Chapter 3

Case summaries

The purpose of this Chapter is to provide case studies and examples of quantification of proceeds in cases of active bribery. It is not meant to provide an exhaustive catalogue of cases involving identification and quantification of the proceeds of active bribery. The case studies draw from official sources (e.g. court documents) or, where the information is confidential, cases which have been "anonymised", i.e. the names of companies or individuals have been deleted. Anonymised cases may also contain features drawn from one or more actual cases.

1. Contracts

Sale of Goods or Services Case (United States)

Source: Anonymised case

Facts

A company sells communications networks and control systems to state-owned enterprises between 2003 and 2007. The company made approximately 5 000 payments totalling USD 5 million to third parties who delivered the payments as bribes to foreign officials. In return for the bribes, the company obtained projects to build communications networks and control systems for the state-owned enterprises. The revenues from the projects were valued at USD 100 million. The company paid USD 25 million for the cost of goods sold for the projects. The company also disguised the bribes as a legitimate expense in its books and records, and deducted the expense from its taxes.

Calculating the Benefit

The benefit subject to disgorgement was calculated using the "net revenues or "net profits" method:

	Revenues received from projects:	USD	100 000 000
-	Cost of goods sold for projects:	USD	25 000 000
+	Total amount of bribes paid:	USD	5 000 000
=	Total benefit derived:	USD	80 000 000

In essence, the benefit is the profits received by the company under the contracts (revenues minus costs) plus the amount of bribes paid. The bribes are added because the company benefitted by deducting the bribes from its taxes.

To test the numbers, the large difference between the amount of bribes paid (USD 5 million) and the benefits gained (USD 80 million) justifies the bribery transaction. A further test could involve comparing the profit margin for this particular contract with those for similar contracts that are not tainted by bribery. Another alternative is to compare internal profit margin projections for the contract to the actual profit margin.

Volume-Based Contract Case (United States)

Source: Anonymised case

Facts

A company has a long-term contract with a state-owned enterprise to sell approximately 100 tons of chemicals. The company pays USD 2 million in bribes to foreign officials to encourage the officials to order a volume of chemicals in excess of 100 tons. This additional order would generate USD 5 million in revenues and cost the company only USD 1.8 million. The company also pays USD 100 000 for lavish travel and entertainment for foreign officials to further encourage the officials to order the chemicals.

Calculating the Benefit

The benefit gained by the briber was calculated essentially using the "net revenues" or net profits" method:

	Revenue from sale of chemicals above 100 tons:	USD	5 000 000
-	Cost of goods sold:	USD	1 800 000
+	Total amount of bribes paid:	USD	2 000 000
+	Total value of travel and entertainment:	USD	100 000
=	Total Benefit Derived:	USD	5 300 000

The benefit gained by obtaining a certain volume of sales was determined by taking the revenue from sales above 100 tons. The bribe was added to the profits since the company benefitted by deducting the bribe from its taxes (see the Sale of Goods or Services Case for further explanation).

The costs of the travel and entertainment were also added because it is presumed that the company benefited in paying this bribe, and this benefit could be beyond the extra sales. For example, the travel and entertainment could have generated goodwill for the company. Determining the benefit from the company's payment of lavish travel and entertainment of foreign officials was neither apparent nor easily calculable. The amount of the bribes was thus used as the estimate of the benefit.

To test the numbers, the benefits gained (USD 5.3 million) relative to the amount of bribes paid (USD 2.1 million) demonstrate the utility of the bribery transactions.

Weir Case (United Kingdom)

Source: Press Release, Crown Office and Procurator Fiscal Service (15 December 2010)

Facts

A Scottish engineering company paid GBP 3.1 million in kickbacks to foreign officials to secure 16 contracts for water treatment equipment worth GBP 34.3 million. The kickbacks were paid through an agent, who received a fee of GBP 1.4 million.

Calculating the Benefit

The benefit subject to confiscation was calculated using the gross revenue method. The agent's fee and the improper payments were added to the benefit:

	Gross revenues for the 16 contracts	GBP	9 414 283
	Agent's fee	GBP	1 427 152
+	Kickbacks to foreign officials	GBP	3 104 527
=	Total benefit derived:	GBP	13 945 962

Selby and Ashurst Contract A Case (United Kingdom)

Source: Provided by the U.K. Authorities

Facts

Selby and Ashurst Limited ("S&A") is part of a conglomerate that supplies pre-fabricated housing. S&A itself specialises in the design and manufacture of pre-fabricated houses overseas. To obtain Contract A valued at GBP 9.1 million from a foreign government, S&A paid a bribe to foreign officials in the amount of 12% of the contract value (approximately GBP 1.1 million). The bribe was paid through S&A's agent and was disguised as a commission for the agent's services.

