

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MCKINSEY AND COMPANY
AFRICA (PTY) LTD,

Defendant.

INFORMATION

24 Cr.

24 CRIM 669

The United States charges:

GENERAL ALLEGATIONS

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* (“FCPA”), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person.

MCKINSEY AFRICA and Relevant Entities and Individuals

2. At all times relevant to this Information, McKinsey & Company, Inc. (“McKinsey”) was an international consulting firm, headquartered in New York, New York, that operated with offices around the world, including in South Africa as described below. McKinsey was a “domestic concern” as that term is used in the Foreign Corrupt Practices Act (“FCPA”), Title 15, United States Code, Section 78dd-2(h)(1)(B).

3. At all times relevant to this Information, McKinsey and Company Africa (Pty) Ltd (“MCKINSEY AFRICA”), the defendant, was a wholly owned and wholly controlled subsidiary

of McKinsey, incorporated in South Africa and located in Sandton, South Africa. MCKINSEY AFRICA was an agent of a domestic concern, McKinsey, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(a).

4. At all times relevant to this Information, Vikas Sagar (“Sagar”) was a citizen of India, a lawful permanent resident of the United States, a resident of South Africa, a partner and senior partner of McKinsey working in McKinsey’s office in Johannesburg, South Africa, and a stockholder, employee, and agent of McKinsey. Sagar was a “domestic concern” and an employee, agent, and stockholder of a “domestic concern,” as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-2(a).

5. At all times relevant to this Information, Company 1, the identity of which is known to the United States, McKinsey, and MCKINSEY AFRICA, the defendant, was a consulting firm incorporated in South Africa, with its principal place of business in South Africa. Company 1 was an agent of MCKINSEY AFRICA.

6. At all times relevant to this Information, Company 2, the identity of which is known to the United States, McKinsey, and MCKINSEY AFRICA, the defendant, was a consulting firm incorporated in South Africa, with its principal place of business in South Africa. Company 2 was an agent of MCKINSEY AFRICA.

7. At all times relevant to this Information, Transnet SOC Ltd. (“Transnet”) was a South African state-owned and state-controlled company headquartered in Johannesburg, South Africa, that operated as the custodian of South Africa’s ports, rails, and pipelines. Transnet was controlled by the government of South Africa and performed government functions. Transnet was an “instrumentality” of the South African government and Transnet’s officers and employees were

12. At all times relevant to this Information, co-conspirator 2 (“CC 2”), an individual whose identity is known to the United States, McKinsey, and MCKINSEY AFRICA, the defendant, was a South African national and businessperson who worked in South Africa at Company 1 and Company 2.

Overview of the Bribery Scheme

13. From at least in or around 2012, up to and including in or around 2016, MCKINSEY AFRICA, the defendant, acting through Sagar and for and on behalf of McKinsey, agreed with others to bribe foreign officials in South Africa to obtain and retain business for McKinsey and MCKINSEY AFRICA and partner firms, Company 1 and Company 2. In furtherance of the scheme, MCKINSEY AFRICA, together with co-conspirators, among other things: (a) obtained sensitive confidential and non-public information from Transnet and Eskom through CC 1, CC 2, and others, regarding the award of consulting contracts; and (b) submitted proposals for multimillion-dollar consulting contracts to Transnet and Eskom on behalf of MCKINSEY AFRICA and partner firms, Company 1, and Company 2, knowing that a portion of the proposed consulting fees from the contracts would be used to pay bribes to Foreign Official 1 and Foreign Official 2.

14. In carrying out the scheme described herein, McKinsey and MCKINSEY AFRICA, the defendant, through Sagar, engaged in communications with co-conspirators, relying on email, messaging apps, and other forms of communication that used the means and instrumentalities of interstate commerce, and in total, McKinsey and MCKINSEY AFRICA earned profits of approximately \$85,000,000 as a result of the bribery scheme.

A. Bribes Involving Transnet

15. In or around 2011, in an effort to obtain business for MCKINSEY AFRICA, the defendant, with Transnet, Sagar began meeting with Foreign Official 1, a former acquaintance of Sagar. Sagar knew that Foreign Official 1 was a board member at Transnet with the ability and authority to influence the award of consulting contracts.

