

WEBINAR

*Foreign Corrupt Practices Act and
Global Anti-Corruption:
2019 Year-in-Review and Predictions
for 2020*

JANUARY 30, 2020

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WEBINAR

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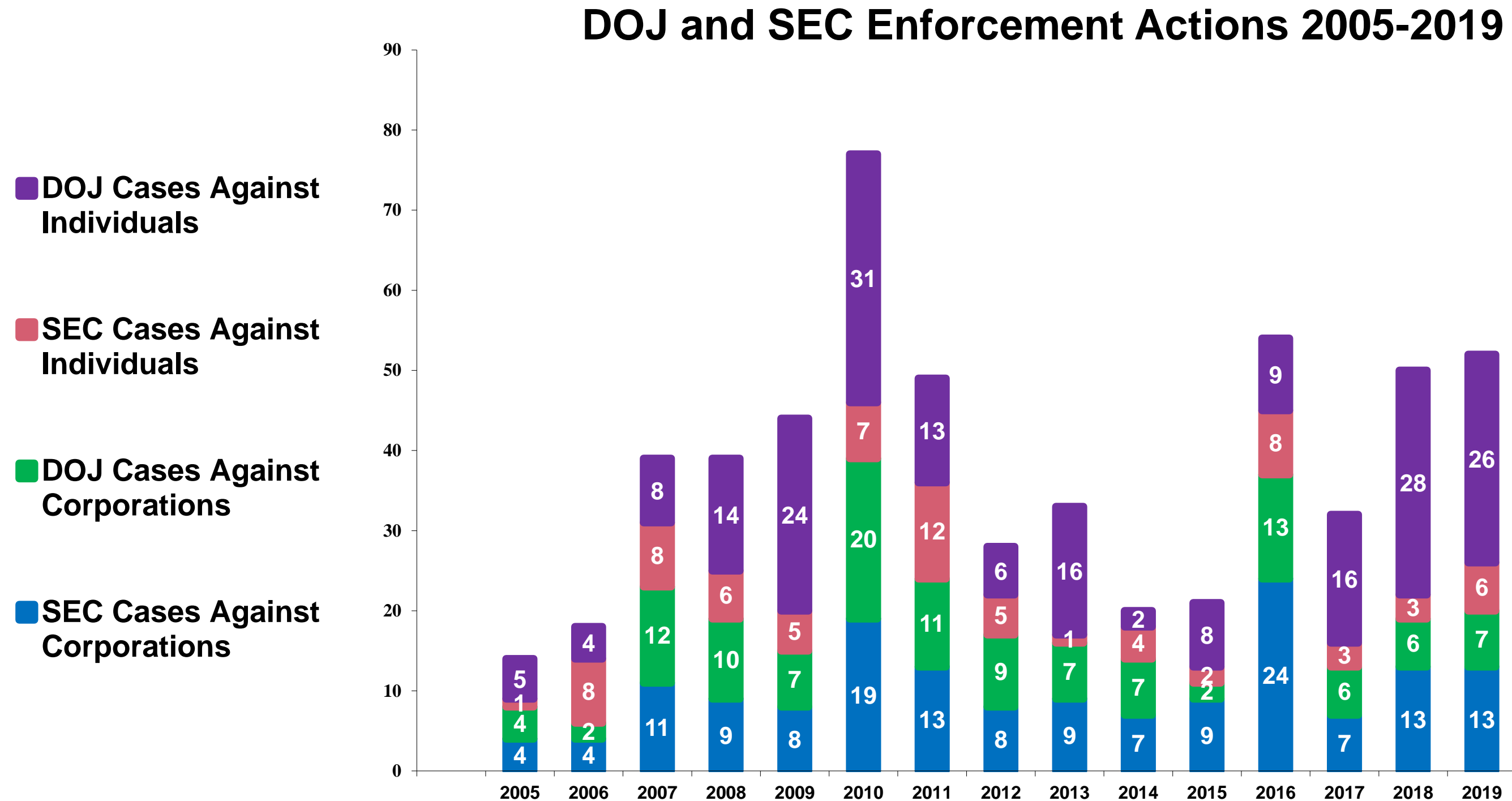


Agenda

- I. 2019 Enforcement Trends & Key Developments
- II. Recent Policy Announcements
- III. Investigation Developments
- IV. Legal Developments
- V. Collateral Actions
- VI. International Developments
- VII. Predictions for 2020



