



3. From 2000, BAES agreed to and did knowingly and willfully make certain false, inaccurate and incomplete statements to the U.S. government and failed to honor certain undertakings given to the U.S. government. These statements and undertakings included that BAES would, within an agreed upon time frame, create and implement policies and procedures to ensure compliance with provisions of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and the relevant provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”). Certain of the statements were false because they were inaccurate or incomplete. BAES also failed to comply with certain of the undertakings in some material respects and failed to inform properly the U.S. government of those failures. BAES’s failures to comply and inform the U.S. government constituted breaches of the representations and constituted a knowing and willful misleading of the U.S. government that impaired and impeded the activities and lawful functions of the U.S. government. BAES also made certain false, inaccurate and incomplete statements and failed to make required disclosures to the U.S. government in connection with the administration of certain regulatory functions, including in applications for arms export licenses, as required by the Arms Export Control Act (“AECA”), 22 U.S.C. §§ 2751, *et seq.*, and the International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120, *et seq.*

#### **COUNT ONE**

#### **(Conspiracy)**

4. Paragraphs 1 to 3 of this Information are re-alleged and incorporated by reference as if set out in full herein.

5. From at least in or about 2000, BAE Systems plc knowingly and willfully conspired, and agreed, with others known and unknown to the United States, to:

- (a) knowingly and willfully impede and impair the lawful governmental functions of the United States government, including the Department of Defense and Department of State, by making certain false, inaccurate and incomplete statements to the U.S. government and failing to honor certain undertakings given to the U.S. government, thereby defrauding the United States in violation of Title 18, United States Code, Section 371; and
- (b) commit offenses against the United States, to wit:
  - (i) knowingly and willfully make materially false, fictitious, or fraudulent statements or representations; in violation of Title 18, United States Code, Section 1001; and
  - (ii) knowingly and willfully cause to be filed export license applications with the Department of State, Directorate of Defense Trade Controls, that omitted a material fact required to be stated therein, that is, applications that failed properly to disclose fees or commissions made, offered and agreed to be made, directly and indirectly, in connection with sales of defense articles, in violation of Title 22, United States Code, Section 2778 and Title 22, Code of Federal Regulations, Sections 127 and 130.

#### **PURPOSE OF THE CONSPIRACY**

6. The purpose of the conspiracy was for BAES and its co-conspirators to impede and impair certain functions of parts of the U.S. government and make false statements to the U.S. government in connection with BAES's business operations, thereby defrauding the United States.

## **OVERT ACTS AND ADDITIONAL ALLEGATIONS**

### **False Statements to the U.S. Department of Defense**

7. The U.S. Department of Defense (the "Defense Department") is part of the Executive Branch of the U.S. government and is charged with coordinating and supervising agencies and functions of the government relating to national security and the military. The Defense Department is administered by the Secretary of Defense, who is appointed by the President of the United States, with the approval of the U.S. Senate.
8. Beginning in 2000 and continuing to at least 2002, BAES made certain false, inaccurate and incomplete statements to the Defense Department and failed to honor certain undertakings given to the Defense Department regarding certain payments and undisclosed commissions, discussed below, and its FCPA compliance policies and procedures.

### **November 18, 2000 Letter to Secretary of Defense**

9. On November 18, 2000, BAES made false statements in correspondence to the then-Secretary of Defense, a copy of which is included as Exhibit A.
10. BAES's statements to the Secretary of Defense in the November 18, 2000 letter regarding BAES's anti-corruption compliance measures were also transmitted directly and indirectly to the U.S. Department of Justice.
11. In or about November 2000, BAES did not have and was not committed to the practices and standards represented to the U.S. government and referred to in paragraph 9 above and Exhibit A.

### **Additional False Statements to the Defense Department**

12. On May 28, 2002, BAES made statements in correspondence to the then-U.S. Under Secretary of Defense that BAES had complied with the spirit and the letter of the statements made in BAES's November 18, 2000 letter.

13. Contrary to its previous assertions, in May 2002, BAES still had not created and was not intending to create sufficient mechanisms for its non-U.S. business to ensure compliance with the FCPA and laws implementing the OECD Convention.

