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Don't be lulled

By Gerry Zack

There appears to be a bit of a lull in corporate prosecutions lately. The big banner cases tend to involve crypto firms rather than household names. There are a few significant settlements, such as in opioid cases, but we aren't seeing the massive Foreign Corrupt Practices Act (FCPA) settlements or other huge fines of years past.

For some, this is a sign that maybe companies are getting better at self-policing. For others, it's a sign of a less active or effective U.S. Department of Justice (DOJ).

My guess is it's neither. These things come in waves. Enron, WorldCom, and Tyco all seemed to happen at once, and all three were cases that seemed to come out of left field. Likewise, the market meltdown in 2008 seemed to come out of nowhere, and with it came scandal upon scandal.

That is likely to happen again. With the economy slowing, some will try to fudge numbers to hide their losses. Others, who had been fudging them for some time, will now find the losses too large to cover. The waves will crest again; recently, even the head of the DOJ's FCPA unit said activity will increase.

But one other factor looms like never before: the prospect of prosecutions by authorities outside the United States. Over the last few years, we have seen an increasing number of multilateral prosecutions of wrongdoing. The Airbus case included settlements with the US, United Kingdom, and France.

In the area of antitrust, European enforcement authorities have been very aggressive. In September, a European Union court agreed to a \$5.1 billion fine of Google.^[1]

When it comes to data protection and privacy, Europe is the clear leader. Amazon was fined \$888 million.^[2] WhatsApp faced a \$267 million penalty.^[3]

In Latin America, corporate criminal liability was nonexistent 20 years ago. Now it can be found in areas such as environmental law and corruption.

The bottom line is that this is not the time to take our eyes off the ball. Instead, it's time to realize that there is not just one ball. There are many out there for us to juggle. That means watching, more closely than ever, the proliferation of laws and enforcement authorities around the world. It means being more attuned than ever to local realities.

It also means being wary and not being lulled into a false sense of confidence.

- 1 Adam Satariano, “E.U. Scores Major Legal Victory Against Google,” *The New York Times*, September 14, 2022, <https://www.nytimes.com/2022/09/14/business/eu-google-antitrust-fine.html>.
- 2 Stephanie Bodoni, “Amazon Gets Record \$888 Million EU Fine Over Data Violations,” *Bloomberg News*, July 30, 2021, <https://www.bloomberg.com/news/articles/2021-07-30/amazon-given-record-888-million-eu-fine-for-data-privacy-breach>.
- 3 Sam Shead, “WhatsApp is fined \$267 million for breaching EU privacy rules,” *CNBC*, September 2, 2021, <https://www.cnbc.com/2021/09/02/whatsapp-has-been-fined-267-million-for-breaching-eu-privacy-rules.html>.

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