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

WITNESS STATEMENT OF DR DAVID ROBERT FINE

I, the undersigned,

DR DAVID ROBERT FINE

do hereby say:

1. I am a Senior Partner at McKinsey, currently based in London, United Kingdom.

2. On 11 November 2017, I submitted a statement to Parliament which dealt with, amongst other matters, McKinsey's engagements with Transnet and which traversed the involvement of supplier development partners (otherwise referred to as a supplier development company; the terms being interchangeable). On 15 November 2017, I appeared before Parliament's Public Enterprises Portfolio Committee in which I provided oral testimony in response to questions the Parliamentary Committee Members posed to me regarding my statement, as well as other matters of interest to them.

3. I have had regard to the further topics identified by the Commission, which I propose dealing with in this supplementary statement. This statement is based on my recollection of events and I do not profess to recall each and

every detail. My hope and aim is that I am responsive to the Commission and able to assist in furthering its mission and purpose.

4. This supplementary statement is to be read contiguously with my previous parliamentary statement and oral testimony (collectively my **parliamentary statement**), which is incorporated herein by reference and attached as annexure **DF-1**.

5. The following matters are addressed in this supplementary statement:

Part A	:	Positions, roles and responsibilities in engagements with State Owned Entities (**SOEs**)
Part B	:	Transnet procurement of McKinsey's services
Part C	:	Letsema conflict
Part D	:	McKinsey due diligence
Part E	:	1064 Locomotive Project
Part F	:	Conclusion

6. Before addressing the matters set out in the above table, I wish to provide some introductory remarks concerning McKinsey's relationship with Regiments Capital Proprietary Limited (**Regiments**), other persons of interest to the Commission, and the work performed at Transnet.

7. I am not aware of McKinsey having entered into or engaged in any corrupt relationship or having given or received or attempted to give or receive any bribe, with Regiments or any other entity or person.

8. I have neither met nor had any dealings with Messrs Salim Essa, Kuben

Moodley, Clive Angel, Mark Pamensky, Stanley Shane or Clive Chipkin or any of the Guptas. I was introduced, briefly, to Mr Iqbal Sharma at a function celebrating South Africa's 20th anniversary of its democracy in 2014. To the best of my recollection, I have had no other contact with him.

9. I have no knowledge of any improper dealings between Mr Vikas Sagar and any one or more of Messrs Niven Pillay, Salim Essa or Kuben Moodley. In like fashion, I was unaware of any involvement by either Mr Salim Essa or Mr Kuben Moodley in the affairs of Regiments.

10. I remain steadfast in my belief that the important work that McKinsey performed at Transnet over the years delivered significant value. I am of the view that McKinsey's work was essential in ensuring that Transnet did not breach its debt covenants. This was achieved through the improvements in operating profit and the reduction in capital expenditure. Substantial resources were expended by McKinsey in the rendering of highly specialised consulting services. The fees charged were commensurate with the work undertaken and in line with rates charged by McKinsey globally.

11. Notwithstanding that McKinsey delivered significant value to the SOEs, as a responsible corporate citizen McKinsey has committed to voluntarily repaying the fees it earned on projects with Regiments, as its supplier development partner, at both Transnet and South African Airways.

12. This is reflective of McKinsey's ethos as a global corporate citizen and its commitment to South Africa. This is the approach I took in 2017, as enumerated in my Parliamentary statement, when McKinsey first determined

to repay fees it earned at Eskom. McKinsey's commitment to do so then, and now, is a matter of principle, rather than a legal duty, and what is set out hereunder is to be read against this backdrop.

A. ROLES AND RESPONSIBILITIES

13. I am currently the global leader of McKinsey's Public Sector, Health Systems and Social Sector Practice. Before assuming this position in 2016, I served as leader of McKinsey's Public and Social Sector Practices for the African, Eastern European and Middle Eastern regions. My previous roles at McKinsey are outlined in my parliamentary statement.

14. McKinsey's public sector projects, including as concerns SOEs, engage a multiplicity of Senior Partners, Partners, Associate Partners, Engagement Managers, Associates and Analysts, with skill sets and experience relevant to the project in question. These consultants are drawn from McKinsey's Johannesburg office and globally from the 130 cities and 65 countries from which McKinsey operates and are organised into what is referred to as a "Client Service Team" (**CST**).

15. I was never a member of the McKinsey CST which worked with Eskom as a client. Accordingly, I occupied no position, role or responsibility as concerns Eskom. This supplementary statement is confined to my work at Transnet, to which I turn herein below.

16. During the period 2005 to 2016, there were a multiplicity of McKinsey Partners (13) and Senior Partners (6) that had extensive involvement in the Transnet

CST and which included international partners (4), all of whom brought important expertise to the McKinsey Transnet engagements. The table below lists the senior partners:

2005-2007	**2007-2013**	**2013-2016**
Dr Thilo Mannhardt [CST Leader] Mr Norbert Dörr	Dr David Fine [CST Leader] Mr Norbert Dörr Dr Thilo Mannhardt Dr Michael Kloss	Mr Vikas Sagar [CST Leader] Dr David Fine Mr Norbert Dörr

17. The Vulindlela Project was the first major project McKinsey conducted with Transnet, which introduced many McKinsey personnel to the Transnet organisation and its operating divisions. The Vulindlela Project, undertaken by McKinsey during the period 2005 to 2009, was intended to address the historical mismanagement by Transnet of its operating performance. There were many members of the Transnet CST who brought valuable skills to bear. For example, Dr Michael Kloss (now known as Plessman) had deep expertise in rail, having served as a senior member of the Deutsche Bahn CST for many years. Other partners brought expertise in rail and port maintenance and logistics. Mr Vikas Sagar, a McKinsey global partner, had expertise and experience in the marketing and pricing of business products and services and capital optimisation in industrial companies. This was important as Transnet had mispriced its services for years and was unable to cover the basic costs of maintenance and refurbishment of its rolling stock and infrastructure.

