



global witness

529 14th Street NW
Suite 1085
Washington, DC 20045

4 March 2013

Elisse B. Walter
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Ms Walter,

Eni's purchase of the OPL 245 oil concession, Nigeria: Request for investigation into alleged collusion in the laundering of proceeds of corruption and conspiracy to defraud.

We write to draw your attention to what, on the balance of probability, appears to us to be strong evidence of corruption and fraud by the oil company Eni S.p.A. ("Eni") in its recent purchase of an Oil Prospecting Licence in Nigeria known as OPL 245.

This letter sets out the allegations made against Eni, notably in recent UK and US court hearings, and invites the Securities and Exchange Commission ("SEC") to investigate. We note that, if substantiated, the allegations would place Eni in breach of a 2010 agreement with SEC, as well as a deferred prosecution agreement with the DoJ¹ and with US and other anti-corruption legislation.

By way of introduction, Global Witness is a non-governmental organisation based in Washington and London, that investigates and campaigns to prevent natural resource related conflict and corruption, and associated environmental and human rights abuses. Re:Common is a membership-based, not-for-profit association registered in Rome that campaigns to hold companies and international financial institutions to account for corruption. The Corner House is a UK non-governmental organisation with a track record of holding companies involved in corruption to account. Dotun Oloko is a Nigerian and UK anti-corruption campaigner.

ENI'S DEFERRED PROSECUTION AGREEMENT

Eni S.p.A. is an Italian company headquartered in Rome, Italy. In 1995, Eni registered a class of securities with the Securities Exchange Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)], and thereby became a U.S. issuer. Eni common stock and American Depositary Shares are listed on the New York Stock Exchange.² It is therefore subject to US law.

As you will recall, in July 2010, Eni settled a civil case brought against it by the SEC in relation to corruptly-obtained contracts to build a liquefied natural gas ("LNG") plant and several expansions on Bonny Island, Nigeria. Under its agreement with the SEC, Eni consented

"to the entry of a court order permanently enjoining it from violating the record keeping and internal controls provisions in Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act".³

1 United States of America v Snamprogetti Netherlands BV, "Deferred Prosecution Agreement", 1 July 2010, Filed with the US District Court, Southern District of Texas, Houston Division, H-10-460, 7 July 2010 available at <http://www.justice.gov/criminal/fraud/fcpa/cases/snamprogetti/07-07-10snamprogetti-dpa.pdf>

2 New York Stock Exchange, "ENI S.p.a", <http://www.nyse.com/listed/e.html>

3 US Securities and Exchange Commission, "Accounting and Auditing Enforcement Release No. 3149 / July 7, 2010, Securities and Exchange Commission v. ENI, S.p.A. and Snamprogetti Netherlands, B.V., Case No. 4:10-cv-02414, S.D. Tex. (Houston)", Litigation Release No 21588, 7 July 2010, <http://www.sec.gov/litigation/litreleases/2010/lr21588.htm>

Eni, "Eni enters agreements with US Department of Justice and SEC over former subsidiary Snamprogetti", 7 July 2010, http://www.eni.com/en_IT/mediapress-releases/2010/07/2010-07-07-snamprogetti-bv.shtml

Additionally, in July 2010 Eni and the DoJ entered into a two-year deferred prosecution agreement (“the Agreement”), under which Eni accepted culpability for violating anti-bribery provisions of the US Foreign and Corrupt Practices Act (“FCPA”) in relation to corruptly-obtained contracts to build a liquefied natural gas (“LNG”) plant and several expansions on Bonny Island, Nigeria. The agreement was conditional on Eni adopting anti-corruption measures, including an enhanced compliance programme.

In the Agreement, Eni represented that it had

*“implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA [Foreign Corrupt Practices Act], the anti-corruption provisions of Italian law, and other applicable anti-corruption laws throughout their operations, including those of their affiliates, agents, and joint ventures, and those of their contractors and subcontractors whose responsibilities include interacting with foreign officials”.*⁴

Furthermore, Eni represented that it had

“undertaken, and will continue to undertake in the future, in a manner consistent with all of their obligations under this Agreement, a review of the existing internal controls, policies, and procedures within Snamprogetti, Saipem, and Eni. Where necessary and appropriate, Snamprogetti, Saipem, and ENI will adopt new or modify existing internal controls, policies, and procedures in order to ensure that Snamprogetti, Saipem, and ENI maintain: (a) a system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance code designed to detect and deter violations of the FCPA and other applicable anti-corruption laws.”

