

United States v. Novartis Hellas S.A.C.I. (D. NJ 2020) United States v. Alcon Pte Ltd (D. NJ 2020)

Nature of the Business.

Novartis AG is a global pharmaceutical company headquartered in Basel, Switzerland. Novartis's publicly traded securities are listed on the New York Stock Exchange and registered with the SEC pursuant to Section 12(b) of the Exchange Act, and as such, it is considered an Issuer.

Novartis Hellas S.A.C.I., which is headquartered in Athens, Greece, is an indirect wholly-owned subsidiary of Novartis AG.

Alcon Pte Ltd, which is based in Singapore, was a wholly-owned subsidiary of Novartis prior to its spin-off in 2019. It is now owned by Alcon, Inc., a multinational eye care company incorporated in Switzerland.

Influence to be Obtained.

According to the DOJ, Novartis Hellas S.A.C.I. sought to bribe employees of state-owned hospitals and clinics in Greece to increase sales of Novartis prescription drugs. The Greek subsidiary allegedly sponsored employees of public healthcare clinics to attend international congresses to similarly bolster prescription sales. Novartis Hellas is alleged to have received at least \$71.48 million in profits from sales of the illicitly promoted prescription drugs in Greece.

The DOJ alleges Alcon Pte Ltd, while still a subsidiary of Novartis AG, hired an unnamed distribution company to increase sales of surgical equipment and devices to state-owned hospitals and clinics in Vietnam. Internal emails allegedly show the company's use of a consultancy program to hide payments in furtherance of the scheme. According to the DOJ, Alcon Pte Ltd realized approximately \$8.5 million in profits between 2011 and 2014 from sales related to the bribery scheme.

Enforcement.

On June 25, 2020, the DOJ announced that it entered a deferred prosecution agreement with Novartis Hellas S.A.C.I. Under the agreement, Novartis Hellas agreed to pay \$225,000,000 in criminal penalties as a result of two conspiracy counts to violate the FCPA's anti-bribery and books and records provisions, respectively. It also agreed to report to the DOJ for a term of three years under the DPA.

On the same day, the DOJ announced it entered into a deferred prosecution agreement with Alcon Pte Ltd regarding one count of conspiracy to violate the books and records provisions of the FCPA. Alcon Pte Ltd agreed to pay \$8,925,000 in criminal penalties and to reporting requirements for a term of three years.

In a related matter, the SEC settled a parallel enforcement action against Novartis AG—the parent company. It was required to pay \$92.3 million in disgorgement, \$20.5 million in prejudgment interest, for a total of \$112.8 million.

Key Facts

Citation. *United States v. Novartis Hellas S.A.C.I.*, 20-cr-00538 (D. NJ June 25, 2020); *United States v. Alcon Pte Ltd*, 20-cr-00539 (D. NJ June 25, 2020).

Date Filed. June 25, 2020.

Country. Greece; Vietnam.

Date of Conduct. 2008 – 2015.

Amount of the Value. Not stated.

Amount of Business Related to the Payment.

- **Novartis Hellas.** \$71.48 million.
- **Alcon Pte Ltd.** \$8.5 million.

Intermediary.

- **Novartis Hellas.** Not stated.
- **Alcon Pte Ltd.** Unnamed distribution company.

Foreign Official. Unnamed foreign officials in Greece and Vietnam.

FCPA Statutory Provision. None.

Other Statutory Provision.

- **Novartis Hellas.** Anti-bribery conspiracy; Books and Records conspiracy.
- **Alcon Pte Ltd.** Books and Records conspiracy.

Disposition. Deferred Prosecution Agreements.

Defendant Jurisdictional Basis. Agents of Issuer.

Defendant's Citizenship.

- **Novartis Hellas.** Greece.
- **Alcon Pte Ltd.** Singapore.

Total Sanction. \$233,925,000.

- **Novartis Hellas.** \$225 million.
- **Alcon Pte Ltd.** \$8.925 million.

Compliance Monitor/Reporting Requirements. Three years reporting requirements.

Related Enforcement Actions. *In the Matter of Novartis AG*, Admin. Proc. File No. 3-19835 (June 25, 2020).

Total Combined Sanction. \$346,725,000.