

## Did Citi Dupe DOJ In Forex Investigation?

By **Matthew Perlman and Bryan Koenig**

*Law360 (October 10, 2019, 6:50 PM EDT)* -- A former Citigroup trader acquitted on charges of manipulating foreign exchange markets has accused the bank of fabricating a case for federal prosecutors in order to shield itself from liability, raising eyebrows in the antitrust bar since the government usually goes to great lengths to ensure it's not being duped.

Rohan Ramchandani was among three London-based traders from Citi, Barclays PLC and JPMorgan Chase & Co. acquitted in October 2018 of allegations they coordinated trading through a chatroom dubbed "The Cartel" to rig the spot market for exchanging euros and dollars.

Their indictments followed guilty pleas from several large banks that included more than \$5.6 billion in fines for antitrust violations related to the manipulation of global currency markets.

Ramchandani filed a malicious prosecution suit against Citi in New York federal court last week, claiming the information the bank provided to the U.S. Department of Justice as part of a cooperation deal purposely pinned all the alleged wrongdoing on him. The bank made the false statements, the trader said, in order to limit scrutiny of its managers and officers and other foreign exchange activity.

Why would Citi allegedly throw one of its own under the bus? Eric Meiring, a partner with Winston & Strawn LLP who served as head of the DOJ Antitrust Division's Washington Criminal II Section, declined to comment on the Citi case specifically, but told Law360 in general there is a strong incentive for a company to try to "quarantine" its exposure to a small subset within the business during an investigation.

This limits the number of employees involved, lessens criminal liability and helps with public relations by making it seem less like there's a systemic problem.

"The incentive is extraordinarily strong," Meiring said. "Put all three of those together, and most companies are going to do everything that they can to minimize the number of individuals within the scope of the DOJ investigation."

Michael S. Pasano, a shareholder with Carlton Fields LLP who focuses on white collar defense, told Law360 there are few realistic remedies for most people accused and later exonerated in criminal cases. Suits targeting prosecutors rarely succeed, but here, the trader is going after a third party, which he said could discourage companies from making use of the DOJ's leniency program.

“If this lawsuit holds up, it could send shock waves through a governmental system that heavily depends on plea deals and testimony of so-called cooperating witnesses,” Pasano said.

Citi has denied Ramchandani’s claims and vowed to contest them vigorously.

### **'Hard to Dupe'**

Despite Ramchandani’s allegations and the incentives for Citi, former DOJ prosecutors say it would be difficult to make one employee the fall guy for a broader conspiracy. The DOJ is not so easily fooled, they say, because its investigative practices are too detailed and too broad to not consider issues beyond what any one defendant or company might want it to focus on.

“It would be very hard to dupe the DOJ in this situation,” said Donald C. Klawiter of Klawiter PLLC, a former senior official with the Antitrust Division.

Lisa Phelan, a partner with Morrison & Foerster LLP who worked at the DOJ for more than 25 years and served as chief of national criminal enforcement and the Washington Criminal I Section of the Antitrust Division, spoke generally but declined to comment on the Citi case itself because the bank is a client of the firm.

She told Law360 that when the DOJ is conducting criminal antitrust investigations, it issues broad subpoenas requesting “all relevant information,” not just what companies offer to turn over.

“The company would be obligated to provide that, or it would be obstructing justice,” Phelan said.

She also noted that since most antitrust cases involve collusion among several companies, the DOJ subpoenas all of those suspected of being involved and compares what it finds from documents turned over by each of them to try to corroborate the stories.

“It would never rely on just one company's representation, or just what that company chose to bring forward,” Phelan said. “It would always get a much broader range of sources and then make decisions based on the totality of what it's seeing.”

During its investigations, the department also usually interviews the superiors and subordinates of the employees suspected of being involved in the alleged misconduct to see how deep, or high, the problem might run, Meiring said. It also looks for third parties that could have relevant information to compare with what the companies told them.

Investigators will also look for former or disgruntled employees, who Meiring said are a “huge potential source.”

“They're not going to be beholden to the corporation, so you may be able to get access out of them that's different from what you hear from corporate counsel,” Meiring said.