16. McKinsey, MCKINSEY AFRICA, the defendant, and Sagar were aware that, pursuant to South Africa's Broad-based Black Economic Empowerment Act of 2003 and the South African government policies implementing it, and other subsequently promulgated policies, including the Supplier Development & Localization Plan (collectively, the "BEE program"), MCKINSEY AFRICA's ability to obtain contracts with Transnet depended, in part, on MCKINSEY AFRICA's engagement of certain local South African subcontractors as BEE program partners. Pursuant to the requirements of the BEE program, MCKINSEY AFRICA agreed to split the fees that were payable on contracts for which it partnered with South African companies. Accordingly, MCKINSEY AFRICA's client would pay a portion to MCKINSEY AFRICA and a portion directly to MCKINSEY AFRICA's BEE partner.

17. In or around 2012, Foreign Official 1 suggested to Sagar that MCKINSEY AFRICA, the defendant, engage Company 1 as its BEE program partner for future consulting engagements at Transnet, and Sagar agreed to the request.

18. In approximately the latter half of 2012, Foreign Official 1 helped arrange a meeting between Sagar and representatives of Company 1 at a restaurant in Sandton, South Africa. Following this meeting, Sagar exercised his influence within MCKINSEY AFRICA, the defendant, to encourage the selection of Company 1 as MCKINSEY AFRICA's BEE partner for

consulting work at Transnet, and MCKINSEY AFRICA selected Company 1 in or around late 2012.

19. Also in the latter half of 2012, Foreign Official 1 introduced Sagar to CC 1—an individual with no apparent connection to Transnet—and indicated that CC 1 would serve as Sagar’s intermediary for communications with Foreign Official 1 relating to MCKINSEY AFRICA’s contracts with Transnet moving forward.

20. Following CC 1’s introduction by Foreign Official 1, CC 1 acted as Sagar’s primary point of contact regarding MCKINSEY AFRICA, the defendant, and Company 1’s efforts to obtain consulting contracts from Transnet, and the division of fees between MCKINSEY AFRICA and Company 1 (a portion of which Sagar understood to continue to be paid to or for the benefit of CC 1 and Foreign Official 1). In return for the bribes, Foreign Official 1 acted as MCKINSEY AFRICA’s “inside man” at Transnet, providing confidential, inside information from Transnet through CC 1 and orchestrating the award of multiple lucrative contracts to MCKINSEY AFRICA over a period of years.

21. To avoid detection, Sagar and CC 1 conducted meetings at coffee shops, restaurants, and other locations in and around Johannesburg, South Africa, instead of meeting at MCKINSEY AFRICA or Transnet offices. Sagar and CC 1 also limited their use of written communications over the course of the scheme, and when they did correspond via email, they often used private personal email addresses rather than Sagar’s McKinsey email address.

22. As part of the scheme, MCKINSEY AFRICA, the defendant, through Sagar, received sensitive non-public information from Transnet, which was transmitted to Sagar by CC 1. Such information included confidential, inside information regarding MCKINSEY AFRICA’s

competitors for contracts, and Transnet's decision-making for such contracts. For example, CC 1 advised Sagar as to the identities of potential competitors for consulting contracts that MCKINSEY AFRICA sought at Transnet and provided advance assurances that MCKINSEY AFRICA would receive the award of a contract focusing on Transnet's acquisition of certain locomotives. Also in furtherance of the scheme, Sagar shared confidential MCKINSEY AFRICA information and work product with CC 1 regarding the work that MCKINSEY AFRICA sought to conduct at Transnet and its proposed engagement with Company 1. For example, on or about February 10, 2014, Sagar sent an email to CC 1 containing confidential internal MCKINSEY AFRICA information regarding a specific project at Transnet, proposed division of work between MCKINSEY AFRICA and Company 1, and the proposed division of fees between MCKINSEY AFRICA and Company 1 of nearly 50 percent. CC 1 subsequently forwarded the information to CC 2.

23. At CC 1's urging—which Sagar understood to be coming from Foreign Official 1—the fee split between MCKINSEY AFRICA and Company 1 shifted over time, increasing the share of fees that were being paid to Company 1, even though Company 1's contributions to the work being done for Transnet diminished.

