Administrative Law

The Price of Whistle blowing: the flawed ECJ Decision in Stanley Adams vs. Commission of the European Communities (1985)

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> Home Affairs Minister Tonio Borg has ruled out a Whistleblower Act in the immediate future, saying new legislation was 'not indispensable' to protect whistleblowers ... Dr Borg said 'there were enough laws giving immunity to whoever exposed corruption and other crimes ... The drafting of a Whistleblower Act is not in the government's immediate legislative programme.[2]

This paper takes a fresh look at a judgement given by the European Court of Justice (ECJ) in 1985[3] and argues that it contained serious flaws and unfortunate and costly contradictions. It involved a suit for damages against the European Commission (EC) instituted by a person who today is considered one of the world's most famous whistleblowers. He also happened to be Maltese. It was one of the very first cases where the EC was sued for damages.[4]

Whistleblowing has become a subject of legal study in its own right and has already been discussed by the author in a recent related paper.[5]

Stanley Adams' misadventures and unfortunate dispute with the EC is important for various reasons: it involved a case in which

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[2] Karl Schembri, 'Whistleblower Act 'not indispensible' says Tonio Borg', *Maltatoday*, (San Gwann, Malta 30 April 2006) <http://archive.maltatoday.com.mt/2006/04/30/t5.html>

[3] Case 145/83 *Stanley George Adams v Commission of the European Communities* [1985] ECR 3539 Readers are encouraged to read the whole text of this judgement. It contains a useful and precise description of the whole story as it evolved and how EC officials acted in relation to Adams and to Roche. It traces the factual account from Adams' original letter of disclosure to the action he instituted against the EC.

[4] From what I can establish so far, his real name was Stanislau Formosa. Will Bennett, 'Extravagant tastes of man of few means ', *The Independent* (London, 15 March 1994) <http://www.independent.co.uk/news/uk/extravagant-tastes-of-man-of-few-means-corrected-1429109.html>; accessed 25 October 2011

For his own personal reasons, Adams is not keen to recall his Maltese background or that his first wife was Maltese or even that Adams was not the surname he was born with. In his book, he only dedicates one page to his Maltese upbringing. Wikipedia places him on top of its list of whistleblowers. In its entry on Roche, it includes a substantial note describing Adam's disclosure of its illegal cartel arrangements.

[5] David Fabri, 'No more heroes anymore? The whistleblowing dilemma: recent developments and a fresh look at some conceptual and legal issues' (2009) Id-Dritt Vol XX. Readers are directed to this paper and to the considerable material referred to therein. I have also referred to the Adams case in '*Whistleblowing in Malta: a note on recent developments, proposals and missed opportunities*' in The Company Lawyer, Vol 23, No 1, January 2002.

competition law, whistleblowing and liability in tort meet; it explains the responsibility in tort of the EC for the failures of its officials; and it adds insight into the obligation of confidentiality and on how breaches of confidence may occur through lack of care. It is a tale worth revisiting as certain questions of an ethical and regulatory nature have remained, in the view of the present writer, insufficiently addressed. Where possible, I have indicated a number of commentators and a few unexpected sources who have commented on Adams, his whistleblowing act and subsequent Court experience.[6]

The Local Context: The Competition Act and the new Whistleblowers Bill

The first comprehensive legislation to safeguard competition in the market and to prevent restrictive arrangements between traders was the Competition Act of 1994.[7] Adopted in preparation for accession to the European Union following the publication of the White Paper

