

Brussels, 31 JUL. 2015

Dear Ms O'Reilly,

**Subject: Complaint by Jean-Paul TRAN THIET, on behalf of Crédit Agricole,
Ref. 1021/2014/CK**

Thank you for your letter of 10 March 2015 to the President of the European Commission about this case.

I am pleased to transmit to you the enclosed comments of the Commission on the above-mentioned complaint. A translation into the language of the complainant (French) will be transmitted shortly.

The Commission remains at your disposal for any further information you may require.

Yours sincerely,



Enclosure

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Opinion of the Commission on the European Ombudsman's draft recommendation

- Complaint by Mr Jean-Paul TRAN THIET, on behalf of Crédit Agricole, ref. 1021/2014/CK

1. Introduction

- 1) The Ombudsman received on 2 June 2014 a complaint from Crédit Agricole SA and Crédit Agricole Corporate and Investment Bank (hereinafter 'Crédit Agricole') related to certain public statements made by former Vice-President Almunia in the context of the cartel investigation on the fixing of Euro Interest Rate Derivatives ('EIRD'), which, in the view of Crédit Agricole, could have casted doubts on the impartiality of the Commission with regard to its position. The Ombudsman decided to open an inquiry under number 2021/2014/CK and on 10 March 2015, she issued the following recommendation (the 'Ombudsman Recommendation'):

"The Commission should acknowledge the maladministration that has occurred in this case, apologise for it and take steps to avoid similar problems in the future. In order to do so, the Commission should consider issuing guidelines on public statements by Commissioners about ongoing investigations."

- 2) The Commission has carefully examined the Ombudsman Recommendation in this case. The following comments will outline the Commission's guidance in place regarding the conduct of Commissioners and their public statements which appears to adequately address the issue in question.
- 3) Moreover, the Commission confirms that it has throughout the whole investigation of the EIRD cartel case fully complied with its obligations of good administration, including the observance of the rights of defence of the investigated parties. The Commission therefore considers that it has not violated any rule of good administration in this case. Furthermore, as this individual competition case is still ongoing, the Commission needs to refrain from making further comments.
- 4) The current Competition Commissioner Margrethe Vestager has already publicly declared that she will be cautious in making public statements for ongoing cases, while she understands the need for the citizens to be kept informed of competition enforcement activities and its impact on their daily lives¹.

¹ A selection of recent speeches of Commissioner Vestager refer to the following:

- *"First of all, there is a need to keep articulating the core principles on which all agencies should build their enforcement: Procedural fairness, impartiality, and transparency."* Speech at the New York

2. The principles guiding the communication to the public

- 5) There are three main general principles at stake which should be considered before making public statements on pending competition cases: (1) the need to safeguard the impartiality of pending administrative investigations, (2) the need to safeguard their confidentiality and (3) the principle of transparency towards the public and EU citizens as regards general rules and procedures applicable in the field of competition.
- 6) The Commission is paying particular attention to both impartiality of decision making in competition cases and to the principle of transparency.

This is particularly reflected in President Juncker's mission letter to Commissioner Vestager as follows:

*"We must abide by the highest possible professional and ethical standards at all times. I want the European Commission to lead the way as a modern, efficient and transparent public administration, open to all input that helps us deliver work of a consistently high quality, in full independence and impartiality. Our conduct must be unimpeachable. You have received the Code of Conduct of the Members of the European Commission. I expect all of us to honour both the word and the spirit of the Code."*²

Therefore, the Juncker Commission is committed to strong ethical standards, highlighting the independence and impartiality heralded by the guidance already in place, while also ensuring good communication between the administration and the public.

- 7) Concerning competition cases there is a comprehensive set of rules in place - including legislation, guidelines and case law - that set out the framework for the Commission actions. The Commission applies these rules consistently in the handling of the cases (including the right of access to file and the right to be heard in antitrust investigations) and in the decision making to ensure that due consideration is given to all information gathered and presented. The EU system is a specific administrative procedure which delivers effective and independent enforcement and guarantees due process and the respect of the rights of parties at all stages of the procedure, ensuring a high standard of

University delivered on 20 April 2015, http://ec.europa.eu/commission/2014-2019/vestager/announcements/enforcing-competition-rules-global-village_en

- *"It is a great responsibility to be in charge of these investigations, and I can assure you that I am taking this very seriously. Needless to say, competition investigations are independent from politics and commercial interests. We will be exclusively guided by the facts, the evidence and by the EU's antitrust rules."* Extract from the press release regarding the adoption of the statement of objection in a recent antitrust case, 15 April 2015, http://europa.eu/rapid/press-release_STATEMENT-15-4785_en.htm

² http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf

fairness and impartiality. The EU institutional framework complies with fundamental rights and, furthermore, full judicial review is available to the parties concerned³.

