CORPORATE CRIME REPORTER

No Bigger Fish than MCI

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Last week, federal prosecutors in New York decided not to criminally prosecute WorldCom/MCI for an $9 billion fraud. This represents a travesty of justice.

The government's response to the largest corporate fraud in U.S. history has been grossly inadequate and fundamentally misdirected.

WorldCom/MCI engaged in a concerted program of manipulation over three years by which it fraudulenty manufactured $9 billion in income, making victims of investors, pension funds, and every honest company struggling to survive the telecom meltdown.

As a result of the WorldCom/MCI fraud, investors lost roughly $175 billion – more than three times the losses in Enron.
WorldCom/MCI 's brazen scheme dramatically deepened the crisis of confidence in corporate America, imposing incalculable costs across the country.

While the Securities and Exchange Commission (SEC) and the Justice Department have focused on pursuing individuals who perpetrated this crime, the government seems poised to allow WorldCom/MCI as a company to escape with the fruits of its unlawful conduct.

The core mission of our justice system is to ensure that "crime does not pay," and the core mission of our securities laws is to ensure that securities fraud does not pay.

When individuals commit crimes, they are not only punished but also compelled to surrender the benefits gained from wrongdoing.

Likewise, when a business engages in crime that produces illicit advantages, it is axiomatic that – whatever individual punishment is meted out – the company itself cannot be left in a position to profit from those ill-gotten gains.

In WorldCom/MCI's case, the fraud was so massive that a significant part of its business – its assets, customers, and market position – are the fruit of criminal conduct.

Imagine two competing trucking firms.

One is an honest business, leasing trucks and making payments on time.

The other is a criminal enterprise, which acquires its trucks through theft and uses this illicit advantage to steal business from the honest firm.

There are two classes of victims – those whose property is directly stolen, and those whose businesses are injured by the criminal enterprise's illicit advantages.

What must the government do to right this wrong?

Obviously, the individuals who stole the trucks should be punished, but just as obviously this alone does not remedy the offense.

If new management is simply allowed to take over the corrupt company, keeping and using stolen trucks, the law-abiding competitor will still be a victim.

It will lose customers and profits, not because it was beaten in the marketplace, but because it must compete against an enterprise built on criminal activity.

So too with WorldCom/MCI.

It is no overstatement to say that WorldCom/MCI would be a valueless enterprise but for its fraud.

None of the arguments that have been made on WorldCom/MCI's behalf warrant leniency.

Some have asserted that WorldCom/MCI should be spared enforcement because it is a major supplier of important services to the government, including services important to law enforcement and national security, that it is "too big to fail."

Others have lamented that liquidation would put WorldCom/MCI employees out of work.

This is a red herring.

The issue is not whether the business continues to exist, or whether the government will still be able to obtain critical services.

It is whether the ongoing business has the cost structure of an honest enterprise or a criminal enterprise, and whether the government obtains services from vendors who fairly compete, or instead seeks to cash in on the crime by effectively serving as a "fence" for stolen goods.

WorldCom/MCI apologists also claim that the company deserves leniency for cooperating with the government's investigation.

But cooperation cannot trump the numerous other factors that dictate action against the corporation in this case, including the crime's unprecedented scale, its brazen nature, its catastrophic impacts, the involvement of senior officials, and the unscrupulous corporate culture that bred these offenses.

WorldCom/MCI's cooperation results from necessity, not from probity.

The crime here was so egregious that the company had no choice but to cooperate.

If this kind of "desperate cooperation" were rewarded with a pass, the most brazen criminals would go scot-free, while those with the temerity to raise a legitimate defense would suffer the harshest punishment.

This result cannot be squared with any rational concept of justice.

In any event, law enforcement gives greatest weight for cooperation when it helps to snare a bigger fish.

Here there is no bigger fish than WorldCom/MCI.

Uh.

Wait a second.

Full disclosure:

Except for the first paragraph, that wasn't us writing.

That was William Barr, executive vice president and general counsel, Verizon Inc. (and former Attorney General of the United States) in a March 19, 2003 letter to the Securities and Exchange Commission calling for the death penalty for WorldCom, then a competitor to Verizon.

Next month, Verizon shareholders will vote on a proposed merger with MCI, the new name for WorldCom.

We assume Barr has now changed his mind and agrees with the U.S. Attorney in New York that MCI should not be criminally prosecuted.

But he did not return our call seeking comment.

Charles Scheeler, a partner at Piper Rudnick in Baltimore, represented MCI before the U.S. Attorney in Manhattan.

In an interview, Scheeler said the circumstances under which Barr was arguing for MCI's liquidation are no longer present.

"That was the position he took at the time," Scheeler said. "The telecommunications industry is very competitive. And the people in the industry tend to play with sharp elbows." (For the complete five page interview with Scheeler, see 19 *Corporate Crime Reporter* 35(12), September 12, 2005, print edition only.)

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