Eni has also affirmed to shareholders that adequate anti-corruption procedures are in place.⁵

4 United States of America v Snamprogetti Netherlands BV, “Deferred Prosecution Agreement”, 1 July 2010, Filed with the US District Court, Southern District of Texas, Houston Division, H-10-460, 7 July 2010

5 “Minutes of the Ordinary and Extraordinary Meeting of the shareholders of Eni S.p.a, held on 8 May 2012”.

The minutes record: “To shareholder Bertani who asked if Eni is structured and has the “antibodies” to face any company scandals. The answer is that: the main tool that Eni has to deal with scandals is an adequate and effective internal control and risk management system, based on international best practices and evaluated on an annual basis by the Board on the basis of reports from the relevant bodies. Special attention is paid to the model established to prevent crimes pursuant to Law 231, anti-bribery, and that respect the Company’s

But recent sworn testimony to courts in the UK and the US, in addition to testimony presented to a parliamentary investigation in Nigeria, strongly suggests that, during the period of the Agreement, Eni entered into a range of corrupt arrangements relating to the purchase of OPL 245, in apparent violation of the terms of its agreement with the SEC and DoJ, and of US and other anti-corruption laws.

Of particular concern are allegations that:

- a) OPL 245 was unlawfully acquired by convicted criminal **Chief Dausia Loyal Amafegha“Dan” Etete** [“Etete”] when he was Minister of Petroleum of the Federal Government of Nigeria and that Etete’s interest in OPL 245 was held through a company called **Malabu Oil & Gas Limited** (“Malabu”), which wholly owned the concession until April 2011;
- b) Eni negotiated and participated in a corrupt arrangement that enabled Etete to crystalize and launder these illegally obtained assets through a convoluted deal that resulted in a consortium of Eni and Shell acquiring OPL 245 in April 2011; and
- c) In arranging this deal and in its payment thereof, Eni knew or should have known that there was a risk that these payments were for secret benefit of current high-level Nigerian officials, whose agreement was needed for the deal to be concluded; and,
- d) Senior Eni officials attempted to defraud shareholders by conspiring (and may still be conspiring) with a Nigerian firm **Energy Venture Partners** (“EVP”) to obtain \$200 million in kickbacks from the OPL 245 deal.

OPL 245 AS PROPERTY OBTAINED UNLAWFULLY BY ETETE

There are strong grounds for concluding, on the balance of probability, that the OPL 245 licence held by Malabu until April 2011 represented property that had been unlawfully obtained by Etete and that any cash or other property due to (or subsequently received by) Malabu as a result of relinquishing its illegally obtained rights to OPL 245 also constitute proceeds of crime.

Code of Ethics, which constitute indispensable tools for facing scandals. Eni’s governance system also includes various players assigned control and supervisory functions, in addition to the Board itself and the Chief Executive Officer, as part of the internal control system. I refer to the Board of Statutory Auditors, the Watch Structure which is also Guarantor of the Code of Ethics, the Internal Control Committee, Internal Audit and the Officer in charge of preparing financial reports. These are further supported by external control bodies.”

The facts are as follows:

- **OPL 245** is a 1,958 square kilometre oil field located in the Eastern Niger Delta in the offshore waters of Nigeria (plan number TH/97/411).
- In April 1998, the exploration licence for the field was awarded by Etete, the then Nigerian Minister of Petroleum Resources, to **Malabu Oil & Gas**, a limited company, incorporated in Nigeria with registration number RC 334442. Malabu was the 100 per cent owner of OPL 245 until 2001 when the award was revoked. The block was then subject to dispute between Malabu and Shell until December 2006 when the asset was re-awarded to Malabu. Thereafter, in April-May 2011, the concession was bought by a joint venture of Shell and Eni.
- Etete is a convicted criminal, having been found guilty of money laundering by the French courts in 2007, his conviction being upheld on appeal in 2009.⁶ Etete currently resides in Nigeria. In 2009, Etete was banned for ten years from entering the United Kingdom after failing to declare his criminal conviction.
- At the time that Etete awarded the OPL 245 licence to Malabu, he reportedly held a 30 per cent undeclared interest in the company through a fictional character “Kweku Amafegha”, who, in reality, is widely believed to be Etete himself (as noted above, one of Etete’s given names is “Amafegha”). (We do not believe there is any significance in the slight variation in spelling of Amafegha/Amafagha). “Omoni Amafegha” was also the character through whose bank account Etete laundered some of the funds that resulted in his conviction in France, according to sworn testimony by Mr Jeffrey Tessler, a Briton who was convicted for his part in the Bonny Island bribery scandal.⁷ During the UK High Court proceedings, Etete admitted using the name “Omoni Amafegha” in the past.
- According to an investigation by Nigeria’s Economic and Financial Crimes Commission (“EFCC”), the other shareholders in Malabu at the time of its incorporation were Ahmed Mohammed Sani (widely reported to be a disguised name for Mohammed Abacha, son of late Head of State, General Sani Abacha) and Hassan Hindu, wife of Hassan Adamu,

