

IN THE CROWN COURT AT SOUTHWARK

No.

BETWEEN

REGINA

-v-

AIRBUS SE

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**STATEMENT OF FACTS PREPARED PURSUANT TO PARAGRAPH 5(1) OF SCHEDULE  
17 TO THE CRIME AND COURTS ACT 2013**

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## **I. INTRODUCTION**

1. This is an agreed Statement of Facts in relation to a Deferred Prosecution Agreement (“DPA”) about the alleged commission by Airbus SE of offences of failure to prevent bribery. This Serious Fraud Office (“SFO”) investigation is part of a joint investigation with the French Parquet National Financier (“PNF”) and a parallel investigation to that conducted by the United States Department of Justice (“DOJ”) and the United States Department of State (“DOS”). Each of the prosecuting authorities has taken responsibility for a number of geographical areas or customers and entered into their own respective DPA, Judicial Public Interest Agreement (“CJIP”) or, in the case of DOS, Consent Agreement with Airbus SE. The SFO has taken responsibility for Malaysia; Sri Lanka; Taiwan; Indonesia; and Ghana.
2. The SFO-investigated conduct demonstrated that in order to increase sales, persons who performed services for and on behalf of Airbus SE offered, promised or gave financial advantages to others intending to obtain or retain business, or an advantage in the conduct of business, for Airbus SE. The SFO alleges that those financial advantages were intended to induce those others to improperly perform a relevant function or activity or were intended to reward such improper performance.
3. Airbus SE did not prevent, or have in place at the material times adequate procedures designed to prevent those persons associated with Airbus SE from carrying out such conduct.
4. The Indictment covers allegations connected to sales by Airbus’ commercial division (Counts 1-4) and Airbus’ defence division (Count 5). The particulars relating to each charge are set out in sections below.

## **II. AIRBUS**

### **A. The Company**

5. On 10 July 2000 the European Aeronautic Defence and Space Company, EADS NV, was created by the merger of three European aerospace and defence companies. On 27 May 2014, the company name was changed to Airbus Group NV. Subsequently, on 27 May 2015 the company decided to convert Airbus Group NV into a European public-limited company, Airbus Group SE. On 12 April 2017 Airbus Group SE changed its name to Airbus SE. Airbus SE is therefore the current name of the ultimate Airbus parent company, and is registered in the Netherlands. It is, however, the same legal entity as the prior group parent companies, EADS NV, Airbus Group NV and Airbus Group SE, and has retained the same company number in the Dutch Commercial Register.
6. The turnover and profit of Airbus SE for the years 2011 to 2018 respectively was:

(In € million)	2011	2012	2013	2014	2015	2016	2017	2018
Entity	EADS N.V	EADS N.V	EADS N.V	Airbus Group N.V	Airbus Group SE	Airbus Group SE	Airbus SE	Airbus SE
Turnover (revenue)	49,128	56,480	57,567	60,713	64,450	66,581	59,022	63,707
Gross margin	6,777	7,898	7,954	8,937	8,851	5,264	6,873	8,787
Profit before finance costs and income taxes	1,541	2,089	2,570	3,991	4,062	2,258	2,665	5,048

7. One of EADS NV's former subsidiary companies was EADS France SAS, which was created in July 2001 out of the merger of the founding companies. The Strategy and Marketing Organisation (the "SMO") was a department based within EADS France SAS, and was formed in 2008. Responsibility for Business Partner ("BP") appointments and International Market Development projects ("IMD projects")<sup>1</sup> resided within SMO International, a sub-division of SMO. SMO International carried out business development functions on behalf of Airbus SAS, in relation to commercial aircraft sales. EADS France SAS became Airbus Group SAS in January 2014. In 2017 Airbus Group SAS was merged into Airbus SAS, and it no longer separately exists.
8. In 2013, the core partnership among the shareholders of Airbus (then EADS) was terminated. The industrial shareholders exited, and the collective state shareholding of France, Germany and Spain was limited to 28%. No shareholder retained veto or director appointment rights.<sup>2</sup> A new and independent Board was established under an independent chairman. The sole executive director is the Group CEO.

<sup>1</sup> IMD projects were projects instituted and overseen by SMO International. They included acquisitions, partnership initiatives or other commercial opportunities, which were entered into by SMO International in conjunction with specific campaigns, or connected to the activities of certain BPs or consultants, commonly involving local investments in countries around the world.

<sup>2</sup> Subject to the French State and the German State's rights to approve or disapprove of — but not to propose or appoint — three outside directors to the board of directors of respectively the so-called French Defence Holding Company and the German Defence Holding Company, at least two of whom must qualify as independent directors, with two of the French defence outside directors and two of the German defence outside directors being required to be members of the Board of Directors of Airbus SE. See Airbus annual report.

9. Airbus SAS, which was, from 2001, the successor company to Airbus Industrie GIE, is now the main commercial aircraft making entity, and the operational HQ of Airbus Commercial, one of Airbus' primary divisions. One of Airbus SAS's subsidiaries is Airbus Operations SAS, which wholly owns three companies concerned with operations in Spain, Germany and the UK. Airbus operations at Filton and at Broughton in the UK are managed through a subsidiary UK company, Airbus Operations Limited.
10. Another Airbus SE subsidiary is the Spanish company Airbus Defence and Space SA (formerly called EADS-Construcciones Aeronauticás SA and, before that, Construcciones Aeronauticás SA). From April 2012, it has owned Airbus Military UK Ltd, the main purpose of which is to support certain programmes in the UK. From 2014, Airbus Military UK Limited has been part of the Airbus Defence and Space division.
11. A part of Airbus SE business is therefore carried on in the UK and Airbus SE has continuously carried on a part of its business in the United Kingdom since, for material purposes, 1 July 2011. It is agreed that the UK companies, Airbus Operations Limited and Airbus Military UK Ltd are subject, through Airbus SAS and Airbus Defence and Space SA, to the strategic and operational management of Airbus SE. It follows that Airbus SE, previously named EADS NV, Airbus Group NV and Airbus Group SE, is a 'relevant commercial organisation' for the purposes of Section 7 of the Bribery Act 2010.
12. It is accepted that during the Indictment period the employees or BPs of Airbus referred to in this Statement of Facts provided services on behalf of Airbus SE. It is accepted that the conduct of the employees or BPs of Airbus set out in this Statement of Facts was intended to obtain or retain business or an advantage in the conduct of business for Airbus SE. For ease of reference Airbus SE and its subsidiaries are generically referred to as Airbus in this Statement of Facts (unless the context otherwise shows).

## **B. SMO International, BPs and IMD projects**

13. Airbus contracted with or engaged BPs in some countries. BPs were third parties used to increase Airbus' international footprint and assist Airbus in winning sales to customers in numerous jurisdictions. BPs are often more commonly referred to as intermediaries, or agents. When Airbus made a successful sale of aircraft it would typically pay BPs a commission based on a percentage value of the sale, or a fixed amount per aircraft sold.
14. In principle SMO International was supposed to ensure the BPs were independent of Airbus' customers and was responsible for compiling and appraising applications from potential and existing BPs for the purposes of a compliance risk assessment.
15. After SMO International was established, Airbus SAS (commercial aircraft sales) agreed to transfer all its business development related activities to SMO International, under the supervision of Airbus. From 2008, the annual SMO International budget for activities on behalf of Airbus' commercial division was

up to but not exceeding US\$300m. Although SMO International was responsible for agreements with and payments to third parties for the commercial division, approval to enter into BP and IMD project relationships was formally to be given by the group's Company Development and Selection Committee ("CDSC"). The CDSC delegated validation of BP engagements for the other divisions to the Head of SMO International Operations via the signature of a review certificate (from 2013 jointly signed with the Group International Compliance Officer).

16. The composition of the CDSC was not fixed but included from time to time Airbus' Chief Financial Officer, Chief Strategy and Marketing Officer and Chief Compliance Officer. Additionally, the SMO's own International Compliance Officer, Head of International Operations, General Counsel, Head of International Development and Head of Administration and Controlling attended CDSC meetings on varying occasions and frequency. Other individuals from the group or divisions were also invited to attend CDSC meetings rather than formally being CDSC members.
17. The CDSC was to meet on a monthly basis and its main responsibilities included:
  - a) approving the proposals submitted concerning the selection of potential BPs and finalising the agreements with them;
  - b) approving IMD projects; and
  - c) ensuring compliance with Airbus' written policies.
18. In order to facilitate its decisions, in circumstances when the CDSC had difficulty meeting regularly, the CDSC established two subcommittees, in which the Head of International Operations played a leading role. These were the "sub-CDSC", which proposed the engagement of BPs for CDSC validation; and the "pre-CDSC", which proposed IMD projects for CDSC validation.
19. Whilst some committee members were aware of and/or involved in the wrongdoing, the information provided to the committees was incomplete, misleading or inaccurate, in particular with regards to the process by which the BP was identified, the actual amount of compensation promised to the BP, the identity of the beneficial owner of the remuneration provided, or the underlying economic justification for the IMD project.

