

Unofficial English Translation

To Norges Bank

22 October 2021

Recommendation to place Bombardier Inc under observation

Summary

The Council on Ethics recommends that Bombardier Inc be placed under observation pursuant to the criterion relating to gross corruption or other serious financial crime in the Guidelines for Observation and Exclusion from the Norwegian Government Pension Fund Global (GPFG)

Bombardier is one of the world's largest producers of private jet aircraft and has more than 16,000 employees in over a dozen countries. Bombardier also produced commercial aircraft up until February 2020, and used to be one of the world's largest manufacturers of railway rolling stock and ancillary equipment. However, this part of the business was sold in January 2021. The company is listed on the Toronto Stock Exchange. At the close of 2020, the GPFG owned 1.03 per cent of the company's shares, worth NOK 80.7 million.

The Council's investigations have revealed that Bombardier or its subsidiaries can be linked to allegations or suspicions of corruption in six countries over a period spanning more than ten years. All the cases relate to bribes or suspicious transactions amounting to more than USD 100 million, via agents, intermediaries or partners, with the object of winning contracts for Bombardier's subsidiaries.

The Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPFG) look forward and the issue to be assessed is whether there is an unacceptable risk that the company is contributing to or is itself responsible for gross corruption. When assessing whether there is an unacceptable risk, the Council attaches importance to the systems the company has in place to prevent corruption, what the company has done to prevent the incidents in question, follow them up and communicate in relation to them, as well as the general corruption risk the company faces in connection with its operations.

The 'tone from the top' is crucial if a company is to be able to establish a culture in which ethical guidelines are complied with. The only example the Council has found of senior management communicating a zero tolerance for corruption is a statement by the then CEO in 2014. In light of the corruption investigations linked to the company and risk exposure in some very challenging markets, the Council considers that the company's senior management could be expected to communicate more actively on this subject.

The Council notes that Bombardier has long had guidelines in place for the performance of third-party due diligence inquiries. Although the Council considers this to be positive in principle, it nevertheless questions the practical implementation of the guidelines. The company has disclosed that it has performed due diligence on partners and customers mentioned in this report, without uncovering any factors that constitute a risk of corruption. At the same time, publicly available information indicates that these partners/customers have operated in part through shell companies and in part been politically exposed. The discrepancy between what the company has disclosed and the information the Council has obtained from other sources causes the Council to question how effectively the company is handling third-party risk.

The Council also notes that Bombardier has long had a whistleblower system in place and a dedicated team to follow up and investigate allegations of potential irregularities. Although this is important, the Council attaches greatest weight to the company's ability to show how whistleblower reports are followed up in practice.

The Council notes that in 2015 and 2016, the company received three internal reports concerning the Azerbaijan project. As far as the Council is aware, Bombardier did not launch any inquiries into these matters until the Swedish police force started its investigation in the autumn of 2016. Nor has the company disclosed whether the case has had any consequences

for those in the company who were involved. In the Council's view, this too makes it questionable whether the company's guidelines are being followed up in practice.

In the Council's overall assessment, there is an unacceptable risk that Bombardier could also in future contribute to or itself be responsible for gross corruption. The Council's decision to recommend that the company be put under observation and not be excluded from investment by the GPFG at this time rests on the fact that Bombardier, in 2021, divested its Transportation division, the business to which the majority of the corruption cases were linked. Compared with the remaining aviation business, the Transportation division was involved in far more public procurement projects, which brings with it a higher corruption risk. Even though Bombardier remains a global company, which could operate in many demanding markets with a high risk of corruption, the Council considers that it is uncertain what developments may occur forward in time, see section 6(5) of the GPFG's ethical guidelines.

During the observation period, the Council will both obtain information about Bombardier's anti-corruption efforts and monitor the emergence of new revelations linking the company to cases of alleged gross corruption or other serious financial crime.

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1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPF) has assessed the fund's investments in Bombardier Inc¹ (Bombardier) against the Guidelines for Observation and Exclusion from the GPF (the ethical guidelines).² The company can be linked to alleged or suspected corruption in several countries.

Bombardier is one of the world's largest producers of private aircraft and has more than 16,000 employees in over a dozen countries. Up until February 2020, the company also produced commercial aircraft, and used to be one of the world's largest manufacturers of railway rolling stock and ancillary equipment. However, this part of the business was sold to Alstom in January 2021.³ The company is listed on the Toronto Stock Exchange.⁴

At the close of 2020, the GPF owned 1.03 per cent of the company's shares, worth NOK 80.7 million.⁵

1.1 Matters considered by the Council

Bombardier has been implicated in allegations and suspicions of corruption in numerous countries. The allegations/suspicions concern the bribery of public officials to secure the award of contracts. A company may be excluded from the GPF if there is an unacceptable risk that it is contributing to or is itself responsible for gross corruption or other serious financial crime, as stated in section 4(g) of the GPF's ethical guidelines.

The Council on Ethics applies the following definition of gross corruption:

Gross corruption exists if a company, through its representatives,

- a) gives or offers an advantage – or attempts to do so – in order to unduly influence:
 - i) a public official in the performance of public duties or in decisions that may confer an advantage on the company; or*
 - ii) a person in the private sector who makes decisions or exerts influence over decisions that may confer an advantage on the company,**
 - b) demands or receives a bribe*
- and*
- c) the corrupt practices mentioned in a) and b) are carried out in a systematic or extensive way.*

Under the ethical guidelines' section 6(5), observation may be decided "if it is uncertain whether grounds for exclusion exist or what developments may occur forward in time, or when expedient for other reasons". In the Council's assessment of future risk with respect to corruption, emphasis is placed on how the company has responded to the allegations of

¹ Issuer ID: 108515

² Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpfg-01.09.2019.pdf>

³ Bombardier Inc., 2021: Financial Report 2020.

⁴ <https://ir.bombardier.com/en/profile> (last visited 4 March 2020).

⁵ Norges Bank's website, [https://www.nbim.no/en/the-fund/investments/#/2020/investments/equities/5593/Bombardier%20Inc.](https://www.nbim.no/en/the-fund/investments/#/2020/investments/equities/5593/Bombardier%20Inc)

corruption and the extent to which it has taken effective steps to prevent, detect and deal with corruption. The risk of corruption in the business sectors and countries in which the company operates are also important factors in the Council's assessment. The Council otherwise attaches importance to whether the company has assisted in its inquiries. The Council takes the position that it is up to the company to substantiate that it is working effectively to prevent corruption if the Council is to deem the risk to the GPGF to be acceptable.

1.2 Sources

The information that has been obtained on the corruption allegations derives principally from international media, as well as documents relating to legal proceedings in Sweden and a judicial inquiry in South Africa. The Council on Ethics' assessment of the company's anti-corruption measures is based on information published on Bombardier's website and in its annual reports, as well as correspondence between the Council and the company.

The company has commented on two draft versions of the Council's recommendation.

