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STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions

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INTRODUCTION

Welcome to the first 2012 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's issue, the trial of six of the 22 defendants in the FCPA arms industry sting case takes another turn for the worse for the prosecution, and Indian officials consider new anticorruption laws in response to vast public outcry. Former executives at Siemens face indictments in the DOJ's ongoing enforcement against corruption within the German company and a former agent for a chemical company faces jail time for his involvement in the Oil for Food scandal. Also, a British trade association consults with authorities enforcing the UK Bribery Act and releases guidance seemingly based on their findings. In antitrust news, officials from three North American countries discuss cooperation in sectors of mutual concern. Lastly, Malaysia's new antitrust authority commences its first investigation and Chilean authorities levy a hefty fine on an American media mogul.

Paul Butler
Partner
pbutler@akingump.com
202.887.4069
Dow nload to Outlook

Brady Dugan
Partner
bdugan@akingump.com
202.887.4152 (direct)
Dow nload to Outlook

Mark MacDougall
Partner
mmacdougall@akingump.com
202.887.4510 (direct)
Dow nload to Outlook

ANTI-CORRUPTION DEVELOPMENTS

Conspiracy Charges Dismissed in FCPA Sting Trial

The Justice Department's FCPA prosecution of individuals and companies in the arms and law enforcement equipment industry suffered another setback last month, as a federal judge dismissed conspiracy charges against six defendants and entirely dismissed one executive from the case (*US v. Caldwell et al*, 09-CR-00345-RJL (D.D.C.)). In what has been called the largest prosecution of individuals under the FCPA, 22 people were charged after an unprecedented sting operation. Undercover FBI agents coordinated meetings between the defendants and individuals purporting to be officials from the West African nation of Gabon. The trials resulting from the investigation have been largely unsuccessful for prosecutors. While three of the 22 defendants have pled guilty, the trial of the first four defendants to challenge the charges in court ended in a mistrial last July. This latest trial involves six different defendants and has also been arduous for prosecutors. The six defendants moved to dismiss the conspiracy charges after the government finished presenting its case, and DC federal district court Judge Richard Leon found that the government failed to provide sufficient evidence to support convictions. Judge Leon's ruling follows the judge's earlier criticism of prosecutors when he struck part of a witness's testimony due to the prosecution's failure to reveal the witness's previous notes to defendants. The five remaining defendants have asked Judge Leon for a mistrial. Read the coverage at Blog of the *Legal Times*.

Indian Parliament Proposes New Anticorruption Laws

In a likely response to protests over corruption in India's government, the India Parliament introduced new anticorruption legislation and moved towards a potential constitutional amendment to assist in the effort. The Lokpal Bill, which requires favorable votes from a simple majority in Parliament, gives an independent national ombudsman and state agencies the power to prosecute politicians and government employees for corruption. The accompanying constitutional amendment, which requires a two-thirds majority vote

The accompanying constitutional amendment, which requires a two-thirds majority vote, grants special legal status to the anticorruption agencies established by the bill. Indian anticorruption activist Anna Hazare describes the legislation as "weak," likely because the India Central Bureau of Investigation would escape the supervision of the new enforcement authorities, a reform previously emphasized by the activist. Read the coverage at the *Wall Street Journal*.

Justice Department Indicts Former Siemens Execs

According to a December indictment, eight former Siemens executives and contractors conspired to pay over $100 million to officials in Argentina in exchange for a lucrative contract to produce the country's national identification cards (*US v. Sharef et al*, 11-CR-01056-DLC (S.D.N.Y.)). According to the Justice Department, executives at the German company funneled approximately $25 million to high-level Argentine officials using U.S. institutions, giving the U.S. criminal authorities jurisdiction, and additionally $31 million was allegedly paid after the Siemens began issuing securities in the U.S., thus giving the SEC jurisdiction over that sum. In 2008, Siemens agreed to pay nearly $1.6 billion to settle charges of corruption brought by DOJ, SEC, and the Office of the General Prosecutor in Munich. When Siemens entered the 2008 settlement, some critics decried the settlements' failure to require Siemens to identify the individuals involved. These critics would likely approve of the Justice Department's decision to indict the Siemens' executives despite the large settlement already paid by the company. The recent indictments of former Siemens executives include an indictment brought against Uriel Sharef, a former Siemens managing board member holding a title just below chief executive. Read the coverage at the New York Times, and for more on the growing trend of FCPA enforcement against individuals, read the story at the *International Business Times*.

