



# HELENSUZMAN FOUNDATION

## MEMORANDUM

**TO : THE FCPA COORDINATOR, CRIMINAL DIVISION, FRAUD SECTION, U.S.  
DEPARTMENT OF JUSTICE**

**FROM : THE DIRECTOR, HELEN SUZMAN FOUNDATION**

**RE : FACTUAL SUMMARY OF THE EVIDENCE AGAINST BAIN & COMPANY  
SOUTH AFRICA in re THE SOUTH AFRICAN REVENUE SERVICE**

**DATE : 25 OCTOBER 2022**

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### **A. Introduction**

This memorandum, together with Annexures A-E, sets out a summary of the factual evidence against Bain & Company obtained during the sittings of two judicial commissions of inquiry held in South Africa between the period 2018 to 2022.

In January 2018 former president Jacob Zuma appointed the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the “**State Capture Commission**”)<sup>1</sup>. The purpose of the State Capture Commission was to investigate allegations of widespread state capture, corruption and fraud in the public sector and Mr Zuma appointed Honourable Mr Justice Raymond Zondo, the former Deputy Chief Justice of the Republic of South Africa, as its chairperson. Mr Zuma was compelled to form the State Capture Commission following remedial action instructed by the Public Protector following investigation into allegations of state capture.

Additionally, following Mr Zuma’s resignation in February 2018, president Cyril Ramaphosa authorised the formation of a Commission of Inquiry into tax administration and governance by the South African Revenue Service which was presided over by former South African Judge Robert Nugent (“**the Nugent Commission**”)<sup>2</sup>. This move was precipitated by

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<sup>1</sup> The State Capture Reports can be accessed via the link - <https://www.statecapture.org.za>.

<sup>2</sup> The Nugent Commission Final Report can be accessed via the link - <http://www.inqcomm.co.za>.

Director: Nicole Fritz

Trustees: Nick Binedell • Cecily Carmona • Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Kalim Rajab • Gary Ralfe • Phila Zulu

Patrons: Prof. Thuli Madonsela • Lord Robin Renwick

allegations of corruption and the demise of the South African Revenue Service (“**SARS**”) during the fiscal period from 2014 to 2018 under the presidency of Mr Zuma.

**B. The demise of SARS**

1. During Mr Zuma’s tenure various state entities in South Africa were found to have engaged in corruption and pillaged millions of rands of state funds for the benefit of certain state officials and influential private citizens. One of those affected state entities was SARS.
2. In September 2014 Mr Zuma appointed Mr Tom Moyane as Commissioner of SARS to undermine the institution’s enforcement capability and to prevent it from pursuing Mr Zuma for non-payment of taxes and other financial malfeasance, and from investigating people linked to him. Mr Moyane dutifully performed this task ably assisted by Bain & Company South Africa (“**Bain**”) by crippling the tax collection arm of SARS and dismissing key employees who were critical to the effective administration of SARS. Mr Moyane remained the SARS Commissioner until his appointment was terminated with immediate effect in November 2018 by president Ramaphosa.
3. The findings of the Nugent Commission were that various individuals and entities were implicated in egregious acts against the tax revenue service. Chapter 3 of the final report of the Nugent Commission dealt specifically with Bain’s seizure of SARS.
4. The managing partner of Bain at the time, Mr Vittorio Massone, deposed to an affidavit<sup>3</sup> and testified before the Nugent Commission but subsequently claimed illness after a directive was issued for him to re-appear before the Commission for further questioning and he returned home to Italy before his date of appearance before the Nugent Commission.
5. The Nugent Commission summarised Bain’s conduct at SARS as follows<sup>4</sup> –  
*“[1] The transition of SARS from what it was to what it became was brought about by events that are shocking. We think what occurred can fairly be described as a premeditated offensive against SARS, strategized by the local office of Bain & Company Inc, located in Boston, for Mr Moyane to seize SARS, each in pursuit of their own interests that were symbiotic, but not altogether the same. Mr Moyane’s interest was to take control of SARS. Bain’s interest was to make money. This was not a plan for mere succession in public service.*

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<sup>3</sup> A copy of Mr Massone’s affidavit and annexures can be accessed via the link - <http://www.inqcomm.co.za>.

<sup>4</sup> Paragraphs 1&2, page 27, Chapter 3 of Nugent Commission Final Report.

*[2] The Commission has no evidence that the parent corporation was complicit in what occurred, as the Commission was told by Bain's legal counsel it was not, but that does not put an end to the parent's responsibility. An international consultancy cannot lend its name and reputation to securing work in this country by the local office, and then leave the local office to its own devices. It secures the work through the reputation of the parent, and the parent is then obliged to see to it that the work meets its standards. If it wants to ignore what the local office does then it must leave the local office to secure work on such reputation as the local office might have. It cannot have both the benefit of its name and no responsibility for what is done in its name."*

6. Both the State Capture Commission<sup>5</sup> and the Nugent Commission found that Bain's conduct was pivotal to the destruction committed by Mr Moyane at SARS. Bain proactively engaged with various influential politicians and senior management personnel in public sector entities in order to gain government work, which was a lucrative market in South Africa susceptible to manipulation.

The Nugent Commission found that Mr Massone had committed perjury and potentially Bain had acted fraudulently. It recommended that South Africa's National Director of Public Prosecutions should consider prosecutions in connection with the award of the Bain contracts with SARS (refer to paragraph 1.2 at page 193 of the Nugent Commission's final report in this regard). In its final report, the Nugent Commission made the following adverse findings against Mr Massone and Bain -

- **Perjury – extract from Nugent Commission final report (Pages 28-30):**

*"[6] Mr Massone appeared before the Commission to speak to the written submissions that had been made by Bain. Prompted by Mr Tshitangano's observation that Bain's bid was ostensibly prepared in a day, counsel asked Mr Massone whether he had met Mr Moyane before the bid was made, which Mr Massone said he had done, but even then he concealed much of what had occurred.*

*[7] He said he had met with Mr Moyane on one occasion before Bain bid for the contract. Asked in what context he had met Mr Moyane, he said it was 'meeting people at events and situations and so on'. He said Bain had had no prior information of the proposal that was made ostensibly to review SARS. None of that was true. Indeed, the evidence of Mr Massone, both the evidence he gave before us, and his evidence in a subsequent affidavit, is littered with perjury, both in what he said and in what he didn't say. The affirmation made by a witness is not only to tell the truth, but also to tell the whole truth, and that is not what Mr Massone did.*

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<sup>5</sup> Refer to the State Capture Report, part 1, volume 3, pages 625-714.

*[8] In response to an invitation by the Commission to furnish written submissions on why certain findings should not be made, including that he had perjured himself, Mr Massone advised, through his attorney, that he had truthfully conveyed all he could recall at the time. We regret that we are not persuaded that when giving evidence Mr Massone could not recollect more of his engagements with Mr Moyane than he disclosed. He was deeply engaged and could not have forgotten.*

*[9] Mr Massone disclosed in his evidence, without elaboration, that at one stage Bain had produced a report for Mr Moyane. After he had given evidence Mr Massone was asked by the Commission to furnish a copy of the report, and an affidavit identifying and describing each occasion he, or any other person from Bain, had met or had contact with Mr Moyane, or with former President Zuma, before the contract was concluded with SARS.*

*[10] What followed was a period of obfuscation and evasion by Bain, as partners rushed from abroad to control the damage. Ultimately the report was produced, and an affidavit deposed to by Mr Massone was furnished to the Commission. Mr Massone was summoned to appear before the Commission once again, but he was said to have fallen ill and he returned to his home in Italy before that occurred. He did not appear again, notwithstanding that he was directed to do so by the Commission, and he is said still to be ill in Italy, though he has been able to consult extensively with Bain's advisers in Rome.*

*[11] Meanwhile, 23 lever-arch files of documents, most of which are irrelevant to matters that concern the Commission, but buried amongst which were certain internal emails I refer to presently, were delivered by Bain. Having furnished the affidavit, and dumped the documents, Bain decamped. It was afforded the opportunity once again for a representative to appear before the Commission to explain its conduct, having been cautioned that its failure to do would necessitate the Commission drawing its own inferences as to what had occurred, but the opportunity was declined. The explanation proffered by its General Counsel for declining the invitation was that 'at this time Bain believes there is no one other than Mr Massone who can provide meaningful information. Therefore, no other representative of Bain & Co will be attending the hearing on 22 October 2018'. That was itself untrue."*

- **Fraud - extract from Nugent Commission final report (Pages 32;33;46-47&50):**

*“[20] The affidavit of Mr Massone reveals that SARS was one of the first ‘targets’ in a campaign by Bain to get access to business in the public sector. Mr Massone met many times with Mr Zuma, and no less than seven times with Mr Moyane, before it bid for the contract. It reveals that Bain had planned in advance for the restructuring of SARS even before it had set foot in the organisation. And it reveals that the Minister of Finance, and the Bid Evaluation Committee and Bid Adjudication Committee of SARS, were misled by non-disclosure, which could amount to fraud.*

*[72] Upon completion of phase 1, however, the contract for phase 2 did not ‘go to market again’, as the Bid Adjudication Committee had been told it would do. Instead SARS deviated from the ordinary procurement process, which, said Mr Tshitangano, is permitted by National Treasury regulations only in the case of an emergency, or if there is only one supplier. There was no emergency, nor was Bain a sole supplier. On the contrary, it was expressly said at the Bid Adjudication Committee meeting that the appointed service provider for phase 1 must ‘give recommendations that can be implemented by any service provider not them alone.’*

*[73] It is clear from what occurred the previous year that there was no intention on the part of Mr Moyane or Mr Makwakwa that there would be a return to the market for phase 2. Phase 2 had already been planned, and Bain was to get the contract. Once again there was non-disclosure of what had occurred, both in the evaluation and adjudication of the bids, on this occasion by both Mr Moyane and Mr Makwakwa, who was at the meeting of the Bid Adjudication Committee.*

*[74] We think it can be inferred, both from the pre-determined plan to restructure SARS, and from what occurred in the course of the ostensible diagnostic evaluation, that the procurement process was manipulated to secure the restructuring of SARS by Bain, which would serve Mr Moyane’s interests in taking control of SARS, and Bain’s interest in making money. Moreover, an ‘IT diagnostic’ was indeed initiated, as Bain had suggested, which led to further work being done by another consultancy, at a cost to the taxpayer of a further large sum, that turned out to be largely pointless, which I deal with later in this report.*

*[75] We have little doubt that the Minister would not have given his approval had he known what was occurring. We also have little doubt that the Bid Evaluation Committee and the Bid Adjudication Committee would not have approved the appointment of Bain had the machinations been disclosed. There is also little doubt that SARS was prejudiced or potentially prejudiced in consequence of the non-disclosure. In both*

respects it could constitute fraud, and we recommend that the National Prosecuting Authority consider prosecution.

*[5] Having completed its 'diagnostic', which took about six weeks, Bain was appointed to undertake phase 2. Although the Bid Adjudication Committee had been told the appointed service provider for phase 1 must 'give recommendations that can be implemented by any service provider not them alone,' and that any later work arising from phase 1 would be 'go to market again', that is not what occurred, nor was it intended by the conspirators to occur. Instead, phase 2 was awarded through a deviation from the ordinary procurement process, on spurious grounds, that earned Bain approximately R164 million calculated at its ordinary rates less an initial discount of 12%."*

1. The State Capture Commission made the following recommendations in relation to Bain's conduct at SARS (refer to page 714 of part 1: volume III of the report in this respect):

*"326.1 in the light of the facts pertaining to Bain's unlawful role in SARS, all Bain's contracts with state departments and organs of state be re-examined for compliance with the relevant statutory and constitutional provisions.*

*326.2 law enforcement agencies conduct such investigations as may be necessary with a view to enabling the National Prosecuting Authority to decide whether or not to initiate prosecutions in connection with the award of the Bain & Co contracts."*

### **C. Bain's relationship with Ambrobrite**

1. Bain wanted a market share of the public sector business in South Africa since it saw its positioning in the market as being weak and Bain wanted to change this landscape. Bain actively sought to associate themselves with influential politicians and public sector officials in order to gain government work.
2. On 1 November 2013 Bain entered into a contract with events company Ambrobrite (Pty) Ltd ("**Ambrobrite**") that helped facilitate engagements with Mr Zuma and other government officials and assisted to identify key priority targets in government for consultancy work. We will detail below in a synopsis and a chronology all the meetings held, amongst others, between Mr Zuma and Mr Massone. At the time when Bain engaged the services of Ambrobrite, the company had no website, had never filed financial statements with South Africa's companies' registration office, its only tax clearance certificate was one that SARS considered to be fraudulent, it had no experience of public -sector management work and had no trading history.

3. The relationship between Bain and Ambrobrite predated the formal contract and as early as 1 September 2013, Ambrobrite had organised a party for Bain where Mr Zuma was in attendance. Ambrobrite was owned by Mr Duma Ndlovu, a well-known South African television producer, and Mr Mandla KaNozulu, who promised to use their close proximity and influence to introduce Bain to key stakeholders in government, including Mr Zuma and heads of state-owned entities. Bain paid Ambrobrite an annual fee of R3.6 million for their services, making Ambrobrite the second highest paid external consultant globally for Bain<sup>6</sup>.
4. In December 2013 concerns were raised internally within Bain's leadership by Wendy Miller (Bain's then global head of marketing), Paul Meehan (partner and former head of the Europe, Middle East, Africa (EMEA) region of Bain) and Stuart Min (Bain's global head of legal) about the Ambrobrite contract, in particular, relating to the following issues<sup>7</sup>:
  - the non-verification by SARS of Ambrobrite's tax clearance certificate;
  - the lack of public information regarding Ambrobrite (no company website, no financial information);
  - the lack of business acumen and expertise on companies' strategic and operational issues.
5. Ambrobrite and Bain ostensibly ended the contract in June 2016.

#### **D. Bain's key meetings with Mr Zuma**

1. On 11 August 2012, Mr Massone, first met with Mr Zuma and presented a draft document related to a project called "Phoenix" which was aimed at Bain getting business in all of South Africa's public institutions. The document was prepared by a partner of Bain, Mr Stephane Timpano, who is currently based in Bain's Dubai office.
2. Evidence before the Nugent Commission and the State Capture Commission showed that between August 2012 to July 2014 at least seventeen meetings took place between Mr Massone and Mr Zuma. During this time, Mr Massone presented at least four iterations of the draft document related to project Phoenix, with Bain even suggesting the creation of a delivery agency to oversee important state infrastructure, which agency was

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<sup>6</sup> Para 65 of A Williams' affidavit annexed hereto as "**Annexure A**" (without annexures). See also paragraph 47 of the State Capture Report, part 1, volume 3, page 639.

<sup>7</sup> Paras 61-63&66 of Annexure A.

to be headed by a chief executive office seconded from the private sector. Presumably, this is where Bain saw itself fit into the plan of public sector work.

3. On 3 April 2014, a few days prior to South Africa's national elections, Mr Massone met again with Mr Zuma to discuss another project dealing with centralising public sector procurement in South Africa. Post the meeting, Mr Massone sent an internal email to a Bain partner, Mr Fabrice Franzen, that confirmed that Bain would be performing work for SARS. This expectation would be contrary to the procurement laws in South Africa, which require that work for the state should be done through a fair and transparent procurement process underpinned by lawful supply chain processes. Refer to **attached "Annexure B"** which is a string of internal emails from Bain, including an email dated 4 April 2014 in this respect.
4. In addition, at this meeting Bain prepared an implementation manifesto for the African National Congress ("ANC") which was a "100-days plan" to be implemented after the new administration took over following the national election.
5. Mr Massone did not charge for his attendances nor did Bain charge a fee for the documents they produced.

#### **E. Bain's key meetings with Mr Tom Moyane**

1. On 13 October 2013 Mr Massone first met Mr Moyane. The meeting was facilitated by Mr Duma Ndlovu, one of the directors of Ambrobrite. At this time, Mr Massone had met with Mr Zuma at least five times. According to Bain, the purpose of the meeting with Mr Moyane was to advise him on his personal goals.
2. In December 2013, Mr Massone's firm performance self-assessment report reflected that he thought that Mr Moyane would become the next Commissioner of SARS.
3. On 25 February 2014 Mr Massone met Mr Moyane again at Mr Zuma's residence.
4. On 26 February 2014 Mr Massone sent an internal email to certain partners at Bain, namely, Messrs Franzen, Dutiro and Timpano and revealed that Mr Zuma had informed him at a meeting that Mr Moyane would be appointed as the next SARS Commissioner. Refer to **attached "Annexure C"** in this regard, which is an annexure to Mr A Williams' affidavit.
5. On 15 May 2014 Messrs Massone and Franzen met Mr Moyane at a local restaurant. According to Mr Massone (per his affidavit to the Nugent Commission) it was a general "catch-up" lunch.

6. On 2 June 2014 Mr Massone again met with Mr Moyane at Bain's office where a "TM First 100 days" document was presented. Mr Massone was accompanied by two partners at Bain, namely Messrs Franzen and Alexis Bour.
7. On 26 June 2014 Messrs Massone and Moyane met again at the offices of Bain, at which meeting a document headed 'Potential SARS organisation chart' was discussed, which largely reflected the organisational structure that Bain later recommended.
8. On 28 August 2014, on the eve of the announcement of My Moyane's appointment as Commissioner of SARS, another meeting was held at the offices of Bain, attended by Messrs Moyane, Duma Ndlovu and Jonas Makwakwa, who was then an employee of SARS.
9. On 22 September 2014 a further meeting was held at Bain's offices and attended by Messrs Moyane, Ndlovu and Patrick Monyeki.
10. On 23 September Mr Moyane was appointed as the SARS Commissioner.
11. Bain did not charge for their meetings with Mr Moyane nor for the work they produced.

#### **F. Bain's appointment as a consultant to SARS**

1. In October 2014, SARS issued a request for proposal ("RFP") to a closed group of consulting firms, including Bain. Bain wrote a draft of the RFP for SARS which was contrary to procurement legislation in South Africa.<sup>8</sup>

The RFP described in detail the scope of work that was to be performed, including a comprehensive organisational and strategy review of SARS and a redesign of SARS. There was no evidence that SARS needed any restructuring at all since at that stage it was regarded as an efficient tax collection agency that adopted international best practices.

1. On 18 November 2014 Mr Massone admitted via email that the RFP was designed for Bain, even though Bain did not have the requisite experience or expertise.<sup>9</sup>
  - In fact, internal investigations at Bain established that they had been involved in the RFP process prior to it being finalized in three ways –
  - First, the RFP was based on a draft prepared by Mr. Franzen - in clear breach of the principles of fair competition in the tender process.<sup>10</sup>

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<sup>8</sup> Para 124.2 of A Williams' affidavit and Annexures AW107 & AW108 (marked as "Annexure D").

<sup>9</sup> State Capture Report, part 1, volume 3, para114, page 655.

<sup>10</sup> *Ibid* para 118, page 655.

- Second, SARS had communicated with Bain seeking information and references prior to the RFP being issued.<sup>11</sup>
  - Third, SARS had expressed a preference for Bain prior to the RFP being issued. This is because on 4 December 2014, an email from Mr Massone to Mr. Siphon Maseko of state-owned communications company, Telkom, confirmed that there was an attempt made at getting Bain to “piggy-back” on an existing consulting contract at Telkom – explicitly in order to avoid the tender process at SARS.<sup>12</sup>
  - Communication exchanged revealed that on 2 December 2014, SARS decided that Bain would be their consultant.
1. In 11 December 2014 SARS proceeded with a closed tender process (when the possibility of participating in the Telkom contract was not feasible) and issued a RFP. The RFP was sent to five consulting firms, including Bain.
  2. In January 2015 Bain was awarded the first phase of the work to perform an initial diagnostic analysis of SARS for a six-week period at a cost of R2.6million.
  3. Bain’s Phase 1 contract with SARS was illicitly extended twice – without an open tender and competitive tender process being initiated - which resulted in its work for SARS spanning 27 months at a cost of R164 million.

## **G. Chronology**

Below is a detailed chronology of Bain’s interactions with certain key persons that led to them securing public sector work.

11 Aug 2012<sup>13</sup> : Vittorio Massone (**VM**) has first meeting with former president Jacob Zuma (**JZ**) (facilitated by Siphon Maseko (**SM**), who was a “*long-standing client of Bain*” and whom VM had known for over two years) and also attended by Duma Ndlovu (**DN**) and related to a project called “Phoenix”, which was aimed at Bain getting business in all of South Africa’s public institutions, refer to **annexure VM9 of VM’s affidavit** for the draft document prepared by Stephane Timpano, a partner at Bain.

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<sup>11</sup> *Ibid* para 119, page 656.

<sup>12</sup> *Ibid* para 122, page 656.

<sup>13</sup> Para 25 of page 34 of Nugent Commission Final Report, paras 70, 71&80 of A William’s affidavit and also refer to Vittorio Massone’s affidavit.

During August 2012 to July 2014, 17 meetings took place between VM and JZ<sup>14</sup>

- 23 Aug 2012: VM attends further meeting held with JZ, SM, DN and Jabu Mabuza (former chairman of Telkom, a state-owned telecommunications company) to dive deeper into Phoenix and discuss additional topics in respect of Telkom. Bain presents a revised document marked **VM 10 of VM's affidavit**.
- 27 Oct 2012: VM has another meeting with JZ, SM, DN and Jabu Mabuza on Phoenix and prepares a further revised document marked VM 11 of VM's affidavit.
- 25 April 2013: VM has another meeting with JZ (cannot recall who else was present except for SM) and presents a further revised document marked **VM 12 of VM's affidavit**. Bain introduced the idea of a creation of a delivery agency to oversee important infrastructure and find improvements in methodology (called "project Elephant") [Note: In later versions of the document (**VM 15**) the delivery agency is to be headed by a CEO from the private sector on secondment (presumably this is where Bain saw it would fit in)].
- 4 Aug 2013: VM has another meeting with JZ, SM and DN on Phoenix and prepares a further revised document marked **VM 13 of VM's affidavit**.
- 13 Oct 2013<sup>15</sup> : VM has first meeting with Tom Moyane (**TM**). In VM's affidavit he mentioned that DN introduced him to TM and the purpose of the introduction was for Bain to advise TM on how to achieve his professional goals (known as "CEO coaching"). At that time, VM had met JZ on five occasions.
- 1 Nov 2013: Bain entered into a Business Development and Stakeholder Management Contract with a company called Ambrobrite, despite the fact that Ambrobrite had no website, had never filed financial statements, had a tax certificate that SARS considered to be fraudulent and had no trading history.<sup>16</sup>
- The contract was intended to facilitate collaboration between Bain and Ambrobrite in securing the latter consulting work in government and state-owned entities. The contract revealed that Ambrobrite had intelligence in its possession that these sectors would be undergoing "significant turnaround and transformation processes."<sup>17</sup>

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<sup>14</sup> State Capture Report, part 1, volume 3, para 56, page 641.

<sup>15</sup> Para 28 of page 34 of Nugent Commission Final Report and Vittorio Massone's affidavit.

<sup>16</sup> State Capture Report, part 1, volume 3, para 42, page 638.

<sup>17</sup> State Capture Report, part 1, volume 3, para 40 page 637.

Some of the meeting between Bain and JZ were facilitated by Ambrobrite prior to the contractual relationship.<sup>18</sup> As early as 1 September 2013, Ambrobrite had organised a party where JZ would be in attendance.

Dec 2013: VM's annual self-assessment report at Bain reflect that VM thought TM was most likely going to be appointed as Commissioner imminently and that Bain would be working with the Commissioner.<sup>19</sup>

25 Feb 2014<sup>20</sup>: VM coincidentally meets TM at JZ's residence. The meeting with JZ was to discuss the central procurement agency idea, refer to **VM 14** prepared by VM in his affidavit.

26 Feb 2014: VM emailed Fabrice Franzen, Mr Dutiro and Mr Timpano, all partners of Bain at the time, and admits that at a meeting with JZ it was revealed that TM would get the job as SARS Commissioner.<sup>21</sup>

3 April 2014<sup>22</sup>: VM meets with JZ to propose the establishment of a centralized public procurement agency (According to VM, this meeting did not proceed and was rescheduled for 26 April 2014 but email evidence before the Commission between VM and a partner at Bain, Mr Fabrice Franzen, reflected that the meeting did proceed.

VM sent an email to Mr Franzen which confirmed that "SARS is a go, right after the elections", long before SARS had begun its tender process.<sup>23</sup>

26 April 2014: VM meets with JZ, DN and Fantas Mobu (senior official in procurement at various state-owned entities) to discuss centralising public procurement. Fantas Mobu presented **VM 14** to JZ. In addition to VM 14, the idea of a workshop to be launched after the new government administration (following the national elections) in order to create a 100 days' plan was also presented. In this regard, Bain prepared a draft "100 days' plan" document called an "ANC Manifesto Implementation for the ANC" – (para 31, page 9 of VM's affidavit) – "*..The first time I ever took the lead in any meeting with Zuma was for the meetings concerning a different 100 days' plan (annexure VM15 below)...*".

7 May 2014: South Africa's national election is held.

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<sup>18</sup> State Capture Report, part 1, volume 3.

<sup>19</sup> Paras 105 & 121 of A Williams' affidavit.

<sup>20</sup> Para 30 of page 35 of Nugent Commission Final Report and Vittorio Massone's affidavit.

<sup>21</sup> State Capture Report, part 1, volume 3, para 60, page 642 and para 105 of A Williams' affidavit.

<sup>22</sup> Paras 31 – 33 of Page 36 of Nugent Commission Final Report, Vittorio Massone's affidavit and internal Bain email dated 4 April 2014.

<sup>23</sup> State Capture Report, part 1, volume 3, para 105, page 652.

15 May 2014<sup>24</sup>: TM meets with VM and Fabrice Franzen at Tasha's Café in Melrose Arch. According to VM (per his affidavit) it was a general "catch-up" lunch.

22 May 2014: VM meets with JZ, SM, DN and M KaNozulu to discuss new entrepreneurship and small and medium sized enterprises. SM presented a document prepared by Bain marked **VM 16 of VM's affidavit**.

23 May – 3 July 2014: VM has meetings with JZ related to the 100 days' plan. VM provides very little information of these meetings in his affidavit and attaches VM 17 which is an ANC Manifesto – programme management proposal document that was presented at the meeting of 23 May 2014.

