

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIEBOLD, INC.,

Defendant.

Case No.

5:13CR464

INFORMATION JUDGE OLIVER

[18 U.S.C. § 371: Conspiracy]
[15 U.S.C. §§ 78m and 78ff: Books and
Records]

The United States charges that, at all times relevant to this Information, unless otherwise stated:

INTRODUCTION

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* (“FCPA”), was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for or with, or directing business to, any person.

The Defendant and Other Relevant Individuals and Entities

2. DIEBOLD was headquartered in North Canton, Ohio, and was incorporated in Ohio. DIEBOLD issued and maintained a class of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 781), which traded on the New York Stock Exchange and, therefore, was an “issuer” within the meaning of the FCPA, 15 U.S.C. § 78dd-1(a). DIEBOLD was a global leader in providing integrated self-service delivery

and security systems, including automated teller machines (“ATMs”), and services to primarily the financial, commercial, government, and retail markets. DIEBOLD operated, including through its subsidiaries, in 90 countries around the world, including in the People’s Republic of China, Russia, Ukraine, and Indonesia.

3. Executive A was a senior executive at DIEBOLD. Executive A held several positions, initially overseeing DIEBOLD’s operations in the Asia Pacific region and later overseeing DIEBOLD’s international operations.

4. Executive B was a vice president of DIEBOLD’s Asia Pacific division. Executive B’s responsibilities included overseeing DIEBOLD’s operations in the Asia Pacific region.

5. Executive C was a high-level executive at DIEBOLD. Executive C’s responsibilities included overseeing and approving due diligence efforts and acquisitions.

6. Employee A was an employee in DIEBOLD’s Asia Pacific division. Employee A was involved in sales and customer relations in the Asia Pacific region.

7. Employee B was an employee in DIEBOLD’s Asia Pacific division. Employee B was in the Finance Department responsible for the Asia Pacific region.

8. Employee C was a director of Corporate Development at DIEBOLD. Employee C’s responsibilities included performing due diligence in connection with acquisitions by DIEBOLD.

9. Distributor 1 was a third-party distributor that entered into a distribution agreement with DIEBOLD to sell ATMs in various countries, including Ukraine. Distributor 1 was an “agent” of an issuer within the meaning of the FCPA, 15 U.S.C. § 78dd-1(a).

10. Distributor 2 was a third-party distributor that entered into a distribution agreement with DIEBOLD to sell ATMs in various countries, including Ukraine and Russia. Distributor 2 was an “agent” of an issuer within the meaning of the FCPA, 15 U.S.C. § 78dd-1(a).

11. “Bank 1” was controlled and approximately 70% owned by the People’s Republic of China. Bank 1 was one of several state-owned banks in the People’s Republic of China that together maintained a monopoly over the banking system in the People’s Republic of China and provided core support for the government’s projects and economic goals. The government retained a controlling right in Bank 1, including appointing or nominating a majority of board of directors and top managers at the bank. Bank 1 was an “instrumentality” of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1). Bank 1 was a customer of DIEBOLD.

12. “Bank 2” was controlled and approximately 70% owned by the People’s Republic of China. Bank 2 was one of several state-owned banks in the People’s Republic of China that together maintained a monopoly over the banking system in the People’s Republic of China and provided core support for the government’s projects and economic goals. The government retained a controlling right in Bank 2, including appointing or nominating a majority of board of directors and top managers at the bank. Bank 2 was an “instrumentality” of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1). Bank 2 was a customer of DIEBOLD.

Conduct in China and Indonesia

13. DIEBOLD sold ATMs and provided ATM-related services to banks in China and Indonesia, including state-owned banks such as Bank 1 and Bank 2.

14. The contracts between DIEBOLD and the banks in China provided that DIEBOLD would train employees from the bank customers with respect to DIEBOLD's ATMs.

15. In order to secure and retain business with bank customers, including state-owned banks such as Bank 1 and Bank 2, Executive A, Executive B, Employee A, Employee B, and other DIEBOLD employees repeatedly provided things of value, including payments, gifts, and non-business travel for employees of the banks, totaling approximately \$1.75 million over a five-year period.

16. Executive A, Executive B, Employee A, Employee B, and other DIEBOLD employees attempted to disguise the payments and benefits through various means, including by making payments through third-parties designated by the banks and by inaccurately recording leisure trips for bank employees as "training."

Conduct in Russia

17. DIEBOLD sold ATMs and provided ATM-related services to privately-owned banks in Russia. In connection with its sales efforts, DIEBOLD entered into a distribution agreement with Distributor 2.

18. From in or around 2005 to in or around 2009, DIEBOLD, through its employees and agents, together with others, created and entered into false contracts with Distributor 2 for services that Distributor 2 was not performing. Distributor 2, in turn, used the money that DIEBOLD paid to it, in part, to pay bribes to employees of DIEBOLD's privately-owned bank customers in Russia in order to obtain and retain contracts with those customers.