S&A pleaded guilty to conspiring with certain of its directors and agents to give corrupt payments to foreign public officials, contrary to Section 1 of the Criminal Law Act 1977. S&A was fined GBP 4.8 million and ordered to submit its internal compliance programme to an independent monitor. The prosecution also sought confiscation of the benefits obtained by S&A as a result of the crime. Under U.K. legislation, the court will confiscate the full amount of the benefit unless it exceeds the value of the defendant's "realisable property" (Criminal Justice Act 1988 (as amended)).

Calculating the Benefit

The U.K. prosecutorial authorities took the position that the benefit should be calculated using the "gross contract value" method. Thus, the benefit figure is not adjusted based on costs or expenses incurred by a briber in executing or obtaining the contract, fees paid to intermediaries or agents, or the amount of the bribe received by a foreign official. This method is based on the view that the contract would not have been obtained "but for" the bribe.

In the present case, the benefit figure was the contract amount obtained, i.e. GBP 9.1 million. S&A had sufficient funds and accordingly the confiscation order was ordered in this sum. Whilst the Criminal Justice Act 1988 prescribes that a confiscation order takes priority over a fine, S&A's

funds (i.e. realisable property) were sufficient to satisfy both orders. The court accordingly ordered confiscation in the amount of GBP 9.1 million.

Siemens Power Turbine Case (Germany)[1]

Source: Decision of the German Regional Court (Landgericht of Munich I) (14 May 2007)

Facts

Siemens is a German engineering company. Two of its executives bribed officials of an Italian utility company in which the Italian government held shares. A EUR 2.65 million bribe led Siemens to win a EUR 132.5 million contract to supply gas turbines and related equipment. Siemens then won a second turbine contract worth EUR 205.6 million after paying bribes of EUR 2.987 million and USD 483 990. Siemens made pre-tax profits totalling EUR 103.8 million from the two contracts. This does not include EUR 3.1 million in overhead costs attributable to the two contracts, and EUR 3.5 million in the costs of bidding for the contracts. The profits are then subject to corporate income tax at a rate of 40%.

When the bribery came to light, Siemens faced criminal prosecution in Italy. Pursuant to these criminal proceedings, Siemens agreed to forfeit EUR 6.121 million, which the Italian authorities assessed as the profits arising from the two turbine contracts.

In addition, the Italian utility also brought civil proceedings in Italy against Siemens to annul the turbine contracts. Annulment would be extremely costly for Siemens, as it would require Siemens to uninstall and repossess the turbines, return the purchase monies, and compensate the Italian utility for any expenses. This would destroy any profits that Siemens acquired under the contracts. Ultimately, Siemens settled these proceedings by agreeing to (1) pay the Italian utility company EUR 20 million, (2) provide two sets of turbines vanes worth EUR 23 million each for free, (3) provide four sets of turbine vanes worth EUR 23 million each at half price, (4) modify certain equipment to allow for higher operating temperatures at a cost of EUR 1 million, and (5) rescind an agreement that gave Siemens the exclusive right to service the Italian utility company's turbines and related equipment.

1. The case was reversed on appeal on grounds unrelated to the issue of confiscation.

In addition to prosecuting the two executives for foreign bribery, the German authorities sought confiscation against Siemens under Sections 73-73c of the Criminal Code.

Calculating the Benefit

The benefit was calculated using the "net revenue" or "net profits" method but (1) without including the value of the bribes in the benefits, and (2) allowing for various deductions.

The starting point was the profits (before accounting for overhead) from the two contracts, not the revenues or the contracts' gross value. The court then deducted the overhead costs attributable to the two contracts to obtain the profits under the contracts. The court also deducted profits already forfeited in criminal proceedings in Italy to avoid double forfeiture. However, the court did not allow several deductions including: (1) income tax on the profits, (2) costs of bidding for the contract, since Siemens would have incurred these costs regardless of whether it was awarded the two contracts, and (3) the value of the bribes (though the court also did not add the value of the bribes to the benefits):

	Pre-overhead profits from the two contracts	EUR	103 800 000
	Profits forfeited in Italian criminal proceedings	EUR	6 121 000
–	Overhead costs attributable to the two contracts	EUR	3 100 000
=	Total benefit derived before Italian settlement:	EUR	94 579 000

