

DOJ's Hammond Leaves Big Shoes To Fill

By **Melissa Lipman**

Law360, New York (July 08, 2013, 7:41 PM ET) -- Since taking over the U.S. Department of Justice's criminal antitrust efforts in 2005, Scott Hammond has presided over a dramatic rise in fines as a result of the leniency program he helped craft, making him a tough act to follow once he steps down in October.

After more than two decades at the Antitrust Division and nearly nine years as deputy assistant attorney general for criminal enforcement, Hammond plans to leave the agency Oct. 1, the DOJ confirmed Monday.

During his time at the department, Hammond helped overhaul the agency's leniency program to provide consistency and transparency for companies willing to come forward and admit to antitrust violations. And he also promoted the DOJ's model around the world, contributing to the explosion of leniency programs and enforcement worldwide, former DOJ officials said.

"There is no question that there has been no greater advocate of the globalization of the antitrust practice than Scott Hammond," said Allen & Overy LLP partner and former DOJ criminal enforcement director John Terzaken. "He has been a tireless advocate in favor of creating leniency programs, but also a tireless advocate in terms of the increased criminalization of antitrust laws [and] the idea that the more enforcers there are that are looking at this conduct, the greater the chance of detection."

Hammond originally joined the division in 1988, working his way up from trial attorney to director of criminal enforcement in 2000 before becoming the deputy in charge of the criminal program in 2005.

During his early years in leadership roles at the division, Hammond worked under former criminal enforcement deputy Gary Spratling as he revised the DOJ's leniency program, a task Hammond has lauded as taking "a little-used voluntary disclosure program and turn[ing] it into the single greatest investigative tool ever created to deter and detect cartel offenses."

After taking the helm himself, Hammond pushed to expand and refine the leniency program, introducing new features like amnesty plus and penalty plus that encourage companies caught in one probe to tell the DOJ if they're also involved in another cartel, according to Terzaken.

"As an architect of what is the modern leniency program, he also is the one who has expanded it over time," Terzaken said. "He is also the architect of the second-in policy, which relates specifically to companies or individuals who are not the first in for leniency but are able to take advantage of various

discounts if they're the first to come forward once an investigation becomes public."

While Hammond has promoted the leniency program, he has also not been afraid to get tough on companies that don't turn themselves in. The DOJ's total price-fixing fines have steadily risen since the late 1990s, and have grown from \$338 million in 2005 to \$1.1 billion in the 2012 fiscal year. And while fines so far in 2013 have been relatively low, the DOJ's ongoing investigations into benchmark banking rate manipulation and auto parts price-fixing are expected to yield significant penalties.

"It's fair to say that during his tenure at Justice, particularly as the DAAG, he really brought the amnesty program to the forefront and made it what it is," said former DOJ prosecutor and Bingham McCutchen LLP partner Michael Whitlock. "To really look at his legacy all you need is to look at are the fine numbers: the fact that criminal antitrust fines have increased in multiple years into billions of dollars I think is indicative of his legacy at the division."

Beyond the fines themselves, the number of criminal cases filed each year under Hammond's tenure has also grown from 32 in 2005 to 67 in 2012, peaking at 90 in 2011. Likewise, the average prison terms for individuals convicted of antitrust violations has increased to more than two years, according to DOJ statistics.

"He's definitely a leader of that increasing enforcement ... because he was tough and he's always had a very aggressive enforcement mindset," said Wilson Sonsini Goodrich & Rosati PC partner Mark Rosman, a former DOJ litigator. "If a case could be brought, he was not going to shy away from it."

Over his time at the agency, Hammond has won a reputation for being a hands-on manager, making the final decisions about whether to bring cases after reviewing the evidence himself. Most recently, Hammond oversaw 2012's successful prosecution of AU Optronics Corp. for its alleged role in the liquid crystal display panel cartel, ultimately netting a \$500 million fine for the DOJ.

Still, Hammond has likewise made sure the DOJ stayed true to its word when it came to dealings with leniency applicants, according to Rosman. For example, even though the first company to come forward is supposed to get the best deal — with full immunity for itself and its employees — sometimes situations would arise when amnesty plus applicants might be in line for similar treatment.

"Scott always had it in mind to make sure the leniency applicant had the best deal," Rosman said. "He's very tough but he's also very fair-minded in thinking through decisions and he's very thorough in his approach to analyzing case and policies."

Hammond has also focused on promoting the division's leniency program and enforcement efforts worldwide, winning praise from Bill Baer, the assistant attorney general for the division.

"Under his leadership, international cooperation has been enhanced and the division's criminal enforcement program has become a model in the international community," Baer said in a statement.

When Hammond took over in 2005, companies considering filing for leniency typically rarely looked much farther than the DOJ and the European Union, according to Crowell & Moring LLP's Daniel Zelenko, a former DOJ prosecutor. Now defense attorneys have to weigh a bevy of jurisdictions around the globe as the number of worldwide antitrust enforcers has ballooned to more than 100.

"Scott was very adept at forming relationships with other antitrust enforcers and encouraging them to take a harder line on cartel behavior," Zelenko said. "Under his tenure, the level of communication and cooperation with other cartel enforcers definitely increased, and that will have a lasting impact on cartel enforcement."

--Additional reporting by Pete Brush. Editing by Chris Yates.

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