

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

**STATEMENT OF JEAN-CHRISTOPHE MIESZALA**

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## 1 Introduction

- 1.1 This statement is submitted to the Judicial Commission of Inquiry Into Allegations of State Capture (the “**Commission**”) on behalf of McKinsey & Company at the request of the Commission.
- 1.2 I am a French national and Senior Partner at McKinsey & Company based in Paris, France. I have served as the Chief Risk Officer (“**CRO**”) of McKinsey & Company since January 2018, and prior to that I was the Managing Partner for France. As the CRO, I oversee our firm risk, audit, compliance, security, and legal functions.
- 1.3 While I have never been based in South Africa, since becoming McKinsey & Company’s CRO in 2018 (after the events at issue), I have been deeply involved in our efforts to understand what happened here, to review our work for the clients at issue, to determine where the firm fell short, and to put in place new measures to guard against the risk that this could happen again. I was, for instance, involved in our voluntary commitment to repay our fees to Eskom on the Turnaround Programme and supported our Global Managing Partner’s decision to come in person to South Africa to set out the status of our investigation and express our deep regrets and apologies.
- 1.4 The facts contained in this statement are informed by the extensive investigation that McKinsey & Company has undertaken and by new information that has come to light in the Commission’s proceedings. Where indicated, certain information that is referred to was not available to McKinsey & Company’s investigation, but is evidence which the Commission has very recently shown to McKinsey & Company to enable me to make this statement. To add further context, I have annexed excerpts from Mr Sifroadu Yeboah-Amankwah’s (“**Mr Yeboah-Amankwah**”) statement that was submitted to the Commission in April 2019 and that provides further details on many important areas. Mr. Yeboah-Amankwah served as the Managing Partner of McKinsey & Company’s Johannesburg office during much of the relevant time period, but he currently resides in the United States and (to our regret) recently chose to leave McKinsey & Company for another highly regarded professional opportunity.
- 1.5 As the CRO, I have closely followed the important role the Commission is playing in getting to the bottom of State Capture allegations that have shaken South Africans’ trust in their government and private sector firms. These events have cast serious doubts on the ability of state-owned enterprises (SOEs) and private sector firms to meet their fundamental obligations to the South African people. On behalf of McKinsey & Company, I want to recognise the critical contributions made by civil society, journalists, and individuals of integrity who have brought to light many of these issues, often at great personal sacrifice. I also want to acknowledge to the Commission that our firm appreciates that the efforts of these patriotic individuals is, and will continue to be, immensely important to the future of South Africa.
- 1.6 I also want to echo the sentiments of other global leaders at McKinsey & Company and of our colleagues based in Johannesburg when I say that this situation is a source of great regret to our firm. I can say with certainty that it deeply troubles our partners and colleagues that our firm is associated with allegations of State Capture. As a firm, we aspire to serve our clients in ways that both improve performance and make a positive difference in the world. I therefore appear before you as a representative of McKinsey & Company and as an adherent to responsible corporate citizenship. As such, I intend, in

all honesty, to put before the Commission, McKinsey & Company's best understanding of these events and to accept responsibility for the errors of judgement we have made. In the aftermath of the events at issue, our firm continues to work hard to make amends. We have taken very seriously the lessons we have learnt from being associated with these unwelcome allegations.