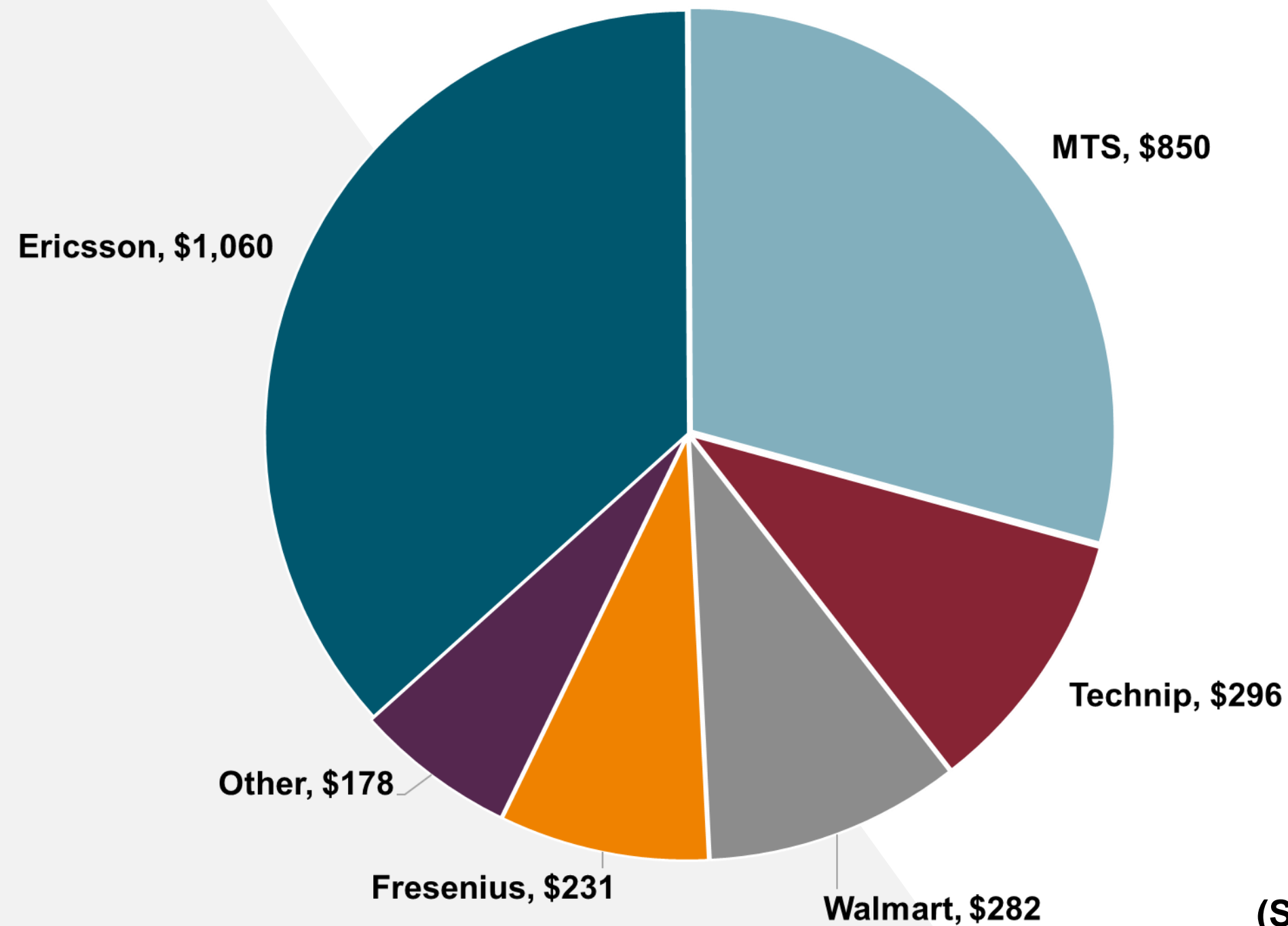
Enforcement Trends Maintained





Record-Breaking Settlement Amounts

2019 Corporate Settlements Total: \$2.9 Billion



(Settlement figures in millions)



Ericsson

Highest combined payment to US authorities – \$1.06 Billion

- \$540 million in disgorgement to SEC
- \$520 million in criminal penalties to DOJ
- Independent Compliance Monitor imposed for three years
- Deferred Prosecution Agreement with DOJ

SEC & DOJ charged violations of anti-bribery and accounting provisions

- Conduct spanned 15 years in 6 countries
- Widespread scheme to pay and improperly book \$50 million in payments to third-party agents to win telecommunications contracts

Swedish authorities have opened investigation

Of top ten FCPA-related monetary settlements, four are with companies in the telecommunications industry



MTS

Second highest combined payment to US authorities – \$850 Million

- \$850 million to DOJ for anti-bribery, and accounting violations
- \$100 million credit for civil penalty paid to SEC for parallel charges
 - DOJ credited civil penalty
- Independent compliance monitor imposed for three years

MTS alleged to have paid \$420 million in bribes to Uzbek government officials to gain access to the Uzbek telecom market

- Bribes generated \$2.4 billion in revenue; no pecuniary gain realized

DOJ & SEC cited lack of cooperation and failure to effectively remediate

- No voluntary self-disclosure, lack of disciplinary action, delay in document production



