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BAE Systems PLC Pleads Guilty and Ordered to Pay \$400 Million Criminal Fine

BAE Systems plc (BAES) pleaded guilty today in U.S. District Court in the District of Columbia to conspiring to defraud the United States by impairing and impeding its lawful functions, to make false statements about its Foreign Corrupt Practices Act (FCPA) compliance program, and to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR), announced Acting Deputy Attorney General Gary G. Grindler. BAES was sentenced today by U.S. District Court Judge John D. Bates to pay a \$400 million criminal fine, one of the largest criminal fines in the history of DOJ's ongoing effort to combat overseas corruption in international business and enforce U.S. export control laws.

"Today, BAE Systems pleaded guilty to knowingly and willfully making false statements to U.S. government agencies. The actions of BAE Systems impeded U.S. efforts to ensure international trade is free of corruption and to maintain control over sensitive U.S. technology," said Acting Deputy Attorney General Gary G. Grindler. "BAE Systems will pay a \$400 million fine for its criminal conduct – one of the largest criminal fines ever levied in the United States against a company for business related violations. The remediation measures BAE Systems has undertaken, in conjunction with its agreement to retain an independent compliance monitor, are evidence supporting BAE Systems' stated commitment to ensure that it operates in a transparent, honest and responsible manner going forward. The Department of Justice will continue to hold accountable companies that impair the operations of the U.S. government by lying about their conduct and operations."

"Competition is one of the foundations of our economic system," said Shawn Henry, Assistant Director in Charge of the FBI's Washington Field Office. "Corporations and individuals who conspire to defeat this basic economic principle not only cause harm but ultimately shake the public's confidence in the entire system."

"Providing false statements to circumvent U.S. export laws and to defraud the U.S. Government must be vigorously prosecuted," said John Morton, assistant secretary of Homeland Security for U.S. Immigration and Customs Enforcement (ICE). "ICE is committed to working with our federal and international partners to investigate violations of U.S. export controls to assure sensitive technologies are not fraudulently and unlawfully acquired."

BAES is a multinational defense contractor with headquarters in the United Kingdom and with a U.S. subsidiary - BAE Systems Inc. - headquartered in Rockville, Md. None of the criminal conduct described in the plea involved the actions of BAE Systems Inc.

According to court documents, from approximately 2000 to 2002, BAES represented to various U.S. government agencies, including the Departments of Defense and Justice, that it would create and implement policies and procedures to ensure its compliance with the anti-bribery provisions of the FCPA, as well as similar, foreign laws implementing the Organization for Economic Cooperation and Development (OECD) Anti-bribery Convention. According to court documents, BAES knowingly and willfully failed to create mechanisms to ensure compliance with these legal prohibitions on foreign bribery. According to court documents, the gain to BAES from the various false statements and failures to make required disclosures to the U.S. government was more than \$200 million.

The FCPA makes it illegal for certain businesses and individuals, or anyone taking action within U.S. territorial jurisdiction, corruptly to make payments to foreign government officials for the purpose of obtaining or retaining business. In addition, the FCPA prohibits corruptly making payments to a third party, while knowing that all or a portion of the payments will go directly or indirectly to a foreign

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government official for the purpose of obtaining or retaining business. Despite BAES's representations to the U.S. government to the contrary, BAES knowingly and willfully failed to create sufficient compliance mechanisms to prevent and detect violations of the anti-bribery provisions of the FCPA.

According to court documents, BAES made a series of substantial payments to shell companies and third party intermediaries that were not subjected to the degree of scrutiny and review to which BAES told the U.S. government the payments would be subjected. BAES admitted it regularly retained what it referred to as "marketing advisors" to assist in securing sales of defense items without scrutinizing those relationships. In fact, BAES took steps to conceal from the U.S. government and others its relationships with some of these advisors and its undisclosed payments to them. For example, after May 2001, BAES contracted with and paid certain advisors through various offshore shell companies beneficially owned by BAES. BAES also encouraged certain advisors to establish their own offshore shell companies to receive payments from BAES while disguising the origins and recipients of these payments. BAES admitted that it established one company in the British Virgin Islands (BVI) to conceal its marketing advisor relationships, including who the advisor was and how much it was paid; to create obstacles for investigating authorities to penetrate the arrangements; to circumvent laws in countries that did not allow such relationships; and to assist advisors in avoiding tax liability for payments from BAES.

