

If a company commits a competition violation outside the United States that has or could have an effect on US commerce – Beware! Company officers may be subject to US antitrust laws, and could be extradited to the United States to stand trial – and if convicted possibly serve time in a US prison.

The Antitrust Division of the US Department of Justice (DOJ) has taken a firm stance: “Foreign nationals do not escape responsibility when they conspire to injure American consumers from afar. We prosecute foreign companies and their executives, and seek extradition of foreign nationals who attempt to evade the jurisdiction of the U.S. courts.” (May 15, 2015, by Assistant Attorney General, Antitrust).

As announced by the DOJ on January 10, 2020, this is exactly what happened to a Dutch national who was extradited from Italy. Maria Christina Ullings, the former senior vice president of cargo sales and marketing for Martinair Cargo, was indicted almost 10 years ago for a worldwide conspiracy to fix prices of air cargo. Ullings, after evading US authorities for almost a decade, was apprehended by Italian authorities in July 2019 while visiting Sicily. Ullings initially contested extradition in the Italian courts, but after ruling that she could be extradited, she waived her appeal and arrived in the US on January 10 of this year to make an initial appearance in the US District Court for the Northern District of Georgia.

Ullings is charged with violating the Sherman Act by conspiring with competitors to suppress and eliminate competition by fixing and coordinating certain surcharges to customers located in the United States and elsewhere for air cargo shipments. The charge carries a maximum penalty of 10 years in prison and a US\$1 million criminal fine for individuals.

According to the Justice Department, Italy is the seventh country to extradite a defendant in an Antitrust Division case in “recent years” and the “second to do so based solely on an antitrust charge.” Current Assistant Attorney General for Antitrust Makan Delrahim said that “those who violate US antitrust laws and seek to evade justice will find no place to hide.” This statement has never been truer. As more and more jurisdictions criminalize cartel conduct and competition enforcement agencies increase cooperation, the threat of extradition is becoming more and more real.

Typically, to be extradited, there must be an extradition treaty between the requesting and the requested jurisdiction. In addition, the alleged competition violation must be punishable under the criminal laws of both jurisdictions (i.e., dual-criminality). This prerequisite has become much more common as more and more countries have criminalized antitrust conduct. Currently, more than half of all EU countries have enacted such laws, along with other countries such as Australia, Brazil, China, India, Japan, Korea, Mexico and Russia. Finally, the nationality of the individual concerned may prevent or reduce the chance of extradition, because numerous jurisdictions have laws that prevent the extradition of their own citizens (e.g., France).

Indicted persons traveling through another country are also at increasing risk of extradition. This is exactly what happened in a case from a number of years ago, when an Italian executive, Romano Pisciotti, indicted for bid rigging in the marine hose industry, was extradited from Germany to the United States. Pisciotti was unaware of having been placed on an Interpol Red Notice when he was stopped by German police while catching a connecting flight in Frankfurt. Pisciotti fought his extradition unsuccessfully and ultimately pleaded guilty to the DOJ’s charges, resulting in a two-year prison sentence and a US\$50,000 criminal fine.

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