### **C. Written Policies**

20. Airbus' handbook contained a collection of written policies which governed payments and contractual relationships with third parties over the relevant period. These included:
  - a) the Rules relating to Foreign Trade, published and updated between 2001 and 2006, replaced by the July 2008 and then the June 2013 Business Ethics Policy and Rules;
  - b) the SMO Process for Business Development dated 2 February 2010; and
  - c) the CDSC Terms of Reference dated 9 May 2011.

21. The Business Ethics Policy and Rules set out fundamental ethical principles for all employees. In the introduction to the July 2008 policy the then CEO described the policy as featuring state of the art business ethics provisions. The same policy detailed the due diligence process to be undertaken in relation to the appointment of BPs. It noted that it was very important to be aware of 'red flags' and listed examples of the same.
22. The SMO Process for Business Development was internal to SMO International and related both to BP appointments and the process for agreeing to IMD projects. It detailed the need for an authorisation process that included due diligence before final agreement could be reached.
23. The CDSC Terms of Reference related largely to IMD projects. It brought within SMO International's remit all such projects to reduce the risks associated with these activities. The Terms of Reference stipulated that decisions taken had to ensure that the financial and legal risks associated with a third party agreement had been identified and minimised. It also was to ensure that governance of transactions was acceptable and did not generate any reputational risk.
24. In late 2012 Airbus commissioned the audit and certification services of a private company to review its compliance programme. A few months later that company awarded Airbus an Anti-Corruption compliance certificate for the design of its anti-bribery compliance program.
25. In late 2013 the CDSC requested a presentation from SMO International on the extent of SMO International's contemplated obligations towards third parties. A "Top Management CDSC Meeting" was convened in early February 2014 for the purposes of receiving, with full transparency, details of the commitments made by SMO International, which were previously not known to the CDSC.
26. The Top Management CDSC Meeting immediately requested that SMO International make revisions to its policies and procedures governing the engagement of third parties. Changes implemented during 2014 included a focus on value-for-money justifications and enhanced compliance reviews.
27. A further Top Management CDSC Meeting took place in June 2014, the purpose of which was to consider key outstanding commitments across Airbus Group divisions.
28. In September 2014, Airbus initiated a review of all third party relationships. An internal Corporate Audit & Forensic ("Corporate Audit") report on the operations of the CDSC found significant breaches of compliance policies. Corporate Audit concluded that the majority of IMD projects performed poorly and questioned whether BPs helped create viable businesses.
29. The heightened scrutiny of BP engagements led, in October 2014, to a freeze on all payments arranged by SMO International to BPs and in respect of IMD projects. This included all commitments related to the commercial division. The freeze was extended to the Airbus Defence & Space, and Airbus Helicopters divisions in May 2015. A Liquidation Committee was concurrently set up to review and approve or reject all outstanding commitments. The Liquidation Committee included members of the former CDSC (some of whom were involved with and/or aware of the wrongdoing), supplemented with additional representation from the commercial division, Contracts and Treasury

departments, together with Group General Counsel. This committee was in turn replaced in June 2015 by a Supplemental Due Diligence Committee.

30. The Legal & Compliance function was re-structured and given far greater prominence and authority under a newly-appointed General Counsel from 1 June 2015, who became a member of the governing Group Executive Committee.
31. In April 2015 Airbus published new rules regarding future third party engagements, the Business Development Support Initiative. Among other things this passed primary responsibility for business development engagements from SMO International to the divisions. The SMO was formally closed on 1 March 2016.

### **III. THE INVESTIGATION**

32. As part of its business, Airbus obtained export credit financing from Export Credit Agencies (“ECAs”), including UK Export Finance (“UKEF”), a government body. On 24 April 2015, UKEF wrote to Airbus regarding UKEF’s anti-bribery due diligence procedures in respect of agents and made specific references to UKEF’s obligation to report all suspicious circumstances to the SFO. The letter also raised the lack of information that had been provided in respect of Airbus’ BP in Sri Lanka (see Count 2).
33. In late 2015 Airbus conducted a review of the accuracy and completeness of all declarations relating to the use of BPs in applications for aircraft export credit financing. Issues with export credit declarations were reported to UKEF initially in January 2016, in accordance with Airbus’ contractual obligations to inform UKEF of any inaccuracies. Following further investigation a more detailed report was made to UKEF in March 2016, on the understanding that the information could be shared with other relevant United Kingdom agencies. This disclosure sought to correct the inaccurate information which had been previously provided to UKEF and included red flags for corruption. At the time that they made this report to UKEF they had already been notified that UKEF were under an obligation to report a suspicion of corruption.
34. Following notification that UKEF felt it appropriate to contact the SFO and its strong preference that Airbus also make a notification to the relevant authority, both UKEF and Airbus via legal advisors reported to the SFO on 1 April 2016. Airbus via legal advisors subsequently met with the SFO on 6 April 2016.
35. On 15 July 2016 the SFO opened a criminal investigation into the conduct of business by Airbus and associated persons (the “Investigation”). The SFO informed Airbus of this on 5 August 2016, prompting Airbus to make a disclosure to the financial markets.
36. French Law No. 68-678 of 26 July 1968 (the “French Blocking Statute” or “FBS”) prevents any French citizen, resident, or officer of a legal entity having its registered office on French territory, subject to international treaties and agreements, from communicating documents or information of an economic, commercial, industrial, financial or technical nature which could constitute evidence in foreign judicial or administrative proceedings. Airbus is subject to

the French Blocking Statute. In addition, under 694-4 of the French Code of Criminal Procedure, when responding to a mutual legal assistance request, French judicial authorities are entitled to exclude from their response any documents or information that would be detrimental to the essential interests of France. In the present case, the French authorities concluded that this includes the making public of specific contract values.

37. On 31 January 2017 the SFO and the PNF entered into a Joint Investigation Team (“JIT”) Agreement, the purpose of which was to “...facilitate the Parties’ investigations into allegations of fraud, bribery and corruption and other related offences against Airbus Group and other Airbus companies and Airbus’ former and current employees and intermediaries”. The French authorities controlled the supply of documents to the SFO to ensure compliance with the French Blocking Statute.
38. The JIT’s investigation covered all of the BPs which were engaged or considered for engagement by one or more of Airbus’ divisions until 2016, i.e. more than 1,750 entities across the world. The JIT focused more particularly on Airbus’ relations with around 110 of these BPs for which red flags had been identified, among which the JIT selected several investigation priorities. The JIT Agreement resulted in a division of these investigation priorities between the PNF and the SFO. The PNF focused its investigations more particularly on Airbus and its divisions’ conduct in the following countries: United Arab Emirates, China, South Korea, Nepal, India, Taiwan, Russia, Saudi Arabia, Vietnam, Japan, Turkey, Mexico, Thailand, Brazil, and Kuwait. The SFO focused its investigations on Airbus and its divisions’ conduct in the following countries: South Korea, Indonesia, Sri Lanka, Malaysia, Taiwan, Ghana, Colombia and Mexico. Within this scope, the PNF and SFO selected a representative sample of the markets and concerns involved.
39. The scale of the case and number of documents collected by Airbus from custodians relevant to the JIT Investigation (in excess of 30.5million documents post de-duplication, from over 200 custodians) required Airbus and the JIT to develop new and proportionate procedures for the identification and review of relevant documentation. Over time Airbus made the JIT aware of their findings through a series of presentations, producing evidence in the form of contemporaneous documents and interview accounts, which were reviewed by the SFO. These presentations concentrated upon the priority customers and jurisdictions identified by the JIT. In addition to examining the internal investigation documents (including the interviews of Airbus employees and BPs, Airbus having waived any claim for Legal Professional Privilege on a limited basis) the SFO undertook its own independent investigation.
40. Mindful of the need to identify the full extent of the alleged offending, the SFO interrogated the Airbus narrative as well as conducting its own investigation. In summary, the SFO:
  - a) reviewed and/or applied digital review processes to potentially relevant documents;
  - b) conducted interviews in the UK;
  - c) attended and asked questions at interviews conducted in France;

- d) provided interview questions to the PNF and OCLCIFF<sup>3</sup> in their interviews of key French Airbus employees and directors;
  - e) issued notices under Section 2 of the Criminal Justice Act 1987 for the provision of relevant bank accounts in the United Kingdom and additional material held by related third parties;
  - f) sent Mutual Legal Assistance and Intelligence requests to overseas jurisdictions and agencies for banking and company information; and
  - g) obtained copies of interview transcripts, banking documentation and documentation seized by overseas agencies conducting connected investigations.
41. While the SFO has reviewed the Airbus material, it has, as far as is possible, independently sourced information to confirm or challenge the information provided to it. The SFO has instituted an independent procedure to interrogate and examine Airbus documents provided to test the veracity and completeness of the provision of those documents.

#### **A. Cooperation**

42. Since Airbus engaged with the SFO its legal representatives have conducted an extensive internal investigation in close consultation with the JIT, and has provided exemplary cooperation. This cooperation has included:
- (a) Promptly providing the JIT with a significant amount of relevant information which may not have otherwise come to its attention;
  - (b) Providing extensive and detailed presentations with supporting documentation;
  - (c) In addition to providing information regarding prior UKEF inaccuracies, Airbus also accepted that the Bribery Act had provided the SFO with extended extraterritorial powers and potential interest in the facts post 2011. This was an exemplary step for a Dutch and French domiciled company, reporting conduct which had taken place almost exclusively overseas;
  - (d) Timely identification and provision of relevant material, including material from overseas (subject to applicable laws);
  - (e) Using technology assisted review to prioritise and identify relevant material to expedite the investigation and detect previously unknown wrongdoing;
  - (f) Providing key information concerning bank accounts into which Airbus monies flowed at an early stage of the JIT investigation;

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<sup>3</sup> L'Office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF), composed of the former national division of financial and fiscal investigations and comprised of police officers, gendarmes and agents of the general directorate of public finance experienced in financial investigations.

