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U.S. Securities and Exchange Commission
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New York Regional Office
200 Vesey Street, Suite 400
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August 18, 2017

By Mail and Email

RE: Investigation of British American Tobacco's possible violations of the Foreign Corrupt Practices Act

Dear Ms. Moser, Ms. Avakian and Mr. Peikin:

The Campaign for Tobacco-Free Kids is a non-profit organization that works to reduce tobacco use and its deadly toll on consumers in the United States and in many countries around the world, including in Africa.

We are writing to urge the U.S. Department of Justice and the U.S. Securities and Exchange Commission to investigate British American Tobacco, Plc. (BAT) and its subsidiaries for what appear to be serious violations of the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act (FCPA). These possible FCPA violations carried out by BAT are based on recently exposed allegations of widespread bribery and corruption in Africa, including the secret movement of millions of undocumented U.S. dollars across international borders into war-torn Democratic Republic of Congo (DRC).

WWW.TOBACCOFREEKIDS.ORG

Earlier this month, the [UK Serious Fraud Office \(SFO\) launched an investigation¹](#) of BAT, its subsidiaries and any associated persons for suspicions of corruption carried out by the company. Today, [an investigative report by *The Guardian*²](#) revealed new allegations that, for years, BAT secretly and possibly illegally moved millions of U.S. dollars in cash across international borders into DRC during periods when violence and mass human rights atrocities were occurring, allegedly to support the company's tobacco leaf operations. The new allegations indicate BAT's operations included engaging with armed rebels in the long-standing DRC conflict in order to make the secret cash drops used to pay for leaf from farmers in Auzi - a town created by BAT in the 1950s.

Whether or not the misconduct described by *The Guardian* is still going on today, the investigative report describes a corrupt business practice that raises serious questions about how BAT does business in Africa and around the world. *The Guardian's* findings call into question the legality of bulk cash payments of U.S. dollars secretly transported across international borders, including whether these previously undisclosed payments violate the FCPA. It also raises questions about whether BAT's conduct in moving U.S. dollars into DRC during the civil war violates federal anti-money laundering laws, especially given the United States' DRC sanctions program in effect since 2006. BAT's claims made to *The Guardian* that it prepaid excise tax to the DRC government should be closely examined to determine exactly who those payments could have been made to over the years when rebels controlled eastern DRC, which is where the company's operations in Auzi were located.

These allegations of systematic unlawful behavior are particularly alarming due to the July 2017 merger of Reynolds American, Inc. and BAT. The recent merger now places BAT in a leading position in the U.S. tobacco market, where it trades its stock on the NYSE under the ticker symbol BTI. The company has also stated that the new BAT global company is the largest tobacco company in the world as defined by operating profit. Prior to the merger, BAT's ordinary shares were traded on NYSE MKT in the form of Level II American Depositary Receipts under the ticker symbol BTI, with Citibank acting as the depository.³

Corruption allegations within BAT were first publicly exposed [in November 2015 by the BBC⁴](#) and revealed that the company engaged in bribery, corporate espionage, and other corrupt acts as described in *Appendix I*. Examples include:

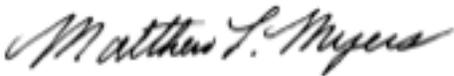
- Bribed Ministry of Health officials in Burundi, Comoros and Rwanda in 2012 to influence tobacco control measures. The BBC reported, "In one document from a U.K. employment tribunal, BAT describes the payments to these officials as "unlawful bribes"."⁵
- Bribed a former Kenyan Minister of Justice turned presidential candidate in 2013 to prevent a competitor (SICPA⁶) of BAT's and Philip Morris International's cigarette track and trace system from obtaining a tax and excise stamp system tender. According to one media report, cash donations to her political campaign were made through a third party and were "falsely listed in BAT accounts as payments for management fees or as expenses incurred in anti-smuggling operations."⁷

- Bribed a Member of Parliament from Uganda “who sat on a committee writing a report on a rival company... to make amendments favorable to the company and give it to BAT in advance.”⁸

BAT’s extensive efforts over half of a century to deceive the American public about the harms of its cigarettes are also well documented. BAT was found liable of fraud and racketeering under the Racketeer Influenced and Corrupt Organizations Act (RICO) in 2006. The Court found that the tobacco defendants in that litigation were likely to continue their fraudulent acts into the future. Although BAT was later released from the case in 2011,⁹ due to a change in U.S. Supreme Court jurisprudence related to the foreign reach of RICO,¹⁰ the findings of liability by the Court against BAT’s decades-long fraud and deceit still stand.¹¹ ***Appendix II provides examples of several judicial findings of BAT’s misconduct.***

Given its fraudulent history within the United States and abroad and its re-entry into the U.S. market, the mounting allegations of corruption and bulk concealment of funds within BAT must be fully investigated by U.S. regulators for possible violations of the FCPA and any other applicable criminal or civil laws.

Sincerely,



Matthew L. Myers
President
Campaign for Tobacco-Free Kids

¹ Serious Fraud Office. Press Release. August 1, 2017. SFO investigating British American Tobacco, p.l.c. <https://www.sfo.gov.uk/2017/08/01/sfo-investigating-british-american-tobacco-plc/>.

² The Guardian. August 18, 2017. Revealed:how British American Tobacco exploited war zones to sell cigarettes. Online: https://www.theguardian.com/world/2017/aug/18/british-american-tobacco-cigarettes-africa-middle-east?CMP=Share_iOSApp_Other.

³ British American Tobacco Annual Report, 2015. Page 114. [http://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DO9DCL3B/\\$FILE/medMDA87PVT.pdf?openelement](http://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DO9DCL3B/$FILE/medMDA87PVT.pdf?openelement).

⁴ On November 30, 2015, BBC One aired the news documentary *The Secret Bribes of Big Tobacco*, which detailed acts of illegal bribery and corruption between British American Tobacco and government public officials and policymakers in several African countries dating from about 2011- 2014. The program relied on evidence from leaked documents, emails, and secret recordings submitted by a former BAT employee and reported on illegal payments made to government officials and Members of Parliament to gain access to tobacco control legislation in order to secure beneficial changes. The program details can be viewed at <http://www.bbc.com/news/business-34944702> and the program can be seen at <https://www.youtube.com/watch?v=wETSRZyUTeE>.

⁵ BBC Panorama. The secret bribes of big tobacco. 11/30/2015. Online: <http://www.bbc.com/news/business-34964603>.

⁶ SCIPA. <http://www.sicpa.com/product-brand-protection/track-trace>.

⁷ The Independent. British American Tobacco 'bribed' Kenyan politician Martha Karua to stop action against cigarette smuggling. 12/18/2015. Online: <http://www.independent.co.uk/news/uk/crime/british-american-tobacco-bribed-kenyan-politician-martha-karua-to-stop-action-against-cigarette-a6779236.html>.

⁸ The Independent. British American Tobacco accused of bribing senior politicians in order to sabotage anti-smoking laws. 11/30/2015. Online: <http://www.independent.co.uk/news/uk/crime/british-american-tobacco-accused-of-bribing-senior-politicians-to-sabotage-anti-smoking-laws-a6754961.html>.

⁹ United States v. Philip Morris USA, Inc. Document No. 5901. MEMORANDUM OPINION. March 28, 2011.

¹⁰ U.S. v. Philip Morris USA, Inc., et al., 783 F. Supp. 2d 23 (D.D.C. 2011)

¹¹ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Available from: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

Appendix I

Selected Media Clips on Recent Allegations of Corruption within British American Tobacco

During 2014-2015, four BAT insiders -- two former BAT employees and two former contractors working on behalf of BAT in South Africa -- disclosed widespread corruption involving government officials and corporate espionage against rivals in Africa. Reportedly supported by leaked documents, secret recordings and court documents, the allegations of BAT's corrupt conduct as reported in the media include the following disclosures.

BBC

November 30, 2015

[The secret bribes of big tobacco paper trail](#)

Daily Mail

November 30, 2015

[BBC reports BAT tobacco giant paid bribes in east Africa](#)

Forbes

December 1, 2015

[An Exceptional Insight into Commercial Bribery Practices at British American Tobacco](#)

The Independent

December 1, 2015

[British American Tobacco accused of bribing senior politicians in order to sabotage anti-smoking laws](#)

The Independent

December 18, 2015

[British American Tobacco 'bribed' Kenyan politician Martha Karua to stop action against cigarette smuggling](#)

The Independent

December 19, 2015

[British American Tobacco paid union to disrupt production at one of its chief rivals, whistleblower claims](#)

The Telegraph

February 25, 2016

[BAT gives law firm 'open door' to probe corruption allegations](#)

The Independent

February 27, 2016

[British American Tobacco accused of corporate espionage in South Africa](#)

Spinwatch.org

April 8, 2016

[Revealed: BAT corruption scandal in Africa leads to London HQ](#)

Sunday Mail

September 4, 2016

[The man who blew the whistle on BAT](#)

The Lawyer

December 8, 2016

[BAT drops Linklaters from corruption probe in favour of Slaughter and May](#)

The secret bribes of big tobacco paper trail

BBC

November 30, 2015

<http://www.bbc.co.uk/news/business-34944702>

The BBC's Panorama programme has spent five months investigating bribery at British American Tobacco.

