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Mobile TeleSystems PJSC Reaches \$850 Million Resolutions with DOJ and SEC Over FCPA Violations

In the latest dramatic chapter of the long-running bribery saga that has pervaded the telecommunications sector in Uzbekistan, on March 6 and 7, 2019, the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) announced settlements with Mobile TeleSystems PJSC (“MTS”), Russia’s largest telecommunications provider, involving violations of the Foreign Corrupt Practices Act (“FCPA”). The resolutions, which include penalties, forfeiture, and disgorgement totaling \$850 million, relate to a similar scheme to bribe Uzbek officials to obtain and retain business in Uzbekistan that led to the \$795–million resolutions in 2016 with VimpelCom Limited, a Netherlands-based telecommunications company, and the \$965–million resolutions in 2017 with Telia Company AB, a telecommunications company based in Sweden.¹

The DOJ also unsealed charges of conspiracy to commit money laundering against Gulnara Karimova, the eldest daughter of Islam Karimov, the deceased former president of Uzbekistan, and FCPA and money laundering conspiracy charges against Bekhzod Akhmedov, the former general director of Uzdunrobita LLC (“Uzdunrobita”), a telecommunications operator in Uzbekistan and an MTS subsidiary.² Karimova and Akhmedov featured prominently, but were not mentioned by name, in the prior resolutions involving VimpelCom and Telia.³ According to the U.S. Attorney’s Office for the Southern District of New York, combined the amounts paid to Karimova amount to the “largest bribe payment ever received by [an] individual defendant” in an FCPA case.⁴

Specifically, the DOJ filed a two-count criminal information in the United States District Court for the Southern District of New York charging MTS, a foreign “issuer” within the meaning of the FCPA, with conspiracy to violate the FCPA and violations of the books and records and internal controls provisions of

¹ See Paul, Weiss Client Memorandum, “VimpelCom Agrees to Landmark \$795 Million FCPA Resolution” (Feb. 26, 2016), available [here](#); Paul, Weiss Client Memorandum, “Telia Agrees to \$965 Million Global Foreign Bribery Resolution” (Sept. 28, 2017), available [here](#).

² See Indictment, *U.S. v. Gulnara Karimova and Bekhzod Akhmedov* (S.D.N.Y.), available [here](#).

³ See Information, *U.S. v. VimpelCom Ltd.*, NO. 1:16-cr-00137-ER (S.D.N.Y. Feb. 18, 2016), available [here](#); Information, *U.S. v. Telia Co. AB*, No. 1:17-cr-00581-GBD (S.D.N.Y. Sept. 21, 2017), available [here](#).

⁴ Press Release, U.S. Attorney’s Office, S.D.N.Y., *Former Uzbek Government Official and Uzbek Telecommunications Executive Charged in Bribery and Money Laundering Scheme Involving the Payment of Nearly \$1 Billion in Bribes* (Mar. 7, 2019), available [here](#).

the FCPA.⁵ MTS entered into a deferred prosecution agreement (“DPA”) with the DOJ and has agreed to pay a criminal fine and forfeiture in the amount of \$850 million.⁶ KolorIt Dizayn Ink LLC (“KolorIt”), a wholly owned subsidiary of MTS, pleaded guilty to a charge of conspiracy to violate the FCPA. The \$850 million penalty includes a criminal fine of \$500,000 plus forfeiture of an additional \$40 million that MTS will pay on KolorIt’s behalf.⁷ MTS also consented to the SEC’s order finding that it violated the anti-bribery, books and records, and internal accounting control provisions of the Securities Exchange Act of 1934, and requiring it to pay a \$100 million civil penalty. Pursuant to the DOJ’s “no piling-on” policy, the Department will credit the \$100 million penalty that MTS is paying to the SEC.⁸ Under the DPA with the DOJ and the SEC’s order, the company must also retain an independent compliance monitor for at least three years.⁹

Factual Allegations

According to the DOJ, the vast bribery scheme began in 2001, when Karimova and Akhmedov, acting in his capacity as general director of Uzdunrobota and as a personal representative of Karimova, extorted a 20 percent interest in Uzdunrobota in exchange for a telecommunications license and “other government benefits in Uzbekistan.”¹⁰ Karimova then used her influence to cause the Uzbek government to cede 31.4 percent of its stake in Uzdunrobota to a shell company she controlled.¹¹

In 2004, MTS sought to enter the Uzbek telecommunications market by acquiring Uzdunrobota.¹² MTS purchased 74 percent of the shares of Uzdunrobota for \$121 million, comprising a \$100–million payment

⁵ Information, ¶¶ 90–97, *U.S. v. Mobile Telesystems PJSC*, 19 Cr. ____ (S.D.N.Y.) (hereinafter “MTS Information”), available [here](#).

