

Veon's compliance chief on monitorship challenges

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Joshua Drew, Veon's chief compliance officer

Amsterdam-based telecoms company Veon, previously known as VimpelCom, recently completed its three-year monitorship following a landmark foreign bribery settlement in 2016.

The company's chief compliance officer Joshua Drew talks to GIR about the monitorship. "I don't want to give the impression that it was without its challenges," he said in an interview.

The US Department of Justice's former criminal division chief Leslie Caldwell told reporters during her announcement of the deal in 2016 that Amsterdam-based telecoms company VimpelCom's foreign bribery settlement with authorities in the US and the Netherlands was "one of the most significant global resolutions in the history of the Foreign Corrupt Practices Act".

The \$795 million resolution was the first time US and Dutch authorities had jointly settled a foreign bribery case, and it kickstarted a trend of other multilateral resolutions for similar corporate crimes.

While the DOJ admonished VimpelCom for its failure to self-report its misdeeds, prosecutors highlighted how quickly the company came clean when the authorities opened an investigation. It "really did cooperate in a very meaningful way – not just showing up and giving us documents, but in a very proactive way it was delivering to us information and assistance that enabled us to make our case more quickly," one of the lead US prosecutors on the case told a conference in 2016.

Authorities said VimpelCom paid more than \$110 million in bribes between 2006 and 2012 to Gulnara Karimova, the daughter of the Uzbekistan president at the time, for access to the country's telecoms market. VimpelCom, represented by a team at Miller & Chevalier, was one of three US-listed telecoms companies caught bribing the same official and was the first to settle the allegations.

But in its haste to settle the charges, VimpelCom hadn't sufficiently addressed its underlying compliance problems to convince US authorities that a monitor was unnecessary. As a result, the telecoms company was required to appoint a monitor for three years.

Companies dread the imposition of a monitor. Expensive and intrusive, monitors are frequently criticised by the corporate community. The DOJ was sufficiently concerned about Corporate America's views on monitorships that it released a memo in 2018 that clarified the department's stance on them. While the DOJ says the memo changed nothing in practice, many commentators felt the department had signalled a new era of scepticism towards the use of monitors – so far, there is no evidence to support that view.

In an interview, the chief compliance officer of Veon (VimpelCom changed its name after the FCPA settlement) said the company enjoyed a healthy relationship with its monitor, Andreas Pohlmann.

A former chief compliance officer for German conglomerate Siemens and Canadian construction company SNC-Lavalin, Pohlmann has also helped Brazilian state-controlled oil company Petrobras recover from the Operation Car Wash scandal. The German-trained lawyer's experience gave Veon confidence to trust him and the company was happy to "really pull him and his team close", Drew said in an interview. "They could attend virtually any meeting that they wanted to."

"At times, it seemed like we were measuring it in dog years"

When Pohlmann started work at Veon around September 2016, the telecoms company had just revamped its compliance team. Daniel Chapman, a veteran who had spent years working in-house for major Houston oil services companies such as Parker Drilling and Cameron, joined as chief compliance officer in July 2016. Supporting him as associate general counsel was Drew, a former US federal prosecutor who moved to Veon's Amsterdam headquarters from US-based information technology company Hewlett-Packard, which had just a few years earlier settled an FCPA case (but unlike Veon, it managed to avoid a monitor).

However, Veon's plans to revamp its compliance and ethics suffered a setback when Chapman left less than a year into the job. "It was not the way the company had planned to proceed," said Drew, who took over Chapman's role. "But we adapted quite quickly."

A major focus for Drew was ensuring open communications with Pohlmann, who was supported by US lawyer Gregory Bruch at Bruch Hanna.

"Don't get caught unaware about some development at the company is really important," he said. "I had a call with our monitor every week. I often would speak with him multiple times in a week but I had a call on the calendar every week to make sure that we caught up. And that was a mechanism designed to address the issue of effective communications."

Drew spoke glowingly about Veon's three-year monitorship and how the company has improved its compliance and ethics during the period. But he's also happy to concede that the monitorship wasn't plain sailing.

"At times, it seemed like we were measuring it in dog years," he said. "You have to acknowledge that there's a degree of disruptiveness from being under a monitorship – for the company you have a third party, an independent third party."

He said the company occasionally had challenges providing the monitor with access to documents when it ran into legal privilege issues or "some nuance of relevant data protection law in one of our countries".

As Pohlmann was a third-party, Veon had to occasionally be careful that it didn't share with him privileged materials – or else the legal protection was waived. The monitorship team wanted to know every detail about the company's compliance upgrades, and at times the relevant documents would

include privileged communications. The way forward, Drew said, was to focus on giving Pohlmann the facts. “And we were almost always able to get the monitor team the information they needed by focusing on the factual issues and setting aside the advice that went from lawyer to client,” he said.

Drew said the company overcame privilege issues because of openness and transparency. “We built a fairly trusting relationship, built goodwill,” he said. “And so when we had problems, challenges when there were difficult issues that we had to confront, we could fall back on a pretty strong collaborative relationship with the monitor.”

“Don’t wait for the monitor”

Pohlmann’s in-house experience helped with managing the cost of the monitorship, says Drew.

But “that was not front and center for the company,” he said. Veon reserved \$105 million for costs after the 2016 FCPA settlement, though it’s unclear how much of that was spent on the monitorship – the company didn’t elaborate further.

“We were also helped by having a monitor who himself worked inside several companies,” he said. “And so we could have a discussion with our monitor the way we do with any other external vendor in terms of budget forecast, and our billing guidelines, and they were willing to work with us in those areas.”

The company’s business structure was also helpful.

It may be based in Amsterdam, where it employs 500 people, but Veon is by-and-large a Russian company (more than 50% of its 46,000-strong workforce is in Russia). It sells products in 10 countries, which are ranked as some of the riskier markets to do business in: Russia (which accounts for 50% of its revenues), Pakistan, Algeria, Uzbekistan, Ukraine, Bangladesh, Kazakhstan, Kyrgyzstan, Armenia and Georgia. The company is majority owned by Altimo, the telecoms investment arm of Alfa Group, a large Russian investment fund founded by Ukrainian-born billionaire Mikhail Fridman. Veon was once based in Moscow before it moved to Amsterdam in 2011.

When Veon’s business structure is put to Drew, he sees it as a positive: “So one of the features of our monitorship is because we are in 10 countries, as opposed to a company with a much larger geographical footprint, is the monitor was able to make multiple visits to every operating company. And really, to rapidly develop a pretty sophisticated understanding of our business... And that led to a very collaborative working relationship with the monitor team.”

Drew’s asked whether he has any particular advice for other companies going through a monitorship. “Be proactive,” he said. “Don’t wait for the monitor. The monitor will come along... But if you have time between your settlement and when the monitor arrives, use that time and get started. Demonstrate your intention to build a compliance programme that meets all the obligations.”

The DOJ moved to dismiss Veon’s three-year deferred prosecution agreement in October after Pohlmann certified in September that the company had met its compliance obligations set out in the settlement. For Veon, its ordeal is over.

For the two competitors that also were caught bribing in Uzbekistan, the after effects continue. Telia, which paid \$965 million to settle related bribery charges in 2017, remains under its three-year DPA; it, however, managed to avoid a monitor.

The third company, Moscow-based Mobile TeleSystems, agreed to pay \$865 million in March this year as part of a three-year DPA. US authorities imposed a monitor (former World Bank anti-corruption chief Leonard McCarthy), who has only just begun his three-year term. The company will do well to heed the advice of Veon’s compliance chief.