- On **26 May 2014**, TM was presented with a 'First 100 Days Plan' that had been prepared for him by Bain. Mr. Williams' evidence suggested that the document contained a suspiciously high level of detail.<sup>25</sup> This would be explained by email correspondence in which Chris Kennedy of Bain revealed several meetings with Mr Jonas Makwakwa, Head of Internal Audit at SARS.<sup>26</sup> Mr Makwakwa had meetings with Mr Massone as well.<sup>27</sup> From these interactions with Mr Makwakwa, Bain illegally received confidential information internally from SARS.<sup>28</sup>

- Extract from Nugent report (page 37)<sup>29</sup>– "[36] ...Mr Massone said the document 'summarizes for the candidate what his/her "report card" should look like after the first 100 days in office, assuming he/she was to be appointed to the job/position then aimed for'. I regret I do not see the document in that way. On its face it is a clear strategy to be followed by Mr Moyane upon his appointment at SARS."

2 June 2014<sup>30</sup>: TM meets with VM again at Bain's office where the "TM First 100 days" document was presented. VM is accompanied by two partners at Bain, Fabrice Franzen and Alexis Bour.

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<sup>24</sup> Para 35 of page 37 of Nugent Commission Final Report and Vittorio Massone's affidavit.

<sup>25</sup> State Capture Report, part 1, volume 3, para 79 p647.

<sup>26</sup> State Capture Report, part 1, volume 3, para 81 p647.

<sup>27</sup> State Capture Report, part 1, volume 3.

<sup>28</sup> State Capture Report, part 1, volume 3.

<sup>29</sup> Para 36 of page 37 of Nugent Commission Final Report and Vittorio Massone's affidavit.

<sup>30</sup> Pages 37-40 of Nugent Commission Final Report, Vittorio Massone's and Fabrice Franzen's affidavits.

Extract of Nugent report (pages 37-39) –

*[37] They met again on 2 June 2014 at the offices of Bain, where the ‘TM First 100 days’ was presented. Mr Massone was accompanied by two other partners of Bain, Mr Franzen and Mr Bour. Mr Franzen furnished an affidavit confirming his attendance at the meeting. I place little store on how he described the meeting, which is inconsistent with the presentation that was made, if he is not willing to explain in person what occurred.*

*[38] At the outset the presentation describes the ‘objectives of the session’ as follows:*

- **Identify the “big items”** (programs, highly leveraged activities, ...) that will be fundamental to medium – term SARS transformation that need to be launched at the beginning, plus **some possible “quick wins”**
- **Discuss and prioritize the most important factors** that will drive and determine the success of SARS transformation and your personal success as Commissioner
- **Deep-dive on the key components of a 100-day plan** (and the items to be addressed even before that).

*[39] What follows in the 32 slide presentation includes much of what had been contained in the earlier ‘SARS 2.0’ presentation. There is also a slide headed ‘First 100 days: framework and key actions – for discussion’, which lists those key actions under three columns. I pick out some of them for their significance to what happened.*

*[40] One heading was ‘KEEP THE BALL ROLLING”, under which one recommendation was ‘Launch IT diagnostic’. IT capability had been built up in SARS over a decade, and Bain had no knowledge of what it comprised, yet it proposed that a diagnostic evaluation should be launched, which is indeed what occurred soon after Mr Moyane took office.*

*[41] Another key action was ‘Testing BH and assessing performance of different components of COO perimeter’. The reference to BH was clearly a reference to Mr Barry Hore, who was Chief Operating Officer (COO). Just how he was to be ‘tested’ is not clear.*

[42] Another slide is headed 'Build a healthy sponsorship spine to accelerate change and identify individuals to neutralize'. Below the heading is a pictorial representation of an hierarchy, with human figures identified as 'positive sponsorship spine', 'external influencers', 'watch out' and 'to neutralise'. The text reads

- Identify positive change sponsors bottom-up
- Leverage external influencers
- Identify individuals that could hamper change:
  - Watch outs
  - To neutralize.

[43] A letter written to the Commission by General Counsel from Bain's Boston office sought to place a benign interpretation on that slide, but we would have given greater weight to evidence of Mr Franzen, who attended the presentation, and was capable of explaining it himself before the Commission. Moreover, the interpretation advanced does not stand up to even cursory interrogation. As it turns out, individuals who might indeed have hampered this radical transformation by Bain were indeed neutralised, and in no small measure, within months of Mr Moyane's arrival, and the neutralising continued in less brutal form for a year and more.

[44] There are two striking features of the strategy that was planned. The first is that it is all directed at change. It urged identification of the 'big items' that would be fundamental to change. Factors must be prioritised that would drive change. Individuals must be identified who would assist with change, and those who would hamper change. What was to be changed in particular, as emerged from the next meeting, was the organisational structure of SARS, a key being the components of the operations division under Mr Hore.

[45] A decision was taken that the organisational structure of SARS would be changed even before Bain and Mr Moyane had spoken to anyone at SARS. Bain knew nothing about SARS other than what was available from public sources. From information furnished to me by Bain it had no more than peripheral experience of a tax collection agency. And without knowledge of how and why SARS was structured as it was, it had no idea of the environment for which it had been structured. What was good for the tax authorities in New Zealand, and

*elsewhere, of which Bain in any event had only second-hand knowledge, is not necessarily good for SARS, and they might at least have asked those who understood SARS, if that was indeed their concern.*

*[46] The second striking feature is that it anticipated there would be resistance to the change. Those who would support change must be identified. Those who would hamper the change must be neutralised. Then there were those over whom to keep watch.*

*[47] This was not a strategy for succession in public service. Public servants succeed one another in service of a common goal, which is the welfare of the state. They have no need to neutralise other public servants. This was a strategy more appropriate to a corporate takeover. The presentation had nothing to do with tax collection. It had all to do with seizing control of SARS.”*

- 16 June 2014<sup>31</sup>: According to VM another meeting was scheduled to take place at the offices of Bain but VM had no recollection of whether it took place.
- 26 June 2014<sup>32</sup>: VM and TM met again at the offices of Bain, at which a document headed ‘Potential SARS organisation chart’ was discussed, which largely reflected the organisational structure that Bain later recommended.
- 6 July 2014: VM meets with JZ, DN and Busi Mabuza (former chairman of IDC) to discuss project Sirius which was aimed at re-shaping SA’s energy sector. Bain prepare a document marked VM 18 of VM’s affidavit for this meeting.
- 28 July 2014: VM meets with JZ to discuss the acceleration of the implementation of Phoenix, Bain prepare a document marked VM 19 of VM’s affidavit for this meeting.
- 6 Aug 2014<sup>33</sup>: TM attends a breakfast hosted by Bain for its clients and potential clients.

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<sup>31</sup> Para 48 of page 40 of Nugent Commission Final Report and Vittorio Massone’s affidavit.

<sup>32</sup> Para 49 of page 40 of Nugent Commission Final Report and Vittorio Massone’s affidavit.

<sup>33</sup> Para 50 of page 40 of Nugent Commission Final Report and Vittorio Massone’s affidavit.

28 Aug 2014<sup>34</sup>:

On the eve of the announcement of TM's appointment as Commissioner of SARS, according to VM, another meeting was held at the offices of Bain, attended by TM, Duma Ndlovu and Jonas Makwakwa, who was then an employee of SARS. Duma Ndlovu requests Bain to prepare an updated version of the SARS2.0 dated September 2013, which Bain did under cover of an email dated 29 August 2014 (para 26 of VM's affidavit).

Extract from Nugent report (pages 40-41) -

*"[51] On 28 August 2014, on the eve of the announcement of Mr Moyane's appointment as Commissioner of SARS, another meeting was held at the offices of Bain, attended on this occasion, according to Mr Massone, by Mr Moyane, Mr Ndlovu and Mr Jonas Makwakwa, who was then an employee of SARS. That meeting coincides with events described in a Bain internal email of that date:*

*'Guys,*

*Just had a call and heard that the Sars announcement should happen tomorrow or monday.*

*Meeting later in the office, to discuss also procurement process*

*Fabrice/Stephane, how many teams did we say? Can we please think about managers, with and without Galactica? I guess we should have a few weeks to ramp up (procurement process) but we'll need to have a first contingent to start working asap ..*

*Thank you*

*Vittoria'.*

*To which Mr Stephane Timpano replied 'vittorio, that's a great news*

*The last thinking was to start with 1 team (M+4 to +6), for 3 months to do fundamentally 2 things:*

- 1) run a full operational / strategic assessment of SARS*
- 2) assist Tom in starting properly his new role (direct "CEO" work)*

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<sup>34</sup> Para 51 of page 40 of Nugent Commission Final Report, Vittorio Massone's affidavit and email of 28 August 2014.

*We will be then able, based on the operational / strategic assessment, to build up the platform for a broader SARS transformational program (6-12 months plan)*

*Let's discuss team face to face later.*

*stephane'.*

*[52] What occurred at this meeting could have been elucidated by Mr Stephane Timpano, had he been willing to have his evidence on affidavit examined by the Commission. In his affidavit Mr Massone said no more of this meeting than that Mr Makwakwa 'shared his personal issues that he had been experiencing at SARS'. We have no hesitation finding that to be yet more concealment by Mr Massone. Having just had confirmation that Mr Moyane's appointment was about to be announced, and the expressed intention to discuss also the procurement process, it is not credible that they gathered to listen to Mr Makwakwa's 'personal issues' at SARS.*

*[53] We think it is fair to infer instead that there must have been congratulations all round, as the collaborators, with Mr Makwakwa now drawn into the fold, set about plotting their course towards securing a contract for Bain to undertake the 'profound strategy refresh' for the 'transformation of SARS' that it had set for itself a year earlier."*

22 Sep 2014<sup>35</sup>:

A further meeting at the offices of Bain was held, attended by TM, Duma Ndlovu and Patrick Monyeki.

Extract of Nugent report (pages 41 – 42) -

*"[54] An email records a further meeting at the offices of Bain on 22 September 2018, attended on this occasion by Mr Moyane, Mr Ndlovu and Mr Patrick Monyeki. The meeting is not disclosed or explained in Mr Massone's affidavit. It appears from other evidence that Mr Monyeki is a long-standing friend of Mr Moyane. He appears again later, when the information technology contracts were awarded, which I deal with later in this report.*

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<sup>35</sup> Para 54 of page 41 of Nugent Commission Final Report (note report erroneously mentions email being 22 September 2018), Vittorio Massone's affidavit and email of 22 September 2014.

*[55] Clearly Bain and Mr Moyane were in deep collusion to restructure SARS, no matter what they might have found at SARS. Neither was concerned for the interests of SARS, but for their own interests, that were at least aligned with one another, though they might not have been quite the same."*

23 September 2014: TM is appointed as SARS Commissioner.

As early as December 2013, Mr Massone's own performance assessment reflects an advanced involvement in preparing a strategic turnaround document for SARS that was prepared in collaboration with TM, who VM believes had pitched the document to JZ.<sup>36</sup>

October 2014: SARS issues a Request for Proposals (RFP), which described in detail the scope of work that was to be performed, including a comprehensive organisational and strategy review of SARS and a redesign of SARS. Bain wrote a draft of the RFP.<sup>37</sup> The document contemplated the appointment of an external consultant. The process was recorded to be by a closed tender – meaning it would only be sent to a closed list of consulting firms.<sup>38</sup>

11 Nov 2014<sup>39</sup>: TM addresses a memorandum to the former Minister of Finance (Nhlanhla Nene) purporting to seek the Minister's approval to approach independent consulting companies to assist with an evaluation of all SARS' operations<sup>39</sup>.

Extract from Nugent report (Page 43 -48) –

*"[60] The memorandum was relied on by Mr Massone to suggest the Minister approved the project, but that is not correct. The former Minister, Mr Nene, said in evidence before us that as this was an operational matter he was required to endorse only the process, with the hope that the implementation would be reported back to him*

*[61] What Mr Moyane represented to the Minister was untrue, both in what was said and in what was not disclosed. The memorandum conveys an intention to approach consulting companies in order to select one. In truth the only approach that was to be made to consulting*

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<sup>36</sup> State Capture Report, part 1, volume 3, para 67, page 644.

<sup>37</sup> Para 124.2 and Annexures AW107 & AW108 of A Williams' affidavit (**Annexure D**).

<sup>38</sup> State Capture Report, part 1, volume 3, para 111, page 654.

<sup>39</sup> Para 57 of page 42 of Nugent Commission Final Report and Appendix 6.

*companies was to entice them to participate in a procurement sham. What he ought to have said to the Minister is that he had already colluded with Bain on a strategy to restructure SARS, for Mr Moyane to take control, and for Bain to increase its wealth.*

*[62] Approval having been given by the Minister, SARS (it seems to have been Mr Makwakwa) at first approached Telkom, with a request to participate in a contract that Telkom had with Bain for procurement of the consulting services of Bain. Why would SARS be wanting to secure services by participating in the contract between Telkom and Bain, asked Mr Tshitangano, unless SARS had already decided that Bain should be appointed?*

*[63] Mr Massone said he had known nothing of the approach to Telkom. Once again that was untrue. On 4 December 2014 he wrote to Mr Maseko of Telkom as follows:*

*'I received a call from SARS (the acting COO) who told me that they would like to use Telkom's contract to give a mandate to Bain – apparently law (or practice) says that they can piggyback another SOE. This will enable an immediate start avoiding long and complicated tender processes. I hope that's ok with you. I gave them Ian's contacts as they want to contact Telkom tomorrow morning'.*

18 November 2014: VM sent an email containing an admission that the RFP was designed for Bain, even though Bain did not have the requisite experience or expertise.<sup>40</sup> Internal investigations at Bain established that they had been involved in the RFP process prior to it being finalized in three ways –

- First, the RFP was based on a draft prepared by Mr. Franzen - in clear breach of the principles of fair competition in the tender process.<sup>41</sup>
- Second, SARS had communicated with Bain seeking information and references prior to the RFP being issued.<sup>42</sup>

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<sup>40</sup> State Capture Report, part 1, volume 3, para 114, page 655.

<sup>41</sup> *Ibid* para 118, page 655.

<sup>42</sup> *Ibid* para 119 page 656.

- Third, SARS had expressed a preference for Bain prior to the RFP being issued. This is because on 4 December 2014, an email from Mr Massone to Mr. Siphon Maseko of Telkom confirmed that there was an attempt made at getting Bain to “piggy-back” on an existing consulting contract at Telkom – explicitly in order to avoid the tender process at SARS.<sup>43</sup>
- Communication exchanged revealed that on 2 December 2014, SARS decided that Bain would be their consultant.

11-18 Dec 2014:

SARS thereafter turned to a closed tender process (when the possibility of participating in the Telkom contract came to nought) in which five consulting companies, including Bain, were invited to submit proposals for an initial ‘diagnostic evaluation’ of SARS.

According to VM, on 2 December 2014 Mogogodi Dioka, an executive procurement at SARS, contacted him to request any current public entity relationships and references from Bain, see **VM 26** of VM’s affidavit. Note VM does not offer any information as to whether this information was furnished to Mogogodi Dioka.

The Request for Proposals was issued on 11 December 2014 and bidders were invited to attend a briefing the following day. Proposals were to be submitted by 18 December 2014.

Some of the documents submitted to the Nugent Commission by Bain, which included pricing of the project, were completed on 12 December 2014. VM disputes that the documents were completed by 12 December 2014 (VM attaches meta data from Bain as **VM 23** of his affidavit in support of this contention but did not appear before the Nugent Commission to answer any further questions on this aspect). In VM’s affidavit he mentions that the proposal was submitted on 19 December 2014 and attaches extracts of these documents as

**VM 21 and VM 22** to his affidavit. Also refer to **paragraph 139 of A Williams’ affidavit**.

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<sup>43</sup> *Ibid* para 122 page 656.

Extract from Nugent report (pages 44 – 48)

*“[64] When the possibility of participating in the Telkom contract came to nought, SARS turned to a closed tender process, which was in truth a sham, in which five consulting companies, including Bain, were invited to submit proposals for an initial ‘diagnostic evaluation’ of SARS. The Request for Proposals was issued on 11 December 2014 and bidders were invited to attend a briefing the following day. Proposals were to be submitted by 18 December 2014.*

*[65] Some of the documents submitted to the Commission by Bain, which included pricing of the project, were completed on 12 December 2014. How was it, asked Mr Tshitangano, that Bain was able to complete its pricing within a day, unless it had been briefed on the proposal beforehand? Asked whether Bain had had prior information of the proposal, Mr Massone said it had not. He said it was simple to prepare a proposal in a day, contradicting the email of 28 August 2014 recording that Bain would have a few weeks to ‘ramp up’ the procurement process. Bain had certainly known the proposal was in the offing, for four months or more. Indeed, it had been its architect.*

*[66] The pricing of Bain’s bid was curious, but not in hindsight. The price offered by Bain for Phase 1 was R2.38 million, calculated at its ordinary rates less a discount of 50%, bringing its price slightly lower than the next lowest bidder. Pricing its bid in that way meant that while phase 1 was undertaken at competitive rates, any further work that followed phase 1 would be at double those rates. As it was said in an email from Mr Massone to his colleagues on 16 December 2014:*

*‘I think we should put the full pricing in the hourly rates and at the bottom, whatever number comes out, we say we’ll do a 50% discount just for this phase 1*

*Otherwise it’ll be tricky to change the rates going forward, In the document, the full rates need to be showed’.*

*[67] That is indeed what occurred. Having completed phase 1, at its discounted rate of 50%, Bain was appointed, by deviation from the ordinary competitive procurement process, to undertake the restructuring of SARS (phase 2) without again bidding against other service providers. On this occasion it charged its ordinary rates, which*

were double the rates that had secured it phase 1, though it allowed an initial discount of 12%, which later increased incrementally as the contract proceeded, up to about 19%.

[68] In short, Bain got its foot in the door by foregoing R2.38 million of its ordinary rates in competitive bidding, only to secure phase 2 at its ordinary rates less 12% without competitive bidding, which earned it a further R164 million for phase 2. Progression to phase 3 would have earned it about R50 million more.

[69] In his evidence the current Chief Financial Officer of SARS said it was not uncommon, where multiple contracts are envisaged for a project, for bidders to offer a 'loss leader' at the outset. If that is indeed the case, we see no proper reason why that should be permitted in public procurement. It has the potential for the abuse that occurred in this case, and we recommend that that form of bidding be reviewed by the National Treasury.

[70] It can be inferred from the email of 28 August 2014 I referred to earlier, and the manner in which Phase 1 was conducted, which I come to presently, that Bain had no intention of undertaking a 'diagnostic' evaluation. It said itself that in Phase 1 it would undertake an 'operational / strategic assessment' of SARS, to set the platform for the 'broader SARS transformational program (6-12 months plan)' that had been planned.

[71] The minute of the Bid Adjudication Committee meeting, at which the recommendation of the Bid Evaluation Committee was accepted, does not identify who asked and who answered the various questions that are recorded in the minute. A copy of the minute is Appendix 7. The minute reflects that the question was asked;

'Did the BEC consider advisory and implementation as phase 1 and 2 to be done by the same service provider?

to which the answer was:

'Yes they did, but concluded by saying they will appoint consultants to do advisory and at a later stage go to market again to appoint a service provider to implement. The other reason is that they needed to know what is to be implemented first which will be addressed by the report of from the consultants appointed to advisory phase. It was also mentioned that the idea is that the appointed service provider must give

recommendations that can be implemented by any service provider not them alone. [my emphasis].

[72] Upon completion of phase 1, however, the contract for phase 2 did not 'go to market again', as the Bid Adjudication Committee had been told it would do. Instead SARS deviated from the ordinary procurement process, which, said Mr Tshitangano, is permitted by National Treasury regulations only in the case of an emergency, or if there is only one supplier. There was no emergency, nor was Bain a sole supplier. On the contrary, it was expressly said at the Bid Adjudication Committee meeting that the appointed service provider for phase 1 must 'give recommendations that can be implemented by any service provider not them alone.'

[73] It is clear from what occurred the previous year that there was no intention on the part of Mr Moyane or Mr Makwaka that there would be a return to the market for phase 2. Phase 2 had already been planned, and Bain was to get the contract. Once again there was non-disclosure of what had occurred, both in the evaluation and adjudication of the bids, on this occasion by both Mr Moyane and Mr Makwaka, who was at the meeting of the Bid Adjudication Committee.

[74] We think it can be inferred, both from the pre-determined plan to restructure SARS, and from what occurred in the course of the ostensible diagnostic evaluation, that the procurement process was manipulated to secure the restructuring of SARS by Bain, which would serve Mr Moyane's interests in taking control of SARS, and Bain's interest in making money. Moreover, an 'IT diagnostic' was indeed initiated, as Bain had suggested, which led to further work being done by another consultancy, at a cost to the taxpayer of a further large sum, that turned out to be largely pointless, which I deal with later in this report.

[75] We have little doubt that the Minister would not have given his approval had he known what was occurring. We also have little doubt that the Bid Evaluation Committee and the Bid Adjudication Committee would not have approved the appointment of Bain had the machinations been disclosed. There is also little doubt that SARS was prejudiced or potentially prejudiced in consequence of the non-disclosure. In both respects it could constitute fraud, and we recommend that the National Prosecuting Authority consider prosecution.

*[76] Upon Mr Massone's revelations, when the partners from abroad scurried to this country, Bain said in its media statement that it had set aside the money it had received from SARS, to be dealt with as the Commission might direct. Upon an intimation from the Commission that it has no authority to dispose of money received from SARS, Bain has now unconditionally paid to SARS all the money it received, together with interest, amounting in all to just short of R217 million. We were told that Mr Massone has also resigned.*

*[77] While the payment of money, whether by returning fees to SARS, or by sponsoring good deeds, is no doubt admirable, Bain ought to know from the fact alone that three commissions of inquiry are at present underway concerning state institutions, that what the South African people want to know is what happened to their country's institutions, and the information Bain has will help to find that out. If Bain wants truly to make reparation, then it should give to South Africans what they want, and not what Bain thinks they should have, which it has steadfastly refrained from doing. Payment of money without prior disclosure of the truth, is not reparation but is marketing instead.*

*[78] What is clear from the evidence I have summarised is that Mr Moyane arrived at SARS without integrity, and once that is the case, we are not able to exclude any of the acts detailed in the terms of reference from having occurred. What we have found and report on are manifestations of the failure of integrity and governance we have observed, but it is probable there were others we did not detect."*

19 Dec 2014:

After Bain presented their proposal to SARS, Mr Bour of Bain gave the following feedback in an internal email in respect of the SARS' executives – "*going through the motions*".<sup>44</sup>

January 2015:

Bain made a submission to SARS in response to the RFP that SARS had sent out in December 2014. The document was headed "The Bain team brings considerable experience and expertise to the table".<sup>45</sup>

This, despite the fact that the partners on the team who pitched for the work, VM and Mr Franzen, having no experience in SARS's core business.<sup>46</sup>

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<sup>44</sup> Para 130 of A Williams' affidavit.

<sup>45</sup> State Capture Report, part 1, volume 3, para 125, page 657.

<sup>46</sup> *Ibid* para 126, page 657.

January 2015 to March 2015: Bain was awarded the initial 'diagnostic work' in January 2015 for a six-week period and for a cost of R2.6m.<sup>47</sup>

- This became known as Phase 1 of Bain's work with SARS.
- Bain's Phase 1 contract with SARS was illicitly extended – without an open and competitive tender process being initiated – twice, which resulted in its work for SARS spanning 27 months at a cost of R164m.<sup>48</sup>

March 2015 to June 2016: Bain's first extension was awarded on June 2015 and lasted until June 2016.<sup>49</sup> This was Phase 2 of Bain's work with SARS.

- Email communications between Bain and SARS during 12 March and 9 April 2015 show that there was collusion between the consultants and SARS to get around the procurement process which was required for a valid extension of the original contract.<sup>50</sup>
- The Commissioner, at this point Mr. Moyane, apparently had communications with the people involved in the procurement decision making. Mr. Makwakwa told Bain "do not worry" about the extension because they were "going to make a plan", because the Commissioner had "gone to see" the people in procurement.<sup>51</sup>
- After back-and-forth communications, a solution – a "legal way" to get around having to have the work go out to open tender - was arrived at. This was for SARS to declare the Bain project an emergency or that Bain was the sole source provider. This is an example of an unlawful use of the deviation provisions as provided for in the Treasury Regulations. This was clearly not an emergency. Mr. Williams said that no one could say.<sup>52</sup>
- Extract from Nugent Report regarding the Bain contracts (Pages 49 -51) –

*"[3] The first contract awarded to Bain was ostensibly to undertake a 'diagnostic' evaluation of SARS. The exercise was shrouded in secrecy from the managers of the various divisions,*

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<sup>47</sup> *Ibid* para 130, page 658.

<sup>48</sup> *Ibid* para 130, page 658.

<sup>49</sup> *Ibid* para 132, page 658-9

<sup>50</sup> State Capture Report, part 1, volume 3, para131 page 658 and paras 128.3-128.6 of A Williams' affidavit.

<sup>51</sup> *Ibid* para 53, page 641.

<sup>52</sup> *Ibid* para 132, page 658-9.

