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Alcatel-Lucent Settles "Unprecedented" $137 Million FCPA Case

By Paul T. Friedman, Angela E. Kleine and Ruti Smithline

After a six-year international investigation, the DOJ and SEC announced that Alcatel-Lucent S.A. will pay one of the largest settlements in Foreign Corrupt Practices Act history.[1] The Paris-based telecommunications company and three of its subsidiaries will pay $92 million to resolve criminal charges with the DOJ and $45 million in disgorgement to the SEC for using consultants to bribe government officials in Costa Rica, Honduras, Malaysia, and Taiwan. The $137 million settlement is the seventh largest FCPA settlement ever reported.[2]

FOCUS ON MEANINGFUL INTERNAL CONTROLS

DOJ charged Alcatel-Lucent with violating the internal controls and books and records provisions of the FCPA, and three subsidiaries with conspiring to violate those provisions and the FCPA's anti-bribery provisions. The SEC brought civil charges against Alcatel-Lucent for bribery, books and records, and internal control violations.

The SEC alleged that, from 2001 through 2006, Alcatel and its subsidiaries "failed to detect or investigate numerous red flags."[3] The complaint does not implicate any Alcatel officer or director. Rather, the SEC concluded that the bribery scheme was the product of a "lax corporate control environment."

The government acknowledged that, at the time the bribes were made, Alcatel already had a "company-wide FCPA training program" and "risk assessment committee" in place. However, employees allegedly routinely disregarded or circumvented those programs, and the risk assessment committee was more focused on "customer lawsuits" than on preventing bribery.

"UNPRECEDENTED" AGREEMENT TO FOREGO THIRD-PARTY AGENTS

The DOJ's announcement focused on Alcatel's "business model"—pursuing business opportunities in foreign countries using third-party agents and consultants. DOJ said "this business model was shown to be prone to corruption."

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[1] Department of Justice Release No. 10-1481 (Dec. 27, 2010), *available at* http://www.justice.gov/opa/pr/2010/December/10-crm-1481.html; SEC Litigation Release No. 21795 (Dec. 27, 2010), *available at* http://www.sec.gov/litigation/litreleases/2010/lr21795.htm.

[2] *See* "In New Top Ten, Eight Are Foreign," FCPA Blog (Nov. 5, 2010), *available at* http://www.fcpablog.com/blog/2010/11/5/in-new-top-ten-eight-are-foreign.html.

[3] Complaint, *SEC v. Alcatel-Lucent, S.A.* (S.D. Fla. Dec. 27, 2010), ¶¶ 3, 19, *available at* http://www.sec.gov/litigation/complaints/2010/comp21795.pdf.

The SEC's complaint highlights two extreme examples.[4] A perfume distributor was hired as a "consultant" in Honduras. He had no telecom experience, but was the brother of a government official. Also, the Alcatel employees responsible for reviewing Costa Rican consultants' reports could not read or speak Spanish.

In its three-year deferred prosecution agreement, Alcatel agreed to stop using third-party sales and marketing agents in conducting its worldwide business. DOJ reported that the "unprecedented pledge" was made on the company's "own initiative and at a substantial financial cost."

Alcatel-Lucent added in a separate statement that it was the "first in its industry" to terminate its international agents and consultants, which it said were the "primary" source of the improper payments.[5] The company added that it is "a radically different company today" than at the time the improper payments were made, with "different management, including a new CEO, a new executive committee and a different Board of Directors, . . . a zero-tolerance policy regarding bribery and corruption and . . . a system in place with strong processes and Internet-based and live training designed to prevent these types of situations in all aspects of our business." The company added that it has "implemented policies and procedures to prevent the violations from happening again."

Notwithstanding Alcatel-Lucent's existing anti-corruption program, the company agreed to implement rigorous compliance enhancements. As part of the settlement, the company also agreed to retain an "independent compliance monitor for three years to oversee the implementation of the enhanced FCPA compliance program and to submit yearly reports to [DOJ]."[6]

THE LONG AND WINDING ROAD TO SETTLEMENT

The settlements were a long time coming. In 2004, Alcatel learned that Costa Rican authorities were investigating its vice president and long-time employee Christian Sapsizian for bribery in that country.[7] Soon after, Alcatel fired Sapsizian and Edgar Valverde Acosta, Alcatel's senior Costa Rican officer.

Alcatel disclosed these payments to the U.S. government in 2004. But according to the DOJ, Alcatel's cooperation with the U.S. government's investigation was "limited and inadequate."[8] Cooperation did not improve, according to the DOJ, until after Alcatel merged with U.S.-based Lucent Technologies in November 2006.

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[4] SEC Complaint, note 3 above, at ¶¶ 32, 40.