International Cooperation

Ericsson and MTS reached resolutions with only US authorities

DOJ and SEC nonetheless continue to tout foreign coordination

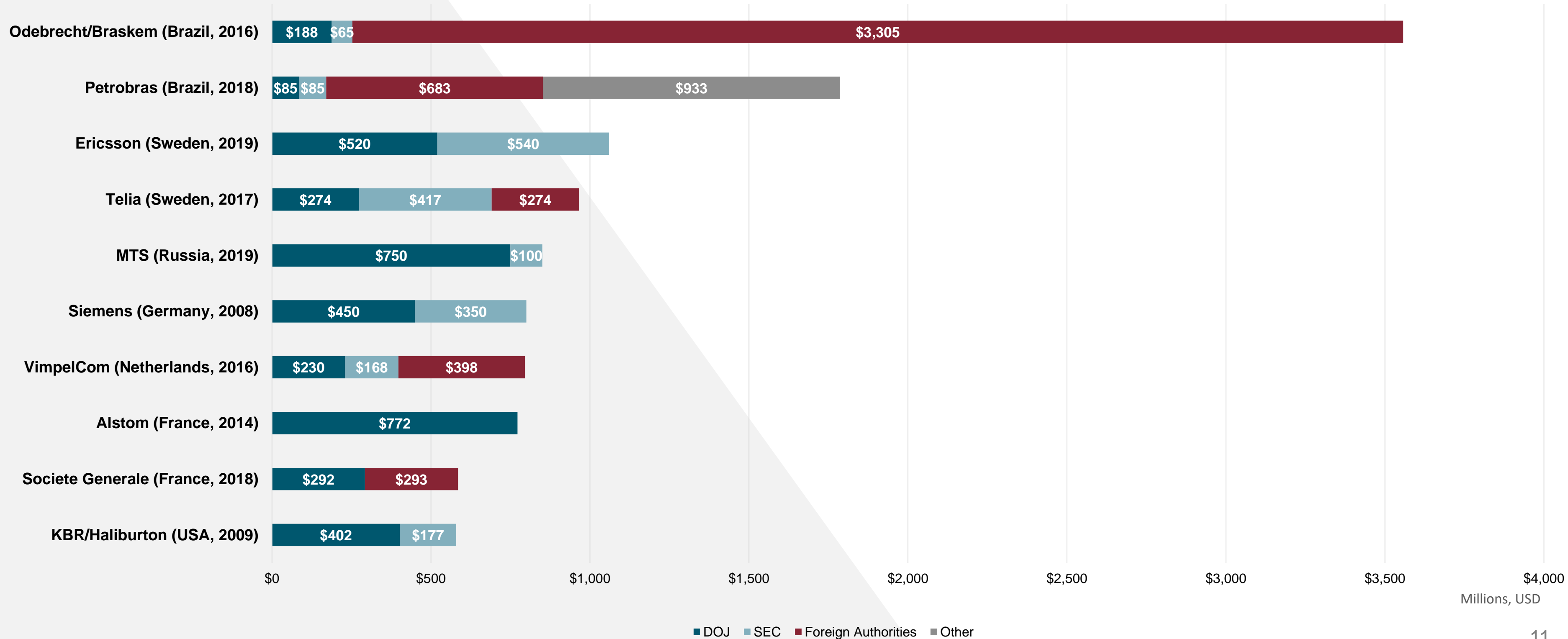
- TechnipFMC – Brazil, UK, Monaco, Italy, Australia, France, and Switzerland credited for providing assistance in DOJ investigation

No Piling On

- Noble Corporation (Brazil)
- PAR Technology Corporation (China, Singapore)
- Veolia Environment S.A. (Romania, France)
- Eni and Royal Dutch Shell (Italy)



Top 10 Monetary Settlements





CFTC

March 2019 announcement that CFTC will enter foreign corruption space to “fill gaps” in anti-corruption enforcement

- CFTC Enforcement Advisory details requirements to avoid civil penalty
 - Timely and voluntarily disclosure of potential violations of Commodity Exchange Act
 - Full cooperation and appropriate remediation required
- CFTC Enforcement Director James McDonald offered examples of practices that would violate the CEA
 - Bribes to secure business in regulated trading activities
 - Corrupt practices to manipulate benchmarks for derivative contracts or prices
- Will coordinate with other agencies to avoid “piling on”
- Three investigations announced to date



Policy Announcements



Revised FCPA Corporate Enforcement Policy

DOJ updated policy “to bring it in line with current practice” and ensure greater transparency and predictability

- Presumption of declination in M&A context
- Relaxed disclosures on individuals for cooperation credit – disclose information only on individuals *substantially* involved in misconduct
- Ephemeral messaging clarification
- “De-confliction” request for limited time and narrowly tailored
- Companies to disclose all relevant facts, of which they were actually aware, known to them at the *time of the disclosure*



Updated DOJ Guidance on Corporate Compliance Programs

DOJ's most expansive effort to publicize its assessment of effective compliance programs

- Compliance is not “one-size-fits-all”
 - Prosecutors must engage in “particularized evaluation”
 - Understand the company's business from commercial perspective
 - Focus on risk-based approach, not rigid formula
- Three “fundamental questions”
 - Is the corporation's compliance program well designed?
 - Is the program being applied earnestly and in good faith? In other words, is the program being implemented effectively?
 - Does the corporation's compliance program work in practice?



Corporate Claims of Inability to Pay

- Designed to standardize prosecutors' assessment of inability-to-pay claims
- Penalty adjustments should only be used where amount would threaten company's viability
- Companies with access to additional capital may not be protected
- May take the form of reduction of penalty or installment schedule
- Sentencing Guidelines instruct evaluation of:
 - Background on current financial condition
 - Other sources of capital
 - Collateral consequence, e.g., pension obligations
 - Victim restitution



SEC Statement on Offers of Settlement

SEC will contemporaneously consider offers of settlement addressing both enforcement action and related collateral disqualifications

- Appropriately-crafted settlements should consider:
 - Cost of litigation
 - SEC's willingness to litigate in absence of timely settlement
 - Importance of promptly remedying harm to investors
 - Desire for certainty
- Effort to create more predictable enforcement environment



Corporate Resolutions



Reliance on Accounting Provisions – Walmart

- DOJ and SEC charged only internal controls and bookkeeping violations
- Walmart subsidiaries in Brazil, China, India, and Mexico hired third-party intermediaries to secure permits and licenses without reasonable assurances the payments were for their stated purposes
- Government acknowledged significant remedial measures, including enhancements to Walmart's compliance program
- \$282 million to be paid in total to SEC and DOJ
- DOJ required a monitor for two-year term with no further self-reporting obligation
- Monitorship limited to review of four markets and company HQ



Reliance on Accounting Provisions – Microsoft

- DOJ and SEC alleged 2012-2015 bribery scheme, charged internal controls and recordkeeping violations
 - Intermediaries used in connection with government projects and business development
 - Payments for gifts and travel for government officials and employees of non-government customers
- Microsoft allegedly won \$13.7 million in government business as a result of conduct
 - \$16 million in disgorgement plus interest to SEC
 - DOJ entered three-year NPA with Hungarian subsidiary, \$8.75 million penalty



