

## [Antitrust Law Daily Wrap Up, ANTITRUST NEWS: Former currency trader seeks release on bail pending appeal of price fixing conviction, \(Oct. 8, 2020\)](#)

Antitrust Law Daily Wrap Up

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By Sheri A. Wattles-Miller, J.D.

Akshay Aiyer argued that he was not a flight risk or a danger to the community, and he would offer substantial questions on appeal. COVID-19 concerns also raised.

A former currency trader who was sentenced to eight months in prison for his part in a conspiracy to violate Section 1 of the Sherman Act has [requested](#) that the federal district court in New York City grant bail pending appeal. The defendant, Akshay Aiyer, said he plans to present substantial questions on appeal, including asserting that the district court erred when it declined to decide whether the antitrust violation was governed by the *per se* rule or the rule of reason, and by precluding substantial evidence that the conduct in which he engaged had no impact on supply and demand and on price. Aiyer also asserted that he was not a flight risk and presented no danger to the community, that denying bail would mean that he would have completed most or all of his eight-month sentence before the appeal was resolved, and that it would be harsh to require him to risk his health amidst the COVID-19 pandemic that was affecting prison populations severely (*U.S. v. Aiyer*, Case 1:18-cr-00333-JGK).

**Background.** On May 10, 2018, Aiyer was [charged](#) with a single count of conspiracy to violate Section 1 of the Sherman Act by "fixing prices of, and rigging bids and offers for, CEEMEA currencies traded in the United States and elsewhere." Aiyer was found guilty by a jury on November 20, 2019, and in July the court [denied](#) Aiyer's motion for a judgment of acquittal or in the alternative for a new trial. He was sentenced to eight months in prison on September 17. Aiyer was directed to surrender on December 4.

Pointing to the Bail Reform Act of 1984, Aiyer argued that the court was required to order bail pending appeal if there was clear and convincing evidence that he was not a flight risk and posed no danger to the community, and his appeal would raise a substantial question of law or fact likely to result in a reversal or an order for a new trial. Aiyer argued that several times—before, during and after the trial—he asked the court to characterize the challenged behaviors at issue as subject to the rule of reason analysis. He also sought to introduce evidence to show the lack of impact of the questioned trading behavior on supply and demand and on prices.

**Not a flight risk or danger to the community.** Aiyer stated that the court previously found that he met the standard for release on bail, and it permitted him to remain on release pending sentencing. He further stated that nothing had changed since that time, and, in fact, that he had even less incentive after sentencing to flee since his sentence was one-third as long as he might have received. Aiyer also asserted that he had been compliant with the terms and conditions of his pretrial release and that he had strong ties to New York. He was not a danger to the community, he said, because he was a non-violent, first-time offender, whose loss of employment made him unlikely to commit a repeat offense.

**Substantial questions of law.** Aiyer suggested that he need only show that if he did prevail on the substantial questions he raised on appeal, it would likely result in a reversal or a new trial. The first substantial question raised was the issue of characterization. Specifically, Aiyer claimed that the court was required to examine particular behaviors at issue and to rule whether they were governed by the *per se* rule or the rule of reason. According to Aiyer, only behavior governed by the *per se* rule should have been submitted to the jury as a basis for criminal conviction.

Aiyer also claimed that there was a substantial question regarding his state of mind and the court's rulings. Here, he said, evidence of the lack of anticompetitive effects bore directly on the issue of his intent with respect to his conduct. He further argued that the jury should have been permitted to hear evidence regarding whether his conduct could plausibly have affected the markets and, thus, evidenced criminal intent. The issue of the admissibility of evidence concerning Aiyer's intent could be decided the other way, Aiyer contended, and, if so, a new trial would be necessary.

**Other considerations.** Aiyer briefly noted three other reasons that bail was appropriate. First, if bail pending appeal were not granted, he was likely to serve his entire sentence before the appeal was resolved, which would undermine the value of a reversal or remand. Second, any jail sentence he served would be harsher than the identical sentence imposed on U.S. citizen. Because he is not a citizen, he would be ineligible to serve his sentence at a minimum security facility. Third, he cites the COVID-19 pandemic, which made imprisonment particularly inappropriate for a first-time, non-violent offender.

Attorneys: Kevin Bradford Hart, U.S. Department of Justice, for the United States. Martin B. Klotz (Willkie Farr & Gallagher LLP) for Akshay Aiyer.

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