The court then dealt with the settlement between Siemens and the Italian utility company. Siemens agreed to provide to the Italian utility company funds, turbines, turbine vanes, and equipment modification. The court disregarded the rescission of the exclusive service agreement since it was speculative whether such an agreement represented a financial benefit:

	Funds provided to the Italian utility	EUR	20 000 000
	Two sets of turbines vanes for free	EUR	46 000 000
	Four sets of turbines vanes at half price	EUR	46 000 000
+	Modifying equipment	EUR	1 000 000
=	Total cost of Italian settlement:	EUR	113 000 000

The court then held that this settlement served two purposes for Siemens: (1) it avoided annulment of the two contracts, which otherwise would have destroyed any profits under the contracts, and (2) it maintained Siemens' access to the Italian market, and also reduced the penalties that Siemens would have faced in Italy. The court held that the value of (2) should not be deducted from the benefit subject to confiscation. However, the value of (1) should be deducted, since if Siemens did not

make this expenditure, then the two turbine contracts could have been annulled. This would destroy all profits accruing to Siemens under the contracts, leaving no benefit to be confiscated or disgorged. In the end, the court held that it was not possible to determine the precise value of (1) and (2). The court accordingly gave equal weight to each purpose, and deducted half of the settlement (representing the value of (1)) from the benefit subject to confiscation.

	Total benefit derived before Italian settlement	EUR	94 579 000
–	Half of cost of Italian settlement	EUR	56 500 000
=	Total benefit confiscated:	EUR	38 079 000

Siemens Telecom and Other Sectors Case (Germany)

Source: Decision of the German Regional Court (Landgericht) of Munich I (4 October 2007); Decision of Public Prosecution Office Munich I in proceedings regarding an administrative offence (15 December 2008)

Facts

Siemens, a German engineering company with worldwide operations, engaged in a widespread and systematic practice of foreign bribery between 2001 and 2007 to obtain business contracts. The scheme involved officials in at least ten countries, several subsidiaries, different lines of business and thousands of payments, many through intermediaries. Administrative fines were imposed against Siemens in Germany. The fines contained two parts: a punitive component and a confiscatory component. The confiscatory component is equal to the financial benefits acquired by Siemens through bribery.

Calculating the Benefit

In determining the amount of the confiscatory component of administrative fines, the German authorities essentially applied a modified "net revenues method. The confiscatory component includes direct benefits from a contract obtained through bribery:

	Revenues from a contract obtained through bribery
–	Costs incurred in executing the contract (but not the bribe)
=	Direct benefits from a contract obtained through bribery

The confiscatory component also includes indirect benefits. These include the opportunity to obtain additional contracts from the same company; the opportunity to obtain additional contracts from other

companies (i.e. market access); increase in Siemens' goodwill; improvement in market position because of the elimination of competitors; and avoidance of losses due to greater utilisation of Siemens' production capacity. These indirect benefits may exist even if the contract obtained through bribery does not generate a profit. Indeed, companies have been known to intentionally enter into loss-making contracts because of indirect benefits, such as the opportunity to obtain additional contracts that do generate profits:

	Direct benefits from a contract obtained through bribery
	Opportunity to obtain additional contracts from the same company
	Opportunity to obtain additional contracts from other companies
	Increase in goodwill
	Improvement in market position
+	Avoidance of losses due to greater utilisation of production capacity
=	Total amount of confiscatory component of administrative fine

In the case of Siemens, the value of the confiscatory component of the administrative fines totalled EUR 200 million (telecoms operations) and EUR 394.75 million (other business sectors). The German public prosecution office arrived at these figures based on "the results of its investigations and on the statements made by Siemens itself, which it found logical and credible in this regard."

Medical Equipment Case (Switzerland)

Source: Anonymised case

Facts

A small unlisted company specializes in trading technical medical equipment. Between 2000 and 2006, it submitted tenders for approximately 20 projects. By bribing foreign public officials, it won all but one of the tenders. The bribes paid varied per contract and ranged up to 30% of the contract value. Bribes were paid through different means including direct payments to foreign public officials, indirect payments through intermediaries, medical treatment of the officials and/or their relatives, and travel, leisure and gifts for the officials and their families.

