

## Expansion of Antitrust Enforcement Continues with Extradition

### *Foreign Executive to Face U.S. Antitrust Charges*

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*On April 4, 2014, the Department of Justice's Antitrust Division announced its first successful extradition of a foreign national to the United States on antitrust charges. Romano Piscioti, a citizen of Italy, has been under indictment since 2010 based on his alleged involvement in a marine hose cartel that has produced a number of guilty pleas. While traveling through Germany on business, he was identified as a fugitive from United States justice, detained, and eventually extradited. Germany's extradition of Mr. Piscioti demonstrates both the increased willingness of the Division to pursue extradition and the increased risks posed to foreign executives, especially if they travel outside of their home countries while under indictment in the United States.*

### Background

The United States Department of Justice's Antitrust Division ("DOJ" or "Division") has steadily increased its prosecution of international cartels involving foreign companies. In 1993 and 1994, the DOJ announced its corporate and individual leniency programs. These programs provide immunity to companies and individuals who are the first to report illegal antitrust activity, and leniency to those who report their own involvement once an investigation has already begun.<sup>1</sup> They have led to an increase in enforcement against foreign cartel defendants: both the number of foreign executives separately prosecuted for violating antitrust laws and corresponding prison sentences are on the rise.<sup>2</sup>

<sup>1</sup> See Scott D. Hammond, Deputy Ass't Att'y Gen., *Cracking Cartels with Leniency Programs*, remarks presented for the OECD Competition Committee (October 18, 2005), available [at this link](#); see also Dept. of Justice, *Corporate Leniency Policy* (August 10, 1993), available [at this link](#); Dept. of Justice, *Leniency Policy for Individuals* (August 10, 1994), available [at this link](#).

<sup>2</sup> See John M. Connor, American Antitrust Institute, *Problems with Prison in International Cartel Cases*, at 27 (June 20, 2011), available [at this link](#).

Foreign cartel defendants sometimes voluntarily travel to the United States to face charges brought against them. Usually this is pursuant to plea agreements negotiated in advance. In other cases, individuals may come to the United States voluntarily to contest the charges and attempt to clear their names – as happened with several AU Optronics executives who recently came to the United States from Taiwan to defend themselves at trial.<sup>3</sup> But where individuals under indictment decide to stay in their home country or otherwise decline to come to the United States to face prosecution, that has typically been the end of the matter.

Extraditing an individual from another country to the United States is a political process. Usually, it requires: (i) an extradition treaty between the United States and the foreign country; (ii) that the foreign country also treats the individual's alleged conduct as a criminal offense (referred to as "dual criminality"); and (iii) that the foreign country is *willing* to extradite the individual. Notably, some countries prohibit, or at least do not require, extradition of their own citizens.<sup>4</sup>

In 2010, the DOJ successfully extradited a foreign cartel defendant on obstruction of justice charges. The Division alleged that Ian Norris, a British national and former CEO of Morgan Crucible, participated in an international conspiracy to fix the prices of carbon products. Because the United Kingdom did not criminalize antitrust offenses at the time, the United States could not extradite Norris on antitrust charges. Instead, Norris was extradited to the United States to stand trial for obstruction (coordinating efforts to destroy and conceal documents) in connection with the antitrust investigation. He was ultimately convicted at trial and sentenced to 18 months in prison and fined \$25,000.<sup>5</sup>

### The Extradition of Romano Piscioti

Italian national Romano Piscioti's extradition is part of the DOJ's long-standing investigation into an alleged international conspiracy among marine hose manufacturers.<sup>6</sup> In May 2007, the Division arrested eight foreign nationals attending a business conference in Texas and charged them with participating in a conspiracy to rig bids, fix prices and allocate market shares of marine hose sold in the United States and elsewhere. According to the DOJ, the alleged cartel significantly affected the prices of marine hose and related products sold worldwide between 1999 and 2007.

Piscioti is a former executive of Parker ITR Srl, a marine hose manufacturer headquartered in Italy. By 2010, Parker ITR, four other manufacturers and nine executives pleaded guilty to participating in the alleged marine hose cartel.<sup>7</sup> Piscioti was "carved out" of Parker ITR's guilty plea and separately indicted by a grand jury on August 26, 2010 in the U.S. District Court for the Southern District of Florida. The indictment claimed that Piscioti violated the Sherman Act by participating in the marine hose conspiracy.

<sup>3</sup> Over a series of three trials, three of the AU Optronics executives were convicted and sentenced to prison terms and three were acquitted. See Renata B. Hesse, Deputy Ass't Att'y Gen., *IP, Antitrust and Looking Back on the Last Four Years*, remarks presented at Global Competition Review (February 8, 2013), available [at this link](#); see also Melissa Lipman, Law360, *AUO Exec Acquitted in Price-Fixing Case* (October 11, 2013), available [at this link](#).

<sup>4</sup> See Michael J. Garcia and Charles Doyle, Cong. Research Serv., 98-958, *Extradition To and From the United States: Overview of the Law and Recent Treaties*, at 13-14 (March 17, 2010), available [at this link](#); James A. Wilson, *Extradition: The New Sword or the Mouse That Roared*, The Antitrust Source, at 3 (April 2011) (finding that the number of jurisdictions that have adopted criminal sanctions for antitrust violations remains relatively small and among them most will not extradite their own citizens), available [at this link](#); see also Gregory C. Shaffer et al., *Criminalizing Cartels: A Global Trend?*, 12 Sedona Conference Journal 313, at 5-6 (June 2011) (concluding that only Brazil, Canada, France, Germany, Ireland, Japan, Norway, the United Kingdom and the United States are "consciously targeting cartel activity by means of criminal law") (citation omitted), available [at this link](#);

<sup>5</sup> See Dept. of Justice, Office of Public Affairs, *Former CEO of Morgan Crucible Co. Found Guilty of Conspiracy to Obstruct Justice* (July 27, 2010), available [at this link](#).

<sup>6</sup> Marine hose is a flexible rubber hose used to transfer oil between tanks and storage facilities.

<sup>7</sup> In addition to Parker ITR, the following companies pleaded guilty: Bridgestone Corp. of Japan; a Florida subsidiary of Manuli SPa of Italy; Trelleborg of France; and Dunlop Marine and Oil Ltd. of the United Kingdom. Each company agreed to pay fines and many of their executives agreed to serve time in prison.

On June 17, 2013, Piscioti attempted to catch a connecting flight through Frankfurt, Germany while traveling back to Italy from a business trip to Nigeria. German officials identified Piscioti as a fugitive from United States justice and detained him for potential extradition. Because Germany and the United States have an extradition treaty and bid-rigging is a criminal offense in both countries, Piscioti was eventually extradited.

Piscioti made his initial appearance in the U.S. District Court for the Southern District of Florida on April 4, 2014. If convicted, he faces a maximum penalty of 10 years in prison and a fine of \$1 million dollars (or up to twice the amount gained by the conspirators or lost by the victims as a result of the conspiracy).

### Implications

Piscioti's case further demonstrates the DOJ's commitment to prosecuting foreign nationals for violations of United States antitrust law. The Division will likely point to Piscioti's extradition to pressure foreign companies and their employees to plead guilty and cooperate with the government.

It is unlikely that Piscioti's extradition will lead to a sudden increase in the extradition of foreign cartel defendants, however. Many countries remain unable or unwilling to extradite their own citizens to face antitrust charges in the United States, particularly those countries that do not criminalize cartel activity. Nevertheless, Piscioti's extradition demonstrates the DOJ's continued focus on cartel activity across the globe, as well as the risks posed to foreign executives traveling outside of their home countries while under indictment in the United States.

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