*Mr Moyane having given instructions to Bain on who to talk to, under the eye of a steering committee headed by Mr Makwakwa.*

*[4] Every managerial employee who gave evidence before us said he or she was either not consulted in the course of the exercise undertaken by Bain, or was consulted only perfunctorily, often by junior employees of Bain. Many were puzzled at why it was thought necessary to 'fix what was not broken'. With knowledge of what had preceded it, it comes as no surprise that there was little consultation, albeit that Bain contended that there was, but produced no documentary evidence to that effect. The Bain email of 28 August 2014 makes it clear Bain was not interested in finding out why SARS was structured in the way it was structured. Its interest was in finding out enough to enable it to re-structure SARS, whether that was needed or not, or, as was said in the email, to undertake an 'operational / strategic assessment' of SARS, to set a platform for a 'broader SARS transformational program' expected to take six to twelve months.*

*[5] Having completed its 'diagnostic', which took about six weeks, Bain was appointed to undertake phase 2. Although the Bid Adjudication Committee had been told the appointed service provider for phase 1 must 'give recommendations that can be implemented by any service provider not them alone,' and that any later work arising from phase 1 would be 'go to market again', that is not what occurred, nor was it intended by the conspirators to occur. Instead, phase 2 was awarded through a deviation from the ordinary procurement process, on spurious grounds, that earned Bain approximately R164 million calculated at its ordinary rates less an initial discount of 12%.*

*[6] Bain presented four potential organisational structures for SARS, and Mr Moyane insisted upon adaptations, resulting in a fifth that was adopted and implemented. The most significant change insisted upon by Mr Moyane was to combine the roles of overseeing individual tax and of corporate tax respectively into one division called 'Business and Individual Tax' (BAIT), reporting direct to the Commissioner. In due course Mr*

*Makwakwa was appointed Chief Officer of BAIT, the effect of which was that he had operational control of all taxpayer affairs.*

*[7] Much was sought to be made, in justification for the restructuring, of the fact that the new organisational structure was presented to, and approved by, the SARS Advisory Board under the chairmanship of Judge Kroon, and then by the Minister of Finance. The evidence of Mr Massone and Judge Kroon, together, discloses that that presentation took place over no more than an hour, followed by discussion with Mr Moyane and Mr Makwakwa, who can be expected to have promoted the new structure. Judge Kroon acknowledged that he, at least, had no knowledge of the organisational structure that then existed, or why SARS had been structured in that way.*

*[8] We do not place any value on an approval for the restructuring of SARS founded on no more than a presentation given over an hour, with no knowledge of the structure it was to replace, and with no guidance other than from Bain and Mr Moyane and Mr Makwakwa, all of whom had colluded to restructure SARS. As for ministerial approval, the evidence of the then Minister of Finance, Mr Nene, was that his approval was for the process of appointing consultants, not the outcome.*

*[9] The first middle managerial employees of SARS knew of the restructuring was when it had been adopted, and was presented to them as a fait accompli. When the new structure was presented some of the existing units were no longer there and others had been materially altered.*

*[10] The new organisational structure of SARS was often called the 'new operating model' but that is a misnomer. An operating model is a strategy upon which a structure is built. There was no new strategy upon which the structure was rebuilt by Bain. It did no more than restructure the organisation, based largely, according to Mr Massone, upon what Bain considered to be 'best practice', drawn from Bain's second-hand knowledge of other tax collection agencies, with little insight, nor any apparent interest, into why SARS had been structured in the way in which it was, and in what direction SARS was headed.*

*[11] The effect was devastating for many employees who were displaced, and proved to be detrimental to the efficiency and governance of SARS. Mr Massone said the new structure was an improvement on what existed, if only it had been utilised in the way it was intended, but the fact of the matter is that it was not utilised in that way, and enabled what occurred. Mr Massone said as well they did not understand at that time who they were dealing with, that Bain may have been 'used', and in hindsight would have acted differently. An email written on 3 December, two days after Mr Hore resigned, demonstrates they knew exactly who they were dealing with. 'Goodbye Barry Hore ...', wrote Mr Franzen to Mr Massone on 3 December 2014, to which Mr Massone replied 'Now I'm scared by Tom.. This guy was supposed to be untouchable and it took Tom just a few weeks to make him resign.. Scary ..'*

June 2016:

Bain's contract with Ambrobrite comes to an end.<sup>53</sup> This date was relevant because it appeared to coincide with the end of with the end of the bulk of Bain's work for SARS. This may suggest that Ambrobrite's fees were linked to securing the work from SARS.

After June 2016:

In June 2016 the issue of how to extend the contract arose. VM wrote an internal email that said Bain could not go to the market because "if we do go to the market, we know we will lose". He was clear that Bain would not be awarded the work if the process were to be a competitive tender one.<sup>54</sup>

- In this instance, the competitive tender process was avoided by Bain arguing that, if phase three of the work was not done by Bain, then phases one and two would be meaningless. Those earlier phases, it was argued, would have no impact on SARS and it would render the expenditure thereon wasteful. National Treasury then had their hands tied because they did not want to incur wasteful expenditure. Mr Williams explained, however, that phase three was actually focused on something different from the earlier two phases. So, in that sense, the argument held no water.<sup>55</sup>

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<sup>53</sup> State Capture Report, part 1, volume 3 para 53, page 641.

<sup>54</sup> *Ibid* para 133 p659 and para 129 of A Williams' affidavit.

<sup>55</sup> State Capture Report, part 1, volume 3 para 134, page 659.

- The upshot is that there was never an open tender process run in relation to the subsequent phases of work that Bain performed for SARS.<sup>56</sup>

17 December 2018: Bain issues the following public statement:

*“The past few months have been a highly challenging and sobering period for Bain South Africa and Bain globally... it has become painfully evident that the firm’s involvement with the South African Revenue Service, SARS, was a serious failure for South Africa, for SARS and clearly for Bain too. The [Nugent] Commission’s hearings and the final report published last week have laid bare the disarray in which SARS now finds itself with both morale and performance severely damaged.”<sup>57</sup>*

- The statement suggests that Bain was an unwitting participant in the saga at SARS and shows none of the self-awareness of a genuinely remorseful party.
- In this regard, the State Capture Commission found that contrary to the explanation they give, the evidence shows that Bain did not arrive at SARS as an unwitting participant in the events that followed. In fact, Bain arrived at SARS, as Mr. Moyane did, with a restructuring agenda. The evidence shows that that was designed months before either of the parties was formally appointed.<sup>58</sup>

The above chronology depicts a scandalous account of how Bain conducted business with the South African government that led to the destruction of the South African tax agency.

#### **H. Corporate Structure of Bain & Company in South Africa**

1. The U.S. global consultancy firm, Bain & Company (“Bain”), currently operates in South Africa through two juristic entities registered with the South African companies’ registration office (“**CIPC**”). These entities are Bain & Company South Africa, with registration number 1996/000558/10 and Bain & Company (Pty) Ltd, with registration number, 2012/075474/07.

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<sup>56</sup> *Ibid* para 135, page 659.

<sup>57</sup> *Ibid* para 137, page 660.

<sup>58</sup> *Ibid* para 138, page 660.

2. At present, the companies' records held at CIPC reveal that Messrs Matthew Hirshfield, a U.S. citizen, and Keith Winston Wilton are reflected as being active statutory directors of Bain & Company South Africa, while Mr Hirshfield is also recorded as being the sole director of Bain & Company (Pty) Ltd.
3. In addition, Mr Stuart Kevin Min, a U.S. citizen, was a director of Bain & Company South Africa from 1 January 2002 until his resignation on 7 December 2020. Mr Min was also a director of Bain & Company (Pty) Ltd from 18 September 2012 until his resignation on 7 December 2020. Mr Colin Fraser Anderson, presumably also a U.S. citizen, was a director of Bain & Company South Africa until his resignation in 2002.

The two U.S. directors were legally responsible for directing and managing the affairs of the South African companies of Bain.

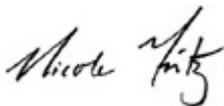
4. We **enclose a** diagram displaying the corporate structure of the two South African entities as "**Annexure E**".
5. Bain's website attests that it works as one entity even though spread across various offices in the world. In this regard, under the "global offices" icon<sup>59</sup> of Bain's website the following text appears – "*At Bain, we work seamlessly together as one firm to serve our clients wherever they need us. With 65 offices in 40 countries around the world, we make our collective knowledge, experience and global network available to our clients.*"
6. At all material times the two U.S directors of Bain were directly responsible for the affairs of Bain in South Africa and therefore they should not escape corporate liability.

## **I. Conclusion**

The evidence outlined in this memorandum shows that Bain's conduct was disgraceful and warrants investigation and prosecution.

The HSF remains available to assist your office in this matter and please do not hesitate to contact us should you require further clarity.

**Yours sincerely,**



**Nicole Fritz**

**Director, Helen Suzman Foundation**

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<sup>59</sup> <https://www.bain.com/about/offices/>

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**AFFIDAVIT**

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I, the undersigned,

**Athol Williams**

do hereby make oath and state that:

1. I am an adult male currently employed as a senior lecturer at the University of Cape Town (“**UCT**”). I also provide services as a management consultant to various organizations.
2. The facts contained in this affidavit are within my personal knowledge save where otherwise indicated, or where the contrary appears from the context. The facts are to the best of my belief both true and correct.
3. On 29 January 2020 I was served with a summons SPS17(g)/0321/SM by the Judicial Commission of Inquiry to Inquire into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (“**the Zondo Commission**”) to “Produce Books, Documents and/or Objects.” The summons presented a list of 11 items that I was to submit to the Commission in a table titled “List of Books and Documents for Bain & Company South Africa, Inc.” The listed items referred to documents and emails. I complied with the summons on 10 February 2020 by submitting electronically the documents and emails in my possession and followed up with additional documents and emails as I located them on my computer.
4. It is my intention to fully cooperate with the efforts of the Zondo Commission, which I believe is an important process for our country. In order to be of service, I requested and was granted unpaid leave of absence from my work duties at UCT to focus on gathering the required information in order to prepare this affidavit.

## BACKGROUND TO THE AFFIDAVIT

5. This affidavit details my association with Bain over a 16-month period commencing sometime during September 2018 when I was contracted to oversee Bain's investigation into their contracts and work with the South African Revenue Service ("**SARS**") and their reporting to the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service ("**the Nugent Commission**"), and ending in December 2019.
6. During this period, I had an office in Bain's suite of offices in Melrose Arch and I performed four different roles with Bain as follows:
  - 6.1. Independent contractor, to perform an oversight role of Bain's investigation into their contracts and work at SARS. I performed this role on a part-time basis under contract from early September to 31 December 2018.
  - 6.2. Independent contractor, as advisor to develop a remedy plan for Bain and help set up the Bain Africa Oversight Board. I performed this role on a part-time basis without a contract from early January to 14 May 2019.
  - 6.3. Part-time employee, as Partner in the South African business during which time I served on the Bain Africa Oversight Board. I performed this role under an employment contract from 15 May to 28 August 2019 when I resigned.
  - 6.4. Finally, negotiating my exit which ran from 29 August to the end of December 2019 but divided into two distinct periods:
    - 6.4.1. Working out my notice period and negotiating terms of exit from 29 August to 17 October 2019. Bain had asked that I remain at the firm until the end of 2019 and I agreed but this was cut short by Bain when they deactivated my access to my company cellphone and laptop on 17 October 2019 after I referred to my resignation during a conference keynote address in Sandton. Bain had been resisting my requests to announce my resignation to staff and to make it public. These had been amicable discussions until 17 October 2019.

- 6.4.2. Between 17 October and December 2019, I held further discussions with Bain around the terms of my exit – these discussions were less amicable. This period included what I believe to be Bain’s attempts to silence me. I have feared for my safety since December 2019 and even now I fear for my safety.
7. This affidavit relies on documents and emails that I received or produced during my 16-month period of engagement with Bain. The nature of these documents and emails vary according to the different roles I played:
- 7.1. Independent contractor to perform oversight role (September to December 2018) – in performing this role I attended telephonic meetings and the occasional face-to-face meeting with Bain and Baker McKenzie (representing Bain) to discuss the evidence that Baker McKenzie had collected from the laptops of Bain employees and other sources. My contract with Bain stipulated that I have sight of all the evidence that Baker McKenzie collected and Baker McKenzie’s contract with Bain stipulated that they share evidence that they collected with me as well as the investigation reports that they produced. I only got to see what Baker McKenzie shared with me and I understand that I only got to see what they determined was non-privileged. All evidence was shared with me via email from three people at Baker McKenzie, namely Darryl Bernstein, Reagan Demas and Marilyn Batonga, or from Bain which was primarily from Chris Kennedy or Stuart Min. During this period I received an estimated 250 emails with regard to my duties, all sent to my personal email address – I continue to have access to these emails. Occasionally these emails would contain a piece of evidence but the bulk of the evidence that I refer to in this affidavit came in 4 emails:
- 7.1.1. 16 October 2018 from Reagan Demas which attached a folder containing 34 documents
- 7.1.2. 23 October 2018 from Reagan Demas which attached a folder containing 5 documents
- 7.1.3. 14 November 2018 from Marilyn Batonga which attached a folder containing 114 documents

- 7.1.4. 22 November 2018 from Marilyn Batonga which attached a folder containing 17 documents
- 7.2. Independent contractor as advisor (January to May 2018) – during this period and subsequent periods I received no additional documents or other pieces of evidence from Baker McKenzie and I stopped attending all meetings with Bain and Baker McKenzie held to discuss the investigation or evidence. During this period I received an estimated 50 emails to my personal email address relating to my work with Bain. During this period Bain furnished me with a company laptop and a Bain email address. I do not have access to emails or documents on this laptop. This helped me keep my Bain work separate from my other work since at this time I had two part-time jobs, the other being at UCT. The Bain laptop did not give me access to Bain's internal networks or IP databases. During this time I was given sight of a presentation that Baker McKenzie informed me was the presentation on their Bain investigation that they shared with the US Department of Justice. I could not and did not retain a copy of this presentation.
- 7.3. Part-time employee (15 May to 28 August 2019) – as an employee all my Bain related work and communications were done using the company laptop and email address unless mentioned otherwise in this affidavit. I do not have access to documents and emails on this laptop save for a few that I forwarded to my personal email address.
- 7.4. Working notice period and negotiating exit (29 August to end December 2019) – I continued to use the Bain laptop until 17 October 2019 when my access was deactivated. I do not have access to emails or documents generated during this period save for the odd email that I forwarded to my personal email address. From 18 October until the end of December 2019 I returned to using my personal email address in communicating with Bain and received an estimated 100 emails which I still have access to. These emails and attachments related mostly to my exit negotiations.
8. The scope of my oversight role referred to in par 6.1 above was only vaguely defined in my contract with Bain. I set two requirements for my oversight relating to the process and reporting of findings. In my Final

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

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

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

## **ABOUT MYSELF**

10. I am currently a Senior Lecturer at the University of Cape Town, Graduate School of Business (“**GSB**”), in the Allan Gray Centre for Values-Based Leadership. I lecture and conduct research in Corporate Responsibility, Ethical Leadership and provide Management Consulting services. I am also a Research Fellow in the Centre for Applied Ethics at Stellenbosch University. I am the founding convenor of the Management Consulting MBA specialisation at UCT GSB.
11. I have worked as a Management Consultant for over 15 years either at Bain, where I worked in their Boston, London and Johannesburg offices, or as the Managing Director of Taurus Associates, a South African management consulting firm that I founded in 2003. I have held senior executive roles at Old Mutual where I was Strategy Director, at Rio Tinto in London where I was Business Development Executive, and at RMB Corvest where I was a Portfolio Executive representing shareholders on the boards of portfolio companies.
12. I have served on the boards of numerous companies and non-profit organisations including chairman of Shalamuka Capital (which funds education) and chairman of The Family Life Centre, one of the oldest welfare organisations in the country. I currently serve as chairman of the youth literacy non-profit organisation, Read to Rise, which I co-founded, and serve on the board of New Contrast literary journal, the oldest literary journal in South Africa. Read to Rise works in primary schools in Soweto and on the Cape Flats.
13. I am a member of the *Scholars and Practitioners Network* for the *Corporate Responsibility Initiative* at Harvard University, a member of the *International Network of Scholars and Activists for African Reparation* and a member of *Unite 4 Mzansi*, an anti-corruption initiative of the SA Institute of Chartered Accountants. I have been recognised for my community development work by Lead SA, Inyathelo, Wits

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

14. I have been awarded the following degrees and qualifications:
- 14.1. Bachelors degree in Mechanical Engineering from *Wits University*.
- 14.2. Masters degree (MBA) from the *Massachusetts Institute of Technology* (MIT) Sloan School of Management, in the USA. This degree I completed with specialisation in Management Consulting.
- 14.3. Masters degree (MSc) in Finance from the *London Business School* in the UK.
- 14.4. Masters degree (MPA) from *Harvard University* in the USA, where I was a Mason Fellow in Public Policy and Management and received the Lucius N. Littauer Award for academic excellence and service to the Harvard Kennedy School community.
- 14.5. Masters degree (MSc) in Political Theory from the *London School of Economics and Political Science* (LSE) in the UK.
- 14.6. Masters degree (MPhil) in Political Theory from *Oxford University*.
- 14.7. Doctorate degree (DPhil) from *Oxford University* which is in progress – this degree was interrupted during 2018 when I contracted with Bain to perform my independent oversight role of their investigation.

#### **MY HISTORY WITH BAIN BEFORE SEPTEMBER 2018**

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

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

17. To deliver its usual high-calibre work, Bain recruits smart, highly educated staff and works them very hard (65+ hours a week), and in return their consultants are paid extremely well. Bain consultants are recruited from a handful of the top universities around the world. The working environment is intense and there is enormous pressure to deliver. Firms like Bain have an exacting performance management system where under-performers are actively managed out of and exit the business on a systematic basis.
18. Management consulting is a unique segment of professional services, distinct from accountants, auditors, lawyers, marketing and public relations firms. The consulting industry is unregulated with no compulsory industry-wide professional standards or codes of ethics, and no oversight. There is no qualification standard to enter the profession or independent examination that needs passing to become a management consultant. Unlike in the case of auditing and some other professional services, all spend by clients on management consulting services is discretionary.
19. Firms like Bain have great sway with boards and institutional investment decision-makers because of the impact of their work and their market reputations. Their depth and breadth of intellectual property is vast, enabling the firm to address most strategic business problems. Consultants work collaboratively within the firm which means that a global network of experts is usually just a phone call or email away. Their advice is often incisive and powerful when executed.
20. The firm fosters a work-hard play-hard atmosphere and frequently throws parties for staff, has elaborate off-site company meetings and has training in exotic locations. As examples, while I was an employee I attended multi-day company events in Miami and Sun City, and training in Monte Carlo and Puerto Rico.
21. I have a long history with Bain both as an employee and contractor. I first joined Bain in 1995 as a Summer Associate (intern) at their global

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

22. I was not employed by Bain or involved with the business during the period when Bain worked at SARS from 2014 to 2017. During this period, in July 2015, Bain made a donation of R4,500 to the literacy organisation, Read to Rise, that I chair. This donation was solicited by means of a mass email campaign to my business associates around South Africa and globally. In addition to Bain, other contacts also responded favourably and donated funds that went toward the printing and distribution of books to children in primary schools in under-resourced communities.
23. During the late 1990s I was featured prominently in Bain's recruiting brochures, website and advertisements. Over the years I have remained in touch with friends at Bain scattered around the world and would ordinarily consider myself a 'friend of Bain.' Immediately after leaving in 2010 I acted as a Senior Advisor to Bain for a year, and over the years I have contributed to initiatives at Bain including professional development of their staff, speaking at recruiting events and contributing to a research study on gender equality in South Africa. In recent years I have exchanged emails relating to my interest in corporate responsibility with senior Bain executives as I undertook my academic activities.
24. I joined Bain as a Partner in September 2009 in Johannesburg after they approached me with an offer. They were restarting their South African operation after having left the country in 2002. Sometime during the early part of 2010 Vittorio Massone ("**Massone**") arrived in Johannesburg as the Office Head or Managing Partner. He was previously a Partner with Bain in Italy. My and Massone's arrival at Bain in South Africa was publicly announced in March 2010 through print media and television appearances. In 2018, Massone represented Bain at the Nugent Commission public hearings.

25. Very soon after his arrival, Massone started clashing with members of the small leadership team, which consisted of myself, Tiaan Moolman (“**Moolman**”) and Susan Smith. I, and I believe others, including Moolman, expressed grave concern about Massone’s ethics and his suitability to lead the business in South Africa. So great was the expression of concern that the head of Bain’s London office, to whom Massone reported, Paul Rogers, came to South Africa in early 2010 to hear the concerns that had been raised. We were sure that Massone was going to be relieved of his post but to our surprise he was retained.
26. I tried to continue working in the office but could not work in the toxic environment Massone engendered. People who worked with Massone around this time describe him as having “no morals, ethics or scruples” and that “Ethically, he was compromising. He had no regard for the law.” In terms of his treatment of staff, his colleagues shared with me that he was “cold and false,” “arrogant,” “staff were treated like scum” and “the way he treated staff was detestable.” I also battled with the arrogant attitudes of many of my European colleagues who were coming to the country. Even my long-term clients commented on what they perceived to be arrogance and condescension by these colleagues.
27. To relieve some of the tension I transferred to the London office for a few months during the first half of 2010 but on my return to Johannesburg, I found the situation unbearable and eventually resigned later that year.
28. After I resigned in 2010, I took on the role as Senior Advisor to Bain which is an ad-hoc role, while I pursued my other interests primarily focused on social development. During my time as an advisor, I met occasionally with Massone and other Bain partners to discuss business and catch up socially but we never collaborated on delivering any paid client work. On occasion I discussed with Bain the prospect of playing a more active role in their business but from 2012 to 2018 I spent most of my time outside South Africa and these ideas never materialised.

## **CONTRACTING WITH BAIN IN 2018 TO PROVIDE INVESTIGATION OVERSIGHT**

29. I was shocked to read in an article published sometime in August 2018 about the nature of Bain's involvement at SARS with allegations that it had damaged the institution, SARS, and allegations of broader involvement in state capture. This upset me both as a South African citizen and as a former Partner at the firm, an association at the time, of which I was proud.
30. After I watched Massone's public testimony to the Nugent Commission on 30 August 2018, I took a decision to do two things. First, I sent an email to Massone's superior, Paul Meehan ("**Meehan**"), who was head of the Europe, Middle East, Africa (EMEA) region for Bain. This email is attached as annexure **AW1**. In this email I stated that I was disappointed to learn of Bain's involvement at SARS and wrote that "some of my concerns are playing out now." The concerns to which I refer relate to "leadership behaviour and attitudes" which I identified back in 2010 about Massone and which I had already communicated to members of Bain's global leadership. I offered my support to Bain although I mention that "I am not entirely sure how you might find me useful."
31. The second thing I did was to contact a *Daily Maverick* investigative journalist who was reporting on the Nugent Commission and more broadly into state capture. Through this communication with the journalist I was introduced to Judge Robert Nugent who was leading the Nugent Commission into SARS. Judge Nugent indicated that he may need my assistance to verify information and on 4 September 2018 I wrote to Judge Nugent introducing myself and offering that, "I am happy to support the work of the commission in any way I can." The email is attached hereto as **AW2**.
32. When Moolman sent an email to former employees of Bain South Africa, myself included, with a statement on the Nugent Commission, (the statement is attached as **AW3**), I again expressed my disappointment with Bain in a reply email to Moolman. My reply email is attached as **AW4**. This email exchange sparked further communication and combined with my offer to Meehan, sparked active discussions about how I could get involved. I drew encouragement from Moolman's email on 5 September 2018 (attached as **AW5**) in which he writes that "There

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

33. I was also encouraged by Bain’s press statement of 2 September 2018 (attached as **AW6**) where they state that they are “undertaking a deep and extensive investigation ... into all matters relating to our work at SARS” and that they would be “completely open and transparent” about the findings of this investigation because “we believe that is what the people of South Africa deserve.” The statement concludes, “We will continue to cooperate with the Commission of Inquiry to support a process aimed at restoring SARS to the once credible institution it was known as.” I took this at face value to mean that Bain would fully cooperate with the Nugent Commission to reveal the whole truth about its involvement at SARS and would actively seek to make amends at SARS. If I could help them fulfil this promise, for the good of South Africa, then I was keen to do so.
34. Moolman and I had a telephone conversation on or about 6 September 2018 in which he asked for my advice and asked me to think about the role I could play in supporting Bain. At this stage I was based in Cape Town and had begun the application process for the Senior Lecturer role at UCT GSB and was working remotely on completing my doctoral degree at Oxford University. Any support to Bain would therefore come at great personal cost to me in terms of time and would have a marked impact on my career plans.
35. The following day I sent an email to Moolman (which is attached as **AW7**) outlining a “process of repair” that Bain could follow to make amends and “key success factors” for a programme of external engagement. In terms of my role, my suggestion was that I “advise on process of repair and solution design” and that I “keep the process honest.” Following on from our phonecall, I suggest that I could play additional roles into the future.
36. Importantly, in this email I emphasised that I had a “hierarchy of interest” that put South Africa at the top of my agenda, my own interests second, and Bain’s interests third. In other words, I wanted to ensure from the

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

37. On 7 September 2018 I travelled to Johannesburg to meet with Bain where I met with Moolman, Meehan (who had travelled from London where he is based) and Stuart Min (“**Min**”), Bain’s global head of legal (who had travelled from Boston where he is based). I signed a Letter of Intent with Bain which described the intent to enter into a formal agreement around my role, which was still, at that point, being developed. I attached an unsigned copy of the Letter of Intent as annexure **AW8** since I have misplaced the signed version. To verify its authenticity I have attached as annexure **AW9** an email from Min sent on 14 September 2018 to which this unsigned copy was attached.
38. I informed Bain, by email and in discussion, that I was communicating with Judge Nugent, and I informed Judge Nugent, by email, that I would contract with Bain to support them. Both parties were happy with this arrangement.
39. Bain put out a press statement on 10 September 2018 (Annexure **AW10**) in which they announced that law firm Baker McKenzie had been hired to conduct the investigation into Bain’s relationship with SARS (“**the investigation**” or “**the Baker McKenzie investigation**”) and that Massone was relieved of his day to day operational duties of the business to allow him to focus on “cooperating with the Commission,” which I now know was not to be the case as he hastily left the country and refused to appear before the Nugent Commission again after testifying at the end of August. The Bain press statement further announced that Moolman was stepping into the Managing Partner role in South Africa on an interim basis and also announced my role. In the statement my expertise as “a respected independent advisor,” a “distinguished academic in the areas of corporate responsibility” and a “corporate leader,” is mentioned to add credibility to my appointment.