6 “France slams \$10.5m fine on Etete”, Nigerian Voice, 20 March 2009

7 “N155billion scandal: How Shell connived with corrupt officials, and subverted Nigerian laws”, Premium Times, 3 June 2012

former Nigerian Ambassador to the UK. The belief that both Etete and the son of General Abacha were shareholders when the oil block was awarded raises the concern that the award of OPL 245 was a way for Nigeria's ruling elite to profit illicitly from the country's natural resources.

- Nigerian press reports allege that, after the death of President Abacha, Etete increased his shareholding in Malabu, fraudulently taking control of 100 per cent of the company. Indeed, Mohammed Abacha petitioned the EFCC to investigate the matter in January 2012⁸. A preliminary investigation by EFCC appears to have found grounds for further investigation and recommended that the funds in dispute be frozen pending the judicious disposal of the case.⁹
- Malabu is in dispute with two companies – Energy Venture Partners Limited and International Legal Consulting Limited – over non-payment of fees allegedly agreed in relation to the sale of OPL 245. This has resulted in court proceedings in New York and, currently, in London. Sworn statements to the Supreme Court of New York affirm that Etete is “Malabu’s principal”¹⁰ who “dominates and controls Malabu”¹¹ and “the main man of Malabu”.¹² A submission by International Legal Consulting Limited to the High Court in London, dated 20 July 2011, likewise refers to Etete as Malabu’s “guiding mind”.¹³ The description of Etete as Malabu’s “principal” was also accepted by the New York Supreme Court and employed in a temporary Restraining Order dated 22 July

8 “The Fraud called Malabu Oil and Gas (part 1), *Premium Times*, 29 June 2012

9 EFCC, “Interim Investigation Report – Re: Conspiracy, forgery, uttering forged documents, criminal misappropriation and money laundering”, undated.

10 Affidavit of Ednan Agaev, “In the Matter of Arbitration between International Legal Consulting Limited against Malabu Oil and Gas Limited”, Supreme Court of the State of New York, County of New York, 24 June 2011, para 8.

11 International Legal Consulting Limited’s Memorandum of Law in Support of its Petition for an Order without Notice in Aid of Arbitration, “In the Matter of Arbitration between International Legal Consulting Limited against Malabu Oil and Gas Limited”, Supreme Court of the State of New York, County of New York, 28 June 2011.

12 Transcript, “In the Matter of Arbitration between International Legal Consulting Limited against Malabu Oil and Gas Limited”, Supreme Court of the State of New York, County of New York, Index No 651733/2011, p.6.

13 Timothy Young QC, Skeleton Argument of International Legal Consulting Limited, “Between Energy Venture Partners Limited and Malabu Oil and Gas Ltd and JP Morgan Chase and International Legal Consulting Limited”, High Court of Justice Queen’s Bench Division, Commercial Court, Claim No 2001, Folio No 792, 20 July 2011, para 6.

2011.¹⁴ Malabu has itself acknowledged that Etete was a consultant to the company “at all material times”, and Etete also took the witness stand on behalf of Malabu during the UK High Court proceedings. Nigeria’s Economic and Financial Crimes Commission also concluded that Etete, through “Kweku Amafagha”, was at least a 30% shareholder of Malabu when the block was awarded.

- Etete signed transfer requests to Malabu’s banks for several hundred million dollars to third parties. This demonstrates his “authority” over the operations of Malabu.
- Publicly available information, including Nigerian media reports and sworn testimony to US and UK courts, thus provides credible grounds for concluding that, on the balance of probability, Etete is, and always has been, a hidden ultimate beneficiary of Malabu.
- As such, the award of the OPL 245 licence to Malabu in April 1998 by Etete when he was the Minister of Petroleum Resources would clearly have been unlawful, in that it was in clear breach of the Code of Conduct Bureau and Tribunal Act 1988 of Nigeria, Section 5 of which prohibits public officials from putting himself or herself “in a position where his personal interest conflicts with his duties and responsibilities”.¹⁵ The offence is punishable by disqualification from office and the seizure and forfeiture to the State of any property that was acquired through the abuse or corruption of office.¹⁶

