

Red Notice

A Monthly Update on Global Investigations and Prosecutions



NOVEMBER 2011

INTRODUCTION

Welcome to the November edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. There have been two historic milestones in anti-bribery enforcement in the past month, with a UK court recording the first conviction under the Bribery Act and a US court sentencing a telecom executive to the longest prison sentence ever handed down in an FCPA case. On the heels of this historic month, Assistant AG Lanny Breuer announced that DOJ will release new FCPA guidance that may provide companies and their counsel with more certainty in discerning the risks of doing business abroad. On the antitrust front, UK and EU antitrust authorities released new policies that will change the treatment of enforcement subjects in Europe.

ANTI-CORRUPTION DEVELOPMENTS

DOJ to Release New FCPA Guidance in 2012

Lanny Breuer, Assistant Attorney General and head of the Justice Department's Criminal Division, announced last week that the DOJ plans to release new guidance on the Foreign FCPA. Companies and their counsel hope that the new guidance will clarify some of the statute's more vague provisions. Practitioners have often lamented the dearth of case law interpreting the FCPA, as most enforcement cases are settled before trial. While guidance from the DOJ does not replace caselaw, it should at least provide information on DOJ's interpretation of the statute. The guidance, which should be released sometime in 2012, may clarify the act's "facilitation payment" exception, as well as the meaning of who should be considered a "foreign official" under the act. Read the [coverage](#) at *WSJ's Law Blog*, and Breuer's [remarks](#) on the DOJ website.

First Prosecution Under UK Bribery Act Ends in Conviction

The UK's Crown Prosecution Service secured a conviction in the first enforcement proceedings under the UK Bribery Act. A London court clerk was convicted last month of procuring a £500 bribe to stop the processing of a traffic summons. Many were surprised that these initial enforcement proceedings prosecuted a domestic official for receiving a relatively small amount of money. Nonetheless, the UK's Serious Fraud Office (SFO) maintains that it will use the new law to vigorously combat foreign bribery on the part of domestic companies or any company listed on the London Stock Exchange. Read the BBC's [story](#) on the first conviction, and also see the SFO's [webinar](#) on the Bribery Act.

Union Reports Company's Use of Government Security Personnel to DOJ

The United Steelworkers union is asking the Justice Department to look into whether mining firm Freeport McMoRan violated the FCPA by hiring Indonesian police and military personnel to protect the company's workforce and facilities in Indonesia's remote Papua province. A miner's strike in Papua recently drew attention after Indonesian police shot

and killed a striker and Indonesian paramilitary forces were sent to the province to restore order. Freeport McMoRan provides in-kind assistance such as food, health care, and transport to the government security personnel, as well as money to "mitigate living costs



Paul Butler

Partner

pbutler@akingump.com

202.887.4069

[Download to Outlook](#)



Brady Dugan

Partner

bdugan@akingump.com

202.887.4152 (direct)

[Download to Outlook](#)



Mark MacDougall

Partner

mmacdougall@akingump.com

202.887.4510 (direct)

[Download to Outlook](#)

Editor: [Jacob Weixler](#)

[Attorneys in Related Practices](#)

transport to the government security personnel, as well as money to mitigate living costs and the hardship elements of a remote posting assignment." Read the United Steelworkers' [letter](#), and the [coverage](#) at *Corruption Currents*.

[Archived Editions](#)

[Subscribe to Red Notice](#)

Court Sentences Telecom Exec to Longest Sentence in FCPA History

A telecom executive convicted in a bribery scheme involving officials at Haiti's state-owned telecom company was sentenced to 15 years in prison late last month, the longest prison sentence ever issued in connection with an FCPA case. Joel Esquenazi, former president of Terra Telecommunications Corp. was convicted of seven counts of violating the Foreign Corrupt Practices Act, 12 counts of money laundering, and two counts of conspiracy, U.S. v. Esquenazi et al., No. 09-cr-21010 (S.D. Fla.). Carlos Rodriguez, Terra's former vice president, was also convicted and sentenced to seven years in prison. Assistant AG Lanny Breuer called Esquenazi's sentence "a stark reminder to executives that bribing government officials to secure business advantages is a serious crime with serious consequences." Read the [coverage](#) at *Corruption Currents* and Breuer's [statement](#) on the DOJ website.

REGULATION AND ENFORCEMENT DEVELOPMENTS

U.K. Antitrust Authority Will Change Penalty Guidelines

The Office of Fair Trading (OFT), Britain's antitrust authority, announced late last month that it is changing its guidelines for assessing penalties for cartel activity, a move that brings the OFT in line with the EU's antitrust regime and may result in increased fines. The announced change comes in response to several decisions by London's Competition Appeal Tribunal that reduced the fines imposed by the OFT. The new guidelines will clarify when and how leniency and settlement discounts apply, as well as the level of cooperation required for leniency. Additionally, the OFT will introduce new guidelines to ensure that penalties are proportional to the violation at issue. Read the [story](#) at *Bloomberg*.

European Commission Releases New Procedures for Antitrust and Merger Proceedings

The EU's antitrust authority announced new procedural safeguards for use in antitrust proceedings, including measures designed to give the subjects of proceedings more access to submissions for complainants and third parties. Under the new rules, the Hearing Officer will also take a more active role during the "investigatory phase of antitrust and certain merger proceedings." The European Commission's Vice President for competition policy noted that the measures show that the Commission is "willing to listen to stakeholders, learn from experience, and make improvement while maintaining efficient procedures." Read the Commission's [release](#) at *Europa*.

[akingump.com](#)



www.twitter.com/akin_gump

© 2011 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

If you would like to update your information or opt out from our mailing list, please [click here](#).