

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA)
)
 v.)
) **No. 0:16-cr-60294-JIC**
EMBRAER S.A.,)
)
 Defendant.)

GOVERNMENT’S MOTION TO DISMISS INFORMATION

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States of America, by and through undersigned counsel, hereby moves to dismiss the Information filed in the above-captioned case against defendant Embraer S.A. (hereinafter “Embraer”). In support of this motion, the Government states as follows:

1. On October 24, 2016, the Government filed an Information charging Embraer with conspiring to violate the anti-bribery and books and records provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”), 15 U.S.C. §§ 78dd-1, 78m(b)(2)(A), 78m(b)(5), and 78ff(a) in violation of 18 U.S.C. § 371, and with violating the internal controls provision of the FCPA, 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5), and 78ff(a) and 18 U.S.C. § 2. Dkt. No. 1.

2. On October 24, 2016, the Government also filed a deferred prosecution agreement (“DPA”) in this case, in which the Government recommended that the prosecution of Embraer be deferred for a period of three years. Dkt. No. 2. Among other obligations, the DPA required Embraer to cooperate with the Government’s investigation, to implement an enhanced compliance program, and to engage an independent compliance monitor for a period of three years. Embraer was also required to pay a criminal monetary penalty of \$107,285,090.

3. The DPA provided that the Government would not continue the criminal prosecution against Embraer and would move to dismiss the Information within six months of the expiration of the DPA, if Embraer fully complied with all of its obligations. Dkt. No. 2, DPA ¶ 15. The DPA expired on or about May 22, 2020.

4. Before that date, on or about April 15, 2020, Embraer's monitor certified, pursuant to paragraph 19 of DPA Attachment D, that Embraer's compliance program, including its policies and procedures, is reasonably designed and implemented to prevent and detect violations of the anti-corruption laws.

5. On or about June 22, 2020, Embraer's Chief Executive Officer and Chief Financial Officer certified to the Government that Embraer has met its disclosure obligations pursuant to paragraph 6 of the DPA.

6. Based on the information known to the Government, Embraer has fully met the obligations under the DPA, including full cooperation with the Government, implementation of an enhanced compliance program and procedures, and satisfaction of the terms of the provisions regarding the independent compliance monitorship. In addition, Embraer has made timely payment of the \$107,285,090 monetary penalty.

7. Because Embraer has fully complied with all of its obligations under the DPA, the Government has determined that dismissal of the Information with prejudice is appropriate. *See* Dkt. No. 2, DPA ¶ 15. The Government has conferred with counsel for Embraer, who concurs that dismissal is appropriate at this time.

For the foregoing reasons, the Government requests that this Motion to Dismiss be granted.

Respectfully submitted,

DANIEL KAHN
Acting Chief, Fraud Section
Criminal Division
United States Department of Justice

By: /s/ Lorinda Laryea

LORINDA LARYEA
Assistant Chief, Fraud Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20005
Tel. (202) 353-3439
Lorinda.Laryea@usdoj.gov
Court ID # A5502385

November 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was filed and served electronically using the Court's CM/ECF system on this 24th day of November, 2020.

/s/ Lorinda Laryea

Lorinda Laryea
Assistant Chief, Fraud Section
Criminal Division
U.S. Department of Justice