

CPI's North America Column Presents:

Prospects Improve for Enactment of the Criminal Antitrust Anti-Retaliation Act of 2019

*By Mark L. Krotoski & Bernard W. Archbold¹
(Morgan Lewis)*

December 2019



Copyright ©2019

Competition Policy International, Inc. for more information visit CompetitionPolicyInternational.com

On October 17, 2019, the U.S. Senate (“Senate”) unanimously passed the Criminal Antitrust Anti-Retaliation Act of 2019.² This is the fourth time since 2013 that the Senate has unanimously passed whistleblower protections for reporting criminal antitrust violations. The legislation is now pending in the U.S. House of Representatives (“House”) and may be considered in the near future.

The legislation, if enacted, would create a new avenue to report criminal cartel activity and would codify civil whistleblower protections for employees, contractors, subcontractors, and agents of private employers (“covered individuals”) who report potential criminal cartel activity, or associated criminal activity, to their employer or the federal government, which includes regulatory and enforcement agencies, congressional committees, and Congress members.³ It also protects covered individuals who assist a federal government investigation or proceeding.⁴

This article reviews the congressional history of the legislation, provides an overview of how the new statute would operate, explains how a whistleblower statute creates a new reporting avenue, contrasts two other federal whistleblower programs, and highlights whistleblower programs used by other antitrust enforcers.

Congressional Process

In 2011, the Government Accountability Office (“GAO”) issued a report⁵ on the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”), which reduces potential civil damages liability for a leniency applicant that provides “satisfactory cooperation” to civil action plaintiffs.⁶ The GAO report recommended that Congress enact antitrust whistleblower protections as an amendment to ACPERA.

Following the GAO report, Senators Chuck Grassley (R-Iowa) and Patrick Leahy (D-Vermont) initially introduced the antitrust whistleblower legislation in 2012,⁷ and have served as primary sponsors since then. Since 2013, the Criminal Antitrust Anti-Retaliation Act has received strong, bipartisan support in the Senate only to die in the House, as summarized in the table below:

Senate Bill	Congress	Introduction	Senate Action	House Action
S. 2258	116th	July 24, 2019	Oct. 17, 2019 Unanimous consent ⁸	Oct. 21, 2019 ⁹ Received; pending further action
S. 807	115th	April 4, 2017	Nov. 15, 2017 Unanimous consent ¹⁰	Nov. 16, 2017 ¹¹ Received; no further action
S. 1599	114th	June 17, 2015	July 22, 2015 Unanimous consent ¹²	July 23, 2015 ¹³ Received; no further action
S. 42	113th	Jan. 22, 2013	Nov. 4, 2013 Unanimous consent ¹⁴	Nov. 12, 2013 ¹⁵ Received; no further action
S. 3462	112th	July 31, 2012	No further action ¹⁶	No action

Recent remarks by Assistant Attorney General (“AAG”) of the Antitrust Division Makan Delrahim provide support for whistleblower legislation. On September 17, 2019, he testified at a Senate oversight hearing. In response to a question from Senator Grassley about the legislation, AAG Delrahim responded “I think it would be helpful and I believe we have expressed support for that Bill. I will check on that and get back to you. It is a sound policy that would complement and further enhance our cartel enforcement activities.”¹⁷ DOJ’s support for the legislation would significantly improve its chance of House passage and enactment.

Following Senate passage, on October 21, 2019, the legislation was held at the desk in the House, which means it has not been referred to committee and is available for full House consideration. Given the strong bipartisan support in the Senate the past few years, it would not be surprising to see the legislation considered in the House in the near future.

Overview of the Criminal Antitrust Anti-Retaliation Act

Broadly, the legislation extends previously unavailable protection to private sector antitrust whistleblowers who report potential criminal violations of section 1 or 3 of the Sherman Act¹⁸ to their employer or the federal government. As an overview, the Bill (1) prohibits employers from taking punitive action against a covered individual for reporting potential criminal antitrust violations or associated criminal violations; (2) explains when a covered individual is ineligible for whistleblower protection; and (3) provides a framework for redress – and associated remedies – when an employer penalizes a covered individual for reporting potential covered criminal violations.