Calculating the Benefit

The investigation of this case largely focused on the financial aspects of the company's behaviour. According to the books and records of the company, there was no separate or specific calculation for each project. Therefore a full cost/benefit analysis could not be performed. However, most of the bribe payments made could be identified and related to one or more contracts. This allowed the application of the net profit (or net value) method, i.e. the benefit is the contract revenues minus the total costs incurred while executing the contract. In addition, Swiss law allows an estimation of the proceeds if the exact calculation poses an insurmountable burden on the prosecution. An estimate was permitted in this case since many of the necessary invoices were forged and the company did not maintain specific calculations for each individual project. Confiscation also covered additional amounts - such as bribes paid to officials, fees paid to intermediaries, the value of medical services rendered, and the cost of travel, entertainment and gifts - that were identifiable. In the end, an estimated benefit of CHF 2 million (approx. USD 2.2 million, EUR 1.5 million) was forfeited.

Contracts and Other Advantages Case (United States)

Source: Anonymised case

Facts

A company made improper payments through its subsidiaries to foreign public officials in two foreign countries, in several sets of transactions.

1. A company subsidiary paid USD 2 million in kickbacks to foreign public officials. It also offered (but ultimately did not pay) additional kickbacks in the amount of USD 2 million USD. These payments allowed the company to obtain several contracts worth approximately 50 million USD and profits in the amount of USD 20 million.
2. The company paid USD 1 million in bribes to foreign public officials, in return for a sale of goods contract generating USD 100 million in revenues, and USD 10 million in profits.
3. The company bribed a foreign public official to secure a contract for the sale of goods. The company paid USD 3 million in bribes and hospitality expenses, obtaining in return a contract generating USD 50 million in revenues and USD 20 million in profits.

4. The company paid USD 150 000 in bribes to foreign public officials to ensure its product would be retained for a public procurement contract. Ultimately, the contract was however not executed.
5. The company covered hospitality expenses for foreign public officials amounting to USD 100 000. The advantage obtained in return was not established.

Calculating the Benefit

The benefit subject to disgorgement was calculated using essentially the "net revenues" or "net profits" method:

	Profits from 1st contract	USD	20 million
	Profits from 2nd contract	USD	10 million
	Profits from 3rd contract	USD	20 million
	Bribes paid in relation to 4th contract	USD	150 000
+	Hospitality expenses for foreign public officials	USD	100 000
=	Total benefit derived	USD	50 250 000

The benefit is based on the net profits (revenues minus costs) of the contracts obtained. In addition, the bribes paid to secure the 4th contract are included in the benefits. Although the contract ultimately was not performed, the benefit accruing to the company is presumed to equal to the value of the bribes paid. Finally, the hospitality expenses for the foreign public officials are also added, as it is presumed that the briber benefited in an amount equal to the cost.

The case of Fyffes Group and others v. Templeman, Seatrade and others (UK)

Source: Fyffes Group Ltd.v. Templeman (2000), 2 Lloyd's Rep. 643 (U.K.)

Facts

Fyffes was a company involved in the banana trade. It found that an employee who negotiated a service agreement with a shipping contractor took bribes amounting to more than USD 1.4 million between 1992 and 1996. Fyffes sought to recover damages from the employee, the shipping company, and its agents.

All defendants were found jointly liable for the value of the bribes. The court ruled that "there can be no dispute that [the bribes] were taken into

account by *the contractor* in agreeing the amount of the freight for each year, which would have been correspondingly less for Fyffes if they had only had to pay the net sum which *the contractor* were prepared to accept." The shipping company and its agents were liable to pay additional compensation for the loss that Fyffes suffered from entering into the contract under unfavourable terms.

To reach this conclusion, the judge rejected an account (a disgorgement) of all profits made by the contractor because it was "highly probable that Fyffes would have entered into a service agreement with the contractor if the employee had not been dishonest." As a result, "ordinary" profit from the contract was not caused by bribery, but by "the provision of services for which there would have been a contract in any event."

Calculating the damages

The judge considered evidence from shipping experts testifying for both Fyffes and Seatrade to determine the difference between the amounts actually paid by Fyffes to Seatrade and the amounts that would have been paid if Fyffes had been represented in the negotiations by an honest and prudent broker. This is, in effect, an example of an additional profit calculation. The following extract in respect of "Steaming saved" shows how specialist the evidence in quantifying these damages is in this case:

> *Under clause 10 of the service agreement Fyffes were obliged to pay Seatrade for any bunker fuel consumed in additional mileage from a substitution of ports on any voyage. There was no converse provision entitling Fyffes to a rebate for the reduction in bunker fuel consumed if steaming was saved. The expert for the plaintiff considered it very unusual for such a provision not to work both ways and that an honest and prudent charterer would not have agreed to the clause as drafted. The defence effectively conceded the point. Fyffes are entitled under this head to USD 471 940 as claimed.*

Each item in the clause in the contracts between Fyffes and Seatrade was considered in a similar way. Only when there was a clear disagreement as to how an expense or income should be calculated, did the judgment discuss the actual calculation. In particular, the judge considered for each year, what Fyffes would have normally agreed to pay if it had been represented by a prudent and honest negotiator. There was no evidence that actual payments would have been different in 1992, 1994, and 1995. But the court ruled that payments were inflated by USD 830 022 in 1993 and by USD 1.1 million in 1996 because actual rates were higher than what a prudent an honest negotiator would have accepted given market conditions.