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

40. I was pleased that Bain made this commitment public. Not only had Bain committed to doing the right thing for South Africa, they now publicly committed me to doing the right thing as well. I found myself in a position of having a unique opportunity to make a meaningful contribution to justice and to our country’s anti-corruption efforts. The position gave me an inside, albeit limited, view of Bain’s investigation but as an independent person able to communicate freely with the Nugent Commission. I felt that I had an opportunity to serve my country to help uncover the truth and be part of Bain’s “doing the right thing.”
41. An item in Bain’s 10 September 2018 press statement of concern to me was their announcement that to ensure independence and rigour of their investigation they “have established an oversight committee” which was to be made up of senior global Bain partners and outside directors and which I was to chair. This statement gave the clear impression that the oversight committee had already been established yet at the time of this press statement on 10 September 2018, the oversight committee had not been established, and was in fact never established. I was the only person overseeing the investigation and doing so on a part-time basis. As early as 19 September 2018, in an email giving a status update to Bain, I raised my concern over the fact that the oversight committee had not been created and that I had no contract which stipulated my mandate. (See Points 1 and 2 under ‘My role’ on page 2 of the email attached as **AW11**). I write that in the absence of establishing the oversight committee “my presence could be considered farcical.” In this same email I share an update on my communication with Judge Nugent and I urge Bain towards full disclosure in two instances: first by writing “Bain needs to satisfy itself that there is full disclosure,” and then “Bain has to answer: Have we declared everything we know about everything

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

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

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

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

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

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

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

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

46. By Bain's own account, they were failing to make inroads into what they described as the "lucrative" public sector. To facilitate its entry into the public sector, Bain entered into a "Business Development and Stakeholder Management" contract ("**the Ambrobrite contract**") (attached as **AW18**) with a company named Ambrobrite ("**Ambrobrite**"). Ambrobrite was led by Mr Duma Ndlovu ("**Ndlovu**"), a TV show producer and a close associate of former President Jacob Zuma ("**Zuma**"), together with creative artist, Mr Mandla KaNozulu ("**KaNozulu**"), also known as Mandla Kheswa who served as the Special Advisor to the Minister of Police, Mr Nathi Nhleko according to KaNozulu's personal website, media reports and a Bain email (These three documents are attached as annexure **AW19**). Bain first met Ndlovu as early as 2012 since documents that I attach later show that Ndlovu was present at Massone's first meeting with Zuma in August 2012.
47. By Bain's own account, Ambrobrite had no trading history, was

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

48. According to an internal email by Bain partner, Fabrice Franzen (“**Franzen**”), Bain was introduced to Ndlovu by prominent businessmen Jabu Mabuza (“**Mabuza**”) and Siphso Maseko (“**Maseko**”), Chairman and CEO respectively of Telkom (Franzen’s email is attached as **AW21**). Telkom was one of Bain’s largest clients. In Massone’s affidavit to the Nugent Commission he states that he was introduced to Ndlovu by Maseko. (See Clause 8 of Massone’s affidavit attached as **AW22**). Maseko and Mabuza were also present at numerous meetings between Bain and Zuma, as described later. On 16 January 2017, Massone writes in an email to Meehan that Mabuza has “accepted to become Chair of our to be created SA Advisory Board” and that he “is and will be even more a key component of our growth in SA, esp in government.” (Massone’s email is attached as **AW23**). Massone writes in this same email that Mabuza is helping Massone “build a relationship with the Min of Finance after the issues related to Sars and its Commissioner.”
49. Bain may have been working with Ambrobrite for over a year before a contract was signed as far as I can tell. Massone’s first meeting with Zuma, supposedly set up and attended by Ndlovu, was in August 2012 while the contract was only signed in January 2014. Massone writes in an internal email to Venter and Smout on 22 November 2013 that Ambrobrite had already worked with him “on SARS” and “the event with the President” (This email is attached as annexure **AW24**). In an email to Wendy Miller (“**Miller**”), Bain’s Global Head of Marketing based in Boston, on 15 January 2014, Massone states that Ambrobrite helped Bain organise “a 40<sup>th</sup> birthday dinner with the 3 business associations and the President.” (See page 2 of the email attached as annexure

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

50. The Ambrobrite contract is dated 1 November 2013 but was only signed in January 2014 while internal red flags were still being raised – the attached email (**AW27**) from Smout to Massone on 7 January 2014 refers to a “proposed arrangement” with Ambrobrite indicating that it had not yet been concluded. The email attached as **AW28** shows that on 13 November 2013, two weeks after the date that the contract was supposedly signed, the contract had not even been drafted yet.
51. The contract is surprisingly poorly written with frequent grammatical and spelling errors, not what I would expect from Bain who usually produces work with great attention to detail. The intermediary's name is variously written as Ambrobrite or “Ambrorite.” Supposedly indicating that they employ high calibre people the contract states that the company targets the “top of the cream.” The city where they all operate is spelled incorrectly as “Johannesburgh.” It seems very little attention was paid to the details of the contract even though it was approved by Bain's Legal and Finance departments as Massone writes to Miller in the email attached as **AW29**. These approvals would have come from Europe or the US since Bain had no local legal team.
52. Bain were already working at Telkom where they expected in excess of R200 million in fees for 2014 as Massone wrote to Meehan on 14 January 2014 (**AW30**). In Point 3 of the same email Massone mentions other SOE (state-owned enterprises) targets, namely, SA Post Office, Eskom and Denel, and estimates revenues for Bain of up to R1 billion over 4-5 years from these three public entities. He mentions that SAA is also a target but “there are not the right conditions at the moment,” which may indicate that the leadership there were not open to Bain's

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

53. In my experience, a relationship with the President of South Africa would ordinarily offer no material benefit to a provider of management consulting services intent on ethically gaining contracts to serve public sector organisations. Decisions to hire management consultants are usually made by those with operating authority in these organisations, that is, the directors-general (DGs) of ministries, commissioners or CEOs of government agencies and the CEOs of state-owned enterprises. For the latter, the approval of the boards would typically be sought for large projects. For public institutions, again depending on the scale and scope of the consulting project, the operating decision-maker may seek the consent or support of the overseeing Minister. Decisions to hire management consultants in these organisations are required to follow public sector procurement laws and rules established by these public entities themselves, all of which are publicly available and follow public tender processes.
54. Given these facts about public institutions, it is concerning to see the content of the contract that Bain entered with Ambrobrite. The contract states in Section 2, "in the next few years a number of state owned enterprises and agencies will be subject to leadership and strategic changes and will require significant transformation and turnaround processes." It is worrying that people outside government had this "intelligence" about significant changes that were planned for our public institutions long before they happened. The contract states that Ambrobrite will help Bain overcome its weakness in the public sector which includes "understanding of the internal situations and competitive dynamics, purchasing policies and procedures" of public institutions and that Ambrobrite would provide Bain with "information and intelligence" on "needs, concerns and buying criteria" of their target public institutions (see section 3c, fourth bullet of annexure AW18). With purchasing

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

55. In terms of the contract, Ambrobrite would gather intelligence, guide Bain’s brand positioning, “qualify and quantify” the business opportunities and define “commercial strategy/tactics” for priority target clients. That a world leader in business strategy was hiring a TV producer to do what Bain charges clients top dollar to do, is perplexing.
56. If anything, Bain was feeding Ambrobrite with information and documents for meetings with public officials such as the former president (see emails marked **AW32** and **AW33**). This, and the further facts set out below, tell me that Bain’s reach in influencing state capture planning extended beyond those occasions when Massone met with Zuma or other government officials.
57. Through Ambrobrite’s “intelligence” Bain understood that information regarding imminent “leadership and strategic changes” at SOEs and government agencies would be shared with them. One example of Ambrobrite deploying their “intelligence” on imminent leadership changes was their introduction to Bain of Mr. Tom Moyane (“**Moyane**”) in October 2013, a relationship that led to the supposed “CEO coaching” engagements that Bain had with Moyane for the year leading up to his appointment as commissioner of SARS. (More details are included in the section titled “Bain’s Relationship with Tom Moyane” below). As discussed below, Ambrobrite would in time facilitate meetings for Bain with Zuma and government ministers, which appears to be an unwritten but key deliverable of this contractual relationship.
58. Reading the Ambrobrite contract and the Bain emails already referred to, the premise for the relationship with Ndlovu and KaNozulu seems to be that they would use their proximity to the Zuma and other government officials to glean major intended government actions or changes and pass this information onto Bain in the hope that this would provide Bain

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

59. Gaining an unfair advantage by accessing non-public information such as contemplated by the Bain-Ambrobrite contract is problematic since it compromises public procurement rules and fair competition. Also, Bain as a company with its origins in the United States is well aware of The Foreign Corrupt Practices Act of 1977 (FCPA) and the severe penalties issued by the DOJ for any infractions. When Miller asks Massone in an email on 15 January 2014 (see page 2 of **AW34**) whether it is a "normal" arrangement in South Africa for consultants to "pay influencers for access like this," referring to access to politicians like the then President, Massone's reply is that Bain's main rivals, McKinsey and BCG already have these arrangements in place. The email is copied to Innocent Dutiro ("**Dutiro**") a former Bain partner based in South Africa whose name appears frequently in communications and who was a member of the Bain team that presented their proposal to SARS in December 2014.
60. The parties to the Ambrobrite contract seemed satisfied with the relationship as judged by the multiple renewals of the contract and the fact that Ambrobrite's performance was rated highly - in an email attached hereto as **AW35** from KaNozulu on 10 November 2013 he states that his invoice amount is based on the "very happy" rating, indicating his assumption that Bain was very happy with Ambrobrite's service. On 3 February 2015 Massone writes an email to his finance manager, Venter attached hereto as **AW36**, saying "we can now pay the success fees – the highest level of satisfaction." This payment occurred with weeks of Bain being awarded the SARS contract.
61. In December 2013 concerns were raised internally within Bain's leadership about the Ambrobrite contract. Venter, based in

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

62. Smout would most likely have raised his concerns through channels in London but also expresses his concerns in an email to Massone on 7 January 2014 outlining the lack of public information available on Ambrobrite (no internet presence, no financials, no listings in business databases) and expressing his discomfort with the proposed contractual arrangement and payment of Ambrobrite. On the same day Massone replies in an email "I am very comfortable ... That's why I've chosen them," which is attached hereto as **AW38**.
63. In an email to Massone and Dutiro on 15 January 2014 (**AW39**), Miller expresses her concern that people outside Bain "may twist this contract into an accusation of impropriety in how Bain is getting our business - that we pay people close to the President to use their influence to get 'our man' the CEO job, so we get the work." In an email to Miller on the same day, Min writes of Ndlovu and KaNozulu: "how are two 'artistic producers' qualified to provide us with intelligence on companies' strategic and operational issues" and "it just seems disingenuous for Vittorio to not acknowledge in any way that we hope these guys [Ndlovu and KaNozulu] will use their connections with President Zuma to influence executive selection decisions." See page 2 of this email, which was forwarded to me by Baker McKenzie, attached as annexure **AW40**. Miller writes to Massone on 15 January 2014 "There are other articles online which talk about Ndlovu introducing people to Pres. Zuma" and continues, "Given that these two are writers and video producers, it is hard to argue we hired them for their business acumen and expertise" (**AW41**). Bain's global head of legal, Min, and Bain's global head of marketing, Miller, incredulously make it obvious that Bain's primary interest in Ambrobrite was opening doors to Zuma and to influence

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

64. Despite all these warning signs and legitimate concerns raised by senior people within the firm, the "dodgy" situation and relationship with Ambrobrite proceeded. The contract ran for 6-month periods backdated to November 2013. An internal Bain email in April 2014 shows that the contract was renewed at that time (see **AW42**) and a Bain letter (**AW43**) renews the contract again in June 2016. Massone's affidavit to the Nugent Commission (par 9) indicates that the contract ran to December 2016.
65. The Ambrobrite contract states that the parties "...sincerely hope it will bring success, satisfaction, friendship and wealth for both parties," nothing about advancing the prosperity of South Africa by improving the workings of the public sector. For Bain, wealth came in the form of significant consulting fees. For Ambrobrite, wealth was accumulated in the form of payments from Bain of R3.6 million per year, per the contract and emails, although I have not seen actual evidence of these payments. This made Ambrobrite the second highest paid of the 52 advisors that Bain worked with worldwide and it was paid 50% higher than the next highest-paid advisor. This information is contained in an internal email from Miller to Massone and Dutiro attached hereto as **AW44** in which Miller also states that this information "could make for a pretty powerful story of 'alleged abuses.'" The level at which Ndlovu and KaNozulu were paid is quite extraordinary when one considers that

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

66. In their press statement of 17 December 2018 (see section 4 of **AW45**), Bain claim that Massone showed "poor judgement in drawing us into the SARS assignment." Based on the information presented here it is clear that Bain was not "drawn" into any engagement with any organisation by Massone or anyone else - rather they actively targeted SARS and it was their explicit intention to do work at SARS, something they pursued for over a year at great expense in terms of billable consulting hours and their payments to their intermediary Ambrobrite. Concluding the Ambrobrite contract was an explicit effort to get to SOEs and government agencies, described by Massone in the internal email (**AW34** page 2) on 15 January 2014 as a "strategic pillar for the long term sustainability of the SA office" and SARS was their first target. Attributing the SARS engagement to one person's "poor judgement" belies the fact that numerous senior people up the Bain global leadership chain had full knowledge of the Ambrobrite contract and its intended outcomes. Knowledge of the Ambrobrite contract went all the way up to Min, Miller and Meehan, all members of Bain's highest management committee, the Global Operating Committee (GOC).
67. Bain appear to want to portray Massone as a lone rogue who flouted the law and Bain's operating principles, yet it was perfectly well understood by Bain's global leadership that the key benefit of the Ambrobrite relationship would be Bain's ability to get close to President Zuma which would bring commercial benefits and allow Bain to participate in projects that the President was facilitating. As I have shown, and will show in what is to come below, Massone acted according to a Bain strategy that was approved by global leadership and was fully endorsed and supported by his superiors, even in the face of internal objections. All along the way he received input and guidance from colleagues in South Africa and globally. The contract and its terms were approved by members of Bain's global leadership and its legal team.

68. In addition to facilitating engagements with former President Zuma and other government officials, the relationship between Bain and Ambrobrite also gave rise to activities unusual for a management consulting firm:
- 68.1. *Unusual payments in the normal course of business.* In October 2015, Massone received and appears to pay an invoice from KaNozulu for a party catering for 350 people at a cost of R50,000 (an email and the invoice is attached as **AW46**). After receiving the invoice, which is issued to KaNozulu, Massone writes: “Ok Mandla – sent instructions to the bank now, will forward you proof of payment asap” and then later the same day, “Here you go - hope you guys enjoy the party... Most likely I won't be able to come, I have meetings here. But would be great to greet in person the new Youth League head when he is in JHB.” A month earlier, the ANC Youth League had elected a new President and it is unclear whether these events are related. In a separate incident, in June 2016, Nondumiso Khumalo, a person who appears to be from Ndlovu’s office wrote to Sharlene Economou (“**Economou**”), Massone’s executive assistant at Bain, copying Massone, “Please find below Ms Lungelo Nqubuka’s banking details. I was advised by Mr Ndlovu to forward them to your office.” There is no indication of the service provided by Ms Nqubuka to Bain and why her banking details are sent to Bain through Ambrobrite. This email is attached hereto as **AW47**.
- 68.2. *Facilitating international government meetings* – An email chain from 7 to 18 September 2015 attached hereto as annexure **AW48**, indicates that Bain was facilitating meetings between South African and Italian senior police officials including Interpol Italy. Arrangements included protocol on arrival at the airport, transport to Pretoria, hotel bookings and meeting schedule. It is not clear who paid for this trip. From the information contained in the email chain, there was to be a meet and greet with the Minister of Police and then meetings attended by:
- 68.2.1. General Zuma, head of special projects at SAPS
- 68.2.2. General Scott Naidoo, head of Interpol at SAPS

- 68.2.3. General Ntlemeza, head of Hawks
- 68.2.4. Molate Moremi, Stakeholder Relations, Civilian Secretariat for Police
- 68.2.5. Mandla KaNozulu, Special Advisor to Minister of Police and adviser to Bain through the Ambrobrite contract
- 68.3. According to the email chain, the Italian counterparts at the meetings were:
  - 68.3.1. Antonio Cufalo, Deputy Director General of the Security Police
  - 68.3.2. Filippo Dispenza, General Manager of Public Security
  - 68.3.3. Gennaro Capoluongo, Superior Director of the State Police and Director of the Service for International Police Cooperation
- 68.4. In the context of a client relationship and while delivering consulting services it may on occasion happen that a management consulting firm would facilitate meetings and arrange logistics for clients or associates to attend events, but that Bain was facilitating such a meeting between senior police officials between two countries outside the context of delivering consulting services and providing logistical support is most unusual in my experience. Massone makes it clear to his assistant Economou that Bain is arranging the logistics when he writes on 18 September 2015 “they won’t contact him directly, they’re using us.”
- 68.5. *Possibly facilitating arms sale* – In arranging the meetings between Italian and South African senior police officials, Massone suggests to an executive of arms manufacturer, Beretta, in Italian which can be roughly translated as “One of the important themes is the Public Order Policing and the theme of the non-lethal weapons very important for Beretta. They received specific instructions from the President to collect and replace the R5s.” The Beretta executive responds in Italian which could be roughly translated as “Thanks again for your valuable collaboration, I am convinced that with your help we will complete this "enterprise". In an email of 12 June 2015 (annexure **AW49**), Massone identified to the Beretta executive, opportunities for Italian companies to supply the South African Police Service with “technology, automotive and defence

in general.”

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

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

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

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

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

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

72. The aforementioned attached “Tracker Table” document also shows that Bain, most likely represented by Massone, had a series of meetings with government Ministers during 2014 and 2015 without Zuma. According to this document, these meetings were with Minister Malusi Gigaba, Minister Jeff Radebe, unnamed “Minister of Police,” unnamed “Minister of Defence” and Dr Zweli Mkhize. I have not seen the documents discussed at these meetings.
73. Between 2012 and 2015 Bain created a series of documents containing far-reaching plans to not only restructure certain government agencies and state-owned enterprises but also to restructure entire sectors of the South African economy. While claiming that such restructuring would offer economic benefits and service improvement to South African society, the consistent theme is that of *restructuring* which, in my view, was aimed at bringing as many organisations and as much financial resources under more concentrated control, which would greatly facilitate state capture. Much like Bain did at SARS (to be discussed below), the restructured public entities would be repurposed to serve an agenda most likely not in the public interest. Bain labelled these plans “reshaping the South African economy.” While there may be many more such plans, I have access to eight – I show the date and title of each below.
  - 73.1. 11 August 2012: *Sisekelo - Reshaping South African Economy* (Annexure **AW55**). Sisekelo was later renamed Project Phoenix.
  - 73.2. 23 August 2012: *Project Phoenix - Reshaping South African Economy* (Annexure **AW56**)
  - 73.3. September 2012: *Project Phoenix - Reshaping South African Economy* (**AW57**)

- 73.4. 25 April 2013: *Holistic approach to Infrastructure Development (AW58)*
- 73.5. 4 August 2013: *Project Phoenix - Reshaping South African Economy (AW59)*
- 73.6. 22 May 2014: *Developing the SMME Sector (AW60)*
- 73.7. June 2014: *Sirius program – Reshaping South Africa’s Energy sector (AW61)*
- 73.8. July 2014: *Project Phoenix - Reshaping South African Economy: Accelerating Implementation (AW62)*
74. Bain didn’t stop at planning the reshaping of SA’s economy. They also planned the reshaping of the workings of the South African government, including seeking to centralise government procurement. Under the banner of working with the ANC to develop a plan to implement the ANC’s 2014 election manifesto, it seemed that Bain were given opportunities to develop plans to restructure and repurpose state institutions. On 6 September 2018, Stephane Timpano (“**Timpano**”), a partner in Bain’s South African office, sent an email to Min and Kennedy explaining that Bain had helped “some ANC officials” to “reorganise their agenda” (which I read to mean the ANC plans) and “clarify ANC priorities”, this email is attached as Annexure **AW63**. The email refers to four documents being attached to it, which I have not have sight of but I have attached the following three documents which speak to these topics:
- 74.1. April 2014: *2014 ANC Manifesto Implementation – Discussion on way forward (AW64)*
- 74.2. 23 May 2014: *ANC Manifesto – Programme Management Proposal (AW65)*
- 74.3. March 2014: *Discussion on a possible Central Procurement Service (AW66)*

Bain’s “Tracker Table” document, referenced above, states that

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

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

to the SA President.”

76. The email from Ndlovu on 2 July 2014 referenced above (attached as AW53) seems to differentiate between the President and the “Principal” which introduces the possibility that at times the main audience for the Zuma meetings was not President Zuma but someone else. Ndlovu also makes reference to “Principal” in an earlier email on 22 May 2014 attached as **AW68** in setting up a meeting attended by Massone, KaNozulu and Maseko.
77. I had sent an email to Kennedy and the Baker McKenzie partners on 29 November 2018 with an article quote saying that “the Guptas used to handle Zuma’s diary” (**AW69**). With the Guptas reportedly so close to Zuma, and Bain now also close to Zuma, it occurred to me that perhaps there was some overlap between Bain and the Guptas. Kennedy replied to my email that he was “On the Gupta trail” giving me the impression that any possible dealings between Bain and the Guptas was being investigated. I was not informed of what was found, although the attached sheet prepared by Baker McKenzie shows that they identified 19 documents which they have labelled “Gupta relationship” that they thought were relevant to the investigation. (The first sheet of annexure **AW70** shows the charts that Baker McKenzie presented by way of status update of their investigation which I was overseeing. One of these charts categorises relevant documents by “Issue Designation”. The second sheet contains a table showing the numbers that went into producing the “Issues Designation” chart on the first sheet). I note that this document also shows that Baker McKenzie had identified 138 relevant documents which they labelled “Zuma relationship,” 122 relevant document relating to Ambrobrite, 266 labelled “SAA Issues” and 1,050 relevant documents labelled “Telkom Issues.” I have not seen these documents. The only other reference to the Guptas that I’ve encountered is an email from Bernstein to me on 27 November 2019 on the day of my planned meeting with the Zondo Commission investigations. Under 1b of the email, Bernstein writes that “Relationship with the Guptas” may be a specific topic that the investigators may want

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

78. I consider it unusual for a management consultant to be meeting with the president of a country. Bain partners would ordinarily only meet senior business executives. Meeting the president 12 or more times is even more unusual and when that president is embroiled in alleged public corruption scandals which were widely reported in the press locally and internationally as well as being linked to state capture allegations, it is even more unusual.
79. Massone was extremely proud of his close proximity to Zuma and spoke about it widely to his colleagues, including mentioning it to me during one of our catch-up meetings after I had left the firm. Bain's global and local leadership were well aware of the meetings with Zuma - after all, it was well known that the intention of the relationship with Ndlovu and entering the Ambrobrite contract was to engage with the President and other politically-connected people. Massone would have no doubt given his superiors updates about his progress. In the 17 December 2018 press statement (AW45), Bain claim to be surprised by the frequency of the Zuma meetings but express no surprise at the content of these meetings which was to repurpose public institutions. Massone expressed his pride in his relationship with Zuma and Ndlovu in an email dated 18 January 2014 to his superior Meehan (**AW72**, second page) "I wouldn't feel ashamed of an article associating us with Duma and the President" he writes, "possibly I believe it could be quite positive and strengthening as an association." It seems the people in whose eyes Bain was building their brand were of such standing that they would consider an association with Zuma as "quite positive."
80. Bain had gathered non-public insight into President Zuma's plans and how the numerous projects they were involved in, and were planning, fitted together. This is revealed in an email sent by Massone to his superior, Meehan on 18 January 2014 (**AW73**, second page, under point 2) in which he explains that he has been part of a broader discussion with President Zuma about Zuma's vision and strategy for the country. Massone explains that Project Phoenix which was

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

81. Massone's email of 18 January 2014 also reveals that Bain knew that there were multiple parts to the state capture project – they had already begun working at Telkom, the cornerstone of Project Phoenix which involved large-scale restructuring of public institutions, and had their sights on SARS, having already begun planning with Moyane, and on Eskom where it appears they sought to influence the content of an Eskom RFP in their favour as reflected in the email I received from a Bain manager, attached in Annexure **AW74**.
82. Though interspersed with some sensible analyses, what emerges from a close review of the eleven strategic planning documents described above is a strategy to enable grand-scale state capture, a pattern now well known to South Africa. My understanding of the strategy, involving three stages, is summarised below:
  - 82.1. Stage A: Create a new macro-structure in the target sector:
    - 82.1.1. Step 1: Consolidate multiple organisations or functions – bring multiple organisations or functions, that are currently separate, into one organisation or function.
    - 82.1.2. Step 2: Concentrate economic and policy power – design the macro-structure such that control over the organisation or function is held by only a few decision-makers.
    - 82.1.3. Step 3: Insert aligned leadership – appoint heads of these organisations

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

- 82.2. Stage B: Restructure individual organisations within the macro-structure:
- 82.2.1. Step 4: Consolidate control and decision-making – by restructuring the organisation, ensure that control and authority is held by only a few decision-makers – the fewer, the better.
- 82.2.2. Step 5: Concentrate financial resources – bring budgets, procurement spend and financial assets together rather than keeping them separated.
- 82.2.3. Step 6: Insert aligned leadership – appoint heads of these organisations that will follow the agenda set by the architects of state capture, lead the restructuring and replace staff who resist the plans.
- 82.3. Stage C: Exert control of the ‘reshaped economy’ through control of these repurposed organisations and pursue private financial enrichment through corrupt procurement or other means.

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

- 83. This scale of sector and organizational restructuring seems to have been anticipated by Bain as stated in their contract with Ambrobrite which states that “in the next few years a number of state owned enterprises and agencies will be subject to leadership and strategic changes and will require significant transformation and turnaround processes.” Large-scale restructuring, such as that done by Bain at SARS, seems to serve the state capture agenda as well as Bain’s financial interests since organizational restructuring is among the most lucrative types of consulting projects given their breadth of involvement across the organization and the length of the project, usually upwards of 18 months.
- 84. The state capture strategy is evident in the energy sector project document prepared by Bain in June 2014: It states that the goal is to “completely restructure and transform the energy sector” and “redesign

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

85. The strategy is again evident in the Project Phoenix documents whose dramatic aim is stated as “Giving birth to a national regional ICT champion.” (Stage A). The documents describe the plan to consolidate Telkom, SA Post Office, SABC, SITA, Sentech and Infracore and then restructure them into a “Bank of the People, Telecom & ICT company and TV & radio company” (Stage B). It is telling that the restructure will “centralise infrastructure and procurement” and it should be driven by appointing a “new CEO and Chair.” This can be seen in annexure AW56, Page 3, last bullet and Page 34, second bullet respectively.
86. Project Phoenix is mentioned 4 times in the document “TM First 100 days” that Bain prepared for Moyane before his appointment at SARS in 2014 (see page 3, 21, 25 and 33 of **AW75**) – this shows the interconnected nature of these strategies.
87. If Bain was genuinely developing ideas to improve certain SOEs or sectors of our economy, I would expect that they would present such plans to the DG of the appropriate Ministry or the Minister, not to the President. But there seems to have been a very specific beneficial reason for presenting these to the President, that one might not ordinarily expect. It is suggested in the Phoenix document (AW56, page 34, first bullet) and the Energy sector strategy document (AW61, page 26, first bullet) that these projects be designated a “President’s Program.” The significance of designating a project in this way is gleaned from an email that Massone sent on 18 May 2014 to a group of global Bain partners after his meeting with Monwabisi Kalawe, then CEO of SAA. Massone writes that “they’ll try to make this a ‘President’s project’, like Telkom, so to eliminate the Minister’s discretionary power.”

