

TELLER AEROSPACE PLC.

INTRODUCTION

Bribery, particularly in the conduct of international business, draws a great deal of attention from enforcement agencies and in press. What constitutes bribery — is it as obvious as it seems? Are “everyone does it” and “that’s the way business is done in this country” valid arguments? Are there values to be considered and not just rules (the law)?

BACKGROUND

Teller Aerospace Plc. (Teller) is a British-based multi-national company that provides radar and flight control systems to both the defense and civilian markets worldwide. They also have a line of small jets used largely in regional air transport. This product line is being phased out and is now largely focused on aftermarket support for parts and maintenance. Their revenues last year were approximately £9 Billion (US\$14 Billion). Teller does business in the U.S., Europe, the Middle East, and Africa.

THE CASE

USA Today, March 11

(London and Washington) The United Kingdom’s Serious Fraud Office (SFO) and the U.S. Department of Justice announced that bribery charges were being filed against London-based Teller Aerospace Plc. as the result of a joint investigation of the company by the two agencies. The charges are being brought under the U.K.’s Bribery Act and the U.S.’s Foreign Corrupt Practices Act (FCPA). The simultaneous announcements in London and Washington stated that the charges related to a pattern of bribery of government officials in the country of...

A spokesperson for Teller stated that “Teller Aerospace operates within the laws of all countries in which we conduct business. We are reviewing these allegations and will cooperate with both the SFO and the Justice Department to resolve this matter.” The spokesperson declined further comment.

Excerpts from the Executive Summary of a Teller Internal Audit Report

The Board of Directors of Teller Aerospace Plc. requested a review by the Internal Audit Department to assess certain allegations against the company related to its ongoing business in the Republic of... (hereafter referred to as “the Republic”).

These allegations are in reference to the so-called “Wizard” air traffic and defense project. The allegations concern (1) the provision of travel and hospitality to officials of the Republic while these officials were on foreign travel, and (2) charitable contributions made inside the country by Teller. Since these matters are the subject of an official enquiry by enforcement organisations in both the United Kingdom and the United States, this audit report was prepared at the direction of the Teller Legal Director and is being forwarded to the Board via the Legal Director as an attorney-client privileged document.

Conclusions on Item (1)

Over the preceding five years, Teller has provided travel support to officials of the Republic when they traveled outside the country on business related to the Wizard Project. Most of this travel was to the United Kingdom. The support included arranging air travel, hotel accommodations, meals, and other requested support. The travel support costs are taken from a specific budget set aside for general programme support in the contract and its renewals. The amount of this budget is set by the Procurement Office of the Republic on an annual basis. The contract does not specify the precise scope of the support; only that it is to be provided. To support this contract requirement, Teller engaged a travel and hospitality firm. The firm responded directly to support requests by Republic officials. The travel firm paid all expenses of the officials and then invoiced the cost, plus an agreed management fee, to Teller's Wizard Project office. Our review found no record of the invoices being scrutinized for accuracy or reasonableness. Essentially, if the support was requested by a Republic official, it was provided and the travel firm's invoices were paid.

A sampling of the invoices indicates that some of the travel and hospitality costs might be construed as "excessive" if subjected to public scrutiny. However, the documentation accompanying the invoices was inadequate to make any firm determination. We recommend that Teller's arrangement with the travel firm be revised to establish acceptable standards for travel and hospitality. The travel firm should also be required to provide detailed support for all invoices. The Wizard Project office should develop written standards for review and approval of the invoices.

Conclusions on Item (2)

Teller made charitable contributions over a period of six years in the amount of £2,500,000 to recognized charities in the Republic. These charities were recommended by senior officials in the Republic as appropriate recipients. The donations were made as part of the charitable giving regime of Teller and were recorded appropriately on the books of the company.

Detailed audit findings are contained in the full report.