2 The Council's findings

The Council's investigations show that Bombardier or its subsidiaries can be linked to allegations or suspicions of corruption in six countries over a period of more than ten years (2004-2016). Three of the incidents – relating to the Gautrain contract in South Africa in 2005⁶, the EverLine contract in South Korea in 2004⁷ and the *Nederlandse Spoorwegen* case in 2015⁸ – will not be discussed in further detail below. In connection with the sale of its Transportation division to Alstom, Bombardier discloses that it has issued a bank guarantee totalling EUR 250 million to Alstom in compensation for expenses associated with certain compliance-related cases and allegations.⁹

2.1 Azerbaijan

In 2013, Azerbaijan Railways (AZD) awarded Bombardier's Swedish subsidiary Bombardier Transportation AB (Bombardier Sweden) the contract to install the railway signalling system EBI Lock 950 on the line between Baku and Boyuk Kesik in Azerbaijan. Bombardier Sweden won the contract, worth USD 340 million, as part of a consortium, which also included the

⁶ The Mail & Guardian, 31 May 2012: *Gautrain: Massive secret payoffs*, <http://www.armsdeal-vpo.co.za/articles16/gautrain.html>; The Globe and Mail, 30 December 2017: *How Bombardier's 'success fees' gave them an inside track to deals around the world*, <https://www.theglobeandmail.com/news/investigations/bombardier-success-fees-inside-track-deals/article37454077/>; CBC, 1 April 2015: *South Africa's corruption watchdog probes Bombardier rail deal*, <https://www.cbc.ca/news/business/south-africa-s-corruption-watchdog-probes-bombardier-rail-deal-1.3017026>.

⁷ CBC, 28 January 2015: *Bombardier Transportation accused of corruption in South Korea*, <https://www.cbc.ca/news/canada/montreal/bombardier-transportation-accused-of-corruption-in-south-korea-1.2935567>; The Globe and Mail, 30 December 2017.

⁸ Financial Post, 12 June 2015: *Bombardier Inc turfs employee for allegedly paying for secret details about upcoming contract*, <https://financialpost.com/transportation/bombardier-inc-employee-fired-after-dutch-railway-consultant-received-money-for-confidential-information>.

⁹ Bombardier Second Quarterly Report, 5 August 2021, p. 58, <https://bombardier.com/en/investors/investor-events/2021/financial-results-second-quarter-ended-june-30-2021>.

Russian joint venture Bombardier Transportation (Signal) Ltd (Signal)¹⁰ and the Azerbaijani company Trans-Signal-Rabita LLC (TSR).¹¹

In March 2017, it became known that Bombardier Sweden was under investigation in Sweden, on suspicion of having paid millions of dollars in bribes to senior public officials in Azerbaijan. The bribes were said to have been paid through the company Multiserv, among others. Closer scrutiny of Multiserv points clearly to it always having been a shell company.¹²

In connection with the investigation, it emerged that Multiserv – through two contracts in January and June 2014, respectively – had first sold equipment for 46 railway stations in Azerbaijan to Signal’s Azerbaijan division for USD 104.8 million and then bought the same equipment from Bombardier Sweden for USD 19 million. Multiserv had therefore made a USD 85.8 million profit on this transaction.¹³

According to an article published by OCCRP, TSR is also a shell company. Apparently, it was at the insistence of the Azerbaijani authorities that TSR was included in the consortium at all. At the same time, Signal is supposed to have been given the opportunity to ‘tailor’ the tender’s technical requirements so the consortium would win the competition.¹⁴

When the case against a Russian employee of Bombardier Transportation came before the district court in Sweden in August 2017, it emerged that Bombardier had performed a due diligence assessment of TSR. However, the company has not shared this assessment with the prosecuting authorities.¹⁵

In connection with the trial, it also emerged that the World Bank had begun its own inquiries into the railway project, since the bank had put up 85 per cent of the funding for it. According to a preliminary report, which was submitted in evidence to the court, the World Bank’s own inquiries also indicated that TSR may have been used by Bombardier to transfer bribes to employees of AZD. According to an article in The Globe and Mail from May 2019, the bank is said to have repeated its suspicions in a subsequent ‘show-cause letter’; specifically, it

¹⁰ Bombardier Transportation (Signal) Ltd. was established by Bombardier and Russian Railways (RZD) in 1996 to supply signalling equipment to the Russian railways. (Source: GlobeNewsWire, 12 October 2015: Bombardier Achieves Rail Control Landmark in Russia, <https://www.globenewswire.com/news-release/2015/10/12/1506130/0/en/Bombardier-Achieves-Rail-Control-Landmark-in-Russia.html>).

¹¹ The Organized Crime and Corruption Reporting Project (OCCRP), 17 March 2017: *Bombardier Sweden Investigated for Alleged Bribery in Azerbaijan*, <https://www.occrp.org/en/agentsofinfluence/bombardier-sweden-investigated-for-alleged-bribery-in-azerbaijan/>; OCCRP, 22 March 2017: *Bombardier’s Azerbaijani Partner Has Chickens and Cows. Who Got the Millions?*, <https://www.occrp.org/en/agentsofinfluence/bombardiers-azerbaijani-partner-chicken-cows-who-got-millions/>.

¹² See The Globe and Mail, 16 December 2016: *Bombardier and the Putin connection*, <https://www.theglobeandmail.com/report-on-business/bombardier-and-the-putin-connection/article33354878/>; Companies House UK, <https://beta.companieshouse.gov.uk/company/07306944/officers> (last visited 28 May 2020); <https://delficorp.com/corporate-services/office-facilities/> (last visited 28 May 2020). That Multiserv appears to be purely a shell company is also confirmed by OCCRP (17 March 2017) and by SVT Nyheter (SVT Nyheter, 27 March 2017: *Affären som spårade ur*, <https://www.svt.se/nyheter/granskning/ug/referens/affaren-som-sparade-ur>), and is also reported to have been confirmed by the World Bank (The Globe and Mail, 10 May 2019: *World Bank accuses Bombardier of corruption to win contract in Azerbaijan*, <https://www.theglobeandmail.com/business/article-world-bank-accuses-bombardier-of-corruption-to-win-contract-in/>).

¹³ OCCRP, 17 March 2017; SVT Nyheter, 27 March 2017.

¹⁴ OCCRP, 22 March 2017. Investigations carried out by the World Bank have also confirmed the impression that TRS is purely a shell company. (World Bank Group, Integrity Vice Presidency (Int), 4 August 2016: *Interim Referral Report to the Government of Sweden*, pp. 4–7, published in connection with the prosecuting authority’s submission of evidence to Stockholm District Court.

¹⁵ Stockholm District Court, 11 October 2017, judgment no. B 1282-17.

suspected that Bombardier had used TSR to channel USD 100 million to Azerbaijani railway authorities.¹⁶

It was further reported in the same Globe and Mail article that the World Bank alleged that Bombardier had intended to pay Multiserv and another presumed shell company a total of USD 120 million, and had actually paid them just over USD 50 million by July 2016. According to the same article, the World Bank had also accused Bombardier of putting obstacles in the way of the bank's inquiries and refusing to hand evidence over to the bank's audit team. Finally, there are supposed to have been 24 documents that Bombardier refused to hand over, on the grounds that they were protected by legal privilege.¹⁷ The World Bank's inquiry was still ongoing in June 2021.¹⁸

The Bombardier employee who stood trial in Stockholm District Court was found not guilty in October 2017. This decision was appealed by the Swedish prosecuting authority.¹⁹ When the appeal hearing was due to start in the Court of Appeal in Sweden in January 2020, the appellant failed to appear. According to media reports, this person had returned home to Russia.²⁰ In June 2021, the Swedish prosecuting authority charged another former employee of Bombardier Transportation with bribery in the same case.²¹

In February 2020, the US Department of Justice (DOJ) is reported to have contacted a representative of Bombardier and requested information and documentation relating to the contract in Azerbaijan. According to Bombardier, the company is cooperating with the DOJ.²²

2.2 Russia

Signal was established in 1996 as a joint venture between Bombardier and Russian Railways (RZD) to supply railway signalling equipment to Russia's railways, including EBI Lock 950 CBI systems produced by Bombardier Sweden.²³ In 2011, Bombardier also acquired shares in RZD's subsidiary Elteza.²⁴ According to Bombardier, an international law firm performed a due diligence on Elteza.²⁵ In 2016, The Globe and Mail reviewed approx. 100 transactions relating to sales of EBI Lock 950 between 2011 and 2016. The review showed that Multiserv

¹⁶ The Globe and Mail, 29 August 2017; World Bank Group, Int, 4 August 2016; The Globe and Mail, 10 May 2019.