(AW76, last 2 lines on first page)

88. This line of Massone's email of 18 May 2014 is revealing: it shows that Bain's work at Telkom was designated a 'President's project' or 'President's Program' as suggested in the Project Phoenix document, which by Massone's explanation, would mean that they had "eliminated the discretionary power" of the Minister of Communications in their dealings with Telkom. What this entailed isn't clear but one gets the impression that it meant the projects could proceed with less oversight and governance when they were designated 'President's projects.'
89. It is not clear to me who "they" are in Massone's email who will be trying to make SAA a 'President's project' but it does indicate the intent to "eliminate the Minister's discretionary power" and the fact that there was a group of people working behind the scenes to influence decisions that could have major impacts on SOEs.
90. Recommending that the Energy sector project be designated a 'President's program' appears to show the intent to find ways around normal governance and ministerial oversight.
91. The plan to centralise government procurement through a Centralised Procurement Agency as described in annexure AW66, is a frightening prospect and another example of grand-scale state capture. While this may work in circumstances where state capture efforts are not in play and offer potential cost savings, under conditions where public institutions were being crippled, it is unlikely that it was conceived with the public good in mind. Consolidating procurement functions across government ministries (another example of Stage A of my synthesised grand state capture plan) would decimate oversight and governance, concentrating decision making power over enormous government procurement in the hands of a few people. Concentrating decision-making power over enormous financial resources in the hands of those intent on corruption could have led to looting on a scale that dwarfs what we have already seen in the country.
92. It is the mark of a good leader to consult widely and be well informed,

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

93. A disturbing feature to me in the ANC Manifesto documents is the plan for a special Delivery Agency to “overcome execution roadblocks” for the changes Bain were proposing to the way cabinet and ministries functioned. The proposed Delivery Agency, as I understand the document, would sit outside any formal government structures and report directly to the President. The Delivery Agency would be armed with a “strategic and controlling role.” Derived from the President, this controlling role would grant this Agency the “power to control funding and approve rights for project spend,” authority to “supervise project budgets,” “power to intervene,” and to “take over execution.” Among the benefits of this centralised control agency is that it “combines central control and direction with local context.” (See pages 26 of annexure AW64. Page 30 shows the extensive and intrusive role Bain saw themselves playing in this restructuring.)
94. Other than the projects with Telkom and SARS it is not clear what became of the projects that were planned, especially with the change of president in 2018 when Mr Cyril Ramaphosa became president following Zuma’s resignation. It is plausible that these projects might still be active or perhaps folded into other initiatives. If these plans had been implemented by those intent on state capture, the planned restructuring would have removed layers of governance and oversight making looting

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

95. Since the state capture strategies required changes of leadership in the relevant organisations, influencing leadership appointments would evidently be of great value to Bain. Min understood that Bain had hoped Ndlovu would use his connection to President Zuma to influence executive selection decisions, which he had written to his colleague Miller as discussed earlier and supported by annexure AW40. Massone mentions in an email on 18 January 2014 to his superior, Meehan, that some could view Bain's "CEO coaching" as "manipulating the appointments of CEOs," but "I wouldn't feel ashamed to have helped a potential CEO prepare for his pitch to get the job." He references Maseko in his email, who had been a beneficiary of Bain's "coaching" and whose appointment at Telkom has come under intense criticism. But "don't worry" wrote Massone, just to make sure to avoid accusations "we'd very careful in making sure we don't appear in any way at any formal point." (See page 2, under 1b of the email attached as annexure **AW77**).
96. It is curious to me that Bain had removed its corporate logo from the strategy documents it presented to the President and the documents prepared for Moyane. It does happen sometimes that clients ask management consultants to use the client's logo on documents to help the client's staff feel greater ownership of the plans developed but Zuma and Moyane were not paying clients, as Bain has led us to believe. Removing their corporate branding is especially odd when considering that Bain claims the meetings with the president were to "build our brand" as Massone wrote in his affidavit (AW50, par 30). If anything, and if Massone is to be believed about Bain's intent with these documents, I would have thought that Bain's branding would be displayed even more prominently on every sheet as they usually do.
97. Even with their established connection to President Zuma, it appears that Bain sought separate, additional channels into the ANC. On 30 January 2014, a Bain employee, understood to be related to Maseko,

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

98. A point mentioned earlier merits repeating here. A relationship with the President of South Africa would ordinarily offer no material benefit to a provider of management consulting services intent on ethically gaining contracts to serve public sector organisations. Decisions to hire management consultants are usually made by those with operating authority in these organisations, that is, the directors-general (DGs) of ministries, commissioners or CEOs of government agencies and the CEOs of state-owned companies. Decisions to hire management consultants in these organisations are required to follow public sector procurement laws and rules established by these public entities themselves, all of which are publicly available. In my view, a strategy to pursue a relationship with the President must point to something other than attempts to raise Bain's profile and demonstrate Bain's sector specific expertise, as Bain claims (par 81 of Massone affidavit, AW50).
99. What concerns me and should concern every South African is that a group of foreign nationals working for a foreign company with no obvious knowledge of South African society, or demonstrable skills in socio-economic development saw fit to develop plans to reshape our public sector and managed to have an audience with the President, at least twelve times over a two-year period, to discuss and further develop these plans.
100. That the relationship between Bain and public sector officials was unusual is further evidenced by some unusual behaviours for a management consulting firm, as evidenced below:
  - 100.1. Massone offered to pay the costs of a holiday resort in Zanzibar for Maseko over the Christmas/New Year period of 2014, whilst at the time Bain was a service provider to Telkom (annexure **AW79** is the English translation by Baker McKenzie of an email sent from Massone to the

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

- 100.2. As discussed already, Massone arranged for Bain to pay R50,000 for what seems to be an ANC youth league party in October 2015.
- 100.3. Massone's diary for 20 January 2018 shows that he attended Moyane's father's funeral in Soweto which conveys a level of familiarity with Moyane. See **AW80**.
101. In their letter to Judge Nugent on 9 September 2018 (AW51, last page), Bain claim that "the materials that we believe Mr. Massone prepared for his meetings with former President Zuma were focused on ideas for improving the well being of the people of South Africa" – I think one can safely say this is untrue. The Bain letter also mentions that plans were developed across a range of areas including "education, healthcare, safety, employment, rural communities, environment and social security." I have not seen any of these documents which suggests that Bain are withholding these.
102. Bain's press statement of 17 December 2018 (annexure AW45) which has been their final word on the SARS and state capture matters, tries to give the impression that the company was surprised by what was happening in the South Africa office, yet at the highest level of Bain's global organisation, the GOC, Massone's activities were known and he continued to be supported. In the midst of the internal red flags being raised over Bain's relationship with Ambrobrite and President Zuma, Meehan, who served on Bain's GOC, wrote to Massone on 18 January 2014: "I really appreciate your leadership" and "I know you have the best interests of our firm and your RSA partners in mind at all times." (**AW81**) I was told in confidence by Partners in the business that Massone was celebrated at global Partner events for his achievements in South Africa and I understand that he was the longest serving Office Head across all Bain offices worldwide in its history. Only a month before his testimony to the Nugent Commission, the entire South African business gave Massone a standing ovation in recognition of his leadership of the

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

### **BAIN'S RELATIONSHIP WITH TOM MOYANE**

103. Sometime during October 2013, Ndlovu introduced Massone to Tom Moyane who would in September 2014 become the Commissioner of SARS and then later be fired by President Ramaphosa on 1 November 2018 on the recommendation of the Nugent Commission. Massone claims in his affidavit to the Nugent Commission (AW50, par 14) that the "purpose" of Bain's introduction to Moyane was to provide him with "CEO coaching," to help Moyane "achieve his professional goals." I will show below that Bain's engagements with Moyane did not amount to coaching but efforts to plan the repurposing of SARS, a view supported by Judge Nugent who concluded in the final Nugent Commission report that Bain and Moyane were in "deep collusion" to restructure SARS. (See Annexure **AW82** for an extract from the Nugent report, page 42, par 55).
104. Bain have claimed that Moyane was not present at any of Massone's meetings with President Zuma nor was SARS or Moyane discussed at any of the meetings with Zuma (for example Massone's affidavit, AW50 at par 34.1). This is an attempt to show that Bain had no knowledge of Moyane's imminent appointment as SARS Commissioner and that Bain had no influence on the decision to appoint Moyane. However in the internal "Tracker Table" document referred to earlier (AW52), Massone is quoted: "It is possible Tom Moyane was present at the Cape Town meeting [with Zuma] as I remember bumping into him in the waiting area

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

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

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

106. Massone testified before the Nugent Commission that he only met Moyane once in connection with SARS during which he presented an "outside in" view on SARS (Annexure **AW88** contains an extract from the transcription of the Nugent Commission hearings). However, the Nugent Commission identified at least seven meetings from the evidence it uncovered as stated in the Nugent Report at page 32, par 20 attached hereto as Annexure **AW89**. Bain concedes in their 17 December 2018 press statement (AW45), that there were "numerous meetings" between Moyane and Bain staff before Moyane was appointed as the SARS Commissioner.
107. In their 17 December 2018 public statement, Bain describes their meetings with Moyane as "coaching" him for his new role (see Point 2, AW45) and Massone refers to this as "CEO coaching" in his affidavit (par 19, AW50). Preparing these materials and having the meetings requires a large investment by the consulting firm so they are usually very selective when making such an investment. It is either in the context of an existing relationship with the executive or when there is certainty that the executive is going to get the job for which they are preparing him. Bain did not have a pre-existing relationship with Moyane but they do appear to have had assurance that he would be appointed as the SARS Commissioner.
108. The first indication that what Bain were doing with Moyane was not mere coaching stems from an email Massone sends to his superior, Meehan, on 18 January 2014, about how they intend using "coaching" in South Africa (email attached hereto as Annexure **AW90**, see second page, point 4.) What Massone writes is not a description of coaching at all but developing a "high level strategy plan" with the expectation that if this plan is approved and the senior executive gets the job, Bain will "most likely" be hired to "work with the CEO in its detailing and implementation". Furthermore, in his partner self-assessment on 6 December 2013 referred to earlier, Massone again does not describe

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

109. Bain produced four documents for Moyane before Moyane was appointed SARS Commissioner (see Massone affidavit, AW50 par 60). These documents formed the basis of many of their meetings. I have seen two of these documents. The first document was titled “SARS 2.0” (**AW91**) which made the case for a complete restructure of SARS, while the second, titled “TM first 100 days” (**AW92**) outlined the plan for the restructure of SARS to be led by Moyane, referred to as “TM” in the document title. The first document had different versions.
110. My reading of the materials is that they were crafted in a way to show alleged deficiencies at SARS to justify a major restructuring of the organisation. The materials also outlined specific actions to be taken. Ahead of Bain’s first presentation to Moyane, in an email to Timpano on 1 October 2013, attached hereto as **AW93**, Massone suggests that they identify “flaws” at SARS. Even the email subject line is telling – the email is titled “SARS Opportunity” which is exactly how Bain saw their discussions with Moyane rather than the delivery of CEO coaching. Rather than standardised CEO coaching materials, it appears that the materials were designed to make the case for restructuring SARS and planning the restructure, which supports the conclusion arrived at by the Nugent Commission. The Commission concluded in their final report that Bain and Moyane orchestrated a “premeditated offensive against SARS” (**AW94** par 1 on p27)
111. Seemingly assured that Moyane would be appointed as the new SARS Commissioner, on 26 May 2014, four months before his appointment, Bain prepared the “TM first 100 days” document which sets out Moyane’s priorities for the first three months in his new role. In Bain’s 9 September 2018 letter to the Nugent Commission, attached earlier as AW51, Bain attempts to portray this document as a typical example of guidance that they would offer to an executive considering or starting a new job. While it is indeed Bain’s normal practice to offer guidance to

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

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

113. The level of specificity with which Bain was able to offer action guidance to Moyane would only be possible with access to inside information at SARS, and as it turns out, this is exactly what happened. Franzen indicates in an email to Kennedy on 3 September 2018, attached as Annexure **AW96**, that Bain had “multiple meetings” with Jonas Makwakwa (“**Makwakwa**”) head of Internal Audit at SARS and that Makwakwa was a “deep throat” relaying information about events at SARS to Bain and Moyane. An email on 30 October 2018, from US-based Baker McKenzie partner, Regan Demas (“**Demas**”), confirms this as he wrote that they have found evidence in Massone’s diary that Makwakwa delivered a flash drive to Massone in August 2014. The flash drive contained a document written by Makwakwa titled “Review of SARS’s Operating Model & Structure, August 2014’ (See annexure **AW97** for the Demas email and Makwakwa’s document). This further confirms that the restructure of SARS was discussed even before Moyane was appointed at SARS. In his affidavit, Massone suggests that he only met Makwakwa once and downplays this meeting as Makwakwa sharing his “personal issues”(see AW50, par 26.1). In his testimony to the Nugent Commission Massone claimed that the materials they prepared for Moyane as “outside-in,” used “public data” implying that they relied only on information from outside SARS – however this seems unlikely in light of the discussions and document that they received from Makwakwa.
114. The “Take Control” agenda in the “TM first 100 days” document states that Moyane must “quickly colour-code the Exec and Mgt team (top 100) and reshuffle,” (third column, fifth bullet on page 7 of annexure AW92) suggesting to Moyane that he conduct an appraisal of the executive and management team at SARS in terms of their support for his agenda. On page 8 of the “TM first 100 days” document (AW92), Bain states that Moyane should identify staff members that would “hamper change” which requires that he label them as either “watch outs” or “to neutralize.” (this page is attached as annexure **AW98**). In their letter to the Nugent Commission on 9 September 2018, (**AW99**, page 3) Bain

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

115. Bain and Moyane’s plan for the restructure of SARS is contained in the document “SARS 2.0 – what has to be done” dated August 2014 attached as Annexure **AW100**, which includes the document and the email which Massone sent to Ndlovu on 29 August 2019 in which Massone writes “for your meeting on Sunday.” It is unclear who the Sunday meeting is with but would likely be with someone in government since the document addresses what “government” must do to achieve “our” ambition. Again, it is not clear who “our” refers to, but I doubt Bain is referring to the South African public interest. In his affidavit to the Nugent Commission, Massone writes that Ndlovu’s use of the document on this day “may have been for a meeting involving Zuma.” (AW50, par 27).
116. The “2.0” in the title SARS 2.0 harks to the introduction of new technology products, where 2.0 would refer to a new product while 1.1 say, would refer to an update to the old product which would have been 1.0. The intent was clear even before Moyane and Bain arrived at SARS, that they would not be merely updating the world-class organisation that existed but creating something different. This is exactly why Bain would call for a “profound strategy refresh,” (see “SARS 2.0 – what has to be done” document (AW100, page 2, third bullet), words that I have never seen a management consulting firm use because of its far-reaching implications. Recommending a profound strategy refresh to any organisation suggests that it is completely dysfunctional and needs a complete overhaul of its vision, mission, strategic plans and operations, including organisation structure. One would be hard-pressed to find any knowledgeable person who could justify the claim that this is what SARS needed, yet this is exactly what Bain set out to

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

117. Any reference in the document to the good progress or accomplishments that SARS has achieved is followed by phrases that point to apparent inadequacies such as “but several questions arise ...” The “SARS 2.0” document contains page after page of supposed “significant challenges” that SARS faces as a way to justify the need for a profound strategy refresh and organisational overhaul. In the hands of anyone intent on damaging SARS, the Bain document is a powerful weapon as it portrays the organisation to be awash with major strategic and organisational deficiencies.
118. As expected from the intent to make major change at SARS, the document contains “the new vision and strategic plan,” evidence that Moyane and Bain had a vision for SARS even before they arrived at the organisation. It is preposterous that Moyane and Bain, as outsiders, would create the new vision and strategic plan for an organisation yet this is what is documented. When Massone was asked at the Nugent Commission hearings on 31 August 2018, “... Mr Massone, did you ever talk to the Commissioner about what his vision would be about SARS, what he would like to achieve in SARS?” Massone replied, “No.”
119. The intent of Bain and Moyane’s planning seems clear – there would be major change across the SARS organisation no matter what Moyane and Bain found when they got there.
120. It is not unusual that a management consultant would sketch out a hypothetical organisational structure to facilitate a discussion with an executive. Based on the context already discussed, and the acute focus on the organisational structure, it is my view that what Bain presented was not a mere hypothetical structure but something a lot closer to an intended or proposed structure. Changing the organisation’s structure

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

## **BAIN AND THEIR WORK AT SARS**

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

- “should he get the job” (**AW104**) which they had been assured he would.
122. SARS issued their request for proposal, RFP 26/2014 (‘SARS RFP’) on 12 December 2014 titled “Consultancy Services to Review the SARS Operating Model.” This is the RFP to which Bain responded in order to get the work at SARS.
123. During Massone’s testimony at the Nugent Commission on 31 August 2018, before he left the country ignoring the Commission’s summons to testify a second time, when asked whether Bain had seen the SARS RFP before it was publicly issued, Massone answered “No we did not.” (See extract from transcript of Massone’s testimony attached as annexure **AW105**, page 2106, point 7)
124. Even if Bain did not see the actual final version of the RFP that was eventually issued, there are two incidents that suggest that they had insight to the upcoming procurement process that SARS was planning and the contents of the RFP.
- 124.1. In an internal email to his colleagues on 28 August 2014, Massone wrote that he had just been informed by telephone that the announcement of the new SARS Commissioner was imminent and that there will be a meeting in Bain’s office that day to discuss the procurement process, (A copy of the email is attached as Annexure **AW106**. Massone’s affidavit (AW50, par 26.1) confirms that the meeting held in Bain’s office included Moyane and Makwakwa, among others, and it was likely that the procurement process was discussed.
- 124.2. Bain wrote a draft of the SARS RFP two months before it was issued. A document dated October 2014 and titled “South African Revenue Service / Strategy and Operations review / Request for Proposal” was retrieved from a Bain computer by Baker McKenzie during their investigation (attached as Annexure **AW107**.) In a document titled “Project Arrow – Index of Key Documents” prepared by Baker McKenzie (Project Arrow was their code name for the Bain investigation) which catalogues documentary evidence collected, Baker McKenzie states that Bain partner Franzen confirmed that he wrote this draft RFP. I

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

125. Writing or influencing RFP documents for public institutions appears to have become a commonplace occurrence at Bain. In addition to the example already given above, Matthew Birch, a Manager at Bain sent me an email on 12 October 2018 stating that in 2017 he was tasked by his superiors with reviewing an RFP document from Eskom. As Birch writes in his email, Bain's goal was to send feedback on the RFP to Eskom so that "the RFP could be tailored to help the chances of Bain being the successful bidder." This email was attached earlier as AW74. Additionally, Massone writes to Meehan that the Telkom RFP issued on 17 November 2014 was "designed for us," giving the impression that the RFP was engineered to ensure that Bain wins it. This email dated 18 November 2014 is attached as **AW109**.
126. On another occasion Bain seems to be part of an effort to circumvent the tender process at a public institution entirely, this time involving the PIC (Public Investment Corporation). In an email from partner Andrei Vorobyov to senior colleagues in December 2014 relating to the PIC, he states: "They would like to go with Bain, instead of issuing full RFP and considering other providers." The email is attached as Annexure **AW110**.
127. It appears that SARS went to great lengths to ensure that Bain would end up being the winning bidder for the multiple phases of the eventual project; a procurement process which the Nugent Commission described as a "procurement sham" on page 43, par 61 of their final report attached as Annexure **AW111**. SARS personnel engaged with Bain variously through phone calls, emails and meetings in support of Bain's bids for the different phases, and Bain willingly participated in this process. At no point in the documents and emails made available to me did I see any objections by any Bain person to SARS's irregular tender

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

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

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

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

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

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

- 128.4. On 13 March 2015, Neville Eisenberg (“**Eisenberg**”) at Bain sends an email to Bain colleagues after a discussion with Jonas (presumably Makwakwa). Eisenberg writes that SARS have received “letters of complaint” about the original procurement process and thus must run a “bulletproof” process this time round. This information is contained in an email attached hereto as Annexure **AW117**.
- 128.5. On 19 March 2015, Eisenberg writes to his Bain colleagues again to say that he’s been informed that SARS will “need to run an open tender process” as contained in an email attached hereto Annexure **AW118**. The email indicates that Bain and SARS had explored the option of extending their contract for the additional work rather than a new contract. Eisenberg writes that “they” (I am not sure who at SARS this is) “still hope that we are the winning bidder” – again, executives at SARS displaying a preference for Bain.
- 128.6. On 1 April 2015 a Bain internal email authored by Massone attached hereto as Annexure **AW119**, reports that after a discussion with “Jonas at Sars” (presumably Makwakwa) SARS might have found a way to “legally resume work without tender,” that is, avoid an open tender process for the next phase of their work at SARS. On 9 April 2015 Alexis Bour at Bain writes an internal email after a meeting with Jonas (Makwakwa) at which he is informed that SARS had had legal advice that supports their decision not to follow an open tender process. Even before the SARS procurement meeting has taken place where the procurement decision is to be made, Bain are told to be “ready to run.” (See email attached as Annexure **AW120**.) A year later, on 9 June 2016, as Bain’s contract comes to an end and they seek to renew it, Bour from Bain writes an internal email conveying assurance from Ronald (presumably Makomva), that Bain should not be concerned about the procurement process since SARS will find a way to extend the contract without an open tender process. Bour writes that he was told “if they

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

129. At each new phase of Bain’s project with SARS, regulations covering public procurement would typically require that SARS enter a new tender process, with certain limited exceptions allowing for single sourcing. Bain seemed only too willing to go along with SARS’s efforts to avoid a tender process (as described above), ultimately succeeding with respect to the work extensions following the initial tendered work. In an email on 16 June 2016, Bain partner Peter Clearkin (“**Clearkin**”) suggests that a new piece of work they’re proposing be “considered as a new piece of work, with a new contract, not an extension,” to which Massone replies in an email, the same day: “A new contract will need to be assigned via a tender process, which we won’t win.. So not a viable option” (emails attached hereto, Annexure **AW123**). Bain’s SA leadership seemed to acknowledge that Bain would lose if they entered a competitive, open market tender process. This was the motivation, in my view, to keep finding ways around the rules.
130. After the meeting where Bain, represented by Innocent Dutiro, John Beaumont and Alexis Bour, presented their proposal to SARS (presumably the procurement committee) on 19 December 2014 (see extract from the proposal in annexure **AW124**), in an internal email, Bour writes that the SARS executives at the meeting seemed to be “going through the motions.” (Annexure **AW125**).
131. Throughout my review of the email exchanges between Bain and SARS relating to procurement, I did not come across a single instance where a Bain executive raised concerns about being involved in a potentially irregular tender process at SARS, that they might be involved in contravening public procurement laws or indeed that they may be

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

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

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

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

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

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

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

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

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

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

138. One of the reasons organisations hire management consultants is for consultants’ depth of expertise in the client’s industry, sector or similar organisation. Bain presented their team as such experts – their proposal to SARS on 19 December 2014 states that “The Bain team brings considerable experience and expertise to the table” (page 24, annexure **AW130**). Yet within their ranks there was little to no discernible tax agency expertise. Of the senior people on the team Massone had a background in telecommunications, Franzen, who led the SARS project, has a background in financial services and Moolman who is listed as an “expert” had a background in mining.
139. There were other occasions where Bain misrepresented the depth of their expertise – again something which is unusual for the firm globally but which seems to have been common practise in South Africa. In an internal email from Alexis Bour dated 3 June 2016, discussing which consultants to allocate to a new piece of work pertaining to SARS, he writes: “We are selling 10 people with only 2 of them ... having deep knowledge about the topic.” (See attached as Annexure **AW131**.) This appears to have happened at Telkom as well as seen in Massone’s email on 18 November 2014 where he writes to Meehan that even though Bain seems certain of winning the contract “we know that we can’t claim to have done much on the specific topic.” (annexure **AW132**)
140. Feeney wrote in her email dated 18 December 2018 that even though her complaints were dismissed, she hoped that when others spoke up

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

## **BAIN WITHHOLDS KEY EVIDENCE FROM THE NUGENT COMMISSION**

141. What I've presented so far is the evidence in my possession that I believe shows Bain's involvement in damaging SARS and the broader state capture planning. I now turn to Bain's efforts to cover up this involvement which became most apparent during the Nugent Commission. Bain's cover-up strategy entailed, through obfuscation and evasion, claiming to cooperate fully with the Commission and claiming to commit to full disclosure while consciously practising selective disclosure, that is, only sharing what they wanted and only when asked.
142. During my oversight role of Bain's investigation, I exchanged emails with Judge Nugent, as my contract allowed, and had two face-to-face discussions with him.
143. From my in-depth and extensive discussions with those leading Bain's response to the Nugent Commission, Bain was driven by two factors, neither of which included telling the whole truth. Firstly, Bain wanted to avoid unlimited liability in South Africa and secondly, Bain wanted to avoid an investigation or prosecution by the US Department of Justice. They wanted to limit the fallout.
144. The cover-up intent was mentioned or intimated through my oversight role in 2018 but became most obvious to me when I received an internal document in October 2019 titled "SARS External Communications - Legal Guardrails" attached as Annexure **AW133**, which was developed with Baker McKenzie. The document was sent to members of the Bain Africa Oversight Board, of which I was a member, and presumably to other partners as well. The document highlights a set of wrongful acts