18. Letsema Consulting and Advisory Proprietary Limited (**Letsema**), was McKinsey's supplier development partner for this project. Notwithstanding

challenges along the way, this worked well overall and Letsema remained McKinsey's supplier development partner for the project's duration.

19. The project sponsor of McKinsey's work for Vulindlela was Mr Louis van Niekerk, the (then) COO of Transnet. This work was reviewed by a Steering Committee on a bi-weekly basis, which included Ms Maria Ramos (Group CEO), Mr Chris Wells (Group CFO) and the divisional CEOs (including Mr Gama). Ms Moira Moses was the day-to-day Programme Leader for Vulindlela and my daily counterpart. Mr Dörr and I engaged directly with the executive team at Transnet Group and I was the McKinsey representative negotiating the scope and professional fees with Transnet.

20. It was during this time that Mr Dörr and I met:

    20.1 Mr Anoj Singh, a Chartered Accountant, who then occupied the position of General Manager Finance (Chief of Staff); and

    20.2 Mr Garry Pita, also a Chartered Accountant and the (then) Head of Shared Services,

who both reported to the (then) Group CFO, Mr Chris Wells (until his departure in 2011). In 2011, Mr Singh was elevated to the position of acting CFO and in 2012 to Group CFO, where he remained until he moved to Eskom.

21. Messrs Anoj Singh and Garry Pita were the recipients of CFO and CPO awards. Mr Brian Molefe was a highly regarded National Treasury official and CEO of PIC. All these people were acclaimed as high-performing executives.

22. It was Mr Sagar and Dr Kloss who engaged directly with Transnet Rail's executive on its related projects, in particular Mr Siyabonga Gama who was the (then) CEO of Transnet Freight Rail and with whom they (Sagar and Kloss) forged a close working relationship.

23. As is well known, Mr Gama had been suspended by Transnet during Chris Wells' tenure as acting CEO. Because of my close working relationship with Messrs Maria Ramos, Louis Van Niekerk and Chris Wells (as CEO, COO and Group CFO respectively), I was apparently viewed by Mr Gama as being associated in the process of his suspension (there was however no truth to this suggestion) and for that reason disliked by him. This was communicated to me at the time by Messrs Sagar and Kloss.

24. By 2011, Mr Gama had been reinstated as Transnet's Freight Rail CEO and by that stage Messrs Ramos, Wells and Van Niekerk had all departed.

25. It was at that time that I introduced Mr Sagar to Mr Singh, who then occupied an acting CFO position and was tasked with the implementation of the Market Demand Strategy (MDS) initiative, which I describe more fully below. Mr Sagar quickly established a strong relationship with Mr Singh. Events had coalesced and whereas Mr Dörr and I hitherto had the principal relationship with Transnet's executive team, that position was now occupied by Mr Sagar. From 2011 onwards, Mr Sagar was consequently McKinsey's primary representative negotiating project scope and professional fees with Transnet. As appears more fully below, I was predominantly focused on projects with Transnet Group Capital Integration and Assurance (GCIA) that were unrelated to the rail business.

B. TRANSNET PROCUREMENT OF MCKINSEY'S SERVICES

26. Following the Government's adoption of the 'Developmental State' model in 2009 and under the leadership of the new CEO, Mr Brian Molefe, Transnet embarked on a new strategy, known as the Market Demand Strategy (**MDS**), to stimulate demand by investing in infrastructure projects without confirmed orders from customers. McKinsey did not develop the MDS strategy.

27. An additional issue faced by Transnet at this time was a lack of global funding liquidity, which meant that MDS implementation would be constrained unless Transnet funded the bulk of these investments and delivered on its projects. Transnet's new strategy required detailed projections of freight demand, based on realistic assumptions of global growth and demand.

28. Between 2012 and 2014, the work that Transnet awarded McKinsey pursuant to competitive tenders was focused on reducing, or deferring, non-essential capital expenditure and developing freight volume scenarios to underpin capital plans. The work included the following:

    28.1 RFP No GSM/11/12/0400 (Delivering the Market Demand Strategy) and RFB No GSM/12/08/0527 (Results Management Office):

    These projects were directed towards aligning Transnet's efforts for achieving their MDS commitments and testing Transnet's volume plans using McKinsey's global proprietary models. Transnet executive members were supported to clarify current performance versus future requirements and to build credible plans that would deliver the required benefits. Thirty group-wide initiatives were identified, with defined outcomes, detailed activities, owners, risks, mitigating actions, and dependencies. McKinsey drafted a "gold standard" for each division in line with the goals of the MDS, being an approach that has worked successfully in other countries. McKinsey also proposed a project management office and drafted an MDS launch and engagement plan. McKinsey recommended the creation of three new structures at Transnet Group level: Group Financial Planning (GFP); Group Capital Integration and Assurance (GCIA); and the Results Management Office (RMO). This work took place over 27 months, with both Letsema (MDS) and Regiments (RMO) as supplier development partners.

28.2 RFP No: GSM/12/05/0447 (1064 Locomotives Business Case):

Transnet decided to procure new locomotives and improve its rail capacity in other ways to meet expected demand. At the time, long-term projections for freight capacity required in South Africa were increasing for several reasons. These included opportunities to export additional coal, manganese, and chrome to Asia; strong growth expected in domestic freight sectors like iron ore, coal, and cement; and the fact that a significant number of containers then transported on South Africa's roads could be transported by rail. Because Transnet's subsequent acquisition of locomotives is of interest to the Commission, the details of McKinsey's work on this topic are described below.

