

"SF1"

REPORT

for

MR T M G SEXWALE

CHAIRPERSON, TRILLIAN CAPITAL PARTNERS (PTY) LTD

on

**ALLEGATIONS WITH REGARD TO THE TRILLIAN GROUP OF
COMPANIES, AND RELATED MATTERS**

GEOFF BUDLENDER SC

29 June 2017

Instructed by S Sirkar

Herold Gie Attorneys

TABLE OF CONTENTS

INTRODUCTION	3
PART 1: TRILLIAN'S RESPONSE TO THE INVESTIGATION	8
PART 2: ESKOM	23
PART 3: MCKINSEY	33
PART 4: TRANSNET	47
PART 5: PURCHASE OF OPTIMUM COAL HOLDINGS BY TEGETA	52
PART 6: THE DISMISSAL OF MINISTER NENE	57
PART 7: A GUPTA CONNECTION?	63
PART 8: SOME FURTHER MATTERS	67
CONCLUSION	70
ANNEXURES	

INTRODUCTION

1. Towards the end of November 2016 I was appointed by Mr T M G Sexwale, the independent non-executive chairperson of Trillian Capital Partners (Pty) Ltd, to conduct an investigation into certain specified matters. Mr Sexwale acted on the authority of a resolution of the Board of Directors. The matters which I was required to investigate were the following:
 - 1.1. The allegations in the *Sunday Times* of 23 October 2016 with regard to Trillian and related persons and entities, including, but not limited to, that:
 - 1.1.1. the CEO of Trillian, Dr Eric Wood, had prior knowledge of the impending dismissal of Finance Minister Nene by President Zuma and his replacement with Minister Van Rooyen;
 - 1.1.2. Trillian acted upon this information for commercial purposes with the aim of collaborating with Minister Van Rooyen so as to position Trillian to benefit from the appointment of the new Minister;
 - 1.1.3. Dr Wood informed an employee of Trillian that Mr Mohamed Bobat would be appointed as a special adviser to Minister Van Rooyen, and would arrange that tenders from National Treasury and State owned enterprises (SOEs) would be channelled to a team at Trillian;

- 1.1.4. Trillian invoiced some SOEs for work which was not done and without contracts.
- 1.2. Issues raised in the report of the Public Protector, "*State of Capture*", in relation to the conduct of Trillian and related entities. These include, but are not limited to, the following issues:
 - 1.2.1. The cession by Eskom of major advisory contracts from Regiments Capital to Trillian.
 - 1.2.2. The role of Trillian and its principal shareholder, Mr Salim Essa, in the acquisition by Tegeta Exploration and Resources of the shares in Optimum Coal Holdings.
 - 1.2.3. The role or impact, if any, of members of the Gupta family and persons associated with it, on the activities of Trillian.
2. The terms of reference noted that it was possible that in the course of the investigation, I might identify "*related issues which bear on good corporate governance and good country governance. The investigator has the latitude to broaden the scope of this investigation in the light of information which emerges, and which bears on those questions. Trillian wishes to be a good corporate citizen of South Africa, and one of the purposes of this investigation is to ensure that it is such.*"

3. The terms of reference recorded further:

“The Board and Management of Trillian, including Dr Wood,¹ have undertaken to co-operate fully with the investigation. They will make themselves available to the investigating team, including meeting with the team and providing all relevant information and documents required by the investigating team.”

4. It was further recorded that I would submit a report to Mr Sexwale, making findings and recommendations, and that the report would be made public after it had been submitted to Mr Sexwale, without delay.
5. Attorney Doris Tshepe of Cheadle, Thompson & Haysom Inc (CTH) was appointed as attorney to the investigation.

The Trillian group of companies

6. I attach (Annexure A) an organogram setting out the ownership structure of the Trillian group, as provided to me by Trillian.
7. The central company in the Trillian structure is Trillian Capital Partners (Pty) Ltd (TCP). It holds 100% of the shares in various subsidiary operating companies:

¹ Dr Eric Wood is the CEO of Trillian Capital Partners.

- 7.1. Trillian Management Consulting (Pty) Ltd (TMC);
 - 7.2. Trillian Financial Advisory (Pty) Ltd (TFA);
 - 7.3. Trillian Asset Management (Pty) Ltd (TAM);
 - 7.4. Trillian Securities (Pty) Ltd; and
 - 7.5. Trillian Shared Services (Pty) Ltd.
8. In this report, when I refer to "*Trillian*", I refer to Trillian Capital Partners (Pty) Ltd and its subsidiaries. Where I refer to a specific company in the Trillian group, I identify it.

The emergence of Trillian in its current form

9. Trillian in its present form has its origins in a dispute between three men who are the owners, managers, funders and directors of Regiments Capital (Pty) Ltd: Mr Litha Nyhonyha, Mr Magandheran Pillay, and Dr Eric Wood. This dispute has resulted in two High Court applications: in one, Dr Wood is suing Mr Nyhonyha and Mr Pillay; in the other, Mr Nyhonyha and Mr Pillay are suing Dr Wood. In each case, the applicants seek an order in terms of the Companies Act declaring their opponents as delinquent directors of Regiments Capital.

10. It is not necessary for present purposes to go into the detail of the litigation. It is sufficient to mention that Mr Pillay alleges that the source of the dispute was that he and Mr Nyhonyha refused to agree to a proposal by Dr Wood that a majority stake in Regiments Capital be sold to the Gupta family. Dr Wood denies this, and has a different explanation of the source of the dispute.
11. The parties entered into negotiations to resolve the dispute. It was proposed and agreed that there should be a parting of the ways, and that the parties should each receive some part of the assets and business of Regiments Capital. The negotiations contemplated that this would all be addressed in an agreement known as the Navigator Agreement. However, the parties could not reach agreement on the terms of the separation, and the Navigator Agreement was not concluded.
12. On 29 February 2016, by agreement, Dr Wood left the employ of Regiments Capital, and became the CEO of Trillian. However, he remained a director and (through a trust) a shareholder of Regiments Capital.
13. In the litigation, the parties accuse each other of acting unlawfully and contrary to the interests of Regiments Capital, of which they are all directors. They dispute who is entitled to the Regiments work, the fruits of that work, and the business opportunities. The litigation is pending. It would obviously not be appropriate for me to express any opinion with regard to the merits of the litigation.