BAT says it conducts its business with honesty, integrity and transparency, and has strict anti-bribery rules. But the BBC obtained hundreds of documents that reveal how BAT employees bribed politicians, public officials and even people working for a rival company in Africa. The documents appear to show:

- Bribes to public officials
- Bribes to MPs
- Bribes to damage a rival company

BAT says it is committed to the "highest standards of corporate conduct and transparency" and its anti-bribery rules are "strictly enforced".

It told Panorama: "The truth is that we do not and will not tolerate corruption, no matter where it takes place."

Bribes to public officials

In 2012, BAT lobbyist Julie Adell-Owino arranged bribes totalling US\$26,000 for three public officials in Rwanda, Burundi and the Comoros Islands. All three officials were connected to a United Nations effort to reduce the number of tobacco related deaths, the Framework Convention on Tobacco Control.

Adell-Owino used a pseudonym (Amanda) and a non-BAT email address (boda.XXX@aol.com). She sent the emails to a BAT manager, who was also using a pseudonym (John Smith) and a non-BAT email (spartan30063@gmail.com). The manager forwarded them to a contractor known as "Andrew" to facilitate the bribes.

In one document from a UK employment tribunal, BAT describes the payments to these officials as "unlawful bribes".

Adell-Owino "categorically denied" involvement in bribery and said BAT "mistakenly believed" the payments were bribes.

In one email, Adell-Owino requests that US\$3,000 be paid to Godefroid Kamwenubusa, an official at Burundi's Ministry of Health and one of its representatives to the FCTC.

From: Boda boda [REDACTED]@aol.co.uk
Subject: Burundi
Date: 9 July 2012 at 15:47
To: Spartan spartan30063@gmail.com

Hi John

Kindly have your friends call Godefroy on [REDACTED]. He supported us at INB so we owe him \$3000 but this is also in exchange for the draft TCB he shd give a draft that the minister has thx. Pse let me know how rwanda goes thx.

Amanda

B

Adell-Owino explains that the payment was because Kamwenubusa "supported us at the INB" - a reference to the FCTC's Intergovernmental Negotiating Body. The fifth session of the INB met in Geneva between 29 March and 4 April 2012 to agree a draft protocol on illicit trade of tobacco products. Kamwenubusa attended it.

The email says the payment was also for "the draft TCB... that the minister has". TCB stands for Tobacco Control Bill, so this is a bribe to undermine an anti-smoking law.

Eight days later, a contractor emails a BAT employee, saying: "The guy can accommodate any amendments before the president signs."

The following month, Kamwenubusa emailed a copy of the draft tobacco bill to a BAT email address.

From: kamwenubusa godefroid <[REDACTED]>
To: [REDACTED]@bat.com
Date: 17/08/2012 11:13 AM
Subject: Loi antitabac

Hello [REDACTED], see below Loi antitabac
For the appointment to Nairobi, can you send me ticket for flight?

Kamwenubusa denied taking \$3000 from BAT and says the emails are "not official". But in documents submitted to an employment tribunal, BAT described the payment as one of a series of "unlawful bribes".

Bribe to Rwanda

In May 2012, Adell-Owino requests US\$10,000 be paid to Bonaventure Nzeyimana, an official at Rwanda's Ministry of Health official and a former FCTC representative.

From: boda [REDACTED]@aol.co.uk
Subject: Consultants
Date: 16 May 2012 at 04:57
To: spartan30063@gmail.com

We have the following consultants due for payment (To discuss details later)
1. Bonaventure Nzeyimana - Rwanda - Cell no [REDACTED] - US 10,000
2. Chaibou Bedja Abdou - Comoros - Cell [REDACTED] - US - 3000

Thanks

Another email says the payment is in exchange for "draft regulations being prepared." Although Adell-Owino is using a pseudonym and an anonymous email address, she signs this email "Julie".

From: Boda [REDACTED] [REDACTED]@aol.co.uk
Subject: Rwanda consultancy
Date: 2 July 2012 at 08:06
To: spartan30063@gmail.com

Hi

Please pay Rwanda us\$ 20000. Kindly cross charge immediately. Also ask them on delivery to share with prepared.

Thanks.

Sent from my iPad, Julie

A contractor working for BAT reports back that Nzeyimana asked for US\$20,000 instead.

A bank transfer document shows the \$20,000 being paid.

Bonaventure Nzeyimana said the payment was nothing to do with tobacco or BAT.

But in documents submitted to an employment tribunal, BAT described the payment as one of a series of "unlawful bribes".

Bribe to Comoros Islands

One document shows that in May 2012, Adell-Owino requested a payment of \$3,000 be made to Chaibou Bedja Abdou, an FCTC representative for the Comoros Islands. The documents do not detail precisely what this payment was for, but BAT has described the payment as one of a series of "unlawful bribes".

Chaibou Bedja Abdou told Panorama: "I have never received any money from BAT and no-one can prove that I have signed any document in receipt of anything whatsoever."

Former BAT lobbyist Solomon Muyita was fired by BAT in Uganda in 2013 after he was accused of giving cash gifts to 50 people, including seven MPs. He says he was following company orders and is suing BAT for wrongful dismissal. The company says Muyita is lying.

In court in August 2015, Muyita alleged that David Bahati, one of the MPs behind Uganda's new tobacco control law, was being paid by BAT.

(vi) A series of minutes of engagements with Hon. David Bahati which demonstrate clearly that he was recruited by BAT Uganda to infiltrate, influence and spy on the cohort of anti-tobacco activists in Uganda in order to minimize legislative/political/regulatory risk for BAT. It is no surprise that a few months after the engagements Hon. Bahati became the seconder of the Tobacco Control Bill that was filed as a private member's bill. **(See Annex 21)**

Muyita's witness statement says that Bahati was "... recruited by BAT Uganda to infiltrate, influence and spy on the cohort of anti-tobacco activists."

This internal BAT report shows that in March 2011 BAT met with the MP. It suggests BAT was using him to gather intelligence on anti-smoking activists and influence the drafting of the Bill. It says the MP told BAT he supported "...having most of our views accommodated in the proposed tobacco law".

BAT says: "Our accusers in this programme left us in acrimonious circumstances and have a vendetta against us, clearly demonstrated by the false picture they present of how we do business."

BBC reports BAT tobacco giant paid bribes in east Africa

Daily Mail
November 30, 2015

<http://www.dailymail.co.uk/wires/afp/article-3340207/BBC-reports-BAT-tobacco-giant-paid-bribes-east-Africa.html>

British American Tobacco paid bribes to officials in east Africa, including two members of a convention created under the World Health Organization (WHO) to combat smoking, according to a BBC investigation airing on Monday.

The claims were immediately denied by the London-based tobacco giant and by the three officials named in the report, while the head of the convention's secretariat called for an investigation.

BBC's Panorama programme said its documentary was based on hundreds of confidential documents from a whistleblower -- a former BAT employee who was based in Kenya and worked for the company for 13 years.

"BAT's bribing people. And I'm facilitating it. The reality is if, if they have to break the rules, they will break the rules," a statement quoted him saying.

But the company rejected the accusation in a statement, saying: "We have made it clear to the BBC that their sources are unreliable and that we categorically deny the suggestion that this is how BAT operates around the world."

"Any proven transgression results in disciplinary action and may lead to dismissal. We will not tolerate corruption in our business, no matter where it takes place," it said.

The documents used by the programme were said to reveal that BAT paid bribes of \$3,000 (about 2,800 euros) each to two representatives of the WHO's Framework Convention on Tobacco Control (FCTC).

A third official who was formerly a representative to the FCTC allegedly received \$20,000.

Vera Da Costa e Silva, head of the FCTC secretariat, said BAT had been "irresponsible", according to the BBC statement.

"It's using bribery at the cost of people's lives, simple as that. I think BAT should be investigated by the government and punished accordingly," she said.

British companies can be prosecuted for bribery in other parts of the world under the Bribery Act.

An Exceptional Insight Into Commercial Bribery Practices At British American Tobacco

Forbes
December 1, 2015

<http://www.forbes.com/sites/jwebb/2015/12/01/an-exceptional-insight-into-commercial-bribery-practices-at-british-american-tobacco/>.

The BBC acquired hundreds of documents which purportedly show that British American Tobacco paid bribes to politicians, public officials and commercial rivals.

In responses, the BAT stated: "The truth is that we do not and will not tolerate corruption, no matter where it takes place." But the evidence, as presented, looks damning.

The tobacco producer is the UK's fifth largest company and generated \$6.7 billion in profits last year. This latest report questions whether it earned this revenue through corruption.

The investigation - and television program - covers a wide spread of shocking allegations including bribing government officials, UN staff as well as corrupting managers in rival organizations. The BBC was given a wealth of documents by Paul Hopkins, a former employee who spent 13 years with BAT in Africa where he ran security and - he claims - organized their bribery.

He has now blown the whistle on his former employer. "My job was to ensure that the competition never got any breathing space."

One of the most revealing aspects of the scandal was the extent to which the company engaged in private-to-private corruption. BAT would pay managers at Mastermind, a rival tobacco firm, to reap a competitive advantage, at their expense.