⁶ See Press Release, Dep’t of Justice, *Mobile Telesystems PJSC and Its Uzbek Subsidiary Enter into Resolutions of \$850 Million with the Department of Justice for Paying Bribes in Uzbekistan* (Mar. 7, 2019), available [here](#).

⁷ MTS Deferred Prosecution Agreement, ¶7(d) (Feb. 22, 2019) (hereinafter “MTS DPA”), available [here](#); Information, ¶¶ 34–39, *U.S. v. Kolorit Dizayn Ink LLC*, No. S1 19 Cr. ____ (JPO) (S.D.N.Y. Mar. 7, 2019) (hereinafter “KolorIt Information”), available [here](#); KolorIt Plea Agreement, ¶ 6(l) (Feb. 22, 2019), available [here](#).

⁸ See Press Release, Dep’t of Justice, *Mobile Telesystems PJSC and Its Uzbek Subsidiary Enter into Resolutions of \$850 Million with the Department of Justice for Paying Bribes in Uzbekistan* (Mar. 7, 2019), available [here](#).

⁹ See Press Release, SEC, *Mobile TeleSystems Settles FCPA Violations* (Mar. 6, 2019), available [here](#). In Q3 2018, MTS announced a reserve of \$850 million to pay the penalties and fines the DOJ and SEC imposed. See MTS, *MTS Reaches Agreements with US DOJ and SEC over Former Operations in Uzbekistan* (Mar. 7, 2019), available [here](#).

¹⁰ Indictment, ¶ 22.

¹¹ *Id.* at ¶¶ 22–23.

¹² See In the Matter of Mobile TeleSystems PJSC, Exchange Act Release No. 85261 (Mar. 6, 2019) (hereinafter “Release No. 85261”), available [here](#); Indictment, ¶ 24.

to a shell company beneficially owned by Karimova for 33 percent of her shares, and another \$21–million payment for the remaining 41 percent.¹³ In addition, Karimova obtained a put option to sell her remaining 26–percent interest to MTS.¹⁴

After the acquisition, MTS sought to acquire a new block of telecommunications frequencies necessary to advance its 3G network in Uzbekistan. To do so, MTS entered into an agreement with Buztel, a local telecommunications operator partially owned by Karimova that held a block of the required frequencies. Under the agreement, Uzdunrobota paid Buztel \$12 million, of which \$4 million went to Karimova, who ensured that the Uzbek Agency for Communications and Information (“UzACI”), the Uzbek telecommunications regulator, approved the transaction.¹⁵

In June 2007, after Uzdunrobota received 3G and WiMax frequencies from UzACI, causing a substantial increase in the company’s valuation, Karimova exercised her put option and MTS paid a further \$250 million for the remaining 26–percent interest in Uzdunrobota.¹⁶ Then, in 2008, an MTS subsidiary incorporated in Bermuda paid a further \$30 million to Takilant Ltd., which was beneficially owned by Karimova, in exchange for rights to additional telecommunications frequencies. Senior MTS officials were aware that Karimova beneficially owned Takilant, and understood that the consequences of refusing to make the payment included the possible suspension of Uzdunrobota’s operations and a forced sale of the subsidiary.¹⁷

MTS also acquired for \$40 million a 100–percent interest in KolorIt, an Uzbek advertising company Karimova indirectly controlled, which conferred a further benefit of \$20 million on Karimova.¹⁸ To ensure continued official support, MTS also made payments in excess of \$1 million to charities supported by Karimova.¹⁹

Apart from the improper payments to Karimova, according to the SEC, in violation of the FCPA’s accounting provisions Uzdunrobota’s books and records did not reflect in an appropriate level of detail currency rate differentials and markups. Between 2009 and 2011, Uzdunrobota entered into equipment purchase contracts denominated in U.S. dollars totaling approximately \$461.5 million. Of this total amount, approximately \$142.7 million represented the difference between the Uzbek Central Bank exchange rate

¹³ Release No. 85261, ¶¶ I–L; MTS Information, ¶¶ 19–23; Indictment, ¶¶ 24–25.