- (g) Agreeing Airbus' approach to internal investigation interviews with the JIT and deferring interviews at the request of the JIT;
- (h) Providing the first account of all relevant individuals;
- (i) Disclosure of material including interview transcripts and memoranda to the JIT under a limited waiver of privilege for the purposes of the JIT investigation;
- (j) Providing a schedule of contemporaneous documents withheld on the basis of privilege, including the reason for asserting privilege; and
- (k) Communicating with the JIT in respect of media reporting.

#### **IV. COUNT 1 [MALAYSIA]**

##### **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 aircraft by AirAsia and AirAsia X airlines from Airbus, namely directors and/or employees of AirAsia and AirAsia X airlines, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus SE.

##### **Summary**

- 43. Between October 2013 and January 2015 EADS France SAS, later Airbus Group SAS, paid US\$50 million as sponsorship for a sports team ("Sports team"). The Sports team was jointly owned by AirAsia Executive 1 and AirAsia Executive 2 but was legally unrelated to AirAsia and AirAsia X. Airbus employees also offered an additional US\$55 million. This offer was not finalised and no payment was made.
- 44. AirAsia Executive 1 and AirAsia Executive 2 were key decision makers in AirAsia and AirAsia X, and were rewarded in respect of the order of 180 aircraft from Airbus. The payments to the Sports team were intended to secure or reward improper favour by them in respect of that business.

##### **A. Introduction**

- 45. AirAsia Berhad ("AAB") and AirAsia X ("AAX") are two major airlines in Southeast Asia, headquartered in Malaysia near the capital Kuala Lumpur with

flights to approximately 165 destinations in 25 countries. AAB and AAX were significant customers of Airbus, operating full Airbus fleets.

46. Between October 2005 and November 2014, AAB and AAX ordered 406 aircraft from Airbus, as detailed in Table 1, including the 180 aircraft secured by way of improper payments, and the offer of a further improper payment.
47. AirAsia Executive 1 and AirAsia Executive 2 were on the Board of Directors of AAX. In addition they were substantial shareholders of AAB and AAX. They also owned a group of companies, including a subsidiary company that managed the Sports team. Both AAB/AAX and Airbus provided sponsorship support to the Sports team from 2010.

**B. The Aircraft Orders**

48. On 11 March 2005 AAB signed a purchase agreement with Airbus to supply 60 A320-200 aircraft. That purchase agreement was amended a number of times to increase the number of aircraft. By 1 July 2011 orders had been placed for: 10 A350 aircraft and 3 A330-200 aircraft (for AAX); and 60 A320 aircraft and 200 A320neo aircraft (for AAB).
49. The total number of aircraft purchased were as follows (the contracts that are the subject of the agreed wrongdoing are contracts 5-8):

	<b>Date of Purchase Agreement</b>	<b>Airline</b>	<b>Aircraft</b>	<b>After amendments and cancellations</b>
1	11 March 2005	AAB	60 x A320	No change
2	16 June 2009	AAX	10 x A350	No change
3	30 December 2010	AAX	3 x A330-200	1 x A330-300
4	23 June 2011	AAB	200 x A320neo	51 x A320neo 149 x A321neo
5	13 December 2012	AAB	64 x A320neo	64 x A321neo
6	13 December 2012	AAB	36 x A320ceo	9 x A320ceo
7	18 December 2013	AAX	25 x A330-300	2 x A330-300 5 x A330-900
8	24 November 2014	AAX	55 x A330-900neo	No change

Table 1

**C. The payments to the Sports team (the payments that are the subject of the agreed wrongdoing are payments 7-10)**

	<b>Date of Payment</b>	<b>Amount of payment US\$</b>
1	27 December 2010	3,000,000
2	24 February 2011	3,000,000
3	26 July 2011	5,000,000
4	6 July 2012	20,000,000
5	16 November 2012	10,000,000
6	11 January 2013	20,000,000
7	25 October 2013	10,000,000
8	4 November 2013	10,000,000
9	16 December 2013	15,000,000
10	09 January 2015	15,000,000

Table 2

1. ***US\$16 million payment (payments 1 - 4 in Table 2)***

50. Paragraphs 51 to 72 are set out by way of background only to the purchase orders, offers and payments that fall within the scope of the agreed facts relating to Count 1. These paragraphs do not form the basis upon which the financial and other terms of the DPA have been formulated.

51. On 16 June 2009 a Memorandum of Understanding (“the 2009 MoU”) was signed by: (1) Airbus employee 1 [senior] (Airbus SMO International Division) on behalf of Airbus; and, (2) AirAsia Executive 1 on behalf of AAB, whereby US\$16 million was to be paid to:

“...further strengthen the relationship between the industrial, research, educational and economic patterns in the Malaysia and play a determining and favorable role in the enhanced penetration of [Airbus] products in Malaysia”.

52. There were discussions between Airbus employee 1 [senior] and AirAsia Executive 1. On 15 July 2010 Airbus employee 1 [senior] emailed AirAsia Executive 1, saying:

“Resending previous self explanatory mail with all details attached.  
Could be further discussed when I will be early next week in KL, should it be convenient to you.”

53. To which AirAsia Executive 1 replied [sic]:

“Honestly [Airbus employee 1 [senior]] I'm fed up. You owe me 4 million already and I'm owed 16 million in total. This shd have been paid ages ago when I bought thre first 60 aircraft. I want my money and I want compensation ... pay up. I want my whole 16 million now..”

54. On 27 September 2010 the CDSC considered a proposal to sponsor the Sports team for US\$6 million, in respect of which Airbus would pay for AAB advertising. AirAsia Executive 1 complained to Airbus employee 2 [senior] about the delay. This led to internal correspondence between Airbus employees where Airbus employee 1 [senior] wrote to Airbus employee 2 [senior] on 8 November 2010 as follows:
- “I am sure that you will understand that paying USD 16 m on [Sports team] need some minimum engineering!!!”
55. In an email to AirAsia Executive 1, Airbus employee 2 [senior] stated:
- “I have not seen all the papers relating to the sponsorship but in general, we need to have some internal link to AirAsia as we can't get board approval simply to sponsor. Externally there is probably no need to link the two.”
56. There was no legal relationship between AAB, AAX and the Sports team, albeit the association between them was utilised by both parties to generate publicity. The common denominators were AirAsia Executive 1 and AirAsia Executive 2.
57. On 27 December 2010, pursuant to the concluded sponsorship agreement (the “First Sponsorship Agreement”) Airbus made a payment of US\$3 million to the Sports team. On 9 February 2011 Airbus employee 2 [senior] emailed AirAsia Executive 1 asking for an invoice: “...for the next 3 million.”. On the same day Airbus employee 2 [senior] emailed Airbus employee 1 [senior] forwarding the email chain and wrote:
- “[Airbus employee 1 [senior]] as discussed yesterday, please can you pay immediately. It will help me close my deal.”
58. On 24 February 2011 a payment of US\$3 million was made to the Sports team. At that stage, US\$10 million of the 2009 MoU commitment remained outstanding and was split into two separate payments of equal amounts.
59. On 12 July 2011, an amendment to the First Sponsorship Agreement was signed by Airbus employee 3 [very senior] pursuant to which Airbus agreed to pay the Sports team US\$5 million. This payment was made on 26 July 2011 from the SMO International budget.
60. The remaining US\$5 million was not coming out of the SMO International budget but, instead, from Airbus providing a rebate to the aircraft purchase price.

## 2. *US\$70 million payment (payments 5 – 9 in Table 2)*

61. On 16 June 2011 a draft MoU was prepared between Airbus, and the holding company of AAB (“the 2011 MoU”). Its stated purpose was as follows:
- “In the context of its international operations, and in accordance with its policy as regards the development of local footprint, [Airbus] is willing to assist in the development and implementation of projects in support of the operations of AIRASIA where it operates...It is anticipated that in the mid and long term, such support would further strengthen the relationship between the industrial, research, educational and economic patterns in Malaysia and play a determining and favorable role in the enhanced penetration of [Airbus] products within AIRASIA fleet.”
62. The 2011 MOU described Airbus’ financial commitment as follows:

“...overall Contribution to Projects as per the MOU has been established as a maximum amount of USD 40,0 million (US dollar forty millions) to be invested between year 2016 and 2026. It is understood that such Contribution may be reassessed from time to time in the light of the effectiveness of the development of its business with AIRASIA.”

63. On 16 June 2011, Airbus employee 2 [senior] emailed Airbus employee 1 [senior] with subject “Air Asia” that:

“... [AirAsia Executive 1] ...insists that we clear the 10m on signing the PA for 200 and that we have a written commitment for the 40m.”

