

The DOJ's Whistleblower Program and Leniency

A photograph of a modern building's curved glass facade, showing multiple stories with dark window frames and light-colored panels, set against a clear sky.

2 MIN READ

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The DOJ Antitrust Division's new Whistleblower Rewards Program could have negative unintended consequences for the leniency program and corporate compliance programs. I wrote about it in an article just published in [Law360](#), titled "How Internal Reporting Could Benefit Antitrust Whistleblowing."

The Whistleblower Rewards Program has caused a stir in the antitrust community and will certainly be the topic of much discussion at the ABA Antitrust Spring Meeting next week. It signifies a sea change in how the government approaches criminal antitrust case generation. Where the DOJ formerly relied on its long-running (and massively successful) corporate leniency program, it now looks to incentivize individual employees to race against the company to report directly to the government.

I recently spoke on a panel at *GCR Live: Cartels* where I raised some potential risks of the program that have not been widely discussed. Namely, because whistleblowers can receive such massive payments in exchange for their reports, they will be heavily incentivized to circumvent internal corporate reporting altogether.

This could damage the very corporate compliance systems that the DOJ has encouraged for years, and limit the ability of companies to detect, investigate, and address antitrust issues

internally. This includes the ability to seek corporate leniency, which is often the best way for the DOJ to obtain the fulsome evidence needed to win antitrust conspiracy cases.

I propose that the program be altered to incentivize potential whistleblowers to make internal reports and cooperate with internal investigations first, perhaps by reserving the largest whistleblower rewards for those who do so, comply and assist with corporate investigations, and ultimately yield accompanying leniency applications. This is modeled in other federal whistle-blower programs, such as the CFTC and the SEC programs.

The DOJ would not need to close the door to direct government reporting first, preserving the leniency-like race it wants to engender. But altering incentives could increase the chances that the Whistleblower Rewards Program does not ultimately cannibalize the Leniency Program.

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.

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