¹⁴ Release No. 85261, ¶¶ O–Q; Indictment, ¶¶ 26, 28.

¹⁵ Release No. 85261, ¶¶ M–N.

¹⁶ Release No. 85261, ¶¶ R–S; MTS Information, ¶¶ 24–37.

¹⁷ Release No. 85261, ¶¶ T–BB; MTS Information, ¶¶ 38–53; Indictment, ¶ 30.

¹⁸ Release No. 85261, ¶¶ CC–FF; MTS Information, ¶¶ 54–66; Indictment, ¶ 31.

¹⁹ Release No. 85261, ¶ GG; MTS Information, ¶¶ 67–73; Indictment, ¶ 32.

and the exchange rate agreed to by the parties and other markups. Approximately \$92.6 million represented taxes and customs costs. These purchases, which were recorded in Uzdunrobita's accounts, and in turn consolidated into MTS's books and records, also did not involve sufficient due diligence to determine whether the third-party intermediaries receiving payments were under the ownership or control of Karimova or other Uzbek government officials.²⁰

After May 2012, MTS, Uzdunrobita, and KolorIt refused to satisfy Karimova's demands for additional payments. In retaliation, she used her influence with the Uzbek government to expropriate Uzdunrobita.²¹ All told, MTS made at least \$420 million in improper payments that generated more than \$2.4 billion in revenues.²² All of these payments were improperly characterized in MTS's books and records as legitimate expenses. MTS filed financial statements, incorporating the falsely recorded payments, with the SEC throughout the relevant period.²³

In addition to the bribes exacted from MTS and its subsidiaries, Karimova and Akhmedov are charged with further bribery schemes in which Karimova demanded, and Akhmedov and his co-conspirators agreed to pay, hundreds of millions of dollars in bribes to Karimova on behalf of Telia and VimpelCom. In total, Akhmedov and others allegedly conspired to make approximately \$866 million in bribe payments to Karimova.²⁴

Analysis

Combined with the resolutions with VimpelCom and Telia, the resolution with MTS brings the total fines, criminal forfeiture, and disgorgement assessed by the DOJ and the SEC against briber payors in the bribery scandal in the Uzbekistan telecommunications market to over \$2.6 billion.²⁵ In addition, the DOJ previously filed civil forfeiture complaints against assets linked to Karimova in Belgium, Ireland, Luxembourg, and Switzerland worth more than \$850 million.²⁶ Swiss prosecutors have also been

²⁰ Release No. 85261, ¶¶ HH–JJ.

²¹ KolorIt Information, ¶ 16.

²² Release No. 85261, ¶ B.

²³ *Id.* at ¶ B.

²⁴ Indictment, ¶ 1.

²⁵ See Press Release, SEC, *Mobile TeleSystems Settles FCPA Violations* (Mar. 6, 2019), available [here](#).

²⁶ See *U.S. v. Any and All Assets Held in Account Numbers 102162418400, 102162418260 and 102162419780 at Bank of New York Mellon SA/NV, Brussels, Belgium, on behalf of First Global Investments SPC Limited AAA Rate et al.*, No. 1:15-cv-05063 (S.D.N.Y. June 29, 2015), and *U.S. v. All Funds Held in Account Number CH1408760000050335300 at Lombard Odier Darier Hentsch & Cie Bank, Switzerland, on Behalf of Takilant Ltd., and Any Property Traceable Thereto et al.*, No. 1:16-cv-01257 (S.D.N.Y. Feb. 18, 2016).

investigating Karimova on suspicion of money laundering and previously froze her assets in Switzerland, including CHF 800 million worth of suspected Uzbek national artifacts.²⁷ On March 5, 2019, Karimova, who reportedly had been under house arrest in Uzbekistan, was sent to prison in Uzbekistan to serve the remainder of a five-year sentence.²⁸ According to her lawyer, she was forcibly removed from her apartment in Tashkent.²⁹ The indictment of Karimova in the U.S. represents one more attempt to hold her accountable for grand corruption in the Uzbek telecommunications sector, and to recover the proceeds of that corruption. It is unclear whether other companies and individuals may yet be implicated by the DOJ's and SEC's far-reaching investigations.