¹⁷ The Globe and Mail, 10 May 2019.

¹⁸ Bombardier Second Quarterly Report, 5 August 2021, p. 57.

¹⁹ Reuters, 11 October 2017: *Swedish court rules Bombardier employee not guilty of bribery*, <https://www.reuters.com/article/us-bombardier-sweden/swedish-court-rules-bombardier-employee-not-guilty-of-bribery-idUSKBN1CG118>; Stockholm District Court, 11 October 2017; Reuters, 25 October: *Swedish prosecutor appeals Bombardier employee acquittal*, <https://www.reuters.com/article/us-bombardier-appeal/swedish-prosecutor-appeals-bombardier-employee-acquittal-idUSKBN1CU1CO?utm>.

²⁰ Aftonbladet, 5 February 2020: *Bombardiermålet: Mutmisstänkt kom inte*,

<https://www.aftonbladet.se/minekonomi/a/WbBVQQ/bombardiermalet-mutmisstankt-kom-inte>.

²¹ Bombardier Second Quarterly Report, 5 August 2021, p. 58; The Globe and Mail, 9 June 2021: *Former top Bombardier employee charged in Swedish corruption probe*,

<https://www.theglobeandmail.com/business/article-former-bombardier-executive-charged-in-swedish-corruption-probe/>.

²² Bombardier Inc. Financial Report 2020, p. 206, <https://bombardier.com/en/investors/investor-events/2021/financial-results-fiscal-year-ended-december-31-2020>.

²³ GlobeNewsWire, 12 October 2015; OCCRP, 5 April 2016: *Wringing Profits from the Russian Railways*, <https://www.occrp.org/en/panamapapers/wringing-profits-from-the-russian-railways/>.

²⁴ Global Railway Review, 2 March 2011: *Bombardier Transportation Acquires Stake in Russian Railways Subsidiary*, <https://www.globalrailwayreview.com/news/8419/bombardier-transportation-acquires-stake-in-russian-railways-subsidiary/>.

²⁵ Letter from Bombardier, dated 6 March 2021.

had resold this equipment to recipients on the Russian side for a combined import value of approx. USD 160 million. In the majority of cases, the buyers were Signal or Elteza.²⁶

The Russian citizen who founded Multiserv and was its first chief executive was also vice-chair of Elteza's board of directors.²⁷ In an internal Bombardier memo from 2014, this person is described as belonging to a "small group of powerful people", which also included another Russian citizen who also can be linked to Multiserv. The memo also says that this group has access to the then CEO of RZD and almost all of the company's other key executives, as well as almost all heads of the railways in the former Soviet states.²⁸ According to the memo, such connections enable them to influence both technical and commercial decisions. The memo also discloses that the company has performed due diligence on members of this group.²⁹

2.3 South Africa

Bombardier can be linked to two separate cases in South Africa (Gautrain and Transnet), the latter of which also has connections with the so-called Gupta Leaks revelation and the commission that has been set up to investigate allegations of state capture, corruption and fraud in South Africa's organs of state.³⁰ Only the Transnet case is discussed below.

This case relates to suspicions of bribery in connection with the contracts that the South African state transport company Transnet signed in March 2014 for the procurement of 1,064 railway locomotives. The contracts were signed with a total of four different companies, with Bombardier's share amounting to USD 1.2 billion for the delivery of 240 locomotives.³¹

A report by the Public Protector, published in the autumn of 2016, sheds light on this procurement. The report summarised the finding of an inquiry into allegations of inappropriate and unethical behaviour by the then president of South Africa and other leading public officials linked to an influential family in connection with the dismissal/appointment of ministers and the heads of state-owned companies in South Africa.³² The report stated that

²⁶ The Globe and Mail, 16 December 2016.

²⁷ The Globe and Mail, 16 December 2016.

²⁸ In Stockholm District Court, it emerged that the two Russian citizens were also involved in Bombardier projects in Kazakhstan, Turkmenistan and Mongolia. (Source: The Globe and Mail, 29 August 2017: *Bombardier culture at heart of bribery case, court told*, <https://beta.theglobeandmail.com/news/world/bombardier-culture-at-heart-of-bribery-case-court-told/article36111064/>).

²⁹ Internal Bombardier memo, dated 17 November 2014, <http://www.svtstatic.se/image-cms/svtse/1490603025/svts/article13013520.svt/BINARY/Dokument%2011%20-%20Internt%20PM%20Obodovski.pdf> (last visited 2 June 2020).

³⁰ <https://www.statecapture.org.za/>.

³¹ SABC News, 16 February 2018: *Transnet absolves officials in locomotives scandal*, <https://www.sabcnews.com/sabcnews/transnet-absolves-officials-locomotives-scandal/>; The Globe and Mail, 22 May 2018: *South African probe urges suspension of controversial US\$1.2-billion Bombardier locomotive deal*, <https://www.theglobeandmail.com/world/article-south-african-investigative-report-suggests-suspending-controversial/>; The Globe and Mail, 30 September 2018: *South African minister demands freeze on Bombardier payments after corruption probe*, <https://www.theglobeandmail.com/business/article-south-african-minister-demands-freeze-on-bombardier-payments-after/>.

³² Public Protector South Africa, 14 October 2016: *State of Capture. Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses*, Report No: 6 of 2016/17, <https://www.sahistory.org.za/sites/default/files/2019-05/329756252-state-of-capture-14-october-2016.pdf>.

there was evidence to substantiate allegations that the family also had close ties to the person who was CEO of Transnet from 2011 until March 2015.³³

In August 2018, it further emerged that the South African prosecuting authorities were investigating allegations of fraud, money laundering and corruption involving the influential family in connection with the Transnet procurement.³⁴

In March 2021, it became known that Transnet and South Africa's Special Investigating Unit (SIU) had asked South Africa's Supreme Court to cancel the contracts for the 1,064 locomotives, since it was presumed that irregularities had taken place in connection with the procurement process and the contracts. Although the main focus was on two Chinese companies, the filing also claimed that neither Bombardier could "claim that they did not or could not reasonably have known that the procurement process and subsequent contracts were irregular and unlawful".³⁵

From as far back as 2010, South African media had published reports expressing concern over the close ties between the family in question and the then South African president and his son.³⁶

In connection with the publication of a cache of emails known as the "Gupta Leaks" in the summer of 2017, it emerged that, in 2015, the influential family had bought a Global 6000 jet aircraft from Bombardier at a considerable discount. According to an article published in The

³³ Public Protector South Africa, 14 October 2016, p. 17; Globe and Mail, 7 March 2018: *Questions mount over Bombardier's deals with notorious Gupta family*, <https://www.theglobeandmail.com/report-on-business/questions-mount-over-bombardiars-deals-with-notorious-guptafamily/article38230152/>; Public Protector South Africa, 14 October 2016, pp. 17, 339.

