

The Editor  
Evening Standard  
Northcliffe House  
2 Derry Street  
LONDON W8 5TT

11 January 2011

Dear Mr Greig

I am writing as the head of one of the UK's leading anti-corruption bodies about the Evening Standard's recent articles on the Bribery Act.

Your 10 January editorial calls for the Act to be dropped but you have failed to give a fair hearing to the overwhelmingly strong counter-arguments, which themselves are supported by leading business people who believe the Act is in the UK's national interest and will actually help UK companies to resist demands for bribes when operating in countries where corruption is endemic. Companies have quite rightly sought clarification of how the Act would affect legitimate business activities such as promotional expenditure. The draft Guidance on the Act published by the Ministry of Justice (MOJ) last year goes a long way towards addressing these concerns. The final version of the Guidance due to be published shortly will hopefully provide additional reassurance.

Your arguments against the Act fall broadly into three areas: ensuring a level playing field for British companies, particularly at a time of economic uncertainty; the fact that facilitation payments are permitted by many other countries; and the uncertainty surrounding corporate hospitality. I am outlining the counter-arguments below in some detail so that you can see that the debate is a great deal more complicated than you may have been led to believe.

- **Level Playing Field.** In terms of a level playing field for UK companies, the Bribery Act is drafted – like the equivalent legislation in the US, the 1977 Foreign Corrupt Practices Act (FCPA) – such that it would also enable prosecution of non-UK companies. Indeed, many of the UK's competitors have argued that the UK has not been operating a level playing field because we were not prepared to prosecute our companies while those of other countries were being prosecuted. You state that 'most of our competitors allow these payments' but in reality other countries' enforcement records are far better than those of the UK. For example, the UK had 10 cases to the end of 2009 compared to 168 in the US, 117 in Germany and 30 in Switzerland. Moreover, if a British company is willing to pay bribes, this is likely to disadvantage a more honest British competitor – which is hardly a level playing field. There is a wider issue of whether companies from non-OECD countries are prepared to pay bribes, to the general disadvantage of OECD competitors. This problem is being addressed at a global level through the G20 anti-corruption initiative and the influential OECD Working Group on Bribery. Transparency International has always taken the view that strong anti-bribery laws should be properly enforced in all countries, OECD and non-OECD. We believe increasing diplomatic pressure should be brought to bear on laggard trading partners to play by the rules.
- **Facilitation Payments.** Facilitation payments are already illegal under existing UK legislation, and that of many other countries. The new Bribery Act does not change this. You state that 'many countries...permit a facilitating payment'. In fact, a large majority of the 38 countries that are party to the OECD Anti-Bribery Convention ban facilitation payments, and those that legally 'permit' them usually only do so in specific or exceptional circumstances. They are, for example, permitted in very specific circumstances under the US FCPA. However, the OECD Working Group on Bribery recommended in 2009 that all parties to the OECD Anti-Bribery Convention, US

included, should in future seek to eliminate facilitation payments. Because they are illegal in many countries, a large number of companies already outlaw them entirely, so as to be able to have a single company-wide code of conduct.

- ***Gifts, hospitality and promotional expenditure.*** Excessive hospitality, such that it is intended as a bribe, is, however, illegal under the FCPA, which permits hospitality that is 'reasonable, proportionate and bona fide.' Many UK companies – probably all FTSE-100 companies, such as the one quoted in the recent article by Anthony Hilton - are already in the ambit of the extra-territorial provisions of the FCPA, and should therefore be exercising care over the levels of hospitality they offer. The draft Guidance to the Bribery Act that the UK's Ministry of Justice published for consultation proposes that 'reasonable and proportionate hospitality or promotional expenditure which seeks to improve the image of a commercial organization, better to present products or services, or establish cordial relations, is recognized as an established and important part of doing business.' The draft Guidance also notes that 'corporate hospitality is a legitimate part of doing business at home and abroad'. In reality, the appropriate level of hospitality for public officials is usually regulated by the laws and regulations in-country, as it is in the UK. Such laws recognize that corporate hospitality can easily be used as a bribe, and so needs to be kept in check.

Ultimately, the Bribery Act will be good for businesses, as corruption creates market distortions, leads to insecure contracts and adds costs to contracts that erode and sometimes eliminate their profitability. The Act is part of a framework of similar legislation in other countries that are parties to the OECD Convention and the UN Convention Against Corruption (UNCAC) (148 parties). It is certainly not the case that UK companies are more exposed or vulnerable than those of our main trading competitors, many of which already have strong anti-bribery laws in place and a track record of robust enforcement. Although it is always possible to point to exceptions, the reality is that there has been a tightening net of anti-bribery legislation and enforcement over the past decade, and the UK's new law needs to be seen in this context. It is by no means a unilateral initiative by the UK.

Neither is it, as your columns state, a purely moral stance. Although there is indeed a strong moral argument for anti-bribery laws, corruption-free economies are overwhelmingly in the interests of business – and that is what creates a truly level playing field.

You suggest that the Act might be 'quietly dropped'. There is no question of its being dropped 'quietly'. Apart from the many supporters in and outside parliament for this Act in the UK itself, the last government's introduction of the Bill was in response to international pressure for the UK to live up to its international obligations. Dropping the Act would create a clamour of international criticism.

One final consideration I would mention is the diplomatic position of the UK in the current climate of global and economic change. If the UK is to exercise influence in areas such as corruption, it must first demonstrate that it has its own house in order. For example, efforts to fight corruption in Afghanistan have much greater credibility when the governments involved are able to demonstrate that they themselves take the issue seriously.

I very much hope that this will have given you additional perspectives on the Bribery Act, and you will use the columns of your newspaper to present a more balanced view. I would welcome an opportunity to meet with your editorial team to elaborate the arguments surrounding this complex issue.

Kind regards

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