Angel Gurría
Secretary General
OECD
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France

28th April 2015

Dear Mr Gurría

We are writing to express our serious disappointment at the OECD's recent appointment of Richard Alderman, former Director of the Serious Fraud Office, to its high-level advisory group to review the OECD's efforts on bribery, as recently reported in the Wall Street Journal.

Richard Alderman was responsible, as Director of the Serious Fraud Office, for leading an approach of using civil settlements to deal with foreign bribery by UK companies. The OECD Working Group on Bribery Phase 3 report of March 2012 stated that this approach was "*opaque, lacks accountability, and thus fails to instil public and judicial confidence*." The Working Group stated that they were not able to ascertain whether such settlements were consistent with the OECD Convention, due to lack of information on how sanctions were calculated in them.

Richard Alderman also personally directed the controversial settlement with BAE Systems in February 2010, including the clause which gave BAE blanket immunity from any further investigation or prosecution for any conduct preceding the settlement. This was criticised by the judge in the sentencing court and by the OECD Working Group on Bribery itself. A UK parliamentary enquiry found the settlement to be deficient in a number of respects. There was considerable outcry over the settlement and the perception that justice was not done in any meaningful way with regards to

BAE's alleged corruption, with one Tanzanian commentator responding to it by saying "Is the war on corruption just words?"

The impact of the BAE settlement on the countries where the SFO had been investigating allegedly corrupt conduct by BAE, such as South Africa, Romania, Hungary, Austria and the Czech Republic was devastating. Partly as a result of the settlement, investigations were effectively stopped around the world, and no-one has ever been brought to justice despite the fact that BAE admitted in the US that they had made $145m worth of payments through an offshore entity to advisors knowing that "*there was a high probability that part of the payments would be used in order to ensure BAES was favoured in foreign government's decisions*."

Additionally, Richard Alderman personally oversaw irregularities at the Serious Fraud Office which seriously tarnished its reputation. The UK's National Audit Office was forced to qualify its audit of the SFO's accounts for 2011-2012 due to irregular voluntary redundancy payments made to senior management personnel under Alderman which were directly authorised by him. The UK's Comptroller and Auditor General stated that there was no evidence that "due process" had been followed in making these redundancy payments. A parliamentary enquiry into the payments by the UK's Public Account Committee found that under Alderman there were a "*catalogue of errors [which] amounts to a case study in how not to run a public body*", and said that his actions had "*undermined the reputation of the SFO and the morale of its staff*".

We do not believe that Richard Alderman's appointment will instil confidence in the OECD's review process. In fact, we believe it will undermine confidence in the impartiality and integrity of the OECD's bribery work and in its ability to oversee the implementation of the anti-bribery Convention.

We are also concerned that the OECD Working Group on Bribery has appointed someone whose views on enforcement of overseas corruption offences are heavily biased towards settlements. We note from the OECD Foreign Bribery Report that currently 69% of foreign corruption cases are settled rather than prosecuted. There is increasing concern over the use of settlements and whether they sufficiently deter bribery, or represent a just outcome for corrupt behaviour that often has deeply harmful effects in developing countries.

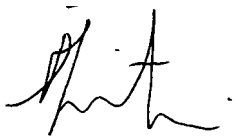
Cristie Ford, Director of British Columbia's Centre for Business Law, recently noted in the New York Times: "*massive fines, used alongside settlement agreements where no fault is admitted, are a weak mechanism for addressing serious corporate misconduct*." As numerous commentators have pointed out, the danger with pursuing settlements to deal with corporate misconduct is that they become a cost of doing business. Furthermore, companies' stock price often sees an immediate increase following the announcement of a settlement, suggesting as Matthew Fishbein put it in the New York Law Journal, that, "*the market appears to value the certainty of a resolution more than it is concerned by admissions of criminal conduct*." Recent academic work by Karpoff, Lee and Martin suggests that settlement fines would need to increase by 9.2% in the US, which currently levies the highest fines for corporates engaged in bribery, to significantly deter further corruption in the context where there is only a 6.4% probability of being caught for foreign bribery in the US.

We note that under article 30 (3) of the UN Convention Against Corruption, state parties must endeavour to ensure that "*any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to*

maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences." Settlements are one such discretionary legal power. In order to co-ordinate its work with UNCAC, we believe that the OECD must consider, as part of the work on reviewing its efforts on bribery, whether settlements do in fact maximise the effectiveness of law enforcement measures and properly deter the commission of such offences. We believe that the OECD Convention itself will be seriously undermined by a continuing trend towards settlements to deal with foreign bribery.

We urge the OECD to appoint experts to its advisory panel who can help them review the effectiveness of settlements and who do not have pre-existing bias towards them.

Yours sincerely



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