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*Antitrust,  
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## For the first time Germany extradites former executive to the US on antitrust charges

*By Dr. Annette Mutschler-Siebert, M. Jur., Dr. Wilhelm Hartung and Marion Baumann*

Romano Piscioti, an Italian national, was extradited from Germany in April 2014 to personally face criminal charges in the US for participating in a worldwide cartel. This is the first time an individual has been extradited from Germany to the US on antitrust charges.

### Background

On 28 January 2009 the European Commission determined that several competing firms active in the marine hose sector in the European market (amongst others Parker ITR Srl, Parker Hannifin Corporation, Bridgestone Corporation, The Yokohama Rubber Company Limited and Trelleborg Industries SAS) had infringed antitrust law by allocating tenders; fixing prices, quotas and sales conditions; geographic market sharing and the exchange of sensitive information on prices, sales volumes and procurement tenders (cartel prohibition – Article 101 TFEU). The cartel was found to have lasted from 1 April 1986 through 2 May 2007 - not all companies participating in the cartel throughout the whole period. Based on this infringement the European Commission imposed fines in the total amount of EUR 131.5 Mio. Fines imposed on Parker ITR Srl amounted to EUR 25.6 Mio.; in an amount of EUR 8.3 Mio. in joint liability with its indirect parent company Parker Hannifin Corporation<sup>1</sup>.

Five of the companies concerned applied for (partial) annulment/reduction of the decision of the European Commission<sup>2</sup>. On 17 May 2013 the European General Court partially annulled the European Commission's decision against Parker ITR Srl and Parker Hannifin Corporation and reduced the fine imposed on Parker ITR Srl to EUR 6.4 Mio. of which Parker Hannifin Corporation is jointly liable for EUR 6.3 Mio. The European General Court in particular reasoned that the European Commission did not prove that according to the criterion of economic continuity Parker ITR Srl, who became owner of the assets which contributed to the infringement only as from 1 January 2002, can be found responsible for the period of infringement prior to 1 January 2002<sup>3</sup>.

### Charges in the US

Romano Piscioti was a former executive of Parker ITR Srl charged with participating in a conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares. In a press release of 4 April 2014 the US Department of Justice stated that [a]ccording to a one-count felony indictment filed under seal on Aug. 26, 2010, and ordered unsealed on Aug. 5, 2013, in U.S. District Court in the Southern District of Florida, Piscioti carried out the conspiracy by agreeing during meetings, conversations and communications to allocate shares of the marine hose market among the conspirators; use a price list for marine hose in order to implement the conspiracy; and not compete for customers with other marine hose sellers either by not submitting prices

<sup>1</sup> European Commission, 28.01.2009, COMP/39406 – Marine Hoses.

<sup>2</sup> European General Court, 17.05.2013, T-146/09, T-147/09, T-148/09 and T-154/09.

<sup>3</sup> European General Court, 17.05.2013, T-146/09.

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*or bids or by submitting intentionally high prices or bids, all in accordance with the agreements reached among the conspiring companies. As part of the conspiracy, Piscioti and his conspirators provided information received from customers in the United States and elsewhere about upcoming marine hose jobs to a co-conspirator who served as the coordinator of the conspiracy. That coordinator acted as a clearinghouse for bidding information that was shared among the conspirators, and was paid by the manufacturers for coordinating the conspiracy.*<sup>4</sup>

While under indictment, Romano Piscioti traveled to Germany and was arrested there on 17 June 2013. On 22 January 2014 the German Higher Regional Court (*Oberlandesgericht*) Frankfurt declared an extradition to the US to be permissible<sup>5</sup>. A subsequent appeal to the German Federal Constitutional Court (*Bundesverfassungsgericht*) did not prevent Roman Piscioti from being extradited<sup>6</sup>.

The extradition of Romano Piscioti was considered permissible in particular for two reasons: Firstly, Romano Piscioti is not only accused of antitrust breaches but also of bid rigging, which constitutes a criminal offence in Germany (§ 298 German Criminal Code - *Strafgesetzbuch*) and thus fulfills the extradition requirements of double criminality under the laws of both countries (*beiderseitige Strafbarkeit*) pursuant to the German Act on International Cooperation in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) and as set forth in the Extradition Treaties between EU/Germany and the US. Secondly, Romano Piscioti is an Italian national. Thus, he could not claim the constitutional right of protection against extradition available to German nationals (Article 16 para 2 German Constitution - *Grundgesetz*). The decisions show an increasing openness to international cooperation in cartel enforcement. However, an extradition from Germany solely for price fixing or market allocation (which do not constitute criminal offences in Germany) or of German conspirators would still face significant legal hurdles.

Romano Piscotti arrived in the US on 3 April 2014. He could be sentenced to up to ten years in prison and fines of up to USD 1 Mio.

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<sup>4</sup> Source: US Department of Justice, press release of 04.04.2014, <http://www.justice.gov/opa/pr/2014/April/14-at-340.html>

<sup>5</sup> OLG Frankfurt, 22.01.2014 - 2 AusI 104/13 (grounds for judgment not published yet).

<sup>6</sup> BVerfG, 17.02.2014 - 2 BvQ 4/14.

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