U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

August 6, 2010

William J. Schwartz, Esq.
Cooley Godward Kronish LLP
1114 Avenue of the Americas
New York, NY 10036

Re: United States v. The Mercator Corporation, S3 03 Cr. 404 (WHP)

Dear Mr. Schwartz:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") and the Department of Justice, Criminal Division, Fraud Section (the "Fraud Section") will accept a guilty plea from The Mercator Corporation ("the defendant") to Count One of the above-referenced Information. Count One charges the defendant with violating the Foreign Corrupt Practices Act in or about November 1999, in violation of Title 15, United States Code, Section 78dd-2, which carries a maximum penalty of the greatest of $2,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, a term of probation of not less than one nor more than five years, and a mandatory $400 special assessment.

The defendant agrees to waive any argument or claim that the offense charged in the Information is time-barred by the statute of limitations.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office or the Fraud Section, except for criminal tax violations as to which this Office and the Fraud Section cannot, and do not, make any agreement, for any of the offenses charged in S2 03 Cr. 404 (WHP). The defendant agrees that with respect to any of those charges it is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant withdraws and relinquishes any and all right, title and interest it may have, directly and indirectly, on any legal, factual or other basis, in any manner or forum, to the following:

1. Any and all funds formerly on deposit in Account No. 1017789E in the name of Orel Capital Ltd. at CAI Indosuez, Geneva, Switzerland, which funds include approximately $84 million frozen by the Swiss Government in or about August 1999, and which funds (a) are the subject of a civil forfeiture action brought by the United States in this District (No. 07 Civ. 3559 (LAP)); and (b) are being used to benefit the citizens of Kazakhstan, pursuant to agreements entered into by the United States and the Republic of Kazakhstan and endorsed as Orders of the Court in the civil forfeiture action.

2. The contents of the following accounts: Account No. 1244450D in the name of Berkut Holdings Ltd. at CAI, Geneva, Switzerland; Account No. 1221320 in the name of Brisa Inc. at CAI, Geneva, Switzerland; Account No. 1051073Z in the name of Condor Capital Management Ltd. at CAI, Geneva, Switzerland; Account No. 1225580N in the name of Denlay Associates Ltd. at CAI, Geneva, Switzerland; Account No. 1063954 in the name of Dundy Trading Corp. at Banque Bruxelles Lambert (Suisse) SA, Geneva, Switzerland; Account No. 1200035 in the name of Hovelon Trading S.A. at CAI, Geneva, Switzerland; Account No. 1220420L in the name of NTC International Inc. at CAI Indosuez, Geneva, Switzerland; Account No. 1200067Z in the name of Orchard Holdings Ltd. at CAI Indosuez, Geneva, Switzerland; Account No. 1017789E in the name of Orel Capital Limited at CAI Indosuez, Geneva, Switzerland; and Account No. 1215300V in the name of Tulerfield Investment Inc., at CAI Indosuez, Geneva, Switzerland.

It is further understood that any disposition of the funds listed above will not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the Guidelines calculations set forth below. The parties disagree as to whether the Guidelines in effect as of November 1, 2009 (the "2009 Guidelines"), or November 1, 1998 (the "1998 Guidelines"), should apply to this case but agree as to how the Guidelines should be calculated under both the 1998 Guidelines and the 2009 Guidelines. Accordingly, the Stipulated Guidelines Range set forth in this Agreement includes the ranges that would apply under the 1998 Guidelines and the 2009 Guidelines. The parties agree that the Court will determine, after hearing argument from the parties, which version of the Guidelines, and which corresponding Guidelines sentencing range, applies.

A. Determination of Fine – 2009 Guidelines

1. 2009 Guidelines Offense Level

a. U.S.S.G. § 2C1.1 applies to Count One. See U.S.S.G. §§ 8C2.1, 8C2.3.

b. Pursuant to U.S.S.G. § 2C1.1(a)(2), the base offense level is 12.

c. Because the amount of the bribes was more than $10,000, the offense level is increased 4 levels pursuant to U.S.S.G. §§ 2C1.1(b)(2) and 2B1.1(b)(1)(C).

d. Because the offense involved an elected official or a public official in a high-level decision-making or sensitive position, the offense level is increased 4 levels pursuant to U.S.S.G. § 2C1.1(b)(3).

e. In accordance with the above, the applicable Guidelines offense level is 20.

2. 2009 Guidelines Base Fine

a. Pursuant to U.S.S.G. §§ 2C1.1(d), 8C2.4(a), 8C2.4(b), and 8C2.4(d), the base fine is $650,000.

3. 2009 Guidelines Culpability Score

a. Pursuant to U.S.S.G. § 8C2.5(a), the base culpability score is 5.

b. Pursuant to U.S.S.G. § 8C2.5(b)(5), because the defendant organization had 10 or more employees and an individual within substantial authority personnel participated in and condoned the offense, 1 point is added.

c. Pursuant to U.S.S.G. § 8C2.5(g), assuming the defendant clearly demonstrates recognition and affirmative acceptance of responsibility for its criminal conduct, to the satisfaction of the Government, through its allocution and subsequent conduct prior to the imposition of sentence, a 1 level reduction will be warranted.

d. In accordance with the above, the culpability score is 5.

