CORRUPTION IN THE PRIVATE SECTOR IN REPUBLIC OF MACEDONIA - RECENT CASES

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2 BACKGROUND INFORMATION

• The political crisis in Macedonia 2014-2017: an accountability crisis
• The emerging of the wiretapping scandal and the alleged corruption cases revealed in it
• Priebe Report 2015
• The first Przino Agreement 2015 and the establishment of the Special Public Prosecution
• Obstructions to the work of SPO
3 BACKGROUND INFORMATION

• The second Przino Agreement of 2016
• EC Progress Report of 2016: State capture
• The parliamentary elections of December 2016
• The problems related to democratic transfer of power and the events of 27 April 2017
• The consolidation of the new government and settlement of priorities
• Second Priebe Report 2017
• “As noted previously, in many areas the appropriate regulatory framework is in place. As explained below, however, the considerable gap between legislation and practice, which has different causes, needs to be bridged. In general, the group considers that the behaviour of some office holders might turn out to be the biggest obstacle for proper implementation. There is an insufficient culture of accountability and transparency within state institutions, which is required to promote greater consistency in policy and action, or ensure clarity and foreseeability of law and practice.”
Companies can avoid risks by changing or abstaining from business operations which are deemed to involve corruption. For instance, a company can avoid risks by not conducting individual transactions and projects, not entering into a high-risk market or by abstaining from the engagement of external agents.

Companies can transfer risks by shifting the responsibility of managing or executing particular measures to another party. For example, a company can avoid the risk on insufficient due diligence on its suppliers to a dedicated external party service provider.
6 CASES REGARDING CORRUPTION IN THE PRIVATE SECTOR

- “Magyar Telecom”
- “Trust” and other SPO cases
• The Department of Justice (USA) filed a criminal information against Magyar Telekom and a two-year deferred prosecution agreement in U.S. District Court for the Eastern District of Virginia today. The three-count information charges Magyar Telekom with one count of violating the anti-bribery provision of the FCPA and two counts of violating the books and records provisions of the FCPA. At the time of the charged conduct, Magyar Telekom’s American Depository Receipts (ADRs) traded on the New York Stock Exchange (NYSE). As part of the deferred prosecution agreement, Magyar Telekom agreed to pay a $59.6 million penalty for its illegal activity, implement an enhanced compliance program and submit annual reports regarding its efforts in implementing the enhanced compliance measures and remediating past problems.
According to court documents, Magyar Telekom’s scheme in Macedonia stemmed from potential legal changes being made to the telecommunications market in that country. In early 2005, the Macedonian government tried to liberalize the Macedonian telecommunications market in a way that Magyar Telekom deemed detrimental to its Macedonian subsidiary, Makedonski Telekommunikacii AD Skopje (MakTel). Throughout the late winter and spring of 2005, Magyar Telekom executives, with the help of Greek intermediaries, lobbied Macedonian government officials to prevent the implementation of the new telecommunications laws and regulations.
Magyar Telekom eventually entered into an agreement with certain high-ranking Macedonian government officials to resolve its concerns about the legal changes. In the secret agreement, a so-called “protocol of cooperation,” Macedonian government officials agreed to delay the entrance of a third mobile license into the Macedonian telecommunications market, as well as other regulatory benefits. Magyar Telekom executives signed two copies of the protocol of cooperation, each with high-ranking officials of the different ruling parties of Macedonia. The Magyar Telekom executives then kept the only executed copies outside of Magyar Telekom’s company records.
According to court documents, in order to secure the benefits in the protocol of cooperation, the Magyar Telekom executives engaged in a course of conduct with consultants, intermediaries and other third parties, including through sham consultancy contracts with entities owned and controlled by a Greek intermediary, to pay €4.875 (approximately $6 million) under circumstances in which they knew, or were aware of a high probability that circumstances existed in which, all or part of such payment would be passed on to Macedonian officials. The sham contracts were recorded as legitimate on MakTel’s books and records, which were consolidated into Magyar Telekom’s financials. Deustche Telekom, which owned approximately 60 percent of Magyar Telekom, reported the results of Magyar Telekom’s operations in its consolidated financial statements.
MAGYAR TELECOM 4

- Response in Macedonia
- Non-prosecution of high state officials involved in this case
- People involved come from different ruling parties having in mind that it has been a long procedure of giving and receiving bribes
- Two of the persons involved in the case sued charges of slander to one of the witnesses who testified before the Department of Justice, USA
“TRUST”

- Three companies joined in a consortium and applied for a tender (worth 17 million euros) advertised by the biggest national electric energy company “ELEM”

- The companies provided falsified documentation in order to prove they posses the needed technology to implement the tender

- The case was revealed by the SPO and arrest of two persons was demanded
THE ARREST CASE

• The judge in the first instance refused the arrest
• The panel of the first instance approved of the arrest
• The suspected person appealed in the court of appeal panel which also approved the arrest
• The suspected person fled the country, was being searched by the Interpol
• The Republican Public Prosecutor issued an extraordinary legal remedy to the Supreme Court (Demand for protection of legality)
• The Supreme Court panel of judges dismissed the arrest of the fugitive
CONCLUSION

• It is very difficult to implement good practices of avoiding and prosecuting corruption in the private sector when there is a strong uphold of impunity in the country.

• Strengthening rule of law and independent state institutions and public administration is crucial.

• Creating and strengthening a culture non-tolerant to corruption within the private sector is also very important.

• Without an independent judiciary and public prosecution there is no chance to implement anti-corruption standards.
QUESTIONS, COMMENTS?

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