

What 1st Antitrust Extradition Means For Auto Parts Case

Law360, New York (April 11, 2014, 6:46 PM ET) -- On April 4, 2014, the U.S. Department of Justice, Antitrust Division announced a milestone victory, having successfully litigated its first extradition for an alleged antitrust violation.[1] Romano Piscioti, an Italian national and former Parker ITS SRL executive, was extradited from Germany for his involvement with the marine hose cartel, almost seven years after the DOJ began its investigation with raids in Houston on May 2, 2007. Piscioti was arrested in Germany on June 17, 2013, and surrendered to the U.S. authorities under the terms of the U.S.-Germany extradition treaty, which provides for extradition where the alleged offense is punishable under both German and U.S. federal law.

Prior to Piscioti's case, in 2010, the Division won a protracted battle to extradite Ian Norris, formerly the CEO of Morgan Crucible, who was alleged to have fixed the prices of carbon products and concealed evidence relevant to the DOJ's investigation. In contrast to Piscioti, Norris was turned over the U.S. authorities solely on the basis of the obstruction charge because price-fixing was not a crime in the United Kingdom during Norris' alleged misconduct.

Another significant difference was Norris' tortuous extradition process, which was heard at least once by all three English courts and spanned seven years. In the end, Norris was sentenced to 18 months in prison, which he served at Rivers Correctional Institution until his release in November 2011.

As the Antitrust Division continues its largest-ever criminal investigation of the auto parts industry,[2] Piscioti's case serves as a cautionary tale in several respects.

First, Japan should not be considered a "safe haven" for individuals seeking to avoid prison in the United States for obstruction of justice or criminal antitrust violations. The extradition treaty between the United States and Japan allows extradition for any offense that is listed in the treaty and is punishable by one year of incarceration in both countries. Obstruction of justice is a basis for extradition under this "list approach." As a result, Japanese residents accused of obstructing justice in the auto parts investigation are easy targets under the express terms of the treaty.

The U.S.-Japan treaty also incorporates the "dual criminality" rubric, which includes any offense that is punishable by one-year imprisonment under the federal laws of the United States and the laws of Japan. Therefore, cartel misconduct also qualifies as an extraditable offense because (1) in the United States, an individual who participates in cartel activity faces up to 10 years in prison; and (2) Japan now imposes up to five years imprisonment for cartel offenses, although individuals have received probationary sentences, rather than actual prison time, in Japan thus far.

For the 19 individuals indicted in the auto parts investigation, the vast majority of whom are resident in

Japan, the Pisciotti extradition is a shot across the bow. Empowered by its recent success with Pisciotti, the DOJ could soon pursue extradition of one or more Japanese nationals both to reinforce the seriousness of its agenda and to encourage culpable individuals to voluntarily go to prison in the United States rather than attempt to avoid punishment by remaining in Japan for the rest of their lives.

But considering the evolution of antitrust law in Japan, it is not a foregone conclusion that Japan would agree to extradition solely on the basis of antitrust misconduct. Enforcers in Japan have only recently embraced the idea that cartel activity should be regarded as a criminal offense and did not have a leniency program until 2006.

On the other hand, by increasing the potential sentence from three to five years, the 2009 amendments to the Anti-Monopoly Act — Japan's antitrust law — divested the sentencing court of the power to impose probationary sentences in lieu of actual prison time, signaling that criminal antitrust violations will be treated more severely in the future.

To the extent that passage of time lulls individuals living abroad into complacency, the examples of Ian Norris and Romano Pisciotti cases should dispel any notion of comfort. In both instances, the Antitrust Division tenaciously pursued these individuals for years and, in Norris' case, outlasted the twists and turns of contradictory U.K. court rulings.

Given the high profile of the auto parts investigation, the DOJ should be expected to take the same measured approach if it makes an extradition request to Japan. In sum, for individuals facing antitrust charges in Japan and elsewhere, the Pisciotti extradition should underscore that one never truly lives beyond the Antitrust Division's grasp.

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[1] See Press Release, U.S. Department of Justice, First Ever Extradition on Antitrust Charge (April 4, 2014).

[2] See Sharis A. Pozen, Acting Assistant Attorney General, U.S. Department of Justice, Antitrust Division, Remarks as Prepared by Acting Assistant Attorney General Sharis A. Pozen at the Briefing on Department's Enforcement Action in Auto Parts Industry (Jan. 30, 2012).