

Brussels, 20 December 2013

Mrs O'Reilly,

On Wednesday 18 December, the Commission adopted a decision opening an in-depth investigation of the compatibility with the State Aid rules of certain tax privileges granted to four Spanish football clubs.

This decision and its timing came as no surprise to you. This is first due to the fact that the investigation has been subject to a complaint to the European Ombudsman and that, on 26 September 2013, the Commission had accepted the Friendly Solution proposed by your predecessor confirming the intention to open this investigation. Secondly, you were informed of the precise timing of the Commission's decision by my private office - out of courtesy - on 16 December, following the reception of your Recommendation, in which you overturn the Friendly Solution agreed with your predecessor and ask the Commission to take a decision by 30 June 2014.

Despite this good cooperation between the Commission and your body, much to my surprise, your office chose to make successive public announcements regarding this case on 17 and 18 December. On 17 December, your office issued a press release alleging to have told the European Commission to stop delaying a decision on the case; hinting at a conflict of interest on my part, given my "strong links" to one of the football clubs in question; and making public the confidential information you had received that the College was to adopt the relevant decision the following day. Your office even went as far as advancing publication of the press release by one day, once it had been contacted by my office to alert you to this fact. On 18 December, a further press release commended the Commission for acting following your "call on the Commission to stop delaying a decision".

Let me share with you the Commission's concerns about these public announcements.

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In the first place, I am convinced that you will agree that it is not appropriate for the Ombudsman office to make public confidential information provided in the framework of the good cooperation between the Commission and your body. The Commission does not make public the list of State aid decisions to be adopted in advance of its weekly meetings. This is standard practice and it aims at ensuring the serenity of the decision-making process and at avoiding last-minute lobbying efforts. Any advance information on the weekly agendas is therefore covered by the obligation of professional secrecy and was communicated by my office to yours as a matter of courtesy and in a spirit of good cooperation. Public announcements of the kind your office chose to make in this case defeat these very purposes.

Second, the allegation in your 18 December press release that the Commission's decision was instigated by your office's request is factually wrong and - much to the Commission's worry - intentionally misleading. The press releases never mention that in your very Recommendation adopted after overturning the Friendly Solution on 16 December, you had given the Commission 6 more months to act.

In addition, as you must also know, the decision to open an in-depth investigation on 18 December could not result from your announcement of 17 December. Indeed, the adoption of a case is prepared through a work of often months and is fixed weeks in advance. In this specific case, interservice consultation on the draft decision was launched early November.

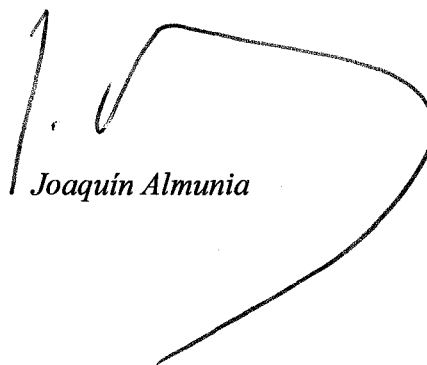
Third, the press releases also insinuate that the Commission's decision in this matter has been deliberately delayed. By so doing, you chose to ignore the explanations given by the Commission's answer of 26 September to your predecessor, which formed the basis of the Friendly Solution to this case.

Let me recall for you the facts of this and the other football cases the Commission investigates. Far from being inactive in relation to allegations of State aid in the field of football, the Commission has taken a number of initiatives in this novel area with a view to determining its approach. For example, following consultations with UEFA, a joint declaration was issued in March 2012, and a letter was sent to all Member States to obtain an overview of practices. Such an overview is essential in order to conduct a proper assessment of the possible distortion of competition between clubs in the various Member States.

The Commission then proceeded to open a first round of investigations regarding 6 clubs in the Netherlands in March 2013 before focusing on the Spanish cases. As you know, on 18 December the Commission took decisions in respect of several possible aid measures regarding 7 Spanish clubs. The information in relation to 3 of these clubs was brought to our attention only in March of this year. The Commission must have discretion to decide on the sequencing of its work, based on the priority of the case and also in view of available resources, which have to be deployed in the first place to notified aid measures where legal deadlines are imposed.

Last but not least, it is no secret that I am a supporter of Athletic Club Bilbao. I am astonished by your insinuation that this "can look like a conflict of interest". Let me also tell you that I am also a Spanish citizen, member of the PSOE, keen opera-goer, I enjoy cinema and I use the internet every day. These elements are however irrelevant when it comes to the Commission adopting decisions on State aid regarding Spanish cases, or granted by centre-left governments, or benefitting cinema or culture in general, or to tackling antitrust issues with Microsoft and Google. The very opening of a State aid investigation into Athletic Club Bilbao is the best proof that this allegation is misplaced.

Rest assured that the Commission remains committed to vigorous, fair and effective enforcement of the competition rules in each and every case. I believe that this kind of public announcements will remain an isolated unfortunate incident and that it will not stand in the way of the otherwise good co-operation that the Commission has always enjoyed in the past with the European Ombudsman.

A large, stylized handwritten signature in black ink, consisting of a vertical line on the left, a small loop, and a large, sweeping curve that extends to the right and then down.

Joaquín Almunia