Hopkins possessed stacks of Mastermind's internal files, which he stated acquired through illicit payments in excess of \$300,000 paid over many years. The most valuable of these were minutes of marketing meetings, which were in Hopkins hands 12 or 14 hours after the event. The documents would have given BAT a unique insight into its competitor's plans and weaknesses.

"It's terrible for an organization that claims to be a civilized organization to be involved in activities of this nature," responded Wilfred Murungi, head of Mastermind, when faced with the allegations. "It's wrong, it's unjust and it's evil."

It is rare to see such blatant evidence of private-to-private corruption. Commercial bribery is normally hushed up to minimize embarrassment and copy-cat moves. As such, corruption is considered a governmental problem. But this shows that once a firm is corrupted, immorality can affect any relationship.

In its defense, BAT claimed that Hopkins was acting as a rogue agent. "Any company can fall victim to an employee acting inappropriately," it stated. This is a classic line for an embattled company facing the wrath of the press, but the whistleblower also had evidence that the management was well aware of the corruption.

Hopkins secretly recorded a conversation with his boss, who had full knowledge of the bribes. Even after informing him of his bribery, Hopkins was told that he had a job for life at BAT.

In another undercover operation, Hopkins taped a meeting with a BAT lawyer. After giving his assent to a list of bribes that were paid to officials, the attorney helpfully inquires: “Anything else that you think we’ll need to be paying for?”

Both Hopkins boss and the lawyer claim that they had nothing to do with any wrong-doing.

BAT’s defense moved on to claim that “Out accusers in this program left us in acrimonious circumstances and have a vendetta against us, clearly demonstrated by the false picture they present of how we do business.” Despite this, the found detailed documentation of widespread fraud.

It revealed once instance where BAT bribed a Ugandan parliamentarian to receive early access to a committee report on a commercial rival. The cost of this was \$5,000. The MP then allegedly requested another \$20,000 to amend the draft. The files suggested these bribes were subsequently paid by a third party.

In another claim, BBC found evidence that BAT bribed a Burundian politician working on a anti-smoking bill.

The future for BAT looks bleak. Hopkins is already presenting his evidence to the Serious Fraud Office in London. The UK Bribery Act has an unlimited penalty for any firm found guilty of bribery and responsible managers can face up to ten years in prison. The US also has strong enforcement under the Foreign Corrupt Practices Act (as we saw with the FIFA affair).

Where this case is exceptional compared to other corruption cases is the weight of evidence presented. Usually, bribes are undocumented and paper-trails eradicated, pushing proof out of reach to prosecutors. As such, companies can easily distance themselves from a rogue or ‘acrimonious’ agent. It is rare when bribery's incorporation into marketing strategy is exposed.

If proved correct, there will be potentially huge financial penalties in store for British American Tobacco.

British American Tobacco accused of bribing senior politicians in order to sabotage anti-smoking laws

The Independent
December 1, 2015

<http://www.independent.co.uk/news/uk/crime/british-american-tobacco-accused-of-bribing-senior-politicians-to-sabotage-anti-smoking-laws-a6754961.html>.

British American Tobacco, one of Britain’s biggest companies, has been accused of bribing senior politicians and civil servants in a bid to sabotage anti-smoking laws.

The allegations by whistleblowers from the company, and supported by court documents, relate to the company’s operations in several African countries.

Paul Hopkins, who served in the Irish Special Forces before working for BAT, claims he broke the law for the tobacco firm. “I was a commercial hitman,” he said in an interview broadcast on BBC One’s *Panorama*.

Commenting on the practice of bribery, Mr Hopkins, who worked for BAT in Kenya for 13 years, said: “It was explained to me in Africa that's the cost of doing business.”

Several individuals involved with the World Health Organisation's Framework Convention on Tobacco Control (FCTC) were allegedly targeted.

Under the UK Bribery Act, British companies can be prosecuted for bribery which takes place overseas. And anti-smoking campaigners are demanding the Serious Fraud Office (SFO) launch a criminal investigation into BAT.

"BAT is bribing people, and I'm facilitating it," claimed Mr Hopkins, who no longer works for the company.

Before he left, he recorded conversations with his boss, Gary Fagan, BAT's director for East and Central Africa, and a company lawyer Naushad Ramoly, discussing bribes. In an exchange in 2013, the lawyer said: "That's what we are going to be paying. Yeah, ok, fine. Anything else that you think we'll need to be paying for?" Mr Ramoly, who no longer works for BAT, denies involvement in illegal activities. And Mr Fagan denies giving permission for the payment of bribes.

Two FCTC representatives, Godefroid Kamwenubusa, from Burundi, and Chaibou Bedja Abdou, from the Comoros Islands, were both allegedly paid \$3,000 (£2,000), according to the Panorama investigation. And Bonaventure Nzeyimana, a former FCTC representative from Rwanda, was allegedly paid \$20,000. All three deny accepting bribes.

But in court documents, BAT describes the payments to the three as "unlawful bribes," according to the BBC.

Another allegedly bribed was Moses Watangula, former Minister of Trade, Kenya. The tobacco company paid for a business class return flight for his wife to London. He denies having had dealings with BAT.

And Dr Kasirivu Atwooki, a Ugandan MP who sat on a committee writing a report on a rival company, was allegedly given £20,000 to make amendments and give it to BAT in advance. He denies the allegations.

The documentary features another whistleblower. Solomon Muyita, a former lobbyist in Uganda, claims he was told to pay off dozens of people, and is suing the company for wrongful dismissal.

Court documents from his case claim that David Bahati, a Ugandan MP who proposed an anti-tobacco bill, had been recruited to spy on anti-smoking activists. The politician was in favour of "...having most of our views accommodated in the proposed tobacco law," according to a record of a meeting between BAT and the MP. Mr Bahati did not respond to requests for comment from the BBC.

Dr Vera da Costa e Silva, head of the WHO FCTC secretariat, accused BAT of "using bribery to profit at the cost of people's lives."

And Deborah Arnott, chief executive of Action on Smoking and Health, said: "Panorama's shocking evidence must be investigated without delay. If true, it is hard to imagine any more disgusting act for a British company than to pay decision makers in Africa to prevent legislation being passed to protect children and young people from a future of addiction, disease and premature death caused by smoking."

She added: "We will be writing to the Government to demand that a criminal investigation under the Bribery Act is launched at once."

In a statement, a BAT spokesperson said the allegations were from “former employees with a clear vendetta against us, whose employment was terminated in acrimonious circumstances and who present a completely false picture of the way BAT does business.” They added: “Any proven transgression results in disciplinary action and may lead to dismissal. We will not tolerate corruption in our business, no matter where it takes place.”

Mr Hopkins plans to meet with SFO investigators this week. A spokesperson for the SFO said: “We are aware of the general allegations but cannot comment further at this stage.”

British American Tobacco 'bribed' Kenyan politician Martha Karua to stop action against cigarette smuggling

The Independent
December 18, 2015

<http://www.independent.co.uk/news/uk/crime/british-american-tobacco-bribed-kenyan-politician-martha-karua-to-stop-action-against-cigarette-a6779236.html>

One of the UK’s biggest companies made secret political donations to a presidential candidate in Africa in a bid to block a rival firm winning a multimillion-pound contract.

British American Tobacco (BAT) paid £50,000 to Kenyan politician Martha Karua, a former Justice Minister, to prevent a rival company supplying Kenya with technology to combat cigarette smuggling.

British American Tobacco 'bribed officials to stop anti-smoking laws'

In return for the donations, paid in cash via a middle man, BAT obtained key confidential Kenyan Revenue Authority (KRA) documents outlining the £100m five-year contract for new technology designed to stamp out tobacco smuggling. They then had the contract deliberately delayed while they secretly lobbied to get their own system chosen.

The secret donations were falsely listed in BAT accounts as payments for management fees or as expenses incurred in anti-smuggling operations.

The serious allegations are contained in a dossier of BAT bribery and corruption claims passed to Britain’s Serious Fraud Office (SFO) by Paul Hopkins, a company whistleblower who worked in Africa for BAT for 13 years. Experts described Mr Hopkins as the most significant whistleblower from the tobacco industry since Jeffrey Wigand, the subject of the Oscar-nominated film *The Insider* starring Russell Crowe.

Mr Hopkins, responsible for stopping the illicit tobacco trade in East and Central Africa when BAT made him redundant, facilitated payments on BAT’s account to cripple anti-smoking laws in several East African countries, payments to officials to undermine the World Health Organisation’s efforts to reduce deaths from smoking, ran a corporate spying operation, and conducted “black ops” to put rival cigarette makers out of business.

It is understood that the key meeting – at which Mr Hopkins and BAT’s senior regional legal officer, Naushad Ramoly, negotiated the deal with a key aide in Ms Karua’s election team – was filmed. The

Independent has seen emails between Mr Hopkins and Ms Mukindia's campaign email address in which the KRA contract is openly discussed. The aide, Mary Mukindia, is now a member of the governing board of the Kenyan tax authority.

Ms Mukindia's legal representative confirmed she had attended the meeting but claims she did not know they were BAT employees. Ms Mukindia was "clear that in her then role that she could not have had useful access to Government officials nor have been able to obtain any contract specifications." She said she was not aware "of any donations" BAT may have made.