PART 1: TRILLIAN'S RESPONSE TO THE INVESTIGATION

14. It is unfortunately necessary to commence with an account of the response of Trillian to this investigation. This is so because that response has had a fundamental impact on what I have been able to do, and what I have done.
15. As I have noted, the terms of reference recorded that the Board and management of Trillian, including Dr Wood, had undertaken to co-operate fully with the investigation, and to provide all relevant information and documents required by the investigating team.
16. Regrettably, Trillian management has not made good on that undertaking. Since January 2017, the Trillian management have consistently obstructed my attempt to conduct a proper investigation. They have refused, despite repeated requests, and despite undertakings which they have given, to provide me with the documents and other information which I required in order to be able to carry out this investigation.
17. The result is that I have been unable to carry out a full investigation into the matters set out in the terms of reference.
18. The process of collecting information commenced with a request which I made to Trillian on 16 November 2016 for specified information concerning the structure of Trillian, its financial statements, its contractual relationships with SOEs, its relationship with

Regiments Capital and with the consulting firm, McKinsey, and certain bank statements. This information was provided to me on 23 November 2016.

19. At my request, Ms Tshepe instructed expert financial analysts to undertake a review and analysis of certain of the information which I had been given. As a result of that review, through CTH I requested Trillian to provide further information. It related mainly to financial matters.
20. That request was made on 17 January 2017, more than five months ago. Since then, Trillian has refused to give me any information which I have requested. I set out below the sequence of events in this regard. Where I refer to "Trillian", I refer to its management, under the leadership of Dr Wood and represented by their attorneys Stein Scop.
21. I now set out the sequence of events which followed on my request of 17 January 2017.

The request of 17 January 2017

22. Trillian Management refused to provide any of the information contained in the request of 17 January 2017. The reason they gave was that the information requested was outside the scope of my terms of reference.

23. CTH repeatedly requested (on my behalf) that Trillian state which parts of the request were alleged to be outside the terms of reference, and why it was contended that this is the case. Trillian never answered this question.
24. On 9 February 2017, Dr Wood wrote to me. He stated that the request "*appeared to have expanded the scope*" of the investigation. He did not identify any part of the request which he contended was outside the scope of the investigation.
25. On 10 February 2017, I replied to Dr Wood pointing this out. I said:

"[Trillian] has apparently decided that all of this information falls outside the scope of the investigation, or will yield nothing more than what it has already provided. I repeat that I consider this information relevant and necessary for me to be able to undertake my mandate. If that were not the case, I would not have asked for it. It is not for Trillian management, which is the subject of the investigation, to decide what evidence I may consider".

26. I accordingly requested Dr Wood to reconsider his position. I received no response to my letter.

The request for electronic devices

27. After considering the information which I had received from Trillian and after reviewing the material that was in the public domain and interviewing a number of informants, I decided that it would be necessary for me to review relevant information on electronic devices used by Dr Wood.
28. Accordingly at my request, on 6 February 2017 Ms Tshepe wrote to Dr Wood recording that I required access to all of his electronic devices which could contain or which were used to send and receive e-mails, messages or draft documents which could be relevant in the investigation. These included computers, laptops, phones, and tablets. She informed him that an independent third party computer forensic service provider had been tasked to create forensic images of the above sources and to ring-fence and extract only specific information as agreed on, based on time period and content. An arrangement had been made for them to attend at the Trillian offices on 10 February 2017 to gain access to those devices.
29. Stein Scop immediately replied that Dr Wood refused to provide access to these devices. They stated:

“Eric advises me that nothing further would be gleaned from trawling his electronic devices and no further information which would result from such an

exercise that has not already been provided to you within the scope of your queries and investigation”.

30. In my letter of 10 February 2017 to Dr Wood, I pointed out that it was not appropriate for him (as one of the persons whose conduct I had to investigate) to decide what evidence I would find useful. This was a task which had been assigned to me. I requested that he reconsider his position.
31. The electronic devices were never provided to me. The result is that I was not able to carry out a proper investigation in relation to key aspects of the enquiry.

Other unsuccessful requests for information

32. Further requests for information were made to Trillian on 10 February 2017 and 23 March 2017. Trillian refused to provide any of the information requested on those dates.

A further broken undertaking to provide the information requested

33. During March 2017 I brought this to the attention of Mr Sexwale, and asked him to intervene. He had a meeting with the management of Trillian, and on 17 March 2017 he wrote to Dr Wood referring to that meeting. He stated that it was to be my call as to what information fell within the scope of the terms of reference. He said that from the side of Trillian, Dr Wood as head of management should be seen to have fully complied with my

requests. He recorded that Dr Wood had always assured him, and he had no reason to doubt this, that he and management had nothing to hide. *"It is therefore crucial that you co-operate with Adv Budlender"*. Mr Sexwale simultaneously wrote to me saying:

"Be assured that as promised, Trillian will fully co-operate with the investigation".

34. Meanwhile, Ms Tshepe and CTH had withdrawn as attorneys on the basis that it had been alleged that they had a conflict of interest, because Ms Tshepe had previously been a Director of Transnet. (She was not a Director at the times relevant to the inquiry which I was conducting.) A new attorney had to be appointed.
35. On 22 March 2017, Stein Scop wrote to me as follows:

"... Dr Eric Wood and the Management Team of Trillian wish to communicate to yourself that they stand ready, once you have received your refresher brief from the new attorneys, to provide you with any information which you and your new advising attorney may require and request. In addition, they confirm that they are eager to appear before you in order to provide you with the input that you may require".
36. On 23 March 2017, I wrote to Stein Scop stating that I hoped that a new attorney would be appointed shortly. I requested that in the meantime, I be provided with the documents requested by Ms Tshepe on 17 January 2017, 7 February 2017 and 10 February 2017. I

also asked for supporting documentation in respect of a withdrawal from the Trillian account with the Bank of Baroda on 14 April 2016, reflecting the person to whom the payment was made, the purpose of the payment, and who authorised it.