14. Although BAES introduced enhanced compliance policies and procedures in 2001, such policies and procedures were not of themselves sufficient to satisfy all the statements made to the Defense Department. BAES therefore failed to honor certain of its undertakings made in the November 18, 2000 letter within the agreed periods and such undertakings remained unfulfilled at the time of the May 28, 2002 correspondence.

15. If, in May 2002, BAES had communicated its actual and intended FCPA compliance policies and procedures, the Defense Department and the Department of Justice could have commissioned further investigations and could have imposed appropriate remedies to satisfy their concerns.

16. BAES's false statements and failure to honor certain of its undertakings impaired and impeded the activities and lawful functions of the Defense Department.

#### **False Statements to the U.S. Department of State**

17. The U.S. Department of State (the "State Department") is part of the Executive Branch of the U.S. government and is the lead U.S. foreign affairs agency that advances U.S. objectives and interests in the world in developing and implementing the President's foreign policy.

#### **Arms Export Control Act Statutory Background**

18. The President has delegated authority to the State Department to review and grant export licenses for the transfer or retransfer of controlled U.S. technology identified on the United States Munitions List ("USML"). The export of USML defense materials is governed by the AECA and the ITAR. While 22 U.S.C. § 2778(g)(3) provides that the President has the power to approve an export license, the President, through Executive

Order 11958 and other regulations, including 22 C.F.R. § 120.1, has delegated the power to the State Department. Within the State Department, the Directorate of Defense Trade Controls (“DDTC”) reviews the suitability of applications and can grant or reject the license application.

19. As part of the application process for an export license, pursuant to 22 C.F.R. § 130.9, each applicant is required to inform DDTC whether the applicant or its vendors have paid, or offered or agreed to pay fees or commissions in an aggregate amount of \$100,000 or more for the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles. Additionally, all applicants and vendors have an ongoing obligation to correct any false statements or omissions on previous arms export license applications.

20. DDTC is also required to conduct a review pursuant to Section 38(g)(3) of the AECA (22 U.S.C. § 2778(g)(3)) to determine if the applicant is prohibited from receiving an export license. The reasons to prohibit an entity from receiving an export license for USML components include if there is reasonable cause to believe that the requesting entity has violated particular statutes, including the FCPA or the AECA.

**False Statements by BAES in Arms Export License Applications**

21. Beginning in 1993, BAES knowingly and willfully failed to identify commissions paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles, in violation of its legal obligations under the AECA to disclose these commissions to the DDTC. BAES made (or caused to be made) these false, inaccurate or incomplete statements to the State Department both directly and indirectly through third parties. BAES failed to identify the commission payments in order to keep the fact and scope of its external advisors from public disclosure.

22. With respect to the lease of Gripen fighter jets to the Czech Republic and Hungary, discussed more fully below, and sales of other defense materials to other countries, BAES caused the filing, by the applicant, of false applications for export licenses of USML defense materials and the making of false statements to DDTC by failing to inform the applicant or DDTC of commissions paid as aforesaid.

23. If the State Department knew of the payments and undisclosed commissions, they could have considered that in deciding whether the export licenses should have been granted and the lease of the Gripen fighter jets to the Czech Republic and Hungary and sales of other defense articles might not have proceeded.

24. BAES's false, inaccurate and incomplete statements impaired and impeded the activities and lawful functions of the State Department.

**BAES's Acts Demonstrating the Falsity, Inaccuracy and Incompleteness of BAES's Statements to the U.S. Government and BAES's Failure to Honor Undertakings to the U.S. Government**

25. Both before and after BAES made the foregoing representations and undertakings, BAES agreed to make payments to third parties that were not subject to the degree of scrutiny and review required by the FCPA. Despite BAES's foregoing representations and undertakings, its systems of internal controls did not comply with the requirements of the FCPA.

**BAES's Structure of Shell Companies and Intermediaries**

26. After May and November 2001, BAES regularly retained what it referred to as "marketing advisors" to assist in securing sales of defense articles. In that connection, BAES made substantial payments which were not subjected to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.

