
Department of Justice Escalates Prosecutions of Alleged Foreign Cartelists

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Yesterday, the Department of Justice conducted an unprecedented series of arrests of eight foreign executives while they were visiting the United States, simultaneously apprehending three UK executives, two French executives, two Italian executives and one Japanese executive in Houston and San Francisco. The Department disclosed that it had previously obtained a criminal complaint against four of the executives and had kept the complaint under seal and secret. The night before the arrest, it had filed a complaint against the remaining individuals. The complaints allege a conspiracy to rig bids, fix prices and allocate markets for US sales of marine hose used to transport oil, and allege that the charged executives participated in the conspiracy at various times from 1999 to the present. Conviction would result in jail sentences of up to 10 years. Assuming a minimum of affected commerce (less than \$1 million) and no additional aggravating circumstances for the executives, the Sentencing Guidelines range for a conviction would be 24 to 30 months' incarceration. The European Commission and the UK Office of Fair Trade conducted simultaneous dawn raids at the European headquarters of the companies and homes of the individuals concerned.

The Department of Justice has long used covert operations to gather evidence of cartel behavior by executives visiting the United States or employed "drop-in" FBI interviews of executives on the date it executes search warrants. However, these arrests indicate a new and much more aggressive approach by the Department, in which they are effectively seeking to eliminate foreign executives' belief that they can avoid US prosecution by restricting travel after an investigation becomes public.

This development comes on top of the Department's efforts to 1) extradite foreign executives from their home countries and 2) steeply increase periods of incarceration for those foreign executives willing to accept a guilty plea and voluntarily come to the United States to serve the prison term. As has been heavily reported, the Department is on the verge of successfully extraditing a UK national for prosecution in the United States and has been seeking extradition from many more countries. Over the last year, the Department has also dramatically increased its demands to resolve cartel complaints through plea agreements with foreign executives. Until last year, the Department normally accepted plea agreements with jail terms of three to five months. In 2006, the number of executives being sentenced or carved out from corporate plea agreements jumped dramatically and

the duration of the jail term for foreign executives climbed to a norm of five to eight months. In 2007, the Department demanded and obtained a plea agreement sentence of 10 months for one executive in February, and two weeks ago it obtained a sentence of 14 months.

Aggressive enforcement against international cartels is not limited to the United States. Searches by the Department of Justice are usually closely coordinated with investigations by the other major antitrust enforcement agencies (the European Commission, in particular). In recent years, FBI searches and European Commission dawn raids have been timed simultaneously so as to avoid tipping off the companies and individuals that they were under investigation. The European Commission has also stepped up its enforcement arsenal with a new fining guideline that should lead to extremely high fines—higher than even US fines. In the first four months of the year, the European Union has levied €2 billion (\$2.7 billion) in fines.

For more information on this or other antitrust and competition matters, please contact authors listed above.

WilmerHale's Cartel Group represents leading companies and their executives in dealing with the threat of cartel prosecutions and responding when they arise. We provide representation in prosecutions or enforcement actions in the United States, the European Union and its Member States. We have developed strong relationships with leading practitioners in the other jurisdictions where prosecutions are becoming more common. We are experienced in obtaining complete amnesty, in reaching the best possible plea agreement and in vigorously defending the merits. Our lawyers are able to give informed advice on how to conduct internal investigations, deal with involved executives, respond to securities disclosure requirements and aggressively defend against the onslaught of civil claims in the United States and, increasingly, elsewhere.

Before the emergence of a cartel investigation, we can provide advice on how to create effective compliance and detection programs and how to create effective means to protect against potential civil claims before they arise, while maximizing the ability of the company to recover damages should it be the victim of a cartel. Similarly, we also represent major companies in seeking compensation if they have been harmed by a cartel.

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