Excerpt from statement to Teller Legal Director's office by Andrew Mueller, Director of Finance for the Wizard Project

"I honestly think SFO and Justice are tilting at windmills here. Nothing we have done in the Republic constituted any conduct that was not how business is typically done there. We violated no laws in the Republic. Providing travel support to government officials is just a run-of-the-mill thing. They don't have a travel infrastructure that can handle these business trips at a standard that business travelers expect. It's not a surprise that they prefer we handle the arrangements instead of their government travel office. In any case, it's their money. They put it into the contract every year — we don't even take a profit factor against those costs, just treat it as a straight pass through. You can't bribe someone with their own money...

"Well, yes, I suppose some of the hotels they stay in whilst in London are posh. These are senior people, after all. You wouldn't expect our CEO to go to one of those extended stay places whilst in Washington on business, would you? Why would you expect the Republic officials to do the equivalent in London? And you know what a dinner in London can cost...

"I'm sorry, it must be the silly season at SFO if they're criticizing charitable contributions. I made sure the contributions were approved according to the company giving policy and the contributions were recorded on the books correctly. We're talking about an educational foundation that works to improve elementary

education in the Republic. And another charity that provides disaster relief when there are floods or other emergencies. We play by the rules in the Republic. We try to do good things. We're delivering a high-quality air defense system—radars, software, workstations, training — the whole lot. We should be congratulated, not prosecuted."

Excerpt from statement to SFO by David Wilde, former Teller Systems Engineer on the Wizard Project

"When you contacted me, I thought I would feel guilty about talking to you about Teller, but I don't. I'm glad you came to me. I worked for Teller for twelve years and most of that time, I was proud of the company. Wizard was my first overseas assignment. It wound up being my last assignment for Teller ever. I stayed in the Republic long enough to qualify for the full repatriation package and then I resigned. I'll give you the short version of what I saw and then you can ask me any questions you like.

"There is nothing wrong with Wizard technically. We designed and built a quality air defense system. I know both Teller and the Republic publicly highlighted the air traffic aspect, but the Republic doesn't have heavy commercial air traffic. It didn't take me long to figure out that the system they already had could have been upgraded to handle their traffic projections for the next twenty years at a lot less cost. As for air defense? They don't even have an air force! The price tag on this project is huge. There are a lot of local companies taking a piece of the pie. I suppose that's a good thing, helping to build local industrial capability. But when you consider the infrastructure needs in the Republic for roads, hospitals, power grids, schools — how can they justify spending the money on a glitzy defense system they really don't need?

"That bothered me, I have to admit, but those decisions are above me in the organization. Then I started to see what was behind the scenes. Attend enough company social events in the Republic as well as project status meetings with the local firms' representatives and you find out a lot. Almost every one of the local firms on the project had some connection to the Republic's Project Director or Chief Procurement Officer. A relative or a close friend might own the company. Or the Republic officials (or someone on their staffs) might own part of the local company.

"I admit I rationalised the cost of the project against the real needs of the Republic because of our charitable efforts in the Republic. Teller seemed to be stepping up to the country's needs through substantial donations to local charities. Education and disaster relief are good things. I told one of the Republic engineers I worked with regularly how proud I was that Teller was making an investment in the country. He laughed. What he said was, 'You do know that the Executive Director of the educational charity your company supports is the sister of our Project Director, don't you? And the disaster relief charity? Run by the Chief Procurement Director's son. They both take very nice salaries and very nice benefits from the charities. Some of the money finds its way to the intended purpose, but it's a lot less than you think.'

"I don't know much about the travel support issue. I didn't travel back to the UK very much, so I didn't see anything directly. I heard stories, but that's all I can say. I came to a point where I couldn't justify what we were doing anymore. So when the opportunity came, I resigned and repatriated to the U.K."

THE ASSIGNMENT

- Consider the facts. Did anyone offer a direct bribe in this case? Did Teller fulfill its social responsibilities in this matter?
- Consider the people. Was Andrew justified in simply looking at the surface of the situation? Was he obligated to probe further? Should David have taken action while still employed by Teller?
- Consider the situation. Should a company take social issues into consideration when deciding to pursue business? What actions should Teller take in reaction to the allegations?

This case was written for the Daniels Fund by Charles Chadwick, Senior Advisor, Ethics Research Center (ERC), the research arm of the Ethics & Compliance Initiative (ECI).

