

BUSINESS FINANCE MARKETS

Deal unites Bumble Bee and Chicken of the Sea

BANGKOK

Largest producer of tuna, Thai Union, to acquire U.S. firm for \$1.5 billion

REUTERS

Thai Union Frozen Products, the world's largest canned tuna producer, is buying the American tuna giant Bumble Bee Seafoods for \$1.5 billion from a private equity firm as part of a plan to double revenue to \$8 billion by 2020 through overseas purchases.

Thai Union, which makes the brand Chicken of the Sea and counts Walmart and Costco among its clients, said on Friday that the purchase, its biggest, would give it North America's largest seafood brands like Bumble Bee, Brunswick and Sweet Sue.

The company, which is based in the Bangkok area, said the deal would lift revenue by a quarter and would be financed by domestic short-term loans.

Thai Union Frozen's shares rose as much as 2.7 percent in early trading on

A buying spree is intended to double the company's revenue.

Friday in Bangkok before giving up the gains to close down 3.5 percent.

The transaction is subject to approval from the United States antitrust authorities and is expected to complete in the second half of next year, Thai Union said.

Bumble Bee is the third acquisition deal this year by Thai Union; it also bought the Norwegian seafood firm King Oscar and the French smoked salmon supplier MerAlliance.

Thai Union has operated in the United States for over 17 years. The company has forecast \$5 billion in sales next year, compared with an expected \$4 billion this year.

"The deal is the largest acquisition in the history of our company and one of the most exciting external growth propositions," Thai Union's president, Thiraphong Chansiri, said in a statement.

Bumble Bee, the largest canned tuna and sardine producer in North America, is privately owned by a Pan-Atlantic private equity firm, Lion Capital. It has annual sales of about \$1 billion and estimated earnings before interest, tax, depreciation and amortization of \$145 million this year.

Muddled insider trading laws need clarity



James B. Stewart

COMMON SENSE

We need an insider trading statute.

With simmering resentments nearing the boiling point among federal courts of appeals, district court judges and law enforcement officials after an appeals court decision, the time seems to have come for a clear-cut law.

On Dec. 10, the barely concealed hostility was only too evident when a three-judge panel of the influential United States Court of Appeals for the Second Circuit swept aside the insider trading convictions of two Wall Street traders, Anthony Chiasson and Todd Newman, and dealt a blow to the successful multiyear crackdown on corruption on Wall Street by Preet Bharara, the United States attorney in New York.

In language that startled many in the securities law bar, the court chastised Mr. Bharara and his team of prosecutors for "doctrinal novelty." It slammed Judge Richard J. Sullivan, the district judge in the case, and his jury instructions, and even suggested that prosecutors had steered the case to a judge of their own choosing.

"It was a gratuitous insult" to the United States attorney, said John C. Coffee, Jr., a professor and expert in securities law at Columbia Law School.

The United States attorney's office has emphatically denied the accusation that it steered the case, saying the assignment in the United States District Court to Judge Sullivan was random. Mr. Bharara is consulting with the United States solicitor general on whether to ask all the active judges of the appellate court to review the decision. The government can even pursue the appeal to the Supreme Court.

The root of the problem is that insider trading is a crime entirely defined by the common law — an accumulation of cases and judicial precedents that date from the 1960s. It has been open to interpretation by an ever-changing cast of prosecutors, Securities and Exchange Commission officials and enforcement chiefs, as well as various judges. All this has resulted in a thicket of confusing and, at times, tortured attempts to fit new insider-trading cases into earlier precedents.

As Judge Barrington D. Parker, one of the appeals court judges that decided the Newman and Chiasson case,



Preet Bharara, the United States attorney in New York, was chastised by the Court of Appeals for the Second Circuit for "doctrinal novelty" in his crackdown on corruption.

put it at oral argument, the law "seems to vary depending on which judge you're talking to."

Justice Antonin Scalia of the Supreme Court, in a written comment joined by Justice Clarence Thomas in November, went even further, saying: "Only the legislature may define crimes and fix punishments. Congress cannot, through ambiguity, effectively leave that function to the courts — much less to the administrative bureaucracy."

Thomas Lee Hazen, a professor at the University of North Carolina's School of Law, has written widely about securities law. "No matter how narrow or broad people believe the definition of insider trading should be, virtually everyone is now in agreement that we'd be a lot better off if Congress would simply bite the bullet and define it," he said. "The situation is a mess. That's how you end up with cases like Newman and Chiasson."

While Mr. Newman and Mr. Chiasson will now remain free (unless the ruling is overturned on appeal, they can't be retried under the appellate court's sweeping ruling), they're not exactly the most sympathetic victims.