Reliance on Accounting Provisions – Juniper Networks

- Settled charges with SEC only for conduct from 2009-2013
 - Alleged that Chinese subsidiary employees falsified trip and meeting agendas with government officials to understate value of entertainment
 - Russian subsidiary, JNN Development Corp., secretly diverted funds to pay for government officials' leisure activities
 - SEC's papers did not identify specific improper payments
- \$4 million in disgorgement plus interest and \$6.5 million in civil penalty



Reliance on Accounting Provisions – Telefônica Brasil

- Settled internal controls and bookkeeping violations with SEC
 - Little evidence of corrupt conduct and tenuous connection with United States
 - Alleged that company provided government officials with more than \$730,000 of soccer tickets and hospitality
 - Failure to properly characterize: booked as “Publicity Institutional Events”; “Advertising & Publicity”
 - Telefônica allegedly lacked sufficient controls to prevent the gifts at issue
- SEC did not allege connection between gifts and business benefit
- Paid \$4.125 million in civil penalties, >5X the value of the gifts given



Reliance on Accounting Provisions – Hiring Cases

- Deutsche Bank and Barclays became fourth and fifth banks to settle charges related to foreign hiring practices
- Both cases involved only the SEC in contrast to other recent bank hiring cases
- Bank hiring investigations appear to be winding down, but hiring will still be a live theory of liability for US authorities



Self-Disclosure and Cooperation

DOJ and SEC continue to reward companies that voluntarily self-disclose, fully cooperate, and appropriately remediate

- Self-Disclosure and cooperation resulted in two 2019 DOJ declinations
- DOJ penalty reductions of up to 50% off low end of USSG range
- Avoidance of independent monitor
- 2019 resolutions reflect DOJ and SEC mutual interest in increasing disclosure and cooperation

Ericsson received only partial cooperation credit – a 15% reduction off the low end of the sentencing range - because it did not, in the DOJ's view, disclose all allegations of corruption, did not timely produce documents, and did not take adequate disciplinary measures



Declinations Pursuant to DOJ Policy

Cognizant Technology Solutions

- DOJ declination highlighted disclosure within two weeks of discovering conduct
- \$25 million to SEC in disgorgement, prejudgment interest, and civil penalty
- Mixed results for Cognizant executives

Quad/Graphics

- Declination a result of the disclosure and self-reporting
- \$10 million to SEC in disgorgement, prejudgment interest, and civil penalty



Continued Use of Monitors

- Four Companies required to engage independent monitors as part of resolutions
 - MTS
 - Fresenius
 - Walmart
 - Ericsson
- Monitorships this year highlight DOJ's attempt to tailor scope
- DOJ and SEC will continue to recommend monitors when there are perceived internal controls failures/gaps, or where enhanced compliance programs are untested



2019 Monitorships

	Walmart	Fresenius	MTS	Ericsson
<i>Length of Monitorship</i>	Two-year term, no self-reporting	Two-year term, one-year of self-monitoring	Three-year term, no self-reporting	Three-year term, no self-reporting
<i>Scope of Monitor's Mandate</i>	Assessment of defined "key risk areas" Limited to operations in four markets and Arkansas Home Office	All internal controls and reporting procedures related to FCPA and other anti- corruption laws Does not cover US entity	All internal controls and reporting procedures related to FCPA and other anti- corruption laws	All internal controls and reporting procedures related to FCPA and other anti- corruption laws
<i>DOJ or SEC</i>	DOJ only (SEC requires two years of self-reporting)	DOJ / SEC	DOJ / SEC	DOJ / SEC



Individual Resolutions



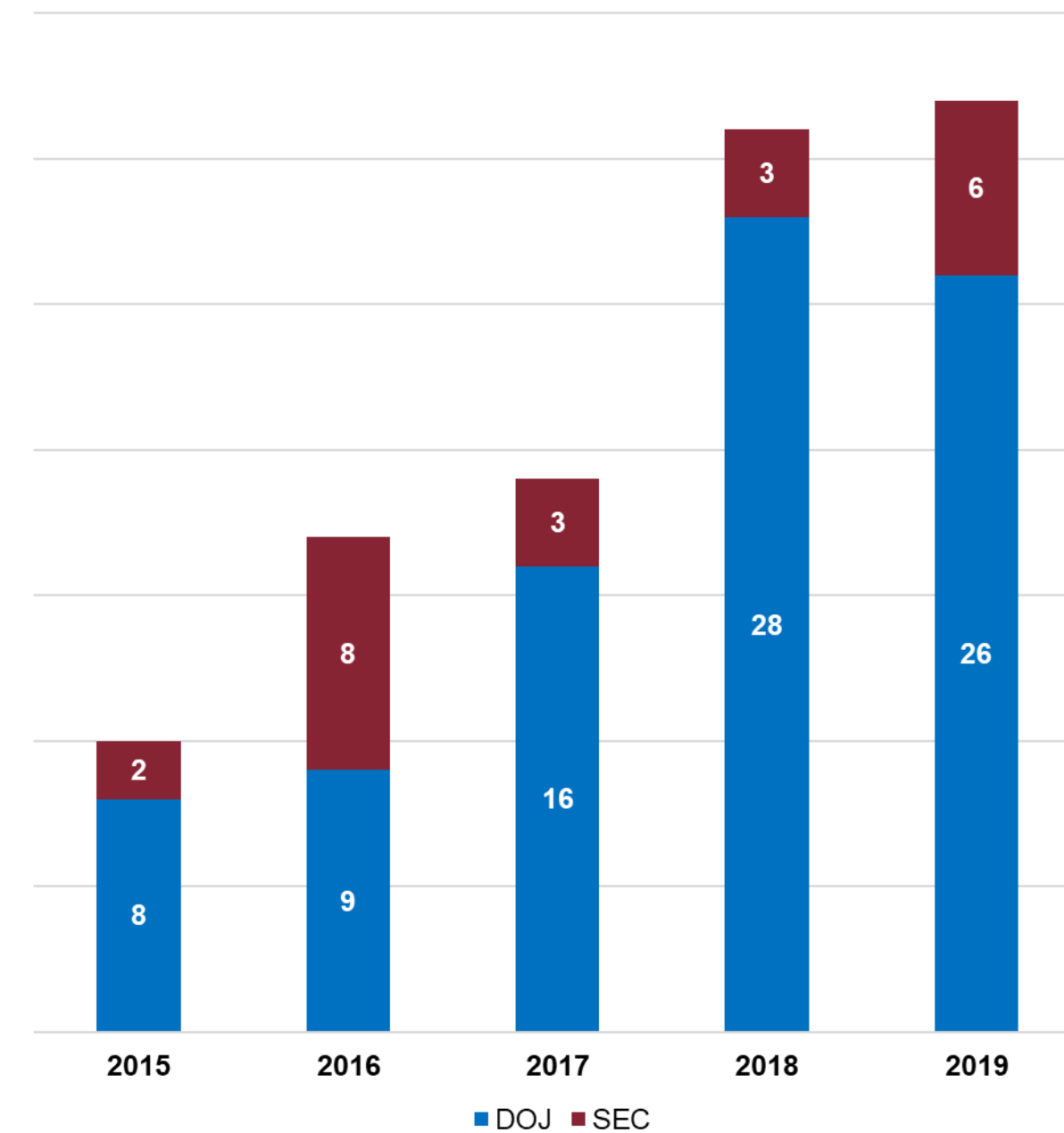
Continued Focus on Prosecution of Individuals