Through this BVI entity, from May 2001 onward, BAES made payments totaling more than £135 million plus more than \$14 million, even though in certain situations BAES was aware there was a high probability that part of the payments would be used to ensure that BAES was favored in foreign government decisions regarding the purchase of defense articles. According to court documents, in many instances, BAES possessed no adequate evidence that its advisors performed any legitimate activities in justification of the substantial payments.

In addition, according to court documents, BAES began serving as the prime contractor to the U.K. government in the mid-1980s, after the U.K. and the Kingdom of Saudi Arabia (KSA) entered into a formal understanding. According to court documents, the "support services" that BAES provided according to the formal understanding resulted, in part, in BAES providing substantial benefits to a foreign public official of KSA, who was in a position of influence regarding sales of fighter jets, other defense materials and related support services. BAES admitted it undertook no adequate review or verification of benefits provided to the KSA official, including no adequate review or verification of more than \$5 million in invoices submitted by a BAES employee from May 2001 to early 2002 to determine whether the listed expenses were in compliance with previous statements made by BAES to the U.S. government regarding its anti-corruption compliance procedures. In addition, in connection with these same defense deals, BAES agreed to transfer more than £10 million plus more than \$9 million to a bank account in Switzerland controlled by an intermediary, being aware that there was a high probability that the intermediary would transfer part of these payments to the same KSA official.

Also as part of its guilty plea, BAES admitted to making and causing to be made certain false, inaccurate and incomplete statements, and failing to make required disclosures to the U.S. government in connection with the administration of certain regulatory functions, including statements and disclosures related to applications for arms export licenses, as required by the AECA and ITAR. The AECA and ITAR prohibit the export of defense-related materials to a foreign national or a foreign nation without the required U.S. government license, and the Department of State has the power to approve or deny such applications. As part of the licensing scheme, applicants are required to identify associated commissions to the State Department- whether they are legitimate commissions or bribes - paid to anyone who helps secure the sales of defense materials.

BAES admitted that, as part of the conspiracy, it knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items in violation of the AECA and ITAR. BAES failed to identify the commission payments paid through the BVI entity described above, in order to keep the fact and scope of its external advisors from public scrutiny. In one specific instance, BAES caused the filing of false applications for export licenses for Gripen fighter jets to the Czech Republic and Hungary by failing to tell the export license applicant or the State Department of £19 million BAES paid to an intermediary with the high probability that it would be used to influence that tender process to favor BAES.

As part of its guilty plea, BAES has agreed to maintain a compliance program that is designed to detect and deter violations of the FCPA, other foreign bribery laws implementing the OECD Anti-bribery Convention, and any other applicable anti-corruption laws, and that is designed to detect and deter violations of the AECA and ITAR, as well as similar export control laws. Under the terms of the plea agreement, BAES has agreed to retain an independent compliance monitor for three years to assess BAES's compliance program and to make a series of reports to the company and the Justice Department.

The criminal case is being prosecuted by Senior Litigation Counsel Nathaniel B. Edmonds and Deputy Chief Mark F. Mendelsohn of the Criminal Division's Fraud Section and Trial Attorney Patrick T. Murphy of the National Security Division's Counterespionage Section. The Fraud Section is responsible for all investigations and prosecutions of the Foreign Corrupt Practices Act, and conducts other investigations into sophisticated economic crimes. The Counterespionage Section supervises the investigation and prosecution of cases involving the export of military and strategic commodities and

technology, including cases under the AECA and ITAR.

The criminal case was investigated by FBI special agents who are part of the Washington Field Office's dedicated FCPA squad and special agents of the U.S. Immigration and Customs Enforcement's Counter Proliferation Unit. Investigative assistance also was provided by the Defense Criminal Investigative Services and the General Services Administration, Office of Inspector General. The Criminal Division's Office of International Affairs provided substantial assistance in support of the investigation.

The Department of Justice acknowledges and expresses its appreciation of the significant assistance provided by the U.K.'s Serious Fraud Office, and further expresses its gratitude to that office for its ongoing partnership in the fight against overseas corruption.

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Criminal Division

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