64. A year later, this commitment had not been satisfied. The delay was due to attempts by Airbus to adhere to its internal compliance procedures. In response to a chaser from Airbus employee 2 [senior] , Airbus employee 1 [senior] replied:

“To invest potentially up to USD 40 million (NOT NOW), it's mandatory to follow a minimum governance and receive information from the partner... We have to be serious.”

65. Shortly thereafter, the US\$40 million commitment was discussed at the April 2012 CDSC. The minutes of that meeting state:

“Following the presentation of the status, and difficulties to gather information and financial data, [Airbus employee 4 [very senior] (Airbus SMO)] confirms that the process to invest has to be followed with no deviation. The agreement in principle has been made and now it is about implementing the agreement in respecting the procedures in terms of documentation, valuation of the activity and assets to be contributed...”

66. Following this, in a May 2012 email Airbus employee 2 [senior] informed colleagues including Airbus employee 1 [senior], Airbus employee 4 [very senior] , Airbus employee 5 [very senior] and Airbus employee 6 [very senior]:

“if we want to sign 50+50 A320 CEO deal... 40m + another 10m (new deal)...

I believe [Airbus employee 1 [senior]] and his team have done a correct and proper job of building a structure that complies with our Internal rules. The problem is that it is difficult to see how we will complete the obligation using this structure...

I would like to suggest that in order to close this subject and move forward with AirAsia we propose the following.

Under the structure proposed by SMO we commit 10m for the seats over the next 12months.

In addition, we offer a simple sponsorship of [the Sports team] for 10m per year for the next 4 years. The structure for the sponsorship is also in place as we used this method for previous obligations with [AirAsia Executive 1].”

67. The US\$40 million referred to the above commitment and an additional US\$10 million was being offered for the purchase of “50+50” (50 confirmed, 50 optional) further aircraft. The US\$10 million sum was increased to US\$20 million taking the total payment for both deals to US\$60 million.

68. In June 2012 Airbus employee 2 [senior] emailed AirAsia Executive 1 and said:

“We will sign for 60m even though we have not signed for 100 more planes.

First 40 will be 20 now and 20 next year. Remaining 20 will be 10+10 as we are not sure if we sign for 50 or 100 planes. They will keep a get out clause in the contract in case we don't sign for any further aircraft but the clause for obvious reasons will not refer to aircraft orders.”

69. Also in June 2012 the CDSC considered the proposed sponsorship (which included publicity and advertising for Airbus/EADS) of the Sports team for US\$60 million over four years and approved it. The sponsorship agreement was signed on 2 July 2012 (the “Second Sponsorship Agreement”).

70. Later that year, AirAsia Executive 1 requested an additional US\$10 million for the purchase agreements at items 5 and 6 of Table 1 before they were signed. Airbus agreed, bringing the total payment for that deal to US\$30 million. The purchase agreements were signed on 13 December 2012. The following day, the Second Sponsorship Agreement was amended to increase the total sponsorship amount from US\$60 million to US\$70 million. These payments were made as follows: 6 July 2012 - US\$20 million; 16 November 2012 - US\$10 million; 11 January 2013 - US\$20 million; 25 October 2013 - US\$10 million; and 4 November 2013 - US\$10 million<sup>4</sup>. The payment on 25 October 2013 and the payments made thereafter, were intended by Airbus employees to influence AirAsia Executive 1 and AirAsia Executive 2 to act improperly.

3. *US\$30 million payments (payments 10 – 11 in Table 2)*

71. In September 2013 discussions began with AAX regarding the purchase of 25 A330-300 aircraft. Having met with AirAsia Executive 1, Airbus employee 6 [very senior] reported back to Airbus employee 5 [very senior], Airbus employee 4 [very senior], Airbus employee 2 [senior] and others that:

“We have had some good meeting with [AirAsia Executive 1] this week-end in Singapore. AirAsia X is willing to take 25 A330-300s starting in 2015. ...

But as you can imagine. [AirAsia Executive 1] is insisting on the early payment of his sponsorship. We owe 10 musd in both jan 2014 and 2015. He wants it paid now...

The incremental A330s will generate a follow-on sponsorship so we need SMO involvement...”

72. The new sponsorship was discussed amongst the Airbus employees the day before a CDSC meeting. On 25 September 2013, Airbus employee 2 [senior] wrote:

“At the request of SMO I will summarise our deal with [AirAsia Executive 1].

AirAsia X will place an order for 25 A330-300 with deliveries starting in early 2015 ...

As part of the deal, EADS will advance the 10m of sponsorship due to be paid in Jan 14 and the 10m due to be paid in Jan 2015, both to be paid on A330 PA signature and PDP payment. These two payments were due as part of the A320 deal.

The A330 deal will create a new obligation to pay 15m in jan 14 and 15m in jan 15.

I trust that this deal meets with your approval...”

73. The CDSC was presented with the proposed sponsorship deal, including the new additional US\$30 million, which took total payments under the Second Sponsorship Agreement to US\$100 million when added to the payments detailed above. The CDSC minutes record that the CDSC “suspends approval of this project until Compliance receives from SMO/IO an updated assessment of the value of the sponsorship”.

74. External analysis was obtained regarding the value of the sponsorship, which was considered by Airbus employee 7 [very senior] (Airbus Compliance), who advised:

“This is helpful. However, I strongly advise that our contribution to [the Sports team] becomes transparent to the management of Air Asia. For instance, the MD or another legal rep of the airline

can acknowledge the contribution. The purpose is to mitigate the risk of being accused of conspiracy on transfer value from the airline to the majority shareholder private interests.”

75. On 15 October 2013, Airbus employee 2 [senior] wrote an email to Airbus employee 1 [senior] and another SMO International employee:
- “We need to get this done. If not we don’t have a 25 A330 deal. We won’t get any letter from Air Asia x.”
76. By November 2013, AAB had signed the purchase agreement for the A330 aircraft but would not proceed until the US\$30 million of sponsorship was finalised. Airbus employee 2 [senior] wrote to Airbus employee 1 [senior] :
- “I know we still have some compliance issues on the 30m for [the Sports team]. When can we expect a solution. My PA for A330 is now signed but not dated. They will only release when we sign with [the Sports team].”
77. The following month Airbus employee 2 [senior] emailed Airbus employee 4 [very senior], Airbus employee 6 [very senior] and Airbus employee 1 [senior] regarding announcing the 25 A330 aircraft deal to say that:
- “[AirAsia Executive 1] has agreed we can announce this month if it is important for Airbus. However, he wants his contract for the 30m in sponsorship before he agrees.”
78. On 12 December 2013, Airbus entered into an amendment to the Second Sponsorship Agreement with the Sports team, increasing sponsorship by US\$30 million.
79. On 16 December 2013, Airbus made a US\$15 million payment to the Sports team’s bank account. On 18 December 2013, AAX announced its purchase of 25 A330 aircraft and an agreement was signed. The purchase order has been since amended to 7 A330 aircraft.
80. The Sports team sold the remaining US\$15 million debt to a third party bank in order to receive advance payment. Airbus paid the third party bank US\$15 million on 9 January 2015.

#### 4. *US\$55 million offer (not paid)*

81. On 15 July 2014, Airbus announced that it had signed an MoU with AAX for the purchase of 50 A330-900neo aircraft. Four days later, on 19 July 2014, AirAsia Executive 1 emailed Airbus employee 2 [senior] about payments stating that:
- “Instead of sponsorship we want to put it as a Grant...”
82. On the same day, in relation to the grant, Airbus employee 2 [senior] wrote to AirAsia Executive 1:
- “I just need to show something serious for auditors. To be honest [Airbus employee 5 [very senior]], and [Airbus employee 6 [very senior]] and I don’t care what it is”
83. On 24 November 2014 a contract was signed and on 15 December 2014, AAX confirmed an order for the purchase of 55 A330-900neo aircraft. The Airbus press release stated:
- “AirAsia X...has placed a firm order with Airbus for 55 A330neo aircraft. This is the largest single order to date for the best-selling A330 Family and reaffirms AirAsia X’s position as the biggest A330 airline customer worldwide...The announcement covers the firming up of a Memorandum of

Understanding (MOU) for 50 A330neo signed during the Farnborough Air Show in July 2014, plus an additional five aircraft.”

84. The next day, AirAsia Executive 1 emailed Airbus employee 2 [senior] stating that:

“We have kept our side of the deal...Pls don’t let us down...”

85. Airbus employee 2 [senior] responded on the same day saying:

“Now if I bend the rules any more I hope you will see I will end up in trouble...I [sic] standby my commitment of 50m and increase to 55m”.

86. On 18 December 2014, Airbus employee 2 [senior] wrote to AirAsia Executive 1 stating that:

“the payments will follow the new delivery schedule 1m per ac from airbus. I would prefer that Airbus provides the money for PR and events or sponsorship related to developing your network. We will not require any proof or invoice for these payments”.

87. In September 2014 Airbus had initiated a review of third party relationships which led to a freeze of all SMO International payments on behalf of the commercial division. By December 2014, SMO International was no longer in a position to fulfil any commitment. The US\$55 million payment was never made.

## V. COUNT 2 [SRI LANKA]

### 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 aircraft by SriLankan Airlines from Airbus, namely directors and/or employees of SriLankan Airlines, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus SE.