When it comes to deciding on criminal charges for individuals, Phelan said, prosecutors have to choose the cases they think they can win. The department may have considered charging additional people suspected of involvement but decided it would be too hard to convince a jury beyond a reasonable doubt.

“They may have focused on other individuals, but just not felt that they could meet that threshold,” she said.

Klawiter noted that “the DOJ’s Principles of Federal Prosecution set a strict standard for seeking indictment of an individual.”

“The internal review process at DOJ is quite rigorous, with ultimate review and signoff by the [assistant attorney general],” he said.

## **The Deal**

Citi paid a substantial financial penalty over the rate-rigging allegations, agreeing in its May 2015 guilty plea to fork over \$925 million to resolve the DOJ’s claims. The bank also agreed to pay some \$394 million to settle private claims over the conduct.

In his lawsuit, Ramchandani contends the government’s sentencing guidance for the plea makes clear that investigators relied on Citi to identify him as a potential wrongdoer and explain the meaning of the coded chatroom communications.

Klawiter said the agreement also contains a provision that would allow the DOJ to void the plea and reopen the matter if it finds Citi didn’t provide full and truthful cooperation. While he said it’s doubtful the department would revisit the investigation years later, an attempt by the bank to put one over on the government could have severe consequences.

“This is truly a nuclear [option] where DOJ would likely insist on a much higher penalty and, perhaps, prosecution of senior company officials,” Klawiter said in an email. “If there is evidence inconsistent with what the company told DOJ, DOJ would, I believe, pursue it aggressively. No prudent defense counsel would put a client in that situation intentionally.”

If Ramchandani’s lawsuit boils down to litigation of the government’s case, Klawiter says he will likely face an uphill evidentiary climb. Grand jury investigations in particular are protected by a cloak of secrecy, Klawiter said, noting that even in relying on evidence presented at trial, Ramchandani is in “uncharted waters.”

“Trying the DOJ’s investigation I think is going to be extremely difficult to put together,” he said in an interview.

## **‘A Particularly Difficult Case’**

Ramchandani’s acquittal, according to attorneys, does not appear to reflect a prosecution in bad faith, and his lawsuit against Citi doesn’t accuse the DOJ of knowing it was being misled.

Instead, Meiring notes the DOJ had just one cooperating witness — former Barclays and UBS Group AG trader Matthew Gardiner — to delve into the jargon-heavy chatrooms Ramchandani and the other traders used.

The conduct also occurred in a complicated industry that sometimes requires traders to communicate with each other, and the defense put up a witness that countered the government’s claims about the chatroom talk being pernicious.

“It was a particularly difficult case for DOJ to win,” said Meiring.

Even the jurors presiding over the traders’ fate recognized that prosecutors had a tough case. Jury foreman Lucien Samaha told reporters after the verdict, “It’s not that we didn’t believe these gentlemen did what they did, but in the end, there was not enough evidence.”

“We’re making a verdict based on the charges and how the judge instructs us to do that,” Samaha said.

Despite knowing ahead of trial that it would be difficult to win a conviction, the DOJ may have felt it had no choice but to bring a criminal case, Meiring said.

The so-called Yates memo issued during the Obama administration stressed that individual corporate officers and employees should be held accountable in order for companies to get credit for cooperating with enforcement cases.

He said it would have been very difficult for the department to accept billions of dollars in criminal fines from the world’s largest banks without charging any of the traders involved in the conduct.

“This was likely a case that DOJ knew was going to be difficult but felt they, as a matter of prosecutorial will, needed to bring,” Meiring said. “Even though it was going to be tough, they were going to bring the case regardless.”

Phelan said the Antitrust Division’s penchant for bringing charges against individuals goes back much further than the Yates memo. Nearly every criminal case she brought while at the division involved at least one individual being charged.

“When high-level executives are potentially facing jail, that gets their attention in a different way ... and deters the conduct better,” she said.

The case is *Ramchandani v. CitiBank National Association et al.*, case number 1:19-cv-09124, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Stewart Bishop and Ed Beeson. Editing by Philip Shea and Jill Coffey.

*Clarification: This story has been updated to clarify the nature of Meiring's comments.*