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[6] The Wikipedia entry on Stanley Adams (whistleblower) provides a good convenient summary of the salient facts: 'Stanley Adams (born c1927) is a former pharmaceutical company executive and corporate whistleblower, whose case was a cause célèbre in the 1970s. The Malta-born Adams was a senior executive with the Swiss pharmaceutical company Roche when in 1973 he discovered documents which indicated that the company was involved in price-fixing to artificially inflate the price of vitamins. He passed on the documents to the competition commission of the European Economic Community, aware that Switzerland, while not part of the EEC, had a free trade agreement with it.
The EC failed to keep his name confidential during its investigation, passing documents containing Adams' name to Roche. Adams was arrested and charged with industrial espionage and theft. He was held in solitary confinement for three months. Adams' wife was told that he faced a 20-year jail term for industrial espionage. She committed suicide. In the end, Adams served six months in a Swiss prison. When released, he fled to the United Kingdom and, with the assistance of a number of Labour Party MPs, notably John Prescott, later deputy party leader, he attempted to recover compensation from both the Swiss government and the European Union. In 1985 the European Union agreed to pay Adams £200,000, about 40% of his total costs. He documented the saga in Roche vs Adams.
In 1985, he was elected rector of St Andrews University (a student-elected post).'
<http://en.wikipedia.org/wiki/Stanley_Adams_(whistleblower)> accessed 25 October 2011

[7] Chapter 379 of the Laws of Malta

'Fair Trading ... the next step forward'[8], the Act set up the Office for Fair Competition and prohibited cartels, abuses of dominant positions, price fixing and other restrictive agreements and practices, imposing some very harsh penalties for breaches of the Act. Later amendments to the Act, including some very recent ones, have sought to strengthen the investigation and enforcement powers of the enforcement agency and make the law more effective.[9]

Despite all the good intentions of this and other legislative reforms in the consumer area, breaches of one nature or gravity or another will be committed. It is no mystery that business corporations often operate outside the law, sometimes using sophisticated methods to escape detection. Some acts of wrong-doing are discovered and stopped. Other breaches remain secret and go unpunished. This note wishes to suggest that in practice there may be little chance to detect and investigate serious corporate breaches in an effective manner unless the regulatory and enforcement authorities are able to access inside assistance from within the guilty business firms themselves. This proposition raises the issue of whistleblowing, a subject which carries relevant moral and legal implications.

A proper Act to provide protection to whistleblowers is long overdue in our country.[10] A bill published some months ago remains pending before Parliament and neither side of the House seems particularly interested in pushing for its quick adoption. In any event, it is not a flawless bill. It reflects an underlying conviction that whistleblowers are to be tolerated rather than encouraged and oozes an impression that the law was drafted in order to respond to media and public pressure rather than out of an honest attempt to protect whistleblowers.[11]

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[8] Department of Information, *Fair Trading ... the next step forward*, November 1993

[9] Part XV of Act No VI of 2011

[10] 'The promise of a Whistleblower's Act is foremost on the agenda of newly-elected PM Gonzi.', *Maltatoday*, (San Gwann, Malta 16 March 2008)

[11] Protection of the Whistleblower Act, 2010, Bill 58 of 2010, published in the Gazette on 8 October 2011 – more than a year ago. See also <http://www.statecareandmore.eu/index.php/blogs/the-whistleblower-bill-a-good-idea-.html?blogger=ivan.mifsud>. Former Prime Minister Alfred Sant has described the bill as "*bullshit*", describing the structures proposed in the bill as insufficient and possibly counter-productive (*Maltatoday*, 28 November 2010).

In Switzerland a man from Malta....

In brief, ***Stanley Adams v European Commission*** is a European court case involving Malta-born Stanley Adams who forwarded to the Competition Commissioner of the European Union remarkable disclosures on a well-known and powerful multinational pharmaceutical firm, Hoffmann-La Roche (Roche), which was engaging in some serious and lucrative cartel activity. The practice was carried out in secret as it was in direct conflict with EC competition rules and breached the Swiss-EEC free trade accord.

Following many years of service in senior management positions with the company in Europe and in Latin America, Adams discovered that his employers were engaging in price-fixing and other serious breaches of the competition laws. He became very upset and after giving his discovery some thought, he decided to reveal the details of this illegal activity to the competition authorities of the European Union in Brussels. For his pains, he was hounded and investigated, ending up in a Swiss jail for the unauthorised disclosure of business secrets. He later won some damages from the EC. Adams wrote a book about his experiences where he describes how business interests and the State machinery conspired 'to send whistle-blowers to jail to punish them for whistle-blowing.'[12] It will be argued here that even the ECJ was guilty of failure to give full justice to Adams through a regrettable mixture of flawed thinking, an inclination to blame Adams for taking such huge risks, and a failure to give proper value to the nature and consequences of the important disclosures which led to severe action being taken by the EC against Roche and its accomplices.

