

# How Internal Reporting Could Benefit Antitrust Whistleblowing

By **Daniel Oakes** (March 18, 2026)

The U.S. Department of Justice Antitrust Division's new whistleblower rewards program[1] represents a meaningful shift in how the division seeks to detect cartel conduct. The policy is clearly well-intentioned.

It reflects an effort to strengthen detection mechanisms at a time when international criminal cartel enforcement has faced significant headwinds. But it also raises important questions about how whistleblower incentives will interact with the long-standing corporate leniency program that has defined cartel enforcement for decades, and even whether it will strengthen or weaken internal compliance reporting.



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One potentially promising reform would be to add incentives for whistleblowers to report internally before going directly to the government, as several other federal whistleblower programs already do. Such an approach could strengthen corporate compliance systems, preserve incentives for corporate self-reporting and leniency applications, and ultimately increase the likelihood that the Antitrust Division receives the high-quality evidence needed to successfully prosecute cartel cases.

## The Leniency Program: The Backbone of Cartel Enforcement

For more than three decades, the Antitrust Division's corporate leniency program has been the backbone of criminal cartel enforcement in the U.S.[2] Introduced in its modern form in 1993, the program created powerful incentives for companies and individuals involved in cartels to self-report misconduct in exchange for immunity from prosecution.

The program's logic is straightforward but powerful. Cartels are inherently unstable because each participant fears that another conspirator may defect. By offering immunity to the first participant to confess and cooperate, the government creates a race among conspirators to be first in the door.

The proof that the program works is clear: Leniency has become the most successful enforcement tool in competition law and has been adopted by competition authorities around the world.[3] The program has exposed some of the largest international cartels ever prosecuted, producing billions of dollars in criminal fines and dozens of executive jail sentences.[4]

In doing so, leniency applicants have often provided the key evidence necessary to prove these conspiracies: communications among conspirators, cooperating witnesses who can explain how the cartel operated, and vast productions of internal documents. Without these insiders and the extensive resources of a corporate cooperator, many cases would have been far more difficult to prove.

## Looking for Leads in New Places

In recent years, however, there have been growing signs that the leniency system may be under strain. Although the Antitrust Division does not publicly disclose the number of leniency applications it receives, other jurisdictions have reported significant declines in

applications in recent years,[5] and the number of major international cartels uncovered through leniency appears to have fallen.

Against this backdrop, the Antitrust Division has begun exploring additional ways to detect cartel conduct, including the new whistleblower rewards program. The program introduces generous financial rewards of between 15% and 30% of fines ultimately collected to individuals who provide qualifying information that leads to successful antitrust enforcement actions.[6]

The structure draws inspiration from several whistleblower programs already administered by other federal agencies.

There seems to be little reason to doubt that the whistleblower rewards program will generate significant numbers of investigative leads. Indeed, even in its early stages, the division has reportedly been receiving new reports on a near-daily basis.[7]

More importantly, in the EBlock Corp. case, the division secured its first enforcement action based on a whistleblower tip, only six months after the program was initiated. The Antitrust Division announced the first whistleblower reward, a grant of \$1 million to an anonymous individual who reported information that led to Eblock's Jan. 22 deferred prosecution agreement in the U.S. District Court for the Central District of California on charges of bid rigging and fraud.[8]

### **Cartel Cases Present Unique Challenges**

It is important to note, however, that antitrust cartel cases differ in key ways from the fraud cases that dominate other existing federal whistleblower programs. In many financial fraud investigations, whistleblowers may well possess documentary information sufficient to demonstrate misrepresentations or accounting irregularities that establish fraud.

Cartel cases, however, require proof of an agreement among competitors to restrain competition, typically through price fixing, bid rigging or market allocation. Proving such agreements beyond a reasonable doubt can be more challenging.

Prosecutors often rely heavily on insider witnesses and evidence of communications between conspirators. This evidence is often more likely to be obtained through a corporate leniency applicant, which must provide extensive cooperation, including documents, testimony and explanations of how the conspiracy operated.[9]

By contrast, a single whistleblower may not have access to the same level of evidence. In some situations, a whistleblower may only suspect misconduct rather than possess concrete proof. Some whistleblowers will be former or disgruntled employees, or may not be directly involved in the alleged cartel conduct. As a result, the whistleblower rewards program may end up generating many allegations that ultimately lack the evidentiary depth necessary to support complex criminal prosecutions.

