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\* Associated Firm  
\*\* In cooperation with  
Trench, Rossi e Watanabe  
Advogados

12 August 2020

Mr E. Lambrechts  
The Judicial Commission of Inquiry into Allegations of  
State Capture, Corruption and Fraud in the Public Sector  
including Organs of State

Our ref: D Bernstein / R / Demas  
Your ref: Etienne Lambrechts

**By email**  
[REDACTED]@commissionsc.org.za


Dear Sirs

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING  
ORGANS OF STATE | BAIN & CO.**

1. We confirm that we act on behalf of Bain & Company South Africa, Inc.
2. We refer to your email of 20 July 2020, along with the list of questions addressed to our client attached to your email under reply.
3. We have taken instructions from our client and are aware of our client's written response to you dated 9 July 2020. We also confirm that Baker McKenzie was appointed to conduct an investigation into our client's contracts with South African Revenue Services ("SARS").
4. We conducted an independent and thorough investigation into these matters and we can confirm that we did not find any evidence of fraud, bribery, or any attempt by our client to undermine the operation of SARS in the course of our review.
5. While our findings in this regard are privileged, we can confirm that our client has instructed us to engage with the Commission and canvass the details of these findings, if that would be useful to the work of the Commission.
6. Please let us know by return when you would be available for a meeting in this regard.

Yours faithfully

Darryl Bernstein  
Partner



Dear Mr Lambrechts

Thank you for your willingness to engage with Baker McKenzie.

I note your request to receive written responses to your questions. We have aimed to address your questions below and if there is any additional information that might be helpful to your investigation then please do not hesitate to let me know.

### **The Investigation**

Bain & Company, Inc. (**Bain**) and Bain & Company South Africa Inc. (**Bain SA**) mandated law firm Baker McKenzie to conduct an investigation (the **BM Investigation**) in relation to, among other things:

1. the contractual relationship that existed between Bain SA and the South African Revenue Service (**SARS**);
2. the services rendered by Bain SA to SARS; and
3. Mr Vittorio Massone's involvement and conduct in relation to the abovementioned contractual relationship and services, and alleged involvement and relationship with SARS and other government officials.

You will appreciate that any work product provided by Baker McKenzie to Bain SA pursuant to the BM Investigation is legally privileged.

Although we are not in a position to waive privilege over any such work product or comment on any confidential matters, we confirm our willingness to make Baker McKenzie available to meet with you and to assist your investigation by discussing their findings with you directly.

### **Disciplinary Action relating to the SARS Contract and Services**

Baker McKenzie has not found any evidence to date of criminal conduct by any Bain employees or directors, nor do we have any reason to believe that any of our representatives knowingly participated in any criminal conduct or effort to damage SARS of any kind.

Bain nevertheless took the decision to separate from Mr. Massone. Mr. Massone displayed poor judgement and then did not adhere to some core Bain leadership values as the problems at SARS unfolded, especially around transparency. Bain and Mr. Massone agreed that Mr. Massone's

## **BAIN & COMPANY**

employment would terminate effective 9 November 2018, including his withdrawal and resignation from any affiliated entities.

No other formal disciplinary action has been taken against Bain employees with regard to the contractual relationship or services provided to SARS.

Bain and Bain SA have both since implemented significant changes relating to risk, in order to remediate issues identified in the BM Investigation. Our global risk function has been substantially strengthened as a result of the learnings from SARS and we would be happy to take you through these changes if that would be relevant to your investigation.

### **Athol Williams**

Mr. Athol Williams was appointed to provide his own opinion on the independence and adequacy of the BM Investigation and he liaised with Baker McKenzie throughout. I will be happy to instruct Baker McKenzie to explain the details of his role to you when you meet.

I trust that you will find the above to be of assistance. Please let me know if you would like a meeting with Baker McKenzie on these topics as I would be more than happy to arrange that if it would be helpful to you.

Yours sincerely



John Senior  
Managing Partner  
Bain & Company South Africa, Inc.



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

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29 May 2020

Attention: Bain & Company

Mr John Senior

Email: [REDACTED]

RE: STATEMENT BY BAIN & COMPANY

The Commission's legal team wishes to obtain an affidavit/statement from you and in this regard would like to pose the follow questions based on *inter alia* the findings of the SARS Commission as well as the Bain & Company press release in this regard:

1. Did Bain & Company conduct any internal investigations relating to the South African Revenue Service (**SARS**) contract?
2. Did Bain & Company conduct any internal investigations into the conduct of Mr Massone and his involvement with South African Government Officials?
3. If yes, who was mandated to conduct the investigation?
4. In your press release mention is made of Baker McKenzie. Did Bain & Company appoint Baker McKenzie?
5. Could a copy of the final investigation report be made available to the Commission?
6. Did Baker McKenzie provide you with a copy of their findings/final report?

7. Due to the possible involvement of South African Government Officials, any self-reporting to the Department of Justice (**DOJ**) in the United States of America?
8. If yes, did the DOJ appoint somebody to conduct the investigation on their behalf?
9. Was Baker McKenzie mandated by the DOJ?
10. Can you provide details of the final (the final report) outcome of the DOJ investigation, if any?
11. Is it possible to provide documentary proof from the DOJ confirming the outcome of their investigation?
12. In your press release mention is made to possible irregularities involving the tender process at SARS. Has anybody in Bain & Company been disciplined in this regard?
13. If there was a disciplinary hearing within Bain & Company, could the transcript of the disciplinary hearing please be made available to the Commission?
14. On what basis and under which terms did you terminate the employment of Mr Massone? If he was a Partner and not an employee, the same question applies.
15. As per the press release it seems as if Mr Athol Williams was appointed by Bain & Company to review the work conducted by Baker McKenzie?
  - 15.1. If this is correct, please provide a copy of Mr Athol Williams' assessment of the work conducted by Baker McKenzie.

Kind Regards