
Department of Justice Obtains First Litigated Extradition for Antitrust Violations

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On April 4, 2014, the United States Department of Justice's Antitrust Division announced the first successful extradition of a foreign national to the United States to stand trial for alleged US criminal antitrust law violations. Romano Piscioti, an Italian national and a former executive with Parker ITR Srl, headquartered in Italy, has arrived in Miami, Florida and will face charges under the Sherman Act for allegedly participating in an international cartel involving sales of marine hoses. Piscioti, who has been under indictment in the United States since 2010, was extradited from Germany.

Although Department of Justice (DOJ) has previously secured the arrest of foreign nationals at US borders, and on one prior occasion successfully extradited a foreign national to the United States based on obstruction of justice charges relating to an antitrust investigation, this is the first time that any foreign national has been extradited to the United States for an antitrust charge. DOJ's announcement demonstrates its commitment to pursuing criminal prosecution of antitrust offenders wherever they may be found. It also emphasizes the risks that such individuals face when they travel while under indictment.

Background

Criminal prosecution of individuals is an essential component of DOJ's cartel enforcement program. Over the last two decades, DOJ has increasingly focused its investigations on international cartels involving foreign companies. DOJ has made it high priority to hold foreign nationals living outside the United States accountable for violations of the US antitrust laws.

DOJ may use information provided by whistleblowers, cooperating with DOJ (typically under its corporate or individual leniency programs), to identify and arrest alleged antitrust violators visiting the United States on business trips. In 2007, DOJ arrested seven British, French, and Italian executives attending an energy industry convention in Houston to face charges in connection with its marine hose investigation—the same one that has now led to Piscioti's extradition. DOJ alleges that from roughly 1999 to 2007, several international companies conspired to rig bids for marine hose procurements.

Even absent advance information about visits to the United States, DOJ can impose a border watch to detain individuals whenever they might enter the country. For example, in July 2011, an executive of auto lights manufacturer Eagle Eyes Traffic Industrial and Taiwanese national, Homy Hong-Ming Hsu, was arrested and held for trial when his plane touched down at Los Angeles International Airport en route to Mexico.

DOJ can also seek extradition of individuals from their home countries. Its likelihood of success depends on whether the home country has an extradition treaty with the United States, the content of the home country's extradition laws, and, in some cases, the political will of the home country to enforce those laws under the particular circumstances. Extradition

commonly requires “dual criminality,” that is the conduct alleged to violate US antitrust laws must also constitute a crime in the individual’s home country. For example, in March 2010, Ian Norris, a UK national and the former CEO of Morgan Crucible, was extradited to the United States to stand trial for allegedly obstructing and conspiring to obstruct an antitrust investigation of carbon component manufacturers. DOJ was unable to extradite Norris to face US antitrust charges because antitrust violations were not criminal offenses in the United Kingdom at that time (they now are). Conduct amounting to conspiracy to obstruct, on the other hand, was a crime in both the United States and the United Kingdom. Norris was later convicted of conspiracy to obstruct justice and sentenced to 18 months in US prison.

DOJ, however, has not yet obtained extradition of any foreign national from his or her home country to face antitrust charges in the United States. Some nations’ laws prohibit extradition of their own citizens. For example, although some forms of bid rigging are illegal under German criminal law (as bid rigging usually is in the United States), and would thus meet the dual criminality requirement, German constitutional law generally prohibits extradition of German citizens to the United States.

Pisciotti had been “carved out” of his former employer’s guilty plea, meaning that DOJ had specifically reserved the right to prosecute him. DOJ obtained an indictment against him personally on August 26, 2010, but kept it secret by filing it under seal. DOJ apparently put Pisciotti on Interpol’s Red Notice, asking participating countries to hold Pisciotti for extradition.

Pisciotti likely faced less risk of extradition from his home country of Italy, because anticompetitive conduct is generally not a criminal offense there. But while returning from a business assignment in Nigeria, he landed in

Germany for his connecting flight to Italy. Because he was on Interpol's Red Notice, he was detained for potential extradition to the United States. The indictment was unsealed on August 6, 2013, following Piscioti's arrest in Germany. As a non-German citizen, he was subject to potential extradition under German law. Piscioti sought to avoid extradition by claiming that extradition would violate European law prohibiting discrimination based on Member State nationality, but his claim was rejected by a German court. (Piscioti is continuing to pursue his discrimination claims against Germany, seeking monetary damages, but whatever the ultimate outcome of that dispute, he is likely to remain in the United States through the resolution of his criminal antitrust case and to serve time in US prison if convicted.)

Implications for Future Cases

Piscioti's extradition, like that of Ian Norris, demonstrates that DOJ is prepared to pursue aggressively antitrust wrongdoers for prosecution in the United States, including foreign nationals living abroad. But it does not suggest that foreign countries are necessarily changing their approach to determining whether to extradite antitrust violators, especially when it comes to their own nationals.

Piscioti's case and several others do graphically illustrate the risks fugitives from US antitrust charges face when they choose to travel from their home countries. In criminal cartel cases, counsel routinely advise clients who are known to be under indictment (or may be under sealed indictment) to refrain from international travel. But that is easier said than done, especially for senior executives at international companies, who may have difficulty doing their jobs without leaving their home countries. Despite the risks, some individuals known to be wanted for US antitrust violations have apparently continued to travel internationally. Piscioti's extradition, like

Hsu's arrest, may cause such individuals to reconsider that choice.

Pisciotti's extradition could also create additional incentives to voluntarily come to the United States to address antitrust charges, by contesting the charges or pleading guilty. Becoming a fugitive from US antitrust prosecution and a life-long restriction on international travel can impose significant personal and professional burdens. In addition, if arrested while a fugitive, the individual is likely to serve a longer sentence, will generally serve that sentence at a higher security prison facility, and will be barred from returning to the United States following release from prison. On the other hand, by pleading guilty, the individual can often obtain a reduced sentence, serve that sentence at a minimum security work camp, and continue to travel to the United States following release from prison as a result of a memorandum of understanding between the DOJ's Antitrust Division and its former Immigration and Naturalization Service (now administered by the Department of Homeland Security's US Immigration and Customs Enforcement arm). In some cases, individuals may even choose to come to the United States to stand trial, rather than live their lives as fugitives. Several Taiwanese, German and Dutch executives have made that choice—some were acquitted, others convicted and some pled guilty before verdict.

DOJ vigorously pursues individual antitrust wrongdoers located outside the United States, and is aggressively using Interpol's Red Notice, border watches, and other tools available to do so. Extradition laws are complicated, vary by country, may depend on the nationality of the individual, and can sometimes be inconsistently applied, especially where they leave room for discretion. When traveling, fugitives from US antitrust charges must worry about potential extradition from their home country, destination country, and all countries in which they may connect along the way. Moreover,

notwithstanding the best laid travel plans, there is always a risk that a plane may land in an unexpected country due to weather, mechanical difficulties, or other unanticipated circumstances. Piscioti's extradition may cause individuals in similar circumstances to think twice before venturing from their home countries, or to reconsider whether to refuse voluntarily to come to the United States to face charges in the first place.

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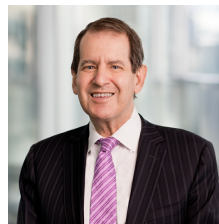


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