³⁴ News24, 15 August 2018: *Hawks investigate cases related to Gupta-loot worth more than R40 billion*, <https://www.politicsweb.co.za/news-and-analysis/hawks-investigating-r40bn-worth-of-gupta-looting>.

³⁵ Daily Maverick, 9 March 2021: *Transnet and SIU ask high court to cancel 1,064 locomotive contracts, scene of the Guptas' greatest heist*, <https://www.dailymaverick.co.za/article/2021-03-09-transnet-and-siu-ask-high-court-to-cancel-1064-locomotive-contracts-scene-of-the-guptas-greatest-heist/>; Special Investigating Unit and Transnet, 9 March 2021: *Transnet and SIU launch review application on 1064 locomotive transaction*, <https://www.transnet.net/Media/Press%20Release%20Office/TRANSNET%20LAUNCHES%20REVIEW%20APPLICATION%20ON%201064%20CONTRACT.pdf>.

³⁶ See for example, AmaBhungane, 14 May 2010: *Zuma 'meddled in mine buyout'*, <https://amabhungane.org/stories/zuma-meddled-in-mine-buyout/>; The Mail & Guardian, 23 July 2010: *Unease over Zuma's Gupta ties*, <https://mg.co.za/article/2010-07-23-unease-over-zumas-gupta-ties/>; Reuters, 10 August 2010: *ArcelorMittal Safrica to buy holder of Sishen rights*, <https://www.reuters.com/article/us-arcelormittalsouthafrica-idUSTRE6792X520100810>; AmaBhungane, 13 August 2010: *Zuma Jnr heading for first billion*, <https://amabhungane.org/stories/zuma-jnr-heading-for-first-billion/>; fin24, 22 August 2010: *Guptas under scrutiny*, <https://www.news24.com/Fin24/Guptas-under-scrutiny-20100822>; Southall, Roger. 2011. *Family and favour at the court of Jacob Zuma*. Review of African Political Economy. Vol. 38, No. 130, December 2011, p. 4; The Mail & Guardian, 25 February 2011: *Cosatu raises red flag on Guptas*, <https://mg.co.za/article/2011-02-25-cosatu-raises-red-flag-on-guptas/>; AmaBhungane, 18 March 2011: *Plum Gupta job for Zuma fiancée*, <https://amabhungane.org/stories/plum-gupta-job-for-zuma-fiancee/>; TechCentral, 23 October 2012: *Guptas score in Telkom bonanza*, <https://techcentral.co.za/guptas-score-in-telkom-bonanza/35755/>; The Mail & Guardian, 30 November 2012: *Guptas 'bankroll' Mrs Zuma's bond*, <https://mg.co.za/article/2012-11-30-00-guptas-bankroll-mrs-zumas-bond/?amp>; BBC, 3 May 2013: *Gupta wedding row: South Africa suspends officials*, <https://www.bbc.com/news/world-africa-22395570>; Daily Maverick, 3 May 2013: *Zuma and the Guptas: the 'symbiosis' continues*, <https://www.dailymaverick.co.za/opinionista/2013-05-03-zuma-and-the-guptas-the-symbiosis-continues/>; The Mail & Guardian, 7 May 2013: *The beginners' guide to the Guptas*, <https://mg.co.za/article/2013-05-07-the-beginners-guide-to-the-guptas/>.

Globe and Mail in August 2017, the family had paid USD 52 million for the aircraft, while the list price in 2015 was USD 62.3 million.³⁷

According to an article published in The Globe and Mail in March 2018, the USD 52 million price was offered in an email dated 18 February 2014 from a VP in Bombardier's Aviation division to a member of the influential family, the month before Bombardier signed the locomotive contract with Transnet. In addition to the discounted price, Bombardier's offer also included two credit notes worth USD 1.35 million and free training for the jet's pilots. In the same email, the VP is claimed to have assured the family's representative that they did not need to pay cash for most of the purchase price, since Bombardier was willing to assist them in securing loan financing.³⁸

In January 2021, the US DOJ is reported to have contacted a representative of Bombardier and requested information and documentation relating to the Transnet contract, as well as the sale of the Global 6000 jet aircraft. According to Bombardier, the company is cooperating with the DOJ.³⁹

2.4 Indonesia

In August 2019, it became known that the former CEO of Garuda, Indonesia's national airline, had been arrested in connection with a major corruption case linked to the company. In this connection, it was alleged that the person concerned had received bribes from a sales consultant in connection with the signing of contracts to purchase and lease Bombardier CRJ 1000 aircraft. The contracts in question were signed in the period 2011–2012.⁴⁰ In May 2020, the former CEO and the sales consultant were found guilty of corruption and money laundering in Indonesia, and sentenced to jail terms of eight and six years, respectively. The Court found that the former CEO had received USD 200,000 in bribes for his assistance with

³⁷ The Globe and Mail, 2 August 2017: *EDC backed Bombardier sale to Zuma allies*, <https://www.theglobeandmail.com/news/world/canada-financed-sale-of-bombardier-jet-to-tycoons-embroiled-in-south-african-scandal-e-mails-show/article35870554/>. In addition to the reference to the list price in this Globe and Mail article, the same price was referred to in later media articles, such as Business Insider, 31 July 2018: *Check out the \$62 million Bombardier private jet that's Canada's answer to Gulfstream*, <https://www.businessinsider.com.au/bombardier-global-6000-private-jet-tour-2018-7>, and various online news outlets focusing on the aviation industry, such as *Business Jet Traveler*: <https://www.bjtonline.com/aircraft/bombardier-global-6000> (visited 12 March 2021), and charter companies that lease out private jets, such as *Air Charter Advisors*: <https://www.aircharteradvisors.com/global-6000/> (visited 12 March 2021).

³⁸ The Globe and Mail, 7 March 2018. According to an interview with a South African businessman, cited in the same article, the person concerned attended a meeting in Zurich in the autumn of 2012 with representatives of Bombardier, Transnet and the influential family. At this meeting, the latter is supposed initially to have demanded a commission corresponding to 20% of the value of Bombardier's Transnet contract for helping the company to win the contract. After this was rejected by Bombardier's representative, the person demanded a significant discount on a jet aircraft from the company instead. That the family arranged a meeting with rolling stock producers in Zurich in 2012 was also confirmed by the former CEO of the Passenger Rail Agency of South Africa (PRASA) in connection with a parliamentary hearing at the end of January 2018.

³⁹ Bombardier Second Quarterly Report, 5 August 2021, pp. 58–59.

