
From: Richard Jeffrey [Richard.Jeffrey@tie.ltd.uk]
Sent: 29 July 2010 09:37
To: Fitchie, Andrew; rush_aj@[REDACTED] david_mackay@[REDACTED]
Subject: RE: Legally Privileged and FOISA exempt

My thoughts.

We need to consider that termination may be/appear the 'easiest' option for BSC, they don't have to take any decisions, so end up there by default. Termination means that financial issues will not crystallise now, it will take several years to resolve, and there is inherent uncertainty, or to put it another way...

A possibly large but uncertain pain in the future is better than a small certain pain now.

I don't think Ed is in clear charge.

I don't think their approach is a clearly thought through tactic, I think it is the result of a confused and un-led approach to this project

We should definitely use Andrew's meeting with Daniel to pass messages, we need to think about what

I am not inclined to call Enekel today, we should wait now until we see what we get today on Carlisle, analyse it and ideally go to Germany armed with the results of 80.13/34.1.

We should discuss this pm.

R

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 29 July 2010 09:21
To: rush_aj@[REDACTED] Richard Jeffrey; david_mackay@[REDACTED]
Subject: Re: Legally Privileged and FOISA exempt

Tony- this is carefully thought over. I will call as soon as I get Brandon what I have promised.

New point: I was called last night by Daniel Hauessermann (European Counsel) of BB. I had a good relationship with Daniel and was also on the otherside from him on the M80 on some difficult issues. He is Edinburgh on Monday Tuesday- to meet Pinsents I have little doubt. He would like to meet up "for old times sake" - which I will obviously do. We should discuss whether I keep mum or give messages. We should discuss.

I too have reservations about the BSC UK senior team to take tough decisions (Involving risk). Easy for me to say but the idea that after two years Darcy should be somehow ambushed/ shocked that there were actions which David and Richard wanted commitment on is, in truth, pitiful.

Even a win for tie on 80.13 can only force a boost to BSC effort if they want the job. If they do not want it, they may well rather take their chances with litigation.

I cannot judge Ed's real authority but having worked in a German company for a very senior hired gun (divisional director so effectively Darcy level) I know that they can really only out rank management if what they produce generates revenue opportunity.

I have concluded that one part of BSC thinking is an end game where the Scottish Govt is involved, the grant is under threat and they throw in tie Default (a) or (c). This would suit Siemens.

Sorry to seem negative.

A
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To: Fitchie, Andrew
Cc: david_mackay@[REDACTED] <david_mackay@[REDACTED]>; Richard Jeffrey <Richard.Jeffrey@tie.ltd.uk>
Sent: Thu Jul 29 07:58:20 2010
Subject: Legally Privileged

I have of course been thinking about my conversation last night with Richard and David.

I think we agree with Swinney when he says that not setting aside the 80.13/34.1 issue and getting on with the Works is a sign of bad-will/faith by BSC. I have been telling EK this for some time and our 13 point list handed to Darcy and Wakeford on Monday de-facto gave them the same message.

We did not get an immediate answer – the 24 hours delay implies that discussion with higher authority may have been involved. Whatever, their answer is in relation to the key-points 1 and 12 amply supports John Swinney's observation.

Two future events concern me:

- What they may deliver today.
- The decision on 6 August.

I fear that neither will give us confidence that we can turn back the "sands of time".

From a negotiating point of view I would very much like us not to play the "pressure from Government" card – it invites more obstinacy from BSC. But, I have to say I am inclined towards thinking that it is safer to believe that EK is just a point of contact – maybe even over stepping his authority – rather than place our confidence in him.

I also accept that we cannot avoid intense scrutiny and pressure from stakeholders.

Taking everything into consideration, I am minded to suggest that David should speak to Enekel this morning and apprise him of the Minister's position and ask him to intervene and agree with what was put to Darcy and Wakeford on Monday. Moreover, to advise that they should be careful not to submit a proposal today which may inflame feelings – completion being an important factor as well. If we have to speak to them I think it should be sooner rather than later. Although hitherto I have thought waiting until 6 August was the best tactic – that may be seen in some quarters as being too late.

Like all such circumstances one cannot be certain what is the right thing to do and I am by no means certain in this case. If it is at least worthy of talking about I shall be at my desk all morning – intending to leave for Citypoint at about 1400.

Tony

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