"I'm Never Too Far Away": Extradition of Non-U.S. Nationals Charged with Price-Fixing*

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I. Introduction

Cartels—price-fixing agreements by competitors—are bad. U.S. Assistant Attorney General for Antitrust Joel Klein once called cartels "the equivalent of theft by well-dressed thieves…[G]overnments should be every bit as willing to work together on fighting cartels as they are to combat securities fraud, tax fraud, and other types of international fraud and theft."[1] More recently, cartels have been described as "a direct assault on the principles of competition" that is "universally recognised as the most harmful of all types of anticompetitive conduct… Any debate as to whether cartel conduct should be prohibited has been resolved, as the prohibition against cartels is now an almost universal component of competition laws."[2]

So, cartel members who inflate prices paid in the United States ought to be punished for their price-fixing.[3] And if they are non-U.S. nationals who decline to submit to U.S. judicial authority, they should be extradited to the United States where the full force of law can be brought to bear—right? The Antitrust Division of the U.S. Department of Justice is trying. But the question remains: is extradition a roaring tiger—or a paper one?

We provide below background for this topic, and an overview of extradition. Then, we discuss recent extraditions to the United States of non-U.S. nationals facing antitrust-related criminal charges. We conclude with "takeaways" from these extraditions.

II. Go to Jail. Go Directly to Jail. (Not Exactly)

A key feature of U.S. Antitrust Division criminal enforcement is individual accountability—the notion that corporate executives and employees, and not just their company, should be held responsible for price-fixing and other hard-core antitrust violations: "[e]ffective cartel enforcement requires holding accountable both corporations and the senior executives who orchestrate their unlawful conduct."[4] Thus, the Antitrust Division regularly brings criminal cases against not only corporations but also individuals who participated in the violation. Moreover, in recent years Antitrust Division criminal enforcement has focused heavily on international cartels—conspiracies that increase prices in both the United States and other regions worldwide and that also frequently involve non-U.S. companies.[5] Put the two together—individual accountability and international cartel enforcement—and the result is many criminal antitrust cases against non-U.S. nationals.

Once upon a time a non-U.S. national could resolve U.S. criminal price-fixing charges by agreeing to plead guilty in exchange for cooperating with the Antitrust Division and the Division agreeing to recommend a sentence that did not require the individual to serve time in a U.S. federal prison. Although the plea agreement between the two was not binding on a U.S. federal judge, who by law must approve the deal, the judge tended to avoid second-guessing the Antitrust Division. Absent an agreed-upon plea and sentence recommendation, the Antitrust Division could well be left holding an empty bag: a criminal antitrust case against an individual outside the United States that the Antitrust Division could not prosecute. No prison time was the trade-off for the non-national's submission to the U.S. court's jurisdiction in order to plead guilty and for the individual's assistance to the Antitrust Division in its ongoing investigation. The guilty plea required the individual to admit criminal wrongdoing, and that was itself a message that the Antitrust Division wanted to send to the business community: in the United States price-fixing *is* a criminal felony.

Those times are gone, however. The "watershed" event came in 1999 when a Swiss executive agreed to plead guilty *and* to accept a four-month prison term for participating in the vitamins cartel.[6] Since then, more than fifty individuals from over twenty countries have served or been sentenced to serve time in U.S. prisons for price-fixing or obstructing a federal antitrust investigation.[7]

Under U.S. antitrust law, price-fixing is punishable by up to ten years' incarceration for individuals.[8] And Antitrust Division officials leave no room for doubt: "the most effective way to deter and punish cartel activity is to hold culpable individuals accountable by seeking jail sentences."[9] Accordingly, the Division's announced policy is that individuals charged with criminal antitrust violations should expect to receive a sentence that includes prison time. The policy applies to "*all* defendants, domestic and foreign."[10] Although the Antitrust Division still engages in plea bargaining, a non-prison time recommendation generally is off the table: "We will not agree to a 'no-jail' sentence for any defendant."[11]

If that policy discourages non-nationals from pleading guilty and encourages them to remain at large outside the United States, the Antitrust Division is prepared to live with the result. The Division's jail-for-price-fixers policy is strongly held. Consider the case of *United States v. Chen*.[12]

Chen had directed his company to file a private civil antitrust case in federal court in California against the members of the very price-fixing conspiracy in which his company had participated. The civil case itself exposed the conspiracy, and caused ***another*** one of its members to seek and receive Antitrust Division leniency, which in turn produced the Antitrust Division's investigation and prosecution of the cartel's remaining members—including Chen's company and Chen himself. Chen cooperated with the Division and agreed to plead guilty.

On sentencing, Chen—then residing in India and doing community service work—argued for a sentence of six months' probation, which the U.S. probation department supported.[13] Among the materials that Chen submitted to the court was his prior attorney's sworn statement that, in discussing a civil case against the conspiracy, he "advised" Chen not to seek leniency from the Division because it "likely would not be worthwhile."[14] The Antitrust Division *opposed* probation, and urged six months in prison: "[a] non-custodial sentence," the Division maintained, "would be a slap on the wrist that would not afford adequate general deterrence…."[15] The court rejected the Division's recommendation and sentenced Chen to the one year's probation, with the first six months consisting of monitored "house arrest" in California.[16]

III. To Be, or Not to Be…Extradited

The Division's most far-reaching current criminal investigation—the long-running "auto-parts" investigation—has returned criminal charges (grand jury indictments or prosecutors' criminal "informations," used with plea agreements) against fifty-two non-nationals.[17] Twenty-nine have pleaded guilty, and the rest are mostly at large living outside the United States.[18] Those individuals under indictment who have not submitted to the U.S. federal court's jurisdiction are "fugitives" under the law.[19] The U.S. DOJ's long-running investigation of financials services products, in which the Antitrust Division has participated, has also produced indictments against non-U.S. nationals.[20] Overall, dozens of individuals indicted for cartel violations are reportedly living as fugitives outside the United States.[21]

A criminal charge brought against an individual not subject to the U.S. court's jurisdiction may seem like a pyrrhic victory. But U.S. criminal charges—which will remain pending indefinitely under U.S. law—can have significant personal and professional consequences.[22] For some, living under the cloud of a felony indictment is simply an uncomfortable state of affairs.[23] There are likely to be recurring jokes and other unpleasant-to-hear comments. Potential employers may be less likely to hire.

Equally important, however, as nations around the world adopt legislation that criminalizes price-fixing, the risk of extradition to the United States to stand trial increases—and here the trend favors the Antitrust Division. Even where extradition from the individual's nation of residence is not possible, international travel, whether for business or personal reasons, may be difficult. Travel will require the individual to take account of the potential for detention and extradition to the United States to stand trial on the antitrust charge. Recently, an indicted Italian national was arrested after temporarily stopping in Germany, and thereafter extradited to the United States, thus leading to a guilty plea for price-fixing. Although indicted individuals can reconcile themselves to planning air travel specifically to avoid landing in nations where extradition is possible, even that approach is hazardous. "The best laid schemes o' mice an' men/Gang aft a-gley, [often go awry]."[24] Weather conditions, ill passengers, and equipment malfunctions, among other circumstances, can result in unscheduled landings in the "wrong" country. Thus, "the costs of being a fugitive are very, very real."[25]

To better appreciate not simply the hazards that a non-U.S. national charged with price-fixing faces, but also the impediments to extradition that the Antitrust Division itself may need to overcome, a fuller discussion of extradition is useful.