ENI’S DEALINGS WITH MALABU

Under the terms of its 2010 deferred prosecution agreement with the DoJ, Eni undertook to ensure “appropriate due diligence . . . pertaining to the retention and oversight of agents and

14 Hon Bernard J Fried, Order to Show Cause with temporary Restraining Order, “In the Matter of Arbitration between International Legal Consulting Limited and Malabu Oil and Gas Limited and J. P. Morgan Chase and Co and all of its subsidiaries and affiliates, including but not limited to JP Morgan Chase Bank, NA”, Supreme Court of the State of New York, County of New York.” Index no 651733/2011, 22 July 2011.

15 Code of Conduct Bureau and Tribunal Act

16 Section 23 of the Act on the “Powers of the Tribunal to impose punishment” states that : “(1) Where the Tribunal finds a public officer guilty of contravening any of the provisions of this Act, it shall impose upon that officer any of the punishments specified under subsection (2) of this section; (2) The punishment which the Tribunal may impose shall include any of the following- (a) vacation of office or any elective or nominated office, as the case may be; (b) disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office. (3) The punishments mentioned in subsection (2) of this section shall be without prejudice to the penalties that may be imposed by any law where the breach of conduct is also a criminal offence under the Criminal Code or any other enactment or law.”

business partners". As such Eni either knew, or should have known, of the widely reported interest of Etete in Malabu and of the allegations of fraud and corruption surrounding the ownership of company. Indeed, such knowledge appears to have played a determinant role in shaping the deal that was subsequently struck to acquire the OPL 245 assets.

Eni initially sought to acquire Malabu directly but subsequently sought an indirect purchase because of Abacha's claim to the company. The history of these negotiations, key landmarks of which occurred during the time of the deferred prosecution agreement, is detailed below:

- On 28th December 2009, according to evidence submitted to the UK courts by EVP, Eni representatives allegedly met with Etete to discuss the disposal of the OPL 245 assets.¹⁷ Malabu has confirmed that the meeting took place and names Mr Vincenzo Armanina as the Eni/NAE representative. NAE (Nigeria Agip Exploration Limited) is a subsidiary of Eni. Mr Armanina was at the time Eni's Vice President, Upstream Activities Sub-Sahara Region.¹⁸
- Meetings are reported by Malabu to have been held in Milan in April 2010 between Mr Etete and three Eni officials: Mr Armanina (Eni's Vice President Upstream Activities Sub-Saharan Africa Region), Mr Descalzi (Eni's Chief Operating Officer, Exploration and Production) and Mr Casula (Director of Eni-AGIP, Nigeria).¹⁹
- Further negotiations reportedly led to Eni making an offer on 31st October 2010 (by which time the company had entered into the deferred prosecution agreement with the DoJ and its civil settlement with the SEC) to purchase OPL 245 directly from Malabu.²⁰ This offer was rejected but was followed by further negotiations, including further face-

17 Energy Venture Partners Limited and Malabu Oil and Gas Limited, Amended Particulars of Claim, High Court of Justice, Commercial Court, London, para 16, 5 November 2012

18 Energy Venture Partners Limited and Malabu Oil and Gas Limited, Recommended Defence and Counterclaim, High Court of Justice, Commercial Court, London, para 23, 23 November 2012

19 Energy Venture Partners Limited and Malabu Oil and Gas Limited, Recommended Defence and Counterclaim, High Court of Justice, Commercial Court, London, para 41.2, 23 November 2012

20 Energy Venture Partners Limited and Malabu Oil and Gas Limited, Amended Particulars of Claim, High Court of Justice, Commercial Court, London, paras 37 and 38, 5 November 2012

to-face meetings in Milan between Eni officials and Etete from 29 November 2010 to 2 December 2010. The Eni officials included Mr Armanna and Mr Casula.²¹

In December 2010, Eni changed its negotiating position. According to sworn testimony to the New York Supreme Court by Ednan Agaev of International Legal Consulting (ILC), the firm retained by Malabu to effect the sale of OPL 245, this came about as a direct consequence of Eni's knowledge of the disputed ownership of OPL 245. Agaev affirmed to the Court:

*"In the last week of December 2010, I was contacted by John Coplestone of Shell, who told me that Mohammed Abacha claimed to be the real owner of the rights to OPL 245. I was then contacted by Mr Casula of ENI AGIP who said that in view of Abacha's claim a direct deal with Malabu would not be possible."*²²

Agaev further affirmed that, in response to this development, he proposed a new deal structure, involving the indirect sale of OPL 245 to Eni/Shell:

"I proceeded to contact Etete, suggested to him that a new deal structure was needed, and expressed to him my idea that the FGN [Federal Government of Nigeria] take back Malabu's rights to OPL 245 and then transfer those rights to ENI AGIP/Shell and pay Malabu for the compensation received from ENI AGIP/Shell."

