Criminal proceedings against Alstom entities are brought to a close

Berne, 22.11.2011 - The Office of the Attorney General (OAG) has effectively closed criminal proceedings conducted against two entities of the Alstom group after two years of investigation. The OAG imposed a summary punishment order against Alstom Network Schweiz AG (formerly Alstom Prom AG) for breach of article 102 section 2 Swiss Criminal Code (SCC) in conjunction with article 322septies SCC and fined the company with CHF 2.5 million and imposed a compensatory claim of CHF 36.4 million.

In the summary punishment order, Alstom Network Schweiz AG is convicted of not having taken, after article 102 SCC had come into effect in October 2003, all necessary and reasonable organizational precautions to prevent bribery of foreign public officials in Latvia, Tunisia and Malaysia. The company therefore is fined with CHF 2.5 m. Additionally, it has to pay a compensatory claim of CHF 36.4 m as well as the costs of the proceedings allotted to it in this regard in the amount of about CHF 95’000. Alstom Network Schweiz AG has renounced to appeal this summary punishment order, which as a consequence thus has become legally binding.

The proceedings were originally brought against persons unknown and, after having temporarily been discontinued, were reopened in May 2008 and extended to include the person and acts of Alstom’s former Compliance Manager for suspected qualified money laundering (Art. 305bis(2) SCC), bribery of foreign public officials (Art. 322septies SCC) and disloyal management (Art.158 SCC). In July 2009, the proceedings were extended to include the entities and acts of Alstom Network Schweiz AG and Alstom SA, France, for suspected offences under Art. 102 SCC. This was done upon an initial analysis of the extensive documents seized for evidence in August 2008 among others from Alstom premises in Baden.

In the comprehensive proceedings conducted by the OAG between 2008 until 2011, activities of the Compliance Manager and from July 2009 onwards also activities of the mentioned Alstom entities in the sectors “Power” and “Power Services” were investigated. The investigation finally focused on about 15 countries. Accordingly, numerous requests for mutual legal assistance were submitted to foreign criminal prosecution authorities. In these investigations the OAG established that the group had implemented a Compliance policy that was suitable in principle, but that it had not enforced it with the necessary persistence and therefore acts of bribery in Latvia, Tunisia and Malaysia were not prevented. The investigation showed that consultants engaged by Alstom on the basis of consultancy agreements in the mentioned three countries had forwarded a considerable part of their success fees to foreign decision makers and thereby had influenced the latter in favor of Alstom.

As far as the proceedings were also brought against Alstom SA, based in France, they have been dismissed with regard to the actions in Latvia, Tunisia and Malaysia based on Art. 53 SCC, imposing on the company the costs of the proceedings allotted to Alstom SA in this regard. In the opinion of the OAG, Alstom SA as the senior holding company is responsible in part for the organizational deficiencies identified. However, after payment of CHF 1 m as reparation and bearing the remaining costs of the proceedings by Alstom SA, the OAG refrained from sanctioning Alstom SA in addition to Alstom Network Schweiz AG regarding the established acts of bribery. It did so particularly considering the demonstrated willingness to cooperate and the considerable improvements in the internal compliance procedures before and after the opening of the investigations.

Within the proceedings against Alstom Network Schweiz AG and Alstom SA, the OAG in close cooperation with the Federal Criminal Police investigated further twelve projects in the power station sector, divided over all continents. In this regard, it in some part detected additional breaches of internal compliance regulations. Despite considerable investigative efforts however, no additional acts of bribery could be established for the time after article 102 SCC had come into effect. The proceedings against the two defendant Alstom entities for these additionally investigated twelve projects were dismissed due to the lack of any criminal conduct (Art. 319(1) (a) Swiss Code of Criminal Procedure) and due to the lack of criminal liability of the companies prior to October 2003 (Art. 319(1)(b) Swiss Code of Criminal Procedure), without granting compensation and by imposing the costs allotted for this part of the proceedings on the two Alstom companies.

In the course of the proceedings, Alstom Network Schweiz AG and Alstom SA have - as far as their position as defendants allowed and enabled them to - increasingly cooperated with the prosecution authorities by complying with requests for information and documents and consulting in most cases to a simplified execution of mutual legal assistance requests from abroad. Furthermore, the group acknowledged certain deficiencies in the compliance organization and it has been noted that Alstom, in the course of the criminal proceedings now brought to a close, has made considerable efforts to rectify the detected inadequacies in the
context of the fight against corruption. This has considerably facilitated the rapid progress of the investigation and ultimately also the closing of the proceedings as set out above.

The amount of CHF 1 m paid by Alstom SA as reparation under Art. 53 SCC was transferred to the International Committee of the Red Cross. One-third of these funds each shall be used in projects of the ICRC in Tunisia, Latvia and Malaysia respectively. The costs allotted for the part of the proceedings resulting in the dismissal amount to about CHF 90'000 and have been imposed on the two Alstom companies for which they are jointly liable. Due to Alstom renouncing to appeal, this decision also has become legally binding.

In the context of the criminal proceedings against Alstom as well as other companies operating internationally, the OAG has noted that the use of agents, particularly on the basis of success fees, in countries with a high level of corruption (cf. corruption index of Transparency International) bears a considerable risk of criminal prosecution for the companies. Only by extensive efforts in compliance and by rigorously enforcing and controlling the accordingly strict internal policy may this risk of criminal prosecution be reduced to an extent that is in accordance with the law.

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webmaster@admin.ch | Legal framework