

Alcatel-Lucent, S.A. (Matter #11)

Case ID:

ST-27

Case Cluster :

Alcatel-Lucent S.A.

Jurisdiction of Settlement:

United States

Jurisdiction of Settlement / Enforcement Agency:

Department of Justice

Jurisdiction of Foreign Public Official(s) :

Costa Rica, Honduras, Malaysia, Taiwan

Year of Settlement:

2010

Month/Day of Settlement (or Notes):

12/27

Other Jurisdictions of Settlement:

Costa Rica

Settlement with Individual or Legal Person?:

Legal Person

Type of Settlement:

Criminal

Legal Form of Settlement:

Deferred Prosecution Agreement

Monetary Sanctions (Types):

Criminal Fine

Total Monetary Sanctions (US\$):

\$92,000,000.00

Criminal Fine/Penalty (US\$) :

\$92,000,000

Monetary Sanctions Returned / Ordered Returned (US\$):

\$0

UNCAC Articles(s) Implicated:

Art.16

Art.23

Art.26

OECD Anti-Bribery Convention Articles Implicated:

Art. 1, Art. 2, Art. 7, Art. 8

Offenses - Alleged:

Falsification of Books and Records, Internal Controls Violations

Offenses - Settled:

Falsification of Books and Records, Internal Control Violations

Public Procurement Contract / SOE Involved?:

Yes

Summary:

According to the US Department of Justice Press Release, Alcatel-Lucent and its subsidiaries

engaged in the following: "Specifically, Alcatel CIT won three contracts in Costa Rica worth a combined total of more than \$300 million as a result of corrupt payments to government officials and from which Alcatel reaped a profit of more than \$23 million, according to court documents. Alcatel CIT wired more than \$18 million to two consultants in Costa Rica, which had been retained by Alcatel Standard, in connection with obtaining business in that country. According to court documents, more than half of this money was then passed on by the consultants to various Costa Rican government officials for assisting Alcatel CIT and Alcatel de Costa Rica in obtaining and retaining business. As part of the scheme, the consultants created phony invoices that they then submitted to Alcatel CIT. According to court documents, senior Alcatel executives approved the retention of and payments to the consultants despite obvious indications that the consultants were performing little or no legitimate work. In addition, according to court documents, Alcatel Standard hired a consultant in Honduras who was a perfume distributor with no experience in telecommunications. The consultant was retained after being personally selected by the brother of a senior Honduran government official. Alcatel CIT executives knew that a significant portion of the money paid to the consultant would be paid to the family of the senior Honduran government official in exchange for favorable treatment of Alcatel CIT. As a result of these payments, Alcatel CIT was able to retain contracts worth approximately \$47 million and from which Alcatel earned \$870,000. In addition, according to court documents, Alcatel Standard retained two consultants on behalf of another Alcatel subsidiary in Taiwan to assist in obtaining an axle counting contract worth approximately \$19.2 million. Alcatel and its joint venture paid these two consultants more than \$950,000 despite the fact that neither consultant had telecommunications experience. In fact, according to court documents, Alcatel Standard's purpose for hiring the consultants was so that Alcatel SEL could funnel payments through the consultants to Taiwanese legislators who had influence in the award of the contract. Alcatel earned approximately \$4.34 million from this contract." (Source: US Department of Justice Press Release, "Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay \$92 Million to Resolve Foreign Corrupt Practices Act Investigation," December 27, 2010.) According to the Deferred Prosecution Agreement, Alcatel-Lucent S.A. and the Department "agree that any criminal penalties that might be imposed by the Court on Alcatel-Lucent's wholly owned subsidiaries in connection with their guilty pleas and plea agreements entered into simultaneously herewith will be deducted from the \$92,000,000 penalty agreed to under this Agreement." (Source: US v. Alcatel-Lucent S.A., Case No. 1:10-cr-20907-PAS (S.D. Fla.), Deferred Prosecution Agreement filed February 22, 2011.) ICE Petition: In May and June 2011, the Instituto Costarricense de Electricidad (ICE) petitioned the District Court for the Southern District of Florida considering the Alcatel-Lucent SA criminal cases for relief/restitution and to object to the Alcatel-Lucent's plea agreement and deferred prosecution agreement with the US Government. ICE petitioned the court to be recognized as a victim and entitled to restitution, pursuant to the Crime Victims' Rights Act (18 USC Section 1651), US Federal Rules on Criminal Procedure and the Mandatory Victim Restitution Act (18 USC Section 3663A). ICE argued that it had suffered direct and proximate damage from Alcatel-Lucent's conduct and refuted the argument by the US and Alcatel-Lucent (later supported by the court) that it had been a co-conspirator or co-participant in the bribery scheme. (Sources: US v. Alcatel-Lucent S.A., Case No. 1:10-cr-20907 (S.D. Fla.), Petition for Relief Pursuant to 18 U.S.C. Section 3771(d)(3) and Objection to Plea Agreements and Deferred Prosecution Agreement filed May 3, 2011 and Petition for Writ of Mandamus Pursuant to the Crime Victims' Rights Act, 18 USC Section 3771(d)(3) filed June 15, 2011.) The US Government's Response to ICE's Petition for Victim Status and Restitution, filed May 23, 2011, argued that "Under the facts and circumstances in the instant matter, which reflect profound and pervasive corruption at the highest levels of ICE, the government does not believe it is appropriate to consider ICE a victim in these cases. [] Moreover, regardless of whether ICE is considered a victim, the government does not believe that