The letter:

> So it was that on the evening of February 25th, 1973, at home in our flat in Basle, I sat down with Marilene[13] and typed a letter to Mr Albert Borschette, Commissioner for

[12]Stanley Adams, *Roche versus Adams,* Jonathan Cape, 1984. see also Fisse & Braithwaithe, *Corporations, Crime and Accountability* (Cambridge University Press, 1993) 56

[13] His second wife

> Competition, at the E.E.C. in Brussels. We stamped it, put it in the mail, and went to sleep. The letter read as follows:
>
> Dear Sir
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> Re: Offences against Article 86 in the sale of Bulk Vitamins and Chemicals in Europe
>
> I am writing this letter out of a sense of duty and I trust you will be able to take some action in this matter. I am not after any position in the E.E.C. institutions, nor am I in any way interested in compensation of any kind.....
> .....I request you not to let my name be connected with this matter. However, I remain at your entire disposal.....
>
> Yours faithfully
>
> Stanley Adams[14]

Time magazine reported on Adams' case in the Monday 7 April 1975 issue which carried a feature headed 'Spying' in Switzerland'. This was the opening paragraph:

> Secrecy in Switzerland is a big business, encased in laws that carry stiff penalties for violations like breaking the shroud of anonymity around numbered bank accounts. Sometimes, though, Swiss secrecy gets in the way of enforcement of other countries' laws. In one current case, the aftermath has been both bizarre and tragic; it includes the jailing of a former executive of a giant drug company, the suicide of his wife and a threat to have two high officials of the European Economic Community (Common Market) arrested if they set foot in Switzerland.

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[14] Adams 21; Adams' statement that he was not after compensation is highly significant. He did not seek a bounty or other mercenary reward. Adams could not have predicted that years later he would actually end up instituting a historic case seeking financial compensation from the EC for recklessly betraying his identity, thereby ruining his life.

The Stanley Adams case[15] is a morality tale of sorts; a David v Goliath scenario which highlights the dangers of whistleblowing and the risks faced by those who practise it. The facts revealed in the judgement show the risks of retaliation by the whistleblower's employer. Some form of retaliation by the employer was to some extent predictable. What was much less foreseeable, and this is a key theme in this paper, was the risk of exposure or betrayal by the very public and important institution to which he had confided confidential information about his employer's illegal price-fixing conspiracies.[16]

The ECJ decides Stanley Adams v European Commission: The Commission defends itself; flaws in the judgement

The Stanley Adams judgement needs to be examined in its factual and historical context. Mr Adams was no ordinary complainant seeking damages and the EC was no ordinary defendant. After having abused of Mr Adams' cooperation and imprudently placed his safety and wellbeing in jeopardy, the EC then proceeded to fight tooth and nail to refuse him any compensation for all the damages and suffering he had to endure.

The EC presented three main pillars of defence to the ECJ. First, it tried to have the case dismissed on grounds of prescription, because too much time had lapsed from its failures. Then it tried to argue that in view of its special status it could not be sued for damages like any other person. Finally, it claimed not to have had any obligation of confidentiality towards its informant. All these three preliminary defence pleas were correctly dismissed by the Court. The morality and coherence of the EC's attempt to have the case thrown out by the ECJ on such grounds were unsatisfactory legally, socially and morally. The

[15] It amazes me just how few in Malta are aware of this story. Students of European Studies would usually know this ECJ decision as an early case which addressed the legal personality of EC and its liability in damages. Students generally miss the significance of Mr Adams' actions and the fact that he was Maltese.

[16] One is with regret reminded of the much-quoted aphorism originally coined by Voltaire that 'I can take care of my enemies, but God protect me from my friends.'

