of laws principles) regardless of what Bain office I work in or to which I am assigned.

10. Successors and Assigns. Bain shall have the right to assign, without my consent, this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns.

11. Integration. This Agreement constitutes the entire agreement and understanding between the parties on the subject matter covered and supersedes any and all prior agreements and understandings, whether written or oral, relating to the subject matter hereof. To the extent I have signed an employment agreement and/or a localized Confidentiality, Intellectual Property and Non-Competition Agreement with the Bain entity that is my direct employer, such agreements shall remain in effect if explicitly intended to co-exist with this Agreement in connection with my Bain employment. In the event the terms are inconsistent, the terms of the agreement that is most enforceable within the jurisdiction in which enforcement is sought shall prevail, provided that Bain & Company, Inc. at all times shall retain ownership of all Confidential Information, Intellectual Property and Bain Works.

12. Captions; Construction. Captions contained in this Agreement are inserted only as a matter of convenience and shall in no way define, limit or extend the scope or intent of this Agreement or any of its provisions or in any way affect their construction or interpretation. The parties further acknowledge that this Agreement shall not be construed more strictly against either of them.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. A facsimile, copy or .pdf of a signature hereto shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Bain & Company, Inc.

Name:
Title:
Date:

Name: ARTHUR WILLIAMS
Date: MAY 12, 2019

SCHEDULE A

Proprietary Information

SCHEDULE B

Bain Competitors*

A.T. Kearney
Accenture
AlixPartners
Alvarez and Marsal
The Boston Consulting Group
EY
Deloitte
LEK Partnership
McKinsey & Company
Monitor
Oliver Wyman Group
Parthenon
PricewaterhouseCoopers
Roland Berger
Strategy&

*includes all affiliates, successors, and assigns of the companies listed in this schedule

ANNEXURE "AW219"

AW219

To: Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Dutiro, Innocent[Innocent.Dutiro@Bain.com]; Timpano, Stephane[Stephane.Timpano@Bain.com]
From: Massone, Vittorio
Sent: Wed 2/26/2014 6:46:22 AM (UTC)
Subject: Quick note - please keep confidential

Guys,

Met President yesterday night in CT. All good.
There was also Tom (they guy we met re Sars) and it really seems he's getting that job, after elections.
He was very friendly with me and seems a smart guy to work with.

Best,
V