Mr Ramoly, who has since left BAT and now works in the Gulf, was unavailable for comment but denied bribery allegations to the BBC.

Lawyers for Ms Karua confirmed she met Mr Hopkins shortly after the donation was made. However, it is not clear she was aware of the circumstances in which the payment was made. She finished sixth in the poll behind President Uhuru Kenyatta in 2013.

BAT was eager to secure the contract to replace the paper stamp which appears on cigarette packets. The stamp shows the manufacturer has paid tax on the packet. The new scheme was aimed at making counterfeiting more difficult.

Emails show their strategy was to win the Kenya contract in order to influence similar contracts elsewhere.

BAT could face a corruption investigation in the UK under the 2010 Bribery Act. The tobacco firm could also face legal action in the US.

Tobacco industry expert Prof Anna Gilmore of the University of Bath said the revelations "reinforce the fact that this company simply cannot be trusted".

"The industry system would not help Kenya address cigarette smuggling. Instead it would place BAT in control of Kenya's effort to address an illegal trade. This is akin to putting the fox in charge of the hen house," she said.

Smuggling is big business and leads to significant tax losses for countries. The European Commission estimates revenue losses of €10bn (£7.2bn) a year.

A fierce global fight has erupted to provide the anti-counterfeit equipment. Sicpa, a Swiss-based firm, is pitted against a consortium of the top four tobacco companies (BAT, Imperial, Japan Tobacco and Philip Morris) which has its own technology.

A BAT spokesperson said the company does not "tolerate corruption in our business anywhere in the world" and its policy "is to take all appropriate action" on any allegations that are uncovered.

British American Tobacco paid union to disrupt production at one of its chief rivals, whistleblower claims

The Independent
December 19, 2015

<http://www.independent.co.uk/news/uk/crime/british-american-tobacco-paid-union-to-disrupt-production-at-one-of-its-chief-rivals-whistleblower-a6780011.html>.

British American Tobacco (BAT) recruited and paid for a union to disrupt production at one of its chief rivals, according to a whistleblower. The union plan was part of a strategy to drive Mastermind Tobacco, an African rival, out of business.

The clandestine plot is revealed in internal BAT documents disclosed by whistleblower Paul Hopkins, who worked for the tobacco giant in Africa for 13 years. The strategy also involved bribing Kenyan tax officials to disclose its rival's confidential tax dealings, paying company officials to disclose vital corporate secrets, and offering cash to port officials to "lose" or impound its rival's export shipments and supplies of raw materials.

The damaging revelations will further embarrass Britain's fifth biggest company, which generated profits of more than £4bn last year. In Kenya there are growing demands for an official investigation into Mr Hopkins' revelations.

The union plot, codenamed Operation Snake, was an attempt to disrupt Mastermind's factory production, the documents state. The confidential BAT report said Mastermind had operated without a registered union and claimed any attempt to register one had been "met with ruthless resistance from senior management".

The result was "iron-fist management" and employees with "no formal channel of airing their grievances", the report said. "Victimisation of employees is the order of the day," it claimed. Previous attempts to unionise "lacked co-ordinated effort", it stated.

Under the scheme, BAT recruited "vocal employees from various departments such as marketing, leaf [tobacco], transport and factory" to be union reps. They were approached with "a handsome offer", the report said.

BAT budgeted 4.5 million Kenyan shillings (£30,000) for five union reps, it added. As the union reps might face violent opposition, the money "will be able to cater for risk including terminal benefits just in case", it said.

The person recruited to organise the union was told the money was coming from an anti-tobacco campaign group. BAT also paid to officially register Mastermind workers with the Kenyan Commercial Food and Allied Workers Union. The company funded the union's legal fees when it became involved in dispute with the management. After two years, BAT withdrew as the union funded itself from membership fees. Once legally recognised, the union was encouraged to start a series of disputes to disrupt Mastermind's production.

According to Mr Hopkins, BAT came up with the union scheme after another campaign ran into difficulties. BAT had suspected Mastermind was not paying its taxes. Mr Hopkins, a former Irish special forces soldier, was told by BAT to "facilitate" bribes to Kenyan Revenue Authority (KRA) officials to obtain its rivals' confidential tax details.

For more than five years, Mr Hopkins accumulated a detailed dossier of KRA tax demands and other legal documents which allegedly revealed that Mastermind regularly failed to pay its tax bill. The KRA documents and correspondence showed the Kenyan tax authority was demanding billions in unpaid taxes from Mastermind but collecting only a fraction of it. Mr Hopkins said senior BAT officials instructed him to leak some of the documents to Kenyan newspapers and parliamentarians to embarrass the company as well as force the KRA to be more aggressive in its tax collecting.

According to documents seen by *The Independent on Sunday*, the strategy was only partially successful and Mastermind paid millions more in taxes. However, when the KRA wrote to Mastermind's bankers threatening to freeze accounts until the outstanding amounts were paid, officials in the office of former Kenyan Prime Minister Raila Odinga stepped in and ordered them to suspend the demands.

Mr Hopkins also facilitated payments on BAT's account to officials and politicians to cripple anti-smoking laws in several East African countries as well as making payments to undermine the World Health Organisation's efforts to reduce deaths from smoking.

He also revealed how BAT made a secret campaign donation to a Presidential candidate, Martha Karua, in a bid to block a rival firm winning a multi-million pound contract to minimise cigarette smuggling.

Ms Karua has said she was unaware BAT had made a donation to her campaign. She believed Mr Hopkins had made a personal donation. She said she would have not accepted the donation if she had known it had come from BAT. “If any person within my campaign team, or beyond, purported to accept the donation in exchange for influence of government procurement was acting beyond the scope of their authority, without my knowledge and in their individual capacity, not for me or my campaign. I believe I lost the Presidential campaign in large part because of my unwavering commitment to rule of law and my position against corruption and impunity,” she said.

A BAT spokesman said: “All BAT companies are required to operate in line with the group’s standards of business conduct and are obliged to ensure that all 57,000 employees understand them and abide by them.”

For more on tobacco industry tactics and its efforts to influence public health policy and stall tobacco control laws read the work of the [University of Bath's Tobacco Research Control Group](#)

BAT gives law firm 'open door' to probe corruption allegations

The Telegraph
February 25, 2016

<http://www.telegraph.co.uk/business/2016/02/25/bat-gives-law-firm-open-door-to-probe-corruption-allegations/>

The FTSE 100 tobacco giant, which has been hit by bribery allegations in east Africa, says it has given lawyers from a top law firm “an open door” to investigate the claims.

Nicandro Durante, the boss of British American Tobacco, said the maker of Benson & Hedges and Lucky Strike cigarettes had tasked Linklaters with investigating corruption allegations that emerged last November.

The BBC’s Panorama programme reported claims from a whistleblower, an ex-BAT employee, who said the company had paid bribes to African officials. American politicians have since called for the company to be investigated by the US Department for Justice.

Mr Durante said that the tobacco company took the allegations “extremely seriously” and that lawyers from Linklaters “have access to everything in BAT”.

He said: “They can travel to East Africa, where the allegations started – they have done so already. “They have an open door here.”

The company is keeping the Serious Fraud Office abreast of developments, Mr Durante said, adding that Linklaters has not yet reported any initial findings.

Tobacco companies face a fall in smoking rates

The allegations hit BAT towards the end of what Mr Durante described as an “excellent year” for the company.

Stripping out the effects of volatile currencies, revenues increased 5.4pc to a better-than-expected £13.1bn in 2015, with adjusted profits from operations up 4pc to almost £5bn at constant foreign exchange rates, BAT reported today. Price hikes drove the profit rise, and BAT shares rose 0.4pc following the results.

At a statutory level, however, sharp movements in emerging market currencies hit BAT’s sales, with revenues down 6.2pc and adjusted profits falling by 7.6pc. Foreign exchange will continue to drag on BAT this year and are forecast to cut its profits by 8pc.

Like all tobacco companies, BAT is faced with a gradual decline in smoking rates as more consumers stub out the habit because of the health risks. Excluding the uplift BAT received from its purchase last year of Croatian firm TDR, cigarette volumes were down 0.8pc, although that fall was better than the 2.3pc slump in the wider industry.

BAT has recently been embroiled in a spat with its major shareholders over a new pay package for Mr Durante, but BAT executives would not comment on the dispute or whether the firm would make concessions to investors. The firm must also contend with plans to introduce plain packaging in the UK, which the company, along with three other tobacco businesses, is contesting in the High Court. A ruling is due in months.

There has been mounting stock market speculation that BAT will buy one of its main rivals, such as Imperial Tobacco, in a blockbuster deal. However, Mr Durante said the company was more likely to undertake smaller “bolt-on acquisitions than big consolidation” this year.

British American Tobacco accused of corporate espionage in South Africa

The Independent
February 27, 2016

<http://www.independent.co.uk/news/world/africa/british-american-tobacco-accused-of-corporate-espionage-in-south-africa-a6900731.html>.

Lawyers investigating bribery and corruption allegations against one of the world’s leading tobacco firms have been urged to expand their investigation after fresh international accusations emerged.

British American Tobacco, BAT, has been accused of corporate espionage against rival cigarette makers in South Africa.