28.3 RFP No: GSM/12/10/0578 (SWAT 1 Capital Standard and Optimisation):

Transnet sought to improve capital project processes and increase its operational performance. The project identified about R45 billion of benefits (capital deferment on Ore Line, Swazi Link, NMPP Phase 2 of R21 billion; reduction of Manganese and Richards Bay projects by R14 billion; portfolio optimisation of R10 billion). These benefits were confirmed by Transnet in a 22 June 2019 meeting to review the historical impact of these projects.

29. The RFPs, to which reference is made in paragraph 28 above and paragraph 33 below, are filed of the Commission's record and, to avoid undue prolixity, are not hereto annexed.

30. During 2014 the economic situation in South Africa deteriorated. Domestic growth stalled and demand and prices for commodities fell significantly as the Chinese economy experienced an unprecedented slow-down in 2015 (China accounted for 45-55% of steel and coal consumption). There were also external factors at play which negatively impacted Transnet's performance, including community unrest in the Phalaborwa channel, flash flooding and a catastrophic failure of the tippler at Majuba. These factors posed significant risks for Transnet's balance-sheet. Risk estimates at the time indicated that Transnet faced a capital funding gap in 2014/2015 in the order of R24 billion. To mitigate this risk, Transnet urgently needed to reduce its non-essential capital project spend and to generate an additional R9.6 billion in cash flow from its existing businesses. Specifically:

30.1 Transnet had consistently under-delivered on its volume plans and thus its operating profit. By way of example, from 2010 to 2013 volumes achieved were on average 12.5% below the 2009-2013 five-year plan.

30.2 Transnet's Cash Interest Cover (**CIC**) ratio (a measure of its ability to fund its debt) was in a critical condition in its loan covenants and needed to remain above a specified ratio (3.0). Due to explicit and implicit government guarantees across all SOEs, breaching the CIC ratio covenant could trigger a default which in turn could have rippled through South Africa's public debt system. Based on Transnet's projected 2013/2014 financials, the published capital plans, and its prior track record of not delivering against volume and profit plans, Transnet estimated that Transnet's CIC ratio covenant would be breached by 2015.

30.3 Transnet was not delivering effectively on its capital projects, with budget over-runs and schedule delays. Specifically – (i) By 2014 the NMPP project had missed its target completion date of June 2010. Project costs had escalated from an original budget of R8 billion to R23.4 billion, with a request for an additional R4 billion to complete the project, bringing the total cost to R27.4 billion; (ii) After McKinsey ceased advising on the 1064 Locomotives project, the procurement budget for the first three years of the seven-year plan escalated by at least R12 billion, increasing the risk to the CIC ratio; (iii) The preferred solution selected for the Durban Container Terminal Expansion

(Durban Dig Out Port (**DDOP**) project) required 10 times more capital (more than R240 billion) than alternative solutions with the same capacity improvement; (iv) Capital investment required for the Manganese expansion communicated in Transnet's corporate plan was R11 billion for the 16 million tonnes per annum solution, which was misaligned with the business case estimating a required investment of R20 billion for this solution to be viable.

30.4 Identified improvement opportunities to mitigate these risks included – (i) R10 billion to 17 billion in potential capex improvements in the coal (R2 to 4 billion), iron ore (R2 to 3 billion), NMPP (R4 billion), and manganese (R2 to 6 billion) businesses; and (ii) R4.8 billion operating profit opportunities by increasing coal and iron ore volumes.

31. In these circumstances, it was a Transnet imperative to rapidly reduce its capital spending budget, whilst improving its operating profit in strategic areas. Against this backdrop and on 9 April 2014, Mr Singh addressed a letter to McKinsey, recording, inter alia, as follows:

> "*As you are aware, Transnet is bound by regulatory policies, procedures and processes in respect of procurement. These processes require amongst others, a request for proposal to be issued for approved transactions, evaluation of the final bid proposals and subject to meeting Transnet's requirements in terms of the full scope of work as set out in the request for proposal, a final Master Service Agreement may be concluded.*
>
> *While our teams expedite the issuing of the request for proposals for the above assignments, due to the urgency of the services required, I kindly request that you mobilise a McKinsey led consortium to have the initial*

discussions with our teams. In the unlikely event that we may not successfully conclude the above-mentioned assignments, Transnet SOC Ltd will reimburse all costs incurred by yourselves."

32. A copy of this letter is attached, marked as annexure **DF-2**.

33. Several projects were thus launched in 2014 and 2015 to address these urgent issues. The projects during this period included the following:

33.1 RFP No: GSM/14/04/1052 (SWAT II):

This project reduced capital spending by R64 billion, including R26 billion in savings in the first three years. The work led to the deferral of the DDOP (over R240 billion in savings). McKinsey provided revenue and demand forecasts, conducted project assessments, identified alternative options and provided the skills for the project in the first six months while Transnet was building its new Group Capital organisation.

33.2 RFP No: GSM/14/04/1039 (Manganese):

Transnet needed to expand capacity for South African Manganese exports. Contracting terms put in place as a result of McKinsey's work led to R400 million in savings when global manganese demand dropped. R34 billion of capital spend was avoided. Over a period of 30 months, McKinsey provided strategy, capital productivity and project execution experts. Over 40 Transnet employees were trained on project delivery methodology.

33.3 RFP No: GSM/14/04/1040 (NMPP):

Transnet needed to contain rising costs and schedule over-runs on their New Multi-Product Pipeline (NMPP). McKinsey implemented lean construction methods and reassessed the business case. This helped contain cost over-runs by R5 billion. Over 18 months, McKinsey provided strategy, capital productivity, project execution, and construction expertise. McKinsey's view diverged with Transnet's NMPP management, who continuously changed priorities, which McKinsey was concerned would have comprised the successful execution of the pipeline. McKinsey withdrew from this project in November 2015.

