

US Department of Justice Extradites First Foreign National on Antitrust Charge

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On April 4, 2014, the United States Department of Justice's Antitrust Division (DOJ) announced the first-ever successful extradition on an antitrust charge. A German appeals court had approved the extradition of Romano Pisciotti, an Italian national, in February 2014.

Pisciotti, a former Parker ITR Srl executive, is accused of participating in a global bid-rigging conspiracy among manufacturers of marine hoses — flexible rubber hoses used to transfer oil between tankers and storage facilities. Pisciotti ran Parker ITR's marine hose business from 1985 to 2006. In February 2010, Pisciotti's employer pleaded guilty to bid-rigging, price-fixing and market allocation in the marine hose industry from 1999 to May 2007. In addition to Parker ITR, four other major marine hose manufacturers, including Bridgestone and Dunlap Marine and Oil, and nine individuals have pleaded guilty thus far.

DOJ carved Pisciotti out of Parker ITR's guilty plea and reserved the right to prosecute him. DOJ indicted Pisciotti in the Southern District of Florida in August 2010, initially maintaining his indictment under seal. At DOJ's request, Pisciotti was subject to an Interpol Red Notice, which seeks the detention of wanted individuals for extradition. In June 2013, Pisciotti was arrested in Germany while in transit from Nigeria to his native Italy. A U.S. court unsealed Pisciotti's indictment on August 6, 2013, shortly after his arrest in Germany.

The extradition process is governed by treaty between the countries involved. Extradition typically requires "dual criminality," meaning that the offense must violate both countries' laws. Bid rigging is a criminal violation under both German and U.S. law, but Germany's Constitution generally protects German citizens from extradition. However, it offers no such protection for noncitizens such as Pisciotti.

Pisciotti's extradition is the culmination of years of DOJ efforts to collaborate with international enforcers to prosecute individuals for violations of U.S. antitrust law. Although the U.S. has long maintained criminal sanctions for bid-rigging and price-fixing, other jurisdictions only recently have criminalized such conduct. As a result, until recently the "dual-criminality" requirement for extradition was seldom met. Now more than 30 jurisdictions impose criminal liability for cartel conduct, including Australia, Brazil, Canada, Germany, Israel, Japan, Korea, Mexico, the United Kingdom and Russia. Of these jurisdictions, most implemented criminal antitrust enforcement after 2000. Nonetheless, until Pisciotti, DOJ had not successfully litigated the extradition of a foreign national on antitrust charges.

The limits of extradition for antitrust charges first came to the forefront in 2009, when DOJ attempted to extradite Ian Norris, a British citizen, for his alleged role fixing prices of carbon products. A British court refused to extradite Norris on the basis of price-fixing, due to the lack of dual criminality. Price-fixing was not a crime in the U.K. at the time of Norris's conduct. Nonetheless, Norris was extradited on the charge of obstruction of justice. In 2010, a federal jury found Norris guilty of obstruction of justice and sentenced him to 18 months in U.S. prison.

While Piscioti has reportedly sought to challenge the propriety of his extradition in various forums in Europe, the fact is that he is now in custody in the United States, and his extradition should serve as a warning, particularly for those who operate in multinational markets. In the past, it was fairly common for foreign nationals who might face charges in the United States but no personal liability in their home country to refuse to submit to U.S. jurisdiction and avoid trial or potential conviction in the U.S. (This was the case in the situation of Sir Anthony Tennant, Christie's former non-executive chairman and a U.K. citizen, who remained a U.S. fugitive until his death.) DOJ's success in extraditing Piscioti is likely to embolden the agency's efforts to prosecute foreign nationals who refuse to submit to U.S. jurisdiction. One potential result is that foreign defendants may increasingly choose to submit to U.S. jurisdiction voluntarily. Voluntary submission has the dual benefits of avoiding the personal toll inflicted by an effective ban on international travel faced by individuals subject to an Interpol Red Notice and avoiding the longer sentence that frequently awaits those who put the government to the full burden of obtaining extradition and conviction.

In the face of DOJ's and other global antitrust enforcers' efforts to attack global cartels, effective corporate compliance regimes take on additional importance. Compliance programs serve to educate employees and prevent wrongdoing. Effective compliance programs must take into account the diversity of laws in all of the jurisdictions in which the company operates around the globe. Timely and robust compliance training can also serve as an early warning system by detecting violations at a moment when companies (and individuals) may be able to take advantage of the increasing international array of "amnesty" programs.

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