Scope of Protections

The Bill expands whistleblower protections to covered individuals (employees, contractors, subcontractors, and agents of private employers)¹⁹ who report potentially criminal activity in one of two ways. First, a covered individual may provide information, or cause information to be provided, to the federal government, an internal supervisor, or an internal employee authorized to investigate the potentially criminal conduct and to stop it.²⁰ Second, a covered individual may “cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed.”²¹

Antitrust whistleblower protection is available for reporting “any violation of, or any act or omission the covered individual reasonably believes to be a violation of” (i) “the antitrust laws” or (ii) “another criminal law committed in conjunction with a potential violation of the antitrust laws” or (iii) “in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.”²²

In these situations, it is unlawful for an employer to “discharge, demote, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment” for lawfully reporting potential criminal violations.²³

Individuals Excluded from the Whistleblower Protections

Individuals who engaged in the underlying criminal conduct are ineligible for whistleblower protection under the Bill. Three categories of prohibited conduct disqualify an individual from antitrust whistleblower protection. These include when “the covered individual planned and initiated” (1) “a violation or attempted violation of the antitrust laws;” (2) “a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws;” or (3) “an obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.”²⁴ Otherwise, a covered individual who meets the other requirements may obtain whistleblower protection.

Enforcement Actions

Covered individuals who experience termination or discrimination based on reporting criminal antitrust violations (or associated criminal violations) have several avenues to pursue relief. Initially, covered individuals may file a complaint with the Secretary of Labor up to 180 days after any alleged discrimination or discharge related to the covered individual's disclosure.²⁵ The covered individual may bring an action in law or equity in U.S. District Court for *de novo* review if the Secretary of Labor has not issued a final decision within 180 days of the initial filing (so long as the delay is not attributable to the claimant's bad faith).²⁶

Rather than create a new process to review complaints, the Bill adopts the procedural framework, timing, and burdens of proof set out in Section 42121(b) of Title 49, which governs whistleblower protections afforded to airline employees who experience workplace discrimination for reporting potential violations of Federal Aviation Administration regulations or federal laws concerning airline safety. Administrative complaints are filed with the Secretary of Labor. This framework is also used in other whistleblower cases, including reports under the Sarbanes-Oxley Act²⁷ and the Taxpayer First Act,²⁸ as noted below.

Upon receipt, the Secretary of Labor notifies the persons and employer named in the complaint.²⁹ Within 60 days after receiving the complaint, the Secretary of Labor must (1) permit the named persons and the employer in the complaint to submit written responses to its allegations and (2) provide an opportunity for named persons and the employer to meet with the Secretary of Labor's representative to present witnesses' statements.³⁰ The Secretary of Labor must also investigate and determine if "there is reasonable cause to believe that the complaint has merit" and notify the parties in writing of the Secretary's findings within the same 60-day period following receipt of the complaint.³¹ Where the Secretary finds that a violation likely occurred, the Secretary shall also include a preliminary order providing relief. Any party to the complaint may file objections to the Secretary's findings, preliminary order, or both within 30 days following receipt of notice.³²

Burdens of Proof

The burdens of proof are based on the enforcement framework for airline safety under Section 42121(b). The claimant must establish a *prima facie* case showing that his or her decision to disclose criminal violations (or potentially criminal violations) was a "contributing factor" in his or her employer's decision to discriminate against or discharge the claimant.³³ Where the complaint fails to make this *prima facie* showing, the Secretary of Labor must dismiss the complaint without performing an investigation.³⁴

Once the Secretary of Labor determines that the claimant established a *prima facie* case, the burden shifts to the employer to show by clear and convincing evidence that they "would have taken the same unfavorable personnel action in the absence of [the claimant's disclosure]."³⁵ The Secretary of Labor must issue a final order within 120 days of the preliminary hearing

under Section 42121(b)(2)(A) — barring a settlement agreement between the parties — where the claimant established a *prima facie* case and the employer was unable to rebut that case by clear and convincing evidence.³⁶

Remedies

The Bill provides for general relief to ensure that a covered individual who reports criminal antitrust violations is made “whole” following employer discrimination or discharge. The legislation provides that a covered individual “shall be entitled to all relief necessary to make the covered individual whole” including three specific forms of compensatory damages: (1) reinstatement with the same level of seniority, (2) back pay with interest, and (3) “compensation for any special damages ... including litigation costs, expert witness fees, and reasonable attorney’s fees.”³⁷ A covered individual’s rights, privileges, or remedies are also preserved under any Federal or State law as well as any collective bargaining agreement.³⁸

Judicial remedies may be used to compel enforcement where a party does not comply with an order or preliminary order issued by the Secretary of Labor. Either the Secretary of Labor or the party on whose behalf an order was issued may sue in “the judicial district in which the violation occurred” to enforce the order.³⁹

New Avenue for Reporting Criminal Antitrust Violations

The whistleblower protections under the legislation establish a new avenue to report antitrust criminal violations with new protections against retaliation for making the report. A comparison of the reporting options highlights the new reporting avenue.