⁴⁰ France24, 8 August 2019: *Ex-Garuda Indonesia boss arrested in major graft probe*, <https://www.france24.com/en/20190808-ex-garuda-indonesia-boss-arrested-major-graft-probe>, Komisi Pemberantasan Korupsi, 7 August 2019: *KPK Summons 3 New Suspects for PT Garuda Indonesia's Bribery Case*, <https://www.kpk.go.id/en/news/press-releases/1109-kpk-summons-3-new-suspects-for-pt-garuda-indonesia-s-bribery-case>; Reuters, 5 November 2020: *Canada's Bombardier faces UK bribery probe over plane sales*, <https://www.reuters.com/article/us-bombardier-sfo-investigation/uks-sfo-probes-bombardier-for-suspected-bribery-corruption-in-indonesia-idUSKBN27L22W>.

the CRJ 1000 contract.⁴¹ At the beginning of November 2020, the UK's Serious Fraud Office (SFO) announced that it had launched an investigation into Bombardier on suspicion of corruption in connection with the Garuda contracts.⁴²

In May 2021, it became known that the US DOJ had also started investigating the Garuda case, and that it had in this connection contacted Bombardier with a request for information and documentation relating to the relevant contracts for the purchase and lease of Bombardier CRJ 1000 aircraft in 2011 and 2012. According to Bombardier, the company is cooperating with the DOJ.⁴³ In July 2021, the Royal Canadian Mounted Police (RCMP) notified Bombardier that it too had launched an investigation into the case in question, and requested documentation from the company.⁴⁴

2.5 Anti-corruption enforcement in the company's homeland and corruption risk in countries and sectors in which the company operates

Anti-corruption enforcement in the company's homeland:

Both the OECD and Transparency International (TI) have highlighted Canada's limited enforcement with respect to foreign bribery. In 2020, TI ranked Canada in the second lowest category (of four) due to the country's weak enforcement of the OECD Anti-Bribery Convention.⁴⁵

In March 2019, the OECD expressed concern over interference and political pressure in the criminal proceedings being pursued against another major Canadian company accused of engaging in bribery abroad.⁴⁶ That political interference had taken place was subsequently confirmed in the report following an inquiry by Canada's Conflict of Interest and Ethics Commissioner.⁴⁷

⁴¹ Komisi Pemberantasan Korupsi, 11 May 2020: *International Cooperation in the Investigation of Garuda Case*, <https://www.kpk.go.id/en/news/press-releases/1687-international-cooperation-in-the-investigation-of-garuda-case>.

⁴² Serious Fraud Office, 5 November 2020: *SFO confirms investigation into Bombardier*, <https://www.sfo.gov.uk/2020/11/05/sfo-confirms-investigation-into-bombardier/>.

⁴³ Reuters, 6 May 2021: *Bombardier says U.S. joins investigation into Indonesian jet deals*, <https://www.reuters.com/business/aerospace-defense/bombardier-says-us-joins-probe-into-decade-old-indonesia-jet-deals-2021-05-06/>.

⁴⁴ Bombardier Second Quarterly Report, 5 August 2021, p. 59.

⁴⁵ OECD, 28 March 2011: *Canada's enforcement of the foreign bribery offence still lagging; must urgently boost efforts to prosecute*, <https://www.oecd.org/corruption/canadasenforcementoftheforeignbriberyoffencestilllaggingmusturgentlyboosteffortstoprosecute.htm>; OECD. 2011. *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada*, pp. 25, 34, 59, <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Canadaphase3reportEN.pdf>; Transparency International. 2018. *Exporting Corruption. Progress report 2018: Assessing enforcement of the OECD Anti-Bribery Convention*, pp. 35–36, https://images.transparencycdn.org/images/2018_Report_ExportingCorruption_English_200402_075046.pdf; Transparency International. 2020. *Exporting Corruption. Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention*, pp. 45–48, https://images.transparencycdn.org/images/2020_Report-Full_Exporting-Corruption_EN.pdf.

⁴⁶ OECD, 11 March 2019: *OECD will follow Canadian proceedings addressing allegations of political interference in foreign bribery prosecution*, <https://www.oecd.org/corruption/oecd-will-follow-canadian-proceedings-addressing-allegations-of-political-interference-in-foreign-bribery-prosecution.htm>.

⁴⁷ CBC, 14 August 2019: *'I take responsibility,' Trudeau says in wake of damning report on SNC-Lavalin ethics violation*, <https://www.cbc.ca/news/politics/trudeau-snc-ethics-commissioner-violated-code-1.5246551>; Office of the Conflict of Interest and Ethics Commissioner. 2019. *Trudeau II Report*, <https://ciec-cicie.parl.gc.ca/en/investigations-enquetes/Pages/TrudeauIIReport-RapportTrudeauII.aspx>.

Corruption risk in countries and sectors in which the company operates:

Bombardier used to be one of the world’s largest producers of railway rolling stock and ancillary equipment. However, this part of its business was sold to Alstom in January 2021. Bombardier’s aviation business now encompasses only private aircraft, since commercial aircraft production was divested in February 2020.⁴⁸ When Bombardier divested its Transportation division, the company went from having around 60,000 employees in 25 countries to approx. 16,000 employees in 12 countries.

In its 2020 annual report, Bombardier discloses revenues in the ten most important markets for its remaining private aircraft business. The USA is the largest and most important market overall, with Canada in second place. The majority of the markets specified are in the upper portion of international corruption indices, but not all. Markets categorised as “Other” account for approx. 28 per cent of the whole.⁴⁹

3 Standards for compliance and corruption prevention

In its assessment of what a company is doing to prevent future acts of corruption, the Council refers, among other things, to international standards for best practice regarding compliance and anti-corruption in multinational companies. On the basis of these standards, some key principles can be deduced with respect to the steps a company should take to establish and implement an effective anti-corruption programme.⁵⁰

All standards for best practice presume that top management must be genuinely involved in this effort if a company is to be capable of preventing corruption effectively. It is important that management clearly communicates a zero-tolerance policy on corruption, and that the company communicates the importance of its corruption-prevention activities to its workforce, business partners and representatives.⁵¹

To be able to define systems and an anti-corruption programme tailored to the specific business, corruption risk must be systematically identified and assessed in all areas of the

⁴⁸ Bombardier, 12 February 2020: *Airbus and the Government of Québec become sole owners of the A220 Programme as Bombardier completes its strategic exit from Commercial Aviation*, <https://bombardier.com/en/media/news/airbus-and-government-quebec-become-sole-owners-a220-programme-bombardier-completes-its?page=0&category=All&year=2020&month=2>.

⁴⁹ Bombardier Inc., 2021: Financial Report 2020, p. 144.

⁵⁰ Internationally recognised guidelines and principles for the design of an anti-corruption programme may be found, inter alia, in: ISO 37001:2016: *Anti-bribery management systems – Requirements with guidance for use*; UNODC. 2013. *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, available on https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf; U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC). 2012. *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, available on <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>; OECD. 2010. *Good Practice Guidance on Internal Controls, Ethics and Compliance*, available on <https://www.oecd.org/daf/anti-bribery/44884389.pdf>; Transparency International (TI). 2013. *Business Principles for Countering Bribery*, available on http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery.

⁵¹ UNODC (2013), Chapter III, (A); OECD (2010), Annex II, (A) point 1.; TI (2013), point 6.1. See also World Bank Group (WBG). 2010. *Summary of World Bank Group Integrity Compliance Guidelines*, point 2.1, available on <https://thedocs.worldbank.org/en/doc/06476894a15cd4d6115605e0a8903f4c-0090012011/original/Summary-of-WBG-Integrity-Compliance-Guidelines.pdf>.

operation. It is a minimum requirement that a company implements robust preventive measures in those areas in which it is most exposed to risk.⁵²

To achieve the effective implementation of these systems, good training programmes must be developed for employees and those business partners over which the company has a controlling or decisive influence. Senior executives, middle managers and employees in high-risk positions must, in particular, receive specially tailored training.⁵³

Furthermore, it is important that the company perform due diligence on third parties, that third parties in high-risk areas are given anti-corruption training and are followed up on a regular basis, and that payments to such third parties are checked and verified as being proportionate to the work performed.⁵⁴ The follow-up of third parties may, for example, include regular reviews and updates of risk assessments and due diligence processes, repeated online and database searches to identify new red flags, and regular and/or risk-based audits.⁵⁵

Management must encourage employees to behave in compliance with the anti-corruption programme and to report any suspected breaches of internal regulations. Systems should be established by which employees and others can report wrongdoing anonymously and without risk of retaliation.⁵⁶ The company should have a clearly defined procedure for investigating reports of rule violations, and the sanctions imposed on individuals who breach the rules must be made widely known.⁵⁷

The anti-corruption programme must be monitored and improved on the basis of both internal experience, changes in the company's risk exposure and new laws and standards for best practice.⁵⁸

According to such standards, it is crucial that corruption prevention activities be delegated to a separate function or a person endowed with the necessary resources and autonomy. It is presumed that the compliance department has direct access to executive management and to the board of directors.⁵⁹ A further key factor is that the compliance department has sufficient resources and competence.