37. On 10 April 2017, Stein Scop wrote to me as follows:

“Trillian is putting together the documentation requested by CTH and should be in a position to forward it to yourself and the new attorneys this week”.

38. As I explain below, when this deadline approached, Trillian sought a new excuse for not providing the documents. This time, they attempted to close down the inquiry completely.

A false explanation of the delay in providing the documents requested

39. Meanwhile, there had been reports in the press about the delay in the enquiry. On 12 April 2017, Trillian issued a media release to the *Mail & Guardian* in response to those reports. They referred to the fact that in mid-March, Ms Tshepe had withdrawn as a result of an alleged conflict of interests. They then stated:

“Any delays occasioned by the process have not been at the instance of Trillian and were occasioned by the need to change attorneys as well as the previous

attorney reflecting information which request may have arisen from the conflict of interests”.

40. That statement was patently false, for two reasons:

40.1. By the time Ms Tshepe withdrew, in mid-March 2017, two months had already passed since the request of 17 January 2017. That request and other requests had met with no answer. The withdrawal of Ms Tshepe in mid-March 2017 could therefore hardly have been a reason for the “*delay*” on the part of Trillian in providing the information requested.

40.2. The suggestion that the requests may have been made because of Ms Tshepe’s alleged conflict of interests, is equally false. Ms Tshepe at all times made it clear, as I did, that the requests which she made were on my behalf and on my instructions.

41. On 12 April 2017, I wrote to Stein Scop attaching a copy of the media statement, and asking whether it had been sent with the knowledge and consent of Dr Wood. When I did not receive a response, on 19 April 2017, I again wrote to Stein Scop requesting a response. On 24 April 2017, they replied that Dr Wood had been out of the country since the beginning of April and had returned over the weekend. They said that the statement by Trillian was issued without his input or knowledge, and that it was prepared “*on advice by management*”.

42. That same day, I replied by asking Stein Scop to advise who, on behalf of management, provided the advice, and who, on behalf of management, authorised the issuing of the statement on behalf of Trillian. On 3 May 2017, I wrote again asking for a response, and on 11 May 2017, I wrote again asking for the courtesy of a reply.

43. On 12 May 2017, I received a reply from Stein Scop as follows:

“The response to the media was prepared collaboratively by the EXCO of the company”.

44. That same day, I wrote again to Stein Scop asking that they advise who the members of EXCO were who had been party to this.

45. I have never received any response to this enquiry.

46. The members of Trillian’s Exco behaved dishonestly in putting out the media statement which they did. When they were asked which of them had been party to it, they were apparently not prepared to identify themselves.

First attempt to close down the inquiry

47. On 3 May 2017, Trillian Management sent a memorandum to Mr Sexwale. In that memorandum, they pointed out that Ms Mosilo Mothepu had been identified as the

whistle-blower referred to in the *Sunday Times* article of 23 October 2016. That article had given rise to my appointment to conduct this inquiry. They pointed out that the article had referred to an affidavit allegedly submitted by her to the Public Protector, and that Ms Mothepu had now (in litigation with Trillian) denied having made such an affidavit. On this basis, they concluded that the reason for the investigation had fallen away.

48. This attempt to close down the inquiry was spurious and without any basis at all:

48.1. I had been appointed to investigate the allegations in the *Sunday Times* and in the Public Protector's report with regard to Trillian;

48.2. In her recent affidavit, Ms Mothepu had confirmed that she had submitted a statement to the Public Protector in which she made allegations of misconduct by Trillian;

48.3. Ms Mothepu's statement to the Public Protector appeared to have been the source of some of the statements in the *Sunday Times* report and the Public Protector's report;

48.4. Ms Mothepu denied having submitted an affidavit, i.e. a statement under oath. She said that she had submitted an unsworn statement;

- 48.5. Ms Mothepu had thus not denied having made allegations of misconduct by Trillian. She had also not withdrawn the allegations which she had made. To the contrary, she stood by them. All she had done was raise a dispute as to the form in which she had made them, namely whether they had been made under oath.
49. The suggestion by Trillian that the reason for the investigation had fallen away was not only spurious. No-one could have honestly believed that Ms Mothepu's statement that she had submitted an unsworn statement, and not an affidavit, to the Public Protector, in any way negated the reason why the inquiry had been appointed. It was appointed because of the serious allegations which were made in the *Sunday Times* and in the report of the Public Protector, and not because the allegations were made in a particular form (whether in an affidavit or an unsworn statement).
50. The management of Trillian are experienced professional people. They cannot honestly have believed that the dispute over whether Ms Mothepu's statement to the Public Protector was an affidavit or an unsworn statement had any bearing on the matter which I was required to investigate.
51. I conclude that this was a dishonest attempt by Trillian to have the investigation closed down, in order to avoid providing the information which I had requested, and which they had promised to provide.

Second attempt to close down the inquiry

52. There was some delay in the appointment of an instructing attorney to replace Ms Tshepe. Approaches were made to several firms of attorneys, each of which indicated that they had a conflict of interests for one reason or another. Ultimately, Mr Sexwale appointed attorney Shekesh Sirkar of Herold Gie, in Cape Town, as instructing attorney for the investigation.
53. On 14 June 2017, Mr Sirkar wrote to Stein Scop referring to their letter of 22 March 2017 to me, in which they had stated that Trillian Management "*stand ready, once you have received your refresher brief, from the new attorneys to provide you with any information which you and your new attorney may require and request*". Mr Sirkar pointed out that I had now received the refresher brief from the new attorney, and repeated the requests which had previously been made. For good measure, he listed the outstanding requests for documentation.
54. Stein Scop replied by denying that Mr Sirkar had any mandate at all to act in the matter. They referred to the fact that there had not yet been agreement in respect of a deposit to be paid in advance to cover the fees and disbursements of Herold Gie. On this basis they asserted that Herold Gie had no mandate at all. They demanded that Herold Gie return to them all of the documents of Trillian, and said that they would send a representative to attend at Mr Sirkar's office the following day to collect such documents. They said that Mr Sirkar had no mandate to have briefed me, and asked him to "*confirm that you have*

removed Adv Budlender SC from any purported brief with immediate effect". This would of course bring the entire inquiry to an end.