33.4 RFP No: GSM/14/04/1037 (Coal line):

To enhance operating profit, Transnet set a target of an additional 4 to 9 million tons of export coal. This project exceeded previous coal line records and added R980 million in operating profit to Transnet in 2014/2015. McKinsey developed several software applications to eradicate bottlenecks at the time. McKinsey trained approximately 500 Transnet staff to use these new systems. Over a period of 16 months, McKinsey provided project leadership and strategy and technical expertise (including software creation).

33.5 RFP No: GSM/14/04/1038 (Kumba Iron Ore):

Transnet needed to negotiate a better tariff with its main iron ore customer, Kumba Iron Ore. McKinsey worked to determine the optimal target tariff by analysing Transnet's costs, customer expectations, and market demand. McKinsey found capacity for an extra 3 to 7 million tons of iron ore per annum, which were captured by Transnet.

33.6 RFP No: GSM/14/10/1167 (Gas fuels strategy):

To increase volumes of liquid fuels transported through Transnet's network (pipelines and rail), McKinsey helped Transnet produce a 30-year model of demand and supply of liquid fuels in South Africa (to become part of the overall commodity flows modelling).

33.7 RFP No: GSM/15/03/1255 (GFB):

Regiments was appointed by Transnet as the prime contractor and McKinsey occupied the position of sub-contractor to Regiments. The work found opportunities to increase freight volumes by 22.1 million tons, with 6 million tons achieved in the first financial year. McKinsey stopped work early when it terminated its relationship with Regiments in March 2016. Over a period of 10 months, 302 different McKinsey consultants worked on this project.

34. From the Transnet CST perspective, the aforementioned projects seemed to have been properly weighed and considered. The need and urgency were apparent. Transnet had a track record of underperforming against its plans and the risk of financial under-delivery for Transnet and the country was

substantial. These topics were by their nature complex and required unique expertise. McKinsey had both deep expertise on the rail system and the commodities identified and a track record of impact at Transnet. It is also common for clients to use management consultants with an established track record in helping them resolve complex and pressing issues. Globally, it is not an unusual practice for clients with pressing business imperatives to follow exemption procurement processes.

35. This accords with McKinsey's understanding, in the South African context, of what is contemplated in Regulation 16A6.4 of the Treasury Regulations (for departments, trading entities, constitutional institutions and public entities), issued on March 2005 in terms of the Public Finance Management Act, No. 1 of 1999, and with what was embodied in the Transnet Procurement Procedure Manual. Extracts from Regulation 16A6.4 of the Treasury Regulations and the Transnet Procurement Procedure Manual, are attached hereto as annexes **DF-3** and **DF-4** respectively.

36. All told, over 169 000 manhours of specialist services were rendered by McKinsey consultants in Transnet projects between the period 2012 and 2016.

37. The sponsor of these Transnet projects for the period was Mr Singh (as the Group Chief Financial Officer) and subsequently in 2015, Mr Pita. Regular and systematic reviews were conducted by a wide range of Transnet executives. This included reviews by a weekly Steering Committee made up of finance executives. Additionally, each project typically had an executive sponsor and steering committee. By way of example, the 1064 Locomotive project had a Steering Committee led by Mr Brian Molefe (Group Chief

Executive), together with Messrs Singh, Gama and other executives. In like fashion, Coal Line project was sponsored by Mr Lloyd Tobias.

38. In 2019, McKinsey entered into discussions with Transnet to review its prior work and attempt to resolve any outstanding issues. The review conducted by Transnet demonstrated that value was achieved and objectives met. The review was conducted by Transnet's Group General Counsel, Mr Ndiphiwe Silinga. This is memorialised in correspondence under the hand of Mr Mohammed Mahomedy, Acting Group Chief Executive (GCE) of Transnet, and which is hereto attached marked as annexure **DF-5**.

C. THE LETSEMA CONFLICT

39. During or about July / August 2012, I learnt from the Transnet CST that Letsema was conflicted as part of our 1064 Locomotive consortium. Specifically, Letsema's non-executive chairman and shareholder, Mr Isaac Shongwe, also served as a senior executive of Barloworld, who had recently formed a connection (whether as distributor agent or otherwise I do not know) with an American manufacturer of diesel-electric locomotives, locomotive products and diesel engines for the rail industry (who I later learned to be Electro Motive Diesel (**EMD**). EMD in turn was considering submitting a tender to supply locomotives to Transnet and would be represented by Barloworld in this process. EMD did, in fact, later bid to supply the locomotives (albeit that the bid was ultimately awarded to China South Rail (CSR) and China North Rail (CNR) respectively).

40. As noted in my parliamentary statement and as stated in section A above,

Letsema was initially brought in as McKinsey's supplier development partner in the Vulindlela Project, which endured from 2005 to 2011. On all accounts Letsema has benefitted significantly from its relationship with McKinsey; its revenue had grown to a point that it exceeded the B-BBEE supplier development guidelines and was competing, successfully, with McKinsey in open market bids.

41. My recollection of the conflict of interest was that Letsema was separately working with a locomotive manufacturer at the time that was also a potential bidder on the same project. I had said in my parliamentary statement that Letsema's conflict arose consequent upon its work with General Electric locomotives. I have since been informed that EMD (and not General Electric) was in fact the locomotive provider that gave rise to the conflict.

42. However so the conflict arose was not a McKinsey determination. It was Mr Singh on behalf of Transnet who was the arbiter of whether a conflict arose with its service providers and it was Transnet's decision – not McKinsey's - to remove Letsema from the 1064 Locatives project. In addition, the explanation for the conflict made sense and I had no reason to believe otherwise.

43. As I recall, Letsema did not dispute that a potential conflict existed. Lest it be necessary to say so, Letsema's Mr Derek Thomas confirmed in response to an inquiry from Fundudzi that Letsema "*accepted the bona fides of [Transnet's] Garry Pita's argument at the time even though we respectfully disagreed with his position*".