### Summary

88. In 2013, Airbus engaged Intermediary 1, the wife of SriLankan Airlines (“SLA”) Executive 1, as a BP through a straw company which was registered in Brunei. Intermediary 1 had no aerospace expertise. Pursuant to the engagement, Airbus employees offered up to US\$16.84 million to the Company of Intermediary 1 to influence SLA’s purchase of 10 Airbus aircraft and the lease of an additional 4 aircraft. In fact, only US\$2 million of the US\$16.84 million was paid to the Company of Intermediary 1. The Company of Intermediary 1 was approved by

Airbus employees as a BP. To disguise the identity of the BP, Airbus employees misled UKEF as to her name and sex.

## VI. FACTS

### A. Introduction

89. SLA is the national carrier of Sri Lanka. The Government of Sri Lanka was the 99.1% owner of SLA.
90. The Company of Intermediary 1 was a straw company registered in Brunei and, at the time of incorporation on 5 October 2012, had one sole shareholder and one director: namely Intermediary 1. The Company of Intermediary 1 had no experience or personnel working in the airline sales industry. Airbus employee 8 [senior] (Airbus SMO International) supported the appointment of the Company of Intermediary 1, despite his compliance staff raising concerns. On 22 March 2013, the sub-CDSC approved the appointment of the Company of Intermediary 1. On 12 June 2013, the sub-CDSC acknowledged that this execution of the proposed contract with the Company of Intermediary 1 had already taken place.
91. On 29 March 2013, Airbus and the Company of Intermediary 1 entered into a consultant agreement in relation to the sale of 6 A330 aircraft, the sale of 4 A350 aircraft and the lease of an additional 4 A350 aircraft. Pursuant to this agreement the Company of Intermediary 1 would be paid US\$1 million on the delivery of each A330 aircraft and US\$1.16 million for each A350 aircraft purchased by SLA and US\$300,000 for each additional A350 aircraft leased by SLA. On 30 October 2015 Airbus also signed a market share agreement, which stipulated that the Company of Intermediary 1 would receive a US\$5 million lump sum if SLA did not purchase any competitor aircraft before 30 October 2015.

### B. The Aircraft Orders

92. At the Paris Airshow on 19 June 2013, pursuant to a purchase agreement SLA ordered 6 A330 aircraft. These aircraft were delivered. On 28 June 2013, SLA ordered 4 A350 aircraft under a second purchase agreement. These aircraft have not been delivered.

	Date of Purchase Agreement	Airline	Aircraft
1	19 June 2013	SLA	6 x A330
2	28 June 2013	SLA	4 x A350

Table 3

### C. The payments to Company of Intermediary 1

93. The promised payments were up to US\$16.84 million.
94. On 26 August 2013, the Company of Intermediary 1 submitted an invoice for the first US\$1 million pursuant to the consultant agreement. However, as Airbus only paid agents in Euros, the Company of Intermediary 1 was required to set up a Euro account at Standard Chartered Bank to receive payment. In agreeing this change, Airbus employees corresponded with SLA Executive 1, using his private Gmail account and on 13 November 2013, SLA Executive 1 submitted a replacement invoice. Airbus received from SLA Executive 1 a further invoice for an additional US\$1 million on 2 December 2013. Payment was approved by Airbus employee 1 [senior] and Airbus employee 9 [senior] (Airbus SMO) and US\$2 million was paid in Euros to the Company of Intermediary 1 (i.e. €1,454,651.24) on 27 December 2013.

	Date of Payment	Amount of payment US\$	Recipient of payment
1	27 December 2013	2,000,000	Company of Intermediary 1

Table 4

### D. UKEF

95. Sometime between December 2013 and November 2015, SLA entered into a sale and lease back agreement with an aviation leasing company, for five of the A330 aircraft. Pursuant to this agreement the aviation leasing company would purchase the aircraft from Airbus and lease them to SLA. Four of the aircraft were due to be delivered in February, July, September and December 2015.
96. In November 2014 Airbus employees submitted an application for export credit financing to UKEF in respect of 4 A330 aircraft, the first of which was to be delivered at the end of February 2015. The application required disclosure of any agent or consultant involved in the purchase agreement. Airbus indicated that it had used an agent on the SLA negotiation and it wished to invoke the Special Handling Process within UKEF. This process ensured that only a small number of individuals within UKEF would be provided with the agent's details. UKEF would then perform due diligence on the agent. On or around 4 February 2015 Airbus submitted the agent details to UKEF. Airbus employee 1 [senior] had signed the Agent Declaration, thereby acknowledging that the information contained therein could be relied upon by UKEF. The agents' details submitted falsely suggested that Intermediary 1 was a 'he', and that the consultant agreement accurately reflected the total amount Airbus would pay. There was no mention of the market share agreement commission.
97. UKEF informed Airbus of their dissatisfaction with the agent details provided and asked a series of questions, including why the agent was employed when their CV suggested they had little aviation experience and why the agent was domiciled and paid outside of Sri Lanka.

98. On 13 February 2015 Airbus provided answers to UKEF's questions. The answers referred to the agent as both a 'he' and 'she' and again Airbus did not mention the market share agreement despite a request by UKEF for confirmation there were no other payments from Airbus to the Company of intermediary 1. UKEF asked Airbus to confirm that its agent was not the wife of SLA Executive 1. On 26 February 2015, Airbus asserted to UKEF that the agent was not the wife of SLA Executive 1 and that the agent had no connection to SLA. Airbus employee 10 passed information he received from Airbus employee 11 (Airbus SMO International) in an email (answers by Airbus in bold) to a UKEF employee:
- "Our research has identified the wife of the [SLA Executive 1] as having the same name as the one we have been given. Please confirm that this is not a party to this issue and is not your agent. **This is an homonymy but certainly not the same person. She is not a party to this issue and she is not our agent.** We assume this is a coincidence but could you also confirm that your agent has no connection to the airline, its personnel or family members of staff and executives at the airline. **We confirm.**"
99. On 27 February 2015, UKEF personnel spoke with Airbus employee 10 and Airbus employee 8 [senior]. This call did not alleviate UKEF's concerns and following it Airbus employee 10 emailed Airbus employee 12 explaining:
- "the truth is most unfortunate"
100. To which Airbus employee 12 replied:
- "we know the truth I suspect but is that what we are intending to inform [UKEF]?"
101. On 2 March 2015 Airbus employee 10 reported to Airbus employee 12 and Airbus employee 4 [very senior]:
- "... [Airbus employee 1 [senior]] and Co have decided to answer to UKEF and thus take the risk to be demonstrated that Airbus was not compliant. How long will it take to convince UKEF?"
102. On or around 12 March 2015 Airbus withdrew its application from UKEF. On 1 April 2016, UKEF reported this and other matters disclosed to it by Airbus to the SFO.

## VII. COUNT 3 [TAIWAN]

### 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 aircraft by TransAsia Airways from Airbus, namely a director and employee of TransAsia Airways, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus SE.

## Summary

103. Company of Intermediary 2 and subsequently Company of Intermediary 3 were BPs of Airbus. Between 2010 and 2013 Airbus channelled payments to TransAsia Airways (“TNA”) Parent Executive 3 for his personal benefit through Company of Intermediary 2 and Company of Intermediary 3. TNA bought 20 aircraft from Airbus. The payments to TNA Parent Executive 3 through Company of Intermediary 2 and Company of Intermediary 3 were intended to reward improper favour by TNA Parent Executive 3 in respect of that business.

## VIII. FACTS

### A. Introduction

104. TNA was Taiwan’s first private airline.
105. In 1983 Goldsun Group (“TNA Parent”) and Taiwan Secom Co. Ltd took over and controlled TNA. Both entities are controlled by a prominent business family in Taiwan, of which TNA Parent Executive 1, TNA Parent Executive 2 and TNA Parent Executive 3 were members. In 2013, TNA Parent Executive 3 replaced TNA Parent Executive 1.
106. On 2 December 2010 Airbus entered into a consultant agreement with the Company of Intermediary 2 registered in Hong Kong. This agreement was stated to retroactively apply from 1 September 2010 so as to cover the period leading up to the 16 November 2010 Purchase Agreements (as defined below). On 22 June 2012 Airbus entered into a consultant agreement with the Company of Intermediary 3, which is registered in the UAE Free Zone and run by Intermediary 3. This agreement was stated to retroactively apply from the date of a 13 June 2011 amendment to the 16 November 2010 A321 purchase agreement. An assignment of receivables agreement dated 24 January 2013 was signed by Intermediary 2 on 13 February 2013, by Intermediary 3 on 25 February 2013 and by Airbus employee 8 [senior] on 11 March 2013, assigning to Company of Intermediary 3 the remaining compensation due under the consultant agreement between Airbus and Intermediary 2 signed on 2 December 2010 (amounting to US\$4,485,500). On 15 March 2013 Airbus entered into a further consultant agreement with the Company of Intermediary 3. This agreement retrospectively engaged the Company of Intermediary 3 for a 25 October 2012 amendment to the 16 November 2010 purchase agreement.
107. The Company of Intermediary 2 was paid US\$2,432,500 and the Company of Intermediary 3 was paid US\$11,902,500 pursuant to the consultant agreements and assignment of receivables agreement. Neither the Company of Intermediary 2 nor the Company of Intermediary 3 provided any meaningful consultancy advice to Airbus.