This proposal was subsequently accepted by both Eni/Shell and by Etete. According to Agaev:

"By the end of January 2011, ENI AGIP/Shell came back with a proposal similar to the one I had suggested to Etete in December . . . At the end of March 2011, I met with Etete, he accepted the proposal and I conveyed his acceptance to ENI AGIP/Shell".

THE FINANCIAL ARRANGEMENTS FOR MALABU'S DISPOSAL OF OPL 245 AND ITS SALE TO ENI/SHELL

²¹ Energy Venture Partners Limited and Malabu Oil and Gas Limited, Amended Particulars of Claim, High Court of Justice, Commercial Court, London, para 42, 5 November 2012

Energy Venture Partners Limited and Malabu Oil and Gas Limited, Reammended Defence and Counterclaim, High Court of Justice, Commercial Court, London, para 68.7, 23 November 2012

²² Affidavit of Ednan Agaev, "In the Matter of Arbitration between International Legal Consulting Limited against Malabu Oil and Gas Limited". Supreme Court of the State of New York, County of New York, 24 June 2011.

In April 2011, Malabu duly entered into a series of back-to-back agreements that resulted in the rights to OPL 245 being transferred to an Eni/Shell consortium, using the Federal Government of Nigeria ("FGN") as a intermediary.

According to sworn statements made to the New York Supreme Court:

- On 29 April 2011, Malabu entered into an agreement with the Federal Government of Nigeria, entitled Block 245 Malabu Resolution Agreement, under which Malabu relinquished all claims to OPL 245 in exchange for the Government paying \$1,092,040,000;²³
- On the same day (29 April 2011), the Federal Government of Nigeria entered into a related agreement, entitled Block 245 Resolution Agreement, with the Eni/Shell consortium, under which Eni (for the consortium) agreed to pay \$1,092,040,000 to the Federal Government of Nigeria for the rights to OPL 245.
- The \$1,092,040,000 paid by the Eni/Shell consortium to the Federal Government of Nigeria was deposited in an escrow account and subsequently a deposit account held by the Federal Government with JP Morgan Chase in London.

The deal thus exactly replicated that proposed by Agaev and reportedly agreed by Etete. Nonetheless, Eni and other parties to the deal now dispute that they had knowledge that the monies ultimately paid to Federal Government of Nigeria for OPL 245 were destined for Malabu²⁴, a line that failed to impress the US Supreme Court of New York. In his judgment on the case brought by International Legal Consultants against Malabu, the Honorable Bernard J. Fried described the Federal Government of Nigeria's role in the deal as that of "the proverbial 'straw man'", who was "holding \$1.1 billion for ultimate payment to Malabu".²⁵

23 See Exhibit 1 Block 245 Resolution Agreement and Exhibit 2 Block 245 Malabu Resolution Agreement in *Matter of International Legal Consulting Ltd. v Malabu Oil & Gas Ltd.*, Sup Ct, New York County, March 15, 2012, available at <https://apps.courts.state.ny.us/fhem/DocumentDisplayServlet?documentId=BmxYax/cWICqEHTBk1JT6A==&system=prod> (Exhibit 1) and <https://apps.courts.state.ny.us/fhem/DocumentDisplayServlet?documentId=JtR9Y6OfsY/6GA PLUS Jzcu6A==&system=prod> (Exhibit 2)

24 "Pressure on Shell/Eni over Nigeria deal", 11 November 2012, Financial Times available at <http://www.ft.com/cms/s/0/a170f202-2be9-11e2-a91d-00144feabdc0.html#axzz2LFnDyS4W>

25 Hon Bernard J Fried, Order to Show Cause with temporary Restraining Order, "In the Matter of Arbitration between International Legal Consulting Limited and Malabu Oil and Gas Limited and J. P. Morgan Chase and Co and all of its subsidiaries and affiliates, including but not limited to JP Morgan Chase Bank, NA", Supreme Court of the State of New York, County of New York," Index no 651733/2011, 22 July 2011, p.10.

