

3 October 2020

Clarissa Haller
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80333 Munich
Germany

Dear Ms Haller,

Re: Your letter of yesterday to Professor Vicki Ann Cremona

Thank you for your letter addressed to my predecessor. This, however, does nothing to alleviate our distress at the attitude of your firm in respect of the Electrogas matter.

Your letter states that you are “to date, not aware of any indications of misconduct on the part of Siemens, Siemens employees, or Electrogas Malta”. Even if you have looked hard enough and in the right places with respect to Siemens, its employees, or Electrogas Malta, by the standards of your very own Business Conduct Guidelines, you have not looked far enough.

Your own Guidelines state that “employees may also not give money or anything of value indirectly (for example, to a consultant, agent, intermediary, business partner or other third party) if the circumstances indicate that all or part of may possibly be directly or indirectly passed on to a government official to influence official action or obtain an improper advantage or to a private commercial counterparty in consideration for an unfair advantage in a business transaction.”

In this context, I wish to reiterate a number of facts.

1. Your business partners in Electrogas are SOCAR and GEM Holdings Limited.
2. GEM Holdings is in turn owned by four entities: Tumas Energy Limited (for the Fenech family), Gasan Enterprises Limited (for the Gasan family), CP Holdings Limited (for the Apap Bologna family) and New Energy Supply Limited. The latter company holds around a tenth of GEM.
3. New Energy Holding Limited is solely owned by Yorgen Fenech.

In your letter you share our concern about your being in business with Yorgen Fenech, a man charged with the assassination of a journalist: “When allegations against Mr. Fenech and the company 17 Black Ltd. became known some time ago, Siemens addressed this issue with the

companies that own EGM. In all conversations, Mr. Fenech denied any misconduct. Nevertheless, Siemens urged that he be dismissed from his membership on the EGM Board of Directors after public doubts in Mr. Fenech's integrity persisted."

This is nowhere near enough.

It should perhaps be pointed out that Yorgen Fenech remains your business partner in the Electrogas project. Like you, he owns a minority interest in the project, and like you, he stands to profit from it. His dismissal from the Board of Directors of the subsidiary he partly owns is frankly neither here nor there.

Please be reminded that we are now at a point considerably beyond "public doubts in Mr Fenech's integrity". We're now at the point where the Malta police are arguing in court that the Electrogas contract was Fenech's motive for killing Daphne Caruana Galizia. Granted that Fenech continues to "deny any misconduct", but the evidence against him is compelling and we are deeply concerned that you continue to ignore the same.

Having established your continued relationship with Yorgen Fenech – in the present, not merely in the past – I will proceed to give you reasons why you need to look beyond the conduct of Siemens, its employees, and Electrogas, and into the conduct of your business partner in the Electrogas venture. Your Guidelines require you to ensure that you "comply with all applicable laws and regulations related to government procurements, including laws prohibiting efforts to improperly influence government officials." (Your Guidelines).

Have your "repeated internal and external reviews" provided you with satisfactory explanations for the following?:

- How have the terms of procurement for the contract been completed so soon after the 2013 elections, when the project was not in the policy of the previous government and therefore no procurement preparation could have been done before the Labour Party was returned to power at the time?

Does the very short time between the introduction of new management at Enemalta and the publication of the procurement document not suggest that the work was being done on the back of a private arrangement with the Labour Party while it was still in opposition?

If so, a commitment from a political party before an election to procure from private interests when it would be returned to government, amounts to a breach of procurement laws (which require no prior collusion) and also your guidelines on relationships with political parties.

- How can the following facts be reconciled? That Nexia BT participated closely in the drawing up of the procurement documentation; that Nexia BT's managing partner Brian Tonna had a determining role in the selection of Electrogas in that process; and that Brian Tonna was retained as a service provider for Yorgen Fenech.

- How does Brian Tonna's role in the procurement of the Electrogas contract reconcile with the fact that Nexia BT set up Panama companies for Konrad Mizzi and Keith Schembri hours after the election of the Labour Party to power?