D. MCKINSEY'S DUE DILIGENCE

(i) Regiments

44. As noted in paragraph 18 above, McKinsey had previously partnered with Letsema as its supplier development partner on the Vulindlela Project from 2005 to 2011, and McKinsey's engagement with Letsema had its genesis with that project. As I stated above in section C, when a conflict emerged with Letsema during the 1064 Locomotives bidding process, it became imperative that McKinsey identify a new supplier development partner in its engagements with SOEs, which forms one of the three Priority Elements of the Broad-Based Black Economic Empowerment (B-BBEE) Scorecard.

45. Regiments was a B-BBEE consultancy and advisory business, who had been suggested by Mr Anoj Singh, the (former) Chief Financial Officer (CFO) of Transnet, as a suitable replacement supplier development partner and in Letsema's stead.

46. This was conveyed to the Transnet CST by Mr Vikas Sagar, who related that Mr Singh lauded Regiments' strong advisory stills and programme management experience. Regiments, according to Singh, was a reliable service provider to Transnet and who had a successful track record. Mr Singh noted with approval the work Regiments had performed for Transnet's Treasury department. Regiments work for Transnet was documented in Regiment's company profile and as appears from annexure **DF-6** hereto attached.

47. By way of background, it was an unusual global practice at that time for McKinsey to partner with a third-party firm for a client engagement. Moreover,

partnering with supplier development partners was a requirement unique to South African SOEs. As a result, McKinsey did not have a formal due diligence process in place to evaluate potential supplier development partners such as Regiments, or for that matter Letsema. Nevertheless, and even though the project was envisaged to be relatively small, McKinsey undertook a limited due diligence investigation regarding Regiments before agreeing to partner with them and undertook the steps described below.

48. Mr Vikas Sagar and others of the Transnet CST (I recall in particular Ms Christina Planert (now Greenidge)), met with Regiments' executives at their Houghton, Johannesburg offices to assess Regiments' suitability as a supplier development partner for the 1064 Locomotive tender, which was then underway. In a report back session to the Transnet CST, they expressed the positive impression that they had formed.

49. For my part, I reviewed documentation provided by Regiments detailing their work for a number of SOEs and Public Sector institutions, including Transnet and which was embodied in its company profile (annexure **DF-6**). I also considered the résumés of the Regiments principals, including impressive professional backgrounds, education, and relevant work history of its three shareholders and leadership team.

50. Mr Litha Nyhonyha, a Chartered Accountant, had been employed at Ernst & Young, had established Thebe Investment Holdings, and was a director serving on prestigious boards, including Kumba Iron Ore Limited and AECI Limited. Mr Niven Pillay had two degrees from Princeton University, with notable investment banking experience. Mr Eric Wood had a Masters' Degree

in Management from the University of the Witwatersrand *cum laude* and had financial modelling and funding experience. I also made enquiries with people in the broader business community whose opinions I valued and from whom I received positive feedback, particularly as concerns Mr Nyhonyha, who was highly regarded.

51. During my desktop due diligence however, I did come upon an article in the Mail & Guardian in which it was suggested that Regiments had profited from a contentious deal with the City of Johannesburg. The issue was raised by members of the CST (exactly by whom I cannot recall) directly with Regiments, who characterised this as a commercial dispute. According to Regiments, they had undertaken the project in question on an "at-risk" basis and the City was contesting the fees it charged on the success it apparently achieved. (During November 2012 there was however a correction and clarification published by the Mail & Guardian which embodied a strong denial by Regiments.)

52. The fact that Regiments was an existing service provider to Transnet's treasury function and was held in high regard by Transnet's Chief Financial Officer, were important considerations for McKinsey. McKinsey was committed to imparting the necessary mentoring, guidance, and transfer of skills to Regiments (as McKinsey had done with Letsema), which were principle governmental objectives when entering supplier development partner relationships.

53. Significantly, Transnet paid Regiments directly and Transnet's Supply Chain organisation was accountable for reviewing whether Regiments supplier

development commitments were met. Regiments accounted to Transnet for its fees and charges in respect of the work it (Regiments) undertook, and Transnet made payment to Regiments directly against its statements of account.

(ii) Warning signs and termination

54. On the 24th of July 2014 an article appeared in the Mail & Guardian in which allegations of impropriety were made against Mr Niven Pillay, a shareholder and director of Regiments and with whom the Transnet CST dealt with on a routine basis in the execution of Transnet projects. A copy of this article is attached as annexure **DF-7**.

55. Naturally, allegations of this nature were concerning and which both Mr Dörr and I escalated to Ms Jean Molino, who was McKinsey's (then) Global General Counsel. Ms Molino addressed a letter to Regiments calling for a response and requiring written assurances that Regiments was in compliance with relevant anti-corruption legislation, including the South African Prevention and Combatting of Corrupt Activities Act, the United States Foreign Corrupt Practices Act, and the United Kingdom Bribery Act. A copy of this letter is attached as annexure **DF-8**.

56. Regiments replied by way of its letter of 28 August 2014, in which it was recorded that:

56.1 the "*allegations in the press are baseless*".

56.2 Regiments had in place policies for "*the promotion of honest and* *ethical behaviour*" and a "*corporate governance framework specifically address[ing] issues such as bribery, corruption, conflict of interest and disclosure of interest*".

56.3 Mr Pillay, who was the only employee affected by the allegations, would "*step down from the Executive Committee of the Consortium*" and that Mr Wood would "*assume the lead role on the part of Regiments*".

57. A copy of this letter is attached as annexure **DF-9**.

58. I conducted further enquires. I personally discussed the issue with senior members of the Gauteng Provincial Government, who could offer no insights. Mr Dörr and I consulted with Transnet's then Chief Financial Officer (Mr Singh) and Chief Procurement Officer (Mr Garry Pita) in a meeting convened with them and in the presence of Mr Sagar. Mr Dörr and I were advised by Mr Singh that Transnet was also seeking confirmation from Regiments of its compliance with relevant anti-corruption legislation.