This view is supported by evidence submitted to the New York case, by official statements by the Nigerian Attorney General and by the disposal of the monies paid for OPL 245 by Eni/Shell. Thus:

- Malabu has stated in writing that it had a contractual right to receive sums from the Federal Government of Nigeria and that it “understands that those sums may be paid from sums held by JP Morgan Chase on behalf of the Federal Government of Nigeria”.²⁶
- JP Morgan Chase has also acknowledged to the New York Supreme Court that the account was “for the benefit of Malabu”.²⁷
- The Attorney General of Nigeria is also on record as stating that the Nigerian Government acted as “obligor” in the transfer of funds from Eni/Shell to Malabu.²⁸
- JP Morgan Chase, acting on the instructions of the Government of Nigeria, made two transfers to Malabu, both on the 23rd August 2011. The first, for \$401,540,000, was to Malabu’s account (No 2018288005) with First Bank of Nigeria plc in Nigeria; and the second, for \$400,000,000, was to Malabu’s account (No. 3610042472) with Keystone Bank Nigeria Limited in Nigeria.²⁹

In effect, on a true construction, the Block 245 Malabu Resolution agreement was an agreement for the disposal of the OPL assets by Malabu and for their sale to Eni/Shell. As such, it arguably enabled the crystallisation and ultimate laundering of assets that Etete is alleged to have obtained unlawfully and fraudulently.

Global Witness has written to Eni on two occasions since [on 3rd October 2012 and 20 February 2013] requesting clarification from the company about various aspects of this arrangement. As

26 Edwards, Angell, Plamer and Dodge on behalf of Malabu to Clifford Chance LLP, 15 July 2011.

27 Transcript, “In the Matter of Arbitration between International Legal Consulting Limited against Malabu Oil and Gas Limited”, Supreme Court of the State of New York, County of New York, Index No 651733/2011, 22 July 2011, p.15.

28 Comprehensive Position Paper by Mr Mohammed Bello Adoke, SAN, CFR, Hon. Attorney general of the Federation and Minister of Justice, to House of Representatives Ad Hoc Committee Investigative Hearing in Respect of “The Transaction involving the Federal Government and Shell/Agip companies, and Malabu Oil and Gas Limited, in respect of oil bloc OPL 245”, 19 July 2012.

29 Garmishee’s objections and Responses to Plaintiff/Petitioner’s first set of interrogatories served on JP Morgan Chase and Co”, “In the Matter of Arbitration between International Legal Consulting Limited and Malabu Oil and Gas Limited and J. P. Morgan Chase and Co and all of its subsidiaries and affiliates, including but not limited to JP Morgan Chase Bank, NA”, Supreme Court of the State of New York, County of New York,” Index No 651773/2011.

of filing this document, Eni has provided responses to both letters, choosing to frame the deal to obtain OPL 245 as one between Eni and Shell and the Nigerian Government. Global Witness views these responses as completely inadequate as the company has failed to answer the questions put to them. This correspondence is appended at Annex 1.

ENI AND EVP: ALLEGED CONSPIRACY TO CORRUPT AND DEFRAUD

As already noted, Energy Venture Partners Limited (EVP) has filed a claim against Malabu in the UK High Court for non-payment of fees. EVP claims that it is owed the sum of \$200 million from the sums payable by or on behalf of Eni and Shell.

In his testimony in the UK court on behalf of Malabu, Etete alleged that two Eni officials, Mr Armanna and Mr Descalzi were part of a conspiracy with EVP to defraud Eni.

In section 23.5.9 of the Malabu defence to the EVP claim, Etete alleged that at a meeting at Etete's house in Nigeria attended by Eni official Mr Vincenzo Armanna and Mr Emeka Obi of EVP,

“Mr Armanna also disclosed that there was also a plan whereby Mr Obi was going to be paid US\$200 million over and above the purchase price agreed between Malabu and NAE/ENI, and that the US\$200 million was to be shared between Mr Obi and other NAE/ENI executives including Mr Descalzi who was ENI/NAE's Chief Operating Officer (Exploration and Production)”.³⁰

In section 23.5.11 of the Malabu defence, Etete also alleged that,

*“After Mr Armanna had left, Chief Etete told Mr Obi that he was mad and the sort of deal Mr Armanna had outlined would put people in jail. Chief Etete said that such a plan was just stealing from ENI and money laundering, and that he would not participate in it.”*³¹

During sworn testimony, Etete alleged that he later learnt that Eni CEO Paolo Scaroni was also part of this conspiracy to defraud Eni.³²

³⁰ Claim No: 2011 Folio 792 in the High Court of Justice, Queen's Bench Division, Commercial Court, Royal Courts of Justice

