

## **TRUMP ADMINISTRATION DOJ AND DUTCH AUTHORITIES EXACT NEARLY \$1BILLION FROM GLOBAL TELECOM COMPANIES PAY IN FCPA RESOLUTION**

On September 21, the U.S. Department of Justice ("DOJ") once again reiterated its commitment to cracking down on international bribery in one of the largest Foreign Corrupt Practices Act ("FCPA") resolutions in history. Putting to rest the notion that the new Administration of President Trump might not actively enforce the FCPA, the Justice Department, working with the Internal Revenue Service ("IRS") and Department of Homeland Security ("DHS") extracted a guilty plea, deferred prosecution agreement and nearly \$1 billion in fines, forfeiture and fees from Swedish-headquartered Telia Company AB ("Telia") and its Uzbek subsidiary Coscom LLC ("Coscom").

Specifically, the DOJ filed criminal charges against Telia, whose securities traded publicly in New York from 2002 until 2007, and Coscom for conspiring to violate the FCPA by paying more than \$331 million in bribes to a government official in Uzbekistan. In connection with these same charges, Coscom pled guilty in federal court and Telia entered into a deferred prosecution agreement ("DPA") with the U.S. government. Pursuant to the DPA, Telia explicitly admitted to participating in the charged conspiracy. In related proceedings, Telia reached a settlement with the U.S. Securities and Exchange Commission ("SEC") and the Public Prosecution Service of the Netherlands ("PPS")<sup>1</sup>.

The aggregate fines, penalties and forfeiture amounts are staggering. Telia will pay a total criminal penalty of \$274,603,972 to the United States, which includes a \$500,000 criminal fine and \$40 million in criminal forfeiture that Telia agreed to pay on behalf of Coscom. (Telia also agreed to implement rigorous internal controls and cooperate fully with the government's ongoing investigation, including its investigation of individuals.) Under the terms of its civil resolution with the SEC, Telia agreed to pay over \$457 million in disgorgement of profits and prejudgment interest. Additionally, Telia agreed to pay the PPS a criminal penalty of \$274 million, which, together with the criminal penalty paid to the United States, yields a total criminal penalties of nearly \$550 million. All told, the total criminal and regulatory penalties to be paid by Telia is just short of \$1 Billion.

<sup>1</sup> <https://www.justice.gov/usao-sdny/press-release/file/997851/download>

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According to documents filed by DOJ in U.S. federal courts in connection with the charges and guilty plea, between 2007 and 2012, Telia and Coscom, through a number of executives, employees, and affiliated entities, allegedly paid more than \$331 million in bribes to illegally obtain telecommunications business in Uzbekistan. The scheme as described by DOJ was relatively straightforward, with bribes being paid to an Uzbek government official who was a close relative of a high-ranking government official and who exercised influence over Uzbek telecommunications industry regulators. Telia and Coscom are alleged to have structured and concealed the bribes through various payments to a shell company that certain Telia and Coscom management knew was beneficially owned by the foreign official. According to DOJ, company officials paid these bribes on multiple occasions over a period of nearly five years so that Telia could enter the Uzbek market and Coscom could gain valuable telecom assets and continue operating in Uzbekistan. These bribery proceeds – totaling more than \$331 million – were then allegedly laundered through accounts held in various countries around the world, being transmitted at various points through financial institutions in the United States.

It is worth noting that in assessing these penalties and resolution, the DOJ and SEC credited the entities for their efforts at remedial measures and for their cooperation with the investigations. However, the companies did not receive more significant mitigation credit given that they did not voluntarily disclose their wrongdoing to the Justice Department. In April 2016, and building on its September 2015 guidance related to individual accountability, and as part of an effort to promote both transparency and accountability, the DOJ launched a program in the Department's FCPA Unit, which intended to provide guidance to prosecutors for corporate resolutions in FCPA cases, and at the same time to motivate companies to voluntarily self-disclose FCPA-related misconduct, fully cooperate with the Fraud Section, and, where appropriate, remediate flaws in their controls and compliance programs. The pilot program set forth what the Justice Department meant by "voluntary self-disclosure," "full cooperation," and "remediation," and made clear the credit available to companies that in fact voluntarily self-disclose FCPA misconduct, fully cooperate with investigations, and remediate.

