

BAE Systems plc (United States / DOJ)

Case ID:

ST-53

Case Cluster :

BAE Systems plc

Jurisdiction of Settlement:

United States

Jurisdiction of Settlement / Enforcement Agency:

Department of Justice

Jurisdiction of Foreign Public Official(s) :

Czech Republic, Hungary, Saudi Arabia

Year of Settlement:

2010

Month/Day of Settlement (or Notes):

03/01

Other Jurisdictions of Settlement:

United Kingdom

Settlement with Individual or Legal Person?:

Legal Person

Type of Settlement:

Criminal

Legal Form of Settlement:

Guilty Plea

Monetary Sanctions (Types):

Criminal Fine

Total Monetary Sanctions (US\$):

\$400,000,000.00

Criminal Fine/Penalty (US\$) :

\$400,000,000

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:

Conspiracy to defraud the United States by impairing and impeding its lawful functions,
Conspiracy to make false statements; Conspiracy to violate the Arms Export Control Act and
International Traffic in Arms Regulations

Offenses - Settled:

Conspiracy to defraud the United States by impairing and impeding its lawful functions,
Conspiracy to make false statements; Conspiracy to violate the Arms Export Control Act and
International Traffic in Arms Regulations

Public Procurement Contract / SOE Involved?:

Yes

Summary:

According to the June 2011 United States Report to the OECD, "On February 4, 2010, BAE Systems plc (BAES), a multinational defense contractor with headquarters in the United Kingdom, was charged in a one-count criminal information with conspiracy to defraud the United States by impairing and impeding its lawful functions, to make false statements about its FCPA compliance program, and to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR). These charges alleged that from 2000 to 2002, BAES represented to various U.S. government agencies, including the Departments of Defense and Justice, that it would create and implement policies and procedures to ensure its compliance with the anti-bribery provisions of the FCPA, as well as similar, foreign laws implementing the Organisation for Economic Co-operation and Development (OECD) Anti-bribery Convention. In pleading guilty, BAES acknowledged that, despite its representations to the U.S. government to the contrary, BAES knowingly and willfully failed to create sufficient compliance mechanisms to ensure compliance with these legal prohibitions on foreign bribery. More specifically, BAES admitted that it regularly used and encouraged the establishment of shell companies and third party intermediaries to assist in securing sales of defense articles. BAES admitted that, from May 2001 onward, it made a series of substantial payments to these shell companies and third party intermediaries that were not subjected to the degree of scrutiny and review to which BAES told the U.S. government the payments would be subjected, even though BAES was aware there was a high probability that part of some of the payments would be used to ensure that BAES was favored in foreign government decisions regarding the purchase of defense articles. In addition, BAES admitted that, as part of the conspiracy, it knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense articles, in violation of the AECA and ITAR." (Source: 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, BAE Systems Plc Case Summary at 50-51.) According to the US Department of Justice Press Release, the DOJ acknowledged the assistance of the UK's Serious Fraud Office in its investigation. (Source: US Department of Justice Press Release, "BAE Systems PLC Pleads Guilty and Ordered to Pay \$400 Million Criminal Fine," March 1, 2010.)

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, BAE Systems Plc Case Summary at 50-51, accessed at <http://www.oecd.org/dataoecd/18/8/42103833.pdf>. US v. BAE Systems plc, Case No. 1:10-cr-0035-JDB (D.D.C.), Information filed February 4, 2010, accessed at <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf>; Plea Agreement filed March 1, 2010, accessed at <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/03-01-10baesystems-plea-agree.pdf>; United States Government Sentencing Memorandum filed February 22, 2010, accessed at <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-22-10baesystems-memo.pdf>; US Department of Justice Press Release, "BAE Systems PLC Pleads Guilty and Ordered to Pay \$400 Million Criminal Fine," March 1, 2010, accessed at www.justice.gov/opa/pr/2010/March/10-crm-209.html