

Risky business

With telecoms fast-becoming one of the most powerful industries in the world, how large is the threat of corruption? **Laura Hedges** investigates.

Corruption scandals have rocked the global telecoms industry over the past decade. From India's 122 cancelled mobile licences in 2008, to accusations against TeliaSonera for bribery in Uzbekistan in 2012, and the prosecution of several former China Unicom officials in January this year.

Confirming as much, the Anti-Corruption Resource Centre released a report in collaboration with Transparency International and the Chr. Michelsen Institute in April 2014, concluding that: "The recently liberalised telecoms industry is particularly vulnerable to corruption".

There are basic characteristics that make the industry a target for corruption, as David Bridge, senior professional support lawyer of Simmons & Simmons' Crime, Fraud and Investigations team, explains.

"These factors are that it involves large value projects and an interface between public bodies and private companies in countries where anti-corruption enforcement is weak," he says.

Spectrum auctions are a prime example of where the industry can find itself vulnerable, with high value assets being awarded to private companies by public officials, on behalf of a government. When any industry requires a licence from a regulatory authority, there is a danger of corruption as public officials in charge of the process are likely paid very low sums when compared to the value of what is at stake. "The opportunity for personal gain for the official, and for a company to gain an illicit advantage over its rivals, means bribery is a real risk," Bridge says.

India's telecoms market, for example, is still recovering to this day from its 2G

spectrum auction scandal. All 122 mobile licences from a 2G auction in 2008 were cancelled on grounds that their allocation was "totally arbitrary and unconstitutional".

Government officials were accused of a conspiracy to award 2G licences for significantly less than their true value, and telecoms minister Andimuthu Raja was jailed as a result. An official audit at the end of 2010 estimated that the rigged auction process had cost India \$39 billion, a price some argue that the country is still



paying back today. It is still considered one of the worst cases of corruption in the country's recent history. But it's not just spectrum auctions which provide an opportunity for corrupt activity.

"It's the big contracts, the big mobile contracts where a new 3G or 4G network is being rolled out," says Daniel Preiskel, senior partner at telecoms specialist law firm Preiskel & Co. Although he stresses that he has not seen this kind of corruption first hand – "obviously they are

not going to talk to lawyers about it!" – Preiskel believes that when you have major vendors pitching to roll out a new network, there is an opportunity for corruption. "With such big contracts involved there is likely to be a temptation to influence the decision makers at the mobile operators who are selecting the equipment suppliers to construct large scale networks," he says.

Termination rates can be another grey area for the industry: "If a developing country has a high termination rate, certain executives may do private deals with carriers to provide lower termination rates, or officials may turn a blind eye in allowing their 'friends' to set up unauthorised termination systems and routes which bypass the main international rate," Preiskel says.

A power trip

Transparency International's Corruption Index places Somalia and North Korea as the world's joint top most corrupt countries.

"It is true to say that most of the worst performing countries are in Africa and Asia, but one needs to be careful about tarring whole continents with the same brush, as there are stark regional variations," Bridge says.

To highlight the contrast, Singapore, for example, is ranked one of the least corrupt countries in the world, ahead of the US and the UK. And while Africa is home to five of the top 10 most corrupt countries, it also includes Botswana which ranks extremely low in terms of its corrupt activity. Bridge adds that corruption is very much related to a lack of accountability by those in political power in a country.

This often results in a lack of free and active investigative press, low paid public officials and weak anti-bribery enforcement, which all present an opportunity for unethical activities.

According to the Anti-Corruption Resource Centre study, the emergence of the digital age has given telecoms operators a new sense of power, thus opening up the possibility for corruption and bribery in countries lacking a strong political system.

“It is virtually impossible to adopt a single measure to control communications networks and information flows, the internet and phone calls without the cooperation of telecoms operators,” the report states. “And in many cases this is done outside of any due process.”

In Uganda, for example, during the riots in 2009 and 2011, regulators blackmailed telecoms operators with the loss of their operational licences if they failed to block communications containing political content. But in some countries, more of a cultural change is required.

In China, there has been a clampdown on traditional gift-giving which has often been used to disguise bribery.

