



The lessons of the Dalli Case

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Main messages

- The VIP treatment for the tobacco industry in the EU
- The access to the 13th Floor
- The delay technique
- The “Petite” problem
- The ignorance of a legal obligation to restrict interactions with the Tobacco Industry

The cooperation agreements with the tobacco industry

In 2004, the EU dropped a lawsuit on smuggling charges against Phillip Morris in return for a legally binding agreement and the payment of \$1 billion.



The cooperation agreements with the tobacco industry

- Similar agreements were concluded with JTI in 2004 (payments \$400 million), BAT in 2010 (\$200million) and in 2010 ITL (\$ 300 million).
- 1 billion + 400 million + 200 million +300 million = \$1,9 Billion

The cooperation agreements with BAT and Imperial Tobacco of 2010

- JTI, BAT and Imperial Tobacco have the right to terminate the agreements if there are significant failures of their 'reasonable expectations' as to their benefits under the agreements.
- Tobacco companies provide training to employees and EU officials (BAT agreement).

Japan Tobacco International Case

- Complaint against JTI of smuggling cigarettes from Cyprus into Syria on 3 November 2011
- Olaf opened an investigation on 5 December 2011
- After 28 months no results yet.

The goal of delaying

- The 1989 Tobacco Products Directive was prepared by the Commission during six months.
- The 2001 Tobacco Products Directive was prepared by the Commission during one year.
- The 2014 Tobacco Products Directive was prepared by the Commission during four years.

The requests for delay by Catherine Day

- “Given these substantial points and taking into account the political sensitivity of the matter, we do not believe it is appropriate to launch the inter-service consultation.” (25/7/2012 Catherine Day to Testori, DG Sanco)
- “We came to the view that it would be best not to launch the ISC until after the October European Council.” (Mail Day to Testori 23/9/2012)
- “I would ask you to agree to do this (adoption in Council) on 19 December (instead of 11 december 2012)” (Mail Day to Testori 25/9/2012)

Dalli Case

- Swedish Match files a complaint against EU Commissioner Dalli.
- PMI lawyer Michel Petite informs the Secretariat-General of the Commission about this complaint.
- The Commission receives the complaint on 21 May 2012.
- OLAF receives the complaint on 24 May 2012 at 8.15 pm.
- OLAF accepts to open the case the next day. A Swedish Match complaint becomes a EU Commission complaint in less than 24 hours.

Dalli Case

- The President of the Commission receives the OLAF report on 15 October 2012.
- Commissioner Dalli is asked to resign on 16 October 2012 around 4.45 pm.
- The Secretary General informs Swedish Match at 5.10 pm.
- The press release announcing Dalli's resignation is at 5.13 pm.
- The press is informed on 17 October 2012 that the Tobacco Products Directive is delayed until a new Commissioner is appointed.

Dalli Case

From: Catherine.Day@ec.europa.eu [mailto:Catherine.Day@ec.europa.eu]
Sent: tisdag 16 oktober 2012 17:10
To: Peyron Fredrik (STO)
Cc: Giovanni.KESSLER@ec.europa.eu
Subject: RE: Letter

Dear Mr Peyron

On 30 May I wrote to thank you for your letter of 14 May, received on 21 May, and to inform you that the Commission had referred the case to OLAF, the EU anti fraud office, for investigation. On 15 October the Commission received OLAF's final report on the investigation.

Despite the fact that Mr Dalli categorically rejects OLAF's findings he has tendered his resignation as a member of the Commission with immediate effect. I attach a copy of the press statement that is now being issued by the Commission.

Yours sincerely

Catherine Day

Michel Petite: a champion of conflict of interest

- Former member of Cabinet of Delors, Prodi (head of Cabinet) and Barroso.
- Former Director General of the Legal Service.
- Negotiated on behalf of the EU agreements with PMI in 2004 and JTI in 2007.