## 2 Overview

- 2.1 Before we go into the details, I also wanted to thank the Commission for its important role in addressing these matters and provide a high-level overview of the statement that follows.
- 2.2 For more than three years, we have undertaken an extensive and thorough investigation with the help of two global law firms. This involved numerous attorneys and included the collection of nine million documents, the review of more than one million emails, financial records, and other documents, and over 100 interviews of relevant individuals.
- 2.3 This statement is not the first time we have addressed these events and allegations. We have made a series of public statements over the years, from as far back as 2017. We have cooperated with a number of reviews looking into these matters including those launched by Parliament, National Treasury, Eskom, and Transnet. As new information has emerged, we have taken additional responsible actions both within South Africa and as a global organisation to right our mistakes and put in place more robust safeguards for the future. As a part of this, where we found violations of our professional standards, we both disciplined individuals in line with our procedures and made improvements to our governance processes to avoid any such violations in the future.
- 2.4 McKinsey & Company has now voluntarily committed to repaying the entirety of the fees that we earned on projects with Regiments Capital ("**Regiments**") at both Transnet and South African Airways ("**SAA**"), following the same principles that led us to repay what we earned at Eskom more than two years ago. We stand ready to make this repayment as soon as an appropriate legal framework is established that allows us to do so lawfully and with finality for the full benefit of the respective SOEs and South Africa's people. As we did with the Eskom matter, we do so voluntarily, out of principle rather than legal obligation.
- 2.5 McKinsey & Company is motivated to make this commitment in response to the growing body of evidence provided by the Commission that suggests a pattern of misconduct by Regiments at these entities. This includes in particular Regiments having entered into an agreement—with Mr Salim Essa ("**Mr Essa**") and other individuals linked publicly to State Capture—to engage in a pattern of troubling payments that we were unaware of at the time the work was being conducted. (I leave open here and in the next paragraph the possible exception of Mr Vikas Sagar ("**Mr Sagar**"), a former partner of our firm whose circumstances are discussed more fully below.)
- 2.6 While we deeply regret being associated with Regiments and those connected to their actions, we take some consolation in the following: Now, more than four years after the events in question, neither our investigation nor (to our understanding) the Commission's investigation has uncovered evidence that our firm secured business through corruption or bribery at Eskom, Transnet, or SAA.

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

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

- 3.1 McKinsey & Company is a global management consulting firm with over 90 years of experience servicing a broad range of private, public, and social sector institutions. We are present in more than 130 cities and 65 countries and support more than 2,000 client institutions globally. McKinsey & Company teams help clients shape bold strategies to improve the way they work, embed technology where it unlocks value, and build capabilities to sustain enduring, positive change for their organisations, their people, and in turn society at large. McKinsey & Company invests in cutting-edge knowledge development and works on all levels of organisations, helping members of the organisations build their capabilities and execute their strategies.
- 3.2 Despite its global footprint, McKinsey & Company made a principled decision not to open an office in South Africa until 1995 because of a strong belief that any activity that might have aided the Apartheid regime would have been incompatible with the values our firm holds dear. The South African entity was incorporated as McKinsey and Company Africa Proprietary Limited, and I shall refer to it as “McKinsey”. Since opening with five consultants in 1995, McKinsey has worked to grow its service to South Africa through a particular focus on hiring local talent and offering local apprenticeship and mentoring. McKinsey currently employs over 150 people in Johannesburg and is proud that more than 60% are black South Africans. To put our service here in some context, in its 25 years in operation, McKinsey has delivered in the order of 1,000 projects in South Africa. In particular, we have served South Africa’s SOEs for over two decades, working with them on more than 350 engagements. In all of these engagements we sought to add value to their operating performance and to contribute to solving some of the most challenging and complex problems they faced. We did so because we recognised the importance of these SOEs to the overall health and growth of the South African economy. We pride ourselves on the depth, quality, and impact of our work.
- 3.3 Social responsibility is a core value to our firm. We are not perfect. We sometimes fail. But our purpose and our aspirations are clear. McKinsey remains unwavering in its commitment to do more to tackle societal challenges and has sought to invest in South Africa through providing pro bono consulting support to organisations and projects that help support South Africa’s transformation and social equality agenda. Some of these efforts include publishing insights on Reimagining South Africa, the McKinsey Leadership Program, the McKinsey Leadership Academy, the Social Advancement Foundation, and the Tirelo program which has the specific goal of helping South Africa address some of its unemployment challenges. Through this program we have been able to serve 44 small and medium enterprises in more than 12 industries through collaboration with a network of private equity firms, non-governmental organisations, and government institutions.
- 3.4 It is therefore with deep concern that McKinsey appears before the Commission associated with those believed to be involved in State Capture. I submit without

hesitation that this is not who we are, this is not the way we conduct our business, and this is not the way we would like to be perceived.