IV. Extradition for Dummies

Extradition—"the formal process by which a person found in one country is surrendered to another country for trial or punishment"—is normally "regulated by treaty" between two countries, which establish the circumstances and terms of surrender.[26] The United States has extradition treaties with more than one hundred countries.[27] These treaties require that a request for extradition be made through diplomatic channels, although a request for provisional arrest may sometimes be made to an executive official directly, such as the U.S. DOJ, and executed by a judicially-issued warrant.[28] Because extradition is governed by treaty, the process for determining extraditability and review of that finding can differ. However, in the United States the federal courts have a limited role: "Extradition is an executive, not a judicial, function" which "derives from the President's power to conduct foreign affairs."[29] Thus, generally the Secretary of State has review authority over a judicial finding of extraditability to a foreign nation.[30]

To be enforceable, the extradition treaty must authorize the particular extradition request. Many older treaties contained lists of extraditable offenses, rather than a "seriousness of the offense standard to determine the applicability of the treaty."[31] The U.S.-Brazil extradition treaty, for example, lists thirty-two specific crimes or categories of crimes, plus "attempt" or "participation" in the enumerated offenses.[32] Antitrust violations are not on the list.

Older treaties, many of which date back to the nineteenth century, are being updated to increase their effectiveness, and new treaties are being developed with

an eye towards modern enforceability.[33] For example, in the late 1990s, the United States revealed an ambitious agenda to update many of its older bilateral extradition treaties, focusing on the treaties with those countries with which it has or can anticipate a significant interest in seeking extraditions.[34] In 1998, the U.S. Senate approved eighteen extradition treaties—the largest group of law enforcement treaties ever addressed at once.[35] Sixteen of these treaties were entirely new, and two were protocols to existing treaties with Mexico and Spain.[36]

Older treaties are also being updated by using categories of offenses to increase their effectiveness.[37] Updated treaties commonly state that the offense at issue need not be categorized within the same class of offenses in each nation to be extraditable.[38] For instance, while the United States classifies bid-rigging as an antitrust violation, other countries may classify it as a fraud. Because more jurisdictions impose criminal penalties for fraud than for competition law violations, the ability to disregard classification differences can increase the Antitrust Division's opportunity to secure extradition.[39]

Similarly, migrating from lists of extraditable offenses to categories can ease the way for extradition. Where a country did not historically have antitrust laws, there was nothing to put on the list, and even where the country had enacted antitrust legislation, typically the offense was not criminal, and thus not on the list for that reason.

A. Bad in Both Places: The "Dual Criminality" Requirement

Extradition treaties tend to include the principle of "dual criminality," which authorizes extradition only where the conduct charged "is a sufficiently serious criminal offense (*i.e.*, usually punishable by a year or more in prison) under the laws of *both* the country seeking extradition *and* the country receiving the extradition request."[40] The U.S.-Brazil extradition treaty, for example, requires dual criminality.[41] Typically, extradition treaties address dual criminality in one of three ways: (i) by listing extraditable offenses and not otherwise speaking to the issue; (ii) by listing extraditable offenses *and* containing separate provisions requiring dual criminality; or (iii) by identifying as extraditable those offenses condemned by the laws of both nations.[42]

Dual criminality can impose a significant obstacle to extradition on U.S. antitrust charges. Most nations' antitrust (competition) laws do not make violation a criminal offense. However, over the past twenty-odd years, the Antitrust Division has successfully exported globally the leniency program idea by which antitrust violators who self-report to enforcement officials are relieved in whole or in part of otherwise available sanctions for violation. Now, the Antitrust Division has set its sights on criminalization. As Brent Snyder, Deputy Assistant Attorney General for criminal enforcement, has noted: "Much like we have had a proliferation of leniency programs in recent years, we also have seen more and more jurisdictions that are adopting criminal antitrust statutes, and—that will make extradition more easy to obtain."[43]

There is, indeed, a growing trend globally toward criminalization.[44] More than thirty countries have adopted criminal penalties for cartel activity.[45] They include, to name only a few, the following:

Australia	Brazil	Canada
Czech Rep.	Denmark	Estonia
Greece	Iceland	Ireland
Israel	Japan	Mexico
South Africa	South Korea	United Kingdom

But remember, criminalization is one thing. *Individual* accountability for the antitrust crime is another. A corporation can't be extradited.

Remember also, that dual criminality may be necessary for extradition, but not sufficient. If antitrust violations are not on the list of extraditable offenses, it is immaterial that the conduct is criminal in both nations. Brazil is an example: "Brazil has emerged as the new leader in Latin America in combating cartels…. Brazil fines more hard-core cartels annually and imposes higher average corporate cartel fines than any other country in the region; it is also alone in Latin America in regularly fining cartel managers."[46] Nonetheless, as noted above, antitrust violations do not make it to the list of extraditable offenses under the U.S.-Brazil treaty. Hence, dual criminality, although satisfied, is not enough.

B. Other Extradition Hurdles

Meeting the dual criminality requirement is just one step along the path leading to extradition. There are many other barriers that may need to be overcome, such as statute of limitations considerations, probable cause requirements, and double jeopardy. The limitations vary, treaty-by-treaty, and are applied on a case-by-case basis. The following are examples of ones of more general application.

1. Protection of Citizens

Some nations, either by law or by practice, forbid extradition of their own citizens.[47] Indeed, in rejecting extradition of a U.S. national to France, Judge Learned Hand once wrote that "most nations have shown a persistent repugnance to submit their citizens to foreign courts."[48] The U.S. Supreme Court affirmed:

> [W]e are constrained to hold that [the President's] power, in the absence of statute conferring an independent power, must be found in the terms of the treaty and that, as the treaty with France fails to grant the necessary authority, the President is without power to surrender the respondents [U.S. citizens].[49]

The U.S. Congress has since enacted legislation conferring discretionary authority on the Secretary of State to extradite U.S. citizens if not expressly provided for in a bilateral treaty.[50] Nevertheless, among members of the international community generally, the historic "repugnance" that Judge Hand identified has traction. The U.S.-France bilateral treaty, for example, provides, in effect, that France will not extradite its own citizens, although the United States may exercise its discretion to do so.[51] The U.S.-Brazil treaty, on the other hand, recognizes that either nation may, by law, confer on itself the discretion to extradite its own citizens:

> There is no obligation upon the requested State to grant the extradition of a person who is a national of the requested State, but the executive authority of the requested State shall, subject to the appropriate laws of that State, have the power to surrender a national of that State if, in its discretion, it be deemed proper to do so.[52]

Nations that decline to extradite their own citizens sometimes have their own laws giving them jurisdiction over crimes committed not only within their own territory but also abroad by or against citizens. This approach then exists to prosecute citizens accused of crimes committed abroad as if the crime had occurred within the country's borders.[53]

2. Public (or National) Sentiment

Even where no express treaty provision or law bars extradition of a requested nation's citizens, the extradition process remains discretionary.[54] In some nations, cartel offenses do not have the level of disapprobation currently held in the United States (among antitrust enforcers at least). Thus, there can be a disinclination to extradite. As criminalization takes hold, and as countries themselves prosecute antitrust violations criminally, this sentiment may change. Certainly, the Antitrust Division would welcome that development.