According to court documents seen by *The Independent on Sunday*, two former police officers who went to work for private corporate investigation companies paid cash to South African law enforcement officials to disrupt BAT’s competitors’ business operations.

The accusations have been made in court documents filed by a body representing small local tobacco producers in a complaint to the South African government’s Competition Commission. The affidavits say BAT officials instructed the men to disrupt rivals’ trade by falsely suggesting they were marketing

and selling cigarettes unlawfully. The aim, often successful, was to get rivals' stock impounded and discourage wholesalers from dealing with rival firms.

The South African claims follow bribery allegations, first revealed by the *IoS* and the BBC, in a dossier of claims passed to the UK's Serious Fraud Office by Paul Hopkins, a BAT whistleblower who worked in Africa for BAT for 13 years before being made redundant.

Mr Hopkins – responsible for stopping the illicit tobacco trade in East and Central Africa – said he facilitated payments on BAT's account to cripple anti-smoking laws in several East African countries, payments to officials to undermine efforts by the World Health Organisation to reduce deaths from smoking, ran a corporate spying operation, and conducted “black ops” to put rivals out of business.

After his claims, members of the US Congress called for a Department of Justice investigation.

Last week Nicandro Durante, head of BAT, announced that the lawyers Linklaters had been appointed by the firm to investigate the corruption allegations in East Africa. BAT's critics said last night that this investigation should be extended to cover the fresh South African claims as well.

BAT insists the company does not “tolerate corruption in our business anywhere in the world” and says its policy “is to take all appropriate action” on any allegation.

Revealed: BAT corruption scandal in Africa leads to London HQ

Spinwatch.org
April 8, 2016

<http://www.spinwatch.org/index.php/issues/spying/item/5854-revealed-bat-corruption-scandal-in-africa-leads-to-london-hq>.

THE BRIBERY and corporate espionage scandal inside British American Tobacco's African operation is moving closer to the company's London headquarters as new whistleblowers have emerged with further allegations of corruption and dirty tricks. Exclusive by Michael Gillard.

The Serious Fraud Office (SFO) is already examining a dossier of internal documents recently passed to its officials in Kenya by Paul Hopkins, a former BAT security manager.

Hopkins has admitted bribing and spying for BAT across east Africa over 13 years until he was made redundant in March 2014. The corruption of politicians and government officials from at least five African nations was part of a BAT dirty tricks campaign to undermine an international public health treaty, he claims.

BAT, which makes premium brands Dunhill, Rothmans and Lucky Strike, admits some bribery took place in East Africa but maintains that Globe House, its London headquarters, was unaware and does not condone illegal behaviour.

However, doubt has been cast on this assertion after Hopkins also passed to the SFO his secretly recorded conversations with senior BAT figures. The legal and intelligence departments at Globe House were aware of his work and the monthly retainers paid to security firms mainly run by former SAS and British military intelligence veterans of the conflicts in Northern Ireland and Iraq, he claims.

These firms, said Hopkins, acted as ‘cut outs’ to distance BAT and were used ‘to pay bribes, move cash across African borders, protect smugglers of BAT cigarettes and conduct black ops on rivals’.

Now, former insiders working with BAT in South Africa have approached the SFO with detailed affidavits and documents, which help corroborate Hopkins and cast further doubt on the company’s insistence that London is not implicated in the unfolding scandal.

The new whistleblowers – a security adviser and a lawyer – describe how through a system of covert cash payments BAT’s intelligence unit in London financed a network of African spies, including local police officers, to disrupt commercial rivals.

The picture emerging is one of a tobacco company with a revolving door to senior British military intelligence figures encouraged to nurture close, perhaps too close, relationships with local law enforcement agencies.

BAT claim its relationship with African police, customs and intelligence officers is part of a global effort to combat illicit activity, including smuggling of genuine and counterfeit cigarettes.

However, the evidence emerging from whistleblowers inside BAT’s anti-illicit trading department suggests the relationship with local law enforcement has been corrupted. Hopkins and the South African whistleblowers say BAT is using the relationship as a ‘cover’ for black ops against competitors and to ensure only its smuggled cigarettes reach black markets.

The 'Devil's Fixer'

Until very recently, Hopkins, a former Irish Army special forces operative, was holed up in his gated villa in Nairobi, where he spoke to *Spinwatch* about his life as an economic hit man.

In a role reminiscent of the character Winston Wolf from the film *Pulp Fiction*, 52-year-old Hopkins, who describes himself as ‘the Devil’s Fixer’, said he also cleaned up sex and drug scandals involving randy senior BAT executives visiting Africa.

After spilling the beans to the SFO and Kenya’s ethics and anti-corruption commission (EACC), Hopkins feared being killed or fitted up by those he is exposing. He therefore seldom ventured outside his compound and had taken to sleeping with enough weapons to kit out a mercenary army.

Michael Mubea, EACC deputy chief executive said his joint investigation with the SFO is looking at allegations of ‘bribery and tax evasion’ by BAT but declined to confirm whether Hopkins had been given protected witness status.

The Irishman is seeking immunity from prosecution in return for giving evidence against BAT in the UK or US, where congressmen have called for the Department of Justice (DoJ) to also launch a corruption probe. Whistleblowers in the US receive a percentage of any fine imposed following a successful prosecution under the Foreign Corrupt Practices Act.

The SFO is understood to be focusing on alleged breaches of the UK Bribery Act, which allows for British companies to be prosecuted here for corruption overseas. However, the DoJ has in the past proved itself more determined and less prone to political interference than the SFO, whose strike rate when it comes to putting big business in the dock and securing convictions is a poor one.

The SFO has yet to launch a formal investigation and said it is still in the 'intelligence gathering' phase. Its investigators working with the National Crime Agency have been interviewing Hopkins since last December and recently took control of his large cache of internal BAT documents.

They are believed to be focusing on a series of alleged bribes for inside information, including to leading Ugandan and Kenyan politicians, one of whom is said to have taken money and a car to launch a tax evasion probe into a BAT rival.

Hopkins has explained how at the behest of BAT's East Africa corporate and regulatory affairs (CORA) department, between April and July 2012 he arranged the bribery of officials in Rwanda, Burundi and the Comoros Islands to water down implementation of the World Health Organisation's 2005 Framework Convention on Tobacco Control (FCTC).

Internal documents show that Hopkins used a Nairobi-based company as a conduit for making six cash payments totalling £20,000 to the government officials.

One of the men who delivered the cash and asked to remain anonymous told *Spinwatch* that at all times he was acting on BAT's instructions. 'My conscience is very clear. Even if I went to court what wrong did I do? It was a company that instructed and there is very clear documentation,' he said.

The FCTC seeks to control the £500 billion tobacco industry but BAT, who produced 663 billion cigarettes last year, has called the legally binding global agreement an 'unprecedented challenge' to growth in core markets such as Africa, where it is the dominant force.

Details of its attempt to covertly undermine the treaty through paying bribes to those charged with implementing it only emerged when Hopkins brought a claim for unfair dismissal against BAT in January 2015.

The tobacco giant admitted in its legal response to the claim that the six CORA payments were 'unlawful bribes' but continues to maintain it was an isolated instruction from Julie Odellowino, a Kenyan manager and lawyer, who subsequently left the company.

Odellowino, however, appears unwilling to carry the can. 'I have nothing to hide and I have a clear conscience ... A better picture of the truth if not the whole picture' will emerge from BAT's internal inquiry, she said in response to a written request for an interview.

Chief executive, Nicandro Durante, who was responsible for Africa from 2006-7, has asked external lawyers Linklaters to investigate the allegations about BAT's African operation.

The top law firm is the third after Kaplan & Stratton and Herbert Smith Freehills to examine the bribery allegations since Hopkins first raised them internally in July 2012. None of the previous reports have been made public.

Durante, who recently angered investors over his attempt to increase his annual pay packet by 20% to £10 million, said Linklaters had an 'open door' to BAT's files.

However, critics suspect that the tobacco giant, who the SFO said has supplied documents to its inquiry, is planning to make controlled admissions to head off any raid on Globe house and draw a line in the sand.

The scandal is also an embarrassment to Ken Clarke, the Tory grandee who from 1998 to 2007 was the deputy chairman of BAT and responsible for oversight of its ethical corporate conduct. Hopkins body-

guarded Clarke during a visit to BAT's east African headquarters in Nairobi, Kenya.

'Have you told anyone about our payments?'

BAT has confirmed that Linklaters will also look into the new allegations that have emerged involving its Southern African operation.

So too are the SFO. The UK agency widened its probe after receiving affidavits from Carnilinx, a rival tobacco manufacturer based in Johannesburg.

Carnilinx is suing BAT for anti-competitive practice and is relying on two key witnesses. The first, Daniel van der Westhuizen, worked for Forensic Security Services (FSS), a South African firm who BAT confirms it retained.

According to his December 2015 signed affidavit, FSS ran 171 paid informants and a trusted group of 'corrupt' law enforcement officers to, among other things, fit up and 'eliminate' Carnilinx through 'a systematic campaign of harassment and disruption'.

Westhuizen, a former South African police officer, said he was asked to devise an operation, codenamed Knysna, to disrupt Carnilinx. He named three London-based BAT intelligence managers - Ewan Duncan, Colin Denyer and Allan Evans - who he said oversaw the operation in 2014.