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INSTRUCTOR/FACILITATOR CASE NOTES

CASE SUMMARY

Bribery, particularly in the conduct of international business, draws a great deal of attention from enforcement agencies and the press. What constitutes bribery — is it as obvious as it seems? Are “everyone does it” and “that’s the way business is done in this country” valid arguments? Are there values to be considered and not just rules (the law)? The case is intended to take cognizance of the laws on bribery, but to focus on both the effect of bribery on society and how individuals see their responsibilities in the face of questionable conduct.

LEARNING OBJECTIVES

The learning objectives of this case study are as follows:

- Understand the effect of bribery (and misconduct in general) on society as a whole
- Know the factors that should be considered when deciding the responsibility of the individual to react to questionable behavior
- Recognize the different forms bribery can take

ISSUES

Bribery

Although we want to focus on the values involved in both individual and corporate conduct, there are clearly specific laws in play here. In the event that questions arise during discussion of the case, a short primer on the key aspects of the law follows. The two most prominent laws to be considered are the U.S. Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act (which is relatively recent legislation). Also worth noting is the OECD Anti-Bribery Convention adopted by 41 countries and implemented in local legislation. The FCPA and OECD Convention specifically address bribery of public officials. The FCPA takes a very broad view of who is a public official. The U.K. Bribery Act makes all bribery, including bribery of private persons, illegal. Both the FCPA and the Bribery Act assert broad extraterritorial jurisdiction. Even though most of the acts described in the case do not happen in the U.K. or U.S., jurisdiction can be asserted because (a) a U.K. company is involved (Bribery Act), (b) the U.K. company has a U.S. subsidiary (FCPA), or (c) funds involved transited banks in the U.S. (FCPA). The acts described in this case (facilitating lavish travel and entertainment, contributions to favorite charities of public officials, benefits provided directly or indirectly to relatives/friends of public officials or to companies in which they have an interest) are all possible examples of bribery under both statutes.

Daniels Fund Ethics Initiative Principles involved: Rule of Law, Integrity, and Fairness (bribery creates an unfair playing field for competition)

Individual Responsibility

The discussion questions in the case focus on the responsibility of two figures in the case: Andrew and David. Andrew's attitude can be treated as "deliberate ignorance": a refusal to ask questions that a prudent person should because the answers may prove inconvenient. It may also be seen as an example of "ethical fading": pushing the ethical considerations of a situation to the fringes (or ignoring them completely) in favor of another set of criteria. In this case, those criteria are the business considerations and an assessment of actions based purely on rules (which is an inaccurate assessment). David, conversely, is well aware of the ethical issues, but still fails to act. Discussion can include a consideration of what he could have done and why he chose not to act. Is his resignation an ethical act? Do members of the group feel they would have acted differently? Why/why not?

Daniels Fund Ethics Initiative Principles involved: Accountability, Transparency, and Integrity

Social Dimensions of Misconduct

The discussion of this issue may expand far beyond the case presented. To what extent do companies have a responsibility to consider the broad effects of their products on society? When should they decline business for such reasons? Does a socially responsible company have a responsibility to work to eradicate corrupt practices such as bribery? Does social responsibility have a positive effect on long term viability of a business?

If not for the connection of the charities' directors to the project, Teller may not have made any donations. Does the fact that the charitable donations are supporting disaster relief and helping to educate children offset the fact that they are veiled bribes? Is financial support to needy recipients, regardless of the circumstances, better than none?

You may want to introduce this quote at some point in the discussion:

"Corruption destroys lives and communities, and undermines countries and institutions. It generates popular anger that threatens to further destabilise societies and exacerbate violent conflicts. Corruption translates into human suffering, with poor families being extorted for bribes to see doctors or to get access to clean drinking water. It leads to failure in the delivery of basic services like education or healthcare. It derails the building of essential infrastructure, as corrupt leaders skim funds. Corruption amounts to a dirty tax, and the poor and most vulnerable are its primary victims." (Transparency International, Corruption Perceptions Index 2012)

Daniels Fund Ethics Initiative Principles involved: Viability, Integrity, Trust (the public and society as a whole are stakeholders), Accountability, and Transparency

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