The Telia/Coscom guilty plea, deferred prosecution and massive penalties are not the first resolutions of bribery by a

major international telecommunications provider in Uzbekistan. On February 18, 2016, Amsterdam-based VimpelCom Limited and its Uzbek subsidiary, Unitel LLC, also entered into resolutions with the United States and admitted to a conspiracy to make more than \$114 million in bribery payments to the same Uzbek government official between 2006 and 2012. Looking at the Telia/Coscom and VimpelCom/Unitel cases together, the U.S. government's investigations have resulted in more than \$1.76 billion in global fines and disgorgement, including more than \$500 million in criminal penalties to the United States. Likewise, the United States continues to use its forfeiture tools globally. It has filed civil complaints seeking the forfeiture of more than \$850 million held in bank accounts in Switzerland, Belgium, Luxembourg, and Ireland, which constitute bribe payments (or connected money laundering funds) made by VimpelCom, Telia, and a third telecommunications company to the Uzbek official.

Finally, this significant development again demonstrates the increasing cooperation among international law enforcement agencies. In addition to the involvement of multiple U.S. law enforcement and investigative agencies, regulatory, banking and enforcement authorities from Sweden, Austria, Belgium, Bermuda, the British Virgin Islands, Cyprus, France, Hong Kong, Ireland, the Isle of Man, Latvia, Luxembourg, Norway, the Isle of Man, Spain, Switzerland and the United Kingdom all assisted in the investigation.

## **WILL INDIVIDUALS BE IN THE CROSS-HAIRS TOO?**

The Telia case, in its current posture, again demonstrates that U.S. regulatory authorities won't hesitate to enforce criminal and civil penalties against global corporate entities. Documents filed in the U.S. courts, and recent press reports, make clear that DOJ believes that senior executives, members of the Board of Directors, management and a number of employees were directly involved in multiple aspects of the conspiracy and bribery scheme. Thus, it leaves open the important question of how the DOJ will treat individuals potentially involved in the illegal conduct.

In a speech on September 14, 2017, U.S. Department of Justice Deputy Attorney General Rod Rosenstein suggested that the Department would continue to look to prosecute individuals when appropriate. He indicated that the so-called "Yates Memorandum," -- the DOJ policy that, among other things, emphasized that the DOJ stressed individual

accountability related to corporate wrongdoing – currently is under review and that he may announce new changes in the near future. Likewise, U.S. Attorney General Jeff Sessions earlier this year highlighted the concerns about enforcing criminal sanctions against corporate entities but not the individual actors, noting "Is it just to punish a corporation for wrongdoing that only one member the corporation did"?

## **LESSONS LEARNED FROM THE TELIA CASE**

The Telia/Coscom case, like VimpelCom/Unitel resolution last year, serves as a stark reminder that corporate entities around the world must take steps to ensure its anti-bribery and anti-corruption compliance programs are not just robust on paper, but are being adhered to and are kept current with the present risks faced by the company's business, which can change year to year. This puts a premium on conducting intelligent and informed annual risk assessments and making periodic adjustments to the compliance program, systems and controls to ensure that the risks identified are mitigated within the company's risk tolerance.

At a base level, companies should codify a written FCPA policy, and if there is one in place already, review it to be certain it captures potential corporate risks. Likewise, rolling out comprehensive FCPA training – tailored for specific personnel in particular positions and geographies – is essential. Companies also should consider regular certifications of FCPA compliance. Companies should carefully examine internal controls, and be clear as to who within the corporate structure has responsibility for enforcing the anti-corruption policies. Companies also should pay close attention to the use of third parties and agents in conducting business. While corruption is present in every country worldwide, it is more prevalent in certain regions and industries, and companies doing business in those places should take particular care in scrutinizing transactions and activities. Finally, companies need to take steps to ensure corporate structures, such as foreign-operating joint ventures and subsidiaries, are included in these anti-corruption efforts.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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