#### **4 McKinsey's Investigation**

- 4.1 Beginning in 2017, McKinsey publicly committed to assisting the authorities in getting to the bottom of allegations related to State Capture, cooperating with ongoing investigations, and helping to ensure responsible parties are held accountable. We continue to honour that commitment today.
- 4.2 McKinsey has undertaken an extensive and wide ranging effort for more than three years to get to the bottom of these events after allegations were raised in regard to McKinsey's work with SOEs in South Africa. McKinsey hired two global law firms, Norton Rose Fulbright and Morrison & Foerster, to independently lead this effort. McKinsey and these two firms have conducted an extensive and thorough review of the information available to us. This has informed our public statements and our submissions to numerous authorities.
  - 4.2.1 Norton Rose Fulbright is a highly reputable global law firm with offices in Africa, Asia, Australia, Europe (including in the United Kingdom), Latin America, the Middle East, and North America. The Norton Rose Fulbright team is led by senior director Mr Jeffrey Kron ("**Mr Kron**"). For over 40 years, Mr Kron has acted for major multi-national as well as local corporations, government-owned organisations, banks and financial institutions, and mining houses, amongst others, and has received wide-ranging recognitions. Mr Kron has been involved in significant commissions of inquiry as well as some of the largest investigations, arbitration, litigation, and class action cases in South Africa.
  - 4.2.2 Morrison & Foerster is a highly reputable global law firm with offices located in the United States, Asia, and Europe. The Morrison & Foerster team is led by partner Mr Charles Duross ("**Mr Duross**"), the global co-leader of Morrison & Foerster's Foreign Corrupt Practices Act (FCPA) and Global Anti-Corruption practice. Prior to coming to Morrison & Foerster, Mr Duross served as Deputy Chief in the Fraud Section of the U.S. Department of Justice (DOJ) Criminal Division, in which role he led DOJ's FCPA Unit. In this role he oversaw more than 150 investigations into corruption throughout the world, including in South Africa. Mr Duross also served as DOJ's principal representative to the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery, including serving as the US representative on the OECD team that conducted the Phase 2 review of South Africa's implementation of the OECD Anti-Bribery Convention.
- 4.3 These two firms have had full and unfettered access to all documents and information within McKinsey's control as well as to current and former McKinsey personnel, where they were willing to cooperate. Under my direction, they were given all of the resources and support they have requested to pursue this matter.
- 4.4 As a part of the investigation, Norton Rose Fulbright and Morrison & Foerster conducted a thorough internal investigation which included the collection of more than nine million documents and the review of more than one million emails, financial records, and other

documents. The review of these documents was undertaken by a group of as many as 65 full-time attorneys. The two firms have conducted more than 115 interviews of current and former McKinsey employees and have sought to discuss these events with others with relevant information, including Regiments who refused to speak with us about these issues.

- 4.5 McKinsey also hired a third-party forensics firm to conduct a thorough forensic review of phone records, devices, financial information, and expense records to further inform our review.
- 4.6 Our firm has committed significant resources to this investigation. Yet, obviously, we could only investigate what we had access to. Unlike the government authorities looking into these matters, we could not access personal emails nor could we interview people who refused to cooperate, as was the case, for instance, with the Regiments executives.
- 4.7 Having said that, to date, our own investigation has identified no suspicious payments to individuals or companies made or directed by McKinsey or any of its personnel. At the time of this writing, we are not aware of any external investigation that has found any such confirmed payments either.
- 4.8 As a part of our investigation, we also cooperated with numerous reviews in South Africa, participated in public forums to present what we had found, and cooperated with relevant enforcement agencies. We took seriously all information and documents from these investigations related to McKinsey and incorporated them into our review so that we could rely on both our internal sources as well as information compiled by others from sources not available to us.
- 4.9 The following is a high level summary of our cooperation with these investigations and I have attached documents describing our responses to some of those inquiries.
  - 4.9.1 **Parliamentary Portfolio Committee on Public Enterprises' Inquiry into Governance, Procurement, and the Financial Sustainability of Eskom (Parliamentary Inquiry):** In November 2017, Dr David Fine ("Dr Fine"), a senior partner at McKinsey who leads McKinsey's Global Public and Social Sector Practice, testified for several hours in front of Parliament. In addition, he submitted a detailed written statement with close to 200 pages of supporting annexures. **Annexure JCM1 – Dr David Fine Submission to Parliament, 11 November 2017.** Even as we do not agree with all of the findings of the Parliamentary Inquiry, we recognise the important role it played and hope that our perspective helped inform its work.
  - 4.9.2 **Eskom Review Proceedings:** In March 2018, Eskom initiated review proceedings in the High Court as a part of the process to determine the appropriate avenue for McKinsey to return the money earned on the Turnaround Program at Eskom as McKinsey had voluntarily committed to do in October 2017. As a part of these court proceedings, McKinsey submitted detailed affidavits and other filings recounting in detail our work on the Turnaround Programme and the Corporate Plan, the value these programs delivered, as well as our interactions with Trillian Management Consulting ("**Trillian**"). This process resulted in the July 2018 settlement as detailed further below.