Westhuizen attached to his 70-page affidavit a list of spies and examples of individual 'special consultancy fee' receipts with the signatures of Duncan and Evans purportedly signing off the monthly cash payments.

In a second development, Carnilinx said that Belinda Walter, a South African lawyer, has admitted to being a paid informant for the state security agency and BAT while acting as their legal representative.

Walter, 41, named her handlers as Duncan, Denyer and Evans, three former senior British military intelligence officers, in an unsigned affidavit provided by Carnilinx to *Spinwatch*.

In the long document, Walter describes how she passed on legally privileged information to the three BAT spymasters during clandestine meetings in London and Johannesburg in 2013 for which she was paid £36,000 using a Travelex card that BAT loaded every month with cash.

Attached to Walter's affidavit are copies of the card and the transcript of a January 2014 call purportedly with Evans in which he advises her how to handle an inquiry by local tax investigators into these and other informant payments. 'Have you told anyone about our payments to you, intimated that eventually we started paying you for, you know, information?', he is recorded asking.

Two months later Duncan wrote to Walter. She was threatening to go to the media about her work for BAT. In his letter, Duncan defended BAT's work as lawful and said it had been 'guided' by the company's legal department.

Duncan and Denyer no longer work for BAT and declined to comment. Evans referred inquiries to BAT's press office. A spokesperson said: 'A full investigation is being conducted with the assistance of an external law firm. If we were to find that illegal activity had occurred, we would, of course, take appropriate action.'

However, Carnilinx, who said it had recently met with Linklaters, dismissed BAT's inquiry as a 'whitewash'. SFO investigators, it said, will shortly be taking witness statements from Carnilinx directors. The SFO declined to comment.

A victory for public health

BAT received another blow on March 24 when the Kenyan high court rejected its legal challenge to block implementation of the 2014 FCTC regulations.

It is not clear if the scandal over BAT's attempt to corruptly undermine implementation of the public health treaty and corruption allegations against several senior Kenyan politicians had any impact on the high court's decision making.

However, anti-tobacco campaigners see the ruling as an important victory in the eleven-year struggle to implement the FCTC treaty against powerful corporate interests in Africa.

'The court's decision is a resounding victory for public health and ... sends a strong message that tobacco industry interference in laws to improve [it] will not be tolerated,' said US-based Campaign for Tobacco Free Kids.

The statement added: '[The ruling] allows the Kenyan government to move forward with implementing a law that will protect millions of citizens from the devastating consequences of tobacco use ... Among other measures, Kenya's new regulations will require picture based health warnings, strengthen protection against second-hand smoke and require tobacco companies to pay an annual fee into a designated tobacco control fund.'

BAT is appealing the decision and said it would defend the claim brought by Carnilinx.

The man who blew the whistle on BAT

Sunday Mail
September 4, 2016

<http://www.sundaymail.co.zw/the-man-who-blew-the-whistle-on-bat/>

"There is a mountain of evidence for everything I said in there, and that's stored with numerous people. Plus others are coming forward with the same story."

THE man who blew the whistle on the alleged racket of bribes relating to British American Tobacco (BAT) says he and his wife still get death threats.

"Often, my wife will be in a shopping centre and guys who've clearly followed her will tell her they're going to come get us," says Francois van der Westhuizen in an interview with the Financial Mail. "It doesn't bother me; I have had plenty of threats in my life."

Van der Westhuizen worked in the murder and robbery section of the SA Police in 1987 during the apartheid era, before being hired as an investigator at the Road Accident Fund in 1999, where he bust a R92 million (US\$6,3 million) scam involving crooked doctors, lawyers and police.

Tall, with a moustache and a brusque, no-nonsense demeanour, he still has the hardened air of a cop.

In 2012 he was hired by Forensic Security Services (FSS), a company that works as the contracted security arm of BAT for an estimated R150million (US\$10,3 million per year).

“We talk about state capture, but BAT has done state capture high-up — when it comes to Sars (SA Revenue Service), the police, and state intelligence,” he alleges.

He says that once he joined FSS, he was asked to work full-time on its programme to root out illicit tobacco.

“Our work mostly revolved around conducting surveillance on its (BAT’s) rivals, like Carnilinx and Gold Leaf, and then reporting back. But soon it escalated into far more serious stuff, like paying off people.”

This “serious stuff” is detailed in a 70-page affidavit he signed, which was then used by Carnilinx, a “value-branded” cigarette manufacturer owned by Adriano Mazzotti, the charismatic benefactor of Julius Malema.

Carnilinx took BAT and a lawyer, Belinda Walter, to court to ask the court to stop it “interfering with its trade”, using this testimony.

The judge dismissed the original application on procedural grounds, and a new case is likely to be lodged soon for a full hearing.

It’s a reputational nightmare for BAT, the second-largest company listed on the JSE, with a market value of R1,81 trillion (US\$125 billion).

Locally, it’s a Goliath, controlling 85 percent of the tobacco market through brands including Rothmans, Dunhill, Lucky Strike and Peter Stuyvesant.

A stash of explosive documents was released in recent days by someone using the pseudonym SA Tobacco Espionage, which casts new light on alleged efforts by tobacco firms to compromise the SA Revenue Service (Sars).

This is important, considering that the claims of a “rogue unit” at Sars, which are being used to target finance minister Pravin Gordhan, were first made by tobacco interests.

Thanks to Van der Westhuizen, however, the agendas are becoming clearer.

“I worked for FSS, but BAT was aware of what was happening every step of the way,” he says. “They even sent me for training with their staff from the UK, so they can’t claim they didn’t know.”

In his affidavit, Van der Westhuizen says he soon discovered he had really been hired “to disrupt the business of BAT’s competitors” using a network of corrupted police and Sars officials.

He claims BAT had an “unholy alliance” with law enforcement agents, and also political strings it could pull with “senior members of the SA law enforcement circles”.

“Each law enforcement agent, whether from Sars, the Johannesburg Metro Police Department (JMPD) or SAPS, would be on BAT’s informal payroll, receiving a minimum of R2 000 each per month, up to R5 000 each per month. Effectively this was a bribe,” he claims.

These officials would allegedly help break into various properties, illegally intercept phone calls, plant cameras in offices and homes, and pay police to conduct raids to gather documents.

Van der Westhuizen says he was the “project manager”, under whom a network of “handlers” would liaise with 171 “agents” who were paid “directly by BAT through FSS as a conduit”.

“The payments were made in cash so that there was no direct link to BAT.”

In all, he says, these spies were paid more than R150 million by BAT. He says FSS was given access to the JMPD’s network of 240 cameras throughout Johannesburg, which they used to spy on Carnilinx’s offices.

“The law enforcement agents who, as I have shown earlier, get paid by BAT will do whatever they are asked to do, no matter how illegal or unjust,” he claims.

FSS’s Stephen Botha has rejected Van der Westhuizen’s claims as “factually inaccurate”, saying they contain “loose allegations, matters of hearsay and extracts of alleged FSS documentation that has been presented in a distorted manner”.

And when it comes to the security cameras, Botha says: “I am not aware of any camera being commandeered as you have stated.”

Botha says it seems that Van der Westhuizen’s only goal is to “discredit FSS and BAT”.

This week, BAT ignored a list of questions from the Financial Mail but sent through a statement. In it, Joe Heshu, BAT’s head of regulatory engagement, says: “Under no circumstances will we condone illegal behaviour . . . we are conducting an investigation with the assistance of an external law firm, and if we were to find that illegal activity has occurred, we would, of course, take appropriate action.”

Richard Burrows, BAT’s chairman, spoke of such a probe in BAT’s annual report relating to “historic misconduct in Africa”, which it was made aware of in late 2015.

BAT SA’s head of anti-illicit activities, Martin Potgieter, has already submitted an answering affidavit to Carnilinx’s accusations in which he says it hired FSS simply to “gather information and pass it on to the law enforcement agencies”.

Potgieter said BAT only co-operates with the law enforcement agencies in order to defeat the illicit cigarette trade in SA, which now accounts for 31 percent of the total SA market, leading to a R3 billion-R5 billion annual tax loss.

People close to BAT say that rivals are good at making allegations which cannot be proven, simply to distract attention from the illicit tobacco business.

“There’s a bigger hand at play and the bad guys are playing it well,” said one.

Still, this isn’t the first time BAT has been accused of spying on rivals. In 2014, Walter said she had been paid by BAT while employed as a lawyer for its rivals, including Carnilinx, and chairing the Fair-trade Independent Tobacco Association, Fita.

Walter wasn’t the most credible witness.

Not only was she a triple agent, working for BAT, the State Security Agency (SSA) and Fita at one stage, but she also flip-flopped on her story numerous times.

However, it was ultimately Walter's ill-fated romantic relationship with Sars's Johann van Loggerenberg that triggered the various inquiries into Sars and the claims of a "rogue unit".

Walter initially claimed Van Loggerenberg had confided confidential taxpayer details, before recanting this testimony, only to repeat the accusation later.

But when it comes to BAT, at least, there are tape recordings of her speaking to BAT executives, who appear to be panicked at the prospect of Sars finding out about the payments made to its "agents".

