

Statement of Offence

Failure of a commercial organisation to prevent bribery, contrary to Section 7 of the Bribery Act 2010

Particulars of Offence

Between 1 July 2011 and 1 June 2015 Airbus SE failed to prevent persons associated with Airbus SE from bribing others concerned with the purchase of military transport aircraft by the Government of Ghana, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus SE.

Summary

170. Between 2009 and 2015 an Airbus defence company engaged Intermediary 5, a close relative of a high ranking elected Ghanaian Government official (Government Official 1), as its BP in respect of the proposed sale of three aircraft to the Government of Ghana. A number of Airbus employees knew that Intermediary 5 was a close relative of Government Official 1, a key decision maker in respect of the sales. A number of Airbus employees made or promised success based commission payments of approximately €5 million to Intermediary 5. False documentation was created by or with the agreement of Airbus employees in order to support and disguise these payments. The payments were intended to induce or reward improper favour by the Government Official 1 towards Airbus.

¹² Payment Table 8, item 7

¹³ Payment Table 8, item 8

¹⁴ Payment Table 8, item 9

XII. FACTS

A. Introduction

171. Airbus (through one of its Spanish defence subsidiaries) conducted two campaigns to sell its C-295 military transport aircraft to the Government of Ghana. The "First Campaign" ran between 2009 and 2011 and the "Second Campaign" between 2013 and 2015. Intermediary 5 acted as Airbus' BP in both these campaigns.
172. Government Official 1 was a key decision maker in respect of Government of Ghana aircraft orders.
173. Intermediary 5 is a UK national born in Ghana. He was brought to the United Kingdom as a young child and lost touch with his Ghanaian family until the late 1990s. He had no prior experience or expertise in the aerospace industry. A "CV" provided to Airbus in 2011 listed Intermediary 5's employment before 2009 as an events manager for a local authority, director of a football merchandising company and facilities manager for an estate management business.
174. Intermediary 5 was assisted in his Airbus work by two other UK nationals: Intermediary 6 and Intermediary 7. Intermediary 6 has publicly described Intermediary 5 as his "best friend". There is no evidence which suggests that either Intermediary 6 or Intermediary 7 had any prior experience or expertise in the aerospace industry. A CV that Intermediary 6 provided to Airbus in 2011 listed his pre 2009 employment as a UK television actor and film director. Intermediary 7 was also a former UK television actor.
175. Contact between Airbus and the Government of Ghana about aircraft sales began in June 2009 following an expression of interest by the Government of Ghana. By August 2009 Airbus employee 15 [senior] (Airbus SMO International) reported that he was in touch with Government Official 1 and 'his team'.
176. Airbus employee 16 was the Spanish sales person responsible for First and Second Campaigns. On 10 October 2009 Airbus employee 15 [senior] emailed Airbus employee 16, part of which translates as follows:

"Our potential friends are at Accra next week. You can call [Intermediary 5] [2 phone numbers] on my behalf. He will wait for your call.."
177. On 7 December 2009, a Company of Intermediary 5 and 6 (hereafter Company D) was incorporated in Ghana. Company D's "CV" submitted by Intermediary 6 to Airbus in June 2011 stated that Intermediary 5 and Intermediary 6 were its directors. A company of the same name was incorporated in the UK in February 2010. Company D was the corporate vehicle through which Intermediary 5 and his associates provided services to Airbus.
178. In January 2010 Airbus employee 16 was made aware that Intermediary 6 and Intermediary 5 were or had recently been working for Government Official 1 and/or the Government of Ghana.

B. The Aircraft Orders

179. The First and Second Campaigns culminated in the following sales to the Government of Ghana:

SALE	Purchase Agreement date	Aircraft	Delivery dates
1	3 August 2011	Two C-295 military transport aircraft	17 November 2011 19 March 2012
2	5 March 2015	One C-295 military transport aircraft	4 December 2015

Table 10

C. The Payments

180. Between March 2012 and February 2014, Airbus paid €3,909,756 to a third-party Company, Intermediary 8. Intermediary 8 paid €3,850,115 to Company D. In respect of the Second Campaign Intermediary 5 or Company D were promised approximately €1,675,000 but this money was not paid.