Japan, for example, permits criminal prosecution for antitrust violations and has brought criminal cases against price-fixing and bid-rigging with increasing frequency in recent years.[55] Moreover, Hideo Nakajima, Japan's top-level antitrust enforcer, has commented that public sentiment against cartels in Japan appeared to be getting stronger.[56] However, the United States has yet to seek extradition of a Japanese national for a cartel violation.[57]

Public attitudes toward price-fixing are difficult to gauge. However, some data can be read to support emerging public awareness that price-fixing should be treated as a crime. The responses to recent extensive surveys in the United Kingdom, Germany, Italy and the United States "suggested overwhelming support for criminalization" of price-fixing, ranging from seventy-six percent in favor in the United Kingdom and the United States to eighty-seven percent in Germany.[58] Support for imprisonment of individuals was much lower, however, ranging from twenty-six percent in favor in Italy to thirty-six percent in the United States.[59] Moreover, "[o]n balance respondents do not consider price-fixing to be as serious as theft, but more than 50% of respondents in the United Kingdom, Germany and the United States do consider it to be equivalent to a fraud. This is significant because in their minds price fixing has the same qualities of delinquency as the appropriation of money through some misrepresentation or deceit."[60]

Time may, therefore, be on the Antitrust Division's side.

3. Location of Criminal Conduct

Some nations are disinclined to extradite to the United States unless there was criminal conduct in the United States itself, and not just overseas activity. If a cartel held its meetings only outside the United States, and somehow avoided communicating to persons in the United States in furtherance of the conspiracy, extradition might not be available under some treaties. If, however, the requested country similarly made criminal acts outside its own territory, extradition to the United States might be available. The U.S.-Brazil treaty is illustrative:

> When the crime or offense has been committed outside the territorial jurisdiction of the requesting State, the request for extradition need not be honored unless the laws of the requesting State and those of the requested State authorize punishment of such crime or offense in this circumstance.[61]

C. Sentries at the U.S. Border and Cops on the Worldwide Beat

To assist in investigating and prosecuting international cartel participants, the Antitrust Division regularly uses border watches in the United States to detect not only individuals under indictment entering the country, but also potential witnesses and even potential defendants.[62] In one recent investigation, for example, the Division arrested an ***unindicted*** Taiwanese national at Los Angeles International Airport on a stopover while on his way to

Mexico and Central America.[63] Having taken the individual into custody, the Division promptly indicted him. Released on bail—but restricted to the northern California area, and monitored electronically—he remained in the United States pending his criminal trial.[64] After more than a year of pretrial proceedings, the individual pleaded guilty and was sentenced to prison.[65]

At the international level, the Antitrust Division relies on INTERPOL "red notices"—"essentially an international wanted notice that many of Interpol's member countries recognize as the basis for a provisional arrest, with a view toward extradition."[66] Individuals on the Red Notice list are wanted by national jurisdictions for prosecution or to serve a sentence stemming from an arrest warrant or court ruling.[67] When police encounter a person whose name is listed, the country that sought the listing is notified though Interpol and can either request his provisional arrest (in emergency situations) or can file a formal request for extradition.[68]

The Antitrust Division began "Red Listing" individuals indicted on antitrust violations in 2001.[69] The Division's stated policy is to "seek to extradite any fugitive defendant apprehended through the Interpol Red Notice Watch."[70] Thus, even if an individual's nation of residence will not extradite on cartel charges, an indicted cartel participant is exposed to the risks of arrest and extradition to the United States while traveling internationally upon entry into a country where extradition is available. As the cases below reflect, the Antitrust Division is prepared to implement its extradition policy.

V. Nowhere to Hide: Recent Extraditions to the United States

In a 2007 speech Assistant Attorney General Thomas O. Barnett emphasized that "[w]ith the increasingly vigorous resolve that foreign governments are taking toward punishing cartel activity and their increased willingness to assist the United States in tracking down and prosecuting cartel offenders, the safe harbors for antitrust offenders are rapidly shrinking."[71] Three years later, the Antitrust Division successfully extradited a CEO from the United Kingdom to stand trial on an obstruction of justice charge arising from a price-fixing investigation. This was the first time that the Division secured extradition of a foreign national on an antitrust-related charge. In 2014, the Antitrust Division secured its first extradition on a price-fixing charge, this time from Germany. Two other extraditions, one from Canada and the other from Israel, are also noteworthy. We discuss these cases below.

A. Ian Norris (Extradited from the United Kingdom)

The 2010 extradition of Ian Norris, the CEO of the Morgan Crucible Company plc, resulted from a multi-year battle. More than a decade earlier, the Antitrust Division began an investigation into price-fixing in the electrical carbon products industry. Morgan Crucible, a U.K. company, pleaded guilty in 2002 to witness tampering and document destruction, and was ordered to pay a $1 million criminal fine.[72] A Morgan U.S. subsidiary pleaded guilty to price-fixing, and was fined $10 million (the statutory maximum at the time), while three of Norris's subordinates were sentenced to prison after pleading guilty to charges of obstruction of justice, witness tampering, and destruction of documents.[73]

In 2004, a U.S. federal grand jury indicted Norris, a U.K. citizen, for price-fixing, conspiracy to obstruct justice, and obstruction of justice in connection with the Division's investigation.[74] The Antitrust Division sought extradition, and both the U.K. trial court and Court of Appeals ordered Norris extradited to the United States on the price-fixing charge.[75] But in March 2008, the U.K. House of Lords ruled that Norris could not be extradited because price-fixing was not a criminal offense in the United Kingdom at the time of Norris' alleged conduct.[76] Thus, the principle of dual criminality barred extradition. The House of Lords, however, did not preclude Norris' extradition on the obstruction of justice charges, which were criminal offenses in the United Kingdom as well as in the United States

In 2009, a U.K. court ordered Norris extradited to the United States to stand trial for obstruction of justice.[77] Norris was unsuccessful in appeal efforts that went all the way to Supreme Court of the United Kingdom and the European Court of Human Rights.[78] In March 2010, Norris became the first non-U.S. national extradited to the United States on charges arising from an antitrust investigation. At a trial later in 2010, a U.S. jury found Norris guilty of obstruction, and he was sentenced to eighteen months in prison. The U.S. Court of Appeals in Philadelphia upheld his conviction and sentence.[79] Norris thus was also the first extradited non-national to go to prison after an antitrust-related conviction.

Norris's extradition was a substantial step towards dispelling any perception that non-U.S. nationals were safe from U.S. antitrust-related prosecution unless they voluntarily agreed to face charges in the United States, typically as part of a plea deal. As then-Assistant Attorney General for antitrust Barnett, declared, "The United States's efforts in the *Norris* case should send a powerful signal that cartelists will not be allowed to hide behind borders."[80]

B. David Porath (Extradited from Israel)

The extradition of David Porath arose from a scheme that began in 2000 to rig bids for contracts at New York Presbyterian Hospital, a major New York City health care facility. During the 2005-06 period, Porath cooperated with the DOJ, and wore a "wire" to help secure evidence against others participating in the scheme. However, in mid-2006, he ceased cooperating, and in 2009 traveled to

Israel, where he had dual citizenship. In February 2010,[81] the Antitrust Division charged him with bid-rigging and tax offenses.[82] In 2011 the DOJ sought extradition, which an Israeli magistrate granted. Porath then waived appeal and in 2012 consented to be extradited to the United States. He pleaded guilty in July 2012.[83]

C. Romano Pisciotti (Extradited from Germany)

In 2014, the Antitrust Division secured its first extradition on an antitrust charge when Romano Pisciotti, an Italian national and executive of marine hose manufacturer Parker ITR Srl, was extradited from Germany. The extradition arose from the Division's investigation into bid-rigging and price-fixing in the marine hose industry.[84] Parker ITR, Pisciotti's employer, pled guilty to cartel violations in February 2010 and agreed to pay a $2.29 million criminal fine.[85] Four other companies and nine individuals also entered guilty pleas.[86]

Pisciotti, an Italian national living in Italy, was himself indicted in August 2010.[87] Nearly three years later, in June 2013, German officials arrested him at the Frankfurt airport, where he was about to transfer planes en route to Nigeria from Italy. Because Germany also criminalizes bid-rigging violations, and because Pisciotti was not a German citizen, the German government agreed to extradite Pisciotti to the United States under its bilateral extradition treaty. The Higher Regional Court of Frankfurt upheld extradition in April 2014.[88] Pisciotti was unsuccessful in challenging the extradition under German and E.U. law and before the European Court of Human Rights.

