



Mark Thompson
Director
Serious Fraud Office
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Monday 11th June 2018

Dear Director

Ensuring any enforcement action against Airbus meets fair justice standards

We are writing as concerned anti-corruption organisations that have seen the effect of corporate bribery on democracy, good governance, economic progress and security across the world.

We are aware of extensive media coverage about allegations of bribery involving Airbus. The allegations are egregious. They span over a decade and include at least 14 countries including Sri Lanka, Kazakhstan, Austria, Tunisia, India, Poland, China, Greece, Saudi Arabia, Turkey, Indonesia, Kuwait, Mauritius and Mali as well as implicating all business segments within Airbus, including aerospace and defence, commercial aerospace and helicopters. The media coverage has indicated that the SFO, PNF and DOJ are all investigating alleged wrongdoing. Other authorities around the world are also investigating these allegations, including in Austria, Kuwait, Poland and Sri Lanka.

We welcome the fact that the SFO and the PNF have set up a joint investigation team in this case with close coordination with the DOJ. The co-ordination of law enforcement activities in such cross-border and global alleged wrongdoing is essential. It helps to maximise use of law enforcement resources and ensure that investigators and prosecutors are aware of the full facts of potential wrongdoing when making enforcement decisions.

We are writing to ask you to ensure that any enforcement action against Airbus, whether a settlement or other form of action, meets standards that would ensure justice is achieved and that the harm caused by any wrongdoing is properly assessed and compensated for. We would encourage you to give careful consideration to the full range of enforcement options available, including prosecution. In particular, we ask you to ensure that:

1. Any enforcement action taken against Airbus fully respects Article 5 of the OECD Convention, namely that national economic interest, the impact of relations with a foreign state, and the identity of the legal person involved will not influence investigation and prosecution of any wrongdoing.
2. Individuals responsible for any wrongdoing, including intermediaries, are actively prosecuted irrespective of any settlement that may be reached with the company.
3. No formal or informal immunity for prosecution will be given as part of any enforcement action either to individuals or to the company and its subsidiaries for any wrongdoing outside of the terms of any enforcement action.
4. A settlement is only given where there has been full and extensive cooperation and where prosecutors have a high degree of certainty that full disclosure of all wrongdoing uncovered by the company and of individuals responsible has been made. Any decision should take into account how widespread and egregious the nature of the conduct has been. We would encourage prosecutors to consider the full scale of offending when reaching their decision, including that outside their jurisdictions, to ensure any penalty imposed truly reflects the company's conduct as a whole.
5. A settlement is only given if the company has committed to full and appropriate remediation as required under the DOJ's Corporate Enforcement policy, including appropriate discipline of employees, and genuine change of corporate culture in line with the DOJ's Evaluation Guidance to ensure that any future offending is highly unlikely, with any settlement requiring extensive monitorship to ensure this outcome.
6. Any monetary penalty imposed upon the company ensures that the company is deprived of the full benefit of its wrongdoing.
7. Compensation is given to countries and communities affected by any wrongdoing by Airbus, and that such compensation is based on an analysis of the full harm of that wrongdoing and not just on the amount of any bribe payment made. Such analysis should be subjected to in-depth analysis by the prosecutors and the courts with expert witness sought where appropriate.
8. Affected countries are advised of legal avenues available to them to participate in the ongoing investigation, including a right to make representations to the judge involved in either approving a settlement or hearing a prosecution, and are encouraged to seek compensation or damages.
9. A comprehensive and public statement of facts, covering the full range of illegality uncovered by investigators, is accompanied by an admission of wrongdoing.

While we have focused on Airbus as it represents a clear example of a global multijurisdictional investigation into widespread wrongdoing, we believe that these are principles that should apply to all such egregious cases. We look forward to your response to our recommendations. We have sent the same letter to the PNF and the DOJ.

Yours sincerely

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