## B. The Aircraft Orders

108. On 16 November 2010 TNA and Airbus signed two purchase agreements for the purchase of 2 A330 aircraft and 6 A321 aircraft (the “16 November 2010 Purchase Agreements”). The 16 November 2010 Purchase Agreements were first amended on 13 June 2011 to include the sale of a further 6 A321neo aircraft from Airbus (“13 June 2011 Amendment”). Airbus and TNA entered into a second amendment on 25 October 2012 for the sale of a further 6 A321neo aircraft from Airbus (the “25 October 2012 Amendment”). On 1 May 2016, a later amendment cancelled the 25 October 2012 Amendment. All eight of the aircraft relating to the 16 November 2010 Purchase Agreements were delivered before TNA ceased operations in 2016. No aircraft were delivered under the 13 June 2011 Amendment or the 25 October 2012 Amendment.

	<b>Date of Purchase Agreement</b>	<b>Airline</b>	<b>Aircraft</b>
1	16 November 2010	TNA	2 x A330
2	16 November 2010	TNA	6 x A321
3	13 June 2011	TNA	6 x A321neos
4	25 October 2012	TNA	6 x A321neos

Table 5

## C. The payments to the Company of Intermediary 2 and the Company of Intermediary 3

	<b>Date of Payment</b>	<b>Amount of payment \$</b>	<b>Recipient of payment</b>
1	17 January 2011	1,831,500	Company of Intermediary 2
2	30 May 2011	54,000	Company of Intermediary 2
3	25 October 2011	97,000	Company of Intermediary 2
4	12 December 2011	62,000	Company of Intermediary 2
5	13 March 2012	62,000	Company of Intermediary 2
6	28 March 2012	68,000	Company of Intermediary 2
7	27 April 2012	50,000	Company of Intermediary 2
8	31 July 2012	3,801,000	Company of Intermediary 3
9	22 November 2012	118,000	Company of Intermediary 2
10	25 April 2013	4,485,500	Company of Intermediary 3
11	10 July 2013	3,616,000	Company of Intermediary 3

Table 6

### 1. *Payments to Company of Intermediary 2*

109. The Company of Intermediary 2 and Airbus signed a consultant agreement on 2 December 2010 but which applied retroactively from 1 September 2010 to cover the period leading up to the 16 November 2010 Purchase Agreements. This agreement provided remuneration as follows: a percentage of net airframe value (“NAF”) with 30% of the remuneration to be paid on signature of the 16 November 2010 Purchase Agreements (and receipt of first pre-delivery payment, and following payments being paid pro-rata on receipt by Airbus) of each pre-delivery payment and the balance due in equal proportion at the delivery of the aircraft.
110. On 17 January 2011, Airbus paid the Company of Intermediary 2 US\$1,831,500 (% success fee as per the consultant agreement related to the 16 November 2010 Purchase Agreements) on an invoice dated 2 December 2010. On 30 May 2011 Airbus paid the Company of Intermediary 2 a further US\$54,000.
111. Airbus then made the following payments to the Company of Intermediary 2: US\$47,000 and US\$50,000 on 25 October 2011; US\$62,000 on 12 December 2011; US\$62,000 on 13 March 2012; US\$68,000 on 28 March 2012; US\$50,000 on 27 April 2012; and US\$118,000 on 22 November 2012.
112. Under an assignment of receivables agreement dated 24 January 2013, the remaining compensation due under this agreement to the Company of Intermediary 2 (US\$4,485,500) was assigned to Intermediary 3 through the Company of Intermediary 3. Later SMO International spreadsheets show that this entire amount was to be paid back to Intermediary 2 and the TNA Parent Executive 3.
113. Intermediary 2 and Airbus employee 1 [senior] and Airbus employee 13 (Airbus SMO International) communicated by way of coded emails. The emails relate to payments from Airbus to Intermediary 2 and paid onwards by Intermediary 2 to the TNA Parent Executive 3. Airbus employees used aliases for Intermediary 2 (“Fu Funien” and “Fu Fu”) and the TNA Parent Executive 3 (“Van Gogh”), referring to the TNA Parent Executive 3 as “a patient” and “the artist”, and referencing “medications and dosages prescribed by Dr. Brown” – a reference to Airbus employee 1 [senior]. In OCLC/IFF interview Airbus employee 1 [senior] said:
- “the [TNA Parent Executive 3] is actually VAN GOGH... This nickname was given to him by [Airbus employee 13]”
114. For example, on 5 December 2011 an email was sent from Intermediary 2 to Airbus employee 1 [senior], entitled ‘Van Gogh’, which read:
- “Recently I sent a request for laeee [sic] prints of Van Gogh to [Airbus employee 9 [senior]]. What is the status of the response?”
115. On 8 April 2012, Intermediary 2 emailed Airbus employee 1 [senior] regarding a meeting with Airbus employee 1 [senior] during which they discussed “a 70/30 split”:
- “Hello my dear [Airbus employee 1 [senior]],  
My family and I wish you and your family a very happy Easter Sunday.  
Waiting,  
At our last meeting and discussions on Van Gogh’s paintings, I left with a new understanding of the 70/30 split. Originally, I thought only the first invoice required the 70/30 split. I want to confirm here that the complete list of invoices requires the 70/30 split. To know:

08/03/11 54 000 – 16200 to [Company of Intermediary 2]  
01/08/11 47 000 – 14100 “  
01/09/11 50 000 – 15000 “  
16/11/11 62 000 – 18600 “  
01/02/12 62 000 – 18600 “  
02/03/12 68 000 – 20400 “  
09/04/12 50 000 – 15000 “  
Fufu”

116. On 13 June 2012 Intermediary 2 sent an email to Airbus employee 13, entitled “VVG”, which reads:

“With ref to the patient, please be advised tha [sic] Dr. Fu is researching the prescription protocol and will revert shortly.

Sincerely,  
Dr. Fu”

117. Intermediary 2 wrote to Airbus employee 13 on 21 June 2012 setting out the payments made by Airbus to Intermediary 2:

“Medications and Dosages prescribed by Dr. Brown

1. Mar 08, 2011 – 54,0 mg
2. Aug 01, 2011 – 47,0 mg
3. Sept 01, 2011 – 50,00 mg
4. Nov 16, 2011 – 62,0 mg
5. Feb 01, 2012 – 62,0 mg
6. Mar 02, 2012 – 68,0 mg
7. Apr 09, 2012 – 50,0 mg
8. May 01, 2012 – 37,0 mg

Medications dispensed by Dr. Fu

1. 54,0 – mg this prescription filled, but under the new protocol should have been 37,8 mg
2. 47,0 – mg this prescription filled, but under the new protocol should have been 32,9 mg
3. 50,0 – mg this prescription filled as 47,0 mg, but under the new protocol should have been 35,0 mg
4. 62,0 – mg this prescription filled, but under the new protocol should have been 43,4 mg

RE: 5-8 below and all previous medications are pending clarification of dosage limits by Dr. Brown

Prescriptions pending clarification:

5. 62,0 mg or 43,4 mg?
6. 68,0 mg or 47,6 mg?
7. 50,0 mg or 35,0 mg?
8. 37,0 mg or 25,9 mg?

Regards,  
Dr. Fu”

118. On 30 June 2012, Intermediary 2 further emailed Airbus employee 13, telling Airbus employee 13 that Intermediary 2 had made a payment to “Van Gogh” on 25 June of US\$25,900 in accordance with the “protocol” that was arranged by Airbus employee 1 [senior] in February 2011:

“In order to insure the continuation of prescription medication to patient Van Gogh, on 25 June, Dr. Fu dispensed 25.9 mg of medication in accordance with the protocol established by Dr. Brown in February 2011 to wit:

Hereafter the dispensing of medication, in this instance and all previous instances, Dr. Fu should follow the 70/30 rule.

I will call to discuss.

Professionally,  
Dr. Funien”

119. The prescribed amounts of the “medications”, namely the payments mentioned in these emails match exactly the amounts and dates in invoices submitted to Airbus by Company of Intermediary 2 under the December 2010 consultant agreement and related to the 16 November 2010 Purchase Agreements, amounting to at least US\$430,000. Intermediary 2 consistently references that the prescription amounts will be distributed subject to “the 70/30 split”, with a percentage of the amount being passed onto the TNA Parent Executive 3.

