

Antitrust Alert

The Antitrust Division Succeeds in Its First-Ever Extradition of a Foreign National

March 26, 2010

The Antitrust Risks Facing Multinational Businesses Increase

On March 23, 2010, for the first time in the history of the Antitrust Division of the Department of Justice, a foreign national defendant was extradited to the United States to face charges arising from a criminal antitrust investigation. Ian Norris, the retired CEO of the Morgan Crucible Company plc, was extradited from the United Kingdom to the United States on charges that he obstructed the Division's investigation of a cartel among carbon components manufacturers in which Norris is alleged to have participated. The extradition of Norris to the United States is a watershed event in criminal cartel enforcement. The Division's ability to successfully extradite foreign nationals charged with antitrust crimes and related offenses significantly enhances the pressure the Division can bring to bear on those foreign nationals it believes are involved in antitrust crimes. The options available to foreign nationals under investigation by the Division are narrowing —attempting to avoid U.S. jurisdiction by remaining overseas is becoming much more difficult. The Norris case should make clear, if there were any doubt, that companies with multinational operations must structure their compliance programs to ensure that overseas operations are compliant with U.S. criminal antitrust laws.

Norris's Role in the Carbon Products Cartel and the Cover up

In November 2002, Morganite, Inc., a U.S. subsidiary of Morgan Crucible, pleaded guilty to a single count of fixing the prices from 1990 to 2000 of certain carbon products used in a variety of applications to transfer electric current. As part of the same plea agreement, Morgan Crucible admitted two counts of witness tampering for its role in trying to cover up the involvement by the company and its subsidiary in the price-fixing scheme. Morganite agreed to a criminal fine of \$10 million dollars for its role in the price-fixing conspiracy, and Morgan Crucible agreed to pay \$1 million for its role in the cover-up. Ian Norris, the U.K. national who was the CEO of Morgan Crucible during part of the carbon products price-fixing conspiracy and during the subsequent efforts to cover up that conspiracy, was eventually indicted on one count for his role in the price-fixing conspiracy and on three counts for his role in the cover-up.

According to the Antitrust Division, Norris engaged in particularly egregious conduct to prevent the Division from uncovering the carbon products cartel. For example, after he knew that Morganite was under investigation for criminal antitrust violations, Norris and his co-conspirators are alleged to have put together a task force of Morgan Crucible employees whose sole purpose was to search for and destroy documents in the files of Morgan entities that contained evidence of the price-fixing agreement. The task force is also alleged to have created a script to be followed by anyone who might be questioned by either the Antitrust Division or a federal grand jury, with answers designed to throw off the investigators. For example, the script apparently instructed employees to characterize price-fixing meetings with competitors as meetings to discuss joint ventures. In addition, after the Department of Justice (DOJ) investigation had become publicly known, the Division claims that Norris invited his co-conspirators to Morgan's offices, where they were invited to use the script to provide explanations if questioned about the meetings they held.



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The Division's Long Road to Extradition

The Antitrust Division originally sought to extradite Norris on the price-fixing charge, even though price-fixing was not a statutory crime in the U.K. during the period of the carbon products cartel. Under the extradition treaties between the United States and many other countries, including the U.K., a person may only be extradited for conduct that is a crime in both countries.¹ The DOJ's lawyers argued, with success in the lower courts, that even though no statute criminalized price fixing during the carbon products cartel, the conduct still amounted to common-law fraud in England, and therefore extradition was proper. Ultimately, the House of Lords ruled in 2008 that Norris's alleged price-fixing was not a crime under English law at the time the offense was committed and, therefore, was not an extraditable offense.²

The House of Lords sent Norris's case back to the lower courts to consider whether extradition was proper on the related obstruction charges. Norris argued in the lower courts and in the U.K. Supreme Court that given his age, his health and the effect that extradition might have on his wife, who was also in poor health, extradition would violate the European Convention on Human Rights. After both the district judge and the High Court found no bar to extradition, the Supreme Court unanimously rejected Norris's human rights arguments. Lord Phillips noted that "only the gravest effects of interference with family life will be capable of rendering extradition disproportionate to the public interest that it serves. This is not such a case."³

Mr. Norris's final recourse was an appeal to the European Court of Human Rights. His appeal was denied by the court last month. On March 23, 2010, Norris was extradited to the Eastern District of Pennsylvania, where he will stand trial on the three obstruction counts, but not the price-fixing count. As of March 25, he had been released on bail, but not yet arraigned on the charges. His bail conditions include a \$1 million bond and house arrest with electronic monitoring.⁴