- 4.9.3 **Question and Answer Session at the Gordon Institute of Business Science:** In July 2018, our newly elected Global Managing Partner, Mr Kevin Sneader (“**Mr Sneader**”), made significant public remarks about these matters, apologised on behalf of the firm, and participated in a question and answer session at the Gordon Institute of Business Science. This event was open to the public and provided an opportunity for any and all stakeholders including business leaders, industry bodies, the public at large, civil society representatives, and the media to pose questions to the most senior leader of McKinsey & Company. **Annexure JCM2 – Speech by Kevin Sneader at the Gordon Institute of Business Science Seminar, 9 July 2018.**
- 4.9.4 **National Treasury Investigation:** In 2018, National Treasury appointed Fundudzi Forensic Services (“**Fundudzi**”) to conduct an investigation into allegations related to Eskom and Transnet. McKinsey provided numerous detailed submissions totalling more than 80 pages (with hundreds of pages of annexures) to Fundudzi in furtherance of – and in reaction to – their draft and final reports. These submissions included an extensive summary of relevant contracts and events. After the final Fundudzi report was released in November 2018, McKinsey sent a letter to National Treasury identifying the specific areas in which McKinsey disagreed with the final report findings and recommendations. **Annexure JCM3 - Letter from McKinsey to National Treasury, 10 January 2019.**
- 4.9.5 **Mncedisi Ndlovu & Sedumedi (“MNS”) Attorneys Transnet Review:** In February 2018, Transnet hired MNS to look into the 1064 Locomotives Project. In response to inquiries from MNS, McKinsey cooperated fully and submitted detailed statements and numerous documents. **Annexure JCM4 - Letter from McKinsey to MNS, 30 October 2018.** While we generally accept their conclusions, we raised limited issues with some of the findings contained in their March 2019 preliminary report. **Annexure JCM5 - Correspondence with MNS, May 2019.** As a part of our dialogue in May 2019, MNS indicated to McKinsey that its findings of wrongdoing were “largely in respect of Transnet’s conduct and are not an indictment on McKinsey.” **Annexure JCM5 - Correspondence with MNS, May 2019.**
- 4.9.6 **Transnet Review:** Since our work with Transnet ended in 2016, we have engaged with Transnet’s management on a number of occasions to review the impact and value of our work there. Starting in May 2019, we engaged with Transnet’s management, including the acting CEO at that time, to review the 11 engagements that McKinsey worked on at Transnet between 2012 and 2016. McKinsey provided numerous files including final deliverables and reports for Transnet’s review. As a part of this review, Transnet acknowledged that McKinsey delivered value and impact on all of the projects. More precisely, the review confirmed that:
- McKinsey’s deliverables on these projects were clearly defined and Transnet had a supervisory role on the work, including through steering committees.
  - On projects where McKinsey and Regiments were both involved, Transnet paid Regiments separately (which, I should note, is in keeping with how



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

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

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

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

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

## 5 McKinsey's Work With Relevant State Owned Enterprises

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

5.2 Eskom: McKinsey worked on projects at Eskom from 2005 to 2017. Our consultants spent several hundreds of thousands of hours on these projects, which covered a wide range of areas including logistics; generation support including outage management; group commercial and IT support; leadership and capability building; and portfolio

optimisation and support for Group Capital. My colleagues' statements go into greater detail about the impact of this work.

