
September 28, 2017

Telia Agrees to \$965 Million Global Foreign Bribery Resolution

Introduction

On September 21, 2017, U.S. authorities announced the first major Foreign Corrupt Practices Act settlement under the Trump administration—a \$965 million global resolution with a Sweden-based international telecommunications company, Telia Company AB, and its indirectly owned subsidiary in Uzbekistan, Coscom LLC. Through separate agreements with the Department of Justice, the Securities and Exchange Commission and the Public Prosecution Service of the Netherlands (Openbaar Ministerie or “OM”), Telia resolved allegations that it paid more than \$331 million in bribes to Gulnara Karimova, the daughter of the late Uzbek President Islam Karimov, in order to expand into the Uzbek telecommunications market.

Telia is the second major settlement resulting from a sprawling investigation into bribe payments made to Karimova to obtain business in Uzbekistan. More than a year ago, in February 2016, Amsterdam-based VimpelCom Limited and its wholly owned Uzbek subsidiary, Unitel LLC, resolved a similar set of allegations through a \$795 million global settlement.¹

Despite the magnitude of the Telia settlement, which is the third-largest global resolution of charges to date under the FCPA, it would be premature to conclude that FCPA enforcement remains a high priority under the Trump administration. The settlement does reflect, however, the continued collaboration by U.S. authorities with their foreign counterparts to combat international bribery.

Terms of the Settlement

As part of its resolution, Telia, which was a U.S. issuer during the relevant time period, agreed to pay a \$548.6 million criminal penalty to the DOJ (including a \$40 million criminal forfeiture payment), a \$274 million criminal penalty to the Dutch OM, and a \$457 million payment for disgorgement of profits and prejudgment interest to the SEC.²

Telia signed a three-year deferred prosecution agreement with the DOJ in connection with a one-count criminal information alleging a conspiracy to violate the FCPA’s anti-bribery provisions. Coscom separately pleaded guilty to a conspiracy to violate the FCPA’s anti-bribery provisions. The SEC, in its cease-and-desist order, charged Telia with violating the FCPA’s anti-bribery and internal accounting controls provisions. The agreements with the DOJ and SEC provide that Telia will implement an improved compliance program and internal controls, as well as fully cooperate with the agencies’ ongoing investigations. No monitor was imposed on Telia.

The day after Telia's resolution became public, the Swedish Prosecution Authority (Åklagarmyndigheten) announced its decision to prosecute a number of former Telia employees and institute disgorgement proceedings against Telia.³ The three individuals who were charged include Telia's former CEO, Lars Nyberg, and Telia's former business head for Eurasia, Tero Kivisaari.

Factual Background

The DOJ and SEC asserted jurisdiction over Telia because Telia was an issuer of publicly traded securities in the U.S. from 2002 until September 5, 2007, when it delisted. In addition, the DOJ alleged that Coscom furthered the corruption scheme, in part, through its holding company, TeliaSonera Uzbek Telecom Holding B.V., which utilized U.S. correspondent banks on multiple occasions to transfer improper payments to Takilant Ltd., a shell company in Gibraltar beneficially owned by Karimova. The DOJ also alleged that Telia management and agents used U.S.-based e-mail accounts to further the corrupt scheme, and also sent an e-mail in furtherance of the conspiracy while in U.S. territory. Finally, some of these agents were U.S. citizens and companies, and would thus qualify as domestic concerns under the FCPA.