ECJ's dismissal of all three defence pleas hardly added prestige to the EC.

The Adams case provides valuable lessons from various perspectives, especially for competition law and practice as it indirectly relates to huge corporations that were found to have ganged together to keep the price of basic health items high thereby increasing their profits at the expense of the public. It is also a lesson in moral courage and conscience, in business ethics, in the duty of confidentiality and in the beauty and dangers of whistleblowing.

The Stanley Adams case and ECJ judgement can also provide guidance for regulators. Indeed, in this case, the Court judgement reveals them as no match for sharp business operators to whom they finally conceded to disclose copies of documentation that allowed them to identify the official in their company who had blown the whistle on their illegal activities. Regulators are expected to deal with their informants in a correct manner safeguarding their privacy and safety at all times. The EC admitted that it failed to alert Adams that the Swiss not only knew about him but that they had started criminal proceedings against him. The Court criticized the EC for having failed to alert Adams that Roche were on to him: 'The Commission was under a duty to take every possible step to warn the applicant ... it is common ground that the Commission did not even attempt to find the applicant.'[17]

The court also found that the EC officials acted carelessly in giving Roche copies of documents handed to them by Adams, and the EC had to pay the price. Before the ECJ, the EC pleaded, to its embarrassment in my view, that Adams had never specifically warned them of the risk that disclosure of the documents could lead to his identification by Roche. The Court rejected this plea and placed full responsibility on the EC officials who are defined as 'imprudent' and not sufficiently professional in the conduct of their relations with Roche and its crafty lawyers.[18] Although the EC adopted a firm policy of not revealing the whistleblower's identity, they delivered documents to Roche in October 1974 from which the company 'drew the conclusion

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[17] Case 145/83 *Stanley George Adams v Commission of the European Communities* [1985] ECR 3539, paras 42-43

[18] Ibid para 40

that the applicant was the main suspect.'[19] The judgement also confirms that in February 1975, a Commission official admitted to Roche's lawyer that Adams was the Commission's informant.[20]

The documents released to Roche by the EC also enabled the Swiss public prosecutor to successfully prove that Adams was guilty of industrial espionage. He was condemned *in absentia* to one year in prison. Indeed, the ECJ found that the Swiss Criminal Court sentence specifically took into account that officials from the EC itself had admitted to Roche's lawyer that Adams had revealed secret information about Roche's price fixing activity.[21] Inadvertently, the EC had facilitated Adams' criminal prosecution in Switzerland.[22]

The first part of the Court sentence is coherent, and it is only towards the end that it falls off the tracks. This first part of the judgement places clear responsibility on the EC for its various failures and proceeds progressively towards asserting plaintiff's rights to be awarded substantial damages for the harm he had suffered. This direction is more or less reversed in one single paragraph in the final part of the judgement. This paragraph swiftly and without much ado reduces Adams' entitlement to damages by an incredible one-half, a late twist in the tail and the proverbial cold shower owing to its flawed finding of contributory negligence. The first fifteen pages go in one direction and slam the EC's claims and defence pleas. The last two pages go into a completely different direction and blame Adams for not keeping the EC informed of his whereabouts and holiday plans. This latter part is surprisingly unsympathetic to Adams and shows no benign understanding and acknowledgement of his good faith, and his and his family's misadventures at the hands of the Swiss authorities and Roche in the face of the EC's apparent relative helplessness. The turning point in this judgement commences with the following shocking statement: 'It must however be recognized that the extent of the Commission's liability is diminished by reason of the Applicant's own negligence ...'[23]

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[19] Ibid para 10
[20] Ibid para 13
[21] Ibid paras 15-16
[22] Ibid para 39
[23] Ibid para 53

The change of heart implied in this controversial paragraph reveals that while the ECJ was concerned in drawing up lines for future conduct to the EC, it had little time for the injured complainant. The withholding of 50% of the award on the stated grounds is nothing less than sensational, and outrageous, practically implying that these troublesome whistleblowers have only themselves to blame.

