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ALERT

# Unsealed Indictment Connected to Record Breaking Telecom Case Reconfirms DOJ's Commitment to Individual Accountability

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In September, the U.S. District Court for the Southern District of New York unsealed an indictment charging Afework Bereket, a former account manager with a large telecom company, with conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and commit money laundering. The indictment — initially filed just six months after the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) resolved allegations that a global telecom equipment manufacturer violated U.S. anti-bribery laws for an eye-popping ten-figure sum — is unsurprising given DOJ's continued focus on prosecuting individuals they believe to be responsible for corporate malfeasance and insistence that corporations seeking favorable resolutions identify bad actors. It also represents yet another in a string of enforcement actions involving corruption in the telecom industry.

*The Case Against Bereket*

The government alleges that from 2010–2013, while Bereket served as an account manager in the Horn of Africa, he conspired with others to bribe foreign officials in Djibouti to obtain and retain business with a state-owned telecom company. During the conspiracy, Bereket and his co-conspirators paid an estimated $2.1 million in bribes to high ranking Djibouti officials. To conceal these bribes, Bereket allegedly disguised the payments as fees to a consulting company affiliated with one of the foreign officials being bribed.

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The U.S. indictment comes on the heels of charges filed by Swedish prosecutors against Bereket this past May. Those allegations say Bereket and other executives paid $2 million in bribes to Djibouti Attorney General Djama Souleiman to help their employer win contracts to provide telecom equipment to a Djibouti state-owned telecom company.

*DOJ's Continued Focus on Individual Accountability*

Bereket's indictment is the latest chapter in the investigation into a large telecom equipment manufacturer's conduct in procuring telecom contracts. The company resolved parallel investigations by DOJ and SEC into alleged violations of the bribery and accounting provisions of the FCPA, by admitting that it failed to adequately implement its compliance program and control framework to curb FCPA violations, allowing several executives to enter into, and conceal, illegal business transactions. In addition to paying more than $1 billion in fines, the large telecom company agreed to enhance its internal controls and compliance program and had to retain an independent compliance monitor for three years. Additionally, to earn what amounted to a 15% cooperation credit, the company disclosed the identities and conduct of individuals involved in all but two corruption allegations.

Bereket is yet another executive indicted for FCPA violations as DOJ continues to put an emphasis on individual accountability in corporate wrongdoing. In 2015, then-Deputy Attorney General Sally Yates authored the so-called "Yates Memo," which reiterated, and brought back to the forefront, DOJ's policy of holding individuals criminally accountable for corporate malfeasance and encouraging corporations to disclose information about culpable employees in exchange for cooperation credit. This policy places individuals at the focus of every DOJ corporate investigation from the beginning, and rewards corporations for providing information about individual wrongdoers up and down the corporate ladder.

*Telecoms in the FCPA Crosshairs*

The Bereket prosecution is the latest in a string of corruption actions involving telecom companies and their executives. This sector is particularly at risk for FCPA enforcement actions because telecom companies often compete for foreign government contracts. Also, many of the international carriers and equipment manufacturers with which they do business are either partially or wholly-state-owned. Indeed, fines paid by telecom companies account for many of the largest FCPA penalties ever assessed by the U.S. government. For example, Telia Company AB, a Swedish telecom company, paid $1.01 billion in 2017 to resolve parallel DOJ and SEC FCPA investigations. Likewise, MTS, a Russian telecom company, resolved a 2019 FCPA investigation by paying $850 million in fines and disgorgement.

Bereket is not the first telecom executive to be charged with violating the FCPA—and, most likely, won't be the last. In 2017, Amadeus Richers, the former general manager of a Miami-based telecom company, pleaded guilty to violating the FCPA. Richers and nine other executives were involved in a scheme that paid $3 million in bribes to officials connected to a Haitian state-owned telecom company. That same year, two former executives with Hungarian-based telecom company Magyar Telekom agreed to pay financial penalties to settle an SEC FCPA investigation. The SEC alleged that the company's former CEO Elek Straub and former chief strategy officer Andras Balogh paid $9 million in bribes to several Montenegro officials to prevent the introduction of new competitors. Similarly, Lawrence W. Parker, Jr., the owner of five Florida-based telecom companies, pleaded guilty to paying $1.3 million in bribes to an Aruban official with Servicio di Telecommunicacion di Aruba N.V. (Setar) in exchange for mobile phone and accessory contract awards.

Looking forward, telecom companies engaged in 5G expansion are particularly susceptible to FCPA violations. As companies race to deploy 5G, government discretion over market entry, equipment purchases, R&D money, and infrastructure projects create pressure to cut corners or take risks. 5G implementation requires companies to reevaluate their FCPA compliance efforts and carefully consider how to control for the risks that naturally accompanies infrastructure and technology spending — particularly when dealing with and in countries known for corruption.

*What's Next?*

Given the $1 billion global resolution — one of the largest amounts ever paid to resolve FCPA allegations — it seems that more than one "agent" would have acted criminally. However, it remains to be seen whether Bereket will be the only person criminally charged in the U.S. Interestingly, while the SEC's resolution with Bereket's employer covered accounting-related conduct in five countries, DOJ only charged bribery with respect to conduct in a single country — Djibouti, the country where Bereket is alleged to have facilitated and arranged bribes. While others related to the conduct in Djibouti may be charged, it would also not be surprising for individuals solely associated with the alleged conduct in China, Vietnam, Indonesia, and Kuwait to escape prosecution.

It might also be the case that U.S. officials bring additional actions involving telecom companies in the coming months and years — particularly associated with new 5G buildout efforts. While several DOJ officials have said that the Department does not do so-called "industry sweeps," they do "follow the evidence." In that sense, "industry sweeps" are often the natural result of a successful prosecution because such prosecutions allow the Government to identify certain problematic practices common within an industry or find evidence that incriminates other industry players (e.g., a corrupt agent or official may not limit his or her business to one company). Accordingly, it is increasingly important that telecom companies continue to double down on their compliance efforts. That means, on the front end, creating and adopting policies that are thoughtfully tailored to the company's specific risk profile. On the back end, companies must embrace a "culture of compliance" and set the right "tone at the top" by creating an environment where all employees are empowered to report perceived misconduct and are willing participants in regular compliance audits.

*Corey Hauser, a law clerk with Wiley Rein LLP, contributed to this alert.*