4. 2009 Guidelines Minimum and Maximum Multipliers

a. Pursuant to U.S.S.G. § 8C2.6, the minimum multiplier is 1.00 and the maximum multiplier is 2.00.

5. 2009 Guidelines Guideline Fine Range

a. Pursuant to U.S.S.G. § 8C2.7(a), the minimum guideline fine range is determined by multiplying the base fine, $650,000, by the minimum multiplier, 1.00. Accordingly, the minimum fine is $650,000.

b. Pursuant to U.S.S.G. § 8C2.7(b), the maximum guideline fine range is determined by multiplying the base fine, $650,000, by the maximum multiplier, 2.00. Accordingly, the maximum fine is $1,300,000.

In accordance with the foregoing, the fine range under the 2009 Guidelines is $650,000 to $1,300,000.

B. Determination of Fine – 1998 Guidelines

1. 1998 Guidelines Offense Level

a. U.S.S.G. § 2B4.1 applies to Count One. See U.S.S.G. §§ 8C2.1, 8C2.3.

b. Pursuant to U.S.S.G. § 2B4.1, the base offense level is 8.

c. Because the amount of the bribe was more than $10,000, the offense level is increased 3 levels pursuant to U.S.S.G. §§ 2B4.1(b)(1) and 2F1.1(b)(1)(D).

d In accordance with the above, the applicable Guidelines offense level is 11.

2. 1998 Guidelines Base Fine

a. Pursuant to U.S.S.G. §§ 2B4.1(e), 8C2.4(a), 8C2.4(b), and 8C2.4(d), the base fine is $30,000.

3. 1998 Guidelines Culpability Score

a. Pursuant to U.S.S.G. § 8C2.5(a), the base culpability score is 5.

b. Pursuant to U.S.S.G. § 8C2.5(b)(5), because the defendant organization had 10 or more employees and an individual within substantial authority personnel participated in and condoned the offense, 1 point is added.

c. Pursuant to U.S.S.G. § 8C2.5(g), assuming the defendant clearly demonstrates recognition and affirmative acceptance of responsibility for its criminal conduct, to the satisfaction of the Government, through its allocution and subsequent conduct prior to the imposition of sentence, a 1 level reduction will be warranted.

d. In accordance with the above, the culpability score is 5.

4. 1998 Guidelines Minimum and Maximum Multipliers

a. Pursuant to U.S.S.G. § 8C2.6, the minimum multiplier is 1.00 and the maximum multiplier is 2.00.

5. 1998 Guidelines Guideline Fine Range

a. Pursuant to U.S.S.G. § 8C2.7(a), the minimum guideline fine range is determined by multiplying the base fine, $30,000, by the minimum multiplier, 1.00. Accordingly, the minimum fine is $30,000.

b. Pursuant to U.S.S.G. § 8C2.7(b), the maximum guideline fine range is determined by multiplying the base fine, $30,000, by the maximum multiplier, 2.00. Accordingly, the maximum fine is $60,000.

In accordance with the foregoing, the fine range under the 1998 Guidelines is $30,000 to $60,000.

C. Stipulated Guidelines Range

In accordance with the foregoing, the Stipulated Guidelines Range is (i) if the 2009 Guidelines apply, $650,000 to $1,300,000; and (ii) if the 1998 Guidelines apply, $30,000 to $60,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that the defendant may seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a), including the argument that the defendant has a public authority defense and other factual and legal defenses to certain conduct alleged in the Information. In addition, the defendant reserves the right to argue that, pursuant to U.S.S.G. § 8C3.3(b), the Court may impose a fine below the minimum of the Stipulated Guidelines Range set forth above, or such other minimum fine as may be determined by the Court pursuant to U.S.S.G. § 8C2.7. This Office and the Fraud Section agree to not seek a sentence outside the Stipulated Guidelines Range or to take a position as to where within the Stipulated Guidelines Range the defendant should be sentenced.

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office or the Fraud Section and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through its allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from

those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that its entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office and the Fraud Section cannot, and do not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw its plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum.

The defendant hereby acknowledges that it has accepted this Agreement and decided to plead guilty because it is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his/her plea or to attack the conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady* v. *Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio* v. *United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

By entering this plea of guilty, the defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. § 3600, to require DNA testing of any physical evidence in the possession of the Government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

It is further agreed that should the conviction(s) following the defendant's plea(s) of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office and the Fraud Section.

The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office, the Fraud Section, and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office, the Fraud Section, and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

PREET BHARARA
United States Attorney

By: _____
Lee Renzin
Assistant United States Attorney
(212) 637-2723

APPROVED:

_____
Anirudh Bansal
Chief, Complex Frauds Unit

AGREED AND CONSENTED TO:

THE MERCATOR CORPORATION

By: _____ August 6, 2010
WILLIAM J. SCHWARTZ DATE

APPROVED:

_____ August 6, 2010
WILLIAM J. SCHWARTZ DATE
Attorney for THE MERCATOR
CORPORATION