27. BAES took steps to conceal its relationships with certain such advisors and its undisclosed payments to them. For example, BAES contracted with and paid certain of its advisors through various offshore shell entities beneficially owned by BAES. BAES also encouraged certain of its advisors to establish their own offshore shell entities to receive payments while disguising the origins and recipients of such payments. In connection with certain sales of defense articles, BAES retained and paid the same marketing advisor both using the offshore structure and without using the offshore structure.

28. Although instructions were given within BAES during 2001 to discontinue the use of offshore structures in connection with marketing advisors, such instructions were not of themselves sufficient to satisfy the foregoing representations and undertakings made to the U.S. government.

29. After May and November 2001, BAES made payments to certain advisors through offshore shell companies even though in certain situations there was a high probability that part of the payments would be used in order to ensure that BAES was favored in the foreign government decisions regarding the sales of defense articles. BAES made these payments, ostensibly for advice, through several different routes and, consequently, they were not subjected to the type of internal scrutiny and review that BAES had represented that they would be subject to in the foregoing statements made to the U.S. government. BAES established one entity in the British Virgin Islands (the "Offshore Entity") to conceal BAES's marketing advisor relationships, including who the agent 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 agency relationships; and to assist advisors in avoiding tax liability for payments from BAES.

30. After May and November 2001, BAES maintained inadequate information related to who its advisors were and what work the advisors were doing to advance the business

interests of BAES, and at times avoided communicating with its advisors in writing.

BAES also at times obfuscated and failed to record the key reasons for the suitability of an advisor or to document any work performed by the advisor. Often, the contracts with advisors and other relevant materials were maintained by secretive legal trusts in offshore locations. BAES's conduct thus served to conceal the existence of certain of its payments to and through its advisors.

31. After May and November 2001 in most cases, BAES did not take adequate steps to ensure that its marketing advisors' and agents' conduct complied with the standards of the FCPA. FCPA due diligence and compliance were significantly neglected by BAES. In many instances, BAES possessed no adequate evidence that its advisors performed legitimate activities to justify the receipt of substantial payments. In other cases, the material that was purportedly produced by the advisors was not useful to BAES, but instead was designed to give the appearance that legitimate services were being provided for the significant sums paid.

32. After May and November 2001, BAES made payments of over £135,000,000 and over \$14,000,000 to certain of its marketing advisors and agents through the Offshore Entity. BAES did not subject these payments to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.

**Undisclosed Payments Associated With the Lease of Gripen Fighters to the Czech Republic and Hungary**

33. Beginning in the late 1990s, BAES provided marketing services in connection with the lease by the government of Sweden of fighter aircraft to the Czech Republic and Hungary.

34. BAES made payments of more than £19,000,000 to entities associated with an individual, "Person A," at least some of which were in connection with the solicitation,

promotion or otherwise to secure the conclusion of the leases of Gripen fighter jets as aforementioned. BAES made these payments even though there was a high probability that part of the payments would be used in the tender process to favor BAES. BAES made these payments, ostensibly for advice, through several different routes and, consequently, they were not subjected to the type of internal scrutiny and review that BAES had represented that they would be subject to in the foregoing statements made to the U.S. government.

#### Czech Republic - Gripen Fighter Jets

35. In May 1999, the government of the Czech Republic contacted the governments of the U.S., U.K., France and Sweden in relation to bids by major defense contractors to supply the Czech Republic with fighter aircraft. On May 25, 2001, U.S. and various European defense contractors withdrew from the tender process based on concerns about the integrity of the process. On May 31, 2001, the Czech Ministry of Defense accepted the tender offer from the government of Sweden for the sale of Gripen fighters manufactured by a Swedish company. However, continued concerns about the integrity of the process contributed to the failed passage through the Czech Republic legislature of the finance bill which was funding the purchase. After the collapse of the purchase deal, the Czech government invited tenders to lease fighter aircraft. Eventually, the Czech government decided to lease 14 Gripen fighter jets from the government of Sweden.

36. The relevant portions of the payments to entities associated with Person A were not publicly disclosed as related to the lease of the Gripen fighter jets to the Czech Republic. Further, BAES did not subject the payments to entities associated with Person A to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.