The Importance of Extradition to the Antitrust Division

The Norris case has long been a priority for the Antitrust Division, both to show its resolve in going after individuals who attempt to obstruct Division investigations and to demonstrate its ability to reach foreign national defendants who try to evade the Division's jurisdiction. When Norris was charged with obstruction offenses in 2003, the deputy assistant attorney general in charge of the Division's criminal program remarked, "[o]nly by protecting the integrity of the Division's criminal investigations from such obstructive conduct can we ensure that we effectively carry out our mandate."⁵ Later, when it became clear that Norris had no intention of ever leaving the U.K. voluntarily to face the charges in the United States, the head of the Division's criminal program recounted, in a speech to the ABA, that with the "increased willingness [of foreign governments] to assist the United States in tracking down and prosecuting cartel offenders, the safe harbors for offenders are rapidly shrinking."⁶ And later, the assistant attorney general in charge of the Antitrust Division echoed this message in a speech to the European Union Institute: "[t]he United States's efforts in the Norris case should send a powerful signal that cartelists will not be allowed to hide behind borders."⁷

Given the efforts to which the Antitrust Division has gone to ensure that Mr. Norris is extradited and the importance the Division has publicly placed on this case, this extradition cannot be viewed as a unique event that is unlikely to be replicated. To the contrary, the extradition of Mr. Norris, following events such as the joint U.S. and U.K. prosecutions of three U.K.

¹ See, e.g., *United States v. Saccoccia*, 58 F.3d 754, 766 (1st Cir.1995).

² In 2002, subsequent to the conduct alleged in the Norris case, the U.K. criminalized cartel conduct with the passage of the Enterprise Act.

³ *Norris v. United States*, [2010] UKSC 9, available at http://www.supremecourt.gov.uk/docs/UKSC_2009_0052_Judgment.pdf.

⁴ *United States v. Ian Norris*, 03-cr-00632, docket entry 11 (E.D. Pa. March 25, 2010).

⁵ Press Release, U.S. Dep't of Justice, Four Former Executives of UK Corporation Charged with Obstructing Price-Fixing Investigation of the Carbon Products Industry (Sept. 24, 2003), available at http://www.justice.gov/atr/public/press_releases/2003/201287.htm.

⁶ Scott D. Hammond, Deputy Assistant Attorney Gen., Address at the ABA Section of Antitrust Law Cartel Enforcement Roundtable: An Update of the Antitrust Division's Criminal Enforcement Program (Nov. 16, 2005), available at <http://www.justice.gov/atr/public/speeches/213247.htm>.

⁷ Thomas O. Barnett, Assistant Attorney Gen., Presentation to the 11th Annual Competition Law & Policy Workshop at the European Union Institute: Seven Steps to Better Cartel Enforcement (June 2, 2006), available at <http://www.justice.gov/atr/public/speeches/216453.htm>.

nationals charged in the marine hose cartel,⁸ and combined with the frequent public statements by senior Antitrust Division officials regarding the importance of international cooperation in antitrust investigations, must be viewed as part of a concerted effort by the Division to work with its foreign counterparts to reach conduct by foreign nationals and foreign corporations. The business community should expect that the Division will look for opportunities to use extradition—and the other tools it has at its disposal—to prosecute conduct by foreign nationals that has an impact on U.S. commerce.

Implications for the Business Community

The Antitrust Division's successful extradition of Ian Norris is an event with implications for multinational companies, whether or not they are facing a Division investigation. For those companies with the misfortune of experiencing a government investigation, the consequences are immediate. If the Antitrust Division believes executives in the company's offices outside the United States may have engaged in criminal conduct, there will now be more pressure on those individuals to submit themselves to U.S. jurisdiction if they want to avoid the prospect of indictment and extradition back to the United States. But even those multinational companies not immediately facing DOJ antitrust investigation must learn the lessons of the Norris case. Companies must take care to ensure compliance across the jurisdictions in which they operate. A company's compliance standards must account for the extraterritorial reach of the DOJ. Compliance programs must be integrated across the different jurisdictions in which the company operates to ensure that employees in one jurisdiction do not run afoul of laws in another jurisdiction.

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⁸ See Brady Dugan & Mollie McGowan, A Fourth Corporation is Prosecuted in DOJ's International Marine Hose Cartel Investigation, Antitrust Alert (Akin Gump Strauss Hauer & Feld, LLP, Washington, D.C.), Feb. 19, 2010, available at <http://www.akingump.com/communicationcenter/newsalertdetail.aspx?pub=2371>.