DOJ still considers individual prosecutions as having more of a deterrent effect than corporate settlements

- The DOJ focus is on identifying individuals **“who play significant roles in setting a company on a course of criminal conduct”** in an effort to identify those individuals **“who devised and authorized criminal schemes.”** – Former DAG Rod Rosenstein, March 7, 2019

Individual prosecutions are still less frequent than corporate enforcement actions, and DOJ far exceeds SEC

Individual Actions 2015-2019





Individual Prosecutions Stem from Multi-Year Investigations

- **PDVSA:** Three new guilty pleas related to payments to Venezuelan government officials
 - All told, 18 of the 21 individuals charged have pleaded guilty
- **1MDB:** SEC civil settlement with Tim Leissner, following his 2018 guilty plea for violating the FCPA; other cases pending
- **PetroEcuador:** Frank Roberto Chatburn Ripalda pleaded guilty to paying almost \$3 million to Ecuadorian officials
 - Sentenced to 42 months + \$40,000 fine
 - Latest of 10 guilty pleas related to PetroEcuador
- **Braskem/Odebrecht:** Former Braskem CEO Jose Carlos Grubisich indicted for his role in organizing hundreds of millions of dollars worth of bribes paid by Braskem's owner, Odebrecht S.A.
- **Unaoil:** Former CEO Cyrus Ahsani and former COO Saman Ahsani pleaded guilty to one count of conspiracy to violate the FCPA in connection with conduct in Algeria, Angola, Azerbaijan, DRC, Iran, Iraq, Kazakhstan, Libya, and Syria



Unusual Fact Patterns: DOJ Pursues Adoption Agency Case

- Robin Longoria, an adoption agency employee, pleaded guilty to conspiracy to violate the FCPA and to commit wire and visa fraud in connection with bribing Ugandan officials to facilitate adoptions by American clients
 - Unusual, but not unique: The DOJ brought a similar case in 2014 against employees at an adoption agency operating in Kazakhstan and Ethiopia
- Entities operating internationally, even those pursuing social good, can still be caught up in FCPA cases



Roger Richard Boncy and Joseph Baptiste

- Roger Richard Boncy, chairman and CEO of an investment firm, and Joseph Baptiste, a member of the firm's board of directors, were found guilty of one count of conspiracy to violate the FCPA and the Travel Act
 - Baptiste was also convicted of one count of violating the Travel Act and one count of conspiracy to commit money laundering
 - The jury found Boncy not guilty of either violating the Travel Act or conspiring to launder money
- DOJ presented evidence at trial that Boncy and Baptiste solicited bribes from individuals whom they believed might become investors in a proposed port development project
- Sentencings scheduled for some time in 2020



Lawrence Hoskins

- French power and transportation company, Alstom S.A., pleaded guilty to violating the FCPA in 2014
- Hoskins, a UK citizen working in Paris for a French company, was charged in 2013 with both conspiracy to violate the FCPA and substantive FCPA violations
 - District of Connecticut dismissed the case, in part, finding his conduct fell outside US jurisdiction
 - Second Circuit found foreign nationals with no US ties to conspiracy could be charged with both substantive and accessory violations as an “agent of a domestic concern”
- On remand, DOJ secured a conviction following trial in late 2019
 - DOJ presented evidence that Hoskins conspired to bribe Indonesian officials in exchange for assistance securing a \$118 Million contract for Alstom and a partner company to provide power-related services within the country



Mark Lambert

- Jurors found Mark Lambert, a former co-president of a Maryland-based transportation company, TLI, guilty of bribing a Russian official in exchange for contracts to deliver nuclear materials to customers in the United States and abroad
- DOJ presented evidence that Lambert and his co-conspirators concealed bribe payments by causing the preparation of false invoices
- Lambert and others then caused TLI to wire payments to shell companies in Switzerland, Cyprus, and Latvia for services described on the false invoices



