

Antitrust Litigation Alert

Foreign Nationals May Face Increased Risk of Extradition to US for Antitrust Violations

The US Department of Justice's first successful extradition of a foreign national charged with violating the Sherman Act—and the potentially longer prison sentence he is likely to receive if convicted—may provide incentive for individuals charged with criminal antitrust violations and contemplating fugitive status to cooperate rather than remain at large.

On April 4, 2014, the US Department of Justice's Antitrust Division announced the first extradition of a foreign national to face a criminal antitrust charge. The successful extradition underscores the increased risk of extradition and prosecution of individuals residing in foreign countries who decline to appear in US district court to answer a criminal antitrust indictment by the DOJ.

The Extradition of Romano Piscioti

On August 26, 2010, a grand jury in the US District Court in the Southern District of Florida returned a sealed indictment against Romano Piscioti, an Italian national, that charged him with one count of violating the Sherman Act. Piscioti is a former executive with Parker ITR Srl, a marine hose manufacturer headquartered in Veniano, Italy that pled guilty in 2010 to conspiring to fix prices, rig bids and allocate market shares for marine hose products sold in the US and elsewhere. The indictment alleges that Piscioti participated in the conspiracy from at least as early as 1999 until at least November 2006.

While under indictment, Piscioti traveled to Germany. He was arrested and jailed in Germany on June 17, 2013, and the indictment was ordered unsealed on August 5, 2013. Because Germany and the US have an extradition treaty and bid-rigging is a criminal offense under German law, extradition was granted. On April 4, 2014, Piscioti made his initial appearance in the US District Court in the Southern District of Florida.

In a statement, Bill Baer, the assistant attorney general in charge of the DOJ's Antitrust Division hailed the extradition as "a significant step forward in our ongoing efforts to work with our international antitrust colleagues to ensure that those who seek to subvert US law are brought to justice." The Antitrust Division no doubt regards the extradition of Piscioti as a "significant step" because successful extradition has been a long-sought goal of the Antitrust Division.

Extradition is a diplomatic process over which the DOJ typically has little control. It requires not only a treaty but also the existence of a law in the foreign jurisdiction criminalizing the same conduct charged in the US. For example, in 2004, the Antitrust Division sought the extradition from the United Kingdom of Ian Norris, a UK national and former chief executive officer of Morgan Crucible, for alleged antitrust and obstruction of justice violations. After six years of litigation, Norris was extradited to the US, but only on the obstruction of justice charges. He could not be extradited for the antitrust charges because the UK did not have a criminal antitrust law at the time the crime was allegedly committed.

Potential Impact of the Extradition

It is premature to say that the Piscioti extradition will herald a new era of extraditing individuals accused of violations. The facts of the Piscioti case suggest an element of serendipity aided the DOJ: an Italian national under indictment traveled to Germany. Indeed, it is unknown whether Germany would permit extradition of a German national facing similar charges in the US or whether the DOJ would seek it.

Between 1990 and 2009, the Antitrust Division charged 228 individuals for international price fixing and cartel activity.¹ As of 2010, 47 of those defendants (21 percent) were fugitives and 19 of those fugitives (40 percent) were Japanese nationals.² For these defendants and those contemplating fugitive status, the Piscioti extradition demonstrates that the DOJ is committed to seeking extradition even of an individual who has been a fugitive for nearly four years. Moreover, Piscioti is likely to receive a longer prison sentence than other individuals involved

¹ See Connor, John M., Problems with Prison in International Cartel Cases (June 20, 2011) at 27. Available at SSRN: <http://ssrn.com/abstract=2166414> or <http://dx.doi.org/10.2139/ssrn.2166414>.

² *Id.* at 28.

in the marine hose conspiracy because of his former fugitive status. Thus, the outcome of Piscioti's case may provide further incentive for individuals to cooperate rather than remain at large.

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