- 5.2.1 McKinsey saw itself as well equipped to help Eskom confront its challenges. From 2010 to 2017, McKinsey & Company worked on more than 2,250 projects at over 600 energy companies around the world. In 2016, when the most relevant projects occurred, McKinsey & Company had over 340 people who specialised in energy-related topics across the world.
  - 5.2.2 Two of McKinsey's projects at Eskom have garnered particular attention: the Corporate Plan and the Turnaround Programme (sometimes referred to as the Master Services Agreement or "MSA"). I attach an excerpt from my colleague Mr Yeboah-Amankwah's detailed submission to the Commission on these contracts. **Annexure JCM6 - Excerpts from Yeboah-Amankwah Statement, Corporate Plan and MSA.** Dr Weiss, who is scheduled to testify, can provide more detail regarding this work.
- 5.3 Transnet: McKinsey worked at Transnet from 2005 to 2016. Over 140 partners and 700 consultants spent hundreds of thousands of hours on these projects which were designed to help Transnet overcome the serious challenges it faced, including becoming a commodities bottleneck that could have vast implications for the South African economy.
- 5.3.1 McKinsey & Company has extensive experience working with transportation and logistics companies around the world that well positioned it to aid Transnet in overcoming its most significant challenges. Since 2010, McKinsey & Company has conducted over 4,000 projects for over 580 clients in this sector globally, including for six of the top-ten companies in the sector.
  - 5.3.2 McKinsey has detailed its work with Transnet on a number of occasions. I attach Dr Fine's testimony to Parliament as well as excerpts from Mr Yeboah Amankwah's statement to the Commission that discuss these projects in detail. **Annexure JCM1 - David Fine Statement to Parliament; Annexure JCM7 - Excerpts from Yeboah-Amankwah Statement, Transnet Projects.** Dr Fine, who is scheduled to testify, can provide more detail regarding this work.
- 5.4 South African Airways (SAA): McKinsey worked periodically at SAA from 1999 to 2014 with a focus on projects seeking to help SAA confront its longstanding challenges including by unlocking its working capital and redesigning its organisational structure. McKinsey's work at SAA was far less extensive than its work at Eskom and Transnet.
- 5.4.1 As described previously, McKinsey & Company has extensive experience with transportation and logistics companies. In regards to air and travel companies in particular, from 2014 to 2018 McKinsey & Company worked on over 960 projects at 190 clients in more than 50 countries in this sector.
  - 5.4.2 I understand that one project in particular is relevant to the Commission's work. In 2014, McKinsey worked with Regiments on GSM/085/13, the Working Capital Optimisation project. As the name would suggest, the project focused on unlocking working capital at SAA. We now understand from the Commission that Regiments appears to have had an inappropriate relationship with an SAA

executive. The Commission has furnished evidence that this individual provided Regiments—not McKinsey—with insider information regarding the proposal phase of the project in exchange for bribes.

## 6 McKinsey's Work With Supplier Development Partners

- 6.1 As a part of its commitment to supplier development and localisation efforts including through economic transformation and skills development, McKinsey has long been dedicated to working with local supplier development partners on contracts with SOEs, even before such partnerships were required.
- 6.2 There are three Black Economic Empowerment entities that are relevant to our work at Transnet, Eskom, and SAA: Letsema Consulting and Advisory (“**Letsema**”), Regiments, and Trillian. As I will describe in further detail below, Letsema and Regiments served as McKinsey's supplier development partners over many years. While such a relationship with Trillian was contemplated, Trillian never served as a supplier development partner to McKinsey. Like other parts of this statement, much of what I know about this area has come after the fact, and I rely out of necessity on descriptions by others who worked with these entities.
- 6.3 Letsema: Most of McKinsey's work with Letsema occurred from 2005 to 2012. I have attached an excerpt from Mr Yeboah-Amankwah's statement to the Commission that covers our work with this entity in more detail. **Annexure JCM8 - Excerpts from Yeboah-Amankwah Statement, Letsema**. Despite certain challenges with this relationship, McKinsey is proud of its work with Letsema and its role in helping to develop and grow Letsema as a consulting business.
- 6.4 Regiments: McKinsey first began working with Regiments in 2012. I have attached an excerpt from Mr Yeboah-Amankwah's statement to the Commission that covers this entity in more detail. **Annexure JCM9 - Excerpts from Yeboah-Amankwah Statement, Regiments**. While the media has reported on allegations related to Regiments and the Commission has now presented evidence related to concerning behaviour by Regiments, we have not found evidence that anyone at McKinsey knew of this activity at the time it was occurring. (I leave open here the possible exception of Mr Sagar whose circumstances are discussed more fully below.) McKinsey notified Transnet of its decision to stop working with Regiments on 23 February 2016 and the separation was made final in March 2016, long before such evidence was made public.
- 6.5 Trillian: In late 2015, Mr Eric Wood (“**Mr Wood**”) notified McKinsey that he would be spinning off Regiments' consulting business into a new entity called Trillian. McKinsey's potential relationship with Trillian has caused significant confusion and I would like to clarify this point. McKinsey worked alongside Trillian at Eskom for a short period of time while our due diligence on Trillian was being carried out. But McKinsey never had a contract with Trillian and decided in March 2016 not to work with Trillian, after our diligence process raised sufficient concern to call a halt to the planned contractual relationship. I have attached an excerpt from Mr. Yeboah-Amankwah's statement to the Commission that covers the diligence process in more detail. **Annexure JCM10 - Excerpts from Yeboah-Amankwah Statement, Trillian**. I participated in the risk review of Trillian in early 2016 and while, as our Global Managing Partner Mr Sneader has noted publicly, the due diligence process should have been completed before any work was started, the due diligence we carried out was effective and resulted in the