Overall, Telia is alleged to have made more than \$331 million in bribe payments to Takilant in exchange for Karimova's influence over decisions made by the Uzbek Agency for Communications and Information ("UzACI"), which is responsible for issuing telecommunications licenses, frequencies, channels and number blocks. Karimova, once slated to succeed her father to the presidency, served in several diplomatic capacities between 2006 and 2012, including Deputy Foreign Minister for International Cooperation in Cultural and Humanitarian Affairs, Uzbekistan's Ambassador to Spain and its Representative to the United Nations in Geneva, Switzerland.⁴ The SEC alleged that Telia senior management understood that it was necessary to negotiate with Karimova in order to acquire Coscom, through which Telia would operate within the Uzbek telecommunications market.⁵

Accordingly, the companies' managers devised and approved improper payments to Karimova in the following ways, among others:

- approving a \$2 million cash payment to Karimova's representative;
- entering into a share purchase agreement with Takilant through which Takilant would receive the right to purchase a 26% ownership interest in Coscom's holding company, as well as the right to sell back that interest at a substantial profit, in exchange for the facilitation of Telia's acquisition of certain 3G frequencies;
- paying \$9.2 million to Takilant to acquire number series and network codes;

- entering into agreements to pay \$15 million to a third-party vendor in exchange for the vendor assuming the debt of a Swiss company owned by Karimova as a *quid pro quo* for Coscom obtaining 4G frequencies, and obscuring the payment as a fabricated consulting services agreement; and
- entering into other sham consulting contracts with Takilant.⁶

The DOJ and SEC further alleged that members of Telia management recognized, even before it acquired Coscom, that the company's relationship with Karimova and Takilant could be problematic from an anti-corruption perspective. During a 2007 board meeting to discuss the acquisition, for example, Telia's management avoided direct references to the company's potential partnership with Karimova. Subsequently, Telia management received advice from outside counsel to remove Coscom from Telia's U.S. structure to avoid potential violations of the FCPA.

The DOJ calculated Telia's fine range under the United States Sentencing Guidelines to be \$731.47 million to \$1.46 billion. However, Telia received an aggregate 25% discount off the bottom of that range for cooperation, which included a thorough internal investigation, regular factual presentations to the DOJ, voluntarily making former employees available for interviews with the DOJ, and producing documents to the DOJ while complying with relevant foreign data privacy and security laws. The DOJ also noted that the 25% discount takes into account the extensive remedial measures implemented by Telia, including terminating employees and supervisors involved in the misconduct, including several members of the company's board of directors; enhancing its compliance program and internal controls; instituting a comprehensive anti-corruption program; and revamping its corporate governance structure. In contrast to the VimpelCom resolution, the DOJ did not impose a compliance monitor on Telia, citing the remedial measures already undertaken.

Key Takeaways and Analysis

Based on President Trump's prior comments about the FCPA, legal commentators have questioned whether anti-bribery prosecution would remain a high priority for U.S. authorities under the new administration. The Telia settlement alone, however, does not shed further light on this question, as this settlement is part of a large-scale investigation that began under the prior administration. Indeed, U.S. and Dutch authorities reportedly presented Telia with their initial settlement offer of \$1.4 billion in September 2016.⁷ Thus, whether the Trump administration continues to vigorously enforce the FCPA remains to be seen. That said, in a DOJ press release accompanying the Telia resolution, Acting Assistant Attorney General Kenneth A. Blanco stated that the resolution "underscores the Department's continued and unwavering commitment to robust FCPA and white-collar criminal enforcement."⁸ Perhaps more tellingly, SEC Chairman Jay Clayton stated recently that "increased enforcement efforts in other jurisdictions over the last five years had 'changed the dynamic' of [FCPA] investigations and made US enforcement more appropriate now that such investigations were no longer a 'unilateral exercise.'"⁹

The Telia deferred prosecution agreement also reflects the DOJ's continuing adherence to the mitigation factors set forth in the FCPA Pilot Program, which was launched in April 2016 and continued in March 2017 pending a review of its impact.¹⁰

Finally, the Telia settlement demonstrates the continued importance of foreign authorities' anti-corruption enforcement efforts. Acting Assistant Attorney General Blanco noted that the current agreement "demonstrates the Department's cooperative posture with its foreign counterparts to stamp out international corruption and to reach fair, appropriate and coordinated resolutions."¹¹ The DOJ explicitly recognized its international counterparts, expressing gratitude to law enforcement officials within the Dutch OM, the Swedish Prosecution Authority, the Office of the Attorney General in Switzerland, and officials in Austria, Belgium, Cyprus, France, Ireland, the Isle of Man, Latvia, Luxembourg, Norway, Switzerland and the United Kingdom.¹²