Gore NO v. Minister of Finance and others Case (South Africa)

Source: Judgment in Gore NO v Minister of Finance and others (11190/99) (30 October 2008)

Facts

A dishonest bidder was awarded a contract using biometric technology for the payment of old age pensions, disability grants and child support grants. The rival bidder sought compensation for damages. The dishonest bidder had not yet actually performed under the contract and the plaintiff never delivered a service. The contract was cancelled and a new contract was awarded to a third company called Allpay.

In this case relatively few adjustments had to be made to the comparative data. In cases where such directly relevant information is not available it may be necessary to use more than one set of comparative financial statement and make multiple adjustments.

Calculating the damages

To determine the net profit that the plaintiff would have earned by performing the contract, income and expenditure were considered as follows:

Income (revenue): Initial enrolment income (fees which would have been received from the government for enrolling pensioners in the first year of the tender) + Payment income (fees received from the government for the payment of pensions) + Interest income on daily balance resulting from the cash advance government and used to pay pensions. + Interest on surplus cash and profits re-invested

Costs: Personnel costs + Direct costs (items such as vehicle running costs, maintenance, insurance, petrol, license fees, modem lines, telephones…) + Indirect costs (items such as office rental, cash insurance, auditor's remuneration, life insurance, regional service levies (RSC levies), travelling, bank charges and extra budget items) + Initial enrolment costs + Rental costs

The judge based his decision on hypothetical calculations performed by the forensic accountants employed by each party and comparative data.

In respect of income the judgment reads "Allpay's cost per beneficiary from 1995 to 1999 inflation adjusted and imputed to the plaintiff's beneficiary numbers ranges from ZAR 7.23 in 1999 to ZAR 9.30 in 1995. By contrast, the plaintiff's tender VAT-inclusive price per head for paying

beneficiaries would have ranged from ZAR 17.40 in 1995 to ZAR 22.55 in 1999. The massive profit margin is self-evident.

On costs the judgment reads "a table produced by the plaintiff substituting the plaintiff's costs with Allpay's costs (derived from their financial statements), adjusted for inflation indicated that the plaintiff would, on the basis of Allpay's expenses have made a five year pre-tax profit of ZAR 322 165 662. This amount is significantly higher than the pre-tax profit claimed by the plaintiff namely some ZAR 253 million."

Regarding operating margin the Gore judgment also reports that "a comparison with the Allpay operating margin supports the case of the plaintiff. I pointed out that according to the plaintiff's calculation the Allpay average operating margin was 28%..." The Allpay average operating margin is some 61.7 % of the plaintiff's projected operating margin. Part of the differential is attributable to the fact that Allpay's first year did not involve any payment of beneficiaries, and thus no real income. By contrast, the plaintiff would have received income from its first year. "Most of the difference is, however, accounted for by the comparatively high tender price of the plaintiff. If one were to raise Allpay's price per beneficiary upwards towards the national average *(other firms provided similar services in other provinces of South Africa)* its operating margin would likewise rise significantly, and be comparable with that projected for [the plaintiff]."

A redacted extract from the judgment relating to the simplest and least contested of these categories illustrates how the judge reached conclusions on specific items:

Indirect Costs

The calculations offered by the respective parties are the following for the five year period: Plaintiff ZAR 26 680 000 [approximately USD 4.44 million]; Second Defendant ZAR 26 680 000 [approximately USD 4.44 million]; Fourth Defendant ZAR 29 881 368 [approximately USD 4.98 million].

There are no indications that *[the Forensic Accountant for the fourth defendant]* adjusted his calculations based on any input from someone with a personal knowledge of the service which the plaintiff would have performed. Counsel for the plaintiff also lists a number of mistakes made by *[Forensic Accountant for the fourth defendant]*. He, mistakenly, took the plaintiff's budgeted monthly expenses for 1995 and inserted them into his 1994 column without de-escalating the amounts to take inflation into account.

For these reasons, as particularly bearing in mind that two of the three parties are in agreement, I see no basis for interfering with the plaintiff's figure.