37. The Gripen fighter jets that were leased to the Czech Republic contained U.S. controlled defense materials, for which the lessor (the government of Sweden) was required under U.S. law to apply for and obtain an arms export license from the U.S. Department of State. The payments to entities associated with Person A were not disclosed in the applications made for these licenses because BAES did not inform the applicant of the existence of the payments.

#### Hungary - Gripen Fighter Jets

38. In 1999, the Hungarian Cabinet published a tender to purchase used fighter aircraft. In June 2001, the Hungarian government announced that a U.S. defense contractor had won the tender. A few days later, the Hungarian government reversed the decision and chose instead to lease Gripen fighter jets from the Swedish government. On February 3, 2003, Hungary agreed to lease 14 Gripen fighter jets from the Swedish government.

39. The relevant portions of the payments to entities associated with Person A were not publicly disclosed as related to the lease of the Gripen fighter jets to Hungary. Further, BAES did not subject the payments to entities associated with Person A to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.

40. The Gripen fighter jets leased to Hungary contained U.S. controlled defense materials, for which the lessor (the government of Sweden) was required under U.S. law to apply for and obtain an arms export license from the U.S. Department of State. The payments to entities associated with Person A were not disclosed in the applications made for these licenses because BAES did not inform the applicant of the existence of the payments.

**Undisclosed Payments Associated with the Sale of Tornado Aircraft and Other  
Defense Materials to the Kingdom of Saudi Arabia**

41. Beginning in the mid-1980s, BAES began serving as the prime contractor to the U.K. government following the conclusion of a Formal Understanding between the U.K. and the Kingdom of Saudi Arabia (“KSA”). Under the Formal Understanding and related documents, BAES sold to the U.K. government, which then sold to KSA, several Tornado and Hawk aircraft, along with other military hardware, training and services. Using the same contractual structure, further Tornado aircraft were sold to KSA in 1998, and additional equipment, parts and services have continued to be sold to KSA since then.

Collectively, these arrangements will be referred to herein as the “KSA Fighter Deals.”

42. Underlying the Formal Understanding and related framework, the U.K., KSA and BAES had certain operational written agreements for specific component provisions of the KSA Fighter Deals. The written agreements under the Formal Understanding and related framework, therefore, were divided into numerous Letters of Offer and Acceptance (“LOAs”) that were added and revised over the years by the parties. The LOAs identified the principal types of expenditures, work to be undertaken, services to be provided, prices and terms and conditions.

43. At least one of the LOAs identified “support services” that BAES was obliged to provide. In the discharge of what it regarded as its obligations under the relevant LOA, BAE provided substantial benefits to one KSA public official, who was in a position of influence regarding the KSA Fighter Deals (the “KSA Official”), and to the KSA Official’s associates. BAES provided these benefits through various payment mechanisms both in the territorial jurisdiction of the U.S. and elsewhere. BAES did not subject these payments and benefits to the type of internal scrutiny and review that BAES had represented it would subject them to in the foregoing statements to the U.S. government.

44. BAES provided support services to that KSA Official while in the territory of the U.S. BAES provided certain of those support services through travel agents retained by a BAES employee, who was also a trusted confidant of the KSA Official. These benefits, which were provided in the U.S. and elsewhere, included the purchase of travel and accommodations, security services, real estate, automobiles and personal items.

45. BAES undertook no or no adequate review or verification of benefits provided to the KSA Official, including the review or verification of over \$5,000,000 of invoices submitted by the BAES employee from May 2001 to early 2002, to determine whether those invoiced expenses were costs which met the standards of review to which BAES was committed by virtue of the foregoing statements made to the U.S. government. BAES's provision of these benefits, and its lack of diligence and review in connection with such benefits, constituted a failure to comply with the foregoing representations made to the Department of Defense.

46. BAES also used intermediaries and shell entities to conceal payments to certain advisors who were assisting in the solicitation, promotion and otherwise endeavoring to secure the conclusion or maintenance of the KSA Fighter Deals.

