



White Collar, Government & Internal Investigations ADVISORY ■

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Going All In: The CPS Shakes Up the UK Corporate Criminal Enforcement Landscape with a Landmark DPA

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On 5 December 2023, Entain plc, the FTSE 100 global online sports betting and gaming business, received final judicial approval for its proposed deferred prosecution agreement (DPA) with the Crown Prosecution Service (CPS).

Notably, this is the first DPA negotiated and entered into by the CPS since the introduction of DPAs in February 2014 and is a clear indicator that corporate criminal enforcement remains a priority in the UK.

The DPA

The DPA resolves a multi-year investigation by HM Revenue & Customs (HMRC) into the alleged failure of Entain (then known as GVC Holdings plc) to prevent bribery, contrary to section 7 of the UK Bribery Act 2010. The alleged misconduct occurred primarily in connection with Entain's since-disposed Turkish business operations. Entain entered into a four-year DPA with the CPS, agreeing to pay a financial penalty of £465 million, disgorge profits of £120 million, pay HMRC's and CPS's costs of £10 million, and make a charitable donation of £20 million.

Entain further agreed to cooperate on an ongoing basis with CPS and other agencies and authorities in matters relating to the conduct at issue, and should its group ethics & compliance director, general counsel, and external legal advisers determine that the company faces potential criminal liability for violations of certain statutes including the Bribery Act 2010, to self-report that determination to the CPS. Entain also agreed to discontinue operations in Brazil, Chile, Peru, and Mexico and to commission two external reviews of its ethics and compliance programme.

Entain did not self-report the offending conduct to HMRC or the CPS, but nevertheless was offered the DPA based on its level of cooperation, which was characterised as 'significant' and 'exemplary', as well as on its 'wholesale change of senior management and approach' and exiting of approximately 160 international markets.

This is the first DPA entered into by the CPS, and marks the CPS's deployment of a tool that historically has been exclusively used by the UK Serious Fraud Office (SFO). This DPA is also one of the largest corporate criminal resolutions ever reached in the UK, and is the second-largest DPA in UK history, behind only the €984 million penalty levied against Airbus SE by the SFO in 2020.

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Key Takeaways

This landmark DPA comes on the heels of the UK's Economic Crime and Corporate Transparency Act (ECCTA, discussed in our prior [Alston & Bird advisory](#)), among other recent developments in UK corporate criminal enforcement, and is notable for several reasons.

A clear sign of continued and expanding corporate criminal enforcement interest by UK authorities. This sizeable resolution from an agency that heretofore has not been seen to have a significant appetite for large-scale corporate cases unmistakably signals a more muscular CPS in the corporate enforcement space at a time when the SFO has not entered into a DPA since 2021 and has not prosecuted a corporate in all of 2023. With the SFO and CPS both undergoing leadership changes this year, the CPS being first past the post with this landmark DPA may reflect an emerging rivalry in UK corporate criminal enforcement, with both agencies seeking to enter into high-profile corporate criminal resolutions. For UK corporates and non-UK corporates with a presence in or other connection to the UK, this would mean an increased risk of enforcement scrutiny, with the potential for overlapping investigative demands from multiple agencies. More than ever before, corporates must be positioned to quickly identify and assess potential misconduct and to engage thoughtfully and strategically with enforcement authorities.

A timely reminder of the power of 'failure to prevent' offences. Entain was charged with four counts of failing to prevent bribery, contrary to section 7 of the Bribery Act 2010; this violation has been frequently charged in prior DPAs as well, likely because it provides a far easier access to corporate criminal liability than do other statutes. As the ECCTA adds a 'failure to prevent fraud' offence to enforcement agencies' toolkits, corporates must prepare to face yet more areas of enforcement risk in the form of investigations and prosecutions.

A further demonstration of the critical importance of adequate and effective compliance programmes. Entain was credited by the CPS and the court for its 'significant enhancements to its ethics & compliance programme', with Chief Crown Prosecutor Andrew Penhale noting the 'sweeping changes to the company's compliance procedures'. This focus by the CPS on issues of corporate compliance programmes echoes what has developed at the SFO in recent years and can leave no doubt for corporates that robust, risk-based investments in compliance and internal controls are essential.

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