1. *The First Campaign*

181. From 2009, Intermediary 5 and his associates worked on the sales to the Government of Ghana without any written consultant agreement. This included liaison with Government Official 1 regarding the potential Airbus C-295 sale.
182. Intermediary 5 and Intermediary 6 submitted a report to Airbus which documented a January 2011 meeting in London attended by themselves, the Government Official 1 and Airbus at which the C-295 was agreed upon as the most suitable aircraft for the Government of Ghana's needs.
183. By April 2011 Airbus employee 16 reported to his Airbus colleagues that the deal was close to being finalised. Airbus employee 16 then asked Intermediary 5 and Intermediary 6 to transmit a letter to Government Official 1 and explain a possible delay. Airbus employee 16 also asked them to secure meetings with the Ghanaian Ministry of Defence and Ministry of Finance. On 18 May 2011 Intermediary 6 emailed Airbus employee 16 stating that Government Official 1 had taken the relevant financials to the Minister of Finance and that Intermediary 6 and Intermediary 5 were planning to go to Ghana within the next couple of weeks:

"so as we can oversee the project personally!".

184. Company D submitted a formal BP application in May 2011. On 8 July 2011 Intermediary 6 sent Airbus employee 15 [senior] a '[Company D] update'. He reported that he had just returned from Ghana "having had very productive meetings with all parties, including [Government Official 1], the MOD and Minister of Finance". The email stated that the C-295 sale was agreed at all levels,

was expected to clear Parliament by 14 July 2011, and that Government Official 1 had expressed an interest in buying two more C-295 aircraft.

185. On 3 August 2011, Airbus' Spanish Defence Subsidiary and the Government of Ghana signed a purchase agreement for the sale of the two C-295 aircraft. The following day Airbus employee 17 [senior] (Airbus Compliance) declared to the Spanish ECA that no more than €3,001,718.15 would be paid to BPs in connection with this contract. Although no payment had actually yet been made, this figure broadly reflected a 5% commission. The same document also declared compliance with the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
186. Following the May 2011, BP application, Airbus commissioned an external due diligence report on Company D. The resulting report dated 30 September 2011 identified Intermediary 5 as a shareholder and the possibility that he was a close relative of Government Official 1. The source of the information was a UK newspaper article quoting Intermediary 6.
187. The external due diligence report raised concerns that there was a risk of non-conformity with the OECD Convention.
188. The Company D application was discussed in an email chain commencing 5 October 2011:
 - a) Airbus employee 18 (Airbus SMO International, compliance) emailed Airbus employee 15 [senior], Airbus employee 19 (Airbus Compliance), Airbus employee 17 [senior] (responsible for the 4 August 2011 declaration above) and others and copied to Airbus employee 20 (Airbus SMO International, compliance). He explained that shareholders of Company D were "so close to the decision makers that we put the file on hold for the moment".
 - b) Airbus employee 15 [senior] responded to the compliance employees requesting a discussion. Airbus employee 17 [senior] suggested an in person meeting with Airbus employee 18 in Paris the following week.
 - c) The next day Airbus employee 15 [senior] replied to the compliance employees and now also Airbus employee 16:

"I read the conclusion of the audit yesterday and its final...I talked to the british shareholder to explain the situation. So we face to a big pb which could impact on the commercial discussion on the ground. I don't know if they will be able to give us another reliable company. They will call me back tomorrow."
 - d) Airbus employee 16 responded to Airbus employee 15 [senior] and the Airbus employee 17 [senior], copied to other compliance employees and Airbus employee 21 [senior], that this was the worst situation and a solution had to be found. His email stated that he was in Ghana and awaiting the last document needed for the credit agreement and for the contract signed on 3 August. He went on (sic):

"I really don't know what will hapend in the next two hours but even if this project enter into force, without solution, anyone in this group will have the opportunity to make business in this country for years".

Intermediary 8 paid €3,850,115 to Company D. Intermediary 8 retained about €60,000.

