

## Montedison S.p.A.

**Case ID:**

ST-276

**Case Cluster :**

Montedison S.p.A.

**Jurisdiction of Settlement:**

United States

**Jurisdiction of Settlement / Enforcement Agency:**

Securities and Exchange Commission

**Jurisdiction of Foreign Public Official(s) :**

Italy

**Year of Settlement:**

2001

**Month/Day of Settlement (or Notes):**

03/28

**Other Jurisdictions of Settlement:**

Unknown

**Settlement with Individual or Legal Person?:**

Legal Person

**Type of Settlement:**

Civil

**Legal Form of Settlement:**

Consent to Final Judgment

**Monetary Sanctions (Types):**

Civil Penalty

**Total Monetary Sanctions (US\$):**

\$300,000.00

**Civil Disgorgement of Profits (US\$) :**

\$300,000

**Civil Prejudgment Interest (US\$) :**

\$0

**Civil Fine / Penalty (US\$):**

\$0

**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

**Offenses - Alleged:**

Anti-fraud, financial reporting and books and records of U.S. federal securities laws

**Offenses - Settled:**

No admission or denial of alleged offenses

## **Public Procurement Contract / SOE Involved?:**

No (Regulator)

### **Summary:**

According to the SEC Litigation Release of March 30, 2001, Montedison S.p.A., an Italian company whose senior management at the time fraudulently overstated company income by at least \$398 million through early 1993, without admitting or denying charges by the SEC agreed to pay a civil penalty for violating US federal securities laws. The SEC Complaint had alleged that Montedison disguised hundreds of millions of dollars in payments that, among other things, were used to bribe politicians in Italy and other persons. Virtually all of the former management at Montedison responsible for the fraud were convicted by Italian criminal authorities and were sued by the company. (Source: Litigation Release No. 16948, SEC v. Montedison, S.p.A., 1:96-cv-02631 (D.D.C.) and Complaint filed November 21, 1996.)

According to the Shearman & Sterling FCPA website case summary, "This case was one of the first cases focusing on bribery brought by the SEC against a foreign issuer. The bribes formed the basis for the books and records violations and were allegedly paid by an Italian company to Italian politicians using offshore subsidiaries. It is, therefore, a unique FCPA case, as the bribes in question were paid by a foreign company to a foreign official in the same country, i.e., the officials were not "foreign" to the company." (Source: Case summary page, SEC v. Montedison, SpA, at <http://fcpa.shearman.com/?s=matter&mode=form&id=68>.)

According to the SEC Complaint, (1) Exilar Loan was one of the fake loans that Montedison made through a wholly-owned subsidiary to Financing and Investments NV, a wholly-owned Curacao corporation, which in turn "loaned" the amount to Exilar International SA, a British Virgin Islands company. The Complaint alleged that the Exilar Loan was designed to aggregate numerous bribes that had been paid over an extended period of time and disguise them as a single loan. Then in fiscal year ending in 1992, Montedison determined that the entire amount of the Exilar loan was uncollectible and should be written off. (2) the ENIMONT Affair involved an effort by Montedison to gain control of ENIMONT, a joint venture by Montedison and the Italian state energy agency, ENI; Montedison management entered into an arrangement with a Rome real estate developer to pay artificially high prices thereby transferring hundreds of millions of dollars with the Developer allegedly using this money to bribe politicians in Italy and other persons on Montedison's behalf.

### **Sources :**

US Securities and Exchange Commission Litigation Release No. 16948 (March 30, 2001), re: settlement in SEC v. Montedison, S.p.A., Case No: 1:96-cv-02631-RWR (D.D.C.), accessed at <http://www.sec.gov/litigation/litreleases/lr16948.htm>; SEC v. Montedison, S.p.A, Case No. 1:96-cv-02631-HHG (D.D.C.), Complaint filed November 21, 1996 and Final Judgment filed March 28, 2001, both accessed from [www.fcpa.shearman.com](http://www.fcpa.shearman.com)