Institute for Business Ethics

University of St.Gallen

Review of Public Eye Award Nomination
ALSTOM GROUP

Context

The nominee at hand (Alstom Group), a company from the transport infrastructure and power industry, is nominated for its involvement in cases of corruption. Specifically, the nominated company is accused of repeatedly bribing public officials with the aim of winning public tenders. The company has not put an end to these malpractices even after having been convicted in several countries. As outlined by the *UN Global Compact*, the company's malpractice is associated with the following problem: bribery poses one of the world's largest challenges, not least since representing a "major hindrance to sustainable development, with a disproportionate impact on poor communities and is corrosive on the very fabric of society" (Principle 10). Whilst significantly undermining the political stability and sustainable development of nation states, bribery is also harmful for the private sector, since it stifles economic growth, distorts competition, creates financial costs for companies and holds off potential investors. Negative ramifications of bribery in the private sector typically materialize in the public sphere in the form of, for instance, lowering the value of democracy or sustainable development.

Relevant Agreements, Conventions, and Treaties

The international legal fight against corruption in general and bribery in particular is associated with different institutions such as the World Bank, the International Monetary Fund, the World Trade Organization, the Organization of American States, the Council of Europe and the European Union. Arguably the most significant convention with regard to the present nomination is the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.*[1] The *OECD Anti-Bribery Convention*, which supports and complements UNCAC (cf. footnote), stipulates legally binding standards that criminalize the bribery of public officials in developing countries. The allegations put forward against the company in the respective nomination documents indicate an evident violation of the *OECD Anti-Bribery Convention.* Among other things, the nominee violates the *OECD Anti-Bribery Convention's* good practice guidance for companies, which points out that companies must regularly assess the risk of bribery and continually increase the effectiveness of the company's internal control systems, policies and compliance programs and measures through which such malpractices are avoided. Judging from the material submitted to the

[1] The *United Nations Convention against Corruption (UNCAC)* represents another important convention focusing on bribery. The convention stipulates minimum standards that support states in effectively tackling corruption and was signed by 162 nations. Bribery inherits a pre-eminent position in this convention since it was early on identified as one of the most serious crimes in conjunction with corruption (cf. particularly Art. 15 and 16). However, since explicitly addressing nation states (and not businesses), UNCAC is not directly applicable to the case at hand.

Public Eye Award, it appears that the nominee, instead of taking a pro-active step in averting the risk of bribery, consciously tolerates potential sanctions and fines as an inherent part of its business practice.

The nominee violates the *OECD Guidelines for Multinational Enterprises* which states that "Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage" (cf. Chapter VII Combating Bribery, Bribe Solicitation and Extortion).

Voluntary Standards and Commitments

According to the submitted documents, the nominee is a signatory of the *UN Global Compact*. Of particular relevance for the present case is the *Compact's* Principle 10 which renders the private sector responsible for supporting the elimination of corruption. Concretely, the *Compact* commits signatory companies to endorse the following ethical principles: "Corruption is inherently wrong. It is a misuse of power and position and has a disproportionate impact on the poor and disadvantaged. It undermines the integrity of all involved and damages the fabric of the organizations to which they belong. The reality that laws making corrupt practices criminal may not always be enforced is no justification for accepting corrupt practices. To fight corruption in all its forms is simply the right thing to do."

Also, as a member of the *Institute of Business Ethics UK* and the *Ethics and Compliance Officer Association*, the nominated company commits itself to generic ethical principles and good practices. Though such commitments are not legally binding, the nominee appears to violate the code's inherent moral responsibility which is to uphold the highest standards of ethical business.

Overall Ethical Assessment: Compounding and Mitigating Factors

Bribery in the context of public tenders is a problem which has been addressed by, for instance, the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. However, as the present nomination shows, even though the knowledge and means for establishing comprehensive anti-bribery programs are available,[2] the nominee has shown little willingness to change its malpractice. Although the nominated company is by far not the only one involved in bribing public authorities, it could be argued that the company has deliberately and repeatedly used its economic power to create unequal conditions of competition. Not having dismissed their malpractices even after having been repeatedly convicted, there are reasons to believe that the company accepts potential fines and exclusions from tender processes as part of its business model and that it fosters a business culture, which endorses such practices as "business as usual". The company thus seems to take advantage of the fact that anti-corruption and anti-bribery conventions have for a long time suffered from rather ineffective levels of enforcement. With this as a backdrop, the nominated company sends a dangerous signal to other organizations relying on public subsidies by demonstrating that bribery does, in the last instance, pay off.

What mitigates the allegations leveled against the nominee is the fact that the involved governments seem to have fallen short in discharging their responsibility to strengthen their due diligence of potential contractors. For instance, the *United Nations Conventions against Corruption* inter alia commends that governments are responsible for periodically evaluating whether their administrative measure adequately prevent corruption (Art. 9). Furthermore, judging from the material provided by the nomination, it is not clear whether the nominated company has violated the mandate as stipulated in the respective tenders and contracts. That

[2] Cf. *Transparency International: Business Principles for Countering Bribery,* which is a framework offering recommendations of how companies can proactively tackle issues related with bribery

is, since not providing information on the nominee's performance in conjunction with the respective tenders, it must be assumed that the nominee's performance has not been an issue of major concern.

All things taken into consideration, the nominee bears a responsibility to put an end to its history of bribery and demonstrate respect toward the anti-bribery standards fleshed out by the previously mentioned conventions. This plea encompasses both compliance with binding legal stipulations as well as a moral obligation to take a pro-active stance in the fight against corruption and bribery. Judging from the nomination, it appears as though the nominee has breached both of these obligations.