STATE SPONSORED BRIBERY?

Airbus’s Saudi Saga and the UK’s Ministry of Defence

Researchers and Written by Susan Hawley
STATE SPONSORED BRIBERY?
AIRBUS’S SAUDI SAGA AND THE UK’S MINISTRY OF DEFENCE

EXECUTIVE SUMMARY

European defence and aerospace giant, Airbus, is under a lot of pressure. It faces investigations in various countries around the world for alleged corruption. The UK Serious Fraud Office’s investigation into Airbus’s Saudi based UK subsidiary, GPT Special Project Management, is one of the longest running of these. The indications are that it should be drawing to some form of conclusion.

The stakes are high. If the SFO can bring a successful prosecution, it will help repair the serious damage done by the 2006 decision to close an investigation into allegations of widespread corruption by BAE Systems on the government to government Al Yamamah contract in Saudi Arabia. That decision provoked international outcry and seriously damaged the UK’s reputation. In particular, the OECD called into question whether the decision was consistent with the OECD Anti-Bribery Convention. Article 5 of the Convention prohibits considerations of national economic interest or damage to relations with a foreign state when investigating and prosecuting bribery.

But the headwinds in favour of a political intervention by UK authorities to prevent or limit GPT’s prosecution are strong. Post-Brexit, the UK is looking to countries like Saudi Arabia, for trade deals and defence related business, despite the inherent risks in trading with countries with high levels of corruption. The UK government has just concluded a new Military and Security Cooperation Agreement with Saudi Arabia and entered into a six-month dialogue for a trade deal. The question is whether it can allow a prosecution in which embarrassing details may emerge about Saudi figures and the UK’s Ministry of Defence itself.

The Allegations

The story of the allegations read, as one Airbus compliance officer put it, like a “bad espionage novel.” On 6th December 2010, Lieutenant Colonel Ian Foxley stumbled across a trove of startling emails. They contained the trail of three years of efforts by GPT’s former Chief Financial Officer, Michael Paterson, to get potentially illegal payments investigated within Airbus. In late 2007, Paterson refused to sign off payments being made by GPT to subcontractors based in the Cayman Islands for what appeared to be non-existent services. GPT was at the time and remains the Prime Contractor to the UK’s Ministry of Defence on a government to government contract in Saudi Arabia known as SANGCOM (Saudi Arabia National Guard Communications) Project.

Paterson was also concerned about the gifting of luxury vehicles to key staff in the Saudi National Guard, including its General, and the lease of a villa from the same General on unusual terms in the run up to the signing of a new contract for GPT on the project. A senior employee from a parent company appears to have been drafted in to sign off the payments instead.

Paterson took his concerns to GPT; to GPT’s parent company, Paradigm; to Paradigm’s parent company, Astrium (now Airbus Defence and Space) and to Airbus itself. He kept copies of all correspondence and started recording conversations for his own protection. And he had good reason to do so. In one recording, the compliance officer in a parent company told him that he should be “cautious when moving around.” In another, that he would not be harmed because the
compliance officer could “accept that we pay, a little, but ... not that someone will get killed.” And in another, that the compliance officer was “prepared to accept some corruption because I like my company better than ethics.” Airbus’ response to Paterson’s concerns was finally to initiate an internal audit of GPT in October 2010. However, the audit team failed to interview Paterson himself or even visit the finance department to audit documents there.

Ian Foxley stumbled across Paterson’s emails just as he had been asked to resign as Programme Director after only 6 months in the job. He was the third Programme Director in six months. He had also been asked to hand over his passport by the company for safe keeping upon resignation. He had already started to have suspicions about strange things going on at GPT including the fact that subcontractors were being paid around £26 million a year for “bought in services” with little evidence of the services being provided. So Foxley arranged a meeting with Paterson who was on ‘local gardening leave’. Having heard Paterson’s story, Foxley accessed his emails and copied the extraordinary trail to the MOD staff of SANGCOM. As a military man, he trusted that the MOD would take it seriously.

Instead shortly after sending the email to the MOD, Foxley received a call from the Managing Director of GPT to come to a meeting. At the meeting, he was accused of theft of company documents and told he could be arrested and jailed. Foxley, fearing for his safety, left the office and took refuge with some local MOD staff who advised him to leave Saudi Arabia immediately. Foxley caught a late night plane out of Riyadh that evening. He took the allegations to senior compliance staff at Airbus and then to the MOD in January 2011. The MOD Fraud Squad passed his case to the SFO in February 2011.

The Implications

The GPT case is a major test of the UK’s ability to prosecute bribery in sensitive cases involving countries that the government considers key defence and trade partners, and on government backed defence contracts. It is a test of whether the government is prepared to respect the independence of its enforcement agencies, and to uphold its international anti-corruption treaty obligations.

Any prosecution in the GPT case will require consent from the UK’s Attorney General. It is imperative that any such consent and any advice sought from other government ministers by the Attorney General abides by Article 5 of the OECD Anti-Bribery Convention. The OECD criticised the UK in March 2017 for failing to make Article 5 legally binding. Any decision to prevent or limit the investigation on national security grounds – grounds that often mask national economic interest and damage to foreign relations – will be a serious blow to the OECD Convention itself and the UK’s reputation.

The GPT case is also a test of the SFO’s resolve and willingness to flex the muscles of its own independence. Any attempt to limit charges to either lesser offences or solely to a few individuals will be seen as letting GPT off the hook. It must show it can make robust charging decisions and be as transparent as possible about how it makes them.

But the GPT case also raises serious questions for the UK’s Ministry of Defence (MOD). The MOD is responsible for overseeing the performance of the contract that GPT has with it to provide services and training to the Saudi Arabian National Guard on the SANGCOM project. It undertakes checks on invoices, and budgets put forward by GPT are approved MOD officials. In 2008, Paterson had warned GPT management that MOD officials in Saudi Arabia had advised that “payments to the Cayman Islands company are unlikely to be approved when next reviewed by the MOD in the UK.” It is imperative that, once the SFO investigation concludes, there is a full public review of the MOD’s role in the affair.
Above all, the UK cannot afford a re-run of the BAE/Al Yamamah scandal. Its long term interest lies in upholding its international anti-corruption commitments and in proving itself as a nation that can trade with integrity.

**Recommendations**

Corruption Watch calls for:

- A commitment from the Attorney General, who is providing superintendence on the case and will need to give consent for it to proceed, to ensure that the investigation and any potential prosecution does not entail any consideration of Article 5 considerations;
- A commitment from the SFO to pursue the case as independently and rigorously as possible, and to be as robust, comprehensive and transparent as possible in any charging decisions;
- A commitment from the MOD and other government ministers, including the Foreign Office, to respect Article 5, and ensure that prohibited considerations are not used to prevent or impede a prosecution;
- A commitment from the MOD to provide full and frank disclosure to and cooperation with the SFO in its investigation;
- A commitment from the MOD to undertake a full review about any failings on its part that enabled the alleged wrongdoing to take place with recommendations for how to ensure corruption cannot happen again on government to government projects;
- A commitment from the MOD to take disciplinary action against any members of staff, civil servants or military found to have been negligent in relation to or complicit with corrupt payments if they are proven;
- A commitment from the MOD to exclude from its procurement for a certain period of time any companies that are found guilty of corruption in relation to these allegations.