

**UK Supreme Court Dismisses Appeal to Halt Extradition to the U.S.
in Connection with Alleged Cartel Participation**

March 8, 2010

On February 24, the Supreme Court of the United Kingdom dismissed the appeal of Ian Norris, former CEO of The Morgan Crucible Company plc, paving the way for the first-ever extradition to the United States of a defendant in an antitrust case. The Antitrust Division of the U.S. Department of Justice (DOJ) is seeking Mr. Norris's extradition in connection with its prosecution of a price-fixing agreement relating to certain carbon products. With more and more countries (including several in the last year alone) criminalizing antitrust violations, the DOJ is likely to be increasingly aggressive in seeking extradition of suspected cartel participants who reside outside the United States.

In November 2002, UK engineering firm Morgan Crucible and its U.S. subsidiary, Morganite Inc., pleaded guilty to fixing the prices of certain carbon products, including carbon brushes and current collectors used in electrical motors, in violation of the Sherman Act, 15 U.S.C § 1. Under the terms of the plea agreement, Morgan Crucible and Morganite agreed to pay a fine of \$11 million for their participation in the carbon products cartel and for obstruction of justice. Four executives, including Ian Norris, were "carved out" of the plea agreement and remained subject to individual prosecution.

In 2003, Norris was indicted in the United States for Sherman Act violations related to the carbon products price-fixing agreements and for obstruction of justice. Since that time, the DOJ has sought to have Norris extradited on both the Sherman Act violation and on obstruction of justice charges. In March 2008, the Appellate Committee of the House of Lords, then the highest judicial body in the United Kingdom, ruled that Norris could not be extradited on the Sherman Act charge. The basis for the ruling of the House of Lords was that price-fixing was not a criminal offense in the UK at the time of the offense, and thus the "dual criminality" requirement of the UK's extradition treaty with the United States was not met.¹ The House of Lords rejected prosecutors' attempts to satisfy the dual criminality requirement by arguing that price-fixing constitutes the common law offense of conspiracy to defraud, but upheld the extradition order for the three ancillary obstruction charges and remanded to the lower courts to determine whether Norris is entitled to a Human Rights exception to extradition. The most recent decision of the UK Supreme Court upholds the decisions of the lower courts, finding that Norris should be extradited to face the obstruction of justice charges in a U.S. court. Norris has until March 10, 2010 to appeal the decision to the European Court of Human Rights.

1. Section 188 of the Enterprise Act of 2002 made price-fixing a criminal offense in the U.K. That law could not satisfy the dual criminality requirement, however, because it was not in effect during the time when the alleged conduct took place. While untested, the extradition of cartel participants who engaged in conduct after Section 188 took effect in 2003 presumably would be more straightforward.

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