There are at least nine ways in which the Antitrust Division can open a criminal investigation.⁴⁰ For example:

- (1) An anonymous report may identify potential criminal antitrust conduct.
- (2) A customer, citizen or business may file a complaint.
- (3) An investigative agency, such as the Office of Inspector General of a federal agency, may uncover suspected conduct during an investigation and report it to the Antitrust Division.
- (4) Another federal or state prosecuting office may contact the Antitrust Division about suspected conduct.
- (5) The Antitrust Division has uncovered criminal conduct during the course of a merger review.⁴¹
- (6) A news report or media story may highlight conduct that leads to an investigation.

(7) Review of private litigation may highlight conduct that leads to the opening of a criminal case.

(8) Economic or market analysis may result in a new investigation.

(9) Finally, the Antitrust Division Leniency Program allows the first company or individual to self-report a criminal antitrust violation to avoid criminal convictions, criminal fines, and incarceration of executives.⁴²

In fact, “[t]he Leniency Program has been the Division’s most effective generator of international cartel prosecutions.”⁴³ Over time, about half of the cartel cases have originated in the Leniency Program.⁴⁴

One question that has been raised is whether an antitrust whistleblower law would adversely impact the Leniency Program. In our view, a new whistleblower law would not do so, because there are distinct eligibility requirements.

The Leniency Program requires that a company or individual report criminal conduct in which it was involved. For example, the second leniency condition requires that the “corporation, upon its discovery of the illegal activity being reported, took prompt and effective action to terminate its part in the activity.”⁴⁵ Likewise, the *Leniency Policy for Individuals* “applies to all individuals who approach the Division on their own behalf, not as part of a corporate proffer or confession, to seek leniency for reporting illegal antitrust activity” or who do not qualify for leniency but are “considered for statutory or informal immunity from criminal prosecution.”⁴⁶ There is no need for criminal immunity under the Leniency Program if the self-report does not involve criminal conduct. Other countries with leniency and whistleblower programs use similar distinctions.⁴⁷

In contrast, as noted, a covered individual providing a whistleblower complaint is not entitled to the statutory protections if “the covered individual planned and initiated” either: (1) “a violation or attempted violation of the antitrust laws;” (2) “a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws;” or (3) “an obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.”⁴⁸

Given these requirements, a decision must be made whether to participate in the Leniency Program or seek whistleblower protections. Consequently, the legislation establishes a new avenue to report criminal antitrust violations, and covered individuals receive anti-retaliation protections that are not presently available under current law.

Contrasts with Other Federal Whistleblower Programs

Other federal agencies offer whistleblower programs including the Internal Revenue Service (“IRS”) and the Securities and Exchange Commission (“SEC”). For example, the Taxpayer First

Act (“TFA”)⁴⁹ provides a similar framework for whistleblowers who “assist in an investigation regarding underpayment of tax or any conduct which the employee reasonably believes constitutes a violation of the internal revenue laws or any provision of Federal law relating to tax fraud.”⁵⁰ Similarly, whistleblower complaints under the TFA are governed by the framework under Section 42121(b) of Title 49 with minor variances to account for differences between aviation and tax.⁵¹ Further, a whistleblower is similarly ineligible for protection under the TFA where the whistleblower’s criminal conduct resulted in the underlying tax underpayment or tax fraud.⁵²

Like the TFA’s whistleblower protections, which the the IRS administers, the Sarbanes- Oxley Act⁵³ also provides whistleblower protections for individuals who report criminal fraud violations under Title 18 “of section 1341, 1343, 1344, or 1348” as well as “any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.”⁵⁴ Individuals who report these violations, but who then experience workplace discrimination or dismissal can also avail themselves of the procedural protection of Section 42121(b) of Title 49,⁵⁵ as is the case for whistleblowers covered by the TFA and the legislation.

