

ANTITRUST TRADE AND PRACTICE

Expert Analysis

## ‘Pisciotti’: Justice Department’s First Ever Antitrust Extradition

On April 24, 2014, the district court in the Southern District of Florida sentenced Romano Pisciotti to two years in prison after he pleaded guilty to a one-count felony indictment for participating in a conspiracy to rig bids, fix prices and allocate market shares of marine hose sold in the United States and abroad.<sup>1</sup> While criminal convictions and prison sentences in the antitrust context are noteworthy in their own right, Pisciotti’s conviction carries even more clout because it came less than three weeks after Pisciotti’s extradition from Germany—the first ever extradition of a defendant to the United States on antitrust charges. While undoubtedly a significant victory for the Department of Justice, highlighting the Antitrust Division’s continuous and vigorous criminal enforcement activities under the Sherman Act, the lasting impact of Pisciotti’s extradition is yet undetermined.

Pisciotti was not the only at large criminal antitrust defendant sought by the United States; indeed, another individual from this very same conspiracy remains at large today, seemingly out of reach of U.S. antitrust enforcers. Nonetheless, even if *Pisciotti* fails to signal a watershed moment with droves of extra-



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ditions to follow, the deterrent effects will likely still be felt.

### The Marine Hose Conspiracy

The first tangible step in the Justice Department’s investigation into the marine hose industry, generally, occurred in May 2007 when federal agents conducted raids in Houston, Texas, that resulted in multiple arrests. Several years later, the Justice Department indicted Pisciotti,<sup>2</sup> alleging that he joined and participated in a conspiracy to rig bids, fix prices and allocate market shares of marine hoses in the United States and abroad from at least as early as 1999 until at least November 2006.<sup>3</sup> Marine hose is a flexible rubber hose used to transfer oil between tankers and storage facilities and/or buoys.<sup>4</sup> Typical end-users are companies engaged in the offshore extraction and/or transportation of petroleum products as well as the U.S. Department of Defense.<sup>5</sup>

The Justice Department alleged that during the conspiracy, Pisciotti and his co-conspirators sold hundreds of mil-

lions of dollars’ worth of marine hose and related products in the United States and elsewhere.<sup>6</sup>

Prior to Pisciotti’s extradition and guilty plea, the Justice Department successfully prosecuted Parker, culminating in a guilty plea on Feb. 1, 2010 (the Parker plea agreement).<sup>7</sup> In its plea agreement, Parker admitted that, through certain officers and employees of its oil and gas business unit, it engaged in discussions and attended meetings with representatives of other marine hose manufacturers, during which the parties agreed to rig bids, fix prices and allocate market shares for marine hose. “Each of the conspiring manufacturers provided a co-conspirator, who acted as a coordinator, with information about upcoming marine hose jobs. The coordinator then designated, based on rules agreed to by the conspirators, which of the conspiring manufacturers would win the job, referring to the winning conspirator as ‘champion.’ After the champion had been designated, the coordinator provided the other conspirators with instructions regarding how much to bid on the job to ensure that the designated champion would win the job.”<sup>8</sup> Pisciotti was explicitly excluded from the Parker plea agreement.

Pisciotti’s factual admission of guilt provided further details with respect to the conspiracy. In addition to reciting those admissions made in the Parker plea agreement, Pisciotti admitted that

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he personally recruited at least two individuals from other marine hose firms to participate in the conspiracy and directed others at Parker to participate in the conspiracy.<sup>9</sup> Piscioti additionally admitted to being an organizer or leader in the conspiracy, which involved at least five participants.<sup>10</sup> Furthermore, Piscioti explained that one of his clandestine meetings occurred in Key Largo, Florida in 2001 (the Key Largo meeting).

While the Justice Department has thus far achieved considerable success in its marine hose investigation, it nonetheless considers this to be an ongoing investigation.<sup>11</sup> As of April 2014, five companies have pleaded guilty—Parker, Bridgestone Corp. of Japan, Manuli Spa of Italy's Florida subsidiary, Trelleborg of France and Dunlop Marine and Oil Ltd. of the United Kingdom.<sup>12</sup> Additionally, eight individuals (not including Piscioti) have pleaded guilty and have been sentenced to serve prison terms ranging from 12 months and one day to 30 months.<sup>13</sup> An additional individual was sentenced to serve six months home confinement. Finally, another individual, Uwe Bangert, a German national formerly associated with Dunlop, is considered an indicted fugitive at large—more on him below.<sup>14</sup>

### The Extradition

Piscioti was initially arrested in Germany on June 17, 2013. Italian media reported that he was arrested in Frankfurt en route home to Italy from a business trip to Nigeria. Roughly 10 months later, on April 3, 2014, Piscioti was extradited from Germany to the United States, the first successfully litigated extradition on an antitrust charge.<sup>15</sup> Prior to Piscioti's extradition, the next closest success was the Justice Department's March 2010 extradition of Ian Norris, a retired British executive, on obstruction of justice charges that related to an antitrust investigation. The Justice Department was specifically unable to extradite Norris on the price-fixing charges, with the House of Lords ruling in Norris'

favor because price-fixing was not a criminal offense in the United Kingdom at the time Norris allegedly engaged in this unlawful conduct.<sup>16</sup>