The paragraphs in question indirectly (and surprisingly) blamed Mr Adams for having given rise to all his troubles: it destroyed much of the good argumentation and principled decisions comprised in the first part of the judgement.[24]

In so finding, the ECJ inadvertently rewarded the EC for its bungling and its failure to warn Adams not to venture to Switzerland as his cover had been blown and the Swiss authorities were after him. As a result, the EC was spared half the damages that would otherwise have been awarded.[25]

The reasons listed by the ECJ for refusing to hold the EC responsible for the total liability may be summarized as follows:

(a) He did not keep contact with the EC and had not kept them updated with his movements.

(b) He did not pester EC officials to be informed how far the investigation he had originally sparked was progressing.

(c) He had not requested the EC to keep him informed of what they were doing with the documents he had passed on to them, (on the ground that Adams was aware that his identity could be established from the documents).

(d) He should not have gone to Switzerland for a holiday as he must have realized that going there was a risky business.

The Court ruled that Adams had not continued to follow the case. But Adams had no right to be informed. His role in the whole matter was voluntary and it was up to the EC not Adams to prosecute the case. Indeed, the EC had probably a right to protect its case and information even from Adams himself. The Swiss went to great lengths to try to establish who had leaked sensitive information. Adams had correctly made himself scarce.

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[24] Incorporated in the previous 16 pages of the judgement

[25] It must also have warmed the hearts of Roche's senior executives to see Adams receive so little for the troubles they put him through.

The Court did not consider that Adams, who did not reside in Brussels, had no right to be informed that something unexpected had happened in the meantime to his disadvantage. He was not privy to the EC confidential internal dealings and investigations. Adams had done the honourable thing of disclosing the dishonourable commercial cartel implemented by his powerful employers but he had no consequential obligation or right to keep involving himself further. By whistleblowing, Adams did not acquire any official status within the EC and he gained no special right of access to its internal files and to its secret deliberations and investigations. All he asked was that his identity would be protected. So on this point, both the EC and the ECJ erred and failed considerably.

Perhaps the worst part of the judgement is where the Court ruled that Adams was partly at fault for his suffering because he failed to follow the development of the investigation he had triggered by his letter. It held that Adams was guilty of contributory negligence to the extent that he was made to forfeit half of the eventual award. The Court did not explain why contributory negligence was an acceptable defence for the EC and why it was so serious to justify such a drastic reduction in the awardable damages. The Court failed when it suggested that by having reported the breach, Adams had a right or an obligation to enquire or, worse, to pester the EC to let him know step by step how the case was proceeding. The claim that Adams should have kept himself informed is not only baseless but contradicts and shows complete ignorance of how informants and whistleblowers operate. Adams correctly kept his communications with the EC competition authorities to a minimum. The risks he undertook were massive enough. The finding of ECJ in this respect was greatly disrespectful and harmful to Adams.

Another flaw in the judgement followed. The Court accepted that the EC had been informed by Roche's lawyer that the Swiss criminal authorities were set to prosecute both the whistleblower and the EC officials themselves for committing the crime of industrial espionage against a Swiss company. Nobody in the EC lifted a finger to warn Adams of this danger, partly because the officials thought Roche's lawyer had been bluffing. Their failure to warn Adams was disturbing. Perhaps it shows regulators not fully understanding the environment

which they were seeking to regulate and being led astray by more cunning and experienced market operators and their legal advisers.

If this was not bad enough, things got even worse in the judgement as the ECJ after establishing the EC's error in failing to alert Adams, proceeded to attribute contributory negligence to Adams for having visited Switzerland for a vacation with his family to meet up with his old friends there. He was completely unaware that thanks to the EC officials, the Swiss had managed to identify him from the documents he had passed on to the EC. As a consequence, the Swiss authorities were seeking to arrest and prosecute him at a stage when the EC officials - again by their own admission - had blown his cover by their ineptitude and lack of foresight.