24. Nevertheless, and repeatedly, MCKINSEY AFRICA, the defendant, through Sagar, submitted and caused proposals for multimillion-dollar consulting contracts to be submitted to Transnet, understanding that a portion of the consulting fees from the contracts would be used to pay bribes to Foreign Official 1. MCKINSEY AFRICA personnel, including Sagar and others whom Sagar did not advise of the bribery scheme, also participated in the drafting of Transnet and, later, Eskom, Requests for Proposals and internal memoranda that justified the award of contracts to MCKINSEY AFRICA without a public tender process. These efforts were intended to prevent

MCKINSEY AFRICA's competitors from competing fairly for awards of contracts, and they had the effect of ensuring that Transnet and Eskom's awards of contracts occurred on a sole-source basis.

B. Bribes Involving Eskom

25. In or around 2015, multiple Transnet executives who had worked with MCKINSEY AFRICA, the defendant, transitioned to leadership positions at Eskom. Around that same time, CC 2 advised Sagar of CC 2's intent to spin off a new consulting entity, Company 2.

26. MCKINSEY AFRICA, the defendant, was seeking to obtain consulting contracts at Eskom at that time, and Sagar joined MCKINSEY AFRICA's client service team for Eskom. Between in or around 2015 and continuing until in or around 2016, as MCKINSEY AFRICA sought business with Eskom, Sagar continued to work with CC 1 and CC 2, with the understanding that the bribery scheme at Transnet would continue at Eskom.

27. At Eskom, MCKINSEY AFRICA's, the defendant's, bribery scheme proceeded in a very similar manner as it had at Transnet, but with Company 2 ultimately replacing Company 1, and with at least Foreign Official 2 receiving the bribes rather than Foreign Official 1. CC 1 worked on MCKINSEY AFRICA's behalf to orchestrate the award of contracts to MCKINSEY AFRICA. In exchange for these efforts, CC 1 and Foreign Official 2 would receive a portion of the fees paid to Company 2 as MCKINSEY AFRICA's BEE partner for Eskom work.

28. In communications with Sagar, Foreign Official 2 focused heavily on the proposed fee split between MCKINSEY AFRICA, the defendant, and its BEE partner, insisting that fees be split 50/50. For Eskom engagements, MCKINSEY AFRICA's BEE partner was initially Company 1, but MCKINSEY AFRICA was in the process of formally retaining Company 2 as its

BEE partner after CC 2 spun off the entity. CC 1 and personnel from Company 2 again pressured Sagar to deliver an even split of fees between Company 2 and McKinsey.

29. On or about November 16, 2015, in connection with the negotiation of a potentially highly lucrative contract with Eskom, personnel from Company 2—copying CC 1 and CC 2—emailed Sagar at his McKinsey business email address, also copying Sagar’s personal email address, (i) requesting proof that fees from the engagement would be subject to a “50/50 fee split” and (ii) noting that CC 1 needed such proof in advance of setting up a meeting with key Eskom executives.

30. On or about November 18, 2015, using the means and instrumentalities of interstate commerce, Sagar responded to the email referenced in paragraph 29 above, using his personal email address, copying CC 1, and attaching a confidential internal spreadsheet by MCKINSEY AFRICA, the defendant, showing a near-50 percent split for Company 2 from the project: the equivalent of hundreds of millions of U.S. dollars in projected revenue. Sagar understood that a portion of the contract split for Company 2 would be paid to Foreign Official 2 in exchange for Eskom awarding the contract to MCKINSEY AFRICA and its potential BEE partner, Company 2. In or around December 2015, Eskom awarded the contract to MCKINSEY AFRICA.

31. In or around late 2015 and early 2016, MCKINSEY AFRICA, the defendant, conducted due diligence on Company 2, but did not complete its due diligence process before beginning work on the Eskom contract with Company 2. In or around March 2016, MCKINSEY AFRICA rejected Company 2 as a BEE partner after Company 2 failed to respond adequately to MCKINSEY AFRICA’s due diligence inquiries. MCKINSEY AFRICA notified Eskom that MCKINSEY AFRICA would not engage Company 2 as its BEE partner, but MCKINSEY

AFRICA continued to work alongside Company 2 at Eskom, until Eskom notified MCKINSEY AFRICA in June 2016 that the contract would be terminated. Separately, in or around March 2016, MCKINSEY AFRICA terminated Company 1 as its BEE partner, and provided notice to Transnet, after public reporting regarding the involvement of a recently departed Company 1 executive in a scandal, and linking the Company 1 executive to politically exposed persons.