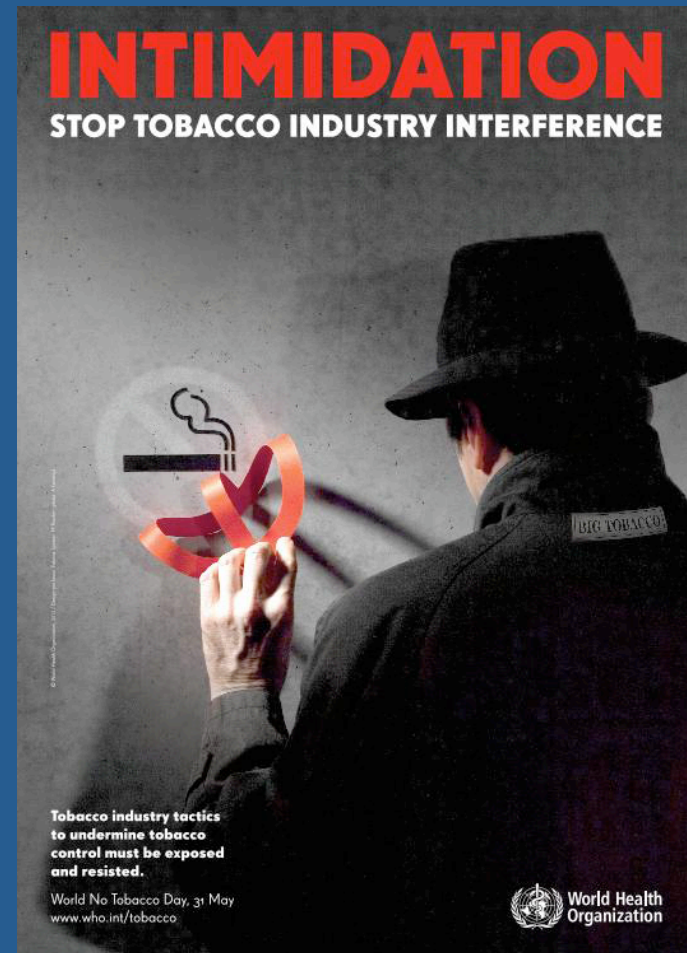


Michel Petite: a champion of conflict of interest

- PMI lawyer at Clifford Chance
- Direct access to Secretary-General Catherine Day who asked three times a delay for the TPD in the crucial period July- September 2012.
- Direct access to the Legal Service which examined the Tobacco Products Directive (September 2011, September 2012 and November 2012).
- Chair of the EU Ethical Committee 2009-2013.

Article 5.3 of the FCTC

“in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”



Article 5.3 of the FCTC

Article 5.3 in the WHO convention and the accompanying guidelines state that decision-makers “should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.”

If interactions with the tobacco industry are necessary, interactions should be conducted transparently.

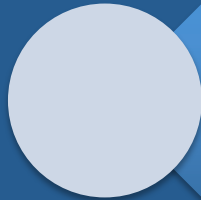
11 undeclared meetings at the 13th floor of the Berlaymont with PMI, ESTOC, Swedish Match and the German cigar industry.



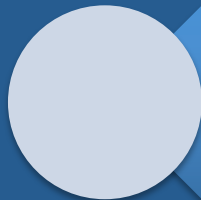
No meetings at the 13th floor with the
public health community on the TPD



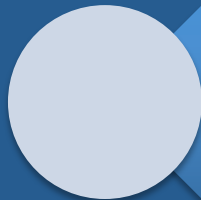
Article 5.3: an obligation for the EU



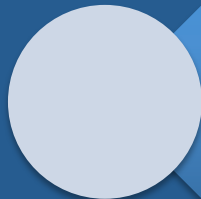
1) Make all interactions with the tobacco industry transparent.



2) Avoid all unnecessary contacts between the tobacco industry and the EU, such as 13th Floor meetings.



3) Eliminate conflict of interests at the EU High Level Committees.



4) The non-renewal of the cooperation agreements with the tobacco industry.



THANK YOU

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