The ECJ's decision to reduce the award by half due to what they termed Adams' own contribution to his fate is, on this basis, outrageous and unjustified. Even if one gives the members on the EC some (undeserved) benefit of doubt, the high percentage reduced (50%) appears much too high and disproportionate. For the ECJ, Adams was no hero, did nothing especially meritorious, but was an individual who took a huge risk unnecessarily and therefore deserved no special mercy. The Adams case is precisely a case where notions of right and wrong either get confused or play no part, and where everybody is treated as equally guilty; heroes and villains are placed in the same boat. Halving the award on such flimsy grounds is something which one cannot easily accept either on legal or on ethical grounds.[26]

This paper suggests that the ECJ got it wrong and that as a direct consequence Adams suffered an additional undeserved injustice at the hands of this Court. This added a grave insult to the physical and moral injuries he and his family had already suffered at the hands of Roche, his former employers, and the Swiss authorities who connived with it. In this manner the ECJ gave little regard and value to the violation of Adams' rights to a private life and to enjoy freedom of movement.

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[26]God does not need whistleblowers because He can see everything Himself. That is how He caught Adam and Eve when they broke the golden rule. In other circumstances, inside help goes a long way to disclose and stop wrongdoing within an organization.

The same companies caught out and fined thanks to Adams' revelations later went on to create ever bigger cartels[27] and were made to pay even higher punitive damages.[28]

Anonymous disclosures

Adams offered his information and advice to the EC under his name and met its officials face to face. It would be here worthwhile exploring briefly the implications of an anonymous tip. Indeed, what would be the position if the leak was received by way of anonymous communication? How should regulators react to anonymous messages? First, in my view regulators would be very irresponsible to discard anonymous information. There is nothing wrong with anonymous alerts being sent to regulators. Anonymous messages may provide useful leads to critical information and may come from very credible

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[27] *The Observer* 25 November 2001 reported that Mario Monti fined a cartel colluding to raise the price of vitamin pills 523 million pounds, describing it as the most damaging case up to that date. Monti was also quoted as expressing the view that '... the cartel could be dubbed 'Vitamins Inc' and was the most damaging case the Commission had ever investigated.'

[28] Roche eventually admitted its wrongdoing. In an official company media briefing held by Roche, the chairman and other senior officials tried hard to explain the position of the company after it was caught once again operating illegal anti-competitive agreements. It was investigated in the US and the EC and heavily fined by both. The chairman, Mr Fritz Gerber, provided some historical background on similar circumstances twenty years earlier: 'Ladies and Gentlemen, when I took over as chairman of Roche in 1978 the Stanley Adams story was good for a headline or two. As you will recall, in the spring of 1973, Stanley Adams turned over company documents to the EC Commission while he was still an employee of our vitamins division. In June 1976 the Commission sentenced Roche to pay a fine of 300,000 Accounting Units for granting unlawful discounts to major vitamins customers ...'

Later the company admitted through Franz B. Humer, Chief Executive Manager and Head of the Pharma Division that: '... we are here to inform you that today, Roche has agreed to pay a fine of 500 million US dollars. The settlement covers all charges filed against the Group for anti-competitive conduct in the US bulk vitamins market ...." later adding: "As I said earlier, official inquiries are currently underway in the European Union. We therefore cannot make any statements about the course that may take or their possible consequences. Overall, the financial liabilities resulting from this matter, painful though they are, will not materially affect the long-term outlook for the Roche Group.' (Roche - Corporate Media News, 21 May 1999, issued in Basel 1999)

informed sources, including as in Adams' case, a senior official, an insider. I have unfortunately heard persons in authority discard anonymous messages as something disdainful and unmanly. I think this attitude is wrong and short-sighted. Stanley Adams chose not to hide his identity to the EC. By so doing he added credibility and weight to his disclosures, but it involved a big risk. After what he paid for having done his moral duty, one would not be surprised that other whistleblowers might not be too happy to reveal their name and address. The final question whether a regulator or public authority may reveal that it had received an anonymous discloser regarding alleged wrongdoing at a particular firm must surely be answered in the negative. Such a disclosure could help the company identify the whistleblower.

