

The Honourable Angel Gurría  
Secretary-General  
Organization for Economic Co-operation and Development  
2, rue André Pascal  
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France

13 April 2007

### **Call for Action by OECD Ministerial**

Dear Mr. Secretary-General,

At the January session of the Working Group on Bribery considering the UK's termination of the foreign bribery investigation involving the BAE Systems Al Yamamah project in Saudi Arabia, you issued an eloquent statement stressing the important role of governments in preserving the credibility of the OECD Anti-Bribery Convention. You pointed out that the credibility of the Convention depends on implementation and enforcement, and that "the political will of our members, collectively and individually, is of very critical importance."

The March session of the Working Group reviewed the status of implementation and enforcement in the UK and in Japan and found continuing grounds for concern. In TI's considered judgment the future of the Convention is at risk, for the reasons outlined below. I am writing to request your support in securing a strong statement from the 15-16 May Ministerial calling on all parties to take prompt action to correct deficiencies in their laws and to undertake enforcement at a level sufficient to bring about the required change in corporate conduct in international transactions.

The central challenge which must be confronted is the need to ensure high-level political commitment to take action. The Working Group on Bribery has done an outstanding job monitoring compliance, as demonstrated by their meticulous reports on deficiencies in UK and Japanese implementation. What is needed now is a clear call for action from the OECD's highest governing body.

Our request for action by the Ministerial should be considered in the context of the upcoming tenth anniversary of the adoption the Convention, in December 2007. That will be an occasion for judging the Convention by all those interested in the fight against international corruption and by the media. Without further actions, it will be a time of disappointment, not for celebration.

Enforcement is Still Inadequate. TI's annual progress reports on enforcement have shown only modest progress. Our 2005 report showed substantial enforcement in 8 of the 24 countries covered, rising to 12 of 31 countries covered in 2006. Cases against major multinational companies are underway in France, Germany and Italy, as well as in the US. While the trend is positive, continuing lack of enforcement by the UK and Japan undermines the collective commitment by the major industrialised states to stop competing on the basis of bribery. Without enforcement by the UK and Japan, support for the Convention is more likely to unravel than to increase.

Al Yamamah Sets Dangerous Precedent. The Al Yamamah termination is dangerous because it gives the wrong answer to the Convention's ultimate credibility test: Will governments apply the anti-bribery prohibition to their national champions? The danger is further compounded by the UK's claim of national security concerns as the justification for overriding the rule of law. If this action is allowed to stand, it would open a loophole that numerous other governments could readily use.

Delay in UK Law Reform is Unacceptable. Failure to take action on law reform aggravates concerns about lack of UK commitment. The need for revising antiquated UK laws on corruption was identified in the first OECD monitoring review in 1999 and again in 2003. The 2005 review provides a detailed analysis of the deficiencies in UK law. Even though there have been numerous studies, and a Corruption Bill commissioned by TI(UK) is presently in the House of Lords, there has been no action. The Government's recent referral of the matter to the Law Commission, with recommendations due in late 2008, is unlikely to result in passage of a new law until well into 2009. This schedule fails to demonstrate any sense of urgency. Action should be taken before the end of this year. While the UK has stated that investigations are continuing on cases other than BAE-Al Yamamah, how successful such cases will be is subject to question until the deficiencies in UK laws are corrected.

Lack of Enforcement in Japan. The review at the March Working Group meeting indicated progress in correcting deficiencies in Japanese law. This is an important step forward. However, there are continuing questions about the organisation of Japan's procedures for investigating and prosecuting foreign bribery. Because no cases have yet been brought there is widespread belief in the international business community that the Japanese Government gives high priority to winning export orders, and is not committed to prosecuting foreign bribery.

Need for Continuing Vigorous Monitoring Programme. There is a clear need for continued monitoring after the present Phase 2 programme is completed. Adequate funding to conduct on-site country reviews must be provided.

We request your support for action by the Ministerial and suggest that you transmit this letter to the delegates coming to the ECSS and the Ministerial. It is essential that they fully recognise that the future of the Convention is at risk. The Ministerial should call on all governments to take prompt actions to correct deficiencies in their laws and procedures and pursue enforcement before the tenth anniversary.

The extensive work of the OECD and the governments which signed the Convention in the ten years since its adoption constitutes a noble effort to curtail the supply side of international corruption, benefiting people all over the world. This work is now at a critical juncture. Action by the Ministerial is necessary to put the Convention back on a positive track prior to the tenth anniversary of the Convention in December.

Yours sincerely,

  
Huguette Labelle  
Chair