Mr. Chiasson, an alumnus of Steven A. Cohen's SAC Capital, which has had its own well-publicized problems with insider trading, helped found a hedge fund, Level Global. He earned prodigious sums in three successive years — \$16 million, \$10 million, \$23 million — according to tax returns cited by Judge Sullivan. Mr. Chiasson was convicted by a jury after his fund made over \$50 million on a single trade based on an advance earnings tip from a source inside Dell, the computer company. The

tip passed through several hands before reaching Mr. Chiasson.

A smaller fish than Mr. Chiasson, Mr. Newman earned more than \$10 million over five years as a trader at another hedge fund, Diamondback Capital Management. The jury found that he, too, traded on the information about Dell, as well as inside information from the technology firm Nvidia.

That both men traded profitably on material inside information shouldn't be in dispute. They knew — or should have known — that they shouldn't have had access to information that was obviously not public yet. It's exactly the

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kind of trading that undermines investor confidence in the integrity of markets and contributes to the perception that Wall Street is a rigged game stacked against the average investor. In many other countries and

in the European Union, where the crime of insider trading is defined by statute, that would be enough to convict. But not, it turns out, in the United States, which was once a role model for the rest of the world when it came to defining and prohibiting insider trading. Because there's no written law, insider trading has been pursued under antifraud statutes. Proving fraud requires additional elements that, to the average person, seem to bear little relevance to insider trading.

"It's like trying to put a square peg into a round hole," Professor Hazen said,

Stephen M. Bainbridge, an insider trading expert at the University of California at Los Angeles School of Law, said: "It's always been a problem to gerrymander insider trading into fraud."

That turned out to be especially true in the cases of Mr. Chiasson and Mr. Newman. To prove fraud, the appeals court ruled that prosecutors had to show that both men knew that the original source of the inside information had breached a fiduciary duty and had received a personal benefit in return.

Both men were far down the chain of information, and as so-called remote tippees were less likely to know the circumstances of the original leak. The case was complicated by the fact that the original sources inside Dell and Nvidia were never prosecuted, and the appeals court had trouble figuring out how a remote tippee could be guilty of a crime if the original tipper wasn't.

Other remote tippees have been successfully prosecuted. Given the nature of much of the trading on Wall Street today, especially by sophisticated hedge funds with access to so-called expert networks, more and more trading is being done by remote tippees. Mr. Bharara seems to have been well within the bounds of prosecutorial discretion in deciding to bring the cases, and a jury obviously agreed. "It was hypocritical of the court to suggest this was some kind of novel approach," Professor Coffee said.

At the same time, the appeals court wasn't necessarily wrong. "This is a very strict interpretation," Professor Coffee said. "But the precedents were inconsistent. Some limiting principle is probably welcome."

The best limiting principle might well be a statute. "I think the law should be clear rather than vague," Professor Bainbridge said. "The law ought to put you on notice what you can and cannot legally do." This seems especially true when a person convicted of violating it faces jail time.

It would also be simpler to enforce and prosecute. "Who cares about a personal benefit or breach of a fiduciary duty?" said Marco Ventoruzzo, a professor with dual appointments at the Dickinson School of Law at Penn State and at Bocconi University in Milan. "This approach is much too complex and leads to bizarre outcomes" like Newman and Chiasson. "There are all these hoops prosecutors have to jump through to find a violation." The European approach, by contrast, is much simpler, Professor Ventoruzzo said.

"If you have material, inside information you can't trade on it, period," he said. "The idea you shouldn't be allowed to trade when you have confidential inside information is widely accepted in Europe."

ON THE RECORD



LUCY NICHOLSON/REUTERS

"Just as most of us today have jobs that weren't even invented 100 years ago, the same will be true 100 years from now."

MARC ANDREESSEN, above, a venture capitalist and an inventor of the web browser, on changes to the job market because of advances in robotics and other technology.

"For a true five-star experience that will attract five-star customers who want five-star amenities, and served by a five-star staff, we're at least a decade out."

RICK NEWTON, founding partner of Resort Capital Partners, a real estate advisory firm, on how long it will take Cuba to become a top destination.

"The wealthy already diversify their assets for protection. Now they want to make sure their residency is diversified as well. Why not have a portfolio of passports, too?"

CHRISTIAN H. KALIN, group chairman of Henley & Partners, a citizenship advisory firm based in London.

"We can't build a tech cluster here if people don't have anywhere to live."

BILLY MCCORMAC, who moved to Sweden in the 1990s, on Stockholm's housing shortage.

"The commodity boom allowed governments and companies to avoid hard choices."

ANDRÉS VELASCO, the former Chilean finance minister, on the impact of Chinese demand in American raw materials.