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

145. To avoid unlimited liability, Bain would avoid admitting to any wrongdoing, instead only admitting to “mistakes.” One sees use of this tactic repeatedly in their press statements.
146. To avoid a DOJ investigation and in the hope of receiving up to 50% discount on any fines, Bain had self-reported to the DOJ as Kennedy explained to me in an email on 28 September 2018 (annexure **AW134**).
147. Bain were aware of everything that I have discussed above but chose to withhold most of it from the Nugent Commission, only revealing certain facts when asked by the Commission. For example, Bain made no mention of their meetings with Moyane in their submissions to the Commission and only provided detail after this fact was teased out of Massone during the Commission’s public hearings.
148. As stated in paragraph 6.1 above, I was appointed by Bain on 7 September 2018 “to provide independent oversight of the external and internal investigations that Bain are conducting,” and to demonstrate that “Bain’s intent in securing Mr Williams’s services is that he does what is right for South Africa, without restrictions.”
149. In conducting my duties my primary contacts were with Kennedy, Bain’s head of legal for the EMEA region, Min, Bain’s global head of legal, Moolman, Interim Office Head for Bain South Africa, Greg Hutchinson (“**Hutchinson**”), advisor to Bain’s global Managing Partner, Bernstein, Partner at Baker McKenzie in South Africa and Demas, Partner at Baker McKenzie in the US. Hutchinson represented Bain’s global leadership in managing the crisis (from their perspective) caused by the revelation

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

150. During my 16-month engagement at Bain, the partners in the Johannesburg business were John Senior, Peter Clearkin, Joachim Breidenthal, Julien Vermersch, Chris Mitchell, Rob Howgego, Bertrand Fallon-Kund and Stephane Timpano. Clearkin and Timpano were directly involved with SARS and Breidenthal and Moolman were in the Johannesburg office at the time of the SARS work. My offers to the partners to present my reasons for resigning in August 2019 and explain my concerns over Bain's involvement in state capture, were all rejected. Only one partner met with me to gather some facts. I had offered to Moolman late in 2019 that I would be willing to present the facts behind my reasons for resigning to the Bain global board but that too was rejected. Other partners who were at Bain at the time of the SARS work and part of the leadership of the business during Massone's tenure quickly relocated out of South Africa when trouble came – these include Fabrice Franzen, Berry Diepeveen, Andrei Vorobyov, Catalina Fajardo and Jérémie Danicourt. Innocent Dutiro had left the business earlier.
151. It was tragic to see how my senior colleagues were willing to turn a blind eye to what was happening around them and to eventually hang me out to dry after I spoke up. Once Bain's wrongdoing was revealed all decisions were directed out of Boston. So often what was said about the SARS debacle to staff, clients and associates in South Africa was scripted in Boston. Even a senior partner and long-time friend like Moolman was willing to have someone in the US send emails in his name – in an email to me on 10 January 2020 after I'd challenged a lie about me on Bain's website, I received an email supposedly from Moolman but clearly written by someone in the US in which he refers to "September 2018" as "the fall of 2018" – not language used between two South Africans and factually incorrect since September is Spring in South Africa but is "fall" in the US (annexure **AW135**).
152. During the initial month of my engagement, in an email dated 19 September 2018 (annexure **AW136**) I began to raise a red flag over "different scopes of truth" among Bain leaders. I wrote this because my

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

153. Judge Nugent indicated to Bain and to me that he deemed Bain not to be cooperating with his Commission. Even in his final report he wrote that the Commission has "not yet heard the full truth from Bain" (Annexure **AW137**, page 32, par 19) and that if Bain wanted to do the right thing, they should furnish the Commission with "all information in its possession" (Annexure AW137, page 31, par 15). In an email on 22 September 2018 to Hutchinson, Moolman, Kennedy and Min I conveyed Judge Nugent's concern and included a graphic in which I tried to offer an explanation to the Bain executives of my view that all relevant information was not being shared with the Commission (annexure **AW138** contains the email and the graphic). My aim was to encourage Bain to reveal all that they knew.
154. Massone had testified before the Commission on 30 and 31 August 2018. He was summonsed to testify again on 25 September 2018, but did not do so, claiming ill health. On 21 September 2018 Massone's lawyers sent a letter to the Nugent Commission explaining his absence. The letter is attached as (annexure **AW139**). I received this letter from Bain who were sent a copy by Massone's lawyers. The Commission then summonsed Min to testify on this date which he did.
155. A junior consultant at Bain told me that while out with her family on 21 September 2018, she and her family saw Massone dining in public in a restaurant during the period when he was supposedly too ill to testify. She stated to me that he looked as if he was in full health. I shared this

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

156. I know from internal discussions that Bain did not fire Massone. Rather they paid him to leave in November 2018, three months after the revelations at the Nugent Commission and only after protracted negotiations with him. In fact, no one at Bain was fired for Bain's involvement at SARS and state capture. Bain has staggered payments to Massone to ensure his silence and cooperation should Bain need him.
157. On or around 25 September 2018 Judge Nugent offered Bain an opportunity to present witnesses to the Commission who could help the Commission get to the whole truth of Bain's involvement. The Commission offered to set aside a whole day, 22 October 2018, to hear from Bain's witnesses. Rather than make available the many people within Bain's ranks who possessed information relevant to the Commission, Bain refused. Judge Nugent in his final report quotes Min as saying: "Bain believes there is no one other than Mr Massone who can provide meaningful information." (See extract from Judge Nugent's final report attached hereto as annexure **AW141**, page 30, first paragraph). The claim was that since Massone was not available to testify, there was nothing more to learn from speaking to anyone else. "That was itself untrue," Judge Nugent wrote in his report. I respectfully concur with Judge Nugent's view since there were numerous people within Bain with relevant knowledge who could have testified.
158. It was clear to Bain who the Nugent Commission would be interested in speaking to as witnesses. On 28 September 2018 Kennedy wrote: "... narrow down the list of custodians and witnesses to those the judge would be interested in. I guess that would be Stephane [Timpano], Fabrice [Franzen] and a handful of others." (annexure **AW142**) I had

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

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

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

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

161. On 1 October 2018 I wrote an email to Baker McKenzie (Demas and Bernstein) and Bain (Min and Kennedy) suggesting that the abovementioned individuals be added to the list of Baker McKenzie's interviewees (this email excluded mentioning Kennedy who I only mentioned later). Demas from Baker McKenzie replied that putting Min up as a witness would negatively impact the discussions with the DOJ (The full email exchange is attached as annexure **AW146**). Demas claimed that Min had no knowledge of the underlying facts, yet I knew, as I've discussed above, that Min was well aware, at a minimum, of what was happening with the Ambrobrite arrangements and Bain's pursuit of Zuma. As the lawyers conducting a supposed independent investigation, I would not have expected that concern over the DOJ's reaction would be their primary reason for excluding a potential witness. To me, an independent investigation seeks to get all the relevant facts from whatever source is available. I believe that some of the individuals were added to the interview list subsequent to my intervention but I have not seen the final list of those interviewed by Baker McKenzie.
162. The response which focused on the DOJ was a precursor for what was to come – that Bain was far more focused on what may matter to the DOJ in the US than what would contribute to revealing the whole truth in South Africa.
163. My contract stipulated that I would have access to all communications between Bain and the Commission and that I was required to review all documentary submissions to the Commission before submission.
164. I frequently had to urge compliance by Bain, for example in an email on 22 September 2018 (**AW147**). For reasons unknown to me, I did not see the 23 lever arch files of collected evidence that were sent to the Nugent Commission, so could not judge if Bain were being transparent with the

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

165. In a verbal update to Moolman on or around 9 October 2018 I outlined a few of my concerns over Bain’s investigation and my ability to perform my oversight role. These concerns related to a lack of findings from Baker McKenzie, delays in access to requested information from Bain and concerns over the nature of the investigation which to me seemed focused on the issue of legality rather than a broader question of ethical behaviour. Moolman conveyed these and other concerns of mine in an email on 9 October 2018 to Hutchinson, Kennedy and Min. (**AW149**)
166. Despite commitments to do so and urging from me, Bain decided not to submit a written report to the Nugent Commission, a submission that could have shed significant light on what had happened at SARS. In an email from Kennedy to Min on 3 October 2018, Kennedy explains that Baker McKenzie, the supposed independent investigators, had “strongly advised against offering the Commission an interim written report.” (page 2 of annexure **AW150**). Again it seemed highly unusual that the “independent” investigators were offering advice to the company they were investigating and offering advice that seemed to withhold valuable information from the Nugent Commission. An email from Demas of Baker McKenzie to Min, Kennedy and myself on 23 October 2018 says “we should be in a position to draw some conclusions on SARS based on at least the forensic email review in November, which could allow us to provide input into Nugent’s report (if he’s interested and we’re willing).” (annexure **AW152**) The email gives an indication of Baker McKenzie’s and Bain’s attitude towards the Nugent Commission – even if they had relevant information available and the Commission was interested in this information, which was likely, it was not a foregone conclusion that Bain would submit this information to the Commission. This did not look to me like a company that was fully cooperating with the Commission and being completely open and transparent as Bain

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

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

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

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

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

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

171. There was no manual to guide what I was doing. As far as I was aware, my role was unprecedented – having access, albeit limited, to an investigation as an independent with a public mandate to ensure ethical standards.
172. The conclusion of my Final Report, written in December 2018 (the full report is attached as annexure **AW155**), was that the Bain investigation was comprehensive but that the findings had not been reported truthfully, that is, based upon the knowledge I had, Bain was withholding relevant information and witnesses from the Nugent Commission. My interim report made a similar finding but not as definitively. I also documented in the Final Report, Bain’s orchestrated efforts to withhold information from me (discussed below). This report was not submitted to the Nugent Commission which by then had concluded its work.
173. Other than comments on the draft of my Interim report, Bain leadership showed no interest in engaging with me on my findings and showed no interest in my Final Report. The stated intention by Bain was that my Final Report was to reflect my review of the Baker McKenzie investigation report but Bain withheld this report from me until after I wrote my Final Report. This delayed the writing of my Final Report until it was too late to submit as input to the Nugent Commission. I believe that the Nugent Commission would have derived great value from the Baker McKenzie investigation report and my Final Report.
174. My Final Report highlighted three major failings by Bain in their dealings with the investigation and the Commission, led by Baker McKenzie:
  - 174.1. I could not assess the rigour of the interviews of Bain staff because I did not attend the interviews which were deemed legally privileged, and I

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

- 174.2. Bain intentionally took a strategic stance of non-cooperation with the Nugent Commission by withholding relevant information and witnesses who could describe in detail what transpired leading up to and during the SARS project.
- 174.3. I could not assess the truthful reporting of Bain's investigation because I was denied access to their final investigation report by both Bain and Baker McKenzie and denied full access to evidence.
175. These three failings lead me to conclude that Bain was withholding information and evidence that I felt should have been provided to the Commission.
176. Judge Nugent expressed to me what he considered to be Bain's lack of co-operation with his Inquiry. The Judge urged me to remind Bain that he would not tolerate what he termed their "obfuscation" and "evasion."
177. I share Judge Nugent's view of Bain's obfuscation and evasion because this has been my experience at times in seeking to gain access to information. It is my conclusion that Bain has not fulfilled its commitment expressed in its press statement of 2 September 2018 to be "completely open and transparent," with the people of South Africa.
178. In establishing my role, Bain committed itself to independence of its investigation, and transparency in its dealing with the findings. It also committed to allowing me freedom to provide independent oversight and to communicate any concerns with the Commission and the public. To varying degrees Bain met all the requirements of my terms of reference

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

179. At the outset of the Nugent Commission Bain’s position was that they did not know anything worth sharing and needed an investigation. I have shown that this was untrue. Bain then asked South Africa to be patient as they conducted their investigation to get to the facts and committed to sharing the findings. They did not share their findings with the Nugent Commission nor the public, only some vague statement on 17 December 2018. They practised selective disclosure, which actively sought to withhold information and witnesses, only giving the Commission sensitive information after being caught out in the public hearings or when the Commission asked directly.
180. This withholding behaviour also extended to withholding information from me, even though my role was meant to give the public comfort that Bain’s investigation was independent, comprehensive and truthfully reported, a conclusion that I could not reach.

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

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

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

182. By late November 2018, the level of Bain’s and Baker McKenzie’s engagement with me had cooled substantially. My reading of the situation was that they saw no value in my continued involvement because I had been critical of the investigation, the Nugent Commission had wrapped up its work and they had decided not to disclose the Baker McKenzie investigation findings as promised, thus not needing me to report on its truthfulness.
183. Bain mandated Baker McKenzie to investigate Bain’s work at other public institutions in addition to SARS. I understood from conversations with Bain partners and emails that Bain had done consulting work for Telkom, Industrial Development Corporation (IDC), Public Investment Corporation (PIC), Development Bank of South Africa (DBSA), SAA and the African Union, where their client was Nkosazana Dlamini-Zuma. My contract was focused on SARS so I was not involved in discussions and did not receive documents relating to these investigations. Bernstein, the lead Baker McKenzie partner in South Africa, did mention to me during a meeting at Bain’s office in June 2019, that their investigation into Bain’s work at Telkom revealed more problematic findings for Bain than what they found at SARS. I did not get any details on the “embarrassing” evidence, as Bernstein described it, but it could relate to topics already discussed such as Bain offering to pay for a vacation for the Telkom CEO in December 2014 or the fact that the Telkom RFP issued on 17 November 2014 was engineered to ensure Bain won it – “designed for us” as Massone wrote to his superior, Meehan on 18 November 2014; or that Massone had asked Meehan on 16 January 2017 to thank Telkom chairman, Jabu Mabuza, “for the business.” A document dated 4 December 2013, that I received from Baker McKenzie during my oversight role, shows that a group of 6 Telkom employees wrote to Bob Becheck, Bain’s global managing partner at the time, based in Boston about an “infringement involving your RSA Bain team.” (annexure **AW157**). The document appears to allege Bain’s

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

184. At some point Bain decided that they would withhold the Baker McKenzie findings from the public and from me. This went counter to their claims of full cooperation with the Nugent Commission and their press statement that they would be open and transparent with the public about the findings. Withholding the findings from me made part of my oversight role a farce because I was required to verify that Bain reported their investigation findings truthfully. I could not do this if I did not see their investigation report. What followed was an orchestrated set of events between Baker McKenzie and Bain which showed just how far Bain was prepared to go to hide the evidence contained in the Baker McKenzie report. I outline these events here.
185. On 10 December 2018, after a phone call with Baker McKenzie's two lead partners (Demas and Bernstein), I wrote an email (Annexure **AW158**) to Kennedy (copied to Moolman) indicating that, to my surprise, Baker McKenzie had informed me that they would not produce a detailed report that captures the findings of their investigation into Bain's work at SARS. I indicated in my email that this outcome meant I would not be in a position to complete the scope of what I had been contracted to do and that I would meet with Bernstein, add any edits to my interim report and issue it as my final report. Kennedy's reply shows indifference to the magnitude of the issues that I raised in my email – he wrote: "I think that's right and the process you suggest seems correct." (annexure **AW159**)

186. In a follow-up email I raised a concern about how negatively the media may react to Bain not producing a report after having publicly committed to doing so, to which Kennedy replied, "Yes that question has been well discussed," (email is attached Annexure **AW160**) and that Bain was following "very clear advice from BM [Baker McKenzie]..." That the question was "well discussed" shows the conscious intentionality of these actions that were presumably decided upon by numerous members of Bain's senior leadership with input from Bain's lawyers. My emails were copied to Moolman who did not respond.
187. On 11 December 2018 the Nugent Commission issued its final report which concluded that what occurred was a "premeditated offensive against SARS, strategized by the local office of Bain & Company Inc, located in Boston, for Mr Moyane to seize SARS." (annexure **AW161** page 27 par 1). The Commission's report referenced my Interim report of November 2018 on a number of occasions and acknowledged my contribution to the work of the Commission and Bain's investigation.
188. On the same day I wrote to Bain's South African marketing head, Nicola Wilson, (annexure **AW162**) again copied to Moolman, expressing my annoyance that no one had told me beforehand that I would not be provided with a copy of the Baker McKenzie findings. Moolman replied to this email claiming that he, the head of the South African business, too was surprised that no report was to be produced (annexure **AW163**).
189. I find it hard to believe that Baker McKenzie, having conducted an extensive investigation, did not compile a report of its findings, and that Bain would be satisfied with a sparse Powerpoint presentation as the final output. While Bain and Baker McKenzie were telling me that no report would be written, I suspect that it had been written but was being withheld from me – it certainly was not submitted to the Nugent Commission.
190. I wrote an email to Moolman, copying Kennedy, on 11 December 2018 with the subject "BM output" (annexure **AW164**) after a phone call with Kennedy relating to the fact that Baker McKenzie was supposedly not

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

191. These actions by Bain added further to my view that they were not interested in South Africa at all - the DOJ in the United States was the focus of their attention. The Nugent Commission was really just being treated as a side show. My persistence on full disclosure and openness in South Africa was merely an annoyance to them.
192. Around 10 to 12 December 2018 I had a string of discussions with Kennedy and Moolman to take stock of the situation. The message from them was clear – I would not see a Baker McKenzie report. If I was not being permitted to see the report then I argued that I should at least have sight of all the evidence that was collected. By then I had not seen investigation update emails for a while and had not seen outputs from any of the interviews that Baker McKenzie were conducting with Bain personnel. On 12 December 2018 I wrote to Marilyn Batonga at Baker McKenzie asking for the regular updates on evidence collected and asked to have sight of notes taken from their interviews with Bain staff and any documents submitted by these interviewees. Batonga did not reply to my email but Demas did, indicating that information emanating from the interviews would not be shared with me. The email exchange is attached as Annexure **AW165**.
193. I became increasingly concerned that I was being misled. The Nugent Commission had ended, so approaching the Commission with these concerns was not an option.

194. On 14 December 2018 I made an impassioned plea by email to Moolman, Kennedy, Hutchinson and John Senior (“**Senior**”) who had recently transferred to the South African office from the US and would soon be appointed as the new Office Head. My plea was that Bain fulfil its commitment to make the investigation findings public and give me access to it so that I could complete my duties. This communication is contained in an email attached as Annexure **AW166**. As with most other occasions where I raised concerns over Bain’s behaviour, my concerns were ignored or dismissed. Kennedy replied on the same day suggesting I read Bain’s “master narrative” which was the PR document they had created. I replied to Kennedy, including Moolman, Senior and Hutchinson, that without seeing the actual investigation findings I could not vouch for the truthfulness of Bain’s “master narrative” (**AW167**).
195. On 14 December 2018, Kennedy wrote: “As you know, not having privilege on the BM report would be a huge disadvantage if we are investigated by the Hawks, DOJ or if anyone brings a lawsuit,” (annexure **AW168**). The email shows that Bain executives had moved far away from their public commitment of full disclosure and full transparency and were acting solely in their own interest with the focus on withholding any information that might count against them in an investigation.
196. By 15 December 2018 I had accepted that at best I would have sight of Baker McKenzie’s watered-down presentation and not a detailed reporting of the investigation. I wrote to Bain’s lawyers and Moolman with what my expectations were in terms of my role and what was expected of Bain (email attached Annexure **AW169**). I highlight that I have only been permitted to view the Baker McKenzie presentation, which I would study closely, and I again request to have sight of all relevant evidence which I have not seen. I go on to ask “I would appreciate it if we could be proactive in identifying relevant evidence that I have not seen,” rather than what was happening where they would only send me something if I asked for it, a frustration that Judge Nugent had also expressed. It seems that Bain’s leaders and their legal

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

197. As Bain's executive was finalising its carefully curated public statements after the release of the Nugent Commission report, Baker McKenzie raised a concern with how Bain's statements referred to my role. Demas wrote to Bain on 15 December 2018: "... reference is made to Athol's "oversight" role of Baker's investigation. We have sought to avoid language suggesting he controlled or oversaw our investigation, which could result in privilege waiver. Yesterday, DOJ actually inquired about the nature of Athol's role in our investigation and we explained it as such, so would also be important to be consistent in a public message." The Baker McKenzie partner then suggests wording that downplays the role Bain had contracted me to play. This email is attached as Annexure **AW170**. I had little interest in how my role was being described in the United States, rather I was focused on my task ahead of working towards my final report, with just two weeks remaining of my contract with Bain.
198. In an email on 15 December 2018, copied to me, Demas continues the discussion around the description of my role in public statements and to the DOJ. He mentions the DOJ's interest in me and my role and wanting to discuss potential scenarios in which privilege waiver could impact upon Bain. (annexure **AW171**)
199. I had raised a question about Baker McKenzie's independence early in my involvement back in 27 September 2018 (see email attached as annexure **AW172**) but with hindsight should have pressed harder on this issue. On page 2, point 5 of the attached email I ask Kennedy whether he's comfortable that Baker McKenzie are independent enough to which he replies "Yes, I am comfortable ... BM assisted us on some related workstreams but that these workstreams are a separate matter ... BM is a sophisticated independent law firm". It appears that there was more

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

200. The announcement in September 2018 that Bain had hired Baker McKenzie to conduct an independent investigation gives the impression that this was a new relationship when actually Baker McKenzie had been working on the case for several months, at least as early as July 2018 but most likely earlier. In their dealings with me during my oversight role and for the months that followed, it became clear that Baker McKenzie were acting not in the interest of full disclosure of the truth, or in the interest of South Africa but in the interest of Bain. Even when I told them in November 2019 that I was in communication with the Zondo Commission investigators their reaction was that I would have nothing of value to offer and tried to steer how I should respond to certain questions and topics (see annexure AW71).
201. Eventually a session was arranged for 19 December 2018 for me to have sight of Baker McKenzie's presentation which was supposedly presented to the DOJ. This was a week after the Nugent Commission had finalised its report on 11 December 2018. This was certainly not the detailed report that I had requested and had been promised but it offered me an opportunity to engage with the Baker McKenzie investigation lawyers to get a fuller picture of what happened at SARS.
202. On 19 December 2018 I joined a conference call and SharePoint link (which allowed them to show me documents but without me being able

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

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

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

multiple times from Bain Legal and Baker McKenzie.

205. On 19 December 2018, I followed up the whatsapp messages with an email to Moolman describing the farcical encounter with Baker McKenzie and expressing my disappointment yet again that Bain was behaving dishonourably (annexure **AW175**). I wrote that I had hoped that I could publicly vouch for Bain's honesty and that the company had acted openly and transparent as they had claimed they would, but that their behaviour had led me to the point where I could not say this.
206. After a few emails Moolman wrote that "I absolutely agree that this is not acceptable." (annexure **AW176**). Kennedy on the other hand continued on issues of legal privilege even suggesting that I needed to have Baker McKenzie approve the wording of my final report. During a conversation Kennedy told me that he was the one who gave instructions for Baker McKenzie to withhold the presentation from me on the 19 December 2018 conference call (I have no evidence to support this). Moolman agreed with my position because he too understood that I would see the presentation document that Baker McKenzie had prepared. Baker McKenzie might point to Demas's email of 15 December 2018, discussed above (annexure AW171) where in the third paragraph he refers to a "read out" of the DOJ presentation as suggesting that the presentation was never intended to be shown to me but this would be inconsistent with the understanding of all involved, including Moolman, evidenced also by the fact that I got to see it later (as discussed below).
207. On 20 December 2018 Kennedy wrote, copying Moolman, Min, Hutchinson, Meehan and Demas expressing his "disappointment" at how things had turned out, implying that the blame lay with me. He proceeded to offer a way forward in his email titled "Viewing/Referring to the BM Report in Athol's Report" again emphasising issues relating to privilege and downside to Bain, without acknowledgement of the dire situation in South Africa that Bain had been party to, and the need to establish and disclose the truth (annexure **AW177**). In my reply on 21 December 2018, which included Min, Moolman, Hutchinson, Demas and Meehan, I repeated my position that Bain was intently and actively

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

208. It surprised me that an email like mine of 21 December 2018 did not illicit any response from any of Bain’s most senior people globally in Min, Meehan and Hutchinson. Not even a call to understand my perspective, let alone an apology for the way I’d been treated or to thank me for trying to keep Bain’s process honest for which they had hired me. Hutchinson, who seemed to be in charge of proceedings and had the ear of Bain’s global head did not once respond to an email in which I raised concerns. Moolman called me and then wrote to all on the email list describing my frustration at what Moolman termed Bain’s efforts to ‘manage’ me – it was in my view much more sinister than this. (annexure **AW179**) We agreed that we would pick these issues up again in the new year but we didn’t.
209. A few weeks after the conclusion of my contract, Bain again offered to share with me the PowerPoint document that they had withheld on 19 December 2018. I had no interest in viewing the document given that my contract had expired but Moolman asked that I view it as a form of closure. On 15 January 2019, through a SharePoint facility I was able to see the Baker McKenzie presentation on my laptop but could not download or print it. This had no bearing on my oversight function since I had already completed my Final Report and was out of contract.
210. After seeing the document on 15 January 2019, I wrote an email to Moolman saying that I had seen the Baker McKenzie presentation. Moolman replied “Any surprises?” to which I replied “It was quite thin on info, only about 30-40 of the 115 pages had content, the rest appendices and background. No surprises. Quite a firm view that Bain has done nothing wrong legally.” (Annexure **AW180**). I was not in a position to assess the document’s claim that Bain had done nothing illegal but what I could tell was that the document did not produce an account of the relevant events of Bain’s involvement with Zuma, Moyane and SARS, as I reference with the phrase “it was quite thin on info.” Bain had

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

211. I could not know for sure that the document that I had seen was the one presented to the DOJ and it certainly was not the detailed findings of Bain's investigation. I was reminded of what Kennedy had written to me on 28 September 2018 that "the DOJ probably won't be thinking about state capture and deliberate schemes to destroy SARS" which would explain why the DOJ report was "thin on info" by my assessment – the report did not focus on the issues that mattered to South Africans which was exactly what Kennedy thought the DOJ would not be interested in, that is, state capture and damage to SARS. Even this watered-down version of their findings, that I saw, has not been made public.
212. Bain had hired PR firm Aprio to facilitate media engagements over my report. I had a few discussions with Aprio but as the end of 2018 drew near any engagement with the media would be muted. I did not proceed with them.
213. In my Final Report I wrote: "It is my conclusion that Bain has not fulfilled its commitment expressed in its press statement of 2 September 2018 to be "completely open and transparent," with the people of South Africa" and "Without access to the findings of Bain's investigation I was unable to perform the role for which I was contracted, that of ensuring that the investigation was fair and independent, and reported truthfully. Bain's refusal to grant me access to the final report violated their commitment to openness and transparency and restricted my ability to adequately provide independent oversight." This reference is contained in page 15 of the report (attached earlier as AW155).
214. The Nugent Commission concluded in its final report on page 47, par 77: "... what the South African people want to know is what happened