55. Mr Sirkar and I then spoke with Mr Sexwale. He confirmed that Mr Sirkar was mandated by him as Chairperson of the Board of Trillian, and that the mandate had not been terminated. Mr Sexwale confirmed further that I was on brief from Mr Sirkar, and I was required to complete my inquiry. By this stage, I had undertaken to provide a report by the end of June 2017. Mr Sirkar informed Stein Scop accordingly. No-one arrived at Mr Sirkar's office to collect the documents which had been demanded.
56. In my opinion, this was patently another cynical attempt to bring the inquiry to an end. As Stein Scop were aware, Trillian had still not paid Ms Tshepe's invoices in respect of the investigation. The reason for this was that through Stein Scop, Trillian had raised a dispute about those invoices. Trillian and Stein Scop must have known that in the light of that fact, a new attorney would be extremely unlikely to take on the appointment unless a suitable deposit was paid. If a new attorney would not accept the appointment, my own appointment and the investigation would come to an end.
57. I conclude that in the light of the obstructive and evasive position consistently taken by Trillian from January 2017, and having regard to the background to which I have referred above, this was a cynical attempt by Trillian to prevent the inquiry ever being concluded.

Conclusion

58. The result of the repeated obstruction and obfuscation by Trillian is that I have not been able to complete the inquiry which I was appointed to undertake. I have consulted a number of informants, and I have studied a large number of documents which I have obtained either from Trillian or from other sources. In the sections of this report which follow, I refer to some of the matters into which I have enquired, and the information which has been made available to me in this regard.
59. I have not been able to corroborate any of this information with Trillian, because they have refused to provide me with the information which I requested. Some time ago, they assured me that they wished to attend an interview with me. At that stage, I took the view that an interview would not be effective, because I had not yet received the documents which I had requested and which I had been promised. The result was that I would not be fully informed as to the questions which I wished to put to them, and I also would not be able to test the accuracy of their answers by reference to the relevant documents.
60. I was recently informed by Mr Sexwale that Dr Wood had told him that he (Dr Wood), and possibly others, wished to attend an interview with me relevant to the inquiry. I immediately (on 19 June 2017) wrote to Dr Wood referring to my discussion with Mr Sexwale, and requesting Dr Wood, if he wished to have such a meeting, urgently to make contact with Mr Sirkar in order to make the necessary arrangements. Dr Wood did not respond to this invitation.

61. Mr Sexwale had publicly announced that I would produce this report by the end of June. After close of business of 28 June 2017, as this report was about to be released, Stein Scop wrote to Mr Sirkar stating that Dr Wood wished to have a meeting with me. A meeting with Dr Wood at this stage would necessarily lead to a delay in the release of the report until after 29 June 2017. It may not be coincidental that the shareholders of Trillian had called a meeting for 29 June 2017, at which a resolution would be proposed for the removal of Mr Sexwale as chairperson. If this were followed by a decision by the directors to terminate my enquiry, the result would be that this report would never be released. I did not agree to the meeting.
62. The interviews which I have had, and the documents which I have studied, have raised very many more questions than I am able to answer. They need to be investigated by someone who has the legal power to compel witnesses to give evidence and to produce documents. I address this further in the concluding section of this report.
63. Against that background, I now address certain discrete matters which I have investigated on the basis of the information made available to me.

PART 2: ESKOM

The relationship between Trillian and Eskom

64. On 2 December 2016, the Minister of Public Enterprises (Ms Lynne Brown) provided a written reply in the National Assembly to a question from Ms N W A Mazzone (DA). Ms Mazzone asked the Minister:

- (1) What amount did Trillian Capital Partners receive in service fees for allegedly negotiating the settlement of a massive insurance claim involving the explosion of a boiler at the Duvha power plant?
- (2) Did Eskom appoint the specified company to source a new supplier to replace the exploded boiler at the Duvha power plant? If so, what: (a) were the fees payable to the specified company in this regard? and (b) what are the further relevant details?
- (3) (a) Which other contracts of engagement have been concluded between Eskom and the specified company? and (b) What are the costs involved in each case?

65. The Minister answered as follows:

- (1) No amount was paid to Trillian Capital Partners for the Duvha power plant insurance claim. Eskom did not appoint Trillian Capital Partners to negotiate the settlement for the Duvha power plant insurance claim.
- (2) No, Eskom did not appoint Trillian Capital Partners to source a new supplier to replace the exploded boiler at the Duvha power plant. There was no need to appoint any external party to assist with sourcing
- (3) (a) None. (b) Not applicable (annexure “**B**”)
66. Eskom spokesperson Khulu Phasiwe was similarly reported as telling the media company, Fin24, on 18 May 2017 that while Trillian was listed as a supplier of Eskom in 2016, Eskom has no record of paying it any money as no services were used.
67. In my request of 16 November 2016, I asked Trillian for all invoices submitted by TH or TCP or TCP’s business units to the State or a State-owned entity. Trillian produced the following invoices addressed to Eskom, all of which are stamped “*Paid*”.
- 67.1. On 14 April 2016, TMC (a 100% subsidiary of TCH) submitted invoice ESK2016-MC01 to Mr Anoj Singh of Eskom (Annexure C). It is stamped “*Paid*” on the same day. It is for an amount (including VAT) of R30 666 000.00. The description of the service rendered is:

“Professional fees: Pro-rate share of Eskom Corporate Plan Deliverable”.

