



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Joaquín Almunia
Vice-President of the European Commission
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1049 Brussels
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Strasbourg, **17 -01- 2014**

Dear Mr Almunia,

Thank you for your letter dated 20 December 2013 concerning the Commission's decision to open an in-depth investigation into public funding of certain Spanish professional football clubs and my draft recommendation on the matter.

At the outset, I would like to welcome your assurance that the Commission remains committed to vigorous, fair and effective enforcement of the competition rules in each and every case. I also welcome the references you make to the good cooperation between the Commission and the Ombudsman. In that spirit, I feel it important to correct certain misunderstandings and misperceptions in your letter, so that they do not become an obstacle to our continuing good cooperation in the future.

The first misunderstanding is that my draft recommendation "overturned" the Ombudsman's earlier friendly solution proposal. That is not so. To recall, the friendly solution proposal was made in the context of the Ombudsman's inquiry into a complaint made on 19 December 2011 about delay in the Commission's handling of the complainant's infringement complaint to the Commission, dated 11 November 2009.

The friendly solution was proposed on 30 May 2013, with a deadline for response of 31 July 2013. The Commission replied nearly two months late on 26 September 2013. The reply stated that the Commission accepted the proposal and that "*DG Competition will propose a Commission decision shortly*". Over two months later, I had heard nothing further, either formally or informally. In these circumstances, I considered (as mentioned in point 91 of the draft recommendation) that the Commission had failed to implement the friendly solution. I therefore sent a draft recommendation to the Commission in the morning of 16 December 2013. The draft recommendation did not "overturn" the friendly solution proposal. On the contrary, it was based on the same



finding of unjustified delay by the Commission and, in addition, its failure to implement the friendly solution.

In the afternoon of 16 December 2013, my services sent to the Commission Secretariat General and to your cabinet the text of the press release I had scheduled for 18 December 2013. Shortly thereafter, your head of cabinet telephoned my head of cabinet and stated that a decision to launch a formal investigation was on the Commission's agenda for 18 December. He also stated that the Ombudsman's press release was therefore "redundant". This was the first information that I or my services received that the Commission was about to take a decision on the matter. That same evening (16 December), Spanish television broadcast coverage of the Spanish foreign minister announcing the Commission's decision and the news began to spread rapidly in the media.

In these circumstances, publishing the Ombudsman's press release on 18 December as originally planned would no longer have served any useful purpose. In this sense, your head of cabinet was clearly right that it had been made "redundant". A revised press release explaining my draft recommendation was therefore prepared and issued on 17 December. The press release included reference to what many media outlets in Europe were already reporting; that is, the fact that the Commission was set to take a formal decision to open an investigation the following day. Neither the Spanish foreign minister, who had announced the decision the previous day, nor anyone else learnt of the impending Commission decision from the Ombudsman. By the time of the press release, it was public knowledge and thus clearly no longer confidential.

I issued a further press release on 18 December, following the Commission's formal announcement, in which I welcomed the decision to open an investigation. Contrary to what your letter states, that press release did not claim, expressly or impliedly, that DG Competition had prepared the relevant Commission decision as the result of the press release of 17 December or the draft recommendation of 16 December. Nor was it understood in that sense by the media. What the press release made clear is that the Ombudsman had found unjustified delay by the Commission, called on the Commission to act and welcomed the fact that it eventually did so.

Finally, your letter objects to what you describe as an "insinuation" by me that your support for Athletic Club Bilbao "can look like a conflict of interest". As the relevant press release makes clear, it was not the Ombudsman but the complainants who suggested that *"the Commission's inaction in this case might be linked to the fact that the Commissioner responsible supports one of the football teams in question and was a Minister in the Spanish government that decided on the tax advantages at the time"*. The Ombudsman's friendly solution proposal and draft recommendation did not make any finding of a conflict of interest. However, the friendly solution proposal invited the Commission to pay particular regard to the need to avoid giving the impression of a conflict of interest. As my press release of 18 December states, I am satisfied that the Commission is now investigating the facts, thereby dispelling any suspicions of a conflict of interests. I am therefore fully in agreement with the statement in

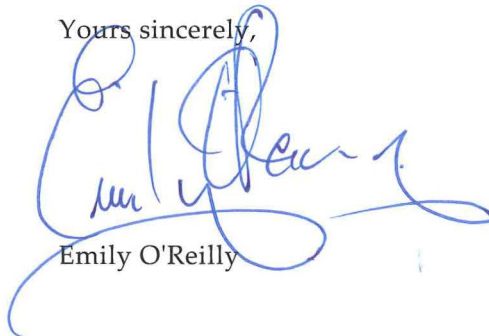


your letter that "[t]he very opening of a State aid investigation into Athletic Club Bilbao is the best proof that this allegation is misplaced."

Finally, I turn to a procedural matter in order to avoid any risk of confusion. Neither your letter, nor the present reply bears the Ombudsman's complaint reference. I therefore understand that we share the view that the issues raised in your letter do not relate to the complaint as such. In consequence, the letter should not be considered to form part of the file on the complaint and the complainant does not need to be invited to submit observations on it. It follows that the Commission should still send a detailed opinion on the draft recommendation, which will be added to the complaint file and sent to the complainant for possible observations. If you take a different view, I would be grateful if you would promptly inform me accordingly.

In conclusion, I would like to thank you once again for the positive tone of your remarks concerning good cooperation between the Commission and the Ombudsman and to assure you that I am committed to maintaining and strengthening that cooperation to enable both our institutions to work as effectively as possible for the citizens whom we serve.

Yours sincerely,



Emily O'Reilly