S.T. Grand, Inc v. City of New York Case (New York State)

Source: 32 N.Y.2d 300, 298 N.E.2d 105 (1973)

Facts

The Grand case is a civil case in which a company, S.T. Grand, Inc., had entered into a contract for with the City of New York to clean a reservoir approximately USD 840 000. Grand completed the cleaning as required by the contract. The City had paid Grand about USD 690 000 at the time a criminal allegation surfaced.

Subsequently, Grand and its president were convicted of conspiracy to commit bribery for having paid a kickback to a City official in return for being selected for the contract.

Grand then sued the City for the unpaid balance it was owed for the cleaning work it had performed, approximately USD 150 000. The City refused to pay and argued that the contract was illegal by reason of the bribery. The City counterclaimed to recover the approximately USD 690 000 it had already paid.

Calculating contractual restitutions

The highest court of the State of New York held that indeed the contract was illegal by reason of the criminal conviction for bribery. The court then applied the prevailing general rule that "where work is done pursuant to an illegal municipal contract, no recovery may be had by the vendor [here Grand], either on the contract or in quantum merit" and that the City could recover all amounts paid from the vendor. Thus, the contractor, Grand, was ordered to forgo the entire amount of the contract, approximately USD 840 000.

Cameroon Airlines v. Transnet Limited (International Court of Arbitration)

Source: ICC Case no. 11307 of 2003, reversed in part [2004] EWHC 1829 (Comm) (UK)

Facts

The company Transnet Limited entered into two maintenance agreements with Cameroon Airlines, a state-owned company. Transnet entered into a contract with an intermediary, ATT, under which the intermediary was to negotiate the price at which Transnet was to supply services to Cameroon Airlines, against payment of a commission. Cameroon Airlines paid Transnet over USD 50 million under the maintenance agreements, with Transnet making proportional payments to ATT in commissions. These payments to ATT were channelled as bribes to senior employees of Cameroon Airlines and senior government officials. Transnet ultimately performed the services and provided materials as required under the contract before the bribery was uncovered.

Cameroon Airlines filed a request for arbitration by the Arbitration Court of the International Chamber of Commerce against Transnet, arguing that the maintenance agreements were tainted by corruption and bribery, asking for restitution of the entire sum of the maintenance agreement contracts, plus interest. By agreement among the parties, the dispute was decided under South African law.

Calculating contractual restitutions

The ICC held that, although Cameroon Airlines was entitled to avoid the maintenance agreements, it was not entitled to restitution of the total sums paid thereunder. Transnet performed services and provided materials as required under the maintenance agreements. Cameroon Airlines is thus entitled to only the value of the contracts minus the value of the benefits that it received under the maintenance agreements. The tribunal thus had to determine the value of these benefits, or the lower price Cameroon Airlines would have paid to another contractor had bribery not been involved.

The tribunal quantified Cameroon Airline's restitution by deducting the "fair value" of services provided by Transnet from the amount paid for the maintenance contracts. The "fair value" consisted of the commercial price of the contracts minus any "commission" added by Transnet on top of the contract price in order to recoup the amount paid for bribes. The tribunal

granted restitution to Cameroon Airlines in the amount of USD 8.4 million, the estimated amount of the bribe payments.

The award was later annulled by the U.K. High Court of Justice for procedural reasons, because it considered that a party to the arbitration proceedings had not been given a fair opportunity to address, in an oral hearing, the key issue of the tribunal's approach to quantification. The High Court nevertheless agreed with the tribunal that Cameroon Airlines was not entitled to restitution of the full contract price. It remarked in *obiter* that Transnet should not be entitled to keep the profit from the contract, and that only its own cost of rendering the services should be excluded from restitution.

2. Business authorisations, permits or licenses to operate

Willi Betz Case (Germany)

Source: Judgment of the Stuttgart Regional Court, 10th Chamber of the Criminal Division (Chamber for Economic Crime), 10 KLs 180 Js 103224/05 (20 March 2008)

Facts

Willi Betz is a company that runs a road haulage business. To operate in Europe, Willi Betz must obtain permits issued by the European Conference of Ministers of Transport (ECMT) for its trucks. Willi Betz set up offices in Georgia and Azerbaijan, the primary purpose of which was to apply for ECMT permits in those countries. Once obtained, these permits would allow Willi Betz's trucks to operate throughout Europe. In the case of Georgia, BT, Willi Betz's managing director, gave USD 1 074 000 in bribes to a Georgian public official to obtain ECMT licenses. In the case of Azerbaijan, BT paid an Azeri official EUR 1 647 436 in bribes to obtain ECMT licenses, and an additional EUR 422 500 in bribes to obtain vehicle registrations. In total, Willi Betz spent EUR 9.2 million to set up and run the firms in Georgia and Azerbaijan, to bribe Georgian and Azeri officials, and to pay the (legitimate) license fees.