³¹ Claim No: 2011 Folio 792 in the High Court of Justice, Queen's Bench Division, Commercial Court, Royal Courts of Justice

Further grounds for suspecting a corrupt deal between EVP and Eni executives may be inferred from the complex fee arrangement for services rendered in the sale of OPL 245. Discussing EVP's agreement with Malabu, Section 19 of the EVP particulars of claim states that,

*"The terms of the EVP Exclusivity Agreement provided a mechanism to determine the fee payable to EVP pursuant to which the parties would agree an "Agreed Malabu Price" ("AMP") within 30 days and EVP's fee would be the total purchase consideration ("the Price") in excess of that AMP".*³³

We have not seen a copy of the Exclusivity Agreement. However, as described by EVP court documents, its complicated fee arrangement resonates with Etete's claim of a conspiracy to defraud Eni by Eni executives acting in concert with EVP. Under the Agreement, on Etete's account, EVP's fee of \$200 million would be added to the agreed Malabu price. This arrangement would thus have resulted in two separate but related prices being agreed for the purchase of OPL 245 with Eni purportedly paying out an amount over and above the price agreed with Malabu. The concern is that this additional cost would have been borne by Eni (and thus its shareholders), with the money allegedly going to Eni executives and EVP.

Furthermore in the ILC claim in the New York Supreme Court, Mr Ednan Agaev, representing ILC, alleges in an affidavit dated 24 June 2011 that ILC was the main contractor that brought EVP into the OPL 245 deal as a sub-contractor. It is therefore a matter of concern that for services rendered in the sale of OPL 245, ILC the main contractor is claiming \$65,522,400 (6%) of the approximately \$1.1 billion that was paid by Eni for OPL 245 while EVP the subcontractor is claiming \$200,000,000 (18%). This skewed reward system is strongly suggestive of EVP acting as a conduit for corrupt payments.

We would therefore request that the SEC also investigate the circumstances surrounding the suspicious and complicated fee arrangement structure in order to establish whether there was indeed an attempt to defraud Eni as alleged by Etete.

32 Testimony of Chief Dauzia Loya Etete given on 11 December 2012 during cross-examination by Mr Howard representing Energy Venture Partners: *Energy Venture Partners v Malabu Oil & Gas*, Commercial Court (Queen's Bench Division), presided over by the Hon. Mrs Judge Gloster.

33 *Energy Venture Partners Limited and Malabu Oil and Gas Limited, Amended Particulars of Claim*, High Court of Justice, Commercial Court, London, para 19, 5 November 2012

PAYMENTS FROM MALABU ACCOUNTS TO SUSPICIOUS COMPANIES RAISE THE RISK THAT CURRENT NIGERIAN OFFICIALS MAY HAVE BEEN PAID OFF

According to Ednan Agaev's sworn affidavit in a New York court,³⁴ there were 2 occasions in July 2011 when JP Morgan Chase received requests, purporting to be from the government of Nigeria, requesting that the bank move \$800,000,000 from the FGN account to an account held by Malabu. Apparently, JP Morgan Chase did not act on these instructions as they did not seem to be valid: one of the requests came from an AOL account from a UK IP address, and not from the Nigerian Ministry of Finance, or other government body.

However, once JP Morgan Chase had transferred \$801,540,000 to Malabu's accounts at First Bank of Nigeria and Keystone Bank Nigeria, these two accounts made further transfers as follows:

A. Transfers from Malabu's First Bank Nigeria Plc account number 2018288005 – all to First Bank Nigeria Plc accounts:

- Malabu letter requests transfer 23 August 2011. Actual transfer made 29 August: \$180 million to MegaTech Engineering, account number: 4382900731157, held at the First Bank Plc, Abuja, Nigeria.
- Malabu letter requests transfer 23 August 2011. Actual transfer made 29 August 2011: \$157 million to A Group Construction Co. Ltd. We do not possess details of the account number, though we believe the account is also held at First Bank Plc.
- Malabu letter 24 August 2011. Actual transfer 29 August 2011: \$34.54 million to Imperial Union Limited, account number: 2017557690, First Bank Plc, Abuja, Nigeria.
- Malabu letter 6 September 2011. Though, from a list of actual transfers/bank statement, it would appear that the actual transfer took place on the 2 of September, pre-dating the formal request: \$30 million to Novel Properties & Dev. Co Ltd, 2016238518 at First Bank, Nigeria, Plc, Abuja, Nigeria.