67.2. On 10 August 2016, TMC submitted invoice ESK2016-MC02 addressed to Prish Govender at Eskom (Annexure D). It is for an amount (including VAT) of R122 208 000.00. It is stamped “Paid” on 13 August 2016. The description of the services rendered is:

“Professional fees: Financial Advisory for the following Eskom initiatives:

- *Project Surge*
- *Private Sector Participation*
- *Online Vending Services*
- *Hitachi*
- *Duvha*
- *Short term funding facility*
- *Long term funding facility”.*

67.3. On 10 August 2016, TMC submitted invoice ESK2016-MC03 to Prish Govender at Eskom Holdings (Annexure E). It is for the amount (including VAT) of

R113 262 534.00. It is stamped "Paid" on 13 August 2016. The invoice is stated to be in respect of the following:

"Professional fees: Management Consulting for the following Eskom initiatives:

- *Programme Management Office (PMO)*
- *Procurement*
- *Primary Energy*
- *Claims*
- *Generation".*

68. The information which the Minister of Public Enterprises gave to Parliament was, depending on the view you take of it, either false or seriously misleading. An amount in excess of a quarter of a billion rand was paid to TMC. TMC is a subsidiary of TCP. Yet the Minister stated that nothing was paid by Eskom to TCP.²

² amaBhungane reported on 18 May 2017 that on 14 December 2016, Eskom paid a further R152.8 million to Trillian for management consulting. This date is after the date on which Trillian replied to my request for information of 16 November 2016, and I therefore do not have any information in that regard.

69. The statement by Eskom to Fin24 on 18 May 2017, namely that while Trillian was listed as a supplier of Eskom in 2016, the power utility has no record of paying any money, cannot be true, unless Eskom has no records of three payments totalling more than a quarter of a billion rand. If it is correct that “no services [of Trillian] were used”, it is for Eskom to explain why it paid the quarter of a billion rand. This question is not rhetorical: it is very pertinent in relation to the question of Trillian tenders to Eskom, Trillian contracts with Eskom, and the work performed by Trillian for Eskom.
70. On 16 November 2016, I had asked Trillian for all tenders or quotations submitted by TH or TCP or TCP’s business units to the State or a State-owned entity. Trillian disclosed only one tender to Eskom. That was in response to an Eskom Request for Proposals for the provision of financial advisory services for a period of three years. The status of the tender was recorded as “*awaiting client decision*”. It follows that Trillian did not submit any tenders for the work referred to in the three invoices which I have identified, giving rise to total payments (including VAT) of R266 136 534.00.
71. The amounts involved are, on any reckoning, very large. On 17 January 2017, I therefore asked Trillian to provide the following:
- 71.1. Project timesheets for all TCP and subsidiary personnel working on State or State-owned enterprise contracts for the financial year ending February 2016 and the current year to date accounts for the financial year ending February 2017. This includes contracts where Trillian are sub-contractors.

- 71.2. Copies of all the final deliverables for contracts with State-owned companies, including the correspondence where such deliverables are provided to the State-owned company for the financial year ending February 2016 and the current year to date accounts for the financial year ending February 2017. This includes contracts where Trillian is a sub-contractor.
72. Trillian refused to provide me with this information. It contended that this was not relevant to the inquiry which I was conducting. It is frankly difficult to understand how anyone could honestly make that assertion. The question which therefore arises is why Trillian refused to provide the information which I had requested. I address this further below.
73. I was, however, given information in this regard by the former CEO and Executive Director of Trillian Financial Advisory, one of the wholly-owned subsidiaries of TCP.³ She explained some of the items listed in the Trillian invoices as follows:
- 73.1. The Duvha claim: The power station had exploded, and Eskom had made a claim from its insurers. Marsh were representing the insurers. Through arrangements made by Mr Anoj Singh, Dr Wood and the CEO met Marsh to assist in resolving the insurance claim. The first time the CEO met Marsh was on 9 December 2015. At this time, she was still employed by Regiments. In these discussions she and Dr Wood were representing Eskom, talking to their insurers about the settlement of the claim. They were also advising Eskom on the Supply Chain appointment

and on people to do the repair. By 1 March 2016, when the CEO moved from Regiments to Trillian, their role in this matter had been concluded. All of the work had been done on behalf of Regiments, and all of the expenses were being recovered by Regiments.

73.2. The Eskom Corporate Plan: In December 2015 Eskom had to prepare a corporate plan in terms of the Public Finance Management Act. Anoj Singh of Eskom asked Regiments to assist in this regard. Regiments assisted the Eskom Treasury team to put together the plan which had to be submitted to the Board, the Treasury and the Department of Public Enterprises. The work was done by Regiments and completed by December 2015 or January 2016.

73.3. Online Vending Strategy: Regiments assisted Eskom with the formulation of the online vending strategy. She was the lead person on this task. The task was completed before she moved to Trillian. After she had moved to Trillian, she did work on the appointment of an entity to undertake the implementation.

73.4. R30 bn loan facility (Goldman Sachs): The team analysed a proposal by Goldman Sachs and made recommendations to Anoj Singh. Eskom had the capacity to do this: it is what their Treasury team did. They were skilled and experienced in the field.

³ In this report I refer to the former CEO of TMC and the former CEO of TFA by their titles rather than by their names. This is to protect their privacy to the extent possible.