Piscioti was extradited under the terms of the U.S.-Germany extradition treaty, which, like most extradition treaties, provides for a "dual criminality" requirement. Thus, an individual may be extradited where the alleged offense is punishable under both countries' laws. While criminalization of the antitrust laws is undoubtedly a growing trend, the number of jurisdictions that have adopted criminal sanctions for antitrust violations remains relatively small, e.g., the United Kingdom, Israel, Ireland, South Korea, Australia, Japan, Canada, Greece, Brazil and Russia.<sup>17</sup>

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This "dual criminality" requirement provides the first, but not the last, hurdle to extradition. Importantly, some countries additionally prohibit or otherwise restrict the extradition of their own citizens (notwithstanding "dual criminality" provisions in their extradition treaties).<sup>18</sup> Germany, for example—the very country that extradited Piscioti—only allows for extradition of its citizens to member European Union states or by the order of an international court.<sup>19</sup> Indeed, this restriction has allowed another individual indicted in the Justice Department's marine hose investigation to remain at large—Uwe Bangert—and also gave rise to claims from Piscioti that he was being discriminated against based on his citizenship.

### The Impact of 'Piscioti'

What the lasting impact of Piscioti's extradition will be remains unknown.

Will it signal a watershed moment, with droves of extraditions in its wake? Or will the impact be more subtle, perhaps rooted in a deterrence model? While *Piscioti's* true impact will be debated at length, it seems safe to say that, if nothing more, Piscioti's extradition highlights the Justice Department's continued pursuit of those who violate the antitrust laws.

As Assistant Attorney General Bill Baer stated, "[Piscioti's] guilty plea demonstrates the Antitrust Division's ability to bring to justice those who violate antitrust laws, even when they attempt to avoid prosecution by remaining in foreign jurisdictions. The Antitrust Division and its law enforcement partners will continue to protect consumers from cartels that affect the domestic and international economy."<sup>20</sup> This stance will not change.

The true impact of *Piscioti*, however, will likely fall short of what the Justice Department hoped would be a watershed moment in Sherman Act Section 1 criminal enforcement. While certainly a significant development, a closer look reveals that the Justice Department still has much ground to cover in the context of antitrust extraditions. To be clear, this is in no part due to the Antitrust Division's lack of effort or ability. Instead, the murky international landscape with respect to antitrust extraditions will continue to pose a barrier to the Justice Department's extradition efforts. Nonetheless, *Piscioti* may have a deterrent effect, serving perhaps as a cautionary tale for those who would violate the U.S. antitrust laws.

The Justice Department would like to hail *Piscioti* for the principle that those who violate the antitrust laws cannot escape responsibility by living abroad. However, the matter of Uwe Bangert contradicts this principle. Bangert, formerly an executive at Dunlop, was indicted as a co-conspirator in the marine hose investigation. Not only has he been indicted, but the Justice Department alleges that he was present at the Key Largo meeting, the very same meeting described by Piscioti in his plea agreement.

The critical difference between Piscioti and Bangert is that Bangert is a German citizen who has largely remained in Germany, while Piscioti is an Italian citizen who happened to pass through Germany. And while the Justice Department describes Bangert as a “fugitive at large,” he is hardly the typical “fugitive” one might think of based on popular culture. Bangert is not living a life in exile, moving from place to place, or taking any steps to remain otherwise “off the grid.” Instead, Bangert seems to be living quite openly, working as a business consultant in Hannoversch Münden.<sup>21</sup> While Bangert acknowledges that his movement is restricted, saying that he “[doesn’t] travel,” the matter otherwise seems to have concluded from his perspective.<sup>22</sup>

Executives will surely take notice that it was Germany, a European industrial and economic powerhouse, that extradited a foreign national to stand trial on antitrust charges. Executives from all parts of the world, but especially Europe and Asia, regularly either visit, or pass through, Germany on business matters.

Bangert’s extradition history further underscores the difficulties faced by the Justice Department. In 2007, while on his way home from a business trip in Latin America, Bangert was detained in Colombia pursuant to an Interpol Red Notice related to a U.S. price-fixing indictment.<sup>23</sup> After Colombian authorities determined he could not be extradited, he was released.<sup>24</sup> However, he was then taken into custody as he passed through Spain, spending the next three months in and out of custody in Spain, as U.S. authorities attempted to win his extradition.<sup>25</sup>

It is somewhat unclear how, exactly, things played out with the Spanish authorities. However, Bangert eventually left Spain via plane, and has been

in Germany since then.<sup>26</sup> Once back in Germany, Bangert presented himself to prosecutors, and thereafter received notice that he would not be extradited.<sup>27</sup> German prosecutors have not taken any further action.<sup>28</sup>

And Bangert is not alone. According to the Justice Department, more than 42 Japanese, Korean and Taiwanese executives have been indicted, many in relation to the past decade’s extensive consumer electronics cartel investigations and the more recent automotive parts cartel investigations, all of whom remain outside the United States, and seemingly the reach of the U.S. antitrust enforcers.<sup>29</sup>

While *Piscioti* would have been even more significant for the Justice Department had Germany extradited one of its own citizens—like Bangert—it is nonetheless an important victory for the Justice Department, though not the monumental defining moment the department might have hoped it would be. Executives will surely take notice that it was Germany, a European industrial and economic powerhouse, that extradited a foreign national to stand trial on antitrust charges. Executives from all parts of the world, but especially Europe and Asia, regularly either visit, or pass through, Germany on business matters; and, of course, an individual passing through Germany on personal matters, even a family vacation, for example, could be subject to extradition.

