

To: José Manuel Barroso, President of the European Commission
Cc: Nikoforos Diamandouros, European Ombudsman
From: Corporate Accountability International, Corporate Europe Observatory, LobbyControl
Re: New facts emerging from OLAF report on Dalli case underlines the need to end Michel Petite's membership on ad hoc ethical committee
Date: Brussels, 8 May 2013

Dear Commission President,

The leaked OLAF report on the Dalli investigation – which led to the resignation of Commissioner Dalli – has added further evidence to the politically untenable and morally unacceptable membership of Mr Michel Petite of the Commission's ad hoc ethical committee. The report reveals that when preparing the complaint to the European Commission that sparked the OLAF investigation, Swedish Match was assisted by Michel Petite, who established the contact with Catherine Day, Secretary General of the European Commission.

We have previously written to you (14 January 2013) to complain about Mr Petite's reappointment in December 2012 to the ad hoc ethical committee. Mr. Petite is a former director of the Commission's Legal Service who in 2008 went through the revolving door to work for a prominent law firm offering lobbying services, Clifford Chance. We issued the complaint after it was revealed that Mr Petite held meetings with his former colleagues in the Legal Service to advise on the EU's Tobacco Products Directive, whilst having tobacco company Phillip Morris International as a client.

On 28 January 2013 we received a response from Secretary General Catherine Day stating that "the Commission considers that there is no justification to revoke its decision to extend the mandate of the ad hoc ethical committee", i.e. Mr Petite's reappointment. As a result of this, we filed a complaint with the European Ombudsman, who is now investigating whether Mr Petite's reappointment breaches the requirement for independence (by working for corporate clients in a legal and interest representation capacity) and the obligation to have an "impeccable record of professional behaviour" (by working for a law firm that offers lobbying services but has failed to sign up to the Transparency Register).

Our complaint to the Ombudsman described the state of affairs as it was until the OLAF investigation report on the Dalli case was leaked. The new information about the role of Michel Petite in the Dalligate affair necessitates further action to notify you of our concerns. According to the OLAF report, Fredrik Peyron, Senior Vice-President of Swedish Match, told OLAF that Swedish Match, after having taped a conversation with Zammit, "started planning for how to report this matter to the relevant EU authorities and contacted Mr. Michel Petite at Clifford Chance to receive advice. At our request he contacted Ms. Catherine Day and we submitted a written report of the matter".[1] It appears that Mr. Petite – who as former head of the Commission's Legal Service had regular contact with Secretary General Catherine Day – used his well-established access to the Secretary General to assist Swedish Match.

Michel Petite has thus played a pivotal role in the events that led to the resignation of former Commissioner Dalli, and his role illustrates an unacceptable conflict of interest in the following ways:

- Swedish Match contacted Clifford Chance lawyer Michel Petite for advice on how to deal with the matter i.e. Swedish Match was a client of Michel Petite. On behalf of Swedish Match, Michel Petite then contacted Catherine Day, who in turn passed the complaint to OLAF. Throughout this time, Michel Petite sat on the ad hoc ethical committee, which is tasked not only with advising on Commissioners going through the revolving door, but may also “be requested by the President to deliver opinions on any general ethical question concerning the interpretation of [the] Code of Conduct [for Commissioners]”.^[2] It is therefore conceivable that the Commission President could have referred the complaint by Swedish Match to the ad hoc ethical committee. This would have put Mr Petite in an absurd conflict of interest, in a position of not only “judge, jury and executioner”, but prosecutor to boot!
- It is clearly stated on Clifford Chance’s website that the law firm offers various lobbying services, including “approaching government or the EU institutions... advising on the parliamentary and political process, and drafting and tabling amendments to proposed legislation.”^[3] Michel Petite’s profile on the law firm’s website states that he specialises in government relations and EU public policy, and the Clifford Chance’s ‘political advocacy strategy’ webpage offers clients assistance in “shaping law and policy as it evolves.” It is likely that Michel Petite’s relationship with Phillip Morris International and perhaps also his work for Swedish Match, was at least partly under these auspices, which clearly fall under the Commission and Parliament’s definition of interest representation. Green MEPs have commented that the OLAF report showed “an unacceptable collusion” between Swedish Match, lobbyist and former head of the Council’s legal services Michel Petite, and Catherine Day.^[4] Has the European Commission assessed whether Mr. Petite’s advice to Swedish Match and subsequent contact with Catherine Day could have been part of a tobacco lobby strategy, namely to foster the resignation of a Commissioner with views unfavourable to the tobacco industry’s interests? We note the fact that the OLAF report appears not to have properly examined the possibility that there could be an element of entrapment by the tobacco industry in what happened in the Dalli case.

The new facts revealed in the OLAF report about Michel Petite’s role in the Dalli affair doubly highlights our initial concern, reflected in the Ombudsman’s investigation into Mr Petite’s reappointment, that when it comes to an ethical advisory body, whose integrity and transparency are paramount to public trust in the Commission, it is the appearance of conflicts of interest that is particularly important. Working for a lobbying-law-firm with undisclosed corporate clients, Michel Petite’s independence is fundamentally questionable, as is his ability to adequately advise the Commission on conflicts of interest in revolving door cases and “on any general ethical question concerning the interpretation of [the] Code of Conduct [for Commissioners]”.

Due to his work for the tobacco industry, Michel Petite’s membership of the Commission’s ad hoc ethical committee constitutes a violation of the implementation guidelines of Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC), a critical provision that

safeguards public health policy from the vested interests of the tobacco industry. Petite's role in the Dalli case (as well as numerous other aspects of the case) highlights the need for the European Commission to introduce a far stronger and coherent implementation of its obligations as a Party to the FCTC. Among the recommendations of Article 5.3 is that "Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry" (4.2). The European Commission does not currently have any specific rules or guidelines in this respect, neither for Commissioners nor for Commission officials.

Once more, we issue our demand that you revoke Michel Petite's reappointment onto the ad hoc ethical committee, as a first step to ensuring a truly independent and credible advisory body. We have copied the European Ombudsman into this letter, as it contains pertinent information to his ongoing investigation.

Yours sincerely,

Olivier Hoedeman, Corporate Europe Observatory
Nina Katzemich, LobbyControl
John Stewart, Corporate Accountability International

Notes

- 1: Page 33 of the leaked OLAF report on the Dalli case, published by MaltaToday: <http://www.maltatoday.com.mt/en/newsdetails/news/dalligate/Olaf-report-00720130427>
- 2: See Code of conduct for Commissioners C (2011) 2904, Article 2.3. on Consultative competence of the Ad Hoc Ethical Committee: http://ec.europa.eu/commission_2010-2014/pdf/code_conduct_en.pdf
- 3: "You may be faced with the prospect of a regulatory development or policy decision that threatens the very nature of your business.... We offer a blend of legal and political expertise". Clifford Chance website: http://www.cliffordchance.com/legal_area/public_policy/political_advocacy_strategy.html and http://www.cliffordchance.com/about_us/find_people_and_offices/lawyers/fr/michel_petite.html
- 4: "Dalligate - OLAF report published", press release 29 April 2013; <http://www.greens-efa.eu/dalligate-olaf-report-published-9756.html>