The German authorities sought confiscation against Willi Betz pursuant to Sections 73-73a of the Criminal Code. The ECMT licenses could not be confiscated as they had expired or no longer existed. The German authorities therefore sought confiscation of property of an equivalent value.

Calculating the Benefit

The value of the benefit subject to confiscation was calculated using the "derived benefit" method. The court held that the benefit derived was, as a minimum, the amount which B was willing to pay in obtaining the ECMT licenses. This includes not only the bribes paid to foreign officials, but also the cost of establishing and operating the companies in Georgia and Azerbaijan, which were set up primarily to obtain the licenses. A small deduction was allowed since a small part of these firms' operation did not relate to bribery or the ECMT licenses:

	Bribes and cost of running firms:	EUR	9 200 000
–	Cost of running firms unrelated to bribery:	EUR	700 000
=	Total benefit confiscated:	EUR	8 500 000

Compensation for damages in the logging case in re Surya Dumai Group (Indonesia)

Source: Corruption Eradication Commission of Indonesia (KPK)

Facts

A company paid bribes to obtain a permit for logging in a prohibited area. In addition, the company had represented that if they were permitted to harvest the timber, they would build a small palm oil factory on the land they cleared and replant the area with palm oil trees. The company did the logging but never built the factory or replanted. The removal of the trees destroyed the local environment.

Compensation calculation

Five persons (four government officials and the company owner) were convicted. The defendants were ordered to pay compensation to the government of IDR 350 billion (about USD 30 million) for the lost timber. This loss was estimated by identifying the areas where trees were harvested, and by applying the market rate to these surfaces. The company owner delivered "substitute money" of IDR 350 billion rupiah to the Indonesian anti-corruption agency, the KPK in March 2008. The company owner and some of the other defendants were sentenced to jail time. No fine was levied.

In calculating the amount of compensation, an argument was made that the court should take into account the multiplier effect of the damage such as increased risk of floods and erosion, since the environmental damage had

been significant. The court rejected that argument, ruling that under Indonesian law judges cannot order compensation greater than the amount of the bribes paid plus the direct proceeds of the corrupt conduct. Thus, the State's loss amount was limited to the timber lost in the concession area.

Costs and Loss Avoidance Case (United States)

See below the **Costs and Loss Avoidance Case** regarding bribes to customs officials to avoid completing necessary customs paperwork and inspections.

3. Expenses or loss avoided

Costs and Loss Avoidance Case (United States)

Source: Anonymised case

Facts

A company provides offshore drilling services and equipment to oil companies throughout the world. In one particular operation, the company was required by the host government to move its large equipment out of the country for a period of time. If the company moved its equipment out of the country, then the equipment would not generate revenue during the period of non-operation. The company paid bribes to customs officials to avoid having to move the equipment. This kept the equipment operational and generated an additional USD 4 million in revenues. The company also saved moving costs of USD 2 million.

The company also paid bribes to avoid paying USD 1 million of customs duties owed on shipments into the country. The bribes ranged from 20% to 30% of the actual duties owed.

Finally, the company also paid USD 50 000 in bribes to customs officials to avoid completing necessary customs paperwork and inspections to facilitate inward clearance and expedite customs clearance of shipments.

Calculating the Benefit

The benefit subject to disgorgement was calculated using the "derived benefit" method:

	Costs of moving equipment avoided:	USD	2 000 000
	Profits from extended period of operations:	USD	4 000 000
	Custom duties avoided:	USD	1 000 000
+	Benefit from avoiding paperwork and inspections:	USD	50 000
=	Total benefit derived:	USD	7 050 000

The benefits derived from the USD 50 000 in bribes paid to facilitate inward clearance and expedite customs clearance of shipments were neither apparent nor easily calculable. The amount of the bribes was therefore used to estimate the benefit.

More Efficient Product Case (United States)

Source: Anonymised case

Facts

A company provides gas and energy-related products. It paid USD 1 million in bribes to foreign officials to get a more efficient crude oil product at USD 0.30 per barrel less than the market rate. As a result, it paid USD 17.5 million for the crude oil product that would have otherwise cost USD 25 million at market rates.