19. During this time period, in or around March 2007, in connection with due diligence being conducted by Employee C and other DIEBOLD employees for a potential

acquisition of Distributor 1 in Ukraine, Employee C and other DIEBOLD employees learned that Distributor 1 paid bribes to employees of bank customers to secure business.

20. On or about March 27, 2007, an employee in DIEBOLD's Corporate Development department sent an e-mail to other DIEBOLD employees, stating: "[Distributor 1] is involved in the practice of giving cash gifts to win their business. In order to record these special handouts, they over pay one of their suppliers [] in exchange for cash (equal to the over payment) and the cash so received is used to pay their clients."

21. On or about October 12, 2007, Employee C sent an e-mail to Executive C stating that Employee C and others were examining issues associated with Distributor 1, but that "I think you probably have a [Distributor 2] Risk, given what I know of the region."

22. DIEBOLD, however, continued to utilize Distributor 2 as its distributor in Russia, and continued to create fake contracts with Distributor 2 for services that Distributor 2 was not performing, and continued to make payments to Distributor 2 pursuant to those contracts.

COUNT ONE
Conspiracy
(18 U.S.C. § 371)

23. Paragraphs 1 through 22 are realleged and incorporated by reference as though fully set forth herein.

24. From in or around 2005, and continuing through in or around 2010, in the Northern District of Ohio and elsewhere, the defendant, DIEBOLD, INCORPORATED, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly conspire, confederate and agree with others, known and unknown, to commit an offense against the United States, that is:

- a. to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value, to a foreign official, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist DIEBOLD and others in obtaining and retaining business for and with, and directing business to, DIEBOLD, in violation of Title 15, United States Code, Section 78dd-1(a); and

- b. to knowingly falsify and cause to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of DIEBOLD.

PURPOSE OF THE CONSPIRACY

25. The purpose of the conspiracy was to obtain and retain contracts with state-owned and controlled bank customers in the Asia Pacific region on behalf of DIEBOLD, including Bank 1 and Bank 2, by making payments and giving other things of value, such as gifts and non-business travel expenses, to foreign officials employed by such customers, and concealing and disguising the payments by falsifying DIEBOLD's books and records.

MANNER AND MEANS OF THE CONSPIRACY

26. The manner and means by which DIEBOLD and its co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following:

27. DIEBOLD, through its executives and employees, discussed in person, via telephone, and via electronic mail ("e-mail") making payments and providing things of value to employees of bank customers in the Asia Pacific region, including state-owned and controlled customers, in order to obtain and retain for DIEBOLD contracts to install ATMs and provide related services.

28. DIEBOLD, through its executives and employees, together with others, offered to pay, promised to pay and authorized the payments and giving of things of value, directly and indirectly, to and for the benefit of employees of state-owned and controlled bank customers in the Asia Pacific region in exchange for those foreign officials' assistance in ensuring the continued use of DIEBOLD ATMs and services with the state-owned and controlled bank customers by which they were employed.

29. DIEBOLD, through its executives and employees, together with others, attempted to conceal the payments, gifts and travel provided to employees of customers by, among other means, making payments through third party agents designated by bank customer employees and describing leisure trips as “training.”

OVERT ACTS

30. In furtherance of the conspiracy and to achieve its purpose and object, at least one of the conspirators committed, and caused to be committed the following overt acts, among others:

31. On or about January 17, 2005, a DIEBOLD employee sent an e-mail to another DIEBOLD employee stating, “[W]e suggest we should prepare some payment card to the key person of HQ in [Bank 1 and another bank] so that we could make a good relationship with HQ.”

32. On or about January 18, 2005, a DIEBOLD employee forwarded to Executive B the e-mail referenced in Paragraph 31 above, stating, “it is a big expense; we need your final approval!”

33. On or about January 18, 2005, Executive B responded to the e-mail referenced in Paragraph 32 above, and stated, “Do you think we need to narrow down the distribution list to a few key persons in [Bank 1]? I am OK to increase the amount for selected individuals. We only conduct similar activity at [Bank 2] to 5-6 key persons.”

34. On or about January 18, 2005, after receiving an e-mail narrowing the list of bank officials to whom payments would be made, Executive B responded, “OK and I suggest we need to give more to [two individuals employed by Bank 1].”

35. On or about January 13, 2006, Employee A sent an e-mail to Executive B, stating, "Our team has made a China Spring Festival gift list for our [Bank 2 and two other banks] customers. Pls. review and approve it ASAP. We would like to do it next week."

