

# DPA Approved between the SFO and Serco Geografix Ltd

8 July 2019

On 3 July 2019, the SFO announced that a deferred prosecution agreement (“DPA”) with Serco Geografix Limited (“SGL”) had been concluded. The judgment finally approving the SGL DPA by Mr Justice William Davis was published on 4 July 2019. It found that the DPA was in the interests of justice and that its terms were fair, reasonable and proportionate.

**Debevoise  
& Plimpton**

This is the fifth SFO DPA, following those with Standard Bank, “XYZ Ltd”, Rolls-Royce, and Tesco Plc.

**Background.** SGL is a private limited company, an indirect wholly owned subsidiary of Serco Group PLC. Under contract with the Ministry of Justice (“MoJ”), SGL supplied electronic monitoring tags for individuals subject to monitoring requirements. An internal investigation uncovered emails which suggested manipulation of accounting to reduce the profit margins reported to the MoJ. Once reported to the SFO, and following further investigations, the SFO concluded that the evidential and the public interest tests found in the DPA Code were satisfied in relation to three offences of fraud and two offences of false accounting.

**Terms of the DPA.** The DPA will be effective for three years from the date of declaration to allow sufficient time for the compliance objectives to be met. The terms include:

- Payment of a financial penalty of £19.2 million and the SFO’s reasonable costs of £3,723,679.00;
- Improvements to ethics and compliance policies and procedures; and
- Continuing co-operation with the SFO and other investigative agencies.

Serco Group PLC has given an undertaking to assume responsibility for the payment of the financial penalty and costs. It has also accepted the further compliance and reporting obligations, as well as the obligation to continue cooperating with the SFO’s and other inquiries. This is because SGL is currently dormant, with no means to pay a

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financial penalty or engage with compliance programmes. Serco Group PLC must also report any serious and complex fraud to the SFO.

**Analysis.** This resolution will be a relief to the Serco Group as the absence of a conviction assists with potentially costly debarment issues. Mr Justice Davis noted that the issue of debarment had caused him some concern in relation to the “proportionality” requirement. Having received evidence from the Cabinet Office, he found that the DPA’s approval, although relevant, would not be determinative of Serco’s continued ability to provide services to HM Government.

The SGL DPA was based on the lower evidential standard in the DPA Code. This means that the SFO does not consider there is currently sufficient evidence to prosecute, but that “there are reasonable grounds for believing that a continued investigation would provide further admissible evidence within a reasonable period of time” sufficient to prosecute.

In addition, this is the first time a parent company has given undertakings in relation to a DPA entered into by one of its subsidiaries. Mr Justice Davis noted the difficulty in attributing liability to parent companies when, as in this case, they often benefited from the relevant offending. His Lordship stated that without Serco Group PLC’s undertakings “*it is very unlikely that the goals of a DPA could have been achieved*”.

It is still unknown whether prosecutions of individuals will follow from what Mr Justice Davis described as “*sustained offending by a company in a position of trust*”. Following the Tesco DPA, the SFO was criticised for naming the individuals allegedly responsible in the Statement of Facts. Unlike in Tesco, in the present case, no individuals have as yet been charged and the SFO applied to Mr Justice Davis to postpone the publication of the Statement of Facts pending individual-charging decisions, which the SFO stated would be made by 18 December 2019. His Lordship agreed, finding “*a substantial risk of prejudice [would exist]... in relation to any proceedings hereafter should the Statement of Facts be published*” before then. We will therefore have to wait and see whether, and, if so, to what extent, the individuals involved have been anonymised in the Statement of Facts.

The evidential basis for the SGL DPA indicates that the SFO will not be ready to charge individuals before conducting significant further investigations. Against a background of the decision not to charge individuals in the Rolls-Royce matter, and the throwing out of the charges against the individuals identified in the Tesco DPA<sup>1</sup>, charges in this

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<sup>1</sup> No individuals were charged following Standard Bank; trials against individuals implicated in “XYZ” are currently underway.

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case would arguably do much to enhance the credibility of the DPA as a settlement instrument and of the SFO as a prosecutor of corporate offending.



**Karolos Seeger**  
Partner, London  
+44 20 7786 9042  
kseeger@debevoise.com



**Robin Löff**  
International Counsel,  
London, Paris  
+44 20 7786 5447  
+33 1 40 73 12 12  
rloof@debevoise.com



**Aisling Cowell**  
Associate, London  
+44 20 7786 9032  
acowell@debevoise.com