

### *Ex-HP Managers Charged in Germany with Bribery - Will Failure to Self-Disclose Hurt?*

As reported by Karin Matussek of Bloomberg News yesterday three former Hewlett-Packard (HP) managers were charged in Germany in a corruption investigation over improper payments made to win a €35 million (\$45 million) sale of computers to Russia about nine years ago. One of the ex-managers charged is a Finnish woman. The other two are men, one American and one German. The German authorities started their probe back in 2009, after provincial tax authorities found, in a routine audit of an unrelated company, evidence of payments for which “real use could be established for some payments found in the accounts. The owner of that company was charged.”

HP’s subsidiary in Munich was subsequently investigated by German authorities, with the company’s offices being raided in December, 2009 and the company’s Moscow’s offices were searched in 2010. Matussek reported that German “Prosecutors asked the court to make Hewlett-Packard an associated party to the case.” She quoted Wolfgang Klein, spokesman for Saxony’s Chief Prosecutor’s Office, who told her that “If the court grants that request and the allegations are proved, Hewlett-Packard’s profits from the transaction may be seized”. The company itself said that it was fully cooperating with the authorities and a company spokesperson, Anette Nachbar, said in an email that HP “stresses that the company expects from employees and partners strict compliance of its business principles.”

The Bloomberg article reminded me about the underlying facts of the HP case and just how bad they were. On April 15, 2010, the Wall Street Journal (WSJ) reported that three middlemen were alleged to have paid invoices, using funds provided by HP, for equipment never purchased, to shell companies with bank accounts in Latvia, Lithuania, Austria, Switzerland and Belize. In return, the suspected middlemen allegedly received commissions totaling US\$700,000, according to court documents. German authorities reported the investigation, which started in 2007, when a German tax auditor discovered bank records showing that between 2004 and 2006, a HP subsidiary paid €22 million into the account of ProSoft Krippner GmbH, a small computer-hardware company in Leipzig. The records indicated the payment was made for services performed in Moscow. It was the size of the payment to ProSoft that caught the tax auditor’s attention and he red-flagged the matter for transfer to a special prosecution team in Dresden who handle major corruption cases.

To top it all off, at least one witness has said that the above transaction was internally approved by HP through its then existing contract approval process. In the same WSJ article, Mr. Dieter Brunner, a bookkeeper who is a witness in the probe, said in an interview that he was surprised when, as a temporary employee of HP, he first saw an invoice from an agent in 2004. “It didn’t make sense,” there was no apparent reason for HP to pay such big sums to accounts controlled by small-businesses such as ProSoft Krippner. Mr. Brunner then proceeded to say he processed the transactions anyway because he was the most junior employee handling the file, “I assumed the deal was OK, because senior officials also signed off on the paperwork”.

Additionally, the New York Times (NYT), on April 16, 2010, reported that three former HP employees were arrested by German prosecutors back in December 2009, the same month police in Germany and Switzerland presented search warrants detailing allegations against 10 suspects. Although it was unclear from a WSJ article, on April 16, 2010, as to the time frame, whether in December 2009 or later, HP had retained counsel to work with prosecutors in their investigation. Apparently, since the Securities and Exchange Commission (SEC) only announced it had joined the investigation on or about April 15, HP had not self-disclosed the investigation or its allegations to either the US Department of Justice (DOJ) or SEC.

However, as bad as the facts appear to be based upon these reports, the position taken by HP not to self-disclose to the DOJ would seem to be equally questionable. Amazingly, HP did not self-disclose any of the above facts before or even after the raid on its German offices to the DOJ. Maybe HP thought a \$10MM bribe and a dawn raid in Europe were “not material” due to its size. Whatever the reason that HP failed to self-disclose, it will be interesting to see the effect, if any on its failure to self-disclose. Perhaps the NYU Law School professors might analyze that enforcement action.

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