### **Risks for Corporate Compliance Programs**

At the same time, and perhaps counterintuitively, the new antitrust whistleblower rewards program may have unintended negative implications for corporate compliance systems. The Antitrust Division has recently reemphasized the importance of effective corporate compliance programs and has encouraged companies to develop mechanisms that enable employees to report concerns internally.[10]

Such reporting allows companies to investigate potential misconduct, act as a screening agent for solid claims, and, when appropriate, seek corporate leniency.

But the introduction of large financial rewards for whistleblowers could significantly alter those incentives. Employees who believe they might receive substantial large monetary awards may prefer to report directly to the government rather than through internal compliance channels.

From an employee's perspective, this may be a rational choice. From a corporate perspective, however, it could undermine compliance systems that still depend on employees reporting concerns internally so that companies can investigate and respond.

If employees simply bypass internal reporting mechanisms, companies may ultimately lose opportunities to detect and address potential violations early, including in situations where seeking leniency would be appropriate. Over time, this dynamic could weaken corporate compliance programs and further reduce the number of corporate leniency applications — the very source of evidence that has historically enabled the Antitrust Division to bring the strongest criminal cases.

### **A Path Forward: Incentivizing Internal Reporting First**

Fortunately, there are ways to mitigate these risks. One promising approach would be to structure whistleblower awards as often as possible to incentivize internal reporting first. At a minimum, the DOJ could structure the program so that whistleblowers who report internally before going to the government are eligible for the highest available rewards.

Such a system would not prohibit direct reporting to the government, but would align incentives of whistleblowers, companies and the government to encourage whistleblowers to first raise concerns within their organizations and increase leniency applications.

Internal reporting is already required by the Antitrust Division's own existing guidance on corporate compliance programs. In evaluating a company's confidential reporting structures, the Antitrust Division expects companies to impose on employees a duty to report potential antitrust violations to compliance officials.[11]

Division policy also suggests that disciplinary measures should apply to knowledgeable employees who fail to report such conduct internally in the first instance.[12] Thus, aligning whistleblower awards with this internal reporting obligation is consistent with the compliance message the Antitrust Division has been communicating for years.

Several other federal whistleblower programs already incorporate this model. Both the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission consider internal reporting when determining award amounts.[13]

These programs incentivize both internal reporting and cooperation with company investigations. Available data from those programs suggest that the incentives are effective. For example, as of 2019, approximately 85% of all SEC whistleblower program award recipients reported their concerns internally before the whistleblower directly approached the government.[14]

A similar approach could work well in the antitrust context. The DOJ could structure award levels so that whistleblowers who first report internally, and assist with internal

investigations, are eligible for the highest available award percentages if their information ultimately leads to successful enforcement actions. Ideally, the highest awards could be reserved only for those whistleblower reports that also result in corporate leniency applications.

Such a framework would preserve the ability of individuals to report directly to the government when necessary while also strengthening corporate compliance systems. Such a change could be a win-win-win.

It would give whistleblowers the best chance at significant awards as they align with corporate self-reporting; it would strengthen compliance programs and give companies the opportunity to investigate potential violations and determine whether to seek leniency; and it would increase the likelihood that the Antitrust Division receives the detailed evidence necessary to prosecute cartel cases successfully.

## **Conclusion**

In creating the whistleblower program, the Antitrust Division has applied the logic of leniency to a traditional whistleblower reward framework, creating a new race between companies and their own employees to report antitrust violations.[15] But whether the program ultimately strengthens or weakens cartel enforcement will depend largely on how it interacts with the corporate leniency program and corporate compliance systems.

If the whistleblower program inadvertently discourages internal reporting or undermines incentives for companies to seek leniency, it could reduce the government's ability to bring strong criminal cartel cases.

But with thoughtful design — particularly by encouraging internal reporting first and further clarifying the relationship between whistleblower rewards and leniency — the program could become a powerful complement to the enforcement framework that has served antitrust law so effectively for decades.

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[1] U.S. Dep't of Justice, "Memorandum of Understanding Regarding the Whistleblower Rewards Program and Procedures Between the Antitrust Division and the United States Postal Service" (hereinafter "Whistleblower MOU") (May 7, 2025), available at <https://www.justice.gov/atr/media/1407261/dl?inline>.

[2] See U.S. Dep't of Justice, Just. Manual §7-3.300; Frequently Asked Questions, (Updated Jan. 3, 2023), <https://www.justice.gov/atr/page/file/1490311/dl?inline>.