The European Commission 2011

It has been a long time since the Adams judgement and the EC's approach and attitude to whistleblowing has remained uncertain and ambiguous. Recently however, a new regulation for the prevention of market abuse contained a specific provision on the need to protect persons who report market abuses. The recently published new Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) contains a novel provision for the protection of whistleblowers who disclose market abuse activities. The accompanying Explanatory Memorandum explains the provision:

> Protection and incentives for whistleblowers
>
> Whistleblowing can be a useful source of primary information and may alert competent authorities to cases of suspected market abuse. The Regulation enhances the market abuse framework in the Union introducing appropriate protection for whistleblowers reporting suspected market abuse, the possibility of financial incentives for persons who provide competent authorities with salient information that leads to a monetary

sanction, and enhancements of Member States' provisions for receiving and reviewing whistleblowing notifications.[29]

The relevant article in the Proposal is Article 29, headed 'Reporting of Violation'. Recitals 36 and 39 of the Proposal seem to introduce a very strong position in favour of whistleblowing that could assist the detection of market abuse activity. Actually, the recitals are stronger than the actual text itself, which does not even specifically refer to 'whistleblowers' or 'whistleblowing'. The protection of persons making relevant disclosures ('who offer salient information') is mandatory on member states. The Proposal allows member states to decide whether to put in place a system of incentives and rewards for whistleblowers. This rule will only be optional, but it marks an interesting and more enlightened change of policy on the EC's part.[30]

Conclusion

It should be clear that the Adams case raises issues which remain very relevant today. The judgement and the facts revealed therein deserve fresh reappraisal as some of the legal and the ethical aspects of the judgement, and the manner in which some regulators behaved, were controversial and deserved censure. Serious questions still arise as to how persons in high regulatory positions should or should not have conducted themselves. The EC fiercely resisted Adams' claims despite having already admitted its involvement by paying for his bail to get him released from the Swiss jail and by settling related legal costs. Of course it is not unusual that when criticized, institutions tend to react defensively and they hate creating precedents, especially where the payment of compensation is involved. Even the EC's own treatment of its whistleblowers has not been impressively consistent or

[29]<http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf> accessed 25 October 2011 - The question arises as to why action is being taken limitedly to protect whistleblowers in relation to market abuse and not generally to detect all serious financial crime.

[30] European Commission, Brussels, 20 October 2011, COM (2011) 651 final, 2011/ 0295(COD)

ethical. One would have expected that the EC accepted responsibility and at the very least argued on the quantum but not on the principle.

To conclude, these would appear to be some of the various reasons why Stanley Adams v European Commission 1985 deserves closer attention from students of law:

(a) it relates to serious breaches of competition law and reminds us how vital it is to have inside help in order to successfully prosecute a cartel arrangement;
(b) it reveals the risks that *bona fide* whistleblowers face and the lack of appreciation they receive for their act of moral courage;
(c) it is an early case of the EC being held liable in damages;
(d) an award of damages may be reduced by the contributory negligence of the applicant;
(e) it deals with (reckless) breaches of confidentiality obligations;
(f) it throws light on the duties of regulatory and enforcement officials and on how they should conduct themselves;
(g) it reveals that the EC is not infallible and may commit serious errors of judgement and more specifically, may fall short of the expected level of loyalty towards its own valuable informants;
(h) it raises other significant business and professional ethical issues;
(i) it shows how an otherwise validly written judgement based on good and sound principles may be derailed by relatively minor factors;
(j) it should finally serve to remind us that one of history's most famous whistleblowers was Maltese.