Jean Boustani

- In December 2019, a jury in the Eastern District of New York acquitted Jean Boustani, a Lebanese shipbuilding executive at Privinvest Group, on charges related to an alleged scheme involving loans backed by the Mozambican Government
- DOJ had alleged that Boustani conspired to commit wire fraud, securities fraud, and money laundering in connection with bribe and kickback payments to Mozambican officials and UK-based investment bankers
 - DOJ did not charge Boustani, a foreign national, with directly violating the FCPA, instead focusing on claims that Boustani defrauded investors
- Boustani testified in his own defense at trial and admitted to making payments to Mozambican officials, but denied defrauding any investors
- Jurors told reporters that their acquittal hinged on the lack of a connection between Boustani's conduct and the United States



Sentencing

- 17 individual defendants were sentenced in FCPA-related cases in 2019
- Most of the defendants received two to three years' imprisonment, a slight decrease from 2018
- Fines imposed ranged from \$15,000 to \$500,000, while orders of forfeiture and/or restitution ranged from \$500,000 to \$1.7 Million
- Of those seventeen individuals sentenced, eleven were in connection with large-scale, multi-year investigations into *Rolls-Royce* (five) *PDVSA* (four), and *PetroEcuador* (two)
- Christian Javier Maldonado-Barillas's sentencing highlighted the importance of cooperation
 - Provided "substantial assistance" to the PDVSA investigation, including the willingness to testify and making many recordings "at great risk to his personal safety"
 - Maldonado-Barillas received two years probation



Legal Developments



International Reach of the FCPA

United States v. Hoskins (D. Conn. Nov. 2019)

- In August 2018, the Second Circuit affirmed the District Court’s limitations on the jurisdictional reach of the FCPA
 - Government cannot use a conspiracy charge to reach a foreign national who could not be charged with a substantive FCPA violation for jurisdictional reasons
 - However, such a foreign national could be charged directly if elements of agency charge are met
- In October 2019, the DOJ pursued charges against Hoskins on an agency theory
 - Jury instructions required an understanding that “the principal will be in control of the undertaking,” and instructed the jury that they could infer an agency relationship “circumstantially from the words and actions of the parties involved.”
 - Hoskins was convicted of six counts of violating the FCPA, three counts of money laundering, and two counts of conspiracy



Potential Limitations of the SEC's Disgorgement Authority

Liu v. SEC (US 18-1501)

- Supreme Court to consider whether SEC can obtain disgorgement as a form of “equitable relief” for a securities law violation in judicial enforcement proceedings following 2017’s *Kokesh v. SEC*
- Limited impact on FCPA enforcement as SEC has mostly used administrative proceedings, which will be unaffected by the *Liu* case



Cooperation and Collateral Consequences

United States v. Connolly (S.D.N.Y. May 2, 2019)

- Gavin Black, a former Deutsche Bank (DB) employee, convicted of wire fraud and conspiracy in October 2018 in connection with alleged LIBOR interest rate manipulation
 - Black moved to vacate, arguing statements to bank's outside counsel during internal investigation were attributable to, and compelled by, the government and improperly used against him at trial
- The Court ruled that because Government had “outsourced” its investigation of Deutsche Bank to the Bank itself, actions undertaken by DB's outside counsel were “fairly attributable” to the Government, and statements made during investigation were subject to constitutional protections as if made to government investigators



FCPA Whistleblowers and the Limitations of Sarbanes-Oxley Anti-Retaliation Protections

Wadler v. Bio-Rad Lab., Inc. (9th Cir. 2019)

- In 2015, Sanford Wadler, Bio-Rad's former general counsel, sued after termination of employment
 - Wadler asserted whistleblower retaliation claims under Dodd Frank and SOX, based on reporting potential FCPA violations to audit committee
 - Jury instructed that statutory provisions of the FCPA constituted "rules or regulations of the SEC" as required in SOX retaliation provision; jury subsequently ruled in Wadler's favor and awarded him \$10.92 million plus interest
- Ninth Circuit reversed, holding that statutory FCPA provisions do not constitute "rules and regulations" of the SEC



Defining “Official Act” under the FCPA and Other Anti-Bribery Laws

United States v. Thiam (2d Cir. 2019)

- Thiam, a US citizen and Minister of Mines and Geology of the Republic of Guinea, convicted of violating 18 U.S.C. §§ 1956 and 1957 after receipt of \$8.5 million bribe from a Chinese entity in violation of Guinean law
- Second Circuit held, primarily due to principles of international comity, that the *McDonnell* “official act” standard under § 201 is inapplicable to cases involving violations of foreign laws

United States v. Ng Lap Seng (2d Cir. 2019)

- Ng Lap Seng, a Chinese real estate developer, convicted on bribery charges under FCPA and 18 U.S.C. § 666, which prohibits theft or bribery in connection with programs receiving federal funds
- Second Circuit held that *McDonnell* “official act” standard does not extend to § 666 or FCPA anti-bribery provisions



Definition of “Official Act” under the FCPA and Other Anti-Bribery Laws, cont’d

United States v. Chi (9th Cir. 2019)

- Chi, a South Korean citizen employed as a researcher and director of a government-funded geological research institute in South Korea, was found guilty of having violated 18 U.S.C. § 1957
 - The government alleged that Chi had solicited and received payments from two seismometer manufacturers in exchange for his assurance that he would give the companies inside information about their competitors
- The Ninth Circuit upheld conviction, holding that higher burden for “official act” in 18 U.S.C. § 201 (*McDonnell*) does not apply to § 1957 cases



Proposed Legislation

The Foreign Extortion Prevention Act (H.R. 4140)