[5] Alcatel-Lucent Press Release, *Alcatel-Lucent Welcomes the Settlements with U.S. Authorities Regarding Previously Reported Violations of Foreign Corrupt Practices Act* (Dec. 27, 2010), *available at* http://www.alcatel-lucent.com/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLd4x3tXDUL8h2VAQAURh_Yw!!?LMSG_CABINET=Docs_and_Resource_Ctr&LMSG_CONTENT_FILE=News_Releases_2010/News_Article_002305.xml.

[6] DOJ Release No. 08-848 (Sept. 23, 2008), *available at* http://www.justice.gov/opa/pr/2008/September/08-crm-848.html.

[7] Alcatel-Lucent Condensed Consolidated Financial Statements (June 30, 2010), at 43-46.

[8] DOJ Release No. 10-1481, note 1, above.

In December 2006, Sapsizian was indicted for causing Alcatel to wire $14 million in “commission” payments to a consultant, who then transferred $2.5 million to a government official in Costa Rica.[9] He pled guilty in June 2007 and was convicted in September 2008.[10] Sapsizian was sentenced to 30 months in prison, three years of supervised release, and forfeiture of $261,500.[11] Acosta was likewise indicted for conspiring to arrange the bribes back in 2007, but he remains a fugitive.[12]

Lucent, meanwhile, had its own FCPA issues prior to its merger with Alcatel and settled FCPA charges with DOJ and SEC in December 2007. The government alleged that Lucent improperly paid travel expenses for Chinese government officials from 2000 to 2003.[13] Lucent paid a $1 million criminal fine and $1.5 million in civil penalties.

Then, in its February 2010 10-K, Alcatel announced that in December 2009 it had reached agreements in principle to resolve the DOJ and SEC’s investigations of the company. The SEC and DOJ announced the final settlements, subject to court approval, on December 27, 2010.

Alcatel’s settlement with the U.S. government came after the company already agreed to pay $10 million to settle a corruption case brought by the government of Costa Rica. And, Alcatel’s corruption saga may not yet be over. The Honduras government said it will reopen investigations into alleged bribes in that country in light of the U.S. government settlements.[14] Alcatel disclosed in its financial statements that French and Costa Rican authorities are also investigating the company’s activities.[15]

DOJ PUNISHES THE COMPANY’S “LIMITED” COOPERATION

The DOJ’s announcement stated that Alcatel’s unusually high penalty reflected, in part, the company’s “limited and inadequate cooperation” before Alcatel’s 2006 merger with Lucent. This despite the fact that the company self-reported improper payments in 2004. DOJ did acknowledge that after the merger, the company’s cooperation “substantially improved,” and said the charging documents reflect that cooperation.

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[9] DOJ Release No. 06-850 (Dec. 19, 2006), *available at* http://www.justice.gov/opa/pr/2006/December/06_crm_850.html.

[10] DOJ Release No. 07-411 (June 7, 2007), *available at* http://www.justice.gov/opa/pr/2007/June/07_crm_411.html; DOJ Release No. 08-848 (Sept. 23, 2008), available at http://www.justice.gov/opa/pr/2008/September/08-crm-848.html.

[11] DOJ Release No. 08-848 (Sept. 23, 2008), *available at* http://www.justice.gov/opa/pr/2008/September/08-crm-848.html.

[12] Notice to Transfer to Fugitive Status, *U.S. v. Edgar Valverda Acosta*, Case 1:06-cr-20797-PAS (S.D. Fla. June 14, 2007), *available at* https://secure.traceinternational.org/compendium/file.asp?id=576.

[13] DOJ Release No. 07-1028 (Dec. 21, 2007), *available at* http://www.justice.gov/opa/pr/2007/December/07_crm_1028.html; SEC Release No. 20414 (Dec. 21, 2007), *available at* http://www.sec.gov/litigation/litreleases/2007/lr20414.htm.

[14] Associated Press, *Honduras Reopens Alcatel Bribe Case on SEC Ruling* (Dec. 29, 2010), *available at* http://www.businessweek.com/ap/financialnews/D9KDN1F00.htm.

[15] Alcatel-Lucent Condensed Consolidated Financial Statements, note 7 above.

CONCLUSION

This significant settlement underscores the importance of establishing and maintaining robust internal controls and compliance programs. It is not enough to put a compliance program in place. Policies and procedures must be followed, monitored, and updated regularly. Importantly, that includes keeping tabs on the consultants and other agents that the company and its subsidiaries employ in foreign countries. This case highlights the potential perils of reliance on consultants and other agents in foreign countries, given DOJ's statement that Alcatel's "business model was shown to be prone to corruption."

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