

Secret junkets that turn sour

US authorities are shining a spotlight on companies that use 'training' trips to keep Chinese clients and officials sweet, writes **Raphael Minder**

When Lucent invited Chinese officials to the US, the company acted more like a travel agent than a telecommunications equipment maker, judging by the details of an anti-corruption investigation that closed last Christmas.

The US Department of Justice found that Lucent spent more than \$10m on about 315 trips for 1,000 Chinese government officials and telecoms executives, most of whom "spent little or no time" at Lucent's facilities, enjoying instead Hawaii, Las Vegas, the Grand Canyon, the Niagara Falls, Disneyland and Universal Studios.

The company paid a total of \$2.5m in fines and related civil penalties after co-operating fully with Washington investigators, and says it is glad to have drawn a line under events that took place before its 2006 merger with Alcatel of France. But some US lawyers and executives say that other companies have also organised questionable trips for Chinese officials, in spite of Washington's recent efforts to clamp down on the practice under its Foreign Corrupt Practices Act.

Patrick Norton, a China legal expert and Washington-based partner at Steptoe & Johnson, a US law firm, says he has been involved in "seven or eight" internal investigations by US companies into training and factory touring trips, one of which has turned into an investigation by the US Department of Justice. "This is a serious problem and it's one that is almost unique to China," says Mr Norton.

The practice indicates how far some US and other western companies may be prepared to go in order to secure business in China. The use of traditional kickbacks has already landed several companies in trouble. Last October, Portland, Oregon-based Schnitzer Steel admitted to paying bribes to steel managers in China and South Korea. The Siemens probe, Germany's largest corporate bribery case, has also extended to China.

The transgressions have allegedly come in two forms. In one, trips have been offered to government officials to curry favour, as in the Lucent case (see below). In the other, the trips have been for employees of client companies, as an inducement to get more business but as part of a contractual agreement in which training and travel costs are included – giving such trips an element of legitimacy. Furthermore, the host company is sometimes instrumental in helping Chinese employees to defraud their own company, since the Chinese companies pick up the bill for the training.

In the wake of the Lucent case, US companies admit the issue has moved up the agenda. "The Lucent case has certainly made us very conscious of this problem," says an executive from Honeywell, who asks not to be named. "Preventing this from happening is a challenge for almost any company dealing with Chinese customers."

One of the main difficulties for foreign companies in China is the blurred line between public and private sectors. The communist government maintains tight control over much of the economy.

Stephen Clayton, a senior director in charge of anti-corruption compliance for Sun Microsystems, the technology company, says: "When dealing with companies there, you've got to assume that you're also dealing with the government."

Meanwhile, says Mr Clayton, American executives should also assume that their activities are now under closer monitoring from US authorities. Last year, for example, the Federal Bureau of Investigation created a four-person team dedicated specifically to FCPA cases. Surveillance by the FBI and other agencies has been encouraged by a US administration that has linked corruption to terrorism and increased scrutiny over foreign visitors in the aftermath of the September 11 2001 attacks. "The main reason for all of this is the war on terror," he says.

As an example of how US law enforcers are now infiltrating the corporate world, Mr Clayton recalls a recent industry conference in which one participant started discussing training trips in Hawaii that his company had organised for customers. "They had to do the training, but they almost certainly didn't have to do it in Hawaii," Mr Clayton

says, without identifying the company. That prompted some questioning from another conference attendee, whom Mr Clayton knew from earlier meetings to be working for the FBI. "This poor guy didn't have a clue that the woman he was talking to about having people over in Hawaii was an FBI agent," he says.

At Honeywell, any US-based training of Chinese client employees is normally limited to a week and kept within a factory location. "We provide them with a very specific agenda to make sure that they only do business-specific activities," says the Honeywell executive. "If we don't get a proper agenda confirmation, we don't provide them with the invitation."

Still, Mr Norton says he knows of one case at another company where Chinese trainees asked their US host on arrival to reimburse them almost all the training money paid up-front by their company, since they had no intention of spending their time in America improving their skills. "There was probably two hours of legitimate business over a two-week-long trip to places such as LA and Las Vegas," he says. "And the trip certainly involved many more people than would have been necessary."

Mr Clayton also says Chinese management is not always on top of the financial aspects of training, even though Sun Microsystems has not experienced such problems at first hand. "Whether the [Chinese] company always realises that they are paying too much, I don't know," he says. "The people asking for some-

thing such as training are in fact not always the most senior in the company. In many ways, my sense is that they are generally ripping off their own company."

That could help convince Beijing it should increase judicial co-operation with Washington – a relationship that remains in its infancy in spite of booming bilateral investments, including those by Chinese state-controlled institutions in Wall Street banks hit by the subprime market collapse.

Mr Norton, who has also worked as a legal adviser in the US State Department, says that "there are a lot of people in the Chinese government who honestly would like to clear up such problems, but for now nobody really knows how to deal with the Chinese government on this kind of [training] issue."

While Beijing is still grappling with such problems, the FCPA has already helped reshape US corporate law by, among other things, making an acquirer liable for any past transgressions by the purchased company.

Linus Wong, a director at Control Risks, a London-based consultancy advising companies on white-collar crime, says: "Due diligence in the traditional sense, in other words just going through some documentations, is probably no longer good enough and would not make a company immune from DoJ prosecution."

So any company eager to follow Alcatel's example and merge with a US counterpart should take a long, hard look at their American partner's records – including the guest book.

No expense spared: Lucent's 'factory trip' of a lifetime

Details of the Lucent case released in December suggest the US company went beyond just providing a topclass travel itinerary for Chinese visitors apparently eager to avoid factory tours.

Lucent also gave some Chinese officials a daily cash allowance of \$500 to \$1,000, even though it had paid all lodging, transport, food and entertainment expenses.

For one trip, Lucent justified the absence of factory visits by saying that Chinese visitors had been afraid to travel to the east coast following the attacks of

September 11 2001. Lucent's help also extended to relatives or associates of the invited Chinese officials, who were offered "educational opportunities" both in the US and back in China at a total cost to Lucent of more than \$100,000.

Trips were typically characterised as "factory inspections" or "training", but the US Department of Justice pointed out that "by 2001 Lucent had outsourced most of its manufacturing and no longer had any Lucent factories for its customers to tour".