

Intermediaries: the weak link

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The three cases have one point in common: the corrupt payments passed through intermediaries, agents, consultants, business introducers and service companies, remunerated by commissions of which a part was passed on to public officials. This pattern is long-standing and well known to traders. Commissions paid to intermediaries in high-risk countries, without any clear economic justification, were already in the 2000s the most obvious warning sign.¹ Compliance programmes have since made intermediaries their principal target: verification of their identity, of their links with public officials and of their commercial justification, written contracts with anti-corruption clauses, capping and justification of commissions, payments only to accounts in the intermediary's name in its own country, audits and, finally, refusal of intermediaries imposed by the public counterparty.

This discipline has a commercial cost: in several producing countries, access to contracts runs through intermediaries connected to those in power, so that the trader who refuses them loses business to less scrupulous competitors, often established in jurisdictions where Article 102 has no equivalent. Geneva traders argue that this disadvantage is the price of their location, and that Switzerland should compensate for it through diplomatic support and through international coordination of prosecutions, so that foreign competitors are subject to the same constraints. Part I shows that, in relations with Africa, this question lies at the heart of the choices facing the financial centre.

1 Notes

1. DOJ, 1 March 2024: “Between 2012 and 2020, Gunvor and its co-conspirators paid more than \$97 million to intermediaries knowing that some of the money would be and in fact was used to bribe Ecuadorean officials”; DOJ, 24 May 2022: Glencore “concealed the bribe payments by entering into sham consulting agreements, paying inflated invoices, and using intermediary companies to make corrupt payments”; SFO, Sentencing Remarks, 3 November 2022: bribes paid “through intermediaries, agents and employees”, false invoices; Office of the Attorney General of Switzerland, 5 August 2024 (Glencore’s business partner in the DRC); Miller & Chevalier, FCPA Spring Review 2024: “Trafigura personnel and agents knowingly and willfully conspired with middlemen and foreign officials to secure and retain improper business advantages” (Petrobras, 2003-2014). ↩

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