59. At the time, McKinsey's agreement with Regiments did not permit of a cancellation absent an unremedied breach. The allegations in the article did not, however, amount to a breach of the agreement with McKinsey and the allegations involved one person (Pillay), not the company. Further, McKinsey was midstream in urgent projects with Transnet, with Regiments as its supplier development partner.

60. After weighing these considerations, it was decided that Mr Pillay would step

away from day to day Transnet operations and that Mr Wood would become McKinsey's principal Regiments contact person. Regiments would also need to confirm in writing its compliance with anti-corruption legislation.

61. In the wake of Mr Pillay having exited Transnet projects, the relationship with Regiments and the quality of its work seemed to improve.

62. By late 2015 however, concerns were being voiced by the Transnet CST about Regiments' deteriorating quality of work. Their B-BBEE transformation credentials were also being questioned. Mr Nyhonyha had no role in the Transnet engagements and Mr Pillay, as I indicated, had recused himself from further involvement in the Transnet projects.

63. At this time, I was notified by Mr Vikas Sagar, who was the primary liaison with Regiments, that Regiments had proposed splitting into two: Regiments Capital, with its financial advisory business, and Trillian Management Consulting Proprietary Limited (**Trillian**), that would seek investments in building a pre-eminent black-owned management consultancy.

64. There was discussion within McKinsey, that in light of the problems identified with Regiments, a new supplier development partner be investigated. Amongst others, consideration would be given to Trillian, but subject to the completion of a due diligence. As far as I am aware, McKinsey did no work in any form with Trillian at Transnet.

65. On Friday, the 11th of December 2015, I participated in a scheduled Transnet Steering committee meeting (in the oral portion of my parliamentary testimony,

I had incorrectly surmised that the date was after 12 December). I did not see Mr Mohammed Bobat, who was normally part of the Regiments' leadership team. On inquiring on his absence, I was told that he now served as an advisor to Minister Des van Rooyen, who on 9 December 2016 had been appointed the Minister of Finance.

66. On 23 January 2016 and at a private function in Cape Town, I had occasion to discuss with a senior person in National Treasury, the appointment of Minster van Rooyen and Mr Bobat as his advisor. There were unfavourable press reports at the time concerning the link between Minister Van Rooyen and the Gupta family. I asked plainly if Bobat was connected to the Guptas and received an affirmative answer. This troubled me greatly as Mr Bobat was a key person in Regiments, our supplier development partner.

67. On 2 February 2016 I communicated my apprehensions during a scheduled teleconference with the South Africa Partners of McKinsey. It was determined that a global consulting firm specialising in political, security and integrity risk, be mandated to conduct a detailed forensic review of Regiments and the matter of Trillian's beneficial ownership structure and to examine possible links to the Guptas. This engagement was actioned and a mandate was executed, dated 18 February 2016.

68. On 15 February 2016, my concerns were further heightened after an article was published by a London-based outlet, Africa Confidential, which is attached as annexure **DF-10**. In that publication was the explosive allegation that Mr Bobat was directly linked to the Gupta family.

69. That same day, I and others of the McKinsey South African leadership instructed Mr Sagar, on behalf of McKinsey, to address a letter to Mr Wood seeking clarification concerning Regiments relationship with Mr Bobat and Trillian and with those politically exposed persons referred to in the article. At that time, Mr Wood was in the process of finalising his separation from Messrs Nyhonyha and Pillay and the formation of Trillian. Hence, the primary interface between McKinsey and Regiments remained Mr Sagar and Mr Wood. A copy of this letter is attached as annexure **DF-11**.

70. At a meeting of the Transnet CST on 18 February 2016, concerns about Regiments were pertinently raised and discussed and the decision was taken to terminate our relationship with Regiments.

71. On 22 February 2016 and in a telephone call with Garry Pita (Transnet's then CFO) and Mr Sagar, I conveyed to him (Pita) McKinsey's decision to terminate its relationship with Regiments and that its decision to do so was final. On 23 February 2016, McKinsey transmitted a letter to Transnet indicating that it intended terminating its relationship with Regiments.

72. On 26 February 2016 a response was received from Trillian, per Ms Bianca Goodson as its (then) CEO. In her letter, Goodson insisted that Mr Bobat's employment with Regiments had ceased in December 2015. This was at variance with Bobat's Linked-In profile, where I discovered that he was still listed as a director of Regiments. I attach a copy of Trillian's letter as annexure **DF-12**.

73. On 17 March 2016, Mr Sagar and I attended a meeting with Messrs Nyhonyha

and Pillay to determine the question of a parting of ways, which McKinsey sought to accomplish amicably. An amicable termination was agreed and then memorialised by way of McKinsey's letter to Regiments of 18 March 2016.

74. Copies of the 23 February and 18 March 2016 letters are hereto attached as annexes **DF-13** and **DF-14** respectively.

75. On 18 March 2016, I initiated a comprehensive review of all McKinsey's work at Transnet with Regiments that involved highly reputable external legal advisors, experienced in these matters, which was a process that was later handed over to the Africa Office and McKinsey's Global General Counsel. I was not involved in the oversight of this process, being now a McKinsey legal and compliance matter.

76. On 31 May 2016, McKinsey's representatives (I was joined by Mr Georges Desvaux and Ms Nomfanelo Magwentshu) were present at a meeting with National Treasury (per Director General Fuzile and Chief Procurement Officer Schalk Human) where McKinsey's partnering with Regiments was disclosed, as were the termination of that relationship and McKinsey's decision not to work with Trillian. A copy of the minutes of that meeting is attached as annexure **DF-15**. This meeting was pursuant to a request I made to the Ministry, expressing my concerns arising out of McKinsey's supplier development partner relationship with Regiments, which, as I have said, had by that time been terminated.

