

The DoJ succeeds in securing its fifth extradition: The increasing risks of cross-border prosecution for antitrust violations

Since the announcement of the Yates Memo, US antitrust authorities have upped the ante on pursuing personal liability for antitrust violations. The past 18 months alone have seen an astounding rise in the number of penalties and jail sentences imposed on executives caught up in cartel conduct. Pursuing individuals for antitrust liability is now becoming a cross border exercise as the Department of Justice ("DoJ") announced its fifth successful extradition of a foreign national on Friday.

Yuvall Marshak, an Israeli national, was extradited from Bulgaria and faces charges of fraud and money laundering in participating in multiple schemes between 2009-2013 to defraud a United States foreign aid program. The charges attract punishment of up to 20 years imprisonment and more than \$1 million in fines.

The decision shows that there are certainly no signs of slowing down in the Government's commitment to ensuring that individuals stay on the hook for their involvement in corporate wrongdoing. Particularly as a major focus of the Yates Memo is identifying the highest level executives within the organization for culpability.

Other participants of the fraudulent schemes sought leniency and entered into non-prosecution agreements and agreed to pay penalties of up to \$360,000 in exchange for their cooperation with the DoJ's Antitrust Division. These participants were companies who illegally received contracts under the scheme, often through the conduct of their employees. In participating in the Antitrust Division's Corporate Leniency Program these companies and their employees escaped full liability for their involvement. This represents an important exception to the Yates Memo; the Government has been careful to exclude the Corporate Leniency Program and its protections for cooperating individual employees from the Yates Memo's policy against granting immunity to individuals as part of corporate settlements.

It's also worth noting that while the high stakes for participating in cartel conduct are no longer limited to those residing within the US, extradition often requires that the conduct be a criminal offence in both of the jurisdictions involved. While certain cartel conduct has long been criminalized in the United States, there are still a significant number of jurisdictions where violation of cartel laws remains a civil liability.

This explains why the extradition of Marshak, as well as several of the prior extraditions secured by the DoJ have often relied on the cartel conduct in question being tied up with fraudulent activity and obstruction of justice charges to get over the line. Nonetheless, this technical challenge should certainly not distract major corporations and their corporate officers from adopting an abundance of caution in their day to day dealings and observing the highest standards of corporate compliance.

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