

# Cartel Alert

## DOJ's Deputy Assistant Attorney General for Cartel Enforcement to Resign

By Joshua Bachrach

Effective October 1, 2013, Scott D. Hammond will resign from his post as Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division (Division) of the US Department of Justice (DOJ). Since 2005, Mr. Hammond has led the DOJ's efforts to aggressively prosecute global cartels and secure major fines against corporations and long jail sentences against individuals, as well as to improve the effectiveness, transparency, and benefits of the DOJ's leniency program and coordination among international enforcers.

*Significant Criminal Fines and Jail Sentences* – Mr. Hammond led cartel investigations across a range of industries, including liquid crystal display (LCD) panels, automobile parts, air transportation, municipal bonds, and chemicals. Since his appointment as Deputy Assistant Attorney General in 2005, there were significant increases in the number of cases filed and amounts in total fines paid to DOJ for price-fixing. In 2005 there were 32 criminal cases filed and a total of US\$338 million in fines paid, while those numbers increased to 67 cases and US\$1.1 billion in fines for 2012 (setting a new record for fines paid in a single year).<sup>1</sup> In connection with the long-running LCD cartel investigation, AU Optronics Corp. was fined US\$500 million, which was the first time the DOJ proved illegal gains of at least US\$500 million at trial in order to obtain fines in excess of the US\$100 million statutory limit on the Sherman Act.<sup>2</sup> The average prison term for antitrust convictions of individuals also increased, surpassing two years.<sup>3</sup>

*Enhancing DOJ's Leniency Program and Global Enforcement* – Mr. Hammond led the DOJ's cartel enforcement efforts during a period involving notable reform in the Division's corporate leniency policy and growth in international coordination among competition agencies. He spoke of the importance of "second-in" cooperation for corporate plea agreements, whereby a company that is "second in the door" after an amnesty applicant could still reap "substantial benefits" from cooperating.<sup>4</sup> He stressed the importance of international cooperation among competition agencies, as "cartels do not stop at national borders".<sup>5</sup> Mr. Hammond also has emphasized the importance of maximizing transparency and predictability in cartel enforcement through "not only explicitly stated standards and policies, but also clear explanations of prosecutorial discretion in applying those standards and policies".<sup>6</sup>

*Cartel Enforcement Will Remain Active* – Despite this change in leadership at the Division, no major changes in cartel enforcement policy are on the horizon. In the 2013 Criminal Enforcement Update, the DOJ disclosed ongoing investigations involving automobile parts, real estate foreclosure and tax lien auctions, and the London Interbank Offered Rate (or LIBOR).<sup>7</sup> These and other investigations will continue and we expect Mr. Hammond’s successor to follow the path he established.

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1 Dep’t of Justice, *Antitrust Division 2013 Criminal Enforcement Update*, <http://www.justice.gov/atr/public/division-update/2013/criminal-program.html>.

2 See Weil Antitrust/Competition Perspectives, *Cartel Watch – US Department of Justice Enforcement Update* (Feb. 5, 2013), <http://antitrust.weil.com/articles/cartel-watch-us-department-of-justice-enforcement-update/>.

3 Dep’t of Justice, *supra* note 1.

4 Scott D. Hammond, Deputy Assistant Attorney Gen., Dep’t of Justice, Address at the 54th Annual American Bar Association Section of Antitrust Law Spring Meeting: Measuring the Value of Second-In Cooperation in Corporate Plea Agreements 1 (Mar. 29, 2006), *available at* <http://www.justice.gov/atr/public/speeches/215514.htm>.

5 Scott D. Hammond, Deputy Assistant Attorney Gen., Dep’t of Justice, Address at the 24th Annual National Institute on White Collar Crime: The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades 14 (Feb. 25, 2010), *available at* <http://www.justice.gov/atr/public/speeches/255515.htm>.

6 Scott D. Hammond, Dir. for Criminal Enforcement, Dep’t of Justice, Address at the ICN Workshop on Leniency Programs: Cornerstones of an Effective Leniency Program 5, 18 (Nov. 22-23, 2004), *available at* <http://www.justice.gov/atr/public/speeches/206611.htm>; see also Hammond, The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades, *supra* note 5, at 3.

7 Dep’t of Justice, *supra* note 1.

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