

DOJ may grant non-prosecution for fraud, bid-rigging, but not for antitrust breaches - Hammond

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IN BRIEF

The Justice Department's antitrust division may offer non-prosecution agreements to firms that harm competition by violating laws such as bid-rigging or fraud statutes, but it will not give such deals to companies that violate U.S. antitrust statutes, the division's top criminal enforcement official said.

Chicago - The Justice Department's antitrust division may offer non-prosecution agreements to firms that harm competition by violating laws such as bid-rigging or fraud statutes, but it will not give such deals to companies that violate U.S. antitrust statutes, the division's top criminal enforcement official said.

The division generally opposes using non-prosecution agreements, or NPAs, to resolve cases, Scott Hammond, the division's deputy assistant attorney general, said at a conference* in Chicago Thursday.

But in the past two years, the division gave NPAs to five financial institutions who were accused of conspiring to rig bids on municipal derivatives sold to cities and towns across the country.

If "you think you have an argument as to why prosecution is not appropriate, then advance that argument and you can refer to the muni-bonds investigation," Hammond said.

But he added that, "if you represent a company in a Title 15 context and you want to argue those same factors, I think you're going to run head on into our policy that disfavors NPAs in those cases."

Those agreements arose out of the specific circumstances in the muni-bonds investigation, Hammond said, which primarily involved fraud and bid-rigging charges, so-called Title 18 violations, as opposed to the more traditional antitrust charges, or Title 15 cases.

Charging a regulated financial institution with a felony also could have resulted in serious collateral consequences, he said.

The division doesn't always avoid prosecuting financial companies, Hammond said. For example, the division prosecuted CDR Financial Products, a Beverly Hills, California broker that was heavily involved in the anticompetitive conduct, he said.

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