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- ¹ See Paul, Weiss Client Memorandum, “VimpelCom Agrees to Landmark \$795 Million FCPA Resolution” (Feb. 26, 2016), available [here](#).
- ² The DOJ credited Telia with the penalty enforced by the OM, and the SEC credited Telia with the forfeiture payment enforced by the DOJ. The SEC also agreed to credit Telia with any confiscation or forfeiture payments to be made in related proceedings by the OM or Swedish authorities, up to \$208.5 million. See Press Release, Dep’t of Justice, Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than \$965 Million for Corrupt Payments in Uzbekistan; Companies Agree to Coordinated Resolution between the Department of Justice, U.S. Securities and Exchange Commission (SEC) and the Kingdom of the Netherlands Representing the Second Major Resolution Involving Corruption by Telecom Companies in Uzbekistan (Sept. 21, 2017), <https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965>.
- ³ Press Release, Telia Company, Disgorgement Claims from the Swedish Prosecutor (Sept. 22, 2017), <https://www.teliacompany.com/en/news/press-releases/2017/9/disgorgement-claims-from-the-swedish-prosecutor/>. The disgorgement that is ultimately owed to the Swedish Prosecution Authority will be deducted from Telia’s disgorgement payment to the SEC.
- ⁴ See Paul, Weiss Client Memorandum, *supra* note 1.
- ⁵ Telia Co. AB, Exchange Act Release No. 81669, <https://www.sec.gov/litigation/admin/2017/34-81669.pdf> (Sept. 21, 2017).
- ⁶ See Information, *U.S. v. Telia Company AB*, No. 17-CR-581, ¶¶ 31-61 (S.D.N.Y. Sept. 21, 2017); Telia Co. AB, Exchange Act Release, *supra* note 5, at ¶¶ 27, 29.
- ⁷ See Paul, Weiss Client Memorandum, “\$1.4 Billion Global Settlement Offer to Telia Portends Major Foreign Bribery Prosecution” (Sept. 23, 2016), available [here](#).
- ⁸ Press Release, Dep’t of Justice, *supra* note 2.
- ⁹ Mary Jo White et al., SEC Leadership Discusses Continuing Priorities, New York University School of Law Compliance & Enforcement Blog (Sept. 11, 2017), https://wp.nyu.edu/compliance_enforcement/2017/09/11/sec-leadership-discusses-continuing-priorities/.
- ¹⁰ See Paul, Weiss Client Video Memorandum, “FCPA Pilot Program: One-Year Retrospective” (Apr. 20, 2017), available [here](#).
- ¹¹ Press Release, Dep’t of Justice, Global Telecommunications Company And Its Subsidiary To Pay More Than \$965 Million In Penalties In Massive Bribery Scheme Involving Uzbek Official; Third Largest-Ever Global FCPA Resolution (Sept. 21, 2017), <https://www.justice.gov/usao-sdny/pr/global-telecommunications-company-and-its-subsidiary-pay-more-965-million-penalties>.
- ¹² *Id.* While, unlike in the VimpelCom resolution, the DOJ did not mention the involvement of its Kleptocracy Asset Recovery Initiative, which is spearheaded by the Criminal Division’s Asset Forfeiture and Money Laundering Section, over the past few years, the DOJ has filed several related civil forfeiture actions seeking approximately \$850 million from bank accounts in Switzerland, Belgium, Luxembourg and Ireland that are alleged to have held improper payments made by Telia, VimpelCom and another telecommunications company to Karimova. See Press Release, Dep’t of Justice, VimpelCom Limited and Unitel

LLC Enter into Global Foreign Bribery Resolution of More Than \$795 Million; United States Seeks \$850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme (Feb. 18, 2016), <https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million>.