Unlike the Bill, which does not provide for financial rewards, these whistleblower programs offer financial rewards when the information a whistleblower provides leads to the collection of unpaid taxes or judgments for violations of securities laws. For instance, the TFA authorizes the Secretary of the IRS to pay between 15-30 percent of unpaid taxes collected to a whistleblower whose information leads to the collection, regardless of whether the funds are recovered through administrative or judicial action (or settlement).⁵⁶ This regime covers actions against any taxpayer, but in the case of individuals, the individual’s gross income must exceed \$200,000 in the tax year that taxes were owed or illegally withheld and the amount in dispute must exceed \$2,000,000.⁵⁷

A whistleblower who provides “original information” about securities law violations that the SEC relies upon to secure a judgment in excess of \$1,000,000 may receive a financial reward in addition to whistleblower protections.⁵⁸ Where the whistleblower satisfies the SEC’s substantive and procedural requirements for a reward, he or she will be eligible to receive not less than 10 percent and not more than 30 percent of the judgment recovered based on their information,⁵⁹ subject to the Commission’s discretion.⁶⁰ The whistleblower cannot receive an award where he or she is convicted of a crime related to the action for which they would otherwise receive a reward.⁶¹

The 2011 GAO report about antitrust whistleblower protections included four key reasons DOJ officials oppose financial incentives. First, a financial reward may decrease a witness’s credibility and may affect the viability of criminal antitrust prosecutions or plea agreements; second, whistleblower rewards may have the unintended consequence of undermining corporate compliance programs by incentivizing disclosure to the government in the first

instance rather than the company; third, a reward may incentivize the reporting of cartel activity based on insufficient (or fraudulent) information, which cannot support a criminal conviction; and fourth, a reward program would require additional resources to administer.⁶² Finally, another issue concerns the source of funds for any rewards program.

Whistleblower Trends in Other Countries

A growing number of antitrust enforcers provide for whistleblower protections in conjunction with leniency programs. For example, in 2005, the Korea Fair Trade Commission (“KFTC”) announced a New Informant Reward Program which included up to 1 billion Won (approximately USD 1 million).⁶³ In 2013, the Canada Competition Bureau announced a Criminal Cartel Whistleblowing Initiative.⁶⁴ In 2017, the European Commission noted an Anonymous Whistleblower Tool to report cartels.⁶⁵ Since 2017, the United Kingdom Competition and Markets Authority (“CMA”) has had a whistleblower program.⁶⁶ In September, the Australian Competition & Consumer Commission launched a whistleblowing tool.⁶⁷ Antitrust whistleblower programs also apply in Brazil,⁶⁸ Hungary,⁶⁹ New Zealand,⁷⁰ Pakistan,⁷¹ Poland,⁷² Singapore,⁷³ Taiwan,⁷⁴ among other countries. Peru is planning to implement a whistleblower program in 2020.⁷⁵

Conclusion

The Criminal Antitrust Anti-Retaliation Act of 2019 would establish a new reporting avenue for criminal antitrust violations. It would establish new protections to covered individuals who submit a report to supervisors or government officials. Given the past bipartisan support in the Senate and the recent support by the head of the Antitrust Division, it appears that the time has arrived for adoption of new whistleblower protections for criminal antitrust violations.