correct decision not to work with Trillian (a decision which was promptly communicated to Eskom).

## **7 Areas of Concern Identified in Our Review**

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

7.2 These issues include:

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

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

7.2.3 **Allegations Relayed By Mr Ian Sinton to the Commission:** As I have discussed previously, McKinsey has always welcomed additional information

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

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

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

7.2.4.2 As part of our ongoing cooperation with the Commission, we were recently provided with documents that we understand the Commission has obtained

from the Regiments server. These include potentially significant documents that we did not have access to during our investigation.

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

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

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

7.2.5 **Issues Raised By Individuals at McKinsey:** We are a private firm that is not accustomed to speaking publicly about matters concerning our clients that are the subject of investigations (and, indeed, have a policy that generally commits

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

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

## **8 McKinsey’s Commitment to Strong Corporate Citizenship**

- 8.1 For the past three years, McKinsey has felt acutely the pain and damage that this period has caused South Africa and its people. Our own staff and alumni, the vast majority of whom are South African, and our clients have also conveyed forcibly their anger and disappointment. As our Global Managing Partner Mr Sneader has made clear, “[t]he stories written about us in South Africa hurt deeply as they strike at what we value more than anything else – the trust we have built with our clients through the judgment, character, and reputation of our people. Indeed, the events of the last 12 months have meant that we have lost the confidence and trust of many South Africans”. **Annexure JCM2 - Speech by Kevin Sneader at Gordon Institute of Business Science Seminar, 9 July 2018.**
- 8.2 McKinsey is committed to being an example of good and strong corporate citizenship and to helping play its part in moving South Africa forward, stronger. To that end, when Eskom’s legal counsel acknowledged in October 2017 that McKinsey was misled by

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

- 8.3 As discussed above, the Commission recently disclosed new information to us of which McKinsey was not aware. While this information does not demonstrate McKinsey was itself involved in corrupt activities, it does corroborate previous allegations that Regiments engaged in a pattern of misconduct. McKinsey has decided, in keeping with its previous commitment in October 2017, that it does not want to benefit from work that is tainted by the misconduct of others. We make this commitment even at a time when Regiments continues to contest its own role in these events and the authority of the State to seize its assets. We are committed to engaging in a process with the relevant entities to return the fees earned on projects where we worked with Regiments at Transnet (as well as the single project on which we worked with Regiments at SAA - the Working Capital Optimisation project).
- 8.4 We have come to this decision after careful reflection on the role we wish to play and impact we wish to make in South Africa, and our commitment to its future. The decision to repay voluntarily is notwithstanding that McKinsey delivered value to the SOEs. While some of the allegations have previously been the subject of press reports, we thought it important to review the actual evidence, whether circumstantial or direct, to make a proper determination. Our ongoing engagement with the Commission helped provide us with the additional understanding necessary to now take this step. We are able to take this decision with higher confidence now that we have the support and process to do so.

## 9 Changes McKinsey Has Made

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

### 9.2.1 South Africa-specific updates



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

#### 9.2.2 Reform of how we serve and select clients

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

#### 9.2.3 Rebuilding of diligence capability

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

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

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

#### 9.2.5 Addition of a global hotline

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

#### 9.2.6 Updates to our training programs

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

#### 9.2.7 Enhanced consequence management

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

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



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**Jean-Christophe Mieszala**

21 November 2020