74. In general, the former CEO stated that in each instance all or a substantial part of the work had been done before 1 March 2016, which for those purposes was the effective Trillian inception date. Before 1 March 2016 the work was done by the staff of Regiments, who were paid by Regiments. She commented further that generally Regiments were not needed for this work, as Eskom staff were able to carry it out.
75. It therefore seems that the Eskom spokesperson was substantially correct when he asserted that Trillian had not done any work for Eskom. Trillian had not tendered for any of this work, and it did not have any contract with Eskom for this work. It has refused to provide me with any information in respect of any work which it allegedly did. The question which Trillian and Eskom need to answer is why these payments were made.
76. The former CEO of TFA told me that the international consultancy firm McKinsey originally had a contract with Regiments as its SDP.⁴ When Trillian was to break away from Regiments, McKinsey had to “vet” Trillian in order to satisfy itself in terms of its due diligence risk review. Trillian put together a company profile, which it submitted to McKinsey. McKinsey declined to contract with Trillian, as I describe more fully below. Trillian were told that this was because the shareholder (Mr Essa) who was a “PEP” (Politically Exposed Person). The former CEO said that she discussed this with Dr Wood in April 2016. He said that she was not to worry, as he would discuss the matter with Mr Anoj Singh of Eskom. He said that Trillian had responded to an Eskom Request for Proposals, and Mr Singh would appoint Trillian through that process. The obvious question which arises is how he could be so confident that Eskom would appoint Trillian.

⁴ I address the McKinsey-Trillian relationship more fully in the next section of this report.

77. The following emerges from this overview of the information which I obtained:
- 77.1. It is not true that Eskom made no payments to Trillian. It paid Trillian more than a quarter of a billion rand.
 - 77.2. Trillian had not tendered for this work.
 - 77.3. Trillian had no contract with Eskom for this work.
 - 77.4. Trillian refused to provide me with information on what work it did to justify these fees, on the basis that this was "*not relevant*" to my inquiry.
 - 77.5. It appears that virtually all of the work on the projects in question was done by Regiments, and not by Trillian.
 - 77.6. When Trillian was unable to continue the Eskom work because it failed McKinsey's risk review process because of the role of Mr Essa in Trillian, Dr Wood was not concerned, because he said that Mr Anoj Singh of Eskom would award a contract directly to Trillian.
78. Dr Wood contends in the litigation with Regiments that the intended Navigator Agreement, settling the dispute amongst the directors of Regiments, entitled Trillian to the payments which it claimed and received from Eskom. Regiments, Mr Nyhonyha and

Mr Pillay dispute this. It is so that the parties initially started implementing parts of the still incomplete and unsigned agreement. It is not appropriate for me to express a view as to the respective rights of the parties to that intended agreement. That is part of the subject matter of the litigation.

79. However, whatever the rights of Dr Wood or Trillian may have been against Regiments, that was and is a matter between those parties. It is difficult to see on what basis Eskom, a third party which was not party to those negotiations, could have lawfully made payment to Trillian for work for which it did not tender, for which it did not have a contract, and which it did not perform. At best, Trillian may have had a claim against Regiments. That would not mean that Eskom could lawfully pay Trillian.
80. It may be that this is the reason why Eskom subsequently denied that it had made any payments to Trillian. As I have pointed out, that denial was false.
81. I am not able to pursue this enquiry further because of Trillian's refusal to co-operate and my lack of powers of compulsion.
82. Finally, I note that it appears from reports in the press that the relationship between Trillian and Eskom has not ended. *Business Day* has reported that in March 2017 Trillian provided Eskom with a "risk assessment" of bids which had been submitted for the supply of a new boiler at Duvha. The Chinese firm Dongfang was reported to have secured the tender even though its bid was substantially higher than the bids of its competitors.

PART 3: MCKINSEY

83. Major state-owned enterprises such as Eskom and Transnet have a Supplier Development Programme (“SDP”). In terms of the SDP, they require certain service providers to engage local service providers to participate in the work. One of the purposes of an SDP is that the local service providers should gain experience and develop skills, and should benefit from part of the contract.
84. McKinsey, the international consulting firm, is one of the companies which has been required to do this. McKinsey was engaged to undertake work on behalf of both Eskom and Transnet. On my behalf, Ms Tshepe of CTH contacted McKinsey in Johannesburg and requested them to attend an interview. They responded by stating that they would prefer to deal with the matter by way of written answers to questions provided by me.
85. On 22 March 2017, I wrote to Mr Benedict Phiri, the person dealing with this at McKinsey, and asked *inter alia* the following questions in relation to Trillian:⁵
- 85.1. Did McKinsey work on any projects on which Trillian worked as an SDP or a subcontractor? If so, in each instance:
- 85.1.1. Who were the clients?

⁵ I also asked certain other questions in relation to Regiments Capital, which are not relevant here.

85.1.2. What role did Trillian play?

85.1.3. What was Trillian's relationship with McKinsey on the project?

85.1.4. To which entity did Trillian submit its invoices?

85.1.5. Was this the usual arrangement for SDPs or subcontractors? If not, why was the usual arrangement not followed, and who suggested this particular arrangement?

85.2. In relation to the due diligence which McKinsey undertook with regard to Trillian:

85.2.1. What information did McKinsey request from Trillian?

85.2.2. What information did Trillian provide?

85.2.3. What information did Trillian not provide?

85.2.4. When did McKinsey decide not to partner with Trillian?

85.2.5. What are the full reasons why McKinsey decided not to partner with Trillian?

86. I stated that I would be happy at that stage to receive written answers to those questions, and that my decision as to whether to persist with a request for an interview or interviews would depend on how comprehensive the written answers were.

87. On 6 April 2017, McKinsey replied as follows:

"McKinsey did not work on any projects on which Trillian worked as an SDP or a subcontractor to McKinsey. Furthermore, Trillian is in possession of correspondence from McKinsey to Trillian with respect to the due diligence referred to. We consent to such correspondence being shared with you by Trillian pursuant to your investigation."

88. On 3 May 2017, I wrote to Mr Phiri as follows:

"I attach a copy of a letter dated 9 February 2016 from Mr Vikas Sagar of McKinsey to Prish Govender of Eskom. Its contents appear to be inconsistent with your letter of 6 April 2017. I shall be grateful for your comments in this regard".