[3] See, e.g., Makan Delrahim, Antitrust Div., U.S. Dep't of Just., Opening Remarks at Roundtable Discussing the Antitrust Criminal Penalty Enhancement & Reform Act (Apr. 11, 2019) at 1 ("[T]he Leniency Policy has played a crucial role in the Division's ability to detect, disrupt, and deter antitrust crimes. It has resulted in the prosecution of sophisticated

international cartels and the collection of billions of dollars in criminal antitrust fines."), <https://www.justice.gov/opa/speech/file/1153656/dl>; Scott D. Hammond, "An Overview Of Recent Developments In The Antitrust Division's Criminal Enforcement Program" (Jan. 10, 2005) at 8 ("[T]he Leniency Program is the Division's most effective generator of international cartel cases, and ... it has served as a model for similar corporate leniency programs that have been adopted by antitrust authorities around the world."), <https://www.justice.gov/d9/atr/speeches/attachments/2015/06/25/207226.pdf>.

[4] See, e.g., Scott D. Hammond, "The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades" (Feb. 25, 2010) at 1-6.

[5] See OECD, "The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels" (June 9, 2023) (stating that between 2015-2021, the number of leniency applications in OECD jurisdictions dropped by 58% with the trend observed across most regions), <https://doi.org/10.1787/9bc9dd57-en>. In 2023, data demonstrate a modest worldwide increase in leniency applications. See OECD, "OECD Competition Trends 2025" (May 2025), at 21-22, [https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/oecd-competition-trends-2025\\_435ed241/8c4bd00b-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/oecd-competition-trends-2025_435ed241/8c4bd00b-en.pdf).

[6] Whistleblower MOU, at 3.

[7] Brian Koenig, "New Whistleblower Program Adds 'Bit More Stick,' DOJ Says," Law360 (March 3, 2026).

[8] Press Release, Dep't of Justice Antitrust Division, "Antitrust Division and U.S. Postal Service Make First-Ever Whistleblower Payment: \$1M Awarded for Reporting Antitrust Crime" (Jan. 29, 2026), <https://www.justice.gov/opa/pr/antitrust-division-and-us-postal-service-award-first-ever-1m-payment-whistleblower-reporting>; Daniel K. Oakes, James W. Attridge, Aigerim Saudabayeva, "DOJ's First Antitrust Whistleblower Payout Signals a New Enforcement Playbook" (Jan. 30, 2026), <https://www.axinn.com/en/insights/axinn-viewpoints/dojs-first-antitrust-whistleblower-payout-signals-a-new-enforcement-playbook?id=102mfbf>.

[9] See e.g., Dep't of Justice, Antitrust Division, Frequently Asked Questions About the Antitrust Division's Leniency Program #11, 29-31 (Jan 3, 2023) (requiring corporate leniency applicants to provide extensive cooperation including "all potentially relevant facts about the illegal activity," including "all potentially relevant records, wherever located" and best efforts to secure the cooperation of its current and former personnel); Scott D. Hammond, "The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades" (Feb. 25, 2010) ("Leniency programs provide unparalleled information from cartel insiders about the origins and inter-workings of secretive cartels.").

[10] Press Release, Dep't of Justice, Antitrust Division, "Antitrust Division Announces New Policy to Incentivize Corporate Compliance" (July 11, 2019) (announcing that the DOJ will consider compliance at the charging stage in criminal antitrust investigations), <https://www.justice.gov/archives/opa/pr/antitrust-division-announces-new-policy-incentivize-corporate-compliance>.

[11] Dep't of Justice, Antitrust Division, "Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations" (Nov. 2024), at 14.

[12] Id.

[13] See 17 CFR § 165.9(b)(4) (CFTC regulation); 17 CFR § 240.21F-6 (SEC regulation).

[14] Securities and Exchange Comm'n, "Securities and Exchange Commission 2019 Annual Report to Congress Whistleblower Program" (2019) at 4, [https://www.sec.gov/files/OW\\_2019AR\\_FINAL\\_1.pdf](https://www.sec.gov/files/OW_2019AR_FINAL_1.pdf).

[15] See Daniel Glad, "Acting Deputy Assistant Attorney General Daniel Glad Delivers Keynote at the Global Competition Review Cartels: Live! Conference" (Mar. 3, 2026) ("What has changed is that thanks to our new Whistleblower Rewards Program, there is another lane in leniency race: insider versus company. The race is now faster."), <https://www.justice.gov/opa/speech/acting-deputy-assistant-attorney-general-daniel-glad-delivers-keynote-global-competition>.