Once in the United States, Pisciotti faced trial in the U.S. federal court in south Florida.[89] However, on 24 April 2014, three weeks after extradition, Pisciotti pleaded guilty and was sentenced to twenty-four months in prison and fined $50,000 for participating in the marine hose conspiracy.[90] Bill Baer, Assistant Attorney General in charge of the Antitrust Division, noted that Pisciotti's guilty plea "demonstrates the Antitrust Division's ability to bring to justice those who violate antitrust laws, even when they attempt to avoid prosecution by remaining in foreign jurisdictions."[91]

D. John Bennett (Extradited from Canada)

The most recent extradition involving antitrust-related charges is that of Canadian executive John Bennett for allegedly participating in a bid-rigging conspiracy. Bennett was CEO of Bennett Environmental Inc., a Canadian soil remediation company. In December 2008, the company pled guilty to conspiring to defraud the U.S. Environmental Protection Agency (EPA) and was ordered to pay a $1 million criminal fine and restitution to the EPA of $1.66 million.[92]

Bennett's own indictment on charges of fraud, kickbacks, and bid-rigging of contracts at EPA Superfund (remediation) sites was publicly disclosed in September 2009.[93] A co-defendant who stood trial was convicted by a jury of multiple criminal violations, and sentenced to fourteen years in prison, the longest prison sentence that has been imposed in a case that included antitrust violations.[94] Another co-defendant pled guilty and was sentenced to thirty-three months in prison.

In February 2010, the U.S. DOJ applied for extradition from Canada. Although Bennett challenged the extradition in the Canadian courts, in October 2014 the Supreme Court of Canada declined to hear Bennett's appeal, thus clearing the last obstacle to extradition.[95] Two weeks later, Mr. Bennett arrived in the United States, where he has since pleaded not guilty and is scheduled to go to trial in November 2015.[96] Assistant Attorney General Baer commented, "This extradition demonstrates our resolve to pursue those who undermine competition. And it is yet another example of our longstanding cooperation with our enforcement colleagues in Canada's Department of Justice, which helps ensure that those who subvert competition in the United States and elsewhere are brought to justice."[97]

VI. Carry-outs (aka "Takeaways")

Several themes emerge from the Antitrust Division's recent extraditions:

First, the Antitrust Division and the U.S. DOJ overall are in it for the long-haul—not just when it comes to extradition generally, but also where individual extraditions are concerned. Extradition is a time-honored principle of international relations. As commerce among nations become increasingly interconnected, and as the speed and ease of physical travel, transfer of property (tangible and intangible) and communications increase, the opportunities for cross-border criminal conduct increase—and so too does the need for international law enforcement cooperation. Extradition takes on correspondingly increased importance. Compared to crimes of violence and even many other non-violent crimes directed to property, antitrust is new to the block. But the Antitrust Division has settled in, likes the neighborhood, and is committed to staying put.

Second, once the Antitrust Division indicts, the Division is enforcement-resolute, and its commitment applies equally to extradition. The Norris extradition in 2010 involved conduct in the 1999-2000 time-period, and the extradition itself was a multi-year battle. The Antitrust Division persisted even after a losing extradition in the U.K. House of Lords, then the United Kingdom's highest appellate tribunal. Similarly, Bennett's extradition in 2014 arose from criminal conduct in 2002,[98] and likewise was protracted. Pisciotti's 2014 extradition was based on bid-rigging that began at least as early as 1999,[99] and Porath's 2012 extradition arose from a scheme that began in 2000.[100]

Third, the Antitrust Division chooses its extradition requests strategically. "A journey of a thousand miles begins with a single step."[101] Therefore, starting off pointed in the right direction is a good idea. Take Norris. The obstruction arising from the Division's investigation was egregious, admitted to in guilty pleas by subordinates in the United States, and implicated a CEO located in the United Kingdom, with which the United States has a "special relationship."[102] As test cases go, this one was pretty good. So too with Bennett, which involved bid-rigging that damaged the public fisc and involved a high-ranking corporate official located in Canada, another nation with which the United States has uncommonly close relations.

Fourth, as Pisciotti's extradition illustrates, "stuff happens," and when it does, the Antitrust Division is ready to seize the moment. The Red Notice list worked. Pisciotti was caught. The Antitrust Division not only nabbed a price-fixer, it also reinforced a message to the international business community: if you are under an Antitrust Division or, indeed, other U.S. indictment, you travel internationally at risk.

Fifth, communications and technological innovations improve international law enforcement, and increase the opportunity to detect, detain, and extradite individuals under indictment. Again, we see that from Pisciotti's extradition.

Sixth, price-fixers often commit other crimes. The crimes can arise from the antitrust investigation—as in Norris' situation—or they can be "stand-alone" criminal offenses. The Antitrust Division, sometimes working with other parts of the DOJ, has often charged other crimes.[103] Those other crimes can provide a basis for extradition, and thereafter trial in the United States, even where price-fixing does not. Norris is illustrative. Bennett, too, was extradited on charges of bid-rigging, fraud, and kickback offenses, and Porath on bid-rigging and tax violations.

Seventh—a close cousin to number six—partial antitrust criminalization itself can be enough to satisfy the dual criminality generally needed for extradition. Although Germany does not currently criminalize price-fixing generally, bid-rigging is criminal. So, Pisciotti could be extradited.

Finally, as Porath's extradition illustrates, "in for an inch, in for a mile." Although Porath began by assisting the Antitrust Division's investigation (no doubt trying to make the best out of an already bad situation), he changed his mind and went to Israel. This circumstance is not going to sit well with the Division. That Porath's indictment and extradition would follow should come as no surprise.

VII. Conclusion

As noted earlier, the Antitrust Division's auto-parts investigation has resulted in indictments of many individuals living in the Far East who have not, thus far, submitted to the U.S. federal court's jurisdiction. The argument has been made that the willingness of these individuals to remain at large as fugitives under U.S. law suggests that the Antitrust Division is "losing" the extradition war: "[t]he DOJ's goal of prosecuting foreign nationals is becoming elusive."[104] There is, however, another explanation, which we believe is more plausible. The Antitrust Division is being strategic in two respects.

First, uncertainty works in the Division's favor. An individual under an indictment for price-fixing may not be extraditable in his or her country of residence. But not knowing for sure—and thus having to live under the cloud of a U.S. criminal indictment—will increase the individual's incentive to plead guilty, serve a prison term in the United States, and put the matter in the past. Even where there is no possibility of extradition, a U.S. non-national under indictment may need or want to travel internationally, which means facing uncertain, but known, risks that could led to extradition. Again, incentives to plead increase.

Second, the Antitrust Division is in the law enforcement business for the long term. Therefore, it needn't rush things. The indicted individual's cost/benefit assessment may change, and lead to a guilty plea. The legal landscape or public sentiment in the individual's country of residence may change, and lead to extradition (or even to prosecution there). Meanwhile, the U.S. indictment is not going away. For the Division, waiting beats losing. All things come to those who wait.

