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The International Comparative Legal Guide to:

Cartels & Leniency 2018

11th Edition

A practical cross-border insight into cartels and leniency

Published by Global Legal Group, in association with CDR, with contributions from:

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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
November 2017

ISBN 978-1-911367-81-9
ISSN 1756-1027

Strategic Partners

General Chapters:

Country Question and Answer Chapters:

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Individuals as Whistleblowers

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1. Introduction

Most cartel activities are secretive by nature and thus difficult to uncover. This is why most competition authorities around the world rely heavily on cartel participants to come forward and confess their wrongdoings in exchange for either full immunity from or a reduction of the fines that would otherwise be imposed.

Whilst in a number of jurisdictions leniency programmes are open to companies only (*e.g.*, the European Union, Hong Kong, Italy, Norway), in others, individuals who might otherwise be subject to sanctions for their participation in a cartel can apply for leniency independently of their employer (*e.g.*, Belgium, Canada, China, Germany, Japan, the Netherlands, Portugal, Romania, Spain, the United Kingdom). In some jurisdictions, there is no need for a separate leniency application by an individual if the employer has applied for leniency, if the application by the company covers all of its employees (potentially) involved in the conduct (*e.g.*, Germany, the United Kingdom).

In order to benefit from full immunity, most leniency programmes require that applicants: disclose their identity; are the first to come forward to the authority; confess their involvement in a cartel; provide the authority with evidence of the cartel conduct allowing the authority, *e.g.* to conduct on-site inspections or prove an infringement; put an end to their participation in the cartel; and continuously cooperate fully and consistently with the authority throughout the investigation. Subsequent applicants can benefit from a reduction of fines if they meet the necessary requirements, *e.g.*, provide information of significant value.

However, there are situations where an individual who has inside knowledge or specific information about a cartel, with or without having a direct involvement in the practices, might be reluctant to alert competition authorities openly or to disclose his or her identity for fear of severe consequences for their career and personal life, including potential retaliations from their employer.

To alleviate the limitations of existing reporting mechanisms for these individuals, an increasing number of competition authorities, including within the EU, have developed anonymous whistleblowing tools designed to make it easier for individuals to alert authorities about secret cartels and other antitrust violations while maintaining their anonymity (*e.g.*, Denmark, the European Union, Germany, Poland, Romania, Spain).

Some competition authorities have even moved a step further by offering attractive financial rewards for whistleblowers (*e.g.*, Singapore, Slovak Republic, South Korea, the United Kingdom).

These new reporting mechanisms for individuals exist alongside the traditional leniency programmes open to cartel participants, and third party complaint procedures, open to competitors and consumers harmed by anticompetitive practices.

We provide below a brief overview of recent developments in relation to those whistleblowing procedures for individuals in selected jurisdictions.

2. European Union

In March 2017, the European Commission (the "Commission") introduced a new online anonymous whistleblower tool to make it easier for individuals to alert the Commission about past, ongoing or planned cartels and other antitrust infringements while maintaining their anonymity. (See http://ec.europa.eu/competition/cartels/whistleblower/index.html.)

The tool is specifically designed to protect informants' anonymity through an encrypted messaging system that allows two-way communication and the use of an external service provider, SecWay, that acts as an intermediary. The tool allows individuals to provide information to the Commission and gives them the option of asking for the Commission to reply to their messages, and allows the Commission to seek clarifications. The intermediary relays only the content of received messages without forwarding any metadata that could be used to identify the informant.

The tool is designed for informants wishing to remain anonymous, whilst individuals willing to reveal their identify can contact the Commission through a dedicated phone number and email address, and individuals empowered to represent a company involved in a cartel can apply for leniency under the Commission's leniency programme.

To date, most cartels have been detected through the Commission's leniency programme, which allows companies to report their involvement in a cartel in exchange for immunity from, or a reduction of, fines.

Because individuals are not subject to sanctions and penalties pursuant to Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and Article 23 and 24 of Regulation 1/2003, protection under the Commission's leniency programme is not open to individual whistleblowers. By introducing the new whistleblowing tool for individuals, the Commission aims to provide opportunity to individuals who have inside knowledge of the existence or functioning of a cartel or other types of antitrust violations to help the Commission discover and end such practices.

The Commission is hopeful that the new tool will increase the likelihood of detection and prosecution and will further deter companies from entering or remaining in a cartel or carrying out other anticompetitive practices. The tool therefore aims to

complement and reinforce the effectiveness of the Commission's leniency programme, which remains in place.

There has been no change in legislation as a result of the introduction of the new whistleblowing tool. However, in March 2017, the Commission issued a proposal for a Directive of the European Parliament and of the Council (COM(2017) 142 final) to empower the competition authorities of the Member States to be more effective enforcers, and to ensure the proper functioning of the internal