(iii) Growing concerns about Trillian's ownership structure

77. On 1 March 2016 and on behalf of McKinsey I, together with Mr Sagar, attended a meeting with Mr Eric Wood (Trillian's progenitor) at Tashas, Melrose Arch. The purpose of the meeting was to understand Trillian's ownership structure. This was an issue because despite innumerable attempts to obtain visibility into the question of the identity of the shareholders and constituent board of directors of Trillian, the only name proffered by Mr Wood was one Max Joosub. It was a requirement of any potential supplier development partner that its ownership was constituted by "Black People" (as defined in the B-BBEE Codes of Good Practice) and was something about which McKinsey required assurance.

78. Mr Wood, for the first time, offered up Advocate Linda Makhatini and Messrs Jimmy Manyi, Marc Chipkin, Clive Angel and Max Joosub as Trillian's prospective body of shareholders and directors. The suggestion of Mr Manyi concerned me in light of the rumours that were circulating in the press at the time, identifying him as a Gupta associate. The others were unknown to me and I was determined to make enquires, including notifying the global risk and strategic consulting firm engaged by McKinsey and as part of their aforementioned investigation.

79. The investigations I undertook during early March 2016 included a CIPC database and social media searches, and from which I learnt the following:

79.1 There was a multitude of companies bearing the Trillian name and where Mr Salim Essa was reflected as a director of one of these entities, as was Mr Wood.

79.2 The Facebook Profile of Mr Salim Essa reflected Mr (Mohamed) Max Joosub as a "Facebook Friend".

79.3 The Linked-In Profile of Mr Max Joosub showed Mr Vikas Sagar as a first degree of separation "Direct Contact".

80. The documents referred to in paragraph 79 above (copies whereof are attached as **DF-16** to **DF-18**) were provided by me to senior people at McKinsey, McKinsey's group legal counsel, as well as its external forensic and legal advisors.

81. On 14 March 2016, and in my capacity as Leader of the Public Sector in the EEMA region, I participated in a McKinsey Global Risk Committee discussion on the proposed supplier development partnership with Trillian and as concerns Eskom projects mooted at that time. Having reviewed the results of the global risk and strategic consulting firm's due diligence report and having considered my recommendation, the Committee determined to terminate discussions with Trillian. This decision was communicated to Trillian (per Mr Wood) by way of a letter from McKinsey dated 15 March 2016. Eskom (per Mr Singh) was similarly notified by way of letter on 30 March 2016. Copies of these letters are hereto attached as annexes **DF-19** and **DF-20** respectively.

82. Throughout, I have enquired of and confirmed with McKinsey's South Africa Managing Partner, Africa Managing Partner, Global Legal Counsel, Chief Risk Officer and the company's external legal counsel, that where their investigations revealed evidence of potential wrongdoing, that this was

reported to the relevant authorities and as required by law.

E. 1064 LOCOMOTIVE PROJECT

83. I covered the 1064 locomotive project extensively in my parliamentary statement. I have accordingly limited this section to cover the points related to Transnet's procurement of McKinsey's services on the 1064 locomotive transaction.

84. I was not a part of the McKinsey team that worked on the 1064 locomotives project, which occurred between 2012 and 2014 and which was led, variously, by Mr Sagar, Mr Dörr, Dr Shrey Viranna, Mr Ashvin Sologar and Ms Planert. My role was limited to senior McKinsey leadership discussions on critical strategic considerations.

85. By way of background and as a brief repeat of some of the points addressed in my parliamentary statement, during May 2012 McKinsey and its consortium partners submitted its proposal in response to RFP GSM/12/05/0447 to provide services to Transnet on its planned locomotives acquisition. The consortium members comprised of McKinsey, Letsema, Nedbank (with Utho), Advanced Railway Technologies (**ART**), and Edward Nathan Sonnenbergs (**ENS**).

86. The tender was awarded to the McKinsey consortium on 30 November 2012. The Letter of Intent indicated that the total value of this tender would be R35.2 million, excluding VAT, and that the project would endure for 9 months, from January 2013 to October 2013.

87. The McKinsey consortium proposal detailed the four primary workstreams and the role each member of the consortium would play:

87.1 McKinsey would be responsible for validating Transnet's business case, projecting the volume of commodities Transnet could transport, validating that the procurement of 1064 locomotives was financially viable (Transnet had projected 1064 locomotives would be required), and conducting scenario planning to inform the contracting phase.

87.2 Letsema would be responsible for programme management, monitoring overall progress against timelines, and ensuring proper governance.

87.3 Nedbank (Utho), ENS, and McKinsey would provide transaction advisory services and procurement execution to minimise financial risk for Transnet and ensure suppliers delivered on their commitments.

87.4 ART and McKinsey would provide technical evaluation and optimisation by assessing the lifecycle costs of suppliers short-listed by Transnet.

88. A copy of the McKinsey Consortium 1064 Locomotive Proposal is hereto attached, marked as annexure **DF-21**. The proposal was accepted by Transnet, who remitted to McKinsey Letters of Intent which are attached as annexure **DF-22**.

89. It was intended that these Letters of Intent be embodied in written agreement, which were negotiated during the course of 2013. McKinsey was represented by its South African Legal Counsel, Mr Benedict Phiri (who was generally responsible for reviewing McKinsey South Africa's contractual arrangements) as well as Mr Ashvin Sologar. By February 2014 however the agreement had not been signed and Ms Planert communicated to me that Transnet required a signed agreement for its compliance purposes. Consequently, and with the approval of Mr Phiri (who signed as witness), I duly signed the agreement on behalf of McKinsey on 21 February 2014 (Mr Singh signing on behalf of Transnet). A copy of the written and signed agreement is hereto attached as annexure **DF-23**.

90. As set out in section C above and once Transnet had identified a conflict of interest relating to Letsema, Regiments was substituted in its stead as the supplier development partner.