Endnotes

1. Joel I. Klein, Asst. Att'y General, Antitrust Div., U.S. Dep't of Justice, *The War Against International Cartels: Lessons From The Battlefront* 2, 15 (14 Oct. 1999), http://www.justice.gov/atr/file/518551/download. *See generally* Connor, Foer and Udwin, *Criminalizing Cartels: An American Perspective,* 1 New J. of Eur. Crim. L. 199, 209-10 (Issue 2, 2010) (comparing price-fixing to theft and fraud), http://www.antitrustinstitute.org/sites/default/files/NJECL%202010.pdf.
2. International Competition Network, Working Group on Cartels, *Building Blocks for Effective Anti-Cartel Regimes* 1, 5 (Vol. 1) (2005), http://www.internationalcompetitionnetwork.org/uploads/library/doc346.pdf.
3. For simplicity's sake, we use the term "price-fixing" to include bid-rigging, market allocation and agreed-on output restrictions. The first two involve agreements by competitors not to compete on price, and the third is simply a mechanism to reduce supply by agreement and thereby hike market price. All are typical forms of cartel activity that the U.S. antitrust law (the Sherman Act) prohibits as illegal "*per se*"—that is, without consideration of their market effect.
4. Bill Baer, *Reflections on Antitrust Enforcement in the Obama Administration* 3 (30 Jan. 2014) *("Reflections on Enforcement"),* http://www.justice.gov/atr/file/517761/download. In a recent

department-wide policy statement, the U.S. DOJ has stated that "[o]ne of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing." Memorandum, Sally Quillian Yates, Deputy Att'y General, U.S. Dep't of Justice, *Individual Accountability for Corporate Wrongdoing* 1 (9 Sept. 2015), http://www.justice.gov/dag/file/769036/download.

5. In any given year, the Antitrust Division typically has roughly fifty international cartel investigations going on. Scott D. Hammond, Deputy Asst. Att'y General for Crim. Enforcement, Antitrust Div., U.S. Dep't of Justice, *The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades* 3 (25 Feb. 2010) ("*Evolution of Criminal Enforcement*"), http://www.justice.gov/atr/public/speeches/255515.pdf.

6. *See, e.g., id*., at 7; Belinda A. Barnett, Sr. Counsel to the Deputy Asst. Att'y General for Crim. Enforcement, Antitrust Div., U.S. Dep't of Justice, *Criminalization of Cartel Conduct—The Changing Landscape* 1-3 (3 Apr. 2009) ("*Criminalizing Cartel Conduct*"), http://www.justice.gov/sites/default/files/atr/legacy/2009/07/10/247824.pdf.

7. *See* U.S. Dep't of Justice Antitrust Div. Update Spring 2014, http://www.justice.gov/atr/division-update/2014/criminal-program (in fiscal year 2013, ten foreign nationals were sentenced to prison); U.S. Dep't of Justice Antitrust Div. Update Spring 2011: Criminal Program, http://www.justice.gov/atr/public-documents/division-update-spring-2011/criminal-program-update-2011 (through fiscal year 2010, forty-nine foreign defendants were serving or had served sentences in U.S. prisons for antitrust violations or obstruction charges); Scott D. Hammond, *Evolution of Criminal Enforcement*, note 5 *supra*, at 7; Scott D. Hammond, Deputy Asst. Att'y General for Crim. Enforcement, Antitrust Div., U.S. Dep't of Justice, *Charting New Waters In International Cartel Prosecutions* 1 (2 Mar. 2006) ("*Charting New Waters*"), http://www.justice.gov/atr/file/518446/download.

8. 15 U.S.C. §1, as amended. Price-fixing became a felony antitrust violation in 1974, punishable by up to three years in prison. Since then, the maximum prison term has increased steadily. Before 1974, price-fixing was a misdemeanor, carrying a maximum prison term of one year.

9. Scott D. Hammond, *Evolution of Criminal Enforcement*, note 5 *supra*, at 11. *See also* Bill Baer, *Reflections on Enforcement*, note 4 *supra*, at 3 ("Experience teaches that the threat of prison time is the most effective deterrent against criminal antitrust violations".)

10. Thomas O. Barnett, Asst. Att'y General, Antitrust Div., U.S. Dep't of Justice, *Global Antitrust Enforcement* 4 (26 Sept. 2007) ("*Global Antitrust Enforcement*") (emphasis in original), http://www.justice.gov/atr/file/519231/download; Gerald F. Masoudi, Deputy Asst. Att'y General, U.S. Dep't of Justice, *Cartel Enforcement In The United States (And Beyond)* 5 (16 Feb. 2007) ("*Cartel Enforcement*"), http://www.justice.gov/atr/file/519316/download.

11. *See, e.g.*, Scott D. Hammond, *Charting New Waters*, note 7 *supra*, at 16.

12. No. Cr. 11-00166 (N.D. Cal.) ("*Chen*").

13. Defendant Andrew Chen's Reply to United States' 5 Sentencing Memorandum 1-2, 6, 10, *Chen*, note 12 *supra*, Docket No. 40 (1 Feb. 2013); Transcript 4, *Chen*, note 12 *supra*, Docket No. 45 (filed 15 Feb. 2013).

14. Declaration of Maxwell M. Bleecher ¶ 4, *Chen*, note 12 *supra*, Docket No. 37-6 (filed 30 Jan. 2013).

15. United States' Sentencing Memorandum and Motion for Downward Departure Under U.S.S.G. §5K1.1, at 1, *Chen*, note 12 *supra*, Docket No. 33 (filed 29 Jan. 2013); Transcript, *Chen*, note 12 *supra*, at 6, 10-12, 20.

16. Transcript, *Chen,* note 12 *supra*, at 26, 27-28.

17. *Annual Report on Competition Policy Developments in the United States—2014*, at 7 (16-8 June 2015). *See also* Press Release, U.S. Dep't of Justice, *Current and Former Executives of an Automotive Parts Manufacturer Indicted for Roles in Conspiracy to Fix Prices - Investigation Has Resulted in Charges Against 90 Individuals and Corporations* (21 May 2015), http://www.justice.gov/opa/pr/current-and-former-executives-automotive-parts-manufacturer-indicted-roles-conspiracy-fix-0; Lipman, *Execs Charged For Fixing Spark Plug Prices To Ford, Others*, Law360 (21 May 2015), http://www.law360.com/articles/658827/print?section=competition.

18. *See* Behre, Briggerman, and Anderson, *DOJ Is Losing The Battle To Prosecute Foreign Executives,* Law360 (3 Mar. 2015), http://www.law360.com/articles/626482/doj-is-losing-the-battle-to-prosecute-foreign-executives; Krotoski, *Extradition in International Antitrust Enforcement Cases*, The Antitrust Source 2 n.8 (Apr. 2015), http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/apr15_krotoski_4_22f.authcheckdam.pdf.

19. *See, e.g., United States v. Hayes*, 12 mj 3229 (PAC) (JCF), 2015 WL 4620254, at **2-4 (S.D.N.Y. 3 Aug. 2015), *appeal filed*, Docket No. 15-2597 (2d Cir. 3 Aug. 2015).

20. *See, e.g.,* Press Release, U.S. Dep't of Justice, *Former U.K. Rabobank Trader Appears in U.S. Court to Face Libor Interest Rate Manipulation Charges* (20 Mar. 2015), http://www.justice.gov/sites/default/files/atr/legacy/2015/03/20/312654.pdf; Press Release, U.S. Dep't of Justice, *ICAP Brokers Face Felony Charges for Alleged Long-Running Manipulation of LIBOR Interest Rates* (25 Sept. 2013), http://www.justice.gov/opa/pr/icap-brokers-face-felony-charges-alleged-long-running-manipulation-libor-interest-rates.

21. John W. Connor, *Problems With Prison in International Cartel Cases* 27 (20 June 2011) (based on data up to 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2166414 (Open PDF in Browser).