In the recording, a BAT executive implores Walter not to "sell us out" and says "we will never reveal who we pay because of the nature of the business and the danger to the individuals . . . I am not going to reveal that because it is a life-threatening issue".

Documents confirm Walter was paid £30 500 (about R570 000) by BAT.

In a letter to Walter on March 6 2014, BAT's Ewan Duncan says the company's relationship with Walter was "legal and proper throughout".

"We established a mutually agreeable relationship in order to provide information on criminal activity to SA law enforcement and national intelligence agencies," he said.

While details of Walter's relationship with BAT are believed to have been scrutinised by Britain's Serious Fraud Office (SFO), it is Van der Westhuizen's claims which could prove more damaging, if he can produce all the evidence he says he has.

It comes three months after another whistleblower, Paul Hopkins, gave a dossier to the SFO in which he says he bribed officials and spied in numerous East African countries for 13 years for BAT.

Hopkins says BAT paid security firms in these countries who acted as "cut outs" to allegedly distance the tobacco giant from the dirty business of paying bribes, conducting black-ops and moving cash across borders.

It is eerily similar to the arrangement BAT is alleged to have with FSS. Van der Westhuizen told this magazine: "You can't tell me it's right that one company, no matter how much money they have, can do things like hijack the police's security cameras so they can keep an eye on competitors."

Van der Westhuizen's detractors say his affidavit is simply the work of a disgruntled ex-employee seeking to assist another role-player, Carnilinx.

But he says he has never worked for Mazzotti's company, which benefits most from his revelations. "There is a mountain of evidence for everything I said in there, and that's stored with numerous people. Plus others are coming forward with the same story," he says.

So why did he blow the whistle?

"Well, I began to realise that what was happening was highly illegal. They told us it was all legitimate, and that it was sanctioned by the authorities. But I then realised this wasn't so, and if it came out what we were doing, none of us would be protected," he says.

Either way, BAT will soon have to stand up in court and explain itself. Mazzotti's court application was initially struck off the roll, and has now been re-enrolled by summons in which people will have to testify. And Van der Westhuizen will have to be grilled on his claims.

"I'm fully prepared to do that. I want that," he says.

Exclusive: BAT drops Linklaters from corruption probe in favour of Slaughter and May

The Lawyer
12/8/2016

<https://www.thelawyer.com/exclusive-bat-drops-linklaters-corruption-probe-favour-slaughter-may/>

Linklaters has been dropped by British American Tobacco (BAT) on its investigation into allegations of bribery and corruption, with the FTSE 100 giant instead turning to Slaughter and May.

Linklaters partners Christa Band, Michael Bennett and Richard Godden were instructed by BAT on the internal probe in February. The instruction followed claims the tobacco company illegally paid politicians and civil servants in East Africa.

The Lawyer has learned BAT has now handed the mandate to Slaughter and May, with partners Jonathan Cotton, Richard Swallow and Damian Taylor advising.

A spokesperson for BAT said it had been "working for some time with both firms" and had "now decided as a matter of efficiency to consolidate the work into one firm, Slaughter and May". The spokesperson added, "we continue to have a strong working relationship with Linklaters in a number of areas".

Allegations about BAT's activities in parts of Africa first surfaced in a BBC Panorama documentary in 2014. Further claims were levied in the US at the start of this year that BAT paid officials to protect its corporate reputation and to cover up scandals, including environmental damage caused by a warehouse fire in Uganda. There are also allegations that the company engaged in corporate espionage in Kenya.

When news of the corruption claims broke, BAT said in a statement it takes "these allegations extremely seriously" and that it was "aware of and had looked into some of the allegations in the past".

It added that given "the number and nature of the allegations", it took the decision to appoint an external law firm to conduct a full investigation.

BAT general counsel Jerome Abelman reviewed the business's roster of external firms last year, shortly after stepping up to the top job. BAT traditionally turns to Herbert Smith Freehills (HSF), Baker & McKenzie, Hogan Lovells, Shoosmiths, and on occasion, Linklaters and Addleshaw Goddard. The tobacco giant also turns to Lawyers on Demand for specialised contract work during restructuring projects.

Abelman was elevated to group general counsel in January 2015 from his previous position as BAT's legal head of corporate and commercial. Before taking on the role he led a wholesale review of the legal

group, which saw it merge its legal and corporate affairs functions.

BAT recently revealed it would seek to appeal a ruling handed down in the High Court in May that rejected its attempt to overturn UK legislation introducing plain packaging for tobacco products.

BAT instructed HSF on the judicial review, which it ran alongside three other major tobacco companies. The challenge was dismissed on 19 May in a 400-page ruling by Mr Justice Green.

Appendix II

Judicial Findings of Fraudulent Misconduct Carried out by British American Tobacco and its Subsidiaries

United States

British American Tobacco (BAT) has been a defendant in two landmark lawsuits in the United States. These lawsuits resulted in millions of pages of BAT's internal corporate documents being released to the public; most are now accessible on the Internet. These documents and findings by a U.S. Federal Court tell the story of BAT's extensive efforts over half of a century to deceive the American public about the harms of its product while, at the same time, it sought to create a new generation of tobacco users by targeting children and young people.

The first case was brought by the State of Minnesota and a private health insurer alleging that BAT, and other tobacco companies, sold a legal product illegally by violating Minnesota's consumer protection laws. This case, which went to trial, resulted in a US\$6.6 billion settlement in 1998 to be paid over 25 years by seven tobacco companies – including BAT.¹ During the course of the multi-year litigation, the Court found that BAT (among other defendants) “committed numerous abuses of [attorney-client] privilege and certain violations of Court Orders and the Rules of Court.”²

The second case was brought by the United States government in 1999. After extensive and complex litigation, in 2006 a U.S. Court found that several major tobacco companies – including BAT – engaged in a pattern of racketeering activity to defraud the American public about the health effects of their products in violation of 18 U.S.C. § 1962(c) and (d). *The Court also found that the tobacco defendants were likely to continue that fraud into the future.* Although BAT is no longer under the Court's Final Order,³ the findings of liability by the Court against BAT's decades-long fraud and deceit still stand.⁴

The Court's extensive findings are contained within a nearly 1,700-page opinion. In the words of the judge presiding over the case, the Court's lengthy findings are necessary because,

“the evidentiary picture must be viewed in its totality in order to fully appreciate how massive the case is against the Defendants, how irresponsible their actions have been, and how heedless they have been of the public welfare and the suffering caused by the cigarettes they sell.”⁵

Relying on acts carried out by BAT, and the other tobacco companies, the Court found in 2006 that the multiple tobacco defendants:

Coordinated their efforts to create a united front against smoking and health issues for the purpose of furthering their collective economic interests

- “There is overwhelming evidence demonstrating Defendants’ recognition that their economic interests would best be served by pursuing a united front on smoking and health issues and by a global coordination of their activities to protect and enhance their market positions in their respective countries. To further their shared objectives, the Defendants, over an extended period of time, created, controlled, used, or participated in an astonishing array of international entities...”⁶
- The Court relied in part on notes prepared by BAT’s counsel during a 1983 inter-industry meeting, which stated, “[I]n BAT’s view, the biggest single threat facing the industry, in both this country and elsewhere, is the issue of smoking and health. Because of this, we believe that the industry must be united in its universal stand on this issue and that no member company should seek to exploit the smoking and health issue for its own commercial advantage. . . .”⁷

Falsely denied that they marketed to youth

- “The evidence is clear and convincing -- and beyond any reasonable doubt -- that Defendants have marketed to young people twenty-one and under while consistently, publicly, and falsely, denying they do so.”⁸
- “BATCo and Brown & Williamson have both made numerous false and misleading statements about youth smoking and marketing.”⁹

Fraudulently denied that smoking is addictive

- “For approximately forty years, Defendants publicly, vehemently, and repeatedly denied the addictiveness of smoking and nicotine's central role in smoking. They made these denials out of fear that public acknowledgment of what was so well documented and widely accepted internally within their corporate offices and scientific laboratories could result in governmental . . . regulation . . . loss of social acceptability of smoking, and the ultimate loss of corporate profits.”¹⁰
- “The evidence . . . is simply overwhelming that Defendants knew that smoking is addictive and knew that nicotine is the agent creating and sustaining that addiction...”¹¹
- “[E]ven though Defendants have known internally about addiction for decades, they have endeavored to keep the extensive research and data they had accumulated out of the

public domain and out of the hands of the public health community by denying that such data existed, by refusing to disclose it, and by shutting down or censoring laboratories and research projects which were investigating the mechanisms of nicotine.”¹²