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

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

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

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

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

218. Even though I was out of contract, quite disheartened and sceptical of Bain, they asked me to help them develop a plan to make amends in South Africa. No one from Bain as much as mentioned the events of December 2018. Whenever I raised it, it was brushed aside. While denying their involvement in state capture, claiming to be mere unwitting participants, Bain wanted to make amends for their “mistakes.”
219. I weighed this request up heavily and decided to continue working with Bain at this juncture, despite my reservations, because of the following considerations:
- 219.1. My professional view is that companies need to remedy the harms they cause: On 19 February 2019 *Business Day* published an article that I wrote titled “Criminal justice after corporate corruption is just the beginning” (annexure **AW181**) in which I argued that complete justice required more than criminal justice but also reparative justice. I described a six-step corporate remedy programme that I had devised and first introduced in Part C of my report to the Nugent Commission and was, as I understood the situation, a key reason for Bain seeking to further retain my services.
- 219.2. Assurances from senior Bain executives that they wanted to make amends: Discussions with Moolman, Senior and Bain’s global Managing Partner, Manny Maceda, (on 29 January 2019 via videocall) gave me assurance (later shown to be hollow) that Bain was committed to making amends for the harms they had caused and to now do the right thing. Although I was quite cautious about Bain’s assurances given my experiences in November and December 2018, I still held the belief that I could contribute to achieving reparative justice in South Africa, so I decided to continue engaging with Bain.
220. The focus of this work would be to develop a Remedy Plan which both made amends for harms caused to South Africa as a result of Bain’s involvement at SARS, and made internal changes within Bain to ensure that the events that transpired at SARS and the harms caused would not be repeated. This plan included developing an Africa Oversight

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

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

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

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

223. On 16 April 2019 I wrote to Senior saying that I rather wanted to continue as an independent advisor and that we could revisit the issue of me joining the firm again at the end of the year. Senior responded angrily by email and telephone (email exchange attached as annexure **AW216**). It was unclear what the reason for this response was but I sensed from my discussions with Senior and Moolman around this time that there was tension among senior people at Bain around my continued involvement in the business. The fact that it took over a month to receive a formal offer, something which usually takes days, shows that this was not a smooth process internally.
224. Sometime in early May 2019 I received a formal job offer to join Bain. The offer proposed that I would work at Bain 60% of my time and at UCT 40% of my time. Bain wanted someone to drive implementation of its remedial actions and it made sense for me to do it, given my background, and it made sense that I do it from inside the firm rather than remain as an independent advisor. Still believing that Bain was committed to making amends I thought the offer presented a good opportunity professionally and a way for me to make a meaningful social justice and economic impact in South Africa. I accepted the offer on 12 May 2019 and re-joined the company on 15 May 2019. My signed acceptance of the offer of employment is attached as annexure **AW217**. I also had to sign Bain's *Global Confidentiality, Intellectual Property and Non-Competition Agreement (Global)*, attached as annexure **AW218**.
225. There was great confusion amongst Bain's South African management about my role and my re-joining. Some thought I had joined to build the firm's financial services practice across Africa. Others thought that joining raised questions about my independence in 2018 which was understandable and indicated to me that they had not been consulted. Upon my arrival it seemed to me as though no one was expecting me. The HR Manager told me that she was not informed that I was joining and as a result had made no preparations. I received a similar response

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

226. In a press statement on 25 June 2019, Bain announced that I was joining as a Partner in the Johannesburg office and announced the appointment of Norman Mbazima ("**Mbazima**") as chairman of the newly created Bain Africa Oversight Board (the press statement is attached as annexure **AW182**). The statement also provided an outline of the remedy plan and the scope of my role.
227. I commenced engaging with stakeholders and building relationships and, as part of my role leading the implementation of the remedy plan, started the process of offering verbal apologies to external parties who had been impacted by Bain's previous conduct. One of my early duties was to present the remedy plan to a subcommittee of the SAVCA board (South African Venture Capital Association) who were considering disciplinary action against Bain. Bain was a member of SAVCA. The conclusion of their process was to suspend Bain. Bain had now been suspended by two business organisations for its role at SARS, after already being suspended by BLSA (Business Leadership South Africa).
228. Because Bain had become of great public interest and because my oversight role had been public, I felt it was important to make a public statement about joining the firm. *Business Day* published the article 'Jump into the fray to remedy corporate wrongs' on 27 June 2019 (annexure **AW183**) in which I gave my background with Bain and explained that we need more ethical leaders in businesses that have been involved in wrongdoing and that this was what I was doing.
229. In this same article I wrote that 'Bain has committed itself to a path of remedy and change in its service to SA. ... What I do know is that Bain's leadership — locally and globally — is committed to this path.' From all my discussions with Bain's local and global leadership, including the global managing partner, Manny Maceda, I was led to believe that Bain

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

230. Also, on 27 June 2019 I represented Bain at a highly visible public conference in Johannesburg. It was the 'Business Against Corruption' conference hosted by the *Daily Maverick* and BLSA. I was a firm believer that if Bain had nothing to hide, it needed to come out of hiding and present its case to the South African public. Given the conference attendees, this would be the ideal opportunity. Attendees included Minister of Public Enterprises, the new SARS Commissioner and the head of the National Prosecuting Authority (NPA), as well as representatives of business, civil society and the media.
231. Bain arranged for extensive preparation ahead of the conference, hiring public relations experts and allocating time from its legal team and Baker McKenzie. Some of the preparation materials are attached (annexure **AW184**). The shaded parts of this document show the instructions I received on how to respond to questions relating to the Baker McKenzie investigation and Bain's commitment to share findings publicly. The conference was a harrowing experience for me because all anger that had been built up against Bain, was now directed at me because I was the first Bain person to engage with the public. Symbolically, I sat right in front throughout the conference because I felt that Bain needed to face South Africa.
232. At the conference Edward Kieswetter, the new SARS Commissioner, mentioned in his talk that SARS was collaborating with the NPA to prosecute cases. This included following the Nugent Commission's recommendation for the NPA to consider prosecuting those involved in Bain's contract at SARS.
233. I had brief conversations directly with Kieswetter, as well as Minister Pravin Gordhan and two SARS staff members who were in attendance at the conference. The latter told me of the trauma of their direct encounter with the Bain consultants and the devastating impact Bain

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

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

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

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

237. It became increasingly apparent to me that the firm's global leadership was acting in the interest of the global business with only peripheral interest in the problems Bain had caused in South Africa. The message seemed to be – make amends in South Africa only as far as it does not threaten the global business, in other words, don't do anything that may aggravate the DOJ which meant, stay out of the media and stay away from SARS.
238. To be clear: it became apparent to me that the strategy to deal with Bain's involvement with state capture and damage to SARS was not centred around full disclosure and remedy in South Africa but avoiding a DOJ prosecution.
239. Bain's stance might seem reasonable to some, that is, that employees were to act in the interest of our employer, but my view was that this is not acceptable when acting in the interest of your employer entails covering up wrongful or unlawful acts that have or could have caused harm to people directly or through damaging public institutions.
240. By early August 2019 I felt that my ethics were being compromised by being at Bain. It became very hard trying to convince external parties that my employer was going to do the right thing when I myself doubted their good faith. I faced resistance from business associates, friends, family, my students and even strangers – a few organisations and individuals started social media campaigns to have me blocked from public speaking platforms. Trusted mentors expressed disappointment that I had 'gone over to the dark side' as some would say. A former Finance Minister greeted me saying "I see you've joined the crooks." That he saw Bain as "crooks" was bad enough but now associating me with crooks was difficult for me to accept especially since I was an ethics lecturer and was at Bain trying to get them to do the right thing. All this resistance would have been easy to manage if I could show progress on remedial actions and if I had faith that Bain was going to do the right thing. On 8 August 2019, I wrote to Hagey, the Partner in charge of the welfare of Partners at Bain describing what a personal and professional burden I was facing (this email is attached as annexure **AW185**). I

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

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

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

amends.

243. In the days that followed (22 - 26 August 2019), Kennedy and I exchanged emails with the subject line 'Kieswetter engagement options' referring to Edward Kieswetter, the Commissioner of SARS and whether Bain should be engaging with him (annexure **AW188**). In this email exchange I expressed my view that I wanted engagement with SARS and pressed Kennedy on why the legal team was opposed to this. In response to a series of questions that Kennedy posed to me, I pointed out on 25 August 2019 that "I am trying to build a non-legal case that says we have committed to making amends and we made all reasonable efforts to make amends at SARS."
244. In this email exchange, Kennedy's email of 23 August 2019, makes Bain's position clear: "A prosecution would be bad for Bain's business globally, not just in South Africa, because Bain is also being investigated by the DOJ and we are advised that an SA prosecution would likely cause them to extend and expand that investigation" and "Bain's legal advisers in both SA and the USA advise that making contact with SARS in any way is a high risk strategy as they are worried that it might increase the chances of prosecution. This is because it is very difficult to tell Bain's side of the story without relying on and showing the Baker McKenzie investigation ... "
245. In addition to confirming the focus on the DOJ and that the DOJ was already investigating Bain, the conclusion I drew from these statements was that the findings of the Baker McKenzie investigation point to wrongdoing by Bain and that Bain was withholding these findings to avoid being held accountable. Yet Bain continued to claim that they are not withholding anything.
246. I was convinced that the only way for Bain to make real progress towards remedy was to engage with SARS. I had exchanged emails with Kieswetter earlier through my UCT email account. I followed up with him on 24 August 2019, writing in my personal capacity but making the case for engagement with Bain (annexure **AW189**). Kieswetter had said

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

247. On 26 August 2019 Kieswetter replied to my email (annexure **AW190**) and his reply proved extremely useful because it offered an indication of what South African authorities were thinking about the Bain situation and what they wanted to know. In fact, this is what the Nugent Commission wanted to know. He emphasised that Bain needed to disclose what transpired during its meetings with President Zuma and Moyane. “The best service you can render to South Africa and SARS,” wrote Kieswetter, “is to persuade them to come clean.” Kieswetter’s email proved to be exactly the catalyst I needed to encourage Bain to move towards full disclosure. I had only a limited sense of what my colleagues at Bain might be hiding but even before I was going to argue for external full disclosure, I wanted full disclosure internally, if to no one else, to me given the prominent public role I was to play.
248. On 26 August 2019 I forwarded Kieswetter’s email to my Bain colleagues who were on the conference call of 22 August 2019, namely Senior, Hutchinson, Cottrell, Kennedy and Mbazima. All except Hutchinson responded. No one expressed any concern that I had contacted Kieswetter. The ensuing email exchange which ran from 26 – 28 August 2019 is attached as annexure **AW191**.
249. As part of this crucial email exchange, I offered my analysis of Kieswetter’s email to my colleagues on 26 August 2019 by outlining that Kieswetter had told me and made public statements to the effect that he was following the Nugent Commission’s recommendations. It was no surprise then that his sentiments towards Bain echoed that of Judge Nugent. Kieswetter did not believe that Bain had disclosed everything and that Bain was focused solely on defending itself rather than acting in the interest of South Africa. I was increasingly coming to this view as well. More importantly, Kieswetter expressed a view, similar to what the Nugent Commission did, that Bain was not only complicit in state capture but assisted in enabling it.

250. Senior understood what Kieswetter was saying, writing on 27 August 2019, “I interpret that as he wants to us to come clean about any involvement in state capture with Zuma and with Moyane. So, I think we all need to have a crystal-clear understanding about what we actually know ...”. In his reply on 27 August 2019, Mbazima agrees with my analysis and writes that Kieswetter’s concerns should be taken seriously because they’re the same concerns held by those in government, while Kennedy’s response was predictably negative and dismissive: “Regrettably, my reading of the email is that he expects nothing less than the company admitting to state capture.” Both Senior and Mbazima agreed with the analysis that I presented in the emails in which I argued that state capture broadly, not only at SARS, was the issue. I felt that we were making progress – at least others saw the merit of a broad internal review of what Bain knew about its involvement in state capture.
251. I wrote in the emails that what was at stake was Bain’s involvement in state capture and gave my reasons for believing that there was a case for which Bain had to answer. Back in 2018 already, Kennedy and I had talked about two possible “schemes” that Bain could have been involved in – a big scheme (Bain strategized with Moyane and Zuma to cause damage at SARS and plan broader state capture) and the small scheme (Bain unwittingly contributed to damage at SARS) (See annexure **AW192** for a partial representation of the “big scheme”). In the email exchange analysing the implications of Kieswetter’s email, I wrote on 26 August 2019: “I’d like us to step back and take another look at everything we now know and refresh our view of VM’s [Vittorio Massone] involvement in the big scheme [state capture] and the small scheme [unwitting harm at SARS]. I am not so sure he was only involved in the latter.” Bain operated with the view that at most, the small scheme was the reality. I had also started out with this view in September 2018 but consistent with Kieswetter, the Nugent Commission and many other observers, the facts seemed to point more towards the big scheme. In internal discussions, Bain flatly rejected the idea of involvement in state capture but without providing any support for this view.

252. Since September 2018 already I had been insisting that I wanted to know everything that transpired at SARS and all the meetings with politically exposed persons, and that this be disclosed publicly. Kennedy was not keen on this level of disclosure even internally, let alone to the outside world. His behaviour had already indicated this, but he would make this explicit the following day, causing me to reconsider my employment at Bain.
253. The following day, on 27 August 2019 I had a meeting in Senior's office with Kennedy on the phone from Europe. I pressed hard again that Bain needed to make full disclosure and that I certainly wanted to know everything that Bain knows, not just the one-liner that we were being fed from Bain's legal team and global leadership that "Baker McKenzie found no evidence of anything illegal." Kennedy dug in his heels. He had been silent or ignored many of my earlier requests for full disclosure and to discuss state capture, but now he flat-out rejected the idea that Bain's legal team would support making full disclosure to me and other Partners, let alone externally. I pressed on what we knew about the content of the Zuma meetings and about what was revealed during the investigation interviews and what was contained in the Baker McKenzie reports. Kennedy made it clear that the firm would not share any of these. Senior remained silent.
254. After the call with Kennedy ended, while still in Senior's office, I told Senior that I could not continue on the basis where my ability to implement the remedy plan was constrained by Bain and where we were unwilling to discuss the full truth among ourselves let alone withholding this from the public. I described the growing distress that I was facing. Senior offered no solutions.
255. The next day, on 28 August 2019 I sent an email to Senior, resigning from Bain (annexure **AW193**). If Bain were not going to come clean and rather continue to withhold relevant information from me; and not do what they had committed to in terms of making amends and not going to allow me to do what they had hired me to do, I could not stay at the firm because I felt that this would make me complicit in their cover-up. I

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

256. I met with Senior to discuss my resignation. I asked if he was surprised, he said “No.” He offered that Bain could arrange for me to be relocated outside South Africa. I refused. I received calls from numerous other Bain partners as word spread of my resignation, including from Moolman and Cottrell. I met with Mbazima as well.
257. On 29 August 2019 I wrote an email to Hagey (copying Senior, Moolman, Cottrell) in which I explained that my reasons for resigning are due to Bain’s withholding information relating to their involvement in state capture, their cynical view of ethical business and their lack of support for partners like me in South Africa facing great difficulty. (annexure **AW194**). In a follow-up email I said I would issue apologies if any of my statements were shown to be false but received no response.
258. Bain had been withholding information and witnesses that I felt the authorities and myself should have had access to since September 2018. I had hoped that being inside the firm would change this stance, but it had not. A Bain manager with whom I shared the news of my resignation wrote: “They (we) like the idea of the recovery but lack the will to face South Africa and do the work. Thank you for trying. But your energy and talent can do so much more in another space where you won’t be blocked.” I was encouraged that at least one person had seen the situation for what it was.
259. I had a remuneration package that guaranteed annual income of R11 million a year if I worked full-time or R6 million if I worked part-time as I had chosen to do. Resigning came at a huge financial cost to me in terms of lost income but also money that I would potentially have to pay back to Bain. But it had become clear to me that despite the assurances I was given, Bain continued to avoid taking responsibility for the full

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

## **GOING PUBLIC AND EFFORTS BY BAIN TO INTIMIDATE AND SILENCE ME**

260. My resignation was a sudden decision and I had not thought about my next steps. Obvious potential next moves would be to return to UCT on a full-time basis or to work on completing my doctorate. Bain asked me to stay at the firm till the end of the year to allow a smooth handover, to which I agreed. I saw this as my notice period for which I expected to be paid. I remained on the Africa Oversight Board but my involvement in key meetings around the legal strategy dwindled either because I withdrew or because I was not invited.
261. What was still to be determined was the terms under which I would leave. A promising alternative to simply walking away was the idea that I proposed for me to establish an independent institute, seed-funded by Bain, that conducted research into corporate responsibility and offered advisory services to companies seeking to make amends after wrongdoings. This idea fitted in perfectly with my academic focus, was consistent with why I joined Bain in the first place and clearly there was a need in South Africa and also other parts of the world. I had discussed the idea of such an institute with Bain for a long time as part of the remedy plan. What would be new was that I would run it as a non-Bain person, with Bain contributing financially.
262. On 25 September 2019 I received an email from Cottrell, Hagey and Senior with an attached note titled 'Future Role' that described an offer of a future relationship between myself and Bain (the email and attached document are attached as annexure **AW195**). This followed a number of phonecalls including one with Hagey on 5 September 2019 which I

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

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

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

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

265. An instruction that bothered me more than the others in the document was on page 1, point 2a which read: “Do not state that you have had any role or involvement in overseeing or directing Baker McKenzie's investigation.” This was exactly what I had done in 2018 and it was public knowledge. Bain was asking me to lie or withhold the truth.
266. Throughout the period since I had resigned on 28 August 2019, despite my repeated requests, Bain refused to announce internally or externally that I had resigned. Most worrisome was that Bain continued to include my name in letters to clients, potential clients and other external bodies and not inform them that I was leaving.
267. On 17 October 2019 I was the keynote speaker at the Finance Indaba conference for finance professionals held at the Sandton Convention Centre. During my address I stated that I had resigned from Bain. The print, radio and TV media covered my resignation extensively.
268. My statement during my address and my responses to journalists afterwards mistakenly gave the impression to the media that I had actually resigned at the conference and that Bain was unaware of my resignation, rather than the fact that I was merely making my resignation public given that I had resigned on 28 August 2019 already.
269. Within hours of my keynote address, and without informing me, Bain blocked my access to my work-issued cellphone and laptop. This was done remotely and according to Bain's local IT department, was done from outside South Africa. This blockage meant that I was blocked from all Bain communications but also that I lost access to my passwords, contacts, messages, emails and documents, both work-related and personal. Bain would not restore these to me. In the meantime Senior sent an internal email to the African business announcing that I had decided to leave and thanking me for my contribution (this email is

attached as **AW200**).

270. Bain's next move was to write a press release on my behalf in which I was to retract some of the statements I had made. I had written a whatsapp to Moolman on 17 October 2019 about coordinating communications (see annexure AW196, point 2) but was not going to have Bain write my press statements for me. On 21 October 2019, Erol Munuz ("**Munuz**"), Bain's Director of Global PR based in Boston, sent the press release (annexure **AW198**) which was labelled "v4" or version 4, indicating that it had already done the rounds within Bain. The press release was clearly intended to influence what I said publicly and included statements which I outright rejected like "There is a difference between unintentional bad choices and intentional bad behaviour. It is my belief that Bain's actions fall into the former category." Also on 21 October 2019 Cottrell sent me an email reminding me of my "confidentiality commitments" as he described them, and an email with an attachment highlighting the 17 media statements relating to my talk on 17 October 2019 that Bain found "problematic." (annexure **AW199**)
271. I refused to include certain phrases in my press statement even after Munuz wrote them a second time. Numerous phone calls and emails, several per day, followed as we went back and forth on what I wanted to say and what Bain wanted me to say. I did not mind issuing a statement because I did think some of the media statements were inaccurate but was not going to add any weight to Bain's twisting of the facts. On 22 October 2019 I issued a press statement (annexure **AW201**) which was written under pressure from Bain and before I had reviewed the 500+ documents and emails that I have now reviewed which came into my possession during my involvement with Bain. I was content that my oversight reports of November 2018 and December 2018 contained the best presentation of my position so wrote in the press statement that I had no additional information on Bain. On the same day I also sent to Cottrell and Munuz an email with a document titled "My claims and conclusion" in which I state that I believe Bain was withholding evidence from me that would help me form a view of Bain's

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

272. On 23 October 2019 Moolman wrote to thank me for my press statement (See annexure AW196, point 4). I replied apologising for the aggravation my actions had caused – most of the people at Bain were good people and some were my friends, including Moolman. If I had caused “undue damage” I wanted to ensure that I remedied that. On the same day Cottrell wrote to say that Bain would make Munuz, available to me personally to help me with my PR. A day earlier Munuz had written an email titled “kitchen cabinet” from his personal email address indicating that he was offering his services to “help you frame and build the next stage of your public intellectual life” (annexure **AW 203**). He writes “you are worth it as a human being”– a bizarre statement. In the email he again tries to steer me away from engaging with the media. Much like Cottrell's communications, I found this email from Munuz to be condescending. I had a good working rapport with Munuz but this act between him and Cottrell was so obviously another attempt by Bain to manipulate me – why else would Bain offer personal access to the Director of Global PR. I did not take up the offer.
273. On a phonecall with Cottrell and Russ Hagey on 30 October 2019 they stated that the bottom line for me going forward was that I could never speak about Bain again. (I have no proof of the contents of this phonecall).
274. I was surprised by this statement and confused about what this meant. The answer from them was that I could not speak about any aspect of my experience with Bain to anyone, particularly the media. It seemed absurd to me. With a case this public and my public life as a speaker and academic it seemed impossible that I could never speak about Bain.

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

275. I was shaken by Bain's request that I never speak about my experience. They knew my position on so many serious ethical topics relating to their behaviour – I still hoped that they would want to engage on these and find a way to come clean. I could understand abiding by a confidentiality agreement but the demand for complete silence shook me.
276. I recalled Cottrell saying to me on one of our phonecalls that Bain's lawyers would be "very aggressive" with me if we ended up in court. I also recalled discussions between Bain and Baker McKenzie about hiring a private investigator to track Massone and the thought occurred to me that they may already have me followed. My family's anxiety grew over my safety, as did mine, when Bain's determination to silence me became apparent. I realised that any involvement Bain would have had in corrupt activities involved powerful people in South Africa who would also have an incentive to keep me quiet. Driven by fear and urged by my family I wavered and began discussing options with Bain.
277. Spending time out of the country seemed like a good option for me. I could go to Oxford to complete my doctorate, something that I needed to do anyway, and this would take me off Bain's war path in the short term. Bain loved this idea when I mentioned it to Cottrell, after all they were getting what they wanted. Numerous phonecalls followed to work out the details which would see Bain cover my cost to be in the UK as part of my separation terms with the firm.
278. On 4 November 2019 Cottrell called with a settlement offer that would require that I go to Oxford for two years, as I had suggested, and Bain would cover the costs of me being there and my opportunity costs of not working in South Africa. I indicated that their offer was unattractive on financial grounds. The structure of our discussions was such that if I went along with Bain's request for silence they would waive amounts that I owed them plus offer additional money. Ethical discomfort started arising over the position in which I found myself – I could consider

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

279. On 7 November 2019 Cottrell sent an email (annexure **AW204**) which followed up his telephone offer of 4 November 2019. The email presented a breakdown of what he claimed I owed Bain, totalling R2.645 million – the largest component being the R2 million signing bonus that Bain paid. In his email he then offers that this R2.645 million would be waived, that is, I would not have to repay it, plus I would receive additional cash and other benefits worth R2.4 million. The condition for this offer was that I remained silent about my experience at Bain since getting involved in September 2018. The email included statements dictating what I should say when questioned about Bain, including saying: ‘I have a set of confidentiality protocols in place and am not at liberty to talk about my time at Bain’ and if pressed, I should talk about the ‘broader set of issues facing South Africa.’ The total benefit to me of my silence would be R5 million. They wanted to pay me off.
280. Seeing this in black and white convinced me that I could not be part of this even if I had suggested going to Oxford. My resolve began to firm again, to look beyond my fear and to return to doing what I believed needed to be done which was to point out Bain’s wrongdoing.
281. I replied the following day (annexure **AW205**) correcting statements in his email and reminding him of his “ethical obligations to truth and to the people of South Africa.” I received no response.
282. On 15 November 2019 Cottrell sent another email (annexure **AW206**) with reminders of confidentiality obligations, this time about the return of information that I had gained access to during my oversight role. I had pointed out to him the risk that I myself be seen to be withholding information which was relevant to understanding the truth of Bain’s actions and therefore could not simply delete or return everything that I had which was his instruction.
283. On 21 November 2019 I had a phone call with Cottrell again. During this call I turned down Bain’s offer. I was willing to stay out of the media, go to Oxford and have Bain contribute to my expenses of being there and

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

284. But Bain were not ready to give up yet. Moolman called me on 21 November 2019 after I asked him over whatsapp if he knew how badly my discussions were going with Bain (see annexure AW196, point 6 to 10). In the whatsapp under point 10 I write “The strategy of telling me to shut up and go away is not going to work” – I was determined not to be silenced. He expressed determination to find a solution that could work.
285. The next day on 22 November 2019 I sent Moolman an email (annexure **AW207**) indicating that my objectives were to support and nudge Bain to act for the good of South Africa in all dealings whether relating to investigations or their operations, and that in my writing and public speaking, I wanted to draw lessons from my Bain experience and Bain’s operations in South Africa. I suggested that we didn’t need to waste money on me going to Oxford. I suggested that rather than be an external agitator or independent advisor, that I serve on their Oversight Board but with a public mandate, meaning that I would give public assurances that Bain’s Oversight Board was ensuring that Bain were not involved in any activities that could cause harm to South Africa. I saw this as a great opportunity for Bain to demonstrate sincerity about transparency and acting for the good of South Africa. It was a long shot, but I had to keep trying. At this point I still thought a financial settlement could be reached without compromising my ethics. Moolman did not respond to my email.
286. On 27 November 2019 I met with the Zondo Commission’s investigators at the Commission’s offices in Parktown. The Commission investigator had contacted me by sms and telephone so I had no way of ensuring that she was who she said she was. With so much anxiety already swirling around I needed to make sure that I was not being deceived by someone pretending to be from the Zondo Commission so I asked Bain if their lawyers could verify the investigator’s identity (see annexure AW196, point 13) but they could not.

