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FCPA Enforcement in Q3 Shows Results of International Collaboration

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(This is a quarterly analysis of trends in anti-bribery enforcement by The Foreign Corrupt Practices Act Clearinghouse, a database operated by Stanford Law School. The views presented here are those of the authors alone, not those of Dow Jones or the Wall Street Journal.)

By WILLIAM GARRETT and KRISTEN SAVELLE

After a relatively quiet second quarter, Foreign Corrupt Practices Act enforcement activity picked up slightly in the third quarter of 2017, but was still lower than in recent years.

Figure 1 below shows the number of FCPA proceedings initiated by the U.S. Department of Justice and the Securities and Exchange Commission in Q3 for each of the last 10 years.

Figure 1 – Third Quarter FCPA Proceedings by Year

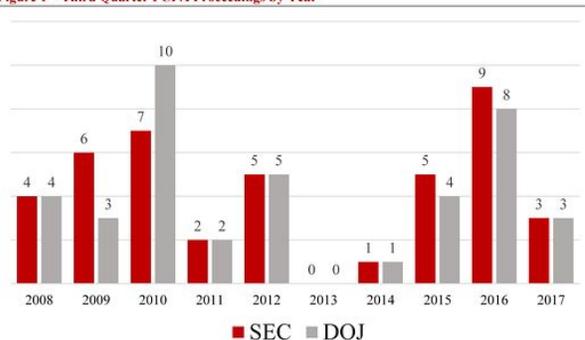


PHOTO: FCPA CLEARINGHOUSE

settlement with Telia AB, a Swedish telecommunications company, for misconduct in Uzbekistan. On Sept. 21, the DOJ and SEC along with Dutch and Swedish authorities announced a global settlement with Telia to resolve this alleged misconduct. Under the terms of the settlement, Telia will pay combined

Between July 1 and Sept. 30, 2017, the DOJ and SEC each initiated three FCPA-related enforcement actions. Figure 2 below identifies these proceedings.

The big news for the quarter was the global

sanctions of more than \$965 million, with at least \$483 million going to U.S. authorities.

Figure 2 – Third Quarter FCPA Proceedings

<u>Date Initiated</u>	<u>Case Caption</u>	<u>Resolution</u>
July 27, 2017	In the Matter of Halliburton Company and Jeannot Lorenz	Cease and Desist Order
August 24, 2017	U.S. v. Fernando Ardila-Rueda	Plea Agreement

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The global nature of the Telia settlement may stem in part from several recent developments.

First, countries around the world are ramping up their anti-corruption enforcement activity, both locally and globally. Swiss and Dutch authorities have taken an active role in some of the largest FCPA-related investigations in recent years, including investigations of Telia, Odebrecht SA, and VimpelCom Anti-corruption laws recently passed in the U.K., France, Germany, Mexico, and Brazil have expanded the jurisdiction of local authorities to prosecute offenses committed abroad, and China and South Korea have strengthened their domestic bribery laws. Authorities in Brazil, Peru, and South Korea are also currently leading domestic corruption probes that reach into the highest levels of government.

Second, both the DOJ and SEC are making concerted efforts to increase meaningful collaboration with law enforcement agencies around the world.

On April 5, 2016, the DOJ’s Fraud Section announced its “Foreign Corrupt Practices Act Enforcement Plan and Guidance,” which outlined three steps in the Department’s enhanced FCPA enforcement strategy. Along with increasing its FCPA law enforcement resources and launching the pilot program to promote transparency in charging decisions, the DOJ announced that it was “strengthening its coordination with foreign counterparts in the effort to hold corrupt individuals and companies accountable.”

The SEC similarly acknowledged the importance of coordinating with foreign counterparts in November 2016, when then-director of the SEC’s Division of Enforcement, Andrew Ceresney, stated that “[c]ollaboration with international regulators and law enforcement is critical to our success in the FCPA space.”

Evidence of multi-jurisdictional cooperation is apparent in several high-profile corruption probes. For example, Brazilian authorities signed an international collaboration agreement with 10 other countries to investigate the bribery scandal involving Odebrecht, which agreed to pay \$3.5 billion in a global settlement last December.

Authorities in Brazil, Peru, Ecuador, Colombia, Switzerland, and the U.S. collaborated on the investigation of Panamanian law firm Mossack Fonseca, whose two founders were arrested on Feb. 9 in connection with their alleged links to Brazil’s Lavo Jato (“Car Wash”) corruption scandal, which has already ensnared Centrais Eletricas Brasileiras, better known as Eletrobras, in possible FCPA investigations by the DOJ and SEC.

Mossack Fonseca has denied having any relationship with Odebrecht or with other companies involved in the corruption investigation.

International cooperation is not, however, a wholly new phenomenon. The DOJ and SEC have long referenced assistance or cooperation from foreign authorities in publicly available press releases issued in connection with FCPA enforcement actions. The agencies have coordinated enforcement with foreign authorities in at least 14 instances, either through concurrent or successive enforcement activity, and explicitly shared sanctions in several of those enforcement actions. Of those 14, five—the global settlements with VimpelCom, Embraer, Odebrecht, Rolls-Royce Holdings PLC, and Telia—have occurred since 2016, and four of those settlements appear on the list of top five highest total sanctions imposed in global settlements. Figure 3 below shows the top five global settlements by gross sanctions.

Figure 3 – Top Five FCPA-Related Global Settlements

<u>Year Initiated</u>	<u>Company Involved</u>	<u>Total Global Sanctions</u>
2016	Odebrecht S.A./Braskem S.A.	\$3.5 Billion
2008	Siemens Aktiengesellschaft	\$1.6 Billion
2017	Telia Company AB	\$965 Million
2016	Rolls-Royce PLC	\$800 Million
2016	VimpelCom Ltd.	\$795 Million

PHOTO: FCPA CLEARINGHOUSE

On its face, increased cooperation in anti-corruption enforcement would appear to pose greater risks to non-compliant companies, but the opposite could also be true. Because the U.S. does not formally recognize principles of

international double jeopardy, companies could be subject to successive enforcement by U.S. and foreign authorities and could be forced to pay duplicative sanctions for the same alleged misconduct.

With increased international cooperation, however, a single global resolution could resolve all claims against the company simultaneously, which could result in a more streamlined resolution of the matter. Additionally, while the headline sanctions number may appear to be higher in a global settlement, it is also

possible that those sanctions would be less than the sum of the sanctions in several uncoordinated enforcement actions, and that the company could reduce its legal expenses by shortening the overall time it is subject to litigation.

International cooperation may also permit a more efficient division of enforcement resources. Both the SEC and the DOJ pursued enforcement actions against Telia but not any Telia executives. The Swedish authorities, on the other hand, have charged the former CEO and other top executives at Telia. Former CEO Lars Nyberg has rejected the allegations. This sort of shared prosecution is similar to what happened in the Odebrecht global settlement at the end of last year: the U.S., Brazil, and Switzerland pursued enforcement actions against the company, while Brazilian authorities took the lead in the prosecution of culpable individuals.

Given these trends and the increasing ease of international communication and coordination, both inter-agency cooperation and global resolutions are likely to become more prevalent in FCPA enforcement in the coming years.

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The Foreign Corrupt Practices Act Clearinghouse (FCPAC) is a free public database. The FCPAC was developed by researchers at Stanford Law School in collaboration with attorneys at Sullivan & Cromwell LLP. The database is available at <http://fcpa.stanford.edu>.

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