89. The letter to which I referred was from McKinsey and Company to Prish Govender of Eskom. It was dated 9 February 2016, and was signed by Vikas Sagar, a Director of McKinsey and Company Africa (Pty) Ltd. It read as follows:

"Dear Prish

Authorisation to pay Subcontractors Directly

We refer to the Professional Services Contract for the provision of consulting services for 6 entered into between Eskom SOC Ltd (Eskom) and McKinsey and Company Africa (Pty) Ltd ("McKinsey"), dated 29 September 2015 (the Agreement). As you know, McKinsey has subcontracted a portion of the services to be performed under the Agreement to [Trillian (Pty) Ltd] (Trillian).

Subject to:

(i) the terms of the Agreement relating to any payments to be made by Eskom to us; and (ii) us issuing a written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey and; (iii) the correctness of the amount to be invoiced, we hereby agree for, and authorize, Trillian to invoice, and be paid directly by, Eskom for any services performed by it in pursuance of our obligations under the Agreement". (Annexure "F").

90. On 9 May 2017, Mr Phiri replied that he would discuss the matter with his colleagues and revert to me. I sent him reminders on 17 May and 23 May 2017. In the latter letter, I pointed out that I intended shortly to commence writing my report. On 24 May, Mr Phiri stated that he would be in a position to respond to me by 2 June 2017. On 4 June 2017, having not received a reply, I again wrote to him. He replied on 6 June 2017 that McKinsey had unfortunately not completed its internal processes in this regard, and he was also not in a position to definitively articulate when they would have done so, as

there were a few aspects they were reviewing. He would, however, revert to me as soon as they were ready.

91. On 6 June 2017, I informed Mr Phiri that I was planning to complete and issue my report during the course of June 2017. I stated that I was sure that he would appreciate that if I did not have a response from McKinsey before then, I would have to report accordingly.

92. On 18 June 2017, I received an e-mail from Mr Phiri as follows:

"We refer to the previous correspondence with you. You have asked for further elucidation. We have noted from media reports and press statements that will be formal regulative and investigative enquiries into a number of matters which have featured prominently in the press including, we understand, some relevant to Trillian.

In the circumstances, we have been advised that it would not be appropriate to provide further information relating to the informal investigation you are conducting into the affairs of Trillian. We trust you will understand our position."

93. On 19 June 2017, I acknowledged receipt of that e-mail. I asked the following:

"For the sake of clarity, would you please confirm that I am to understand your e-mail to mean that McKinsey is not willing to provide me with information

regarding its relationship with Trillian, and not just in relation to the particular letter which I sent to you for comment."

94. On 26 June 2017 Mr Phiri responded as follows:

"For clarity, McKinsey's position is that, in light of the informal nature of your inquiry in the context of the various legal and regulatory processes around Trillian, it is inappropriate to furnish any further comment with respect to this matter."

95. In the light of this attitude, I have not raised with McKinsey the further matters referred to in this report.

96. The factual situation is that a letter on the McKinsey letterhead, signed by a Director of McKinsey, directly contradicts what McKinsey told me on 6 April 2017. It contradicts McKinsey's claim that it did not work on any projects "*on which Trillian worked as an SPD or a Subcontractor to McKinsey*". McKinsey has neither suggested that the letter apparently signed by its Director is not genuine, nor provided any explanation for this inconsistency, despite repeated invitations to do so. It has refused to provide any explanation.

97. I have to say that I find this inexplicable, particularly having regard to the fact that McKinsey presents itself as an international leader in management consulting, and given the widespread public interest in this matter. It is difficult to avoid the conclusion that the

ultimate McKinsey response was an attempt to avoid dealing with a situation which appears to be embarrassing to the company. In my opinion, a refusal to provide the truth ought to be even more embarrassing.

98. I have subsequently established from the former CEO of TMC that in fact McKinsey did not conclude a contract with Trillian. A draft contract was prepared. The draft was discussed by the parties, and it was amended, but it was not signed. The reason for this appears to have been that as a result of the due diligence enquiry which it undertook, McKinsey ultimately decided not to contract with Trillian. However, this leaves two questions unanswered.
99. The first question, obviously, is why the McKinsey Director, Mr Sagar, wrote the letter of 9 February 2016, stating that McKinsey had subcontracted a portion of the services to be performed by it under an agreement with Eskom to Trillian, and why it authorised Eskom to make payment directly to Trillian in respect of that work.
100. The second question arises from facts which give rise to even greater concern. One of the witnesses with whom I consulted was the CEO of Trillian Management Consulting for approximately three months. She resigned on 19 March 2016. She informed me that during the period of her employment at Trillian she had extensive engagement with McKinsey in relation to Eskom. She provided me with extensive documentation in that regard, which demonstrated beyond any doubt whatsoever that:
- 100.1. during this period, McKinsey was undertaking work on behalf of Eskom; and

- 100.2. Trillian was working with McKinsey on this Eskom work as a supplier development partner.
101. The unexplained denial by McKinsey is all the more inexplicable in the light of these facts. Trillian itself provided me with the agenda of a meeting of the Steering Committee in respect of the "*Top Consultants' Programme*" which McKinsey was conducting on behalf of Eskom. It reflects Dr Wood, the CEO of TMC, and the CEO of TFA, each of them identified as being from Trillian, as members of the Steering Committee for the Programme (see for example "**H**", an extract from that document). This flies in the face of the denial by McKinsey that it worked on any projects on which Trillian worked as an SDP or a subcontractor to McKinsey.
102. The documents provided to me include a memorandum from Vikas Sagar and Alexander Weiss of McKinsey to Clive Angel and Eric Wood of Trillian, dated 15 December 2015 and headed "McKinsey-Trillian partnership principles for the Eskom turnaround".
103. The letter from Mr Sagar is also confirmed by an e-mail from the CEO of TMC to mabelact@gmail.com (Mr Edwin Mabelane, who I understand is the chief procurement officer of Eskom) referring to a meeting the previous night, and noting "*McKinsey issued a letter to Eskom stating that payment should be made directly to Trillian*".
104. I conclude that the denial of McKinsey is false. Why they made a false denial is for them to explain.