Trade Group Consults UK Enforcement Agencies, Releases Guidance on Bribery Act

Britain's leading trade association for the banking and financial services sectors has published guidance on the UK Bribery Act, in an attempt give further clarity to the Act which has been called the world's toughest anti-bribery law. The British Bankers' Association (BBA) publication is meant to supplement the UK's Ministry of Justice (MOJ) guidance, which was released early last year. In drafting its guidance, the BBA consulted the UK's Serious Fraud Office, the Crown Prosecution Service, the Financial Services Authority, and the MOJ, claiming that these agencies helped to "develop [the BBA's] thinking in this area." Read the BBA guidance here, and the MOJ guidance here.

Prison Term Given in Oil for Food Bribery Case

A DC federal judge handed down a 30-month jail term and a $250,000 fine to a Canadian chemical company agent in connection with charges that he bribed members of Iraq's government (*US v. Naaman*, 08-CR-00246-ESH (D.D.C.)). The Justice Department accused Ousama Naaman of Innospec, Inc. of paying kickbacks to Iraqi government officials and approximately $167,000 in bribes to members of Iraq's Ministry of Oil to obtain contracts under the UN's Oil for Food program. Naaman previously pled guilty to the charges against him after his extradition from Germany. The sentencing guidelines direct the judge to give Naaman a 12-year sentence, but prosecutors agreed to reduce their recommendation to just over seven years. Innospec's former CEO and former Managing Director are also facing bribery charges in the UK. Nathaniel Edmonds, a DOJ fraud prosecutor, noted that the Naaman case was merely part of the first wave of the Departments efforts to bring more FCPA enforcement actions against individuals. Read the coverage here.

ANTITRUST ENFORCEMENT DEVELOPMENTS

US, Canadian, and Mexican Antitrust Officials Meet to Discuss Cooperation

In addition to a series of bilateral antitrust cooperation agreements between the three countries, enforcement officials from the US, Mexico, and Canada met last month to

Edward L. Rubinoff
Partner
erubinoff@akingump.com
202.887.4026 (direct)
Dow nload to Outlook

Editor: Jacob Weixler

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discuss their commitment to effective enforcement. The officials shared their recent "experiences" in antitrust enforcement issues touching North America, and each updated the others on their agency's efforts to combat anticompetitive activity. Along with the bilateral cooperation agreements, all three nations are also parties to the North American Free Trade Agreement which specifies that parties will cooperate with one another in antitrust investigations. See the DOJ release here.

Airline Investigation is Malaysia's First Competition Probe

Malaysian authorities have asked two airlines to provide information and documents related to the competitive effects of a recent share swap agreement in a case that marks the Malaysian Competition Commission's (MYCC) first antitrust investigation. The MYCC requested documents from AirAsia Bhd and Malaysia Airlines in connection with the firms' recent, widely-criticized agreement that opponents claim will cause air travelers to incur higher fares. The MYCC, which opened its offices on January 3rd, was authorized by the Malaysia's Competition Commission Act of 2010. The Commission can begin an investigation after a complaint is lodged, pursuant to government directive, or on its own accord. Read the coverage of the MYCC's first investigation here.

Chile Issues First Merger Non-compliance Fine to Exec

Chilean antitrust authorities have levied a hefty fine on an American media mogul due to his ownership of two television providers in the South American nation. John Malone of Colorado owns a stake in DirecTV while also holding Liberty Global, an international cable company and potential competitor of DirecTV. According to Chilean authorities, Malone's holdings in DirecTV stock violate an agreement reached between the authorities and Liberty. Malone has been fined $3.6 million and faces more penalties if he does not sell his interest in DirecTV in the next six months. Read the coverage here.

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