

United States v. Telefonaktiebolaget LM Ericsson, (S.D.N.Y. 2019)

Nature of the Business.

Telefonaktiebolaget LM Ericsson (Ericsson) is a global telecommunications company with its headquarters in Sweden. Ericsson maintains common stock publicly traded on the NASDAQ and registered with the SEC pursuant to Section 12(b) of the Exchange Act.

Ericsson has majority-owned and wholly-owned subsidiaries globally to assist in its operation. Ericsson Egypt Ltd. is Ericsson's majority-owned subsidiary operating in North East Africa. Ericsson AB is a wholly-owned subsidiary, acting as one of Ericsson's largest operating companies.

Influence to be Obtained.

According to the DOJ, Ericsson's aforementioned subsidiaries were involved in schemes to bribe officials in at least five countries that caused Ericsson to violate all three statutory provisions of the FCPA.

The DOJ alleges that Ericsson paid bribes from 2010 to 2014 to government officials in Djibouti totaling approximately \$2.1 million to secure a contract valued at €20.3 million. The DOJ alleged that these bribes were effected by fake invoices funneled through a consulting company. Furthermore, the DOJ alleged that Ericsson failed to disclose that the owner of the consulting company was married to a high-ranking Djibouti official.

The DOJ accused Ericsson of paying tens of millions in bribes from 2000 to 2016 in China via an expense account covering gifts, travel, and entertainment. Moreover, the DOJ alleged that Ericsson paid approximately \$31.5 million to third parties for services that were never rendered, mischaracterizing them in its books and records.

Allegedly, between 2012 and 2015, Ericsson paid bribes to the tune of \$4.8 million to facilitate the creation of a slush fund by a consulting company benefitting a customer in Vietnam. According to the DOJ, a similar process was employed for third party entities in Indonesia, facilitating payments of approximately \$45 million.

The DOJ also alleged that between 2011 and 2013 an Ericsson subsidiary in Kuwait offered a \$450,000 payment to a consulting company in return for insider information relating to modernization efforts of a state-owned radio network, a contract which Ericsson eventually landed for a sum of \$182 million. The DOJ believes Ericsson made \$450,000 payment from the contract.

Enforcement.

On December 6, 2019, Ericsson Egypt Ltd. pleaded guilty to one count of conspiracy to violate the FCPA's antibribery provisions. Furthermore, the DOJ issued a Deferred Prosecution Agreement on November 26, 2019 explaining that Ericsson had accepted for the responsibility for the above actions. Ericsson was ordered to pay a criminal penalty of \$520,650,432. Additionally, in a related matter with the SEC, Ericsson must disgorge \$458,380,000 and pay \$81,540,000 in pre-judgment interest. Ericsson was also required to report to the DOJ's Fraud Section its remediation and compliance efforts in accordance with a compliance program for a three-year period. The DOJ indicated that its determination was based on Ericsson's partial credit for cooperating with the investigation, though its failure to voluntarily report and the involvement of high-level executives weighed against it.

Key Facts

Citation. *United States v. Telefonaktiebolaget LM Ericsson*, No. 1:19-CR-00884 (S.D.N.Y. Dec. 06, 2019).

Date Filed. November 25, 2019.

Country. Djibouti, China, Vietnam, Indonesia, Kuwait.

Date of Conduct. 2000 – 2016.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Various agents and subsidiaries.

Foreign official. Unnamed government officials from China, Djibouti, Indonesia, Kuwait, and Vietnam.

FCPA Statutory Provision. Anti-Bribery; Books and Records; internal Controls; Conspiracy.

- **Ericsson Egypt.** Conspiracy (Anti-Bribery);
- **Ericsson.** Conspiracy (Anti-Bribery, Books-and-Records).

Other Statutory Provision. None.

Disposition. Plea Agreement (Ericsson Egypt); Deferred Prosecution Agreement (Ericsson).

Defendant Jurisdictional Basis. Issuer (Ericsson); Agent of Issuer (Ericsson Egypt).

Defendant's Citizenship. Sweden (Ericsson); Egypt (Ericsson Egypt).

Total Sanction. \$520,650,432.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *SEC v. Telefonaktiebolaget LM Ericsson*.

Total Combined Sanction. \$1,060,570,432.