

## Air cargo defendant extradited to stand trial

17 January 2020

The Antitrust Division (Division) announced Monday that Maria Christina "Meta" Ullings, a Dutch national and former executive for Martinair Holland N.V., was extradited from Italy to the United States after being apprehended by Italian authorities in Sicily in July 2019.<sup>1</sup> Ullings was indicted nearly 10 years ago as part of the Division's prosecution of a price-fixing conspiracy in the air cargo industry. Ullings arrived in the United States on 10 January and made her initial appearance in U.S. District Court on 13 January. Ullings' extradition represents the second time that a foreign national has been extradited for solely criminal antitrust charges.

Over the last decade, the Division has increasingly flexed its extradition powers. To successfully extradite a fugitive to the United States for antitrust violations, there must be both an existing extradition treaty and "dual criminality." In most cases, the presence of an extradition treaty can be assumed as the United States has such treaties with all but a handful of nations.<sup>2</sup> Therefore, the Division's ability to pursue extradition in a criminal antitrust case usually hinges on the existence of "dual criminality," or whether the alleged offense is a criminal violation in both countries. Historically, very few countries had criminal cartel laws on their books, sharply limiting the Division's ability to pursue extradition in most fugitive cases. In the last 10 years, however, there has been an unprecedented boom in the criminalization of cartel conduct. In 1990 only 13 countries had laws that criminalized any cartel conduct. Today, however, that number has more than doubled and the criminalization of cartel conduct is clearly trending upwards.<sup>3</sup> As more nations adopt criminal sanctions for cartel conduct, the risk of extradition grows accordingly.

Of course, issues arise in assessing dual criminality. Although cartel prohibitions are increasingly prevalent globally, not all criminal antitrust laws are identical. For example, while more than half of the European Union member states and the BRICS nations: Brazil, Russia, India, China, and South Africa have criminalized cartel conduct in some form, several of these nations provide criminal sanctions only for bid-rigging.<sup>4</sup> As a result, in these jurisdictions, unless the Division has alleged bid-rigging as part of the offense, there would be no dual criminality and accordingly no extradition. Finally, while dual criminality may exist in more and more cases, the nationality of the defendant may prevent or reduce the chance of extradition. Some nations, such as Australia,

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<sup>1</sup> Press release, former Air cargo executive extradited from Italy for price-fixing, United States Department Of Justice (13 January 2020): available [here](#).

<sup>2</sup> The United States has bilateral extradition treaties with over 100 countries. See CONG. RESEARCH SERV., 98-958, EXTRADITION TO AND FROM THE UNITED STATES: OVERVIEW OF THE LAW AND CONTEMPORARY TREATIES 35-40 (2016), available [here](#).

<sup>3</sup> In 2010 the International Competition Network put the number at 20; recent scholarly work puts the number at approximately 30. See Gregory Shaffer, Nathaniel H. Nesbitt, and Spencer Weber Waller, Criminalizing Cartels: A Global Trend?, in research handbook on Comparative Competition Law (John Duns et al. eds. 2015) at 5: available [here](#).

<sup>4</sup> See *id.* at 3.

Brazil, Japan, and South Korea, limit the extradition of their citizens by treaty or statute.<sup>5</sup> Of course, this limitation on extradition of citizens from their home countries does not protect individuals traveling in or between foreign nations as shown by the fact that Italy arrested and extradited Ullings, a Dutch citizen. Over the last 10 years, the Division has successfully extradited at least six other individuals in criminal antitrust cases. Some notable examples include:

- **Ian Norris:** A British national indicted for price-fixing and obstruction of justice in 2003. Initially, Norris was to be extradited for both price-fixing and obstruction of justice, but in March 2008 the House of Lords ruled that he could not be extradited for price-fixing because it was not a criminal offense in the United Kingdom at the time the alleged conduct occurred.<sup>6</sup> Norris was extradited for obstruction of justice in March 2010 and convicted in July 2010.
- **David Porath:** An Israeli national indicted for bid-rigging, tax fraud, and false subscription in 2010. Porath was arrested in Israel in November 2010 and consented to voluntary extradition in January 2012 after an Israeli magistrate declared him extraditable. He returned to the United States in February 2012 and pled guilty to the indictment in July 2012.
- **Romano Piscioti:** An Italian national indicted for price-fixing, bid-rigging, and market allocation in August 2012. Piscioti was placed on Interpol Red Notice and subsequently arrested in Germany in April 2013. He was extradited to the United States nine months later and subsequently pled guilty to a one-count indictment. Piscioti's case was notably the first time that the Division successfully extradited an individual for strictly antitrust offenses.<sup>7</sup>

The current administration has emphasized its commitment to pursuing extradition for antitrust offenses. Makan Delrahim, assistant attorney general for the Antitrust Division, remarked that Ullings' extradition "demonstrates that those who violate U.S. antitrust laws and seek to evade justice will find no place to hide... With the cooperation of our law enforcement colleagues at home and around the world, the Division will aggressively pursue every avenue available in bringing price fixers to justice." Delrahim's principle deputy, Andrew Finch, similarly noted the importance of extraditing antitrust offenders in a speech in Seoul in May 2018.

Defendants, therefore, should not assume that they are beyond the reach of the Department of Justice simply because they reside abroad nor should defendants have a false sense of security with the passage of time as Ullings' case shows.

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<sup>5</sup> Id. at 4.

<sup>6</sup> Today, the United Kingdom does consider antitrust violations to be a criminal offense. See Christopher Thomas & Gianni De Stefano, Extradition & Antitrust: Cautionary Tales for Global Cartel Compliance, MLEX AB EXTRA (30 September 2016): available [here](#).

<sup>7</sup> Three other individuals – John Bennett, Paul Thompson, and Yuval Marshak – have been extradited for fraud offenses in joint investigations between the Antitrust Division and the Criminal Division.

## Contacts



**Kathryn (Katie) Hellings**  
Partner, Washington, D.C.  
T +1 202 637 5483  
[kathryn.hellings@hoganlovells.com](mailto:kathryn.hellings@hoganlovells.com)

**Susan Musser**  
Senior Associate, Washington, D.C.  
T +1 202 637 5457  
[susan.musser@hoganlovells.com](mailto:susan.musser@hoganlovells.com)



**Tyler Blake**  
Associate, Washington, D.C.  
T +1 202 637 2749  
[tyler.blake@hoganlovells.com](mailto:tyler.blake@hoganlovells.com)

**[www.hoganlovells.com](http://www.hoganlovells.com)**

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