

The Honourable Angel Gurría
Secretary-General
Organization for Economic Co-operation and Development
2, rue André Pascal
Paris Cedex 16
France

6 March 2007

Resolving the Al Yamamah Issue

Dear Mr. Secretary-General,

We wrote to you on 8 January 2007, prior to the January meeting of the OECD Working Group on Bribery, to express Transparency International's concern regarding the UK's decision to terminate the investigation of foreign bribery allegations in connection with the Al Yamamah project in Saudi Arabia. We commend the forthright statement you and the Working Group issued at the conclusion of the January meeting.

We understand that the Al Yamamah issue will again be on the agenda of the Working Group at the March meeting, together with a review of the UK response to the March 2005 OECD Phase 2 Report. In our view, the most serious consequence of the Al Yamamah termination is that it undermines the basic understanding underlying the OECD Convention: the collective commitment by the major industrialized countries to stop competing on the basis of bribery. How this issue is resolved will send an important message to all the parties to the Convention, to the international business community and to civil society organizations committed to combating corruption.

Stepping back from the particulars of the UK's actions to gain a broader perspective, the essential aim should be to ensure that the OECD Convention will not unravel, and that all parties will undertake effective enforcement. Even before the Al Yamamah termination, there were widespread concerns about the UK Government's commitment to enforcing the prohibition against foreign bribery.

- No foreign bribery prosecutions have been brought six years after the Convention went into effect.
- Little or no action has been taken to correct deficiencies in UK law and procedures identified in OECD monitoring reviews in 1999, 2001 and 2005.

Recently the UK Government made encouraging statements about its determination to confront corruption in international business. Hilary Benn, Secretary of State for International Development, has been made responsible for the UK's international

anticorruption efforts, and new resources have been allocated. However, the Al Yamamah termination confirmed pre-existing concerns and created a serious credibility problem, even among the UK's friends and partners.

TI believes that it is now essential for the UK Government to take actions that demonstrate an unequivocal commitment to end foreign bribery. We ask that the OECD urge the UK to promptly undertake the following: (a) enact a new corruption law correcting the deficiencies identified by OECD, (b) bring cases, and (c) encourage BAE to make clear that its ongoing business practices effectively prevent foreign bribery.

Correcting Deficiencies in UK Laws and Procedure. The UK Government has accepted since June 2000 that UK laws on corruption must be comprehensively reformed. A minimal step was taken in response to the OECD phase 1 evaluation. But all subsequent reform attempts faltered. The Government has now decided to refer this issue back to the Law Commission, which is expected to come up with its proposals in late 2008. This further delay is deplorable. Comprehensive anti-corruption laws need to be introduced and passed as a matter of urgency, in order to correct the deficiencies identified by the OECD's March 2005 Phase 2 Report. That Report foreshadowed the problems raised by the Al Yamamah termination, in particular the problematic role of the Attorney General. Restoring UK credibility will require prompt enactment of a new law; we suggest that the draft Corruption Bill commissioned by TI(UK) and presently in Parliament could usefully be adopted as an urgent government measure. After seven years, statements about the difficulty of finding time on the Parliamentary calendar are unacceptable.

In our view, the 2005 Report is an outstanding example of the monitoring and follow-up called for by Article 12 of the Convention. If monitoring of such quality does not produce positive results, the usefulness of monitoring is compromised, and with it the viability of the OECD Convention.

Bringing Cases. The UK must proceed with prosecutions without further delays. Assurance that investigations are underway is not enough. Reinstatement of the Al Yamamah investigation would be the most positive step. We note that the UK Government has stated that investigations of alleged bribe payments by BAE in other countries are continuing. It is essential that these and other investigations move ahead as quickly as possible and that prosecutions be brought where justified by the evidence.

Clarifying BAE's Business Practices. Even though BAE Systems Plc has denied any wrongdoing and stated that it has a strict anti-bribery policy, the Al Yamamah termination and the Parliamentary debates that followed leave unresolved questions about the past. Irrespective of how questions regarding past transactions may be resolved, it is essential to clear the air for future international transactions.

To provide assurance to OECD governments and their companies, BAE should make a public statement making clear that it is following a strict anti-bribery policy, backed up by a rigorous compliance programme, consistent with the best practices of leading MNCs. Provision should be made for independent verification of BAE's compliance programme. Such action would also be desirable in BAE's corporate interest to reassure investors and other stakeholders and to repair reputational damage.

Unacceptability of National Security Exception. As already pointed out in our 8 January 2007 letter, TI believes that the UK's assertion that national security interests justify the termination of the Al Yamamah investigation violates Article 5 of the Convention. TI will shortly submit to OECD's Legal Directorate a detailed analysis of applicable international law, demonstrating that there is no support for asserting a national security exception under a treaty that does not contain an explicit national security exception. This analysis was prepared by Professor Susan Rose-Ackerman of Yale Law School and the conclusions reached are endorsed by three distinguished international lawyers: Jeremy Carver, Ugo Draetta and Ko-Yung Tung.

Conclusion. The Al Yamamah termination poses the most serious threat to the success of the OECD Convention since it was adopted in 1997. It is essential that a satisfactory resolution be developed. The credibility of the UK Government commitment to prohibit foreign bribery must be rebuilt, in order to restore the collective commitment on which the success of OECD Convention depends.

TI, and in particular TI(UK), are very willing to assist OECD and the UK Government to bring this difficult matter to a satisfactory resolution.

Yours sincerely,



Huguette Labelle
Chair

cc: Professor Mark Pieth, Chairman, OECD Working Group on Bribery
Patrick Moulette, Head, OECD Anti-Corruption Division
Hilary Benn, UK Secretary of State for International Development