- 8) Regarding the rules on transparency, it should be taken account of the need for the public not to feel disconnected with the work of the Commission and the necessity to provide concise, yet meaningful information on competition cases.
- 9) President Juncker has expressly addressed transparency as a priority for the Commission, as it is within the Commission's mandate to inform the public about matters of public interest:

*"We could do the best possible work but it will be worth nothing if we do not earn the support and trust of the citizens we are working for. So let us be more transparent, because in fact we have nothing to hide. Let us show that this time it really is different and that together we are able to really change and renew Europe."*⁴

- 10) This is all the more important as investigated undertakings and other interested persons recurrently communicate to the public regarding their stance on ongoing investigations. The Commission should thus be able to communicate to the public on the issues raised in cases and how the procedures work, as to allow balanced information of the public. However, it is important to note that the Commission does not reach or make public any definitive conclusion until the end of the investigation.⁵

3. The existing guidance for Commissioners and Commission officials

- 11) The existing Code of conduct for Commissioners⁶, adopted in 2011 includes guidance regarding public communications.

Section 1.7 of this Code provides the following regarding "collective responsibility and confidentiality":

"In accordance with the principle of collective responsibility, Commissioners shall not make any comment which would call into question a decision taken by the Commission. They shall also refrain from disclosing what is said at meetings of the Commission."

³ Judgment of the Court of Justice of 24 October 2013, Case C-510/11 P – *Kone Oyj and Others v Commission*, Point 25; Judgment of the Court of Justice of 8 December 2011, Case C-272/09 P, Point 103; Judgment of the Court of First Instance of 6 October 1994, Case T-83/91, *Tetra Pak International SA v Commission*, [1994] ECR, p. II-755, point 235.

⁴ http://europa.eu/rapid/press-release_IP-14-2131_en.htm

⁵ A recent example of the balanced approach can be found in the replies given by Commissioner Vestager to the European Parliament's TAXE Committee on 5 May 2015, where she referred to the willingness to be transparent on general principles, but that she cannot be too specific about ongoing investigations. Video recording available at: <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20150505-0900-SPECIAL-TAXE-OMEE>

⁶ C (2011) 2904

As foreseen by Article 339 of the Treaty (TFEU), the members of the Commission shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components."

12) The Code of good administrative behaviour⁷, applicable to officials and other servants as well as to other staff working for the Commission, also sets forth, *inter alia*, the following principles:

a) quality service⁸: *"The Commission and its staff have a duty to serve the Community interest and, in so doing, the public interest. The public legitimately expects quality service and an administration that is open, accessible and properly run. Quality service calls for the Commission and its staff to be courteous, objective and impartial."*

b) objectivity and impartiality⁹: *"Staff shall always act objectively and impartially, in the Community interest and for the public good. They shall act independently within the framework of the policy fixed by the Commission and their conduct shall never be guided by personal or national interest or political pressure."*

13) The Commission is conscious of the importance to ensure transparency and discretion in handling information and applies this policy consistently. For instance, there are other detailed internal rules applicable to Commission staff¹⁰ which emphasise these principles. Those rules specify that the Commission staff should act in a transparent manner and be ready to justify the reasons for particular actions and the context in which they have been taken, as well as display the greatest discretion regarding information where the Commission has not adopted an official position, especially in the context of investigations.

4. Conclusion

14) The Commission regrets that some of the statements by the former Vice-President Almunia might have been misinterpreted as demonstrating a lack of impartiality.

15) The Commission stresses that the Code of conduct for Commissioners, as well as the ethical rules regarding handling of competition cases and the Code of good administrative behaviour already establish the principles of impartiality and objectivity guiding the work of the Commission more generally, including as regards public statements on ongoing cases.

⁷ OJ L 308 of 8.12.2000, p 32.

⁸ See Preamble of the Code of Good Administrative Behaviour

⁹ See Section 2 of the Code of Good Administrative Behaviour

¹⁰ For example, the Practical Guide to Staff Ethics and Conduct, the new Working Arrangements for the Juncker Commission and the Code on Ethics and Integrity of DG COMP Staff