Chinese president Xi Jinping is driving an anti-corruption campaign across the country which, in 2013, led to a 13.3% increase in the number of people punished for corruption compared to 2012, and oversaw the disciplinary sanctioning of 19 officials at vice-ministerial level or above.

“Generally, whatever the Chinese decide to do in the telecoms sector, they tend to implement very effectively,” Preiskel says.

However, there appears to be concern from some in the industry over who the current drive is aimed at. “I think there is no doubt about the seriousness of the efforts to combat corruption in China, though there may be subtleties as to who is targeted,” Bridge elaborates. “Many Western businesses with operations in China feel that the spotlight is falling on them more than local competitors.”

On the defence

“The risks to a business of being found to have acted corruptly are now colossal,” Bridge says. Aside from the financial penalties from multiple national authorities, the loss of staff and the removal from auction procedures when corruption is revealed, the damage to a company’s reputation can be extremely difficult to repair. After bribery allegations

in Uzbekistan, TeliaSonera was forced to take immediate and public action.

In September 2012 the Nordic operator was accused of paying \$320 million in bribes to the daughter of the Uzbekistani president in order to enter the country’s market. The company has since admitted that some of its transactions had not been in line with “sound business practices”.

The outcome saw the resignation of CFO Per-Arne Blomquist in 2013, as well as the departure of four other senior employees. And in an industry where connections and relationships mean everything, a corruption scandal can be devastating. This risk of corruption therefore means that protection against it should form a crucial part of an operator’s day-to-day business.

Rob Bratby, managing partner at Olswang Asia, says that operators need to implement “robust governance and compliance policies and frameworks” in order to protect themselves.

The UK and the US governments have strict anti-bribery laws in place for British

Market reputation on the line

With such a large number of high profile incidents, what implications might ongoing corrupt activity have for the broader telecoms market?

Not only does corruption instil an attitude of dishonesty, it affects those that are trying to operate a genuine business.

A corrupt market is a hindered market and can lead to a reduction in growth and innovation for all.

“If, because of corruption, the best operators do not win contracts, the development of networks and services is left to inferior players,” says Bridge. According to the Anti-Corruption Resource Centre report, corruption in the telecoms sector is generally seen as distorting healthy market competition, creating barriers to trade and having a negative impact on free and fair competition.

And a market renowned for corruption will be inexorably avoided by major players. There are, for example, a

significant lack of Western multinationals in Somalia, with regional African operators only tentatively entering the country. “When there is no true competition because work is won through corruption,

there will inevitably be less investment and services will suffer,” Bridge agrees.

And for every market making progress with minimising the risk of corruption, another appears to become more susceptible.

“At the more established end of the market there are signs that combatting corruption is more of a focus as the risks increase,” Bridge says. “But in developing countries there is little sign as yet of a significant decline in corruption, as the number of news stories on the subject illustrates.”

Amid the many benefits of working in such a powerful global industry, operators are burdened with an enormous social responsibility when it comes to acting reputably, and it is the deeply international nature of wholesale telecoms that brings both great opportunity and risk.

“The telecoms sector has important economic and social implications,” the report concludes. “It is therefore important to ensure that states have ratified international and regional anti-corruption conventions, and that they properly implement them.”

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Daniel Preiskel, senior partner, Preiskel & Co.



and American companies, which Preiskel says should serve as an example of best practice to the rest of the world.

The UK Ministry of Justice Guidance on the Bribery Act outlines a number of steps for businesses to consider when it comes to corruption, based around enforcing that bribery is not tolerated, regardless of the potential gain.

The 2010 Bribery Act in the UK has also increased the reach of the country’s anti-corruption law and made it easier to convict companies of bribery if a payment has been made by a local agent, joint venture or local subsidiary.

Another example is TUFF (Telecommunications UK Fraud Forum) – a forum in the UK which has a register listing individuals who have been involved in fraudulent or corrupt activity.

These individuals will then be on a database and their previous activity will be flagged when they look for work elsewhere.

“But these employees initially have to agree to sign up to this,” Preiskel says. “So other than that, it is a question of having regular internal checks, especially on the sales and procurement side.”