It may be fitting to conclude this brief paper by quoting a famous actor who played the role of Stanley Adams on film:

> I loved doing A Song for Europe. That was a film I did about Stanley Adams, who actually blew the whistle on that big chemical company in Switzerland - Hoffmann La Roche - because they were forming illegal cartels. He was a very brave man. And then he was put through hell by the

> Swiss police and his life was destroyed. That was a great role - Stanley Adams.[31]

Other notes and further reading:

1. This case should not be confused with another judgement given by the ECJ on 7 November 1985, (Case 53/84), which deals with Adam's claim that Switzerland had broken the fair competition obligations undertaken in the Free Trade Agreement with the EEC concluded on the 22 July 1972 and that the EC had failed to take action on this alleged breach and ensure that Switzerland respected the provisions of the Agreement. Adams argued that Switzerland had breached the FTA by instituting criminal action against him thereby causing him damages. The application leading to this judgement was lodged on 29 February 1984. The application to the ECJ requesting the condemnation of the EC to pay damages to Adams had been filed on the 18 July 1983 (Case 145/83). The two applications were based on the same facts and the EC pleaded *lis alibi pendens* in its defence. The court here decided that the case was unfounded and outside its competence.
2. Generally on whistleblowing: Chapter 7 of Business Ethics - *Readings and cases in Corporate Morality*, W. Michael Hoffmann and Robert E. Frederick, McGraw-Hill, 3rd Edition, 1995.
3. An extract from Adams' book is featured in the collection 'Conscience be my Guide – an Anthology of Prison Writings', edited by Geoffrey Bould, Weaver Press, 2005.

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[31]An extensive interview with David Suchet at <http://www.strandmag.com/suchet.htm> accessed 11 March 2009: Suchet is better known for his role in the TV series as Hercule Poirot. He played the part of Adams in the film A Song for Europe (1985). Wikipedia: *"In 1985 Director/Producer John Goldschmidt made the TV-Movie A Song for Europe, also known as A Crime of Honour, inspired by Adams' story. The film was shown on Channel 4 in the UK, on ZDF in Germany, on SRG in Switzerland and on ORF in Austria. The British actor David Suchet and Goldschmidt won Royal Television Society Awards for the film."*- Stanley Adams (whistleblower)
<http://en.wikipedia.org/wiki/Stanley_Adams_(whistleblower)> accessed 25 October 2011

4. 'Whistleblowing at Work', Ed David B Lewis, The Athlone Press, 2001 and materials quoted therein, especially chapter 11.
5. 'The Strange Story of Stanley Adams', The Economic Research Council, ed Edward Holloway Winter 1983/84, Vol 13 No 4, page 12.
6. In Ireland, during the Second Stage of the parliamentary debate on the Whistleblowers Protection Bill, 1999, members referred to various whistleblowing cases including Stanley Adams. Dail Debates Official Reports 16 June 1999. <http:www.irlgov.ie/debates-99/16june99/sec13.htm> accessed on 11 May 2006.
7. The Cost of Whistleblowing: Stanley Adams v. Hoffmann-La Roche, matters of Corporate Conscience, in Multinational Monitor, June 1984, Vol 5, no 6 (Report by Ole Baekgaard) <http://multinationalmonitor.org/hyper/issues/1984/06/baekgaard.html> accessed on 5 February 2009. This report explains that the European Parliament had unanimously passed a resolution 'asking the Commission to intervene with the Swiss authorities and demand the re-opening of Adams' case and to compensate him for his losses'. The writer provides an unusual 1984 perspective from Denmark: 'In Denmark, consumer coops have taken an active interest in his case. In April this year (1984), they invited him to Copenhagen to address an audience representing a wide range of institutions and the press. The coops recognized that Adams ' case is of crucial importance to consumers worldwide'.
8. Law and Contemporary Problems Vol 68:85: 'Judicial Review of European Administrative Procedure', Jurgen Schwarze, 2004, discusses aspects of the judgement on page 96.
9. Political Corruption, Prescription and Whistleblowing, The Times 30 August 1998 'As Brussels blasts the drug giants, the man who took on Roche and was jailed for it talks to Nick Mathiason', Blowing the final whistle, Guardian.co.uk/The Observer.
10. SWP 17/87 Hoffmann-La Roche v Stanley Adams - Corporate and Individual Ethics, Eric Newbigging, visiting professor in Business Policy, Cranfield University 1986: a detailed case study written for the purpose of teaching Business Policy. It comments briefly on how it happened that 'the European Court's award to Adams in November 1985 of around £500,000 was half his claim'.