22. If a non-U.S. national is brought to the United States, the individual may assert a "speedy trial" argument in moving to dismiss the case. Although an indicted defendant's absence from the United States does not relieve the government of its obligation to make good-faith efforts to secure the defendant's presence for trial, the government is not required to request extradition if it would be "futile" to do so. *See* Iraola, *Due Process, the Sixth Amendment, and International Extradition*, 90 neb. l. rev. 752, 774, 784 (2012). Where an individual knows of the indictment and remains outside the United States in a country where extradition is impossible or unlikely, the individual would generally seem more interested in delaying, not expediting, resolution of the pending charges. *See, e.g., United States v. Wanigasinghe*, 545 F.3d 595, 599 (7th Cir. 2008), *cert denied*, 556 U.S. 1112 (2009).

23. *See, e.g., United States v. Hayes*, No. 12 mj 3229 (PAC) (JCF), 2015 WL 4620254 (S.D.N.Y. 3 Aug. 2015) (refusing to dismiss a criminal complaint against a Swiss national, living in Switzerland, for manipulating LIBOR yen transactions), *appeal filed*, Docket No. 15-2597 (2d Cir. 13 Aug. 2015).

24. Robert Burns, *To a Mouse,* in Kilmarnock volume (1786).

25. Lipman, *DOJ's Baer Promises More Extradition Fights,* Law360 (15 May 2015), http://www.law360.com/articles/656850/exclusive-doj-s-baer-promises-more-extradupition-fights [sic].

26. U.S. Dep't of Justice, U.S. Attorneys' Manual §9-15.100 (International Extradition and Related Matters), http://www.justice.gov/usam/usam-9-15000-international-extradition-and-related-matters. *See also* ABA Section of Antitrust Law, International Antitrust Cooperation Handbook 9 (2004) ("International Cooperation"). Note, however, that the U.S. Supreme Court has upheld "non-formal" transfer of individuals to the United States for trial—in other words, abduction—under what is often referred to as the *Ker-Frisbie* doctrine. *See*, *e.g.*, *United States v. Alvarez-Machain*, 504 U.S. 655, 657 (1992) ("The issue in this case is whether a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, thereby acquires a defense to the jurisdiction of this country's courts. We

hold that he does not, and that he may be tried in federal district court for violations of the criminal law of the United States"). *But see United States v. Toscanino*, 500 F.2d 267, 275 (2d Cir. 1974) ("We view due process as now requiring a court to divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights").

27. *See generally* list of countries with an extradition treaty with the United States, http://www.state.gov/documents/organization/71600.pdf.

28. *See generally* 18 U.S.C. §§ 3181 *et seq*.; U.S. Dep't of Justice, U.S. Attorneys' Manual, note 26 *supra*, §§ 9-15.100 *et seq*., http://www.justice.gov/usam/usam-9-15000-international-extradition-and-related-matters#9-15.700; U.S. Dep't of Justice, U.S. Attorneys' Manual, note 26 *supra*, *Criminal Resource Manual* § 612, http://www.justice.gov/usam/criminal-resource-manual-612-role-department-state-foreign-extradition-requests.

29. *Hilton v. Kerry*, 754 F.3d 79, 83 (1st Cir. 2014) (internal quotations and citations omitted).

30. *See generally id.; United States v. Kin-Hong*, 110 F.3d 103 (1st Cir. 1997); 18 U.S.C. § 3186.

31. ABA Section of Antitrust Law, International Cooperation, note 26 *supra*.

32. Article II, Treaty of Extradition Between the United States of America and the United States of Brazil (in force 17 Dec. 1964), 15 UST 2093.

33. *See* ABA Section of Antitrust Law, International Cooperation, note 26 *supra*, at 65.

34. *Report on International Extradition Submitted to the Congress Pursuant to Section 211 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Public Law 106-113)* 1-2 (27 Mar. 2000).

35. *Id.* at 2.

36. *Id.*

37. ABA Section of Antitrust Law, International Cooperation, note 26 *supra*, at 65-66.

38. *Id.* at 66.

39. *Id.*

40. ABA Section of Antitrust Law, International Cooperation, note 26 *supra*, at 10 (emphasis added).

41. Article III, Treaty of Extradition Between the United States of America and the United States of Brazil (in force 17 Dec., 1964), 15 UST 2093.

42. Michael John Garcia and Charles Doyle, *Extradition to and from the United States: Overview of the Law and Recent Treaties* 9-10 (Cong. Res. Serv. 2010).

43. Lipman, *DOJ Official Warns Extradition" "Safe Havens" Fading*, Law360 (5 June 2014), http://www.law360.com/articles/545218/doj-official-warns-extradition-safe-havens-fading.

44. *See generally* Belinda A. Barnett, *Criminalizing Cartel Conduct*, note 6 *supra*, at 4-8.

45. *See generally* Shaffer and Nesbitt, *Criminalizing Cartels: A Global Trend?* 4, 26-29 (Table 1) (2015) ("*Criminalizing Cartels*"), http://ssrn.com/abstract=1865971 (Open PDF in Browser); Scott D. Hammond, *International Developments in Anti-Cartel Enforcement* (12-13 Mar. 2015) (detailing recent antitrust enforcement, including criminal prosecution, worldwide), http://www.nysba.org/Sections/International/Events/2015/Zurich_Regional_Meeting/Coursebook/Thursday_-_Antitrust/Scott_Hammond_powerpoint_presentation.html.

46. Shaffer and Nesbitt, *Criminalizing Cartels*, note 45 *supra*, at 9, 17 (footnotes omitted).

47. *See, e.g.*, Basic Law for the Federal Republic of Germany [*Grundgesetz*], Article 16 (2), 29 July 2009, http://www.iuscomp.org/gla/statutes/GG.htm#16; Article 8 of the Extradition Law of the People's Republic of China, http://www.gov.cn/english/laws/2005-09/22/content_68710.htm; Article 4 of the Law of Extradition of the Republic of China, http://law.moj.gov.tw/Eng/news/news_detail.aspx?id=192; Article 2, Law of Extradition of Japan, http://www.moj.go.jp/ENGLISH/information/loe-01.html. *See also* Joshua and Camesasca, *An Antitrust NATO—the DOJ's "Foreign Policy" in the War Against International Cartels*, European Antitrust Rev. (2006), http://www.howrey.com/docs/AnAntitrustNATO_GCREuropeanATReview.pdf.

48. *United States v. Valentine*, 81 F.2d 32, 35 (2d Cir.), *affirmed sub nom. Valentine v. United States ex rel. Neidecker*, 299 U.S. 5 (1936).

49. *Id.*, 299 U.S. at 18.

50. 18 U.S.C. § 3196: "If the applicable treaty or convention does not obligate the United States to extradite its citizens to a foreign country, the Secretary of State may, nevertheless, order the surrender to that country of a United States citizen whose extradition has been requested by that country if the other requirements of that treaty or convention are met."

51. Article 3 of the Extradition Treaty between France and the United States of America, 23 April 1996, provides: "There is no obligation upon the Requested State to grant the extradition of a person who is a national of the Requested State, but the executive authority of the United States shall have the power to surrender a national of the United States if, in its discretion, it deems it proper to do so." *See* U.S.-France., Art. 3, S. Treaty Doc. No. 105-13 (1996).

52. Article VII, Treaty of Extradition Between the United States of America and the United States of Brazil (in force 17 Dec. 1964), 15 UST 2093. This provision is subject to an interpretation: "The Contracting Parties are not obliged by this Treaty to grant extradition of their nationals. However, if the Constitution and laws of the requested State do not prohibit it, its executive authority shall have the power to surrender a national if, in its discretion, it be deemed proper to do so." Article I, Additional Protocol to the Treaty of Extradition of January 13, 1961, Between the United States of America and the United States of Brazil (in force 17 Dec. 1964), 15 UST 2093.