-
- ¹ Mark L. Krotoski, a litigation partner in the Morgan Lewis Antitrust Practice Group, previously served as Assistant Chief in the National Criminal Enforcement Section of the Antitrust Division, among other DOJ leadership positions. Bernard W. Archbold, an associate in the Morgan Lewis Antitrust Practice Group, represents clients in mergers, acquisitions, and joint ventures, governmental investigations, civil antitrust litigations, and criminal cartel cases. He also interned at the Federal Trade Commission in the office of Commissioner Maureen Ohlhausen and in the Bureau of Competition's Mergers IV Division.
- ² See S. 2258, 116th Cong., 1st Sess., 165 Cong. Rec. S5904-05 (Oct. 17, 2019).
- ³ *Id.* § 216(a)(3)(B) (defining a “covered individual” as “an employee, contractor, subcontractor, or agent of an employer.”); *Id.* § 216(a)(3)(C) (defining “employer” as “a person, or any officer, employee, contractor, subcontractor, or agent of such person.”); *Id.* § 216(a)(3)(D)(i)-(ii) (defining “Federal Government” as either “a Federal regulatory or law enforcement agency” or “any Member of Congress or committee of Congress.”)
- ⁴ *Id.* § 216(a)(1)(B)(i)-(ii).
- ⁵ U.S. Gov't Accountability Off., GAO-11-619, Criminal Cartel Enforcement Stakeholder Views on Impact of 2004 Antitrust Reform Are Mixed, but Support Whistleblower Protection (2011) [Hereinafter “2011 GAO Report”].
- ⁶ Pub. L. No. 108-237, 118 Stat. 661 (2004).
- ⁷ See S. 3462, 112th Cong., 2d Sess., 158 Cong. Rec. S5732 (July 31, 2012). Senator Herbert H. Kohl (D-Wisc.) also joined as an original sponsor and retired from the Senate at the end of 2012.
- ⁸ See S. 2258, 116th Cong., 1st Sess., 165 Cong. Rec. S5904-05 (Oct. 17, 2019).
- ⁹ See 165 Cong. Rec. H8265, D1136 (Oct. 21, 2019).
- ¹⁰ S. 807, 115th Cong., 1st Sess., 163 Cong. Rec. S7266-67 (Nov. 15, 2017) (passed without amendment by unanimous consent).
- ¹¹ See 163 Cong. Rec. H9405, D1233 (Nov. 16, 2017).
- ¹² See S. 1599, 114th Cong., 1st Sess., 161 Cong. Rec. S5474-75 (July 22, 2015) (passed with an amendment by unanimous consent).
- ¹³ See 161 Cong. Rec. H5409, D871 (July 23, 2015).
- ¹⁴ See S. 42, 113th Cong., 1st Sess., 159 Cong. Rec. S7799-7800 (Nov. 4, 2013) (passed with an amendment by unanimous consent).
- ¹⁵ See 159 Cong. Rec. H6960, D1072 (Nov. 12, 2013).
- ¹⁶ See S. 3462, 112th Cong., 2d Sess., 158 Cong. Rec. S5732 (July 31, 2012).
- ¹⁷ Oversight of the Enforcement of the Antitrust Laws: Before the Senate Judiciary Subcomm. on Antitrust, Competition Policy, and Consumer Rights, 116th Cong. (2019) (testimony of Assistant Att'y Gen., Antitrust Div. of the United States) (hearing time 52:40-53:20), available at <https://www.judiciary.senate.gov/meetings/09/17/2019/07/23/2019/oversight-of-the-enforcement-of-the-antitrust-laws>.
- ¹⁸ 15 U.S.C. §§ 1, 3.
- ¹⁹ S. 2258 § 216(a)(3)(B) (defining a “covered individual”).
- ²⁰ *Id.* § 216(a)(1)(A)(i)-(ii).
- ²¹ *Id.* § 216(a)(1)(B).
- ²² *Id.* §§ 216(a)(1)(A)(i)-(ii), 216(a)(1)(B)(i)-(ii).
- ²³ *Id.* § 216(a)(1).
- ²⁴ *Id.* § 216(a)(2)(A)-(C).
- ²⁵ *Id.* §§ 216(b)(1)(A), 216(b)(2)(D).
- ²⁶ *Id.* §§ 216(b)(1)(B).
- ²⁷ 18 U.S.C. § 1514A.
- ²⁸ 26 U.S.C. § 7623(d).
- ²⁹ *Id.* § 216(b)(2)(B).
- ³⁰ 49 U.S.C. § 42121(b)(2)(A); S. 2258 § 216(b)(2)(B).
- ³¹ 49 U.S.C. § 42121(b)(2)(A).
- ³² *Id.* § 42121(b)(2)(A).
- ³³ *Id.* § 42121(b)(2)(B)(i).
- ³⁴ *Id.*
- ³⁵ *Id.* § 42121(b)(2)(B)(ii).