- Introduced by Representatives Sheila Jackson Lee (D-TX), John Curtis (R-UT), Tom Malinowski (D-NJ), and Richard Hudson (R-NC)
- Fills gap in FCPA by prohibiting foreign officials from taking or demanding bribes
 - But, amends 18 U.S.C. § 201, the general federal anti-bribery statute, not the FCPA
 - Impact potentially limited by *McDonnell* decision imposing higher burden for “official act” in § 201



Proposed Legislation

The Investor Protection and Capital Markets Fairness Act (H.R. 4344)

- Introduced by Representatives Ben McAdams (D-UT) and Bill Huizenga (R-MI)
- Would grant express statutory authority for SEC to seek disgorgement
- Addressing *Kokesh*, would expand statute of limitations for disgorgement to 14 years
- Passed the House overwhelmingly by a vote of 314-95 in November 2019



Proposed Legislation

The Securities Fraud Enforcement and Investor Compensation Act (S. 799)

- Introduced by Senators John Kennedy (R-LA) and Mark Warner (D-VA)
- Express statutory authorization for SEC to seek disgorgement and restitution
 - *Liu* decision may be catalyst for Congressional action on this legislation
- Extends statute of limitations for SEC's disgorgement and restitution authorities
 - Disgorgement within five years of receipt of ill-gotten gains
 - Restitution-related statute of limitations extended from five to ten years



Collateral Actions



Restitution Claims

United States v. OZ Africa Management LLC (E.D.N.Y. Aug. 29, 2019)

- Former shareholders of Africo Resources Ltd. entitled to restitution; briefing and motions related to the amount owed in restitution are ongoing

Government-as-Victim Cases

- ***United States v. Ortega*** (S.D. Fla. Apr. 2, 2019): Maduro Government of Venezuela moved to be recognized as a victim and for restitution related to PDVSA embezzlement; US government opposed because Maduro Government not recognized as government of Venezuela; motion is pending
- ***United States v. Escobar*** (S.D. Fla. Sept. 20, 2019): PetroEcuador sought restitution as victim of bribery scheme carried out by own employees; Magistrate Judge recommended denying the request because company “cannot be deemed a victim” because it was “complicit” in the schemes; no action from district court on report and recommendation to date



Shareholder Lawsuits

Cobalt International Energy Inc. Shareholder Litigation

(S.D. Tx. Feb. 13, 2019)

- Approved combined \$173.8 million settlement in a consolidated class action lawsuit stemming from alleged bribery in Angola

Mobile Telesystems PJSC Shareholder Litigation

(E.D.N.Y. Mar. 19, 2019)

- Shareholders alleged failure to disclose an alleged bribery scheme and related substantial fines; case is pending

In re General Cable Corp. Securities Litigation

(E.D. Ky. Apr. 30, 2019)

- Dismissed allegations of material misrepresentations and omissions relating to bribes paid through subsidiaries to foreign government officials; court found investors had not shown that the company knowingly lied about its compliance with anti-corruption laws



Shareholder Lawsuits, cont'd

Cemex Shareholder Litigation (S.D.N.Y. July 12, 2019)

- Alleged “culture of corruption” at Colombian branch; motion to dismiss amended complaint pending

OSI Systems Shareholder Litigation (C.D. Cal. June 13, 2019)

- Amended class action alleging OSI concealed dealings of its Albanian subsidiary; motion to dismiss pending

Glencore Investor Lawsuit

- Planned lawsuit in Q1 2020 alleging share price decline due to bribery investigations by the UK, US, and Canada



Whistleblower Awards

SEC issued first internal whistleblower award under Rule 21F-4(c)(3); encourages use of internal compliance programs

- \$4.5 million award to anonymous whistleblower who alerted Zimmer Biomet to kickback scheme in Brazil
- Whistleblower awarded 15% of the total 2017 fine due to SEC's "high enforcement interest" in this case, based on: (1) the conduct occurring outside the US; and (2) the case involving a company violating the terms of an earlier settlement

SEC has now awarded \$381 million to 62 individuals since first whistleblower award in 2012



Other Collateral Actions

Civil Forfeiture – 1MDB

- Largest civil forfeiture ever and largest DOJ recovery in 2019
- Over \$1 billion settlement with Malaysian financier Low Taek Jho; DOJ recovered more than \$700 million

International Arbitration – Petrobras Securities Litigation

(S.D.N.Y. July 30, 2019)

- Cornell University denied access to sealed Petrobras class action documents in arbitration

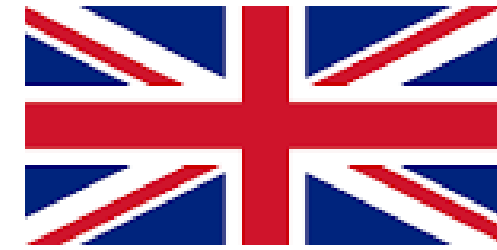
Breach of Fiduciary Duty, Fraud – IMSS v. Stryker Corp.

