

The Novartis resolutions of 2020

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The most significant enforcement cases involving a Basel group in recent years concerned Novartis. In June 2020 Novartis AG and several current and former subsidiaries reached resolutions with the US Department of Justice and the Securities and Exchange Commission concerning the FCPA. According to the official announcements, the matters related to conduct by subsidiaries in Greece, South Korea and Vietnam, as well as by Alcon, the eye care business that Novartis had spun off in 2019, in Vietnam. Novartis Hellas, the Greek subsidiary, and Alcon Pte Ltd entered into deferred prosecution agreements with the Department of Justice. The total amount payable to the American authorities was stated as roughly 345 million US dollars. Novartis stated that the conduct had occurred under former management and that it had strengthened its compliance programme.¹

In July 2020 Novartis Pharmaceuticals Corporation, the American subsidiary, agreed to pay about 678 million US dollars to settle civil and criminal claims under the False Claims Act and related laws concerning speaker programmes. The authorities had alleged that the company had used speaker events, some of which took place in restaurants and involved little educational content, to induce doctors to prescribe its medicines. In the same month the company agreed to pay a further amount of about 51 million US dollars to resolve allegations concerning donations to charitable foundations that covered patients' co-payments. Novartis accepted a corporate integrity agreement with the Office of Inspector General of the Department of Health and Human Services. The company described these matters as legacy issues.²

In Greece the matter took a political turn. After a parliamentary committee had examined allegations in 2018 that politicians had received payments, the proceedings against most of the persons named were closed, according to public reports. Investigations into the role of witnesses and prosecutors

in the original allegations followed. These Greek proceedings concerned questions of domestic politics and procedure that are beyond the scope of this book. They show, however, how a compliance case in one country can become a matter of public controversy that lasts for years after the corporate resolution. The account here is limited to what the official sources in the United States and the company itself have published.³

The Novartis cases illustrate several features of modern enforcement. They combined anti-bribery law in foreign markets with healthcare fraud law in the domestic American market and involved both criminal and civil proceedings. They also showed the importance of successor liability: Alcon was already an independent listed company when the resolution was reached, but conduct that had occurred during its time within the Novartis group still had to be resolved. For transactions such as spin-offs and acquisitions, which Chapter I and Chapter II of this Part have discussed, compliance due diligence has since become a standard element. Buyers and spun-off companies seek indemnities and want to know which investigations are pending when the transaction is concluded.⁴

1 Notes

1. US Department of Justice, press release of 25 June 2020, "Novartis AG and Subsidiaries to Pay More Than \$233 Million to Resolve Foreign Corrupt Practices Act Charges"; SEC, press release of 25 June 2020 on the settled order against Novartis AG; Novartis AG, media release of 25 June 2020. Figures to be verified. ↩
2. US Department of Justice, Southern District of New York, press release of 1 July 2020 on the settlement with Novartis Pharmaceuticals Corporation concerning speaker programmes; US Department of Justice, press release of 1 July 2020 on the settlement concerning co-payment foundations; Novartis AG, Annual Report 2020. Figures to be verified. ↩
3. On the Greek parliamentary and judicial proceedings concerning the allegations, see reporting by international news agencies and the publications of the Hellenic Parliament. The procedural situation is complex and has evolved over time. Status to be verified. ↩

4. On successor liability in FCPA matters, see the FCPA Resource Guide (2nd edition, 2020), chapter on mergers and acquisitions; on the Alcon spin-off of April 2019, see Chapter I of this Part. To be verified. ↩

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