⁵² This follows, inter alia, from UNODC (2013), Chapter II; OECD (2010), Annex II, (A); DOJ and SEC (2012), Chapter 5, pp. 58-59; UK Ministry of Justice. 2011. *The Bribery Act 2010 Guidance*, Principle 3, available on <https://www.gov.uk/government/publications/bribery-act-2010-guidance>. A more comprehensive guide to how such risk assessments may be performed is Global Compact's *A guide for anti-corruption risk-assessment* (2013), available on https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf.

⁵³ UNODC (2013), Chapter III, (H); OECD (2010), Annex II, (A), point 8; TI (2013), point 6.4; WBG (2010), point 7.

⁵⁴ OECD (2010), Annex II, (A), point 6(i); TI (2013), point 6.2; WBG (2010), point 5.

⁵⁵ World Economic Forum-Partnering Against Corruption Initiative (WEF-PACI). 2013. *Good Practice Guidelines on Conducting Third-Party Due Diligence*, point. 4 b, p. 14, http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf.

⁵⁶ UNODC (2013), Chapter III, (I) and (J); OECD (2010), Annex II, (A), points 9 and 11(ii); TI (2013), points 6.3.1 and 6.5.1; WBG (2010), points 8.1, 9.1 and 9.3.

⁵⁷ UNODC (2013), Chapter III, (J) and (K); WBG (2010), point 10.

⁵⁸ UNODC (2013), Chapter III, (L); OECD (2010), Annex II, (A), point 12; TI (2013), points 6.8 and 6.10; WBG (2010), point 3.

⁵⁹ This follows, inter alia, from DOJ and SEC (2012), Chapter 5, p. 58; OECD (2010), Annex II, (A), point 4.; WBG (2010), point 2.3.

4 Information from the company

4.1 Bombardier's response to the allegations of corruption

In connection with the court case relating to the railway signals project in Azerbaijan, Bombardier denied the allegations that the company had acted improperly, while underlining that it took the allegations seriously since the actions described did not reflect the company's values and high standards.⁶⁰ When it became known that the World Bank was also investigating the company in connection with the same project, Bombardier stated that it was cooperating with the bank's inquiries.⁶¹

Bombardier states that Multiserv has been responsible for logistics administration and foreign currency hedging activities. Bombardier further states that a well-reputed international law firm performed due diligence on Multiserv before any collaboration was entered into, and that further reviews were subsequently also undertaken. All the reviews were supposed to have concluded that Multiserv had a good corporate reputation.⁶²

A week after The Globe & Mail had published a lengthy article on Bombardier's operations in Russia in mid-December 2016,⁶³ the company published a rebuttal on its website.⁶⁴ In its reply, Bombardier asserted that it operates in all countries and at all times in full compliance with the law and its code of conduct, whose provisions are more stringent than provided by law. According to Bombardier, no material circumstances were identified when due diligence was performed on the business partners concerned, on Elteza or on the other businesses the company collaborated with in Russia.⁶⁵

In 2018, when the issue of a potential link between the sale of a private aircraft to the influential family in South Africa and the Transnet procurement came to light, a VP in Bombardier's communications department confirmed that the email had been sent, but claimed that the company's ethical guidelines were among the most stringent in the industry. The VP further pointed out that Bombardier had zero tolerance for unethical or inappropriate behaviour in its business operations.⁶⁶ In a letter to the Council on Ethics, Bombardier repeated previous assertions that there was no connection between the sale of the aircraft and the Transnet contract. The company also claimed that the sales price when the contract was signed must be deemed the market price, since it is normal that the list price is subject to negotiation between the parties, in the same way as for the purchase of a new car. In addition, Bombardier pointed out that the due diligence inquiry performed before the contract was signed and the aircraft handed over in 2015 revealed no red flags or allegations.⁶⁷

In connection with the British SFO's announcement of its investigation into Bombardier's sale of aircraft to Garuda in Indonesia, Bombardier stated that it would cooperate with the

⁶⁰ The Globe and Mail, 25 August 2017: *Wiretaps of executives reveal details in Bombardier bribery, collusion case*, <https://www.theglobeandmail.com/report-on-business/international-business/bombardier-executives-colluded-with-foreign-officials-auditors-allege-in-bribery-probe/article36088275/>.

⁶¹ The Globe and Mail, 9 June 2017: *World Bank probing Bombardier railway deal*, <https://www.theglobeandmail.com/report-on-business/world-bank-probing-bombardier-deal/article35259156/>.

⁶² Bombardier, 22 December 2016: *Setting the Record Straight*, <https://bombardier.com/en/media/news/setting-record-straight>.

⁶³ The Globe and Mail, 16 December 2016.

⁶⁴ Bombardier, 22 December 2016

⁶⁵ Letter from Bombardier, dated 6 March 2021.

⁶⁶ The Globe and Mail, 7 March 2018.

⁶⁷ Letter from Bombardier, dated 6 March 2021.

investigation and launch an internal inquiry.⁶⁸ Bombardier has subsequently informed the Council that no indictments have been filed against the company or its employees in this case, and that no employees were summoned as witnesses in connection with the trial in Indonesia.⁶⁹

4.2 Measures implemented by Bombardier to prevent, detect and deal with corruption

In addition to the information obtained from Bombardier's website, the company has on several occasions provided supplementary information about its anti-corruption measures, and has shared several of its internal guidelines in written replies to the Council's queries.

Tone from the top:

From the documentation that the Council on Ethics has received from the company, Bombardier appears to have had a zero-tolerance policy with respect to corruption, communicated by the company's then CEO, since 2014.⁷⁰ According to Bombardier, both the CEO and other senior company executives have communicated this message a number of times over the years.⁷¹ Bombardier has given the Council access to fairly extensive documentation, but it has been difficult for the Council to find specific examples of the CEO, board chair or other senior management figures having communicated a zero tolerance for corruption or bribery through written communications or in other ways.⁷²

Risk assessments:

According to Bombardier, the company performed a Global Compliance Risk Assessment (GCRA), with corruption risk as one of the main elements, for the first time in 2020. Bombardier has allowed the Council sight of an overarching description of how the GCRA was performed, but has not answered the Council's questions about what the company's central organisation considers the most important corruption risks, how these are prioritised and what measures have been determined to manage them.⁷³

In 2018, Bombardier embarked on a process to evaluate compliance risk, including corruption risk at the country level through a Country Risk Evaluation Tool (CRET), for its Transportation division. Bombardier has allowed the Council sight of an example of a risk assessment at the country level, which indicates that the system is also used in practice.