-
- ³⁶ *Id.* § 42121(b)(3)(A).
- ³⁷ S. 2258 § 216(c)(2)(A)-(C)(iii).
- ³⁸ *Id.* § 216(d).
- ³⁹ *Id.* § 216(b)(2)(E).
- ⁴⁰ See generally Antitrust Division Manual, at III-6 (5th ed. Updated July 2019) (summarizing common sources), available at <https://www.justice.gov/atr/file/761141/download>.
- ⁴¹ See, e.g. Mark L. Krotoski & Zachary M. Johns, Merger Review in Seafood Industry Highlights Importance of Regular Antitrust Counseling and Compliance Training (May 1, 2017), available at <https://www.morganlewis.com/blogs/welldone/2017/05/merger-review-in-seafood-industry>.
- ⁴² See U.S. Dep't of Justice, Antitrust Div., Corporate Leniency Policy (1993) [Hereinafter "Corporate Leniency Policy"], available at <https://www.justice.gov/atr/file/810281/download>; U.S. Dep't of Justice, Antitrust Div., Leniency Policy for Individuals (1994) [Hereinafter "Leniency Policy for Individuals"], available at <https://www.justice.gov/sites/default/files/atr/legacy/2006/04/27/0092.pdf>.
- ⁴³ Antitrust Division, Frequently Asked Questions About the Antitrust Division's Leniency Program and Model Leniency Letters, at 28 (Jan. 2017) [Hereinafter "Leniency Program FAQ"], available at <https://www.justice.gov/atr/page/file/926521/download>.
- ⁴⁴ See, e.g. Remarks of Scott D. Hammond, Director of Criminal Enforcement Antitrust Division, U.S. Dep't of Justice, A Summary Overview of the Antitrust Division's Criminal Enforcement Program, presented at the New York State Bar Association Annual Meeting (Jan. 23, 2003), available at <https://www.justice.gov/atr/speech/summary-overview-antitrust-divisions-criminal-enforcement-program>; Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, U.S. Dept. of Justice, An Update of the Antitrust Division's Criminal Enforcement Program, presented at the ABA Section of Antitrust Law Cartel Enforcement Roundtable, 2005 Fall Forum 12 (Nov. 16, 2005), available at <https://www.justice.gov/atr/file/517831/download>.
- ⁴⁵ Corporate Leniency Policy, at 1.
- ⁴⁶ See Leniency Program FAQ, at 1 (the program applies to the "*first corporate or individual conspirator to confess participation in an antitrust crime, fully cooperate with the Division, and meet all other conditions*") (emphasis added); *id.* at 3 (noting that in obtaining a leniency marker, counsel must "report that he or she has uncovered some information or evidence indicating that his or her client has engaged in a criminal antitrust violation"); Leniency Policy for Individuals at 2.
- ⁴⁷ See, e.g. Question 15, Guidelines on CADE's Antitrust Leniency Program, at 16 (Apr 14, 2016) (noting a whistleblower petition may be filed in Brazil which is distinct from a leniency agreement which "applies only to cartel participants"), available at <http://en.cade.gov.br/topics/leniency-program/guidelines-cades-antitrust-leniency-program.pdf/@@download/file/Guidelines%20CADE's%20Antitrust%20Leniency%20Program.pdf>.
- see also Approaching Competition & Consumer Commission of Singapore for Leniency or Reward ("Leniency applicants are not eligible for a reward under the Reward Scheme."), available at <https://www.cccs.gov.sg/faq/approaching-cccs-for-lenieny-or-reward> (last visited Nov. 5, 2019).
- ⁴⁸ S. 2258 § 216(a)(2)(A)-(C).
- ⁴⁹ 26 U.S.C. § 7623(d).
- ⁵⁰ *Id.* § 7623(d)(1)(A).
- ⁵¹ *Id.* § 7623(d)(2)(B)(i)-(iii).
- ⁵² *Id.* § 7623(b)(3).
- ⁵³ 18 U.S.C. § 1514A.
- ⁵⁴ *Id.* § 1514A(a)(1).
- ⁵⁵ *Id.* § 1514A(b)(2)(A)-(C).
- ⁵⁶ 26 U.S.C. § 7623(a)-(b)(1).
- ⁵⁷ *Id.* § 7623(b)(5)(A)-(B).
- ⁵⁸ *Id.* § 78u-6(a)(1), (a)(3)-(4)(B).
- ⁵⁹ *Id.* § 78u-6(b)(1)(A)-(B).
- ⁶⁰ *Id.* § 78u-6(c)(1)(A).
- ⁶¹ *Id.* § 78u-6(c)(2)(B).
- ⁶² 2011 GAO Report, at 36.
- ⁶³ See Byongbae Kim, Director General, Competition Bureau, Korea Fair Trade Comm'n, Measures to Improve Cartel Detection (Other than Leniency) (Nov. 8, 2005), ICN Cartel Workshop (discussing New Informant Reward Programme of 2005 including up to 1 billion Won (approximately USD 1 million)), available at <http://old.internationalcompetitionnetwork.org/uploads/library/doc649.pdf>.