In this respect, do please take into account that Nexia BT has now halted its operations after its partners have had their assets and the assets of their relatives and companies frozen by a court's attachment order, together with the assets of the relatives and companies of Keith Schembri, on the Attorney General's request pending charges for money laundering.

- Why has the government authorised the absorption of the shares of Gasol in the Electrogas consortium, when Gasol was the largest partner in the consortium and the partner bringing the bulk of the finance and the trade experience to the consortium? Would it not have been likelier for the government to consider other bids at that point or re-open the competition?
- Why has the government stepped in to provide security for the financing needed by Electrogas to fill the vacuum left by Gasol at considerable risk to the public purse? Why has the government permitted the shifting of the competitive goalposts in this procurement process, providing an extent of comfort to its private supplier that would have permitted any number of other competitors to make rival offers on these terms?
- Why has the government directed for Electrogas to be relieved of paying excise tax on the electricity it generates after the procurement process was completed, again shifting goalposts to a point where other rival bidders could have made more advantageous offers?
- Why has the government commuted all penalties for late delivery of the project without any form of compensation?

I submit that these questions have no reasonable answer unless they're considered alongside other facts that we know:

Firstly, that Brian Tonna, who worked for Yorgen Fenech, set up Hearnville and Tillgate in Panama for Keith Schembri and Konrad Mizzi at the same time that he designed the contract which he would award to Electrogas.

And secondly, that Yorgen Fenech owns 17 Black in Dubai which alongside Macbridge, the owner of which remains unknown, undertook to pay Hearnville and Tillgate a yearly \$2 million kickback.

This does not specifically raise suspicion that Siemens, Siemens employees, or even Electrogas itself paid bribes or broke procurement rules. However, it is not reasonable to conclude anything but that using off-shore structures in secretive jurisdictions, your business partner reserved a portion of the profits from the Electrogas project for the payment of bribes to government officials. As a result of those bribes or the promise of those bribes, Electrogas has benefited disproportionately, not only by the fact that it has been granted the contract in the first place, but that it had done so on terms that improved after the contract was awarded.

This is a far cry from your declared objective that “we compete fairly for orders with the quality and the price of our innovative products and services, not by offering improper benefits to others.” In this case the opposite has occurred.

This should be enough for you to seriously consider your position as shareholders of Electrogas as, alongside Yorgen Fenech, you continue to enjoy the proceeds of corruption. In the words of your Joe Kaeser, you seek to uphold human rights and the fight against corruption, as well as the law. You say you stand for fairness and integrity along with responsibility “because it is the culture of a company and its values that make the difference”.

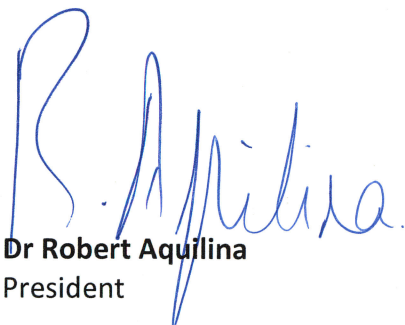
The Malta police have explained in open court that just before her death, Daphne Caruana Galizia received a large dump of emails from the Electrogas servers. Formally Electrogas has limited itself to demanding a police investigation into the leaks. However, your partner Yorgen Fenech was heard on recordings played out in open court going well beyond the formal measures taken by the company you and him partly own. He commissioned the murder of the journalist before she could understand and reveal the implication of the emails that, in simple terms, would show that Electrogas would not have been retained by the government without the corruption that secured its deal.

Your partner in Electrogas retained a holding for the purpose of corruption. In entering into, and remaining in, a commercial arrangement that has permitted and still permits dividends on the back of that share which “may possibly be directly or indirectly passed on to a government official to influence official action or obtain an improper advantage”, you are indirectly paying into the corruption that has secured this business. You are, as a minimum, in breach of your own Guidelines, which is a matter for you alone to consider.

We find however that your response is entirely inconsistent with the values you profess, and we also suspect that your conduct may very well be in breach of the anti-corruption laws of your country.

We are publishing this exchange of correspondence.

Respectfully,



Dr Robert Aquilina
President