32. On October 5, 2016, Sagar traveled to New York City to meet with a senior executive of Eskom and others to discuss MCKINSEY AFRICA's, the defendant's, work under the contract in furtherance of the bribery scheme. MCKINSEY AFRICA's work for Eskom ended in or around November 2016.

STATUTORY ALLEGATIONS

COUNT ONE **(Conspiracy to Bribe a Foreign Official)**

33. Paragraphs 1 through 32 of this Information are repeated and realleged as if fully set forth herein.

34. From in or around 2012 through at least 2016, both dates being approximate and inclusive, in the Southern District of New York and elsewhere, MCKINSEY AFRICA, the defendant, together with others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, to violate the anti-bribery provisions of the FCPA, in violation of Title 15, United States Code, Section 78dd-2.

35. It was a part and object of the conspiracy that MCKINSEY AFRICA, the defendant, being the agent of a domestic concern acting on behalf of that domestic concern, would and did make use of the mails and any means and instrumentalities of interstate commerce corruptly in

furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, and offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, and to any person, while knowing that all or a portion of such money and thing of value would be and had been be offered, given, and promised, directly and indirectly, to any foreign official, to any foreign political party or official thereof, and to any candidate for foreign political office, for purposes of (A)(i) influencing any act and decision of such foreign official in that foreign official's official capacity; (ii) inducing such foreign official to do and omit to do any act in violation of the lawful duty of such foreign official; and (iii) securing any improper advantage; and (B) inducing such foreign official to use that foreign official's influence with a foreign government and agencies and instrumentalities thereof to affect and influence any act and decision of such government and agencies and instrumentalities, in order to assist MCKINSEY AFRICA in obtaining and retaining business for and with, and directing business to, MCKINSEY AFRICA and others, in violation of Title 15, United States Code, Section 78dd-2, to wit, MCKINSEY AFRICA and others agreed to pay Foreign Official 1, Foreign Official 2, CC 1, and others known and unknown, a portion of fees generated by and in connection with MCKINSEY AFRICA's contracts with Transnet and Eskom, in order to assist MCKINSEY AFRICA in obtaining and retaining business for, and directing business to, MCKINSEY AFRICA and others.

Overt Acts

36. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about February 10, 2014, Sagar sent an email to CC 1 containing confidential internal information from MCKINSEY AFRICA, the defendant, regarding a specific


project at Transnet, proposed division of work between MCKINSEY AFRICA and Company 1, and the proposed division of fees between MCKINSEY AFRICA and Company 1 of nearly 50 percent. CC 1 subsequently forwarded the information to CC 2.

b. On or about November 16, 2015, in connection with the negotiation of a potentially highly lucrative contract with Eskom, personnel from Company 2—copying CC 1 and CC 2—emailed Sagar at his McKinsey business email address, also copying Sagar’s personal email address, (i) requesting proof that fees from the engagement would be subject to a “50/50 fee split” and (ii) noting that CC 1 needed such proof in advance of setting up a meeting with key Eskom executives.

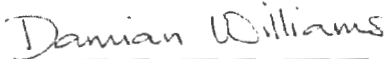
c. On or about November 18, 2015, using the means and instrumentalities of interstate commerce, Sagar responded to the email referenced in paragraph 36(b) above, using his personal email address, copying CC 1, and attaching a confidential internal MCKINSEY AFRICA spreadsheet showing a near-50 percent split for Company 2 from the project: the equivalent of hundreds of millions of U.S. dollars in projected revenue.

d. On or about October 5, 2016, Sagar met in the Southern District of New York with a senior executive of Eskom and others to discuss MCKINSEY AFRICA’s work under the contract in furtherance of the bribery scheme.

(Title 18, United States Code, Section 371.)



GLENN S. LEON
Chief, Fraud Section



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United States Attorney