One in three leniency applicants drop their marker, DOJ official says
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IN BRIEF
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Responding to a question during a panel discussion Thursday at a conference in Chicago*, Deputy Assistant Attorney General Scott Hammond said that companies frequently approach the division for a so-called marker that would put them first in line for leniency, but don’t use it because the conduct they report turns out to be legal.

In order to join the division’s leniency program, a company first reports the alleged anticompetitive conduct and receives a marker that keeps their place in line, while the company’s lawyers look for proof of price-fixing to provide DOJ.

If the company can produce enough evidence of the anticompetitive conduct, the antitrust division will accept the business into its leniency program. The process of conducting an internal investigation is often called “perfecting a marker.”

“I would say maybe a third” of leniency applicants don’t perfect their marker, Hammond said. “I believe the majority, 75 percent of Type-A amnesty applications we get are people who just found out about this [conduct] in the last week or so.”

“You’ve got to tell me [a little] in terms of the threshold. You’ve got to tell me who the client is and the product so I can actually reserve a place for you,” he added. “That’s all you need to get a marker.”

*Third Annual Chicago Forum on International Antitrust Issues, Northwestern University Searle Center on Law, Regulation and Economic Growth, Chicago, June 7-8, 2012

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