



KEY FINDINGS - SAP SE SOUTH AFRICA INVESTIGATION

March 8, 2018

Overview

In July 2017, SAP contracted Baker McKenzie to conduct an investigation into its public sector contracts in South Africa.

Since the investigation began, the law firm has conducted a data analytics search of over 29.6 million documents, followed by a first level review of 202,599 documents, and a second level review of 64,786 documents. It also conducted numerous interviews of SAP employees, former employees and external third parties.

Baker McKenzie has finalized its investigation of SAP's business interactions with Gupta-related entities in connection with Transnet and Eskom.

To date, the investigation has found no evidence of any payment to any government official or to any employee of an SOE, including any employee of Transnet or Eskom. However, the investigation has uncovered indications of misconduct in issues relating to the management of Gupta-related third parties.


The role of sales commission agents in SAP's business model

Globally, SAP's products and services are sold to customers either directly or through intermediaries, including sales commission agents who operate on a commission basis.

All SAP intermediaries, globally, are required to undergo a thorough due-diligence process, which includes an assessment to ensure they possess the relevant technical capabilities required to fulfil the customer's mandate. All SAP partners are also required to sign an anti-bribery declaration.

The findings of the investigation:

1. Beginning in or about mid-2014, representatives of the Guptas began to associate themselves with multiple small third parties that had experience in the IT industry. Some of these third parties had existing relationships with SAP.
2. There is no evidence of SAP direct contact with any member of the Gupta or Zuma families. The primary connection was with Gupta intermediary, Santosh Choubey, and the people who reported to him. Choubey became the principal contact for Global Software Solutions (GSS) and CAD House.


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3. GSS became eligible to act as a sales commission agent in September 2014 when it became a Value Added Reseller. CAD House was approved as a sales commission agent in August 2015. SAP terminated the ability of Value Added Resellers such as GSS to act as sales commission agents in 2016.
 4. SAP South Africa concluded two contracts with Transnet and four with Eskom between December 2014 and June 2017, with GSS and CAD House acting as commissioned intermediaries. One contract involved a commission of 10%, while the other five contracts involved a commission rate of 14.9%, just below the 15% threshold that would have triggered an SAP Executive Board review of the deals. In connection with one Eskom contract, SAP retained a Gupta-related entity called Lejara Global Solutions to provide services to Eskom.
 5. The investigation did not find any evidence that the integrity and value of the software and services provided by SAP to Eskom and Transnet in these contracts were undermined in any way by the inclusion of these intermediaries.
 6. In addition to the above-described finalized contracts, the investigation found that SAP, with the assistance of Gupta-related entities, unsuccessfully sought other contracts with Transnet and Eskom.
 7. The investigation found no evidence of any payment to any government official or to any employee of an SOE, including any employee of Transnet or Eskom. However, the investigation has uncovered indications of misconduct in issues relating to the management of Gupta-related third parties.

The findings of the investigation have led SAP's Executive Board to institute significant changes to its global compliance processes. These include:

- eliminating, effective immediately, all sales commissions on all public sector deals in countries with a Corruption Perceptions Index (according to Transparency International) below 50, which includes South Africa since it has a rating of 45;
- initiating on a global basis extensive additional controls and due diligence into relationships with sales agents and value-added resellers, including additional audit functions;
- allocating to the SAP South Africa market unit additional legal compliance staff who are based in South Africa; and
- strengthening SAP's Compliance Committee in the SAP Africa region.

The contracts in question:

1. In December 2014, SAP concluded a contract for the sale of software to Transnet with GSS serving as a sales commission agent. SAP provided software and received revenue in the




amount of approximately ZAR 65 million (approximately USD 5.6 million), and paid a commission to GSS in the amount of approximately ZAR 6.5 million (approximately USD 535,000). Including VAT, SAP paid the third party approximately ZAR 7.4 million (approximately USD 607,000). This represents a 10% commission.

2. In September 2015, SAP concluded a contract for the sale of software to Transnet. CAD House acted as a sales commission agent. SAP provided software and received revenue in the amount of approximately ZAR 100 million (approximately USD 7.25 million), and paid a commission to CAD House in the amount of approximately ZAR 14.9 million (approximately USD 1 million). Including VAT, SAP paid the third party approximately ZAR 17 million (approximately USD 1.13 million). This represents a 14.9% commission.
3. In March 2016, SAP concluded a contract for the sale of software to Eskom with CAD House acting as a sales commission agent. SAP provided software and received revenue in the amount of approximately ZAR 61.5 million (approximately USD 4.2 million), and paid a commission to CAD House in the amount of approximately ZAR 7.6 million (approximately USD 518,000). Including VAT, SAP paid the third party approximately ZAR 8.6 million (approximately USD 592,000). This represents a 14.9% commission.
4. In November 2016, SAP concluded a contract for the sale of software and services to Eskom with CAD House acting as a sales commission agent. SAP provided software and services and received revenue in the amount of approximately ZAR 434 million (approximately USD 30.75 million), and paid a commission to CAD House in the amount of approximately ZAR 64.6 million (approximately USD 4.7 million). Including VAT, SAP paid the third party approximately ZAR 73.7 million (approximately USD 5.3 million). This represents a 14.9% commission.

The ZAR 434 million paid by Eskom to SAP included an allocation for consulting services to be provided in the future. In March 2017, SAP concluded a subcontract with Lejara Global Solutions, a Gupta-related entity, to assist SAP in providing these services to Eskom. In June 2017, SAP paid Lejara Global Solutions approximately ZAR 19.1 million (approximately USD 1.49 million), which including VAT totaled ZAR 21.9 million (approximately USD 1.7 million). The subcontract between SAP and Lejara Global Solutions called for SAP to pay Lejara approximately ZAR 17.7 million (approximately USD 1.36 million) at the conclusion of the consulting project, which was finished in late July 2017. However, SAP declined to make any additional payments to the subcontractor. The investigation confirmed that SAP provided the full deliverables to Eskom as promised.

5. In December 2016, SAP concluded a contract for the sale of cloud services to Eskom with CAD House acting as a sales commission agent. The value of the contract was approximately ZAR 21 million (approximately USD 1.5 million). Eskom has not made any payment on this contract, and SAP has not paid any commission to CAD House.

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6. In June 2017, SAP concluded a contract for the sale of software to Eskom with CAD House acting as a sales commission agent. The value of the contract was approximately ZAR 42.15 million (approximately USD 3.3 million). Eskom has not made any payment on this contract, and SAP has not paid any commission to CAD House.

Additional actions:

On 8 November 2017, SAP notified the National Head of the Directorate for Priority Crime Investigation (the Hawks) of SAP's willingness to cooperate with any investigation they might undertake.

SAP continues to cooperate with the investigations being conducted by the US Department of Justice (DoJ) and the US Securities and Exchange Commission (SEC). These investigations came as a result of SAP's voluntary disclosure on 13 July 2017. Baker McKenzie is in regular communication with these authorities on SAP's behalf, and has provided more than 100,000 pages of documents to the authorities. SAP has committed to full cooperation with the DOJ and SEC.

On 30 November 2017, the Companies and Intellectual Property Commission ("CIPC") notified SAP that it had laid charges with the South African Police Service for SAP's alleged contravention of section 214(1)(c) of the Companies Act of 2008 and section 12(1)(b)(i)(a) of the Prevention and Combating of Corrupt Activities Act of 2004. SAP has advised the investigating officer that the company is willing to cooperate with any investigation they might undertake.