91. Further substitutions occurred at the behest of Transnet: it wanted to work with Webber Wentzel rather than ENS, who was substituted out. During May 2013 and after the 1064 business case had been completed, Nedbank indicated that it wished to participate in funding the locomotive transaction and on that basis withdrew from the consortium, given that its mooted funding would represent a conflict of interest. This was embodied in a letter from Transnet dated 22 May 2013 recording, in relevant part, that "*primarily based on Nedbank Capital being appointed as part of the McKinsey led consortium to provide Transnet with advisory services related to the acquisition of 1064 locomotives as well as their interest in providing funding for other related*

services to Transnet for the same transaction". A copy of this letter is attached, as annexure **DF-24**. In light of this, Transnet determined that Regiments, as an extant consortium member, would assume responsibility for the financing workstream.

92. The 1064 Locomotives contract consisted of two phases. McKinsey's involvement principally concerned phase one, which developed an analysis to validate Transnet's hypothesis that a planned acquisition of 1064 locomotives would be financially viable for Transnet. The business case developed by Transnet Freight Rail was also inadequate, having garnered numerous questions from the board and DPE. The focus of the business case involved analysis with respect to the "*clear need to accelerate locomotive deployment to enable delivery against Transnet's Market Demand Strategy (MDS) and achieve South Africa's broader socioeconomic objectives*".

93. After completing the validation of the business case during April 2013, McKinsey expected to transition to supporting phase two, being the procurement and execution phase. This did not occur for the following reasons:

93.1 From May 2013 to January 2014, McKinsey did not work on the assessment of locomotive bidders and was not involved in the project.

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

93.3 On 31 January 2014, McKinsey addressed a memorandum to Mr Singh advising that the new scope and timing limited McKinsey's ability to deliver value. The additional cooperation and information McKinsey would require from Transnet to conduct meaningful work in Transnet's new truncated timing schedule was set out and listed. This memorandum is attached, as annexure **DF-25**.

93.4 The requisite information and cooperation from Transnet was not forthcoming and for those and the other reasons expressed in the memorandum, McKinsey took the view that it could not provide sufficient value. On 4 February 2014 McKinsey made the decision to withdraw from the 1064 Locomotives engagement, as appears from the further memorandum attached, as annexure **DF-26**.

94. As at the date of McKinsey's withdrawal from part two of the 1064 project, there remained three principal pieces of work still to be completed, *vis*: (i) procurement - including negotiating with prospective suppliers, requirements, timing and prices; (ii) financial arrangements - structuring, financial strategy and funding options; and (iii) legal - formalising and the preparation of agreements.

95. Consequent upon McKinsey's withdrawal from part two of the 1064 project, it was my understanding that Regiments was not simply going to assume that

portion of work with which McKinsey had been tasked and had withdrawn from, but rather that Transnet had decided as follows – (i) internal Transnet executives, comprising Messrs Singh, Pita and Gama, would themselves lead the procurement work stream (this in light of McKinsey's withdrawal); (ii) Regiments would continue with the financial structuring as envisaged; and (iii) legal would continue to be provided by Webber Wentzel (having replaced ENS in 2012).

96. What is set out aforegoing was embodied in an internal Transnet memorandum dated 14 April 2014 (which was included, inter alia, in the appendices to the Werksmans' report on the 1064 locomotive transaction, dated 7 December 2017), and which is attached as annexure **DF-27**.

97. As concerns 95(ii) above, it was not originally intended that Regiments would provide funding arrangements or facilities as part of its services in part two of the 1064 project. This was earmarked for Nedbank, which was the rationale for it (Nedbank) withdrawing from the consortium when a conflict arose (see paragraph 91).

98. On 16 April 2014, McKinsey wrote a letter memorializing the transfer of its responsibilities under phase two of the contract, which is attached as annexure **DF-28**.

99. In summary:

99.1 McKinsey's participation in the 1064 Locomotives project was limited to a review of the business case and in terms of phase one of the project (in which, as I have said, I was uninvolved).

99.2 McKinsey withdrew from advising Transnet on the procurement of new locomotives on 4 February 2014 and before the 1064 locomotives tender was awarded. Accordingly, McKinsey played no role in those decisions.

99.3 McKinsey did not determine the locomotive prices, select the winning supplier, or work on the transaction advisory service. McKinsey was not involved in the Technical, Financial or B-BBEE assessment of bidders. McKinsey played no role in identifying, scoring, assessing or awarding bidders.

99.4 McKinsey was not paid for any work performed in 2014 with respect to the 1064 locomotive contract, including the limited work done on phase two and before McKinsey withdrew from the project.

100. Based on my own review of the 1064 locomotive business case in 2017, what I can say is that the financial modelling and analysis McKinsey used to generate the R38.6 billion figure included the costs of exchange rate hedging and South African and US inflation (US 2.2% per annum, SA 5.2% per annum), but which excluded borrowing costs. Accordingly, I cannot account for the increase in costs in the 1064 project from R38.6 billion to R54 billion, which happened after McKinsey withdrew from the project.

F. CONCLUSIONS

101. I have and will continue to render my full cooperation with the Commission in

its investigations. Transparency and accountability are central tenants of the McKinsey ethos.

102. In the aftermath, McKinsey recognised vulnerabilities in its then applicable processes and procedures, particularly as concerns public sector and state-owned clients. In my capacity as global leader of McKinsey's Public and Social Sector Practices, I have effected changes in the way McKinsey selects supplier development partners and which includes a vigorous due diligence process that interrogates all aspects of the business of the prospective supplier development partner.

103. McKinsey has committed additional regulatory, compliance and legal resources to ensure that these new processes are implemented. I applaud the Commission's noble objective and one that is fully supported and endorsed by me and McKinsey at large.

David Fine

DR DAVID ROBERT FINE

Johannesburg, South Africa

24 November 2020