(W.D. Mich. Oct. 18, 2019)

- The Instituto Mexicano del Seguro Social (“IMSS”), an agency of the Mexican Government, filed suit against Stryker for alleged corrupt conduct in contracting with IMSS between 2003-2015



International Developments



United Kingdom

— Investigation and Enforcement Trends

- The UK's Serious Fraud Office (SFO) reached no DPAs for bribery cases and failed to convict the only individual defendant the SFO prosecuted for corruption after a company DPA

— Significant Cases

- SFO closed its investigations into GlaxoSmithKline and into individuals linked to Rolls-Royce
- FH Bertling was fined £850,000 for its role in a bribery scheme in Angola
- SFO failed to convict three individuals tied to Sarclad for corruption and bribery conspiracies
- SFO concluded Alstom investigation, ordering UK subsidiary to pay \$21.2 million in fines and costs
- Three individuals tied to Güralp Systems were acquitted of conspiracy to commit corruption

— Legislative and Enforcement Guidance Developments

- Crime (Overseas Production Orders) Act enacted to enable the authorities to quickly obtain evidence held abroad
- SFO released its Corporate Co-operation Guidance to assist companies with self-reporting



Germany



— Enforcement Efforts

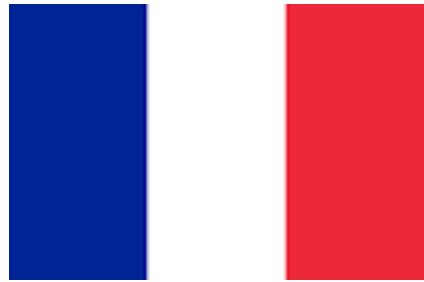
- Frankfurt public prosecutor confirmed that it has initiated investigations against several Fresenius employees for bribery

— Legislative and Enforcement Guidance Developments

- In March 2018 coalition agreement, government agreed to reform corporate sanctions law
- In August 2019, government proposed reforms to widen the range of prosecutable corporate offenses, increase possible penalties, encourage compliance measures, and permit the seizure of documents before prosecutors open a case
- In April 2019, Directive (EU) 2016/943 implemented on the protection of trade secrets against their unlawful acquisition, use and disclosure
 - The new law contains exemptions to protect whistleblowers
- Additional protections for whistleblowers are found in Directive (EU) 2019/1937
 - Germany has not yet published a draft law to implement this Directive



France



— Enforcement Efforts

- Authorities entered into a DPA with Egis Aviva over alleged bribery and forgery related to construction contracts in Algeria
 - Egis Aviva paid €2.6 Million in fines
- Authorities did not sanction an electric company that failed to implement an adequate compliance program because the company cooperated and improved its program
- Former President Sarkozy may be put on trial for concealing the true cost of his 2012 campaign

— Law Enforcement Guidance

- French authorities released new guidelines for DPA eligibility, covering three key areas of concern for companies pursuing a DPA:
 1. conditions under which the authorities will consider entering into a DPA
 2. factors that the authorities weigh in determining the fines imposed under the DPA
 3. the type of monitoring that companies can expect following a DPA
- The guidelines do not specify the duration of supervision after a DPA and do not assign specific punitive damages multipliers after finding aggravating circumstances



China



— Enforcement Efforts

- Chief Justice of the Supreme People's Court stated that the Court continues to focus on penalizing corruption and bribery related crimes
- In the first nine months of 2019, a total of 452,000 corruption cases were investigated with 383,000 people disciplined and penalized, including many senior government officials
- The Chinese police have successfully convicted multiple senior government officials and state-owned enterprise business leaders of bribery and corruption

— Regulatory Developments

- Communist Party revised its Regulations on Party Accountability to strengthen accountability for misconduct of Party members and senior government officials
- International Criminal Judicial Assistance Law enacted, which could prevent China-based individuals and entities from providing assistance to criminal proceedings outside of China
- China has been tightening its scrutiny of cross-border information transmission



Brazil



— Enforcement Efforts: Operation Car Wash

- On June 9, *The Intercept* reported that Justice Minister Moro colluded with prosecutors to use Operation Car Wash to target Bolsonaro's political opponent, Lula da Silva, and help Bolsonaro win the 2018 election
- In August, the Supreme Court overturned the conviction of Aldemir Bendine, a former president of Petrobras, on procedural grounds
- Brazilian authorities have signed 11 settlements, totaling nearly \$3 billion in fines under Operation Car Wash, including two \$500 million settlements with Engevix Group and OAS to resolve bribery accusations
- The Supreme Court issued a controversial evidentiary ruling, temporarily halting all cases built on evidence obtained from the Financial Activities Control Board or Financial Intelligence Unit without judicial approval, radically impacting federal investigations into corruption, money laundering, and terrorism financing

— Legislative Developments

- The Bolsonaro administration introduced an anti-crime bill to increase protections and incentives for whistleblowers, and enables the expanded use of DPAs, settlements, and conciliations
 - The legislation remains stalled in Congress



Mexico



— Enforcement Efforts

- In May, Mexican authorities filed charges against a former Pemex CEO alleging that he accepted \$10 Million in bribes in connection with Pemex's purchase of a fertilizer plant
- Mexico's first Chief Anti-Corruption Prosecutor Luz Mijangos Borja's has initiated nearly 700 anti-corruption investigations
- Prosecutors have brought criminal cases against entities tied to the corruption scandal "La Estafa Maestra"
 - The scandal involves funneling nearly \$200 million worth of government funds through public universities and shell companies

— Legislative Developments

- The government pledged to create an entity to redistribute the proceeds of seized assets to fund social programs throughout the country
- The government expanded its asset forfeiture powers
 - Critics argue that the new law could allow for the seizure of assets from an owner who had no knowledge of the illegal purpose of the assets



Predictions for 2020



Predictions for 2020

- FCPA enforcement will remain a priority, and resolutions will continue apace
- The CFTC will likely open new investigations, issue further policy guidance on the scope of foreign corruption activity, or, perhaps, even reach its first resolution
- DOJ will continue to prioritize individual prosecutions for FCPA cases in 2020
- There will likely be additional investigations in the medical device industry; there has been a recent increase in investigations in this field
- Airline and aerospace industry has also been the focus of recent FCPA investigations, and this trend will likely continue, especially with recent announcement of record-setting penalties in Airbus agreement in principle
- DOJ and SEC will continue to aggressively pursue expansive jurisdictional and agency theories
- SEC will continue to aggressively utilize the internal accounting controls provisions



Questions

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