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19 November 2010

Richard Alderman
Director
Serious Fraud Office
Elm House
10-16 Elm Street
London WC1X 0BJ

Dear Mr Alderman

SFO/BAE settlement

We understand that the Serious Fraud Office (SFO) is next week to bring before the Court its plea agreement with BAe Systems announced on 5 February this year. As we understand it, BAe will plead guilty to breaching its duty under the Companies Act 2006 to keep accurate accounting records in respect of its 1999 sale of a radar system to Tanzania.

As you know, we brought legal proceedings earlier this year seeking to challenge that plea agreement. We had no choice but to withdraw the legal challenge when you revealed, contrary to your earlier public position, that the SFO had, in fact, insufficient evidence to prosecute BAe for the corruption offences that it was investigating.

We remain deeply concerned about the terms of the plea bargain that the SFO has struck with BAe. In the course of the legal proceedings, you disclosed that:

“BAe requested an undertaking from [sic] the SFO that in any future proceedings (to which BAe was not a party) the prosecution would not allege

that the company was guilty of corruption.” [paragraph 18 of your grounds of resistance]

We highlighted to you through our lawyers, Leigh Day & Co, in a letter of 11 May 2010, that it would seem from this statement that the SFO has agreed to fetter its future prosecutorial discretion. If further evidence came to light that was sufficient to mount a prosecution against individuals that necessitated making allegations concerning BAE’s conduct, the SFO would not be able to bring such a prosecution as it has undertaken not to do so.

We consider that the SFO does not have power to enter such an agreement and that it is an illegitimate fetter upon the SFO’s discretion as to prosecution. We consider that, if the terms of the agreement with BAE are as they appear to be, then the plea agreement is unlawful.

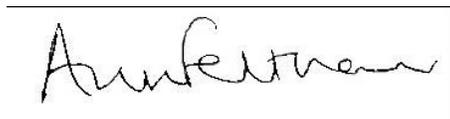
We are limited in what we can say further because, despite repeated requests, you have declined to provide us with a copy of this undertaking between the SFO and BAE or to confirm or deny whether our understanding is correct.

You have taken the position that the undertaking is confidential between the SFO and BAE Systems and that such confidentiality is in accordance with the Attorney General’s 2009 *Guidance on Plea Discussions in Cases of Serious or Complex Fraud*.

Notwithstanding the question of confidentiality, in light of Lord Justice Thomas’s findings in the March 2010 Innospec case, we consider that this undertaking will be a matter of great concern to the Court. As you are now aware, sentencing is a matter for the Courts, which are not bound by the terms of any agreement between the SFO and the Defendant.

We trust that you will raise this specific issue with the Court next week and look forward to confirmation of the same.

Yours sincerely



Ann Feltham
Campaign Against Arms Trade



Nicholas Hildyard
The Corner House