B. Transfers from Malabu's Keystone Bank Nigeria Ltd, Account number No. 3610042472:

³⁴ Affidavit of Ednan Agaev. "In the Matter of Arbitration between International Legal Consulting Limited against Malabu Oil and Gas Limited", Supreme Court of the State of New York, County of New York. 24 June 2011

- Malabu letter 2 September 2011. Actual transfer 6 September 2011: \$336.456 million paid to Rocky Top Resources Ltd, account number 3610042596. Note, the Malabu transfer letter also specifies an additional Malabu account held at Keystone: 1005552028, under the name: Malabu Oil and Gas Ltd Domiciliary Account.
- On 26 August 2011, a further \$60 million was transferred from Malabu's Keystone account – 1040659338, to AS Sunnah BDC, Account number: 1040659656. The Domiciliary account mentioned in the above bullet transferred the funds first to Malabu's current account (see just above in this bullet). In court, Etete stated that this transfer was for "foreign exchange trading," on behalf of Malabu.

In total, \$797.996 million was withdrawn from Malabu's accounts. In court, Etete claimed that the monies transferred were a combination of his payment for his work for Malabu and investments made on behalf of Malabu. Etete is listed as a director of Rocky Top Resources (through which he claims he was paid). It is interesting to observe, however, that whilst Etete claims to be only a consultant to Malabu, he would appear to have direct control on the financial operations of the company.

In our opinion, the companies mentioned above do not seem to be legitimate. For example, according to a Nigerian investigative journalist who visited the companies' given addresses, both Rocky Top Resources (in Abuja) and Imperial Union (in Lagos) could not be located. The journalist believes that the addresses do not exist. A Group Construction Co Ltd's address in Lagos does exist, but was found to be a residential property with the people who live there claiming no knowledge of the company. Novel Properties & Development Company's address exists, but a company of this name could not be found there, nor is the address owned by a company of this name, according to the journalist.

On 23 August 2011, MegaTech sent an invoice to Malabu for an "investment in telecommunication project in Abuja". The way the invoice is written and the amounts involved make it immediately suspicious. Little detail is given on what the money is to be spent on ("Equipment: US\$80,000,000. Construction and acquisition of Site: US\$50,000,000. Installation, insurance, cleaning: US\$20,000,000. Working Capital and Domestic Sourcing of Local Contents: US\$30,000,000.") In court, Etete said it was "an investment on behalf of Malabu."

We note that each company also has a shared director: Mr Aliyu Abubakar. We have been informed that he is commonly referred to as “Mr Corruption,” amongst Nigeria’s anti-corruption officials. Abubakar is considered to be “close” to some members of the current Nigerian Government.

In summary, we believe that in addition to whatever funds were ultimately obtained by Etete through the monetisation of his illegally expropriated asset (OPL 245), there is a substantial risk that some of these large transfers could have been made for the benefit of influential Nigerian officials whose approval was required to ensure the deal went through. The Malabu money transfer documents are appended as Annex 2.

REQUEST FOR INVESTIGATION

In conclusion and in light of the above, we would request that the SEC investigate

- Whether or not Eni’s engagement with Etete, EVP and Malabu during the period of its deferred prosecution agreement with the DoJ was a breach of that agreement and in particular of the undertakings with regard to conducting due diligence and having in place rigorous anti-corruption procedures? And whether such a breach renders Eni liable to prosecution under the original (deferred) offence?
- Whether or not given the arrangement entered into by Eni to acquire OPL 245 constituted a conspiracy to disguise and conceal the fact that the ultimate beneficiary of the \$1.1 billion payment for OPL 245 was Malabu?
- Whether or not, the arrangements entered into by Eni to purchase OPL 245 facilitated the crystallisation and laundering of proceeds of crime, in that OPL 245 was on the balance of probability unlawfully obtained by Etete?
- Whether or not Eni’s purchase of OPL 245 has breached US anti-corruption laws?
- Whether or not, there was indeed an attempt by some Eni executives acting in concert with others to defraud Eni as alleged by Etete?

- The extent to which Eni's transfer of funds, ultimately for the benefit of Etete, also resulted in illicit transfers to high-level Nigerian officials and thus could represent a serious FCPA violation.

We would also request that you acknowledge this letter.


Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Taylor'.

Simon Taylor, Global Witness

A handwritten signature in black ink, appearing to read 'Luca Manes'.

Luca Manes, Re:Common

A handwritten signature in black ink, appearing to read 'Nicholas Hildyard'.

Nicholas Hildyard,
The Corner House

A handwritten signature in black ink, appearing to read 'Dotun Oloko', written over a horizontal line.

Dotun Oloko