53. *See, e.g.,* Extradition Treaty between the United States and the Republic of Korea, Art. 3, S. Treaty Doc. 106-2 (in force 20 Dec. 1999): "1. Neither Contracting State shall be bound to extradite its own nationals, but the Requested State shall have the power to extradite such person if, in its discretion, it be deemed proper to do so. 2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution." *See also* Extradition Treaty between the United States and Poland, Art. 4, S. Treaty Doc. 105-14 (in force 1 Feb. 2010) (same).

54. *See, e.g., United States v. Kin-Hong*, 110 F.3d 103, 116 (1st Cir. 1997).

55. *See* McGovern, Toh and Jo, *Extradition of Japanese Nationals: A Growing Threat in U.S. Prosecutions of International Cartels?* 12-14 (Apr. 2015) ("*Extradition of Japanese Nationals*") (discussing recent criminal cases in Japan), https://www.ropesgray.com/~/media/Files/articles/2015/April/20150402-Extradition-of-Japanese-Nationals.ashx (download), *published* in 43 J. Japan. Inst. of Inter. Bus. Law (No.3 Mar 2015). The Japan Fair Trade Commission (JFTC) investigates potential antitrust violations, and can submit cases for criminal prosecution. *See* JFTC, Press Releases for 2002-2015, http://www.jftc.go.jp/en/pressreleases/index.html, *linking to Enforcement of the Antimonopoly Act in FY2013* (28 May 2014) (In fiscal year 2013, the JFTC filed criminal accusations with the Public Prosecutor General against eight companies and eight employees.); *Enforcement of the Antimonopoly Act in FY2012* (29 May 2013) (In fiscal year 2012, the JFTC filed a criminal accusation with the Public Prosecutor General against seven individuals and three

companies in connection with a price-fixing cartel by bearing manufacturers.). The JFTC also issues cease and desist orders against price-fixing and bid-rigging cartels. *See Enforcement of the Antimonopoly Act in FY2014* (27 May 2015) (In fiscal year 2014, the JFTC issued two cease and desist orders in bid-rigging cases, and five in connection with price-fixing cartels.).

56. Lipman, *DOJ Official Warns Extradition 'Safe Havens' Fading*, note 43 *supra*.

57. *See generally* McGovern, Toh and Jo, *Extradition of Japanese Nationals*, note 55 *supra*.

58. Andreas Stephan, *Survey of Public Attitudes to Price Fixing in the UK, Germany, Italy and the USA* 17 (2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2642181 (Open PDF in Browser).

59. *Id.* at 16.

60. *Id.* at 19.

61. Article IV, Treaty of Extradition Between the United States of America and the United States of Brazil (in force 17 Dec. 1964), 15 UST 2093.

62. Scott D. Hammond, *Charting New Waters*, note 7 *supra*, at 7-8.

63. *See* United States Sentencing Memorandum Re Homy Hong Ming Hsu 2, Docket No. 274 (filed 15 Jan. 2013), *United States v. Eagle Eyes Traffic Industrial Co.*, No. 11-cr-00488-RS (N.D. Cal.) ("*Eagle Eyes*").

64. United States' Opposition to Defendant Homy Hong-Ming Hsu's Motion to Modify Conditions of Pretrial Release 2, *Eagle Eyes*, note 63 *supra*, Docket No. 48 (filed 18 Jan. 2012).

65. Transcript 13-14, *Eagle Eyes*, note 63 *supra*, Docket No. 256 (filed 18 Oct. 2012), and Transcript 32, Docket No. 293 (filed 28 Jan. 2013).

66. Gerald F. Masoudi, *Cartel Enforcement*, note 10 *supra*, at 3-4. *See also* Scott D. Hammond, *Charting New Waters*, note 7 *supra*, at 9.

67. Notices, Interpol, http://www.interpol.int/INTERPOL-expertise/Notices.

68. U.S. Dep't of Justice, U.S. Attorneys' Manual, note 26 *supra*, *Criminal Resources Manual* § 611 Interpol Red Notices (3 June 2015), http://www.justice.gov/usam/criminal-resource-manual-611-interpol-red-notices

69. Scott D. Hammond, Director of Criminal Enforcement, Antitrust Div., U.S. Dep't of Justice, *A Summary Overview of the Antitrust Division's Criminal Enforcement Program* 3 (23 Jan. 2003), http://www.justice.gov/atr/file/518876/download.

70. Scott D. Hammond, *Charting New Waters*, note 7 *supra*, at 9; Gerald F. Masoudi, *Cartel Enforcement*, note 10 *supra*, at 4.

71. Thomas O. Barnett, *Global Antitrust Enforcement*, note 10 *supra*, at 3.

72. Press Release, Antitrust Div., *U.S. Dep't of Justice, U.S. Company and U.K. Parent to Plead Guilty to Charges Involving an International Electrical Carbon Products Cartel* (4 Nov. 2002), http://www.justice.gov/atr/public/press_releases/2002/200423.htm.

73. Press Release, Antitrust Div., U.S. Dep't of Justice, *Former CEO of The Morgan Crucible Co. Sentenced to Serve 18 Months in Prison for Role in Conspiracy to Obstruct Justice* (10 Dec. 2010), http://www.justice.gov/sites/default/files/atr/legacy/2010/12/10/265028.pdf.

74. Second Superseding Indictment, *United States v. Norris*, No. 2:03-cr-00632 (E.D. Pa. 28 Sept. 2004). *See generally United States v. Norris*, 719 F. Supp. 2d 557 and 753 F. Supp. 2d 492 (E.D. Pa. 2010).

75. *See Norris v. Government of the United States of America*, [2005] UKCLR 1205 (MC) (finding the alleged price-fixing conduct was an extraditable offense); *Norris v. Government of the United States of America*, [2007] EWHC 71 (Admin) (holding the facts alleged by the United States fell within "the broad umbrella offence of conspiracy to defraud" in English common law, and that this was sufficient to warrant extradition).

76. *Norris v. Government of the United States of America*, [2008] UKHL 16, [62], [2008] 2 All E.R. 1103 (Eng.). The United Kingdom first criminalized price-fixing in 2003.

77. *Norris v. Government of the United States of America*, [2009] EWHC (Admin) 995, [2009] Lloyd's Rep FC 475 (Eng.).

78. *See generally* Wilson, *Extradition: The New Sword or the Mouse that Roared?*, The Antitrust Source 1, 1-2 (April 2011), http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/apr11-wilson_4-20f.authcheckdam.pdf; *Norris v. Government of the United States*, [2010] UKSC 9, https://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0052_Judgment.pdf.

79. *United States v. Norris*, No. 10-4658, 2011 U.S. App. LEXIS 5946 (3d Cir. 23 Mar. 2011) (unpublished opinion), *cert. denied*, 132 S.Ct. 250 (2011).

80. Thomas O. Barnett, Assistant Att'y General, Antitrust Div., U.S. Dep't of Justice, *Seven Steps to Better Cartel Enforcement* 6 (2 June 2006), http://www.justice.gov/atr/file/518401/download.

81. Government's Memorandum in Opposition to Defendants' Motion for a New Trial In the Interest of Justice Under Rule 33 of the Federal Rules of Criminal Procedure 2, *United States v. Yaron*, S2-10-CR-363 (GBD) (S.D.N.Y. 16 Apr. 2012).

