

Alstom S.A. / Alstom Network Schweiz AG and other Swiss subsidiaries

Case ID:

ST-39

Case Cluster :

Alstom S.A.

Jurisdiction of Settlement:

Switzerland

Jurisdiction of Settlement / Enforcement Agency:

Office of the Attorney General

Jurisdiction of Foreign Public Official(s) :

Latvia, Malaysia, Tunisia

Year of Settlement:

2011

Month/Day of Settlement (or Notes):

11/22

Other Jurisdictions of Settlement:

World Bank

Settlement with Individual or Legal Person?:

Legal Person

Type of Settlement:

Criminal

Legal Form of Settlement:

Summary Punishment Order

Monetary Sanctions (Types):

Criminal Fine, Confiscation of Profits, Legal Costs

Total Monetary Sanctions (US\$):

\$42,485,594.00

Criminal Fine/Penalty (US\$) :

\$2,723,790

Criminal Forfeiture / Confiscation (US\$):

\$39

658

300

Monetary Sanctions Returned / Ordered Returned (Explanation):

\$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, Art. 9

Offenses - Alleged:

Bribery of foreign officials, Not take all necessary and reasonable organizational precautions to prevent bribery of foreign officials in the course of its business operations (Art. 102 Section

2 Swiss Criminal Code in conjunction with Art. 322 of the Swiss Criminal Code)

Offenses - Settled:

Bribery of foreign officials, Not take all necessary and reasonable organizational precautions to prevent bribery of foreign officials in the course of its business operations (Art. 102 Section 2 Swiss Criminal Code in conjunction with Art. 322 of the Swiss Criminal Code)

Public Procurement Contract / SOE Involved?:

Yes

Summary:

According to the Summary Punishment Order of the Office of the Swiss Attorney General, dated November 22, 2011, "In complete disregard of the internal provisions [for selecting and using consultants] . . . the Defendant [Alstom] through its representatives signed consultancy agreements with pure offshore and shell companies in the cases relevant to the current proceedings. [] The fact that payments were carried out and made by the Defendant on the basis of such consultancy agreements into the accounts of offshore and shell companies both nationally and abroad, i.e. into accounts located outside the project country, meant that there was a higher risk, as a matter of principle not tolerated by internal guidelines, that such payments could be used for bribery or for other illegal purposes." (Source: Summary Punishment Order at para 10.) According to the Summary Punishment Order, this misconduct continued after active foreign bribery sanctions entered into effect, and "It must be held in the OAG's [Office of the Attorney General's] consideration that the company did not take all necessary and reasonable precautions to prevent the bribery of foreign public officials, as a result of which bribery of foreign public officials did in fact occur in three cases." (Source: Summary Punishment Order at para 11.) (1) In Latvia, from 2006 onwards, bribe payments were funnelled to legal entities SIA Energy Consulting (Latvia) and Kenmore OU (Estonia) controlled by Andrejs Livanovics, a former Alstom business development manager for the Baltics but the beneficiaries of the success fees were executives of the state owned company LATVENERGO AS who were decisively involved in decisions related to awarding contracts; (2) in Tunisia, "consultancy" payments to companies controlled by Slim CHIBOUB, a son-in-law of the former President of Tunisia; the companies were Roserton Overseas SA (Panama) and Dalmel Trading, Inc. (BVI); and (3) in Malaysia, in connection with the state-licensed Teknologi Tenaga Perlis Consortium Sdn Bhd, Alstom companies were used as intermediary companies for "consulting agreements" for which the beneficiaries were TTPC executives Chee Liang TI and Abdul Hamid PAWANTEH (latter was also a local politician in the constituent state of Perlis where the power station was to be built). The involved Alstom companies were: in Latvia - Alstom Power Sweden AB and Alstom Hydro Sweden AB; in Tunisia - Alstom Power Centrales; in Malaysia - Alstom Schweiz AG and Alstom power O&M AG. Alstom was fined CHF 2.5 million; compensatory claim of CHF 36.4 million; and CHF 95,217,70 in procedural fees. (Source: Office of the Swiss Attorney General, Summary Punishment Order, in the Investigation of Alstom Network Schweiz AG, November 22, 2011.) According to a statement by Alstom, the Swiss Attorney General issued a dismissal order regarding any other proceedings against Alstom; and the company decided not to challenge the decision of the Attorney General. (Source: Alstom Company Statement, "The Swiss Office of Attorney General confirms the absence of any bribery system at Alstom. It fines the company for 'corporate negligence' in three isolated cases," November 22, 2011.)

Sources :

Office of the Swiss Attorney General, Summary Punishment Order, in the Investigation of Alstom Network Schweiz AG, November 22, 2011, accessed at scribd.com (link provided at Samuel Rubinfeld, Wall Street Journal Corruption Currents, "Alstom Fined By Switzerland in Bribery Case," November 22, 2011, at <http://blogs.wsj.com/corruption-currents/2011/11/22/alstom-fined-by-switzerland-in-bribery-case/>; The [Swiss] Office of the Attorney General Press Release, "Criminal proceedings against Alstom entities are brought to

a close," November 22, 2011, accessed at <http://www.news.admin.ch/message/index.html?lang=en&msg-id=42300>; Alstom Company Statement, "The Swiss Office of Attorney General confirms the absence of any bribery system at Alstom. It fines the company for 'corporate negligence' in three isolated cases," November 22, 2011, accessed at <http://www.alstom.com/news-and-events/press-releases/The-Swiss-Office-of-Attorney-General-confirms-the-absence-of-any-bribery-system-at-Alstom/>. See also, Organisation of Economic Co-operation and Development, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Switzerland, Adopted by the OECD Working Group on Bribery on December 16, 2011, at 55 and throughout, accessed at <http://www.oecd.org/dataoecd/59/53/49377354.pdf>