Calculating the Benefit

The benefit gained by the briber was calculated using the "traditional" method:

	Cost to obtain oil at prevailing market rate:	USD	25 000 000
-	Cost to obtain oil at rate due to bribery:	USD	17 500 000
+	Amount of bribes:	USD	1 000 000
=	Total benefit derived:	USD	8 500 000

The derived benefit was calculated by determining the difference between the price that the company would obtain on the crude oil at market price (USD 25 million) and the price of crude oil procured through bribery (USD 17.5 million).

To test the numbers, the company paid bribes to secure crude oil that was below the prevailing market price and that was a more efficient product than competitors. Therefore, at the time of purchase, the utility of the transaction was to secure the crude oil at a reduced cost.

Tax Avoidance Case (United States)

Source: Anonymised case

Facts

A company that sells computer and software components to state-owned entities pays USD 250 000 in bribes to foreign officials to avoid paying USD 1.25 million in taxes on its goods sold.

Calculating the Benefit

The benefit gained by the briber was calculated using the "derived benefit" method:

	Taxes avoided:	USD	1 250 000
+	Amount of bribes:	USD	250 000
=	Total benefit derived:	USD	1 500 000

Expenses and Import Controls Avoidance Case (United States)

Source: Anonymised case

Facts

A company's subsidiaries bribed foreign public officials in two sets of transactions:

a) A subsidiary of the company paid USD 150 000 in bribes to foreign customs officials, in return for lower customs duties, as well as to avoid obtaining necessary import licences. The majority of these payments were infrequent and of minor value. As a result of these payments, the company avoided USD 200 000 in expenses.

b) Another subsidiary of the company paid USD 25 000 in bribes to foreign customs officials, allowing the company to avoid customs inspections which could have resulted in not allowing certain products to be imported. As a result, the company avoided USD 170 000 in expenses and equipment downtime.

In all, over 50 payments totalling USD 200 000 were made to foreign customs officials. The company did not record the true nature and purpose of these payments in its books and records.

Calculating the Benefit

The benefit subject to disgorgement was calculated using the "derived benefit" method:

	Expenses avoided through 1st set of payments:	USD	200 000
+	Expenses avoided through 2nd set of payments:	USD	170 000
=	Total benefit derived:	USD	370 000

4. Expedition of delays

Expedition Case (United States)

Source: Anonymised case

Facts

A company bribes customs officials in a foreign country to expedite the shipping into the country of equipment that is needed to produce oil. This allowed the company to get the equipment into the country six months sooner, thus allowing the company to reach oil production six months faster. (Determining the amount of time saved requires one to look at historical operations and data.) In those first six months, the project produced USD 500 million in profits for the company.

Calculating the Benefit

Because of bribery, the project began producing revenues sooner than otherwise. The economic benefit to the company is therefore the time value of obtaining the profits sooner, which is calculated as:

Benefit = (Profit per week) x (time saved in weeks) x (discount rate in weeks)

In this particular case, the derived benefits were determined to be approximately USD 12 million.

5. Violations of provisions on internal controls, and books and records

Books and Records Case (United States)

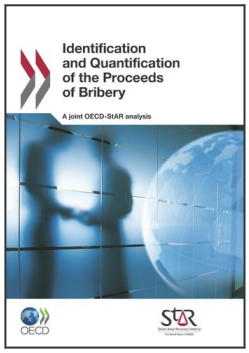
Source: Anonymised case

Facts

A wholly-owned subsidiary of a company paid bribes totalling USD 200 000 to several foreign state-owned enterprises to secure a public procurement contract. The bribes generated sales contracts worth USD 4 million and profits of USD 1 million, which includes the value of the bribe payment. The bribe payments were improperly recorded in the subsidiary's books and records. The company did not properly record the bribe payments in the subsidiary's accounts and thus violated the applicable laws on maintaining proper books and records.

Calculating the Benefit

The benefit subject to disgorgement was calculated using a "net revenues" method: the benefit is the net profit derived from the contracts obtained through bribery. The value of misrecorded transactions (i.e. the hidden bribe payments) is also part of the benefit. The company accordingly paid disgorgement of USD 1 million in addition to prejudgment interest.



From:

Identification and Quantification of the Proceeds of Bribery

Revised edition, February 2012

Access the complete publication at:

https://doi.org/10.1787/9789264174801-en

Please cite this chapter as:

OECD (2012), "Case summaries", in *Identification and Quantification of the Proceeds of Bribery: Revised edition, February 2012*, OECD Publishing, Paris.

DOI: https://doi.org/10.1787/9789264174801-6-en

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