DOJ’s Packaged Seafood Probe Yields Conditional Leniency Applicant

Thursday, September 14, 2017

On Monday, September 11, Tri-Union Seafoods LLC, the US subsidiary of Thai Union Group, announced it blew the whistle on competitors in the US Department of Justice’s (DOJ) investigation of the packaged seafood industry. The “Chicken of the Sea” canned tuna manufacturer also said it received conditional leniency from DOJ in exchange for its cooperation.

WHAT HAPPENED:

- In 2015, DOJ began investigating the packaged seafood industry for anticompetitive conduct, including price fixing. DOJ’s investigation followed a failed merger between Thai Union and Bumble Bee Foods LLC.
- In May 2017, Bumble Bee pleaded guilty to violations of Sherman Act Section One. Bumble Bee agreed to fix the price of shelf-stable tuna fish from as early as the first quarter of 2011 through at least the fourth quarter of 2013. The company agreed to pay a $25 million fine, which was substantially reduced to protect the company from insolvency. Two Bumble Bee executives also pleaded guilty.
- In June 2017, a former StarKist Co. sales executive pleaded guilty to price fixing.
- Private plaintiffs filed class action complaints in October 2016 alleging antitrust violations in the packaged seafood industry. The private plaintiffs represent grocery retailers who sold packaged tuna to US consumers.

WHAT THIS MEANS:

- Despite the significant costs of participating in DOJ’s Corporate Leniency Program, leniency recipients continue to receive significant value for their cooperation. Conditional leniency recipients like Tri-Union and their employees will not face criminal fines, jail time or prosecution.
- Full cooperation with DOJ’s program will place heavy demands on leniency applicants, including gathering and translating foreign documents, bringing foreign witnesses to the United States for interviews and testimony, and providing several attorney proffers.
- It is critical to have a robust compliance program in place to detect any potential or actual violations of antitrust law. Such a program will allow a company to investigate any potential misconduct and, if necessary, report it to DOJ. Time is of the essence when seeking leniency with DOJ’s Corporate Leniency Program.
- Companies contemplating acquisitions should consider whether any problematic antitrust conduct could arise during the merger review and result in a subsequent criminal investigation.

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