

25 October 2018

Hon. Judge Nugent
Commission of Inquiry into Tax Administration and Governance by SARS
Hilton House, 2nd Floor
570 Fehrsen Street
Brooklyn, 0181
Republic of South Africa

Dear Judge Nugent

Thank you for your letter dated 14 October 2018 (“*your letter*”).

You stated that your letter “is not an invitation to proffer explanations by letter that are not supported by evidence given in the ordinary course”. The purpose of this letter is not to proffer any such unsupported explanations, but instead to inform you of certain developments, to request certain clarifications, and to make very brief submissions in relation to certain of the findings that you indicate the Commission might make on the evidence before it.

You have informed us that the Commission might make certain findings, described in more detail in your letter, that follow on the evidence now before it and the inferences to be drawn from that evidence. These potential findings relate to prior evidence given by Mr Massone, as described in paragraphs 1 and 2 of your letter, and the actions and motivations of the “representatives of Bain” who were engaged in the SARS project, as described in paragraph 3 of your letter. The potential findings are, we recognize, very serious ones that will likely be perceived by readers of the Commission’s final report as damning of Bain as an organization.

With respect to paragraphs 1 and 2 of your letter, I wish to inform you that Bain has also been assessing the veracity of statements made by Mr Massone to Bain throughout the course of this inquiry, in light of the documents which were provided to the Commission by Bain. Bain, like the Commission, has grave reservations about what it has previously been told by Mr Massone, and generally about the veracity and reliability of some of Mr Massone’s evidence before the Commission. As a result of Bain’s own investigation and assessment, which is continuing, Mr Massone’s employment relationship with Bain is in the process of being terminated, in accordance with the applicable law.

In your letter, you have explained the bases on which you might draw negative inferences about Mr Massone’s actions from evidence such as whether or not meetings took place, the number of meetings held and other such verifiable matters. As you are aware, Mr Massone has his own

legal representatives, and we will leave it to them to make any written submissions to you in relation to the proposed findings referred to in these paragraphs.

Bain's own ongoing investigation, as referred to above, is also focused on establishing whether any other employees of Bain (along with Mr Massone) may also have been involved in and made themselves guilty of conduct of the nature to which you refer in your letter, and particularly in paragraph 3 thereof. Bain obviously does not and will not tolerate or condone such conduct, which is wholly at odds with Bain's principles and values, and Bain is committed to rooting out the perpetrators of any such conduct. Insofar as any further individuals are identified, they too will face severe disciplinary action and, where justified, dismissal.

In light of Bain's aforesaid assessment, we are also now in the process of assessing and taking advice on whether it would be appropriate to report certain suspected activity under Section 34 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004.

We wanted the Commission to be aware of these developments and trust that they will not interfere with your ongoing inquiry, but we would ask you to inform us if you have any concerns about the impact of these actions on the Commission's work.

You refer in paragraph 3 of your letter to "representatives of Bain" and to potential findings regarding their underlying motivations and states of mind. We are frankly not in a position at this time to make submissions to you in relation to the findings to which you refer in paragraphs 3(a) to (c). We are not aware of precisely which documents you rely on in relation to those proposed findings, but we are unable to refer you to specific evidence that is before you that serves to establish that those inferences cannot be drawn. That is, of course, not to say that we accept those findings – we simply are not in a position to put up contrary evidence at this stage.

The proposed findings set out at paragraph 3(d) and 3(e) are on a somewhat different footing. They appear to be inferences drawn from other inferences, and we would urge you to reconsider them. At the least, we respectfully request you to advise us of the specific evidence upon which you rely for those far-reaching findings, in order to enable us properly to consider them, and to consider whether they are justifiable or whether we might identify any evidence to the contrary. We must accept that we cannot at this stage point to specific evidence to contradict the proposed findings, but that in itself is not a basis for reaching what in our respectful view constitute speculative inferences.

May we also take this opportunity to update the Commission on two other matters that might be of relevance.

First, during my testimony on 25 September 2018, you questioned me about the public statement that Bain had made about setting aside the money it had been paid by SARS for our work. You observed that the actual terms of payment of the money appeared still to be within Bain's discretion. Based on your observations, we have now taken a decision to repay the money to SARS, together with interest accruing from the date the money was originally paid to Bain. We

are in the process of finalizing our payment to SARS. We sincerely believed that we had made a sufficient commitment to set aside the money, but your questioning made us realize this was not the case and prompted us to finalize the terms of repayment to SARS.

Second, I wanted to inform the Commission that Bain has established a Public Sector Working Group comprised of senior Partners with experience in doing public sector work, particularly in developing markets. Among other things, this group will be reviewing our existing governance and risk management procedures relating to public sector work, and making recommendations for improvements based on lessons we have learnt from the work that was done for SARS, and the ensuing inquiry that you have led. The rigorous scrutiny of the Commission, and the enquiry process in general, have provided us with valuable insights that we intend to apply to our business practices going forward.

Finally, I would like to offer the Commission an apology. Bain's cooperation with the Commission was managed and coordinated by Mr Massone in his capacity as office head and also as the senior partner who had led the SARS project. He had committed to full transparency with the Commission, which was in line with Bain's ethos and values, and he was trusted by the global leadership to lead Bain's cooperation. It became apparent to us a short time after his initial testimony that there were matters that had not been disclosed to the Commission that should have been disclosed. As a result, we retained Baker McKenzie to conduct a thorough investigation in order to ensure that future information provided by Bain was comprehensive and without omission. It was only after we had had the chance to review in detail the affidavit he submitted, and to compare it with the documents Baker McKenzie had located on his computer, that we came to the realizations referred to above regarding Mr Massone's evidence. At no point did Bain ever attempt to cover up Mr Massone's actions. If our current reservations about Mr Massone are correct, then it follows that in working to support Mr Massone in his endeavours to assist the Commission in finding the truth, Bain was actually achieving the opposite. For this, Bain unreservedly apologizes. I should like it to be clear that Mr Massone's actions in this regard were in no way authorized or sanctioned by the Bain global leadership, and a key deliverable for the Public Sector Working Group I refer to above will be to ensure that the correct governance processes are put in place to ensure that there can be no repeat of what has transpired here.

Very truly yours,



Stuart K. Min
Partner and General Counsel