It is in this context where *Piscioti*’s lasting impact may actually be felt. Indeed, the Justice Department may have effectively added both (i) another real cost to a would-be antitrust violator’s risk/reward calculus in this increasingly globalized economy, and (ii) a meaningful restriction, on both a personal and professional level, on those who have already violated the antitrust laws. And for those who may have been indicted under seal, perhaps the impact of *Piscioti* is a free flight to the United States.

1. Piscioti Plea Agreement, *U.S. v. Piscioti*, (S.D. Fla. 2014) (No. 10-60232). Piscioti will serve a total of two years in prison with credit for the nine months and 16 days he was held in the custody of the German government pending his extradition. He has also agreed to pay a \$50,000 criminal fine. Additionally, the Justice Department agreed not to oppose Piscioti’s request to serve his prison sentence in Italy.

2. During the conspiracy, Piscioti was the oil and gas business unit manager of Parker ITR S.r.l., an Italian company engaged in the production and sale of marine hose.

3. Piscioti Indictment at 2-3, *U.S. v. Piscioti*, (S.D. Fla. 2010) (No. 10-60232). The one-count felony indictment was originally filed under seal on Aug. 26, 2010, and unsealed on Aug. 5, 2013. The indictment was likely originally filed by prosecutors under seal to prevent Piscioti from becoming aware of the indictment. After the indictment, Piscioti was likely placed on Interpol’s Red Notice list. This combination would keep the defendant in the dark about the indictment until he would eventually be detained at an airport or border crossing.

4. *Id.* at 4.

5. *Id.*

6. *Id.* The parties agreed, for purposes of the plea agreement, that during the conspiracy the “volume of United States commerce attributable to the defendant [was] greater than \$10 million but less than \$40 million.” Piscioti Plea Agreement at 4.

7. Parker plea agreement, *U.S. v. Parker ITR S.R.L.*, (S.D. Tex. 2010) (No. H-10-75).

8. *Id.* at 4.

9. Piscioti Plea Agreement at 4.

10. *Id.* at 5.

11. Press Release, U.S. Department of Justice, Former Marine Hose Executive Who Was Extradited to United States Pleads Guilty for Participating in Worldwide Bid-Rigging Conspiracy (April 24, 2014), available at [http://www.justice.gov/atr/public/press\\_releases/2014/305376.htm](http://www.justice.gov/atr/public/press_releases/2014/305376.htm).

12. *Id.*

13. *Id.*

14. *Id.*

15. Press Release, U.S. Department of Justice, First Ever Extradition On Antitrust Charge (April 4, 2014), available at [http://www.justice.gov/atr/public/press\\_releases/2014/304888.htm](http://www.justice.gov/atr/public/press_releases/2014/304888.htm).

16. *Norris v. Government of the United States of America*, [2008] UKHL 16, [62], 2008 2 All E.R. 1103 (Eng.). Norris, the former CEO of Morgan Crucible, was indicted in 2004 by a federal grand jury on one count of fixing prices of carbon brushes and other carbon products, one count of conspiring to obstruct justice and two counts of obstructing justice in connection with the Justice Department’s antitrust investigation of price-fixing in the carbon products industry. *Norris Indictment, United States v. Norris*, (E.D. Pa. 2010) (No.2:03-CR-00632). Norris was extradited to the United States in March 2010 and in July 2010 was convicted of conspiring to obstruct justice. In December 2010, he was sentenced to serve 18 months in prison, a decision that was affirmed by the U.S. Court of Appeals for the Third Circuit in March 2011.

17. James A. Wilson, “Extradition: The New Sword or the Mouse that Roared?,” *The Antitrust Source*, April 2011, at 3.

18. *Id.*

19. [GG] [Basic Law for the Federal Republic of Germany], July 21, 2010, at 6, art. 16, §2, available at <http://www.gesetze-im-internet.de>.

20. Press Release, U.S. Department of Justice, Former Marine Hose Executive Who Was Extradited to United States Pleads Guilty for Participating in Worldwide Bid-Rigging Conspiracy (April 24, 2014), available at [http://www.justice.gov/atr/public/press\\_releases/2014/305376.htm](http://www.justice.gov/atr/public/press_releases/2014/305376.htm).

21. Lewis Crofts and Leah Nysten, “Comment: U.S. Wins One Extradition, But Dozens of Alleged Price Fixers Remain Out of Reach,” *MLex US*, May 21, 2014, available at <http://www.mlex.com/US/Content.aspx?ID=537832>.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*