2. *The Second Campaign*

197. Between 2012 and 2013 Airbus attempted to arrange the sale of two further C-295 aircraft to an Irish aircraft finance leasing company for onward use by the Government of Ghana.
198. After the failure of this lease campaign, the Government of Ghana decided to purchase a third C-295 direct from Airbus.
199. On 10 October 2013 Airbus employee 16 sent a proposal to the Ghanaian Ministry of Defence outlining details for the purchase of a third C-295 aircraft. Airbus employee 16 emailed Intermediary 5 relevant documents (including a draft contract) on 18 October 2013. On 9 November 2013 Intermediary 5 responded to an email from Airbus employee 16 about progress.
- “Fantastic [Airbus employee 16], I am hoping to meet [Government Official 1] tomorrow so hopefully will have some more news tomorrow, I believe they all need you to arrive in order for us to move it forward..”
200. By 14 December 2013 Airbus employee 16 emailed Intermediary 5 expressing frustration that the deal was not progressing. He stated:
- “In my company my hierarchy is telling me that Ghana is lying to me and playing with us and with the bank. I know that is not at all the aim of [Government Official 1] and I had been permanently defending Ghana is a serious country but less and less people is listening to me.. This week I had a very hard conversation with [Airbus employee 21 [senior]] about my Ghana campaign. I had been always fully honest with all of you but do not exclude that from January I can loose all my capacity to help you and [Government Official 1] due to this disaster.”
201. The email then proposed a series of actions that must happen on the Ghanaian side, including that the Attorney General’s office must give the Ghanaian Ministry of Defence their comments on the proposed contract. He continued:
- “I don’t know if you can reach those three actions but without them sorry [Intermediary 5] I have no justification to continue pushing ahead in this project. I know you will not show this email to [Government Official 1] but maybe is the only real explanation of the status of the program he can receive.
202. Intermediary 5 responded that he shared the frustration and would revert. Four days later a letter was sent in the name of the Attorney General to the Ghanaian Ministry of Defence enclosing their comments on the contract.
203. By February 2014 Airbus employee 16 emailed Intermediary 5, again pushing for progress.

204. On 24 February 2014 Airbus employee 21 [senior] and Airbus employee 15 [senior] wrote to Airbus employee 1 [senior] and Airbus employee 22 [senior] requesting an extension of the now expired March 2012 Intermediary 8 consultant agreement. On 19 March 2014 the request was refused by Airbus employee 20. The email noted, inter alia, that the earlier agreement had expired almost a year ago and that a fresh agreement would have to be signed.
205. On 7 March 2014 Airbus employee 16 emailed the Ghanaian Ministry of Defence raising concerns about the lack of progress and requesting urgent action. Airbus employee 16 blind copied Government Official 1 and Intermediary 5.
206. On 6 October 2014 Airbus employee 16 emailed the Ghanaian Ministry of Finance with a broad overview of events thus far and saying it was urgent for the Government to finalise the negotiation. Intermediary 5, Government Official 1 and another Government Official were blind copied into the email.
207. Intermediary 5 reassured Airbus employee 16 on 14 October 2014 that he had spoken with [Government Official 1] over the weekend and:
"he said he was looking into the matter to please bear with him, he is aware of the deadlines and he assures me there will be movement on this very soon".
208. In November 2014 the press reported a public announcement that the Government of Ghana was to acquire a C-295 aircraft. The signed contract was dated 5 March 2015.
209. A draft BP application in the name of Intermediary 8 was created in February 2015 and a request for payment presented to the Airbus Liquidation Committee in April 2015. However the Liquidation Committee requested further due diligence before payment could be concluded. Airbus documents include a May 2015 report headed '[Intermediary 8] and Airbus Military' detailing the work done on the Second Campaign but falsely presenting it as having been done by Intermediary 8.
210. By June 2015 an external due diligence report had been completed in respect of Intermediary 8. By July 2015 a compliance pack had been prepared for the Liquidation Committee. Airbus had engaged external counsel to, inter alia, conduct extended due diligence interviews as a precondition to successful completion of the due diligence. Intermediary 8 declined to participate in an interview and accordingly failed the due diligence.
211. Airbus did not enter into a written contract or make any commission payment in respect of the Second Campaign. Correspondence from Intermediary 5 to Airbus claimed he was owed €1,675,000. Airbus dispute Intermediary 5's claims and no proceedings have been issued.