Those investigations relied on extensive international cooperation among the U.S. enforcement agencies and authorities in Latvia, the Netherlands, Norway, Sweden, and Switzerland. Additionally, the DOJ and the SEC received assistance from regulatory and law enforcement agencies in Austria, Belgium, Cyprus, France, Ireland, Isle of Man, Luxembourg, and the U.K.³⁰ Such cross-border cooperation, which is now typical of large-scale enforcement actions,³¹ is in part illustrative of the FCPA's global reach, as well as the increased vigilance of foreign governments to root out bribery abroad. In addition, a large number of U.S. law enforcement agencies worked together to prosecute these cases. The DOJ's Criminal Division and the SEC's Division of Enforcement collaborated with IRS Criminal Enforcement, Immigration and Customs Enforcement, the Money Laundering and Asset Recovery Section of the DOJ, and the U.S. Attorney's Office for the Southern District of New York.³²

The size of the penalty assessed against MTS, and the terms of the DPA, are demonstrative of the fact that senior executives at MTS were involved in or aware of the bribery scheme, the corruption was massive in scale, the benefits to MTS from the bribery scheme were substantial, and the company's internal accounting controls were inadequate.³³ Indeed, a monitor was imposed precisely because the company has not yet fully

²⁷ See Agence France-Presse, *Uzbek President's Daughter Faces Swiss Money-Laundering Investigation*, THE GUARDIAN (Mar. 12, 2014), available [here](#).

²⁸ See Marc Bennetts, *Uzbekistan Ex-President's Daughter Sent to Prison*, THE GUARDIAN (Mar. 6, 2019), available [here](#).

²⁹ See *Gulanra Karimova: Uzbekistan Ex-Leader's Daughter Jailed*, BBC (Mar. 6, 2019), available [here](#).

³⁰ See Press Release, SEC, *Mobile TeleSystems Settles FCPA Violations* (Mar. 6, 2019), available [here](#); Press Release, U.S. Attorney's Office, S.D.N.Y., *Former Uzbek Government Official and Uzbek Telecommunications Executive Charged in Bribery and Money Laundering Scheme Involving the Payment of Nearly \$1 Billion in Bribes* (Mar. 7, 2019), available [here](#).

³¹ See, e.g., Paul, Weiss Client Memorandum, "Behind Petrobras \$1.8 Billion FCPA Settlement, An Interesting Accounting" (Oct. 2, 2018), available [here](#).

³² See Press Release, U.S. Attorney's Office, S.D.N.Y., *Former Uzbek Government Official and Uzbek Telecommunications Executive Charged in Bribery and Money Laundering Scheme Involving the Payment of Nearly \$1 Billion in Bribes* (Mar. 7, 2019), available [here](#).

³³ See MTS Information, ¶ 78.

implemented or tested its compliance program.³⁴ The magnitude of the penalty, which was 25 percent above the low end of the U.S. Sentencing Guidelines fine range, also reflects the fact that the company did not self-report or fully cooperate and remediate the misconduct.³⁵ The only apparent mitigating factor in MTS's favor was that the Uzbek government expropriated the company's telecommunications assets in Uzbekistan, resulting in no realized pecuniary gain to the company as a result of the misconduct.³⁶

On the eve of the settlements, MTS publicly acknowledged that it is considering delisting from the New York Stock Exchange, commenting in a statement on February 8, 2019 that it will examine "whether or not having listing in the U.S. with associated costs continues to serve the best interests of shareholders, or whether a listing elsewhere may be preferable."³⁷ This step, if taken, may reflect a reaction to U.S. sanctions on Russia as well as the perceived burdens of a U.S. listing.³⁸

The allegations against Karimova and Akhmedov are remarkable, but perhaps the more remarkable aspect of this saga is the willingness on the part of executives at MTS, Telia, and VimpelCom to kowtow to Karimova's extraordinary demands in exchange for access to the Uzbek market. The explicit and implicit findings against them serve as a further reminder—if any were required—that, however much bribery may be a cost of business condoned in the highest echelons of government, companies both individually and collectively must protect themselves by resisting demands for improper payments.

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³⁴ MTS DPA, ¶4(e).

³⁵ *Id.* at ¶4(a)–(c).

³⁶ *See id.* at ¶4(j).

³⁷ Ilya Khrennikov, *MTS Considers Pulling U.S. Listing as Investors Fret Over Sanctions*, BLOOMBERG (Feb. 8, 2019), available [here](#).

³⁸ *See id.*

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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