287. On Bain's request Bernstein of Baker McKenzie called me and then followed up with an email (attached earlier as annexure AW71). The email was yet another attempt to exert influence over my decision making and what I would say. Bernstein wrote that my value to the Commission would be "limited" and my evidence would amount to "hearsay". He suggested that I be prepared for some topics that may come up, all of which were obvious, except for his mention of "Relationship with the Guptas." During my involvement with the investigation, the Guptas very rarely got mentioned even though I did ask about Bain's connection with them in an email on 29 November 2018 to which Kennedy replied that he was "on the Gupta trail" and speaking to "Amit" who I believe was a partner in Bain's India business (annexure **AW208**). Bernstein's mention of the Guptas made me suspect that evidence might have emerged of a relationship between the Guptas and Bain. The 19 relevant documents that Baker McKenzie labelled as "Gupta relationship" may also have some bearing.
288. Meanwhile Moolman had been working on a new settlement offer. On 28 November 2019 he sent me a document titled, "Outline of potential elements in separation agreement" (annexure **AW209**) which presented an offer of over R9 million, much higher than the earlier R5 million offer with some payments spread over multiple years. – the offer stated that I would return or delete all materials and have to enter into an agreement "not to talk publicly about Bain during the period up to December 2021." I later returned hardcopy documents that I had but refused to delete any documents and emails all of which I had obtained lawfully.
289. After back and forth with Moolman, on 30 November I rejected Bain's offer. I sent a whatsapp to Moolman: "All things considered I think its best that we part ways with a clean break" (see annexure AW196, point 17). I followed up with an email to Moolman and Cottrell on 30 November 2019 titled "Clean Break" in which I wrote (annexure **AW210**): "I cannot remain silent about my experience of Bain over the last 14 months, as you've requested, in fact, I consider it my duty to speak up." I end with: "I suggest we draw a line under our relationship

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

290. On 4 December 2019 Moolman sent me a whatsapp saying “Would love to chat. I have another idea (maybe)” (see annexure AW196, point 18). We eventually connected by phonecall on 5 December 2019 during which Moolman made the most startling offer on behalf of Bain – Bain would waive all that I owed them, and Bain would pay R5 million cash directly into my bank account “without a paper trail” (Moolman’s words). There would be no agreements or signed documents between myself and Bain and they would simply pay R5 million cash into my bank account. Moolman emphasised however, that before they paid the money Bain needed assurance from me that I would remain silent, according to him, they wanted to know that they could “trust me” to remain quiet about all that I knew about Bain. I was shocked that Bain had stooped this low. I said he knows my position on Bain’s wrongdoing and that this would not change. I rejected the offer. On 10 December, Moolman sent a whatsapp (see annexure AW196, point 19) - “I just want to confirm that as per our conversation end of last week, and for the reasons we discussed, you definitely don't want to explore the UK study option any more.” The “UK study option” was the chosen euphemism for the offer to pay me to be silent. My reply was clear: “Nothing has changed on my side regarding making a clean break from Bain.”
291. On 17 December 2019 I received an email from Cottrell (with a final separation agreement (annexure **AW211**) giving me three days’ notice to pay what they claimed I owed them. I sent Moolman a whatsapp “On 17 Dec I get a letter from Bain requiring payment on 20 Dec.” Moolman replied that the short repayment period was a surprise to him.
292. On 18 December 2019 I sent Cottrell an email (annexure **AW212**) with my calculation of what I owed them. On 20 December 2019 I paid the amount I owed according to my calculations and attached proof of payment to an email to Cottrell (annexure **AW213**). I did not sign the final separation agreement.

293. On 19 December 2019 several media outlets reported that Bain were trying to buy my silence. I felt it necessary to reaffirm my public commitment to full disclosure, to reveal yet more of Bain's cover-up attempts.
294. On 20 December 2019 Bain posted a statement on their Johannesburg website which among other statements read, "We also reject out of hand Mr Williams' allegations that Bain in any way attempted to coerce him or influence him through monetary levers or otherwise." The documents and emails that I've presented above show otherwise. The Bain website statement also claimed that I had "unilaterally approached us to rejoin the firm in 2018 and we welcomed him back" (annexure **AW214**). This was a blatant lie since Bain asked for my help in September 2018. After an email and whatsapp exchange with Moolman (see annexure attached earlier as AW135 and AW196, points 21 and 22) and his colleagues in which I challenged them over their statement, Bain removed the lie but without stating the change on their website or apologising to me. Moolman wrote in a whatsapp that the website statement will be amended "as it was not accurate."
295. On 8 January 2020 Cottrell wrote an email asking me to confirm that I had deleted soft copy documents. I replied the next day that the documents served as proof of my engagements with Bain "especially at a time when Bain is challenging my integrity." (annexure **AW215**) In addition to the misrepresentations on their website, Bain had barred all staff from communicating with me and I was told by Bain staff that I was being slandered to clients and presented as "prime evil" to staff. In the same email Cottrell writes that "In relation to the final settlement amount, we are reviewing the amounts you owe Bain and we will revert to you with any outstanding amounts." They continued to try to keep things unresolved in the hope of hooking me back. I replied that "I consider the financial matter settled." I have not heard anything on the matter since.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2020

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**ATHOL WILLIAMS**

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

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COMMISSIONER OF OATHS

Name:

Address:

Capacity:

## Appointment

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**From:** Casella, Curtis [/O=BAIN/OU=EXCHNEWYORK/CN=RECIPIENTS/CN=12CAS]  
**Sent:** 10/3/2013 8:17:53 AM  
**To:** Massone, Vittorio [vittorio.massone@bain.com]; Johannesburg, Kopano [smallboardroom.johannesburg@bain.com]; duma@icon.co.za; patrick.monyeki@rangenet.co.za; hlekanius@yahoo.com; mandla@kanozulu.co.za  
**Subject:** Meeting with Duma - Kopano  
**Location:** Bain Offices - Kopano  
**Start:** 10/4/2013 1:30:00 PM  
**End:** 10/4/2013 3:30:00 PM  
**Show Time As:** Busy

**Required Attendees:** Johannesburg, Kopano; duma@icon.co.za; patrick.monyeki@rangenet.co.za; hlekanius@yahoo.com; mandla@kanozulu.co.za

Message

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**From:** Massone, Vittorio [/o=Bain/ou=exchGLOBALSERVICES/cn=Recipients/cn=09VMA]  
**on behalf of** Massone, Vittorio [/o=bain/ou=exchglobalservices/cn=recipients/cn=09vma]  
**Sent:** 4/4/2014 7:40:58 AM  
**To:** Franzen, Fabrice [fabrice.franzen@bain.com]  
**Subject:** RE:

Be ready for SARS!!!! Tom passes by for a coffee next Friday morning, if you want to say hi to him

-----Original Message-----

**From:** Franzen, Fabrice  
**Sent:** Friday, April 04, 2014 9:38 AM  
**To:** Massone, Vittorio  
**Subject:** RE:

Congrats!

-----Original Message-----

**From:** Massone, Vittorio  
**Sent:** Friday, April 04, 2014 9:37 AM  
**To:** Franzen, Fabrice  
**Subject:** Re:

Thank you Fabrice, it went very well

- Sars is aa go, right after the elections
- central procurement agency: he loves it, wants an implementation plan
- wants to accelerate Phoenix
- asked us to organize a workshop with the new cabinet of ministries after the elections (sort of new strategy by sector + RDO/mobilization)

So I'd say very well..

I'll update the team on next call

Thank you  
V

----- Original Message -----

**From:** Franzen, Fabrice  
**Sent:** Friday, April 04, 2014 08:08 AM GMT Standard Time  
**To:** Massone, Vittorio  
**Subject:**

Ciao - just wanted to check how your "big meeting" went yesterday.  
Take care

Message

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**From:** Beaumont, John [/O=BAIN/OU=EXCHLONDON/CN=RECIPIENTS/CN=03JBM]  
**Sent:** 8/28/2014 6:48:33 AM  
**To:** Timpano, Stephane [stephane.timpano@bain.com]; Massone, Vittorio [vittorio.massone@bain.com]  
**CC:** Franzen, Fabrice [fabrice.franzen@bain.com]  
**Subject:** RE:

I would imagine Alexis would be the Manager.

Question for you Vittorio is Partner team and specifically do you want Neville to play OVP role

-----Original Message-----

**From:** Timpano, Stephane  
**Sent:** Thursday, August 28, 2014 8:41 AM  
**To:** Massone, Vittorio; Beaumont, John  
**Cc:** Franzen, Fabrice  
**Subject:** RE:

Vittorio,  
that's a great news.

The last thinking was to start with 1 team (M+4 to +6), for 3 months to do fundamentally 2 things:

- 1) run a full operational / strategic assessment of SARS  
assist Tom in starting properly his new role (direct "CEO" support work)

We will be then able, based on the operational / strategic assessment, to build up the platform for a broader SARS transformational program (6-12 months plan)

Let's discuss team face to face later

stephane

-----Original Message-----

**From:** Massone, Vittorio  
**Sent:** Thursday, August 28, 2014 8:04 AM  
**To:** Beaumont, John  
**Cc:** Franzen, Fabrice; Timpano, Stephane  
**Subject:**

Guys,

Just had a call and heard that the Sars announcement should happen tomorrow or monday

Meeting later in the office, to discuss also procurement process

Fabrice/Stephane, how many teams did we say? Can we please think about Managers, with and without Galactica? I guess we should have a few weeks to ramp up (procurement process) but we'll need to have a first contingent to start working asap..

Thank you  
Vittorio

Message

**From:** Franzen, Fabrice [/O=BAIN/OU=EXCHPARIS/CN=RECIPIENTS/CN=06FFR]  
**Sent:** 12/3/2014 6:32:48 AM  
**To:** Massone, Vittorio [/O=BAIN/OU=EXCHGLOBALESERVICES/cn=Recipients/cn=09VMA]  
**Subject:** RE: Alert: SARS

I agree.....

**From:** Massone, Vittorio  
**Sent:** Wednesday, December 03, 2014 8:23 AM  
**To:** Franzen, Fabrice  
**Subject:** Re: Alert: SARS

Now I'm scared by Tom.. This guy was supposed to be untouchable and it took Tom just a few weeks to make him resign.. Scary..

**From:** Franzen, Fabrice  
**Sent:** Wednesday, December 03, 2014 06:11 AM GMT Standard Time  
**To:** Massone, Vittorio  
**Subject:** FW: Alert: SARS

Goodbye Barry Hore...

**From:** [emailednews@email.global.factiva.com](mailto:emailednews@email.global.factiva.com) [mailto:[emailednews@email.global.factiva.com](mailto:emailednews@email.global.factiva.com)]  
**Sent:** Wednesday, December 03, 2014 8:01 AM  
**To:** Franzen, Fabrice  
**Subject:** Alert: SARS

 DOW JONES FACTIVA ALERTS

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## Scheduled Alert

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Alert: SARS

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### News24.com | R3m worth of counterfeit goods seized

News24, Tuesday 02 December 2014, 15:46 GMT, 195 Words, © 2014  
(Document WC92389020141202eac2002e8)

Johannesburg - Police last week seized counterfeit goods valued at around R3m and illicit cigarettes worth about R470 000, Western Cape police said on Tuesday

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Message

**From:** Sipho Maseko (SN) [MasekoSN@telkom.co.za]  
**Sent:** 12/6/2014 2:20:43 PM  
**To:** Massone, Vittorio [/O=BAIN/OU=EXCHGLOBALSERVICES/cn=Recipients/cn=09VMA]  
**Subject:** RE: Re:

Vittorio  
Indeed let's try to meet before you leave  
Its bene a rocky week  
Sipho

-----Original Message-----  
**From:** Massone, Vittorio [mailto:Vittorio.Massone@Bain.com]  
**Sent:** 05 December 2014 03:21 PM  
**To:** Sipho Maseko (SN)  
**Subject:** Re:

Hi Sipho,

Sorry to hear that - they told me you had to move the meeting with Anamaria. Hope you get better soon

Ian told me exactly the same thing and I called back the COO who was very tranquil and said they have had confirmation from Treasury.

So I closed the loop with Ian anyway. Let's see what happens, clearly they know they need to check

Brian told us there's a strategy session (I believe on Enterprise), so the guys are going to send you during the weekend a few pages that might be helpful for you

We are also finalizing with Izaak the "high-ground" presentation for the meeting with the Min on tuesday

Shall I see you soon? I'm leaving for holidays next sunday..

Best,  
Vittorio

----- Original Message -----  
**From:** Sipho Maseko (SN) [mailto:MasekoSN@telkom.co.za]  
**Sent:** Friday, December 05, 2014 01:14 PM GMT Standard Time  
**To:** Massone, Vittorio  
**Subject:** RE:

Hi Vittorio  
I'm not too bad - just a bad flight from the US It appears that the specific provision does not apply with us - We are also listed and some aspects of PFMA don't apply or bind us I will call SARS Sipho

-----Original Message-----  
**From:** Massone, Vittorio [mailto:Vittorio.Massone@Bain.com]  
**Sent:** 04 December 2014 07:50 PM  
**To:** Sipho Maseko (SN)  
**Subject:**

Hi Sipho,

I believe you are croI hope your trip has gone well, am sure we'll see the results on the stock price monday morning..

I received a call from SARS (the acting COO) who told me that they would like to use Telkom's contract to give a mandate to Bain - apparently law (or practice) says that they can piggyback another SOE. This will enable an immediate start avoiding long and complicated tender processes

I hope that's ok with you, I gave them Ian's contacts as they want to contact Telkom tomorrow morning

Thank you!

Best,  
Vittorio

# Annexure C

**To:** Franzen, Fabrice[Fabrice.Franzen@Bain.com]; Dutiro, Innocent[Innocent.Dutiro@Bain.com]; Timpano, Stephane[Stephane.Timpano@Bain.com]  
**From:** Massone, Vittorio  
**Sent:** Wed 2/26/2014 6:46:22 AM (UTC)  
**Subject:** Quick note - please keep confidential

Guys,

Met President yesterday night in CT. All good.  
There was also Tom (they guy we met re Sars) and it really seems he's getting that job, after elections.  
He was very friendly with me and seems a smart guy to work with.

Best,  
V

AW107

**South African**  
**Revenue Service**

**Strategy and Operations review**

*Request for Proposal*

*October 2014*

## **1. Context of the Request for Proposal**

The South African Revenue Service (SARS) is a South African Government agency, in charge of tax collections – including Personal Income Tax, Corporate Income Tax, VAT, Customs, Excise and Fuel levy. It reports to the National Treasury.

Over the last decade, SARS has conducted a number of initiatives to improve its performance and adapt to the increasing complexity and modernity of the South African Economy. In particular, it has launched a *Modernisation Program* which has delivered concrete results such as a significant increase in the number of individual and corporate tax payers; the successful adoption of eFiling to facilitate collection process (with an adoption rate above 90%). This has been delivered while managing costs within the envelope allocated in the Government budget.

On September 23<sup>rd</sup>, His Excellency the President of the South African Republic has appointed a new SARS Commissioner, M. Thomas Moyane, concluding a period of vacancy at the Commissioner level. The President has also reinforced the critical role for SARS to play in the socio-economic development agenda of the Government, by being an innovative revenue and customs agency supporting our Nation's economic growth, with a fairness that benefits all South Africans.

In this context, and in order to help the new Commissioner frame the next of SARS transformation agenda, the Service is considering the support of an external third party consulting firm, with the following three objectives:

- Assess current level of performance of SARS on core dimensions such as tax collection performance; operational efficiency; organisational effectiveness
- Identify the critical components of the next wave of SARS transformation to the benefit of the South African Nation and its citizens, building on what has been achieved so far. This should include
  - o Mid to long term transformation initiatives to further improve efficiency
  - o Short term "quick wins" to address most immediate gaps
- Develop the roadmap to deliver this new wave of transformation and the financial commitments from SARS (revenues and costs) that underpin that change. This new roadmap should build on the *2014-2018 SARS Strategic Plan* and amend it where necessary
- Link SARS mandate and future performance to the country's broader strategic priorities and outcomes, through the right strategy, business model, organisation and KPIs.

## **2. Scope of Work and deliverables**

It is expected the review will cover the following dimensions:

- Revenue Collection:
  - o How does SARS performance compare with other institutions across different tax categories, in terms of number of payers, amount collected and efficiency of the process?
  - o What are the main areas for improvement for each tax category?

- In particular for Customs, how to accelerate tax collected and speed of process to support SA economic development while protecting the local industry?
  - What is the desired level of integration with other South African agencies and international counterparties to improve SARS tax collection performance?
  - What is the performance of the litigation process?
    - How could it be improved?
    - Is there a need for a stronger enforcement force mechanism?
- Operational performance:
  - How does SARS cost structure compare with other international revenue services?
    - What are the opportunities for improvement?
    - In professional services in particular (IT providers, law firms, consulting), is there room for rationalisation of the spend?
  - How does SARS deliver on its core processes?
    - Intrinsic level of efficiency? Areas for improvement / streamlining?
    - How does it compare with international best practices?
  - Is SARS correctly measuring its performance?
    - Do we have the right KPIs? Are there too many?
    - Is SARS funding model adequate to push for continuous search of improvement?
- SARS Infrastructure:
  - Is the IT infrastructure adequate to sustain SARS continued development?
    - What are the gaps?
    - Is the IT roadmap adequate?
    - Are the current projects the right ones and are they correctly funded?
  - Is the network of branches fit for purpose?
    - How could it be optimised to further improve service to the South African citizens while controlling costs of operations?
    - Is there room to optimise SARS real estate assets?
- Organisation and governance:
  - How does SARS structure and sizing compare with other international best practices?
    - Is it the current structure fit for purpose?
    - How could it be improved?
  - Is SARS decision-making process efficient?
    - Is it supported by the right governance (internally and with the National Treasury)?
    - How could it be improved?
  - Does SARS face any capability gaps?
    - In which function? Of which nature?
- SARS image and perception:

- What is the general perception of SARS in the South African public (individuals and Corporates)?
- Does it convey the right image of fairness and efficiency?
- On which dimensions should it be improved and how?

The project should be structured along the following phases:

- Phase 1: initial review and diagnostic
- Phase 2: final review and recommendations
- Phase 3: quick wins implemented and long term transformation initiatives launched

At the end of the project, SARS expects – *inter alia* – the following deliverables:

- Detailed assessment of SARS current level of performance on the aforementioned dimensions (tax collection, organisation, operational performance, infrastructure and image/perception)
- Recommended SARS strategy to achieve its mandate and contribute to country's broader strategic priorities and outcomes
- Amended structure and operating model including decision rights, capabilities
- Recommended portfolio of initiatives to deliver the proposed strategy, differentiating quick wins from mid- to long term initiatives
- Recommended KPIs to measure SARS success to deliver its mandate.

### **3. Selection process and criteria**

This process will be a closed tender. This RFP has been to a selected list of consulting firms that are part of SARS consulting panel.

For this specific project, SARS will be looking for consulting firms with the following characteristics:

- South Africa based, BB-BEE score of 3 or better
- Relevant experience working with South African Government agencies, departments and State-Owned Enterprises
- Relevant large scale transformation experiences (minimum 3 in last years) with JSE-listed companies
- Ability to bring global best practice and examples, leveraging international experience working with Revenue services, National Treasuries / Ministry of Finance
- Project management team with credible recent experience in the aforementioned areas

The selection process will run as follows:

- RFP issuance – Friday 10<sup>th</sup> October 2014
- Q&A session – Wednesday 13<sup>th</sup> October 2014
- Proposal submission date – Monday 20<sup>th</sup> October 2014
- Engagement to start no later than November 10<sup>th</sup> 2014

Interested parties are requested to submit a proposal that must include the following elements:

- Succinct presentation of the company and its South African operations (if international)
- Detailed credentials of the firm with South African Government departments, agencies and State-Owned Companies – references to be provided
- Detailed credentials of the firm driving large scale transformation with minimum 3 JSE listed companies
- Detailed credentials working with international Revenue Services / National Treasury / Ministry of Finance – references to be provided
- Proposed approach and timing for the assignment
- Description of proprietary methodologies to be used in the course of the assignment, in particular regarding strategy formulation, organisational design and project management
- Proposed project management team with detailed CV and relevant experience
- Project team structure and time allocation on the assignment, with names, seniority and experience of selected team members
  
- Financial considerations – to be provided in a separate document
  
- The candidates should also provide SARS with the following documents:
  - o Original and Valid tax clearance certificate(s)
  - o Certified copies of your CIPRO company registration documents listing all members with percentages, in case of a CC. Or latest certified copies of all share certificates in case of a company;
  - o BEE Certificate verified by a SANAS accredited verification agency

Filename: "2012.11.21 Index of docs for client review - 8448472 -v1- WAS.DMS.XLSX"

Date	Document	Versions	Additional Comments
02/10/2013	RE "SARS Opportunity", a first set of analysis on SARS modernisation program. Massone asks if (Bairn) has talked to "experts" to understand if there are "flaws" in the system. He specifies that Innocent's friends told him that the security levels are very low - i.e. you pay and your tax problems disappear.	CTRL-00046462	
10/11/2013	Email from Timpano to Massone with subject line 'sars 2.0'  Italian translation: Almost all the points discussed yesterday were integrated, with the exception of revenues generated from custom in relevant countries (ie. United States aggregates data very differently and is not comparable, China does not disclose data, ...). If we spend time, I do not think we would find much I think that what we have is enough for Sunday we have to talk about the fact that others can make more money on this. Let me know if it's fine if I send this to Tom when I arrive in Douala	BM-0000339	
10/11/2013	Email from Massone to Kanozulu with subject 'Re: Ambrobrite invoices'	BM-0000685	
13/11/2013	Massone indicates, upon receiving invoices from Kanozulu, that he cannot pay invoices without having a valid contract in place.		
17/12/2013	Ventler to Massone: "Since I have not done this before, I had a quick chat to Geoff for some guidance. He suggested the contract should be drafted by Ambrobrite and we should then check and also ensure our Legal team are happy". "I have also asked Dan Pinkney and his team to send through the Fleischman Hilliard contract for us to compare against if we want to."	BM-0000918	
17/12/2013	Massone to Ventler (Cc: Smout): "OK no worries. I'll draft it and send it to you. What they do has not much to do with what Fleischman does (luckily)"	BM-0000672	
18/12/2013	Ventler to Massone: "I think we are good on Maudia/Ambrobrite, although they will need to check/sign the attached contract and send an invoice before we can pay. (Legal have OK'd it)"	BM-0000926	
18/12/2013	Smout to Ventler: "For some reason I don't trust this situation - I'd like to see their certificate of incorporation and VAT certificate too."	BM-0000927	
07/01/2014	Smout to Ventler: "This whole situation seems very dodgy. Do you know anything about the background of the people who run Ambrobrite or who are named in the contract?" Ventler to Smout: "Well, I have just been to SARS who could not verify the TCC and suspect it's fraudulent! They have taken a copy and will get back to me later confirming whether it is a fake certificate or not." Massone to Smout: "I am very comfortable to do business with the people which we've been doing for a few months already. That's why I've chosen them. We should however do all the appropriate verifications on the vehicle/event. Actually, I wish we applied the same level of scrutiny in all our activities, as we're leaving with this."	BM-0000931	
21/08/2014	Timpano to Lerato Ngake, Nicole Ventler (copying Massone): "I believe we need to be more cautious on SARS. I believe we should push it back to October - Vittorio please confirm"  Massone responds: "Agree - thanks" Document: "Staffing Supply / Demand - VM update"		
21/08/2014	The document indicates that the SARS project is only a 50% possibility, and would only continue for a period of 6 months with a monthly rate of R4.4 million.	CTRL-00185970	
28/08/2014	Email from Massone to Timpano asking for Timpano to send Massone the 'Sars organization slides'	CTRL-00185977	
29/08/2014	Massone to Timpano (Italian): "Could you please send me the old SARS document? The first one shown to Z. I only have it in PDF..."  Timpano responds by providing Massone with the SARS 2.0 document.	CTRL-00185964	
25/09/2014	Dairy entry in Franzen's calendar: "S. RFP"	CTRL-00185962	
		CTRL-0018638	Franzen confirmed during his interview that he did in fact draft the "South African Revenue Service - Strategy and Operations review - Request for Proposal" dated Oct 2014

AW108

AW108<sup>25</sup>.20

atholwilliams@hotmail.com

**From:** Batonga, Marilyn <Marilyn.Batonga@bakermckenzie.com>  
**Sent:** 22 November 2018 01:27  
**To:** atholwilliams@hotmail.com; Min, Stuart (Stuart.Min@Bain.com); Kennedy, Chris (Chris.Kennedy@Bain.com) (Chris.Kennedy@Bain.com)  
**Cc:** Bernstein, Darryl; Demas, Reagan R; Steyn, Wian; Klinger, Jane C  
**Subject:** Project Arrow Update  
**Attachments:** Project Arrow Review Stats - 21.11.18.xlsx; 2700416\_2018\_11\_21\_10\_48\_PM.zip; 2018.11.21 Index of docs for client review-8448472-v1-WASDMS.XLSX

All:

Please see attached updated review stats on the SARS-focused review, as well as an index of key documents reviewed this past week. We have also attached the key documents in a zip file.

Please note that we have completed first level review of documents hitting on Italian search terms.

As you know, we have started conducting interviews. Following interviews we ran additional search terms against the data and batched additional documents for review. The updated dashboard reflects the new numbers.

Certain witnesses also forwarded to us documents as a follow-up to their interviews. These documents are being loaded onto the Relativity platform. They are not reflected in today's dashboard.

Best Regards,

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McKenzie.**

ACRITAS SHARPLEGAL 2017  
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GLOBAL INVESTIGATIONS REVIEW 2017  
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# Annexure E

## CORPORATE STRUCTURE OF BAIN & COMPANY SOUTH AFRICA

The information below was obtained from CIPC's Disclosure Reports as at 2 August 2022.