The Council has asked Bombardier whether the company has a risk assessment tool, corresponding to the CRET, for its remaining aviation business (BA). In response, Bombardier has pointed out that the type of business, products and services that BA is responsible for require slightly different tools and processes than those applied in the transport business. Among other things, there is a stronger focus on Know Your Client (KYC) procedures.⁷⁴

⁶⁸ Reuters, 5 November 2020.

⁶⁹ Letter from Bombardier, dated 6 March 2021.

⁷⁰ Bombardier Anti-Corruption Manual, September 2014, p. 4.

⁷¹ Letter from Bombardier, dated 6 March 2021.

⁷² Letter from Bombardier, dated 5 August 2020; Letter from Bombardier, dated 6 March 2021; Email from Bombardier, dated 21 April 2021.

⁷³ Letter from Bombardier, dated 3 July 2020; Letter from Bombardier, dated 6 March 2021; Meeting with Bombardier on 12 January 2021.

⁷⁴ Email from Bombardier, dated 21 April 2021.

Guidelines:

Bombardier has disclosed that it has had a code of conduct in place since 1979, and separate anti-corruption rules since 1999.⁷⁵ The company has shared the two latest versions of its anti-corruption rules, dating from 2014 and 2019, with the Council. For various reasons, these editions of the rules are not directly comparable, but in the Council’s view they both seem to meet requirements set out in relevant international guidelines. The rules from 2019 apply to all company employees and managers, as well as for joint ventures where Bombardier has a controlling interest.

Asked by the Council if the company had a specific plan for its anti-corruption activities, Bombardier replied that anti-corruption activities are an integral part of the company’s ethics and compliance programme.⁷⁶

Training:

Bombardier states that it launched six different e-Learning modules in 2012, which focused specifically on different aspects of anti-corruption. In 2018, the company introduced a more structured training scheme, which provided a better overview of which employees had completed the various parts of the training programme at any given time.⁷⁷

Bombardier has shared an overarching description of the company’s ethics and compliance training scheme with the Council. It appears that e-Learning is a key element, since it makes it easier to reach out to a large number of employees and cover many different topics. For the groups of employees who may be particularly vulnerable to various types of compliance risk, Bombardier has also developed its own, more extensive and customised programme of classroom tuition.⁷⁸

Training materials that the Council has been given access to cover the same main topics as those encompassed by the company’s anti-corruption regulations. The material also contains examples of specific cases.⁷⁹

Organisation:

Bombardier has a dedicated Ethics and Compliance Office (ECO).⁸⁰ The ECO was established in 2003 and is led by the Chief Ethics and Compliance Officer (CECO), who reports administratively to Bombardier’s General Counsel and directly to the board’s Audit Committee. According to Bombardier, the CECO also has direct access to senior management and meets with the CEO on a regular basis. As at March 2021, the ECO had eight full-time employees. In addition, the company states that it has established a network of 15 “ambassadors”, who act as local resources for employees on ethics and compliance issues. In addition, Bombardier discloses that it has a dedicated three-person inquiry team, who investigate all reports of potential irregularities, including corruption, fraud and illegal cartel activity. Bombardier has not provided any clear response to the Council’s queries about how many of the ECO’s staff work specifically on anti-corruption, but has underlined that all its employees have solid experience of compliance – including anti-corruption.⁸¹

⁷⁵ Letter from Bombardier, dated 5 August 2020.

⁷⁶ Meeting with Bombardier on 12 January 2021.

⁷⁷ Letter from Bombardier, dated 6 March 2021.

⁷⁸ Letter from Bombardier, dated 6 March 2021.

⁷⁹ Letter from Bombardier, dated 5 August 2020; Letter from Bombardier, dated 6 March 2021.

⁸⁰ Bombardier 2019 Activity Report, p. 24, <https://bombardier.com/en/sustainability/resources-and-publications>.

⁸¹ Letter from Bombardier, dated 5 August 2020; Letter from Bombardier, dated 6 March 2021; Email from Bombardier, dated 21 April 2021.

Use of and due diligence on third parties:

Bombardier has shared with the Council on Ethics every version of the company's guidelines for the performance of due diligence on third parties. It appears that these guidelines have undergone several substantial revisions since their first iterations. As far as the Council can see, the checkpoints, tools and processes described in the latest versions are largely in accordance with the requirements set out in international guidelines with respect to corruption, money laundering, export controls, etc.⁸²

Bombardier has stated that due diligence inquiries are an integral part of the company's commercial operations, which it performs to the extent it deems necessary and appropriate. Such inquiries, it asserts, have long been a key part of the company's Compliance Management System (CMS). The management of identified corruption risk is an important element in such inquiries. The company further asserts that it has robust and standardised processes in place to ensure that due diligence inquiries are performed in a proper and uniform fashion across the entire business. According to Bombardier, ongoing monitoring of third parties is also included in the company's due diligence procedures.⁸³

Given what has been revealed in media reports and other inquiries concerning the influential family in South Africa, TSR and Multiserv, the Council has requested sight of the reports from the due diligence inquiries the company performed in connection with the aircraft sale in South Africa in 2014–2015, the creation of the consortium with TSR in Azerbaijan in 2013 and the establishment of the collaboration with Multiserv in 2011. Bombardier has rejected this request, citing the ongoing investigations/legal proceedings. The Council has also requested more detailed documentation that can explain the kinds of services Multiserv actually performed in connection with the contract in Azerbaijan. However, this request has also been rejected on the same grounds.⁸⁴

The Council has asked for further details of how many third parties (sales agents, consultants, business partners, etc) the company has contracts with. Bombardier has disclosed that it decided to phase out the majority of the agreements it had with so-called "preferred" sales representatives in 2018. Instead, the company now engages agents on an ad hoc-basis in those cases where its own sales team would be unable to win a contract without the help of an external sales agent.⁸⁵

Reporting and inquiries:

With effect from 2005, Bombardier has had its own electronic reporting system, where employees are able to report their concerns via an external and anonymous whistleblowing service. According to Bombardier, the company has long had procedures for the allocation, investigation and reporting of incoming notices. In 2020, the company also established a separate function with responsibility for coordinating inquiries.⁸⁶

Bombardier has shared with the Council a brief description of its inquiry process. According to Bombardier, all allegations of potential irregularities are investigated by the company's own inquiry team, led by the Global Head of Investigation, who reports to the company's General Counsel.⁸⁷

⁸² Letter from Bombardier, dated 5 August 2020; Letter from Bombardier, dated 25 September 2020; Email from Bombardier, dated 21 April 2021.

⁸³ Letter from Bombardier, dated 5 August 2020; Letter from Bombardier, dated 6 March 2021.

⁸⁴ Letter from Bombardier, dated 5 August 2020.

⁸⁵ Letter from Bombardier, dated 25 September 2020.

⁸⁶ Letter from Bombardier, dated 6 March 2021.

⁸⁷ Letter from Bombardier, dated 6 March 2021.

In response to the Council's question in July 2020 about how it responds to confirmed reports of corruption, Bombardier stated that the ECO has not received any reports of corruption that have been confirmed/substantiated in the past five years.⁸⁸ However, Bombardier is alleged to have received three internal reports relating to the Azerbaijan project and the use of Multiserv more generally in the period from March 2015 until May 2016. The first report, an email from March 2015, was supposed to have concerned irregularities relating to the Azerbaijan project. This report is supposed to have been picked up on in connection with the World Bank's inquiry into the project.⁸⁹ The two other reports – also in the form of internal emails sent respectively in September 2015 and May 2016 – were published in connection with the prosecuting authority's submission of evidence to the Stockholm District Court in August 2017. In both emails, the writer states their impression that Multiserv is a shell company without any real business activity. In one of the emails, the writer also addresses the transaction in which Multiserv made a profit of USD 89.3 million and points out that the company contributes no added value to the deal.