47. After May and November 2001, and until early 2002, in connection with the KSA Fighter Deals, BAES agreed to transfer sums totaling more than £10,000,000 and more than \$9,000,000 to a bank account in Switzerland controlled by an intermediary. BAES was aware that there was a high probability that the intermediary would transfer part of these payments to the KSA Official. BAES undertook no or no adequate review or verification of the purpose of these payments, and therefore BAES failed to comply with the foregoing representations made to the Department of Defense.

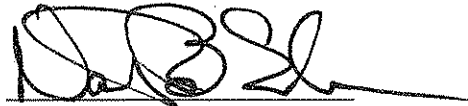
**Gain to BAES from False Statements to the U.S. Government**

48. The gain to BAES from the various false statements to the U.S. government exceeded \$200,000,000.

All in violation of Title 18, United States Code, Section 371

PAUL E. PELLETIER  
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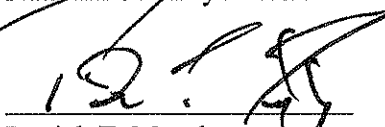
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# EXHIBIT A

**BAE SYSTEMS**

*Chief Executive*

Our ref. JFW/DS/2126

16 November 2000

Honorable William S Cohen  
Secretary of Defense  
Department of Defense  
1000 Defense Pentagon  
Washington D.C  
20301-1000  
USA

Privileged and Confidential  
May not be disclosed under FOIA



I am pleased to reaffirm BAE SYSTEMS plc's commitment to adhering to the highest ethical standards in the conduct of its business throughout the world. We have recently undertaken significant new steps in this regard and I am delighted to share them with you.

Our affiliates in the United States -- BAE SYSTEMS Holdings, Inc., BAE SYSTEMS, North America, and entities wholly owned or controlled by them (collectively "BAE US Affiliates") -- are, and have long been, strongly committed to operating in full compliance with the Foreign Corrupt Practices Act ("FCPA"). As Chief Executive Officer of BAE SYSTEMS plc, I commit that the BAE US Affiliates will not knowingly offer, pay, promise to pay, or authorize the payment of anything of value, directly or indirectly, to a foreign public official for the purpose of influencing any official act or omission in order to obtain or retain business in violation of the FCPA. The BAE US Affiliates will not use BAE SYSTEMS plc, a non-US affiliate or any third party to undertake such activities on their behalf.

In addition, I am pleased to inform you that our Board of Directors recently voted to adopt a proposal for all of the Company's non-US businesses to comply with the anti-bribery provisions of the FCPA, as if those provisions applied to us. The Board resolved that because of "the size of the Company's presence in the US following the MES US merger, the importance of the US to the Company's long term strategic objectives and the prospective convergence of the English law of corruption with the FCPA, it was agreed that the Company should develop an FCPA compliance program for its non-US businesses to operate as if these businesses were, in fact, subject to the FCPA."

We are also aware of the recent signing and ratification of the Convention on Combating Bribery of Foreign Public Officials In International Business Transactions ("OECD Anti-Bribery Convention") by member states of the Organisation for Economic Co-operation and Development, including the United Kingdom and the United States, and of the importance of full compliance with these provisions.

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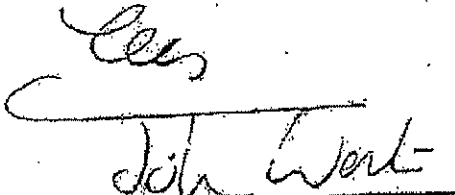
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Accordingly, I confirm that BAE SYSTEMS plc and other non-US entities wholly owned or controlled by it ("BAE Affiliates") are committed to conducting business in compliance with the anti-bribery standards in the OECD Anti-Bribery Convention. In order to raise the level of awareness of our BAE Affiliates with regard to these obligations, I commit that BAE Affiliates will use best efforts to adopt within six months, and in any event within twelve months, compliance programs to ensure that the BAE Affiliates meet these standards. These programs will include training for employees, internal procedures and controls concerning payments to government officials, and the use of agents, consultants and other third parties, and a program of internal audits.

BAE SYSTEMS plc is committed to exemplary business practices and the highest ethical standards. We believe that these steps will enhance our ability to fulfil those goals.

Yours sincerely,

  
JOHN WESTON

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May not be disclosed under FOIA