- “BATCo's sophisticated research from the early 1960s demonstrated that ‘smokers are nicotine addicts.’¹³ ...” “[A]s early as 1962, BAT had reached the internal corporate conclusion that smoking was an addiction produced by nicotine, and met the requisite criteria in terms of cravings, compulsive use, physiological effects on the body, tolerance, and withdrawal.”¹⁴
- “In ... [a] 1992 marketing document...BATCo's Product Developer, Colin Greig, described cigarettes as a “‘drug’ administration system for public use” with “very very significant advantages over other drugs.” Because “nicotine is the lowest dose ‘common’ drug available,” it compared favorably to other “slower” drugs such as marijuana, amphetamines, and alcohol.” Greig wrote that, “Within 10 seconds of starting to smoke, nicotine is available in the brain.”¹⁵ ... Greig described tobacco as “a fast, highly pharmacologically effective and cheap ‘drug’” contained within a “relatively cheap and efficient delivery system.” At the close of his memorandum, Greig observed that because cigarettes leave smokers unsatisfied and always craving more, “all we [BATCo] would want then is a larger bag to carry the money to the bank.””¹⁶
- “In its January 2, 1996 supplemental submission to the FDA in opposition to the FDA's assertion of jurisdiction over tobacco products, B&W (speaking for itself and BATCo) denied addiction and the prominence of nicotine in the smoking habit. The supplemental comments, signed by B&W's Director of Scientific and Regulatory Affairs Scott Appleton, stated, “[U]nder scientifically verifiable criteria, neither cigarette smoking nor the nicotine in smoke is addictive.””¹⁷
- “In comments published in the Wall Street Journal on October 31, 1996, the CEO of BAT Industries and Director of BATCo, Martin Broughton, denied any concealment of research linking smoking and addiction, saying that, ‘We have no internal research which proves that . . . smoking is addictive.’ This statement, made to analysts, investors, and journalists, was confirmed in a BATCo “Company Notice” to employees dated October 31, 1996.¹⁸ The statement by Broughton had been earlier released by BATCo as a Press Announcement.”¹⁹

Suppressed and concealed vital information about their products from the public and public health authorities

- “Over the course of approximately fifty years, different Defendants, at different times, took the following actions in order to maintain their public positions on smoking and disease-related issues, nicotine addiction, nicotine manipulation, and low tar cigarettes, in order to protect themselves from smoking and health related claims in litigation, and in order to avoid regulation which they viewed as harmful: they suppressed, concealed, and terminated scientific research; they destroyed documents including scientific reports and

studies; and they repeatedly and intentionally improperly asserted the attorney-client and work product privileges over many thousands of documents (not just pages) to thwart disclosure to plaintiffs in smoking and health related litigation and to federal regulatory agencies, and to shield those documents from the harsh light of day.”²⁰

- “[M]embers of the BAT Group...destroyed documents, routed them from one country or BAT facility to another, erased a useful litigation database...and constantly exhorted their many employees to avoid putting anything in writing. All these activities were taken for one overriding purpose -- to prevent disclosure of evidence in litigation.”²¹

Deceived the public and public health authorities about the harmful effects of secondhand smoke exposure

- “Despite the fact that Defendants’ own scientists were increasingly persuaded of the strength of the research showing the dangers of ETS [secondhand smoke] to nonsmokers, Defendants mounted a comprehensive, coordinated, international effort to undermine and discredit this research. Defendants...identified, trained, and subsidized “friendly” scientists through their Global Consultancy Program, and sponsored symposia all over the world from Vienna to Tokyo to Bermuda to Canada featuring those “friendly” scientists, without revealing their substantial financial ties to Defendants.”²²
- “[Defendants] conducted a mammoth national and international public relations campaign to criticize and trivialize scientific reports demonstrating the health hazards of ETS [secondhand smoke] to nonsmokers and smokers.”²³
- “[D]efendants crafted and implemented a broad strategy to undermine and distort the evidence indicting passive smoke as a health hazard. Defendants’ initiatives and public statements with respect to passive smoking attempted to deceive the public, distort the scientific record, avoid adverse findings by government agencies, and forestall indoor air [smoking] restrictions.”²⁴
- “BATCo understood that the passive smoking issue not only risked an increasing number of smoking restrictions, but even threatened to reduce the number of starting smokers. Without such starting smokers, the industry could not survive.”²⁵

Falsely denied the devastating health effects of smoking

- “[E]ach and every one of these Defendants repeatedly, consistently, vigorously -- and falsely -- denied the existence of any adverse health effects from smoking. Moreover, they mounted a coordinated, well-financed, sophisticated public relations campaign to attack and distort the scientific evidence demonstrating the relationship between smoking and disease, claiming that the link between the two was still an “open question.” Finally, in doing so, they ignored the massive documentation in their internal corporate files from their own scientists, executives, and public relations people...”²⁶

- “In 1980, in a confidential memo analyzing BAT public positions and their impact on B&W's stance in litigation, BATCo internally admitted: "It is simply incorrect to say, 'There is still no scientific proof that smoking causes ill-health.'”²⁷
- “Martin Broughton, Chairman of BAT plc, the corporate parent of BATCo, stated in opening remarks to analysts, investors and journalists at a briefing held at Windsor House on October 30, 1996, that “We have no internal research which proves that smoking causes lung cancer or other diseases or, indeed that, smoking is addictive.”²⁸

Deceived consumers and public health authorities about the nature of so-called “low tar” cigarettes

- “[D]efendants conducted extensive research on quitting to help them identify and understand potential quitters (i.e., smokers who were "concerned" and "uncomfortable" with the fact that they smoke) and design marketing that would dissuade them from quitting. Defendants' internal documents demonstrate their recognition that smokers interested in quitting smoking were instead switching to low tar cigarettes under the mistaken belief that doing so would either help them quit or be better for their health.”²⁹
- “It is clear, based on their internal research documents, reports, memoranda, and letters, that Defendants have known for decades that there is no clear health benefit from smoking low tar/low nicotine cigarettes as opposed to conventional full-flavor cigarettes.³⁰ Despite this knowledge, Defendants extensively -- and successfully -- marketed and promoted their low tar/light cigarettes as less harmful alternatives to full-flavor cigarettes. Moreover, Defendants... denied that they were making any health claims for their low tar/light cigarettes, and claimed that their marketing for these cigarettes was based on smokers’ preference for a “lighter,” “cleaner” taste.”³¹
- “It is also clear that while Defendants knew that the FTC Method for measuring tar and nicotine accurately compared the nicotine/tar percentages of different cigarettes, they also knew that that Method was totally unreliable for measuring the actual nicotine and tar any real-life smoker would absorb...³² [D]efendants opposed any changes in the FTC Method which would more accurately reflect the... actual tar and nicotine received by smokers...”³³
- “BATCo's research documents establish that the company has long known and intended that its advertisements and marketing for low tar cigarettes, featuring claims of lowered tar and nicotine and "light" and "ultra light" brand descriptors, contributed to and reinforced consumers' mistaken belief that low tar cigarettes are better for their health, and caused consumers to smoke them for this reason.”³⁴
- “Susan Ivey [Current President and CEO of RAI Susan Cameron] claimed that BATCo's public position was that the use of low tar brand descriptors was "not intended to make

any health claims,” and was "not meant to imply that light or ultra-light cigarettes are less harmful.””³⁵

Falsely denied that they manipulated their products to increase users’ addiction

- “Using the knowledge produced by [their]... research, Defendants have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction. At the same time, Defendants have concealed much of their nicotine-related research, and have continuously and vigorously denied their efforts to control nicotine levels and delivery.”³⁶
- “In sum, the evidence...is overwhelming that Defendants have, over the course of many years, time and again -- and with great self-righteousness -- denied that they manipulated the nicotine in cigarettes so as to increase the addiction and dependence of smokers. Those denials were false.”³⁷
- “At an experimental farm in North Carolina during the 1980s, BATCo and B&W developed a tobacco that the companies referred to as "Y-1." The tobacco was genetically engineered to have a nicotine content approximately twice the nicotine content of conventional tobacco...B&W claims it was encouraged to pursue Y-1 technology by the public health community to develop a less hazardous cigarette.”³⁸

Canada

In May 2015, a Canadian court also found that BAT’s operating company in Canada colluded with other tobacco firms to deceive consumers. The Court found that the cigarette companies “colluded among themselves in order to impede the public from learning of health-related information about smoking,”³⁹ “earned billions of dollars at the expense of the lungs, the throats and the general well-being of their customers,”⁴⁰ and carried out conduct that was "particularly reprehensible."⁴¹ After a 17-year legal battle, the Quebec Superior Court ordered the defendant tobacco companies to pay US\$15 billion in damages to about one million smokers in Quebec. BAT’s company’s respective liability is 67% (US\$10.5 billion). The tobacco companies have appealed the ruling.

¹ The State of Minnesota and Blue Cross Blue Shield of Minnesota v. Philip Morris et. al. Consent Judgment. Court File No. C1-94-8565. May 8, 1998. Paragraph VII(E).

² Minnesota v. Philip Morris, No. C1-94-8565 (Minn. Dist. Ct. Dec. 30, 1997).

³ United States v. Philip Morris USA, Inc. Document No. 5901. MEMORANDUM OPINION. March 28, 2011.

⁴ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Available from: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

⁵ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Pages 9-10. Available from: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

⁶ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 364. Available from: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

³⁷ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 1763. Available from: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

³⁸ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 1549. Available from: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

³⁹ Quebec Superior Court Justice Brian Riordan. Létourneau & Blais v. JTM, ITL & RBH Para 449.

⁴⁰ Quebec Superior Court Justice Brian Riordan. Létourneau & Blais v. JTM, ITL & RBH Para 1037.

⁴¹ Quebec Superior Court Justice Brian Riordan. Létourneau & Blais v. JTM, ITL & RBH Para 1038.