



DOJ Sends Message With Historic Alstom FCPA Pact

By Max Stendahl

Law360, New York (December 22, 2014, 6:34 PM ET) -- Alstom SA's guilty plea and record-breaking \$772 million Foreign Corrupt Practices Act fine on Monday underscore the severe consequences for corporations that drag their feet in disclosing shady dealings to U.S. officials or fail to keep close tabs on third-party consultants, attorneys say.

The French conglomerate pled guilty in Connecticut federal court to falsifying its books and records and failing to implement sufficient internal controls, admitting that it paid more than \$75 million to win lucrative contracts in Indonesia, Saudi Arabia, Egypt and the Bahamas.

In announcing the pact, the U.S. Department of Justice sharply criticized Alstom for failing to voluntarily disclose its misconduct to investigators even though it was aware that a subsidiary had previously resolved corruption allegations in connection with a power project in Italy. Prosecutors said Alstom didn't begin to fully cooperate with the probe until the DOJ took the dramatic step of filing criminal charges against several of its executives.

DOJ Assistant Attorney General Leslie Caldwell warned that prosecutors would not "wait for companies to act responsibly."

"With cooperation or without it, the department will identify criminal activity at corporations and investigate the conduct ourselves, using all of our resources, employing every law enforcement tool, and considering all possible actions, including charges against both corporations and individuals," Caldwell said in a statement.

According to court documents, Alstom had faced a fine of between \$532.8 million and about \$1 billion under U.S. sentencing guidelines. The size of the penalty was largely a product of the amount of gains from the scheme — \$296 million, according to the DOJ.

Alstom's failure to self-disclose and its lack of cooperation were among several factors also considered by prosecutors, including the company's previous alleged misconduct and its more recent efforts to bolster compliance.

"This guilty plea underscores the importance of how a company responds to reports that a foreign subsidiary engaged in bribery," said Jeffrey Alberts, head of Pryor Cashman LLP's white collar defense and investigations practice.

The DOJ hasn't always been clear on the exact benefits companies should expect to receive for voluntary disclosure and cooperation, prompting many FCPA practitioners to call for additional guidance. There is no good-faith compliance defense baked into the law.

Still, the DOJ has repeatedly said that self-disclosure and cooperation can make a penalty less severe than it otherwise might be. Ralph Lauren Corp. and Hewlett-Packard Co. were each lauded by the DOJ for "extensive" cooperation with U.S. officials in FCPA settlement announcements in April 2013 and April 2014, respectively.

And in August 2014, Layne Christensen Co. said the DOJ had decided not to file charges against the company due in part to its disclosure, cooperation and remediation efforts. The company later reached a \$5 million civil settlement with the U.S. Securities and Exchange Commission, again receiving cooperation credit.

The Alstom settlement also sends a strong warning to corporations that rely on third-party consultants to do business with foreign officials, according to Jacob Frenkel, a former prosecutor and SEC enforcement lawyer who now chairs the securities enforcement practice at Shulman Rogers Gandal Pordy & Ecker PA.

In a statement of facts, Alstom admitted that it had retained consultants in order to pay bribes to foreign officials. In internal documents, the company referred to the consultants with code names like "Mr. Geneva," "Mr. Paris," "London," "Quiet Man" and "Old Friend." Some were paid millions of dollars in fees without documentation of any legitimate services.

"One of the greatest risks to companies in the contracts procurement space throughout the world is the use of third-party consultants, whether for sales, marketing or project implementation," Frenkel said. "Rather than size of penalty and corporate plea, the takeaway must be in compliance and the imperative of establishing adequate and accountable processes for the use of retaining, using and monitoring the activities of third-party consultants."

The U.S. government was represented by Daniel Kahn, David Novick, Zach Intrater and David Salem.

Alstom was represented by Robert Luskin and Jay Darden of Squire Patton Boggs LLP.

The case is USA v. Alstom SA, in the U.S. District Court for the District of Connecticut. A case number was not immediately available.

--Editing by Katherine Rautenberg and Kelly Duncan.