

## **Telecommunications Industry Giant Agrees to \$137 Million Combined Settlement in FCPA Cases**

Government regulators closed the 2010 Foreign Corrupt Practices Act (“FCPA”) enforcement calendar with a flourish in reaching an agreement with global telecommunications giant Alcatel-Lucent (“Alcatel”) for a combined penalty of \$137 million in fines and disgorgement to resolve a far-reaching FCPA investigation. As part of the resolution, both the Securities and Exchange Commission (“SEC”) and the Department of Justice (“DOJ”) filed actions against the company. While the government’s active pursuit of companies in the telecom industry has been largely overlooked, the resolution of this case sends a clear message that this industry is squarely within the government’s sights.

In March 2010, Alcatel, a French telecommunications equipment and services company, disclosed the extent to its FCPA issues and its proposed settlement with the U.S. government. The settlement was announced by government regulators on December 27, 2010. In an SEC complaint filed in the Southern District of Florida, it was alleged that Alcatel paid bribes to government officials in Costa Rica, Honduras, Malaysia and Taiwan between December 2001 and June 2006. The complaint further alleges that all of the bribery payments were improperly recorded on Alcatel’s books and records as consulting fees. The complaint charges that Alcatel violated the Securities Act in several ways: by making illegal payments to obtain and retain business; by failing to have in place adequate internal controls to detect and prevent the payments; and by improperly recording the payments in its books and records. In consenting to a court order permanently enjoining further violations, Alcatel agreed to pay the SEC \$45.372 million in disgorgement of wrongfully obtained profits.

The DOJ filed a two-count criminal information against the company alleging violation of the books and records and internal controls provisions of the FCPA. Alcatel agreed to enter into a deferred prosecution agreement for a period of three years with the DOJ, as well as agreeing to pay a \$92 million fine. In addition, three of its subsidiaries agreed to plead guilty to a criminal information charging one count of conspiracy to commit bribery, books and records, and internal controls violations of the FCPA.

The deferred prosecution agreement, among other things, discloses that the use of third-party consultants as a pass through for bribe payments to public officials was a critical problem for the company. These relationships existed with Alcatel across the globe in locations that included Nigeria, Kenya, Costa Rica, Malaysia and Angola.

The deferred agreement recites the use of vague descriptions of consultant duties, false invoices and other transactions that circumvented the weak internal controls in place within the company. For example, in one instance a consulting company executed five consulting agreements, paying a commission rate higher than the standard rate normally awarded. In return, the agreement required the performance of vaguely described duties and services. This consulting company submitted approximately 11 phony invoices totaling \$14.5 million, \$7 million of which was used to pay bribes to Costa Rican government officials. The agreement further recites the lack of appropriate due diligence performed by the company in the retention of foreign consultants and the failure to follow up on numerous red flags. The company

acknowledged that in one instance it paid one consultant in Malaysia \$500,000 for marketing reports with an awareness of a significant risk that all or part of the payments would be passed to foreign officials.

In reaching the deferred prosecution agreement with the government, Alcatel has agreed to implement what the government describes as “rigorous” internal controls, policies and procedures to ensure compliance with the FCPA. The agreed upon compliance policies and procedures provide all companies with an up-to-date look at what the government views as essential controls and policies needed to prevent and detect corrupt conduct. These policies include an agreement that Alcatel’s “senior management provide strong, explicit and visible support and commitment to its corporate policy against violation of the anti-corruption laws and its compliance code.”

While in the end, the government credits Alcatel with cooperating with its investigation, according to the government, this cooperation came after a time of “limited and inadequate cooperation for a substantial period.” Alcatel reportedly conducted a global internal investigation and disclosed the misconduct to the DOJ and the SEC. In what appears to be an unprecedented move, the company agreed that it will no longer use third-party sales and marketing agents in conducting its business.

An independent monitor is often imposed in FCPA deferred prosecution agreements. This case is no exception. Alcatel has agreed to the retention of an independent compliance monitor who will submit yearly reports to the government on the company’s compliance with the deferred prosecution agreement. The retention of a monitor will undoubtedly increase the cost and expense of its settlement with the government.

As we start the new year, public and private companies with global operations should make every effort to bring their internal controls, policies and practices in line with the teachings that can be drawn from the Alcatel-Lucent case. This is a company’s first line of defense against corrupt conduct abroad.

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