82. Indictment, *United States v. Porath*, 10-CR-00120 (S.D.N.Y. 18 Feb. 2010); Press Release, Antitrust Div., U.S. Dep't of Justice, *Former Contractor Indicted In Bid-Rigging Conspiracy At New York City Hospital And For Tax Fraud* (31 Mar. 2010), http://www.justice.gov/atr/public/press_releases/2010/257286.pdf.

83. Press Release, U.S. Dep't of Justice, *Owner of Insulation Service Company Pleads Guilty to Million Dollar Bid-Rigging and Fraud Conspiracies at New York City Hospital* (11 July 2012), http://www.justice.gov/opa/pr/owner-insulation-service-company-pleads-guilty-million-dollar-bid-rigging-and-fraud; Krotoski, *Extradition in International Antitrust Enforcement Cases*, The Antitrust Source 5-6 (Apr. 2015), http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/apr15_krotoski_4_22f.authcheckdam.pdf.

84. *See* Press Release, U.S. Dep't of Justice, *First Ever Extradition On Antitrust Charge* (4 Apr. 2014) ("*First Ever Extradition On Antitrust Charge*"), http://www.justice.gov/opa/pr/first-ever-extradition-antitrust-charge.

85. *See* Plea Agreement, *United States v. Parker ITR S.r.l.*, Crim. No. H-10-75 (S. D. Tex. 25 Mar. 2010), http://www.justice.gov/file/507201/download. *See also* Press Release, U.S. Dep't of Justice, *Italian Subsidiary Of U.S.-Based Company Agrees To Plead Guilty For Participating In International Price-Fixing Conspiracy* (16 Feb. 2010), www.justice.gov/opa/pr/2010/February/10-at-144.html.

86. Press Release, *U.S. Dep't of Justice, Former Marine Hose Executive Who Was Extradited to United States Pleads Guilty for Participating in Worldwide Bid-Rigging Conspiracy* (24 Apr. 2014) ("*Pisciotti Conviction Release*"), http://www.justice.gov/opa/pr/former-marine-hose-executive-who-was-extradited-united-states-pleads-guilty-participating.

87. *Id.*; Indictment, *United States v. Romano Pisciotti*, No. 10-CR-60232 (S.D. Fla. 26 Aug. 2010), http://www.justice.gov/file/507556/download.

88. *See* Treaty between the Federal Republic of Germany and the United States of America concerning extradition, 20 July 1978 (as amended on 21 October 1986 and 18 April 2006).

89. Press Release, U.S. Dep't of Justice, *First Ever Extradition On Antitrust Charge*, note 84 *supra*.

90. Plea Agreement, *United States v. Romano Pisciotti*, No. 10-CR-60232 (S.D. Fla. 24 Apr. 2014), http://www.justice.gov/file/507541/download.

91. Press Release, U.S. Dep't of Justice, *Pisciotti Conviction Release*, note 86 *supra*.

92. Press Release, U.S. Dep't of Justice, *Bennett Environmental Inc. Pleads Guilty to Defrauding the U.S. Environmental Protection Agency* (31 July 2008), http://www.justice.gov/archive/opa/pr/2008/July/08-at-676.html. *See also* Plea Agreement, *United States v. Bennett Environmental, Inc*., No. 08-CR-534 (D.N.J. 31 July 2008), http://www.justice.gov/file/489246/download.

93. Press Release, U.S. Dep't of Justice, *Three Individuals Indicted for Roles in Conspiracy Schemes Involving Two U.S. Environmental Protection Agency Superfund Sites in New Jersey* (11 Sept. 2009), http://www.justice.gov/opa/pr/three-individuals-indicted-roles-conspiracy-schemes-involving-two-us-environmental-protection.

94. Press Release, *U.S. Dep't of Justice, Former Project Manager Sentenced to Serve Time in Prison for Role in Bid Rigging and Other Fraudulent Schemes Involving Two EPA Superfund Sites in New Jersey* (3 Mar. 2014), http://www.justice.gov/atr/public/press_releases/2014/304133.pdf; *see also* Press Release, U.S. Dep't of Justice, *Former Representative of Backfill Subcontractor Sentenced to 33 Months in Jail for Kickback and Fraud Scheme* (23 Feb. 2010), http://www.justice.gov/atr/public/press_releases/2010/255575.pdf.

95. Press Release, U.S. Dep't of Justice, *Canadian Executive Extradited on Major Fraud Charges Involving a New Jersey Environmental Protection Agency Superfund Site* (17 Nov. 2014) ("*Canadian Executive Extradited on Major Fraud Charges*"), http://www.justice.gov/opa/pr/canadian-executive-extradited-major-fraud-charges-involving-new-jersey-environmental; Press Release, Diversified Royalty, *Diversified Royalty Corp. Announces Filing of Final Prospectus and Update on Litigation Involving John Bennett* (31 Oct. 2014) (noting dismissal by the Supreme Court of Canada), http://www.marketwired.com/press-release/diversified-royalty-corp-announces-filing-final-prospectus-update-on-litigation-involving-tsx-div-1963398.htm.

96. Press Release, U.S. Dep't of Justice, *Canadian Executive Extradited on Major Fraud Charges*, note 95 *supra*.

97. *Id.*

98. *See* Plea Agreement, note 92 *supra*, ¶ 1, *United States v. Bennett Environmental, Inc*.

99. Plea Agreement ¶ 4(a), *United States v. Romano Pisciotti*, No. 10-CR-60232 (S.D. Fla. 24 Apr. 2014), http://www.justice.gov/file/507541/download.

100. Press Release, U.S. Dep't of Justice, *Owner of Insulation Service Company Pleads Guilty to Million Dollar Bid-Rigging and Fraud Conspiracies at New York City Hospital* (11 July 2012), http://www.justice.gov/opa/pr/owner-insulation-service-company-pleads-guilty-million-dollar-bid-rigging-and-fraud.

101. Lao-tzu, The Quotations Page, http://www.quotationspage.com/quotes/Lao-tzu/.

102. *See generally* Special Relationship, Wikipedia, https://en.wikipedia.org/wiki/Special_Relationship.

103. *See, e.g.*, Thomas O. Barnett, Asst. Att'y General, Antitrust Div., U.S. Dep't of Justice, *Criminal Enforcement of Antitrust Laws: The U.S. Model* 6 (14 Sept. 2006), http://www.justice.gov/atr/file/518376/download:

> The Division has uncovered cartel activity in conjunction with crimes such as mail and wire fraud, bribery, money laundering, and tax offenses, to name just a few. Antitrust prosecutors should have the power and the inclination to pursue a cartelist for each and every criminal violation, both to vindicate such proscriptions on their own merits and to induce cooperation against other members of the cartel.

See also Scott D. Hammond, Dir. of Crim. Enforcement, Antitrust Div., U.S. Dep't of Justice, *A Review of Recent Cases and Developments in the Antitrust Division's Criminal Enforcement Program* 8 (7 Mar. 2002) (describing two investigations where "the Division uncovered and prosecuted, in addition to the Sherman Act violations, other offenses such as tax violations, bribery, and money laundering. Such collateral offenses often accompany bid-rigging conspiracies, and the Division has aggressively prosecuted such offenses in conjunction with antitrust crimes"), http://www.justice.gov/atr/file/519841/download.

104. Behre, Briggerman, and Anderson, *DOJ Is Losing The Battle To Prosecute Foreign Executives*, LAW360 (3 Mar. 2015), http://www.law360.com/articles/626482/doj-is-losing-the-battle-to-prosecute-foreign-executive.

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***Jon Secada, *I'm Never Too Far Away*, on I'M NEVER TOO FAR AWAY (Secada Prod. 2012) ("Even when it seems I'm gone/On those nights when you're alone/I'm never too far away"**