105. A further issue arises from a contemporaneous internal Trillian memorandum written by the then CEO of TMC. The memorandum addressed the "*Current status of the Trillian/McKinsey supplier development partnership: Eskom turnaround programme*". It recorded that McKinsey had entered into a Supplier Development Partnership with Trillian Management Consulting as part of their commitments for the award of the Eskom turn-around programme. The CEO stated that she had concerns about the general behaviour of the team, and more specifically the senior leadership of McKinsey, in relation to the Supplier Development Relationship, as highlighted by the statement which she said had been made by a senior McKinsey representative at a meeting of the joint team:

"It doesn't really matter [supplier development] as long as you get your percentage [revenue]".

106. She said that this was said in response to her complaint that McKinsey was not engaging Trillian in the programme, with the result that Trillian was not receiving the exposure and experience which it required. She reported that a general theme, from the McKinsey leadership down, was that "*Trillian as the development partner is simply a necessary, but unwanted piece of baggage in the awarded contract*". She recorded a further McKinsey response, by Mr Lorenz Jungling, as follows:

"TMC requested a separate discussion on the proposed ramp of TMC resources, to ensure that the organisation is optimally structured and developed."

McKinsey response (Lorenz Jungling): The program does not have a detailed and long term plan that will make this explicit. Besides, regardless of TMC resources allocated to projects, TMC will still get their 30%”.

107. After another meeting, the CEO of TMC recorded that McKinsey’s view (as expressed by Mr Jungling) was as follows:

“... the current McKinsey sentiment is that TMC is not motivated by delivery and growth towards independence, but rather in this partnership purely to receive revenue in return for not much work.”

108. This suggests that the “*Supplier Development Programme*” was, at least from the point of view of some senior McKinsey representatives, a sham. The Eskom contract price included 30% for Trillian, which from those representatives’ point of view served little purpose other than to provide a substantial financial benefit to Trillian and its shareholders – and presumably to induce Eskom to award the contract to McKinsey.

109. I have referred above to the due diligence conducted by McKinsey. Annexure “G” is a letter from McKinsey dated 10 March 2016 and addressed to Eric Wood at TMC. The letter is headed “*Trillian, Hubei Hongyuan, E Gateway Global Consultants FZC, and Eskom Duvha Boiler Purchase*”. It records that the McKinsey global risk review is “*ongoing*”, with a view to being concluded during the middle of the following week. McKinsey required detailed responses to a letter of 25 February 2016 by the close of

business on Friday, 11 March 2016. The information required by McKinsey included the following:

- 109.1. Detailed account of the form and legal status of Trillian's relationship with Hubei Hongyuan, which I understand is a Chinese company.
- 109.2. Detailed account of the form and legal status of Trillian's relationship with E Gateway Global Consultants FCZ.⁶
- 109.3. Confirmation that Trillian, its employees, or any of its subcontractors or affiliates have no other interests which may conflict with their respective roles as advisor to Eskom.
- 109.4. Confirmation that, pending Trillian's detailed response to the letter, and with immediate effect, no Trillian personnel, subcontractor personnel, or personnel of any affiliate undertaking would conduct or undertake any activities on any element of the Top Consultants Programme which may lend themselves to a conflict of interest whether real or perceived.
- 109.5. Confirmation that Trillian indemnifies, defends and holds McKinsey harmless from any and all claims brought against McKinsey in respect of and relating to Trillian's relationship with Hubei Hongyuan and any services performed by Trillian and/or any of its subcontractors or their affiliates for Eskom.

110. From this it appears that by March 2016, McKinsey had developed reservations about its relationship with Trillian. Trillian was apparently not able to satisfy McKinsey in that regard, and the relationship was terminated. Two matters arise from this:

110.1. The document appears to confirm that Trillian was working with McKinsey on an Eskom project, the Duvha boiler purchase;⁷ and

110.2. It raises questions with regard to the probity of Trillian, which apparently was not able to satisfy McKinsey's risk review. This too is a matter which requires further investigation.

McKinsey, Trillian and Transnet

111. One further document is of note in this regard. On 9 March 2016, Dr Wood (Trillian) and Mr Sagar (McKinsey) sent a joint memorandum to Mr Garry Pita of Transnet. It was headed "*Proposed Model for Support: April to September*". It states that McKinsey had terminated its relationship with Regiments Capital "*due to political exposure and under-delivery by Regiments*". This separation was to be effective as at 31 March 2016. The memorandum – and I underline, this is a joint memorandum from Trillian and McKinsey – proposes that McKinsey and Regiments/Trillian "*support Transnet on independent streams to deliver on the 2016/17 budget*". In other words, what was proposed by McKinsey and Trillian was a different form of "partnership" for providing services to Transnet, in which the work would be divided between them, and they would act

⁶ I refer below to eGateway.

independently of each other. This would be a means for McKinsey and Trillian to cooperate in obtaining work and payment from Transnet without Trillian having to satisfy McKinsey's risk review (due diligence).

112. The memorandum proposed a basis for settling the existing contract for R245 million, by Transnet paying R235 million. The authors noted that if there was such a settlement, there would be an additional R130 million in contract value outstanding on the Transnet General Capital Freight Business ("GFB") contract. They proposed that the contract value be split 50:50 between McKinsey and Regiments or Trillian.

Conclusion

113. This narrative raises questions about McKinsey:

- 113.1. McKinsey initially indicated a willingness to answer questions which were put in writing.

- 113.2. It did answer questions which were put in writing.

- 113.3. When it was put to McKinsey that a letter on its letterhead suggested that one of those answers was false, and it was invited to explain this, it took 2½ months to

⁷ It also belies the answer which the Minister of Public Enterprises gave in this regard in the National Assembly.

decide how to answer - and then answered that it was "inappropriate" for it to respond to an "informal" enquiry such as the one I was mandated to undertake.

- 113.4. Why that would be "inappropriate" has not been explained. In my opinion, the answer holds no water at all.
114. The facts revealed by the investigation raise questions as to the conduct of McKinsey. They require further investigation, by a person or institution which has the legal powers to compel McKinsey to provide the relevant information. I do not have those powers.