restitution should be ordered in this matter, because, under the facts and circumstances present in this case, any restitution calculation would be entirely speculative and would unduly prolong and complicate the sentencing process - something that the law does not support." The US Government cited the involvement of the ICE board members and high level officers in the Alcatel scheme and as legal basis, *US v. Lazarenko*, 624 F.3d 1247, 1250-52 (9th Cir. 2010) (an individual who is both a victim and a participant in a money-laundering scheme who profited from the conspiracy cannot qualify as a "victim" under restitution statutes), and in footnote 8, refuted ICE's contention that the DOJ had stated that foreign governments or instrumentalities could never be victims, much less that that was Department [of Justice] policy. ICE appealed the district court's ruling to the 11th Circuit Appeals Court, but its petition was also denied. The appeals court held that the "district court did not clearly err in finding that 'Instituto Costarricense de Electricidad' ("ICE"), here seeking to be deemed a "crime victim," actually functions as the offenders' coconspirator. The district court identified the pervasive, constant, and consistent illegal conduct by the "principals" (i.e. members of the Board of Directors and management) of ICE, the organization claiming status as a victim under the CVRA. Neither did the district court err in finding that ICE failed to establish that it was directly and proximately harmed by the offenders' criminal conduct." (Sources: *In re: Instituto Costarricense de Electricidad*, No. 11-12707-G and No. 11-12708-G (11th Cir.), On Petition for Writ of Mandamus to the United States District Court for the Southern District of Florida filed June 17, 2011 and September 2, 2011 denial of ICE's motion for Petition for Rehearing En Banc; see also Consolidated Opposition of Alcatel-Lucent, S.A., Alcatel-Lucent France, S.A., Alcatel-Lucent Trade International, A.G. and Alcatel Centroamerica, S.A. to Petitions for Writs of Mandamus Pursuant to the Crime Victims Rights Act, 18 U.S.C. Section 3771 filed June 17, 2011.)

Sources :

US Report to the Organisation for Economic Co-operation and Development, "Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," Information as of May 31, 2011, Alcatel-Lucent, S.A. Case Summary at 27-29, accessed at <http://www.oecd.org/dataoecd/18/8/42103833.pdf>. *US v. Alcatel-Lucent, SA*, Case No. 1:10-cr-20907 (S.D. Fla.), Information filed December 27, 2010 and copies of the Deferred Prosecution Agreement and Order, accessed at <http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-lucent-sa.html>; US Department of Justice Press Release, "Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay \$92 Million to Resolve Foreign Corrupt Practices Act Investigation," December 27, 2010, at <http://www.justice.gov/opa/pr/2010/December/10-crm-1481.html>. ICE Petition: *US v. Alcatel-Lucent S.A.*, Case No. 1:10-cr-20907 (S.D. Fla.), Petition for Relief Pursuant to 18 U.S.C. Section 3771(d)(3) and Objection to Plea Agreements and Deferred Prosecution Agreement filed May 3, 2011 and Petition for Writ of Mandamus Pursuant to the Crime Victims' Rights Act, 18 USC Section 3771(d)(3) filed June 15, 2011; US Government's Response to ICE's Petition for Victim Status and Restitution, filed May 23, 2011; *In re: Instituto Costarricense de Electricidad*, No. 11-12707-G and No. 11-12708-G (11th Cir.), On Petition for Writ of Mandamus to the United States District Court for the Southern District of Florida filed June 17, 2011 and September 2, 2011 denial of ICE's motion for Petition for Rehearing En Banc; see also Consolidated Opposition of Alcatel-Lucent, S.A., Alcatel-Lucent France, S.A., Alcatel-Lucent Trade International, A.G. and Alcatel Centroamerica, S.A. to Petitions for Writs of Mandamus Pursuant to the Crime Victims Rights Act, 18 U.S.C. Section 3771 filed June 17, 2011.