-
- ⁶⁴ See Remarks by John Pecman, interim Commissioner of Competition, CBA Spring Speech, Toronto, Ontario (May 28, 2013), available at <http://www.ic.gc.ca/eic/site/cb-bc.nsf/eng/03571.html#Initiative>; Criminal Cartel Whistleblowing Initiative, available at <http://www.ic.gc.ca/eic/site/cb-bc.nsf/eng/02819.html> (last modified Nov. 5, 2015); Whistleblowing Initiative, Fact Sheet (March 16, 2016), available at <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04043.html>.
- ⁶⁵ Press Release, Antitrust: Commission introduces new anonymous whistleblower tool (March 16, 2017), available at https://europa.eu/rapid/press-release_IP-17-591_en.htm; Anonymous Whistleblower Tool, available at <https://ec.europa.eu/competition/cartels/whistleblower/index.html> (last updated Mar. 3, 2019).
- ⁶⁶ Press Release, CMA launches campaign to crack down on cartels (March 20, 2017) (offering up to £100,000 for whistleblower reports on cartels), available at <https://www.gov.uk/government/news/cma-launches-campaign-to-crack-down-on-cartels>.
- ⁶⁷ Cartel immunity policy strengthened, whistleblowing tool launched, Australian Competition & Consumer Commission (Sept. 6, 2019), available at <https://www.accc.gov.au/media-release/cartel-immunity-policy-strengthened-whistleblowing-tool-launched>.
- ⁶⁸ Question 15, Guidelines CADE's Antitrust Leniency Program, at 16 (Apr 14, 2016) (distinguishing a whistleblower petition from a leniency agreement), available at <http://en.cade.gov.br/topics/leniency-program/guidelines-cades-antitrust-leniency-program.pdf/@download/file/Guidelines%20CADE's%20Antitrust%20Leniency%20Program.pdf>.
- ⁶⁹ Regular Questions About the Cartel Informant Reward, available at http://www.gvh.hu/en//data/cms1021336/kiemelt_tema_kartell_informatori_d%C3%ADj_gyfk_2010_03_31_a.pdf (last visited Nov. 5, 2019).
- ⁷⁰ Press Release, New Zealand Commerce Commission, Anonymous whistleblowing tool launched to help people report cartels (Aug. 1, 2018), available at <https://comcom.govt.nz/news-and-media/media-releases/2018/anonymous-whistleblowing-tool-launched-to-help-people-report-cartels>.
- ⁷¹ Competition (Leniency) Regulations, 2019 (Government of Pakistan, Competition Comm'n of Pakistan, July 26, 2019), S.R.O./2019 (Pak.), available at https://www.cc.gov.pk/images/Downloads/leniency_regulations.pdf; Charles McConnell, Pakistan introduces whistleblower programme and revises leniency, GCR Asia (July 31, 2019), available at <https://globalcompetitionreview.com/article/1195798/pakistan-introduces-whistleblower-programme-and-revises-leniency>.
- ⁷² Press Release, Introducing the whistleblower programme (April 10, 2017), available at https://uokik.gov.pl/news.php?news_id=13103.
- ⁷³ Reward/Whistle-Blowing Scheme, Competition & Consumer Commission of Singapore, available at <https://www.cccs.gov.sg/approach-cccs/making-complaints/reward-scheme>; see also Approaching CCCS for Leniency or Reward, available at <https://www.cccs.gov.sg/faq/approaching-cccs-for-leniency-or-reward> (last visited Nov. 5, 2019).
- ⁷⁴ Taiwan Fair Trade Act of 1992, Faigui Huibian, art. 47-1 (amended 2017), available at <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0150002>; Jing Zhao, Inside Taiwan's Antitrust Whistleblower Rewards Program, Law360 (May 11, 2016), available at <https://www.law360.com/articles/792788/inside-taiwan-s-antitrust-whistleblower-rewards-program/congresswoman-demands-military-end-burger-king-contracts>.
- ⁷⁵ Indecopi: Desde el 2020 darán recompensa a quienes denuncien concertación de precios (March 20, 2019), available at <https://diariocorreo.pe/economia/indecopi-desde-el-2020-daran-recompensa-quienes-denuncien-concertacion-de-precios-876974/>; see also Peru: INDECOPI plans reward for price-fixing whistleblowers, Competition Policy International (March 26, 2019), available at <https://www.competitionpolicyinternational.com/peru-indecopi-offers-a-reward-to-anyone-who-denounces-price-collusion/>.