36. On or about January 13, 2006, Executive B responded to the e-mail from Employee A referenced in Paragraph 35 above, stating, "The total amount is huge. Please provide me with the expenditure from these account [sic] last year for review."

37. On or about January 13, 2006, Employee A responded to the e-mail from Executive B referenced in Paragraph 36 above attaching a spreadsheet of the expenditures from 2005 and the proposed expenditures for 2006, including ¥ 27,500 RMB for 12 bank employees in 2005 and ¥ 55,000 RMB for 26 bank employees in 2006.

38. On or about May 22, 2007, Employee A sent an e-mail to Executive B, Employee B, and other Diebold employees regarding an overseas trip for employees of Bank 2, and stated, "Pls, make the answer and give us a solution as early as possible because [Bank 2's Shanghai office] push us to do it every day."

39. On or about May 25, 2007, Employee B responded to the e-mail string referenced in Paragraph 38 above, stating, "I think the point is we have to make the trip more training related. For example, the detail Itinerary showing no/minimized tourism schedule; the invitation letter showing strong reason why it should be oversea, [sic] etc. Once we get all evidence, we can have some argue [sic] points if any investigation comes."

40. On or about May 25, 2007, Executive B sent an e-mail to Employee A in response to Employee B's e-mail referenced in Paragraph 39 above, stating, "Please follow what [Employee B's] comments [sic] to handle this training."

41. On or about May 30, 2008, in connection with KPMG's audit of DIEBOLD in China and its attempt to obtain "more audit evidence about the overseas training provided to bank officers," and in response to a specific request from KPMG for the contact person in France involved in a training trip for Bank 2 officials, Executive B forwarded the request to a supervisor in DIEBOLD's office in France, and stated, "As you know, these days, many Chinese bankers like to conduct study trip [sic] in Europe to learn advanced banking services and also exchange idea [sic] with European banks. In most cases, Diebold France and/or previous Cassis plant helped us to prepare customer invitations and arrange needed activities for Chinese customers' study trip in France and other European countries. By the mail below, I want to seek your kind assistance to appoint one local contact person in Diebold France who can help us on the inquiry from outside audit, KPMG in this case. If receive [sic] inquiry, he or she needs to respond that Diebold France did assist Diebold China on the invitation preparation, program arrangement, and needed logistic assistance."

42. On or about May 30, 2008, Executive B forwarded to Executive A the e-mail Executive B had sent that same day to the supervisor in France, referenced in Paragraph 41 above, and stated, "The selected [Bank2] Zhejiang case is just one of the formal training commitment [sic] we had with bank [sic] in previous contracts. Sometimes, our team in France only help [sic] on invitation regardless the rest of activities we are putting into the itinerary. In above selected case, even Diebold China didn't assign salesperson to participate in the trip. The request from KPMG is a formality during annual audit process, but it may be noisome if we doesn't [sic] handle it right. Please help us to have chat with [the France supervisor] to seek his support."

43. On or about May 30, 2008, Executive A responded to the e-mail from Executive B referenced in Paragraph 42 above, and stated, "Will do."

44. On or about October 14, 2008, Employee B drafted and sent to Employee B's supervisor a memorandum entitled, "China Commitment Accrual & Payment," in which Employee B discussed payments to third parties in connection with contracts with bank customers, writing, "The last item rings the bell. The bank customers aware that Diebold has accrued certain amount to the training fee based on the sales contract we signed with them. And they don't think they need any kind of training actually. They want the money but without booking into their ledger. As a solution, the Bank found a third party company, which may have some kind of relationship with the bank, but definitely no transaction with Diebold at all. This third party provides a bank account with a legal invoice issued to Diebold China, and Diebold made the payment directly to them. This process violates Chinese law and regulation and we have potential risk to be challenged by government [sic]. And the punishment is heavily related to business bribe. . . . When we went through the detail supporting documents of such payments, we noticed that these training [sic] were conducted oversea or in some domestic tourism cities. . . . Also, if we check our practice with the FCPA regulation, I should say that we have potential risk on this area."


All in violation of Title 18, United States Code, Section 371.

COUNT TWO
Books and Records
(15 U.S.C. § 78m)

45. Paragraphs 1 through 22 and 25 through 44 are realleged and incorporated by reference as though fully set forth herein.


46. From in or around 2005, and continuing through in or around 2009, in the Northern District of Ohio and elsewhere, the defendant, DIEBOLD, INCORPORATED, knowingly falsified and caused to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of DIEBOLD, that is, DIEBOLD drafted fictitious contracts with Distributor 2 for services that Distributor 2 was not providing so that Distributor 2 could use the money provided by DIEBOLD in connection with the contract to pay bribes to employees of bank customers in Russia, in violation of Title 15, United States Code, Sections 78m(b)(2), 78m(b)(5), and 78ff(a).

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