The last two reports were sent by two different employees in different parts of the business. As far as the Council is aware, Bombardier did not initiate any inquiries into the matters until the Swedish police launched its investigation of the affair in the autumn of 2016. In its annual report, Bombardier says it instigated an internal investigation into the matters concerned in October 2016.⁹⁰ Bombardier has disclosed to the Council that no evidence that the company has paid or offered bribes to public officials has so far been found. The Council has asked to be given sight of the report from the inquiry or details of the most important consequences of the inquiry. However, Bombardier has refused this request on the grounds that the allegations are subject to investigation/legal proceedings.⁹¹

5 The Council's assessment

Based on the available documentation, the Council has assessed the GPF's investment in Bombardier against the ethical guidelines' criterion on gross corruption and other serious financial crime. The Council does not consider the matter of criminal liability, but has assessed whether the company has behaved such that there is an unacceptable risk of it having contributed to or has itself been responsible for gross corruption or other serious financial crime.

The Council's investigations have shown that Bombardier or its subsidiaries have been implicated in allegations or suspicions of corruption in six countries over a period of more than ten years. All the cases concern allegations of bribery or suspicious transactions via agents, intermediaries or partners, which were undertaken for the purpose of winning contracts for Bombardier's subsidiaries. Taken together, the amounts involved add up to more than USD 100 million in presumed bribes or suspicious transactions.

On the basis of these cases, the Council on Ethics has assessed whether there is an unacceptable risk that Bombardier could be involved in similar actions in the future. One aspect of this assessment is the concerns that the OECD and Transparency International have expressed with regard to Canada's limited enforcement with respect to foreign bribery. Importance has also been attached to the corruption risk in the countries and business sectors

⁸⁸ Letter from the Council on Ethics, dated 3 July 2020 and letter from Bombardier, dated 5 August 2020.

⁸⁹ The Globe and Mail, 10 May 2019.

⁹⁰ Bombardier Inc., 2020: Financial Report – Fiscal Year Ended December 31, 2019, p. 225.

⁹¹ Letter from the Council on Ethics, dated 3 July 2020 and letter from Bombardier, dated 5 August 2020.

in which Bombardier operates. Nevertheless, the most important factor is how the company has responded to the allegations of corruption and the extent to which the company has implemented effective measures to prevent, detect and deal with corruption.

In light of the investigations and inquiries that Bombardier has been the subject of, one would expect a clear ‘tone from the top’ making it clear that corruption is unacceptable in the company. The thrust of the company’s public communication about the investigations has primarily been to deny that the company is at fault or has taken too high a risk. The company has asserted that it has performed due diligence on its partners and customers, without finding any material issues, at the same time as publicly available information indicates something else. The Council understands that the company does not accept any legal liability as long as this has not yet been determined by means of a final out-of-court settlement or legal judgment, but takes the view that the company’s response lacks recognition of the risk that agents and other partners represent in high-risk countries.

As far as the Council can see from the extensive material the Council has received, there is only one statement from the company’s senior management that clearly communicates a zero tolerance for corruption. And that was from 2014. The Council takes the view that the tone from the top is very important for the culture that grows up within a company, and that the absence of any clear statements from senior management in this situation evinces a passive approach to corruption risk on the part of the company.

With respect to the company’s systems and procedures to prevent and detect corruption, the Council’s review indicates that some of the elements are in place, while other areas remain unclear. The Council has the impression that the most significant improvements have been made after 2018, particularly in the Transportation division, which has now been divested. While the training programme is, in the Council’s view, in accordance with international guidelines, the Council notes that the company has been unable to present an overarching assessment of corruption risk or a comprehensive, annual plan for anti-corruption work in the remaining aviation business.

With respect to third parties, the information that Bombardier has shared with the Council on the number of due diligence inquiries and rejected third parties in the transport and aircraft division respectively indicates that these systems are operational. The Council also notes that the company decided in 2018 to phase out the use of sales agents or reduce it to a minimum. At the same time, the Council notes that the company still permits the engagement of sales agents on an ad hoc basis.

As far as the Council can see, Bombardier’s guidelines for due diligence inquiries into third parties appear largely in accordance with the requirements set out in relevant international guidelines. The Council also notes the company’s assurances that due diligence inquiries have long been a key part of the company’s compliance system, and that it has robust and standardised processes in place to ensure that such inquiries are performed properly and in a uniform manner throughout the organisation. The real test, however, is whether the system works as intended when it really matters. In other words, that the company is actually willing to sacrifice a major contract when the risk is in fact too high.

With respect to the influential family in South Africa, Multiserv and TSR, the Council notes that there is a major discrepancy between what the company itself has disclosed and the information the Council has obtained from other sources. The Council considers that this discrepancy indicates a lack of effective implementation of due diligence on third parties.

The Council notes that Bombardier has long had a reporting system and reporting routines in place, including opportunities for anonymous reporting, and that the company has a separate

team tasked with following up and investigating all allegations of potential irregularities, including corruption. This is important, but the Council attaches greater importance to whether the company can show how whistleblowing reports are followed up in practice.

The Council attaches importance to the fact that the company received several internal reports relating to the Azerbaijan project in 2015 and 2016. Nevertheless, it is the Council’s understanding that the company did not make any inquiries into the matter until the Swedish police opened its investigation in the autumn of 2016. Nor has the company disclosed that this has had any consequences for any of those in the company who were involved. A key element in an effective anti-corruption programme is, in the Council’s view, the ability to respond adequately to whistleblower reports. This includes conducting inquiries and implementing corrective measures.

All in all, the Council does not consider that this provides reasonable assurance that Bombardier has implemented adequate measures to prevent, detect and deal with corruption. This would indicate in principle that the risk of the company contributing to corruption also in the future is unacceptably high. The fact that the Council is not recommending that Bombardier be excluded from investment by the GPF, but rather that it be placed under observation, is due to the fact that Bombardier divested its Transportation division in 2021. It was the Transportation division to which the majority of allegations and suspicions of corruption were linked. Compared with the remaining aviation business, the Transportation division was far more extensively involved in major public procurement projects, which involve a higher risk of corruption. Even though Bombardier is still a global company, which could operate in many challenging markets with a high risk of corruption, the Council considers that it is uncertain what developments may occur forward in time. On this basis, the Council considers that there are grounds to observe developments going forward, see section 6(5) of the Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF).

During the observation period, the Council will monitor developments in the ongoing corruption cases, and will observe Bombardier’s anti-corruption activities, in part through dialogue with the company. If further cases of gross corruption or other forms of serious financial crime are uncovered in the company’s operations, or if the company cannot demonstrate that it is doing enough to prevent, detect and deal with corruption and other serious financial crime in its operations, the condition for recommending the company’s exclusion from the GPF may be met.

6 Recommendation

The Council on Ethics recommends that Bombardier Inc be placed under observation due to an unacceptable risk that the company is contributing to gross corruption.

Johan H. Andresen Chair	Svein Richard Brandtzæg	Cecilie Hellestveit	Siv Helen Rygh Torstensen	Trude Myklebust
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)