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DOJ Scores First Antitrust Extradition: More to Come?

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With Friday's announcement of the first-ever extradition of a foreign executive on criminal antitrust charges to the United States, the US Department of Justice has won a major victory in its effort to prosecute and deter international cartels. Combined with the increased international trend towards criminalization of cartel activity, Friday's extradition announcement represents a significant cautionary precedent for corporations and individuals alike.

A Major Milestone in DOJ Cartel Prosecution

The US Department of Justice announced on Friday that they have secured the first-ever extradition of a foreign national to the United States on an antitrust charge. The transfer in custody of Italian executive Romano Pisciotti from Germany comes on the heels of a years-long investigation by the DOJ and other agencies into bid rigging in the marine hose industry, and marks a growing trend towards increasingly aggressive cross-border cooperation between criminal antitrust enforcers.

Pisciotti, a former executive with Veniano, Italy-based Parker ITR SRL, is accused of playing an instrumental role in a multi-year bid-rigging conspiracy among manufacturers of marine hose, which is used to transfer oil between tankers and maritime storage facilities. According to the DOJ, Parker ITR conspired with other major marine hose manufacturers such as Bridgestone and Yokohama to fix prices and allocate bids in the worldwide market for marine hose, a conspiracy that allegedly lasted from at least 1986 through 2007. As the director of Parker's marine hose unit from 1985 through May 2006, Pisciotti is accused of having cooperated with representatives of other manufacturers to share information about bidding opportunities and allocate bids to selected cartel members. If convicted, he faces a maximum penalty of 10 years in prison and a fine of \$1 million or, alternatively, up to twice the amount gained by the conspirators or lost by the victims as a result of the conspiracy.

Further Evidence of Increasing International Criminalization and Cooperation on Cartels

The Piscioti extradition represents a high point in the Justice Department's ongoing effort to encourage foreign governments to cooperate with the United States in the criminal prosecution of individuals for antitrust violations. While the United States has had criminal sanctions in place for "hardcore" cartel activity since the 1890 passage of the Sherman Act (although it was only classified as misdemeanor until 1974),¹ other jurisdictions have been slower to criminalize price-fixing and bid-rigging activity. As a result, the ability of the US to secure extradition – which requires that the conduct in question be subject to criminal sanctions in both the extraditing and receiving state – has been highly limited. In recent years, the number of countries that have criminal antitrust laws has increased considerably – in significant part thanks to US DOJ advocacy – with more than half of all EU states now having enacted such laws, along with other countries such as Australia, Brazil, Japan, Korea, Mexico, and Russia. Despite the theoretical increase in availability of extradition due to increasing instances of dual-criminality, however, the US has never (until now) succeeded in persuading a foreign court to extradite an antitrust defendant for trial in the United States.

The limitations of the international extradition process were highlighted by US DOJ's 2009 attempt to obtain the extradition of a British national, Ian Norris, for alleged price-fixing activity as part of a carbon products cartel. A British court ultimately declined to extradite Norris for price-fixing, which was not yet a criminal offense in the United Kingdom at the time of his alleged activity, but agreed to extradite him for obstruction of justice. Norris was ultimately extradited, tried in US federal court in 2010, and sentenced to 18 months in prison and a fine of \$25,000.

Because German law lists bid rigging as a criminal offense punishable by up to five years in prison (a law enacted in 2007), the German court faced no such difficulties in extraditing Piscioti to face antitrust criminal charges in the United States under the US-German extradition treaty. Piscioti was arrested in Germany in June, 2013, and was removed to the United States on April 3rd to make his initial appearance in US federal court on Friday, April 4.

Lessons

The DOJ's success in the Piscioti extradition may embolden the Department's already-growing efforts to prosecute foreign executives in cartel cases. In recent years, the DOJ has continued to increase enforcement against foreign cartel defendants, with the number of foreign defendants sentenced to US prison rising from near zero in the late 1990s to over 10 per year in the years 2010-2013. Major international cartel investigations are increasingly characterized by large numbers of foreign executives being separately prosecuted and sentenced, with nine executives having pleaded guilty in the marine hose case and at least 24 having been sentenced to between 12 and 24 months in the ongoing auto parts investigations.²

Prison sentences appear to be growing as well, with the average US antitrust prison sentence rising to 26 months in FY 2013 and with foreign defendants who choose to contest the charges against them, as in TFT-LCD case, receiving

¹ Antitrust Penalties and Procedures Act, Public Law 93-528, § 3, 88 Stat. 1708.

² Japan may present an especially important test case. While numerous Japanese individuals have surrendered themselves to US jurisdiction under plea agreements, Japan's extradition treaty with the US allows extradition only when the offense in question is punishable by 3 years imprisonment or more. While the maximum prison sentence for most price-fixing offenses in Japan is five years, the statute of limitations and other elements of the offense vary between the US and Japan, and it remains to be seen whether Japan will cooperate in US extradition efforts, especially in cases where Japan's competition authorities have been investigating the same conduct domestically.

sentences of up to 36 months. With extradition now a proven alternative, it is possible that the DOJ will feel emboldened to press for even longer prison sentences for foreign cartel conduct – subject, of course, to the need for fairness and proportionality. To date, the vast majority of foreign antitrust defendants have been sentenced as a result of plea bargains, in which the longest sentence thus far has been 24 months, and even if overall sentences increase, we expect there will continue to be a very substantial discount in prison time for those that voluntarily submit to the US as compared to those that go through extradition and trial.

The DOJ has long viewed jail time for foreign executives as a key weapon in its deterrent arsenal, and its success in securing Piscioti's removal to face prosecution confirms its growing reach, even in cases where the foreign national refuses to submit willingly to US jurisdiction. With an increasing number of countries imposing criminal liability for cartel activity, cases like the Piscioti extradition may become more common in the years to come.

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