

December 9, 2019

Ericsson to Pay Over \$1 billion to Settle FCPA Bribery Violations with DOJ and SEC

On Friday, December 6, 2019, Telefonaktiebolaget LM Ericsson (“Ericsson”), a Sweden based telecommunications company, reached the second largest settlement in the history of U.S. enforcement of the Foreign Corrupt Practices Act (“FCPA”), when it agreed to pay over \$1 billion in penalties to resolve the U.S. Government’s multi-year investigation into violations of the FCPA arising from millions of dollars paid in bribes across the world. One of the Company’s subsidiaries, Ericsson Egypt Ltd, also pleaded guilty to a charge of conspiracy to violate the anti-bribery provisions of the FCPA.

As part of its groundbreaking settlement, Ericsson entered into a three-year Deferred Prosecution Agreement (“DPA”) in the Southern District of New York, which settled the criminal and civil investigations with the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”). The \$1 billion dollar payment includes a \$520 million criminal penalty to the DOJ and \$540 million to the SEC in disgorgement and interest for a related matter arising from the same facts. The SEC civil complaint, filed December 6, 2019, charged Ericsson with violating the anti-bribery books and records, and internal controls provisions of the FCPA. Ericsson has also agreed to cooperate with DOJ in any ongoing investigations and prosecutions relating to the conduct, including against individuals, to enhance its compliance program, and to appoint a three-year independent compliance monitor.

The settlement is related to Ericsson’s historical breaches of the FCPA beginning in 2000 and continuing until 2016. The conduct spanned across five countries including Djibouti, China, Vietnam, Indonesia, and Kuwait. Admissions show that Ericsson used third-party agents and consultants to make payments to government officials and to manage off-the-books “slush funds.” Through the consultants, Ericsson funded travel and entertainment for officials in China, paid consultants for inside information on government contracts, and paid over \$2 million to government officials in Djibouti to obtain a €20 million government contract with a state owned telecommunications entity. Other FCPA violations included falsifying its books and records and failing to implement reasonable internal accounting controls.

Per the DPA, Ericsson has agreed to continue to enhance its internal controls and its compliance program. In addition to the appointed monitor, some of Ericsson’s Ethics and Compliance program improvements include hiring additional resources for its compliance and investigative functions, enhancing the due diligence process of third parties, including monitoring third-party engagement, introducing sophisticated analytic tools to better identify and prevent high-risk transactions and engagements, and enhancing internal messaging surrounding compliance-related campaigns.

The settlement was based on a number of factors, including Ericsson’s failure to voluntarily disclose the conduct to DOJ. The Company received partial credit, a 15% reduction, for cooperating through the investigations, including conducting a thorough internal investigation, participating in interviews in the U.S., and producing documents that disclosed conduct that DOJ was previously unaware of. However, Ericsson failed to receive full cooperation credit because it failed to disclose allegations of corruption with respect to two relevant matters, produced certain materials late, and failed to adequately discipline some involved employees.

The Ericsson settlement caps the continued FCPA enforcement in the telecommunications industry resulting in fines and penalties of over \$3 billion. MTS, Russia’s biggest mobile phone company, paid \$850 million in penalties to the DOJ and SEC to resolve FCPA violations in March 2019; the Swedish Telia Company paid \$457 million to SEC to resolve FCPA violations in 2017; and VimpelCom, an Amsterdam-based telecommunications company, paid \$795 million to resolve FCPA violations with the DOJ, SEC, and Dutch authorities in 2016.

Please contact your Ropes & Gray counsel.