2. *Payments to the Company of Intermediary 3*

120. On 22 June 2012 Airbus signed a consultant agreement with the Company of Intermediary 3 which applied retroactively from the date of the agreement of the 13 June 2011 Amendment (sale of additional A321neo aircraft). The agreement provided remuneration as follows: a percentage of NAF with 50% of the remuneration to be paid on signature (later reduced by amendment to a percentage of NAF), and the balance to be paid pro rata upon receipt of each instalment payment as per the 13 June 2011 Amendment.
121. On 15 March 2013 Airbus signed a consultant agreement with the Company of Intermediary 3 (remuneration being a percentage of NAF, with 50% of the remuneration payable within 15 days of signature) with retroactive effect from 1 September 2012, so as to cover the period of the 25 October 2012 Amendment (sale of additional A321neo aircraft).
122. Under an assignment of receivables agreement dated 24 January 2013, the remaining compensation due under the Company of Intermediary 2’s consultant agreement (US\$4,485,500) was assigned to the Company of Intermediary 3.
123. The Company of Intermediary 3 invoiced Airbus on 16 July 2012, 25 February 2013 and 16 May 2013. These invoices indicate that Airbus paid the Company of Intermediary 3 a total of US\$11,902,500. A percentage of the total commercial contract value of each TNA purchase appears to have been destined for “Van Gogh”.
124. In an interview during Airbus’ due diligence review process, on 29 October 2015 Airbus employee 1 [senior] is recorded in an interview note as saying:

The Company of Intermediary 3 would serve as what he described as a “portage,” and that Intermediary 3 would pass on the majority of the compensation that it received from Airbus Group to the TNA Parent Executive 3 minus a commission. Specifically, Airbus employee 1 [senior] stated that Airbus Group would pay the Company of Intermediary 3 a commission of a specified percentage in connection with the sale of commercial aircraft to TransAsia, and that Airbus employee 1 [senior] understood that Intermediary 3 would keep 8% to 10% of this amount as his fee, and that he would pass the rest on to the TNA Parent Executive 3. Airbus employee 1 [senior] stated that, through Intermediary 3 the TNA Parent Executive 3 initially requested and received a specified percentage commission, but that over time this was reduced to a specified percentage, because Airbus employee 1 [senior] believed that a specified percentage was too high of a percentage to pay on commercial aircraft sales. Airbus employee 1 [senior] stated that, pursuant to the consultant agreements with the Company of Intermediary 3, Airbus Group would usually pay a specified percentage of the commission due under a consultancy agreement when the commercial contract was signed. The rest of the commission would be paid pro rata with payments from the Customer.

Airbus employee 1 [senior] stated that he decided that Airbus Group should contract with the Company of Intermediary 3 (rather than directly with the TNA Parent Executive 3) for risk management reasons. He explained his belief that this structure reduced the risk to the company for two principal reasons: First, there was no official connection between the TNA Parent Executive 3 and Intermediary 3 and the Company of Intermediary 3 (beyond their personal and investor-client relationships), meaning that it would be difficult to establish a link between Airbus and the TNA Parent Executive 3 via Airbus' contractual relationship with the Company of Intermediary 3 ...thus providing ways to transfer money through several KYC-approved banks in a way that could conceal the connection to Airbus...

When asked which Airbus or Airbus Group personnel knew that the payments made to the Company of Intermediary 3 for sales to TransAsia would be passed to the TNA Parent Executive 3, Airbus employee 1 [senior] said that (in addition to himself), only a select few individuals knew.

## **IX. COUNT 4 [INDONESIA]**

### **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 01 June 2015 Airbus SE failed to prevent persons associated with Airbus SE from bribing others concerned with the purchase of aircraft by PT Garuda Indonesia and Citilink Indonesia from Airbus, namely directors and/or employees of PT Garuda Indonesia and Citilink Indonesia, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus SE.

### **Summary**

125. Between 2011 and 2014 Airbus' BP paid in excess of US\$3.3 million to or for the personal benefit of senior employees of Indonesia's national airline PT Garuda Indonesia (Persero) Tbk ("Garuda") and/or its low-cost subsidiary, PT Citilink Indonesia ("Citilink") or their family members. The Garuda/Citilink employees were key or significant decision makers in respect of Airbus business during that period, namely Garuda/Citilink's purchase of 55 Airbus aircraft. The payments were intended to secure or reward improper favour by those Garuda/Citilink Executives in respect of that business.

## **X. FACTS**

### **A. Introduction**

126. Garuda is the national airline of Indonesia. In 2006 the Indonesian Government owned 100% of Garuda. The Government's stake decreased to just over 60% in 2016. Airbus and Garuda have done business together since 1979.
127. During the relevant period Airbus engaged Intermediary 4 through Intermediary 4, company A as a BP to help sell its aircraft to Garuda and Citilink.
128. Garuda Executives 1, 2 and 3 occupied senior positions within Garuda or Citilink. All three were key or significant decision makers in respect of Airbus business.

## B. The Aircraft Orders

129. Between 2009 and 2015 Garuda and Citilink purchased a total of 58 aircraft from Airbus, as follows (the contracts that are the subject of the agreed wrongdoing are contracts 2 to 5):

	Date of Purchase Agreement	Airline	Aircraft
1	9 November 2009	Garuda	3 x A330
2	6 July 2011	Garuda	4 x A330
3	2 August 2011	Garuda	15 x A320
4	19 December 2011	Garuda	11 x A330
5	20 December 2012	Citilink	25 x A320

Table 7

## C. The Payments

130. Intermediary 4, company A was the BP in relation to each of the above sales. Between 2011 and 2014 Intermediary 4 paid the following amounts to or for the benefit of these Garuda/Citilink Executives or their family members:

	Date of Payment	Amount of payment US\$	Recipient of payment
1	5 December 2011 15 December 2011 2 February 2012	43,165 539,647 55,991	Seller of property to relative of Garuda Executive 1 or notary acting on the sale
2	27 December 2011	83,000	Garuda Executive 3
3	7 February 2012	632,330	Garuda Executive 2
4	7 February 2012	179,163	Garuda Executive 3
5	7 February 2012	1,351,915	Company beneficially owned by Garuda Executive 1 and wife
6	30 August 2012	166,000	Garuda Executive 2
7	30 August 2012	83,000	Garuda Executive 3
8	24 February 2014	57,500	Garuda Executive 3

9	25 February 2014	115,000	Garuda Executive 2
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Table 8

## D. The Details

### 1. Campaign 1: A330 aircraft

131. Intermediary 4 wrote to Airbus employee 14 (Airbus SMO International) on 10 March 2009 (with Airbus employee 1 [senior] copied) explaining that his company Intermediary 4, company A "would represent [Airbus] in Indonesian territory".
132. On 15 June 2009, Airbus and Garuda signed a MoU relating to the purchase of 6 A330 aircraft (the "June 2009 MoU"). Garuda Executive 1 signed for Garuda.
133. On 20 July 2009, an Airbus consultant application was submitted for Intermediary 4, company A in respect of the sale to Garuda of 6 A330 aircraft. The agreement provided remuneration as a percentage of the NAF. The consultant application referred to the June 2009 MoU and the need for Intermediary 4, company A to support the process given there was an incumbent supplier. The application stated that Intermediary 4, company A would supply support at "airlines level", while another company was actively working "at the political level". The application was approved by the CDSC sub-committee on 19 October 2009. The signed consultant agreement was dated 20 October 2009 but stated to be formally effective from 1 September 2009.
134. The purchase agreement between Garuda and Airbus was dated 9 November 2009 but was only for 3 A330-200 aircraft. This purchase agreement was signed by Garuda Executive 3 and another Garuda Executive.
135. Intermediary 4, company A produced a report entitled "GARUDA - 6 units A330-200 Year 2008-2009-2010" which documented Intermediary 4's frequent meetings with Garuda Executive 1 and his contact with Garuda Executive 2. An earlier draft of the report written in the first person stated:  
 "I have got a wide experience with Garuda for many years and I know most of the executives of the airline, including [Garuda Executive 1]".
136. Between January 2011 and October 2014 Airbus paid Intermediary 4, company A just over US\$8.67 million pursuant to the 20 October 2009 consultant agreement.

### 2. Campaign 2: Further A330 aircraft

137. On 4 February 2011 an Airbus consultant application was submitted for Intermediary 4, company A in respect of the sale to Garuda of four further A330 aircraft. The agreement provided remuneration as a percentage of the NAF. The consultant application was similar to the July 2009 application and it repeated the

division of airline level/political level assistance between Intermediary 4, company A and another company.

138. The 2011 consultant agreement between Airbus and Intermediary 4, company A was signed on 29 March 2011, having been approved by the CDSC at the end of February. The 2011 consultant agreement was said to be in respect of a campaign to sell up to 6 aircraft.
139. On 6 July 2011, Airbus and Garuda signed a further purchase agreement for 4 A330 aircraft. Garuda Executive 2 signed on behalf of Garuda.
140. Intermediary 4, company A prepared a report entitled "GARUDA - 4 unit options into Firm Orders. A330-300 Purchase Agreement July 1st 2011". This describes a number of meetings with Garuda Executive 1.
141. Between October 2011 and January 2012 Airbus paid Intermediary 4, company A approximately US\$4 million pursuant to the March 2011 consultant agreement.

### **3. Campaign 3: A320 aircraft**

142. On 18 March, 2011 an Airbus consultant application was submitted for Intermediary 4, company A in respect of the sale to Garuda (Citilink division) of up to 25 A320 aircraft at a remuneration rate of a percentage of NAF.
143. The consultant agreement between Airbus and Intermediary 4, company A was dated 13 May 2011, having been approved by the CDSC at the end of April 2011.
144. On 2 August 2011, Garuda and Airbus signed a further purchase agreement for 25 A320 aircraft (the "2 August 2011 Purchase Agreement"). In 2015, a further agreement amended the agreement to 15 aircraft.
145. Intermediary 4, company A prepared a report entitled "GARUDA - Citilink A320-A320NEO August 2011". The report set out a number of meetings with Garuda Executive 1. Contemporaneous emails also demonstrate Garuda Executive 2 and Garuda Executive 3's involvement in the deal.
146. In January 2012 Airbus paid Intermediary 4, company A approximately US\$4 million pursuant to the May 2011 consultant agreement.

### **4. Campaign 4: A330 aircraft**

147. A purchase agreement for the sale of 11 A330-300 aircraft was signed by Airbus and Garuda on 19 December 2011. Garuda Executive 2 signed on behalf of Garuda.
148. On 5 January 2012 Garuda Executive 3 was in email communication with Intermediary 4 about the engines for Garuda's additional 11 A330 aircraft.
149. On 23 January 2012 an Airbus consultant application was submitted for Intermediary 4, company A in respect of the sale of 11 A330-300 aircraft. The fee to Intermediary 4, company A was said to be a lump sum of US\$11 million. Aside from a lump sum fee, the application was in similar terms to those submitted in July 2009, February and March 2011.

150. The consultant agreement between Airbus and Intermediary 4, company A for 11 A330 aircraft was dated 24 February 2012, having been considered by the CDSC on 10 February 2012.
151. Intermediary 4, company A prepared a report entitled "GARUDA INDONESIA - 11 A330-300 PURCHASE AGREEMENT APRIL 2012 Actions of [Intermediary 4, company A] ". This report focuses on activity from September 2011 onwards and sets out contact with both Garuda Executive 1 and Garuda Executive 2.
152. Between July and October 2012 Airbus paid Intermediary 4, company A approximately US\$4 million pursuant to this February 2012 consultant agreement.

#### 5. *Campaign 5: A320 aircraft to Citilink*

153. On 23 January 2012, an Airbus consultant application was submitted for Intermediary 4, company A in respect of the sale of up to 25 A320 aircraft to 'Garuda Citilink division'. The fee to Intermediary 4, company A on this application was said to be a lump sum of US\$10 million.
154. As with Campaign 4, the consultant agreement between Airbus and Intermediary 4, company A was dated 24 February 2012. The application had previously been considered by the CDSC on 10 February 2012.
155. On 6 July 2012 Garuda and Airbus signed a contract, as an amendment to the 2 August 2011 Purchase Agreement. This July amendment set out an agreement to buy another 25 A320 aircraft.
156. Intermediary 4, company A prepared a report entitled "GARUDA CITILINK - 25 UNITS A 320 Neo January 2013". This report sets out contact with both Garuda Executive 1 and Garuda Executive 2. The report also states that the July 2012 signed amendment had not been approved by the Garuda board of directors and the lawyers saw difficulties with it needing to be signed or transferred to Citilink.
157. On 20 December 2012 Airbus and Citilink signed a purchase agreement for 25 A320 aircraft. On the same day Airbus and Garuda entered into an amendment agreement to its August 2011 A320 agreement which stated that the July 2012 agreement above had not received necessary approvals and was no longer in force and of no effect.
158. In September 2013 Airbus paid Intermediary 4, company A just under US\$1 million pursuant to this February 2012 consultant agreement.

#### 6. *The Payments*

159. Airbus paid Intermediary 4, company A monies due under the consultant agreements relating to Campaigns 1-5 between January 2011 and October 2014. Intermediary 4, company A made regular payments to Intermediary 4's personal account.

160. On 5 December 2011 Intermediary 4 caused 390 million rupiah (US\$ equivalent at the time US\$43,165) to be paid to the notary acting in the purchase of a residential property in Jakarta by a relative of Garuda Executive 1.<sup>5</sup>
161. Intermediary 4 then caused the following two payments (shown in US\$ equivalent amounts) to be made to the seller of that Jakarta property:
- a) On 15 December 2011, US\$539,647; and
  - b) On 2 February 2012, US\$55,991.<sup>6</sup>
162. In the interim, on 27 December 2011, Intermediary 4, company B paid US\$83,000 to an account in the name of Garuda Executive 3.<sup>7</sup>
163. On 7 February 2012 Intermediary 4, company B made three payments (all US\$ equivalent):
- a) US\$632,330 to Garuda Executive 2;<sup>8</sup>
  - b) US\$179,163 to Garuda Executive 3;<sup>9</sup> and
  - c) US\$1,351,915 to company beneficially owned by Garuda Executive 1 and his wife.<sup>10</sup>
164. The company beneficially owned by Garuda Executive 1 and his wife was a company incorporated in the British Virgin Islands in 2009.
165. In March 2012 Garuda Executive 1's bank raised anti-money laundering concerns about the source of the US\$1,351,915 payment to the company he beneficially owned with his wife. Garuda Executive 1 responded that it was connected to a property scheme in which he and Intermediary 4 had jointly invested. He forwarded his explanation to Intermediary 4 who responded,
- “Bravo boz! Let's wait for their reaction...hee hee!”
166. By July 2012, the bank was not satisfied with the explanation and Intermediary 4 suggested moving Garuda Executive 1's monies to Intermediary 4's account. At the end of August 2012 Garuda Executive 1 instructed the bank to remit all his funds in the company beneficially owned by him and his wife to an account of Intermediary 4's in Singapore. The resulting transfer of US\$1,458,364 was not made until November 2012.
167. On 30 August 2012, Intermediary 4 made the following two payments:
- a) US\$166,000 to Garuda Executive 2; and<sup>11</sup>

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<sup>5</sup> Payment Table 8, item 1

<sup>6</sup> Both payment Table 8, item 1. The first and third payments were made by Intermediary 4's personal assistant. The second payment was made from the account of another Intermediary 4 company.

<sup>7</sup> Payment Table 8, item 2

<sup>8</sup> Payment Table 8, item 3

<sup>9</sup> Payment Table 8, item 4

<sup>10</sup> Payment Table 8, item 5

<sup>11</sup> Payment Table 8, item 6

b) US\$83,000 to Garuda Executive 3.<sup>12</sup>

168. By 2013 Garuda Executive 2 had taken up a senior position at Citilink.

169. In February 2014 Intermediary 4 made the following payments:

a) February 2014 US\$57,500 to Garuda Executive 3;<sup>13</sup>

b) February 2014 US\$115,000 to Garuda Executive 2.<sup>14</sup>

## **XI. COUNT 5 [GHANA]**

### **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.

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<sup>12</sup> Payment Table 8, item 7

<sup>13</sup> Payment Table 8, item 8

<sup>14</sup> 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".

- e) This final Airbus employee 16 email recorded his view that absent a solution to the failure of the Company D application, Airbus would be prevented from doing business in Ghana for a number of years.
189. On 20 October 2011 Airbus employee 15 [senior] emailed Airbus employee 16, Airbus employee 17 [senior], Airbus employee 20 and Airbus employee 18:
- “In order to find a “smoth” (sic) solution to solve this issue, I suggest to move trough (sic) a third part (sic), somebody well known, audited and already engaged with us in the same area”.
190. On 22 October 2011 Airbus employee 15 [senior] emailed further, stating he had met Intermediary 7 in Manchester but it was not easy for them to “find a new company”.
191. The third party selected was a Spanish company, Intermediary 8, a pre-existing Airbus BP. Airbus employees involved in the ‘smoth solution email’ above (the recipients of which included subsidiary and SMO International compliance personnel) agreed to deliberately circumvent the proper compliance process by falsely representing that the work in respect of the First Campaign had been done by this company, who could in turn then make the money available to Intermediary 5 and others. Intermediary 8 had no previous links or experience of working in Ghana for any Airbus entity.
192. In January 2012, Airbus employee 16 sent an email to Airbus employee 19 attaching a Intermediary 8 BP application for Ghana. The new Intermediary 8 application was very similar to the earlier one submitted by Company D.
193. On 18 January 2012 Intermediary 6 sent Airbus employee 15 [senior] and Airbus employee 16 a report of work done from August 2009 onwards to secure the 2011 C-295 sales. The same report was emailed by Intermediary 5 to Airbus employee 16 that day. The report falsely presented that work as having been done by a company with a name very similar to a subsidiary of Intermediary 8. The report described meetings and discussions with Government Official 1 and others. In the report the author claimed that "after numerous interventions from [Government Official 1] on our behalf" the signature of the contract had been enabled by the end of July 2011. Intermediary 5 or his associates were not named in the report.
194. On 19 March 2012 Airbus employee 1 [senior] and Airbus employee 22 [senior] (Airbus SMO International, compliance) approved the Intermediary 8 BP application for the First Campaign. The approval memo stated that:
- "As per Consultant Application, the Consultant has already rendered services during 2010 and 2011 under a verbal agreement, it is recommended to obtain all reporting related to that period prior to any payment to the Consultant"
195. The consultant agreement between Intermediary 8 and Airbus was dated 20 March 2012 but said to be effective from 1 January 2010. The agreement provided for a percentage commission fee of the net total amount received by Airbus by virtue of any commercial contract with the Government of Ghana for C-295 aircraft.
196. Between March 2012 and February 2014, Airbus paid Intermediary 8 a total of €3,909,756.85, a sum in excess of the agreed commission amount as per the ECA declaration (€3,001,718.15) Between 10 April 2012 and 31 July 2013

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.