



COMMERCE COMMISSION

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BY HAND

18 August 2008

Colonel Mohammed Aziz
Deputy Chairman
Fijian Holdings Limited
Leve 1, Govt Buildings
SUVA.

Dear Colonel,

I am writing to address matters arising from your unannounced visit to the Commission's office on 12 August 2008.

You informed the CEO of the Commission that you were there in your capacity as a director of FHL and of Basic Industries, that there was a pending application for a cement price rise and that you had been told that there had been delay due to the inaction of the Commission, which was doing nothing on the request and was wasting time and taking too long. You also said that there was a complaint that the Commission's project officer was biased against FIL and could be using the application as an opportunity to penalise the company by delaying its application.

The CEO of the Commission explained that there was no substance to either of these complaints. The details of her explanation are not relevant to the purpose of this letter.

You then mentioned that you had seen a delegation in the last fortnight from Fletcher Pacific Steel Limited and they had complained that because the Commission Chairman was not resident in Fiji, that made it difficult for the Commission to operate effectively. You then asked if the Commission had a full board and whether another (local) Chairman could be appointed. Finally you asked when a decision would be made on the cement application.

It is necessary for me to deal with a number of aspects of your visit.

VISIT IRREGULAR

Commission staff are required to report all contact made by anyone connected with an applicant or possible applicant. It is critical to the Commission's independence that its deliberative processes are based solely upon the matters relevant to the decision and that no conduct of the Commission or its staff could give rise to a perception that it is influenced by the identity of interested parties. It is critical to the Commission's discharge of its statutory duty, that it is governed by the rule of law and treats all parties in the same manner,

no matter how large or small they are and no matter whether they are government or private sector, possessed of political or military influence or not.

The unannounced visit of an extremely senior member of the Military Council and sometime Acting Commander of RFMF gives rise to the perception that the Commission is expected to act in accordance with the wishes of that person. It also communicates to the staff that the Military Council and therefore the Government do not respect the obligation of the Commission to act independently of government.

VISIT DESTABILISED COMMISSION'S REPORTING LINES.

The CEO reports to me as Chairman of the Commission. It is highly corrosive of my authority as Chairman to raise with her the possibility of appointing a local Chairman when nothing of the kind has ever been suggested to me and where it is obvious that I would emphatically reject such a suggestion. It was a way of implying that the CEO loyalties should be to you and not to her Chairman.

VISIT ALIGNED MILITARY COUNCIL, RFMF AND GOVERNMENT WITH FLETCHER STEEL'S ILLEGITIMATE EFFORTS TO DESTABILISE COMMISSION.

The complaint which the Fletcher Steel delegation made to the Military Council was highly improper. Fletchers had previously attempted to put pressure on the Commission to grant it price rises to which it was not entitled on the merits. It used political pressure and media pressure. The Commission made its determination in accordance with the merits and when it had done so, I published a statement recording Fletcher's illegitimate tactics and communicating to the market that they must not happen again. I enclose a copy of my statement. It would appear that Fletchers have taken their battle to the Military Council and that the Military Council granted them an audience and heard them out without the knowledge of the Commission. I request that you provide me with a diary note of the meeting so that I can respond properly.

VISIT A THREAT TO THE COMMISSION.

An unannounced visit to an independent statutory regulator by an extremely senior military officer who was also a director of a company which was an applicant for a price rise and of a company (FHL) a recent acquisition of which was under consideration by the Commission is a serious departure from established expectations. Nothing like it has happened since the Commission was established. When Fletchers persuaded the Minister for Commerce to attempt to intervene in an earlier price application, I wrote making it clear that the Commission had no intention of abrogating its duty in this manner. My understanding is that the Minister has accepted that his approach was mistaken.

When the relevant officer combines two subject matters in the one meeting, the first being the application for a price rise and the second being the viability of the position of the Chairman, it creates the clear impression that the Commission and its Chairman are being threatened that, if the price rise is not approved, the relevant officer might use his influence to have another Chairman appointed.

CONCLUSION

I have given written instructions that the concrete price application is to be dealt with strictly in accordance with the Commission's established procedures. No favour will be given to it, nor will it be disadvantaged by your visit. On present figures, however, I think it unlikely that the application will be successful.

I request that, if in future you or any member of the Military Council or the government has any issue that you wish to discuss with the Commission, or if you wish to have the Commission's position on any matter explained, you make contact directly with me and not with the staff. I also request that any representations made to either body in future about the Commission are made available to me to enable the Commission's

position to be available to the government or the Military Council. I would have expected that both bodies would decline to receive such representations unless they are made in the presence of a representative of

the Commission. Otherwise, you encourage intrigue and destabilisation of an independent statutory body the continued independence of which is important to the Fijian economy.

The Commission is entering a period of extremely important work, especially in telecommunications. It is critical that stakeholders are not encouraged to think that lobbying the Military Council or the government is an effective means of preventing the Commission from doing its duty.

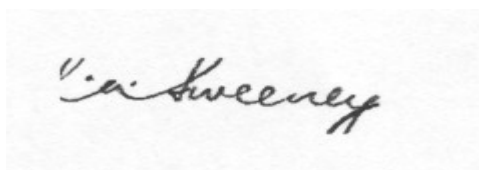
I am aware, of course, that as a very senior legal practitioner yourself, you would have already been aware of the matters raised in this letter.

Finally, if you will permit me a personal comment: I am working hard at considerable personal cost to develop the Commerce Commission into an effective and efficient Commission for the long term benefit of Fiji. I believe that an independent and expert Commission is capable of making a substantial contribution to the Fiji economy. It is a task to which I am very committed. I believe strongly that regional experts should be willing to set an example to their own countries at the personal level by making an effort to assist their Pacific neighbours without being preoccupied with domestic political issues, which are none of our business. My record of involvement in Fiji and other Pacific nations is a long one of which I am proud. However, these objectives cannot be achieved if the Commission is constantly under siege from the government and the Military Council. To be effective the Commission needs the stakeholders to see and accept that it is "untouchable". Its statutory independence must be real, not just a statutory fiction and it must be resolutely supported by the organs of government. The market needs to know that the response to any attempt to lobby the government or the Military Council will be a firm message that there is no point in lobbying anyone but the Commission itself as neither the government nor the Military Council will ever interfere with the Commission's work or co-operate in any endeavour to erode its independence.

If the Military Council or the government no longer intends to support a fully independent Commerce Commission, a letter from the Prime Minister informing me that the government no longer considers section 11 of the Commerce Act to be in force will secure my immediate resignation.

I look forward to receiving a diary note of the representations made by Fletchers.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "C. Sweeney", is written on a light-colored, slightly textured background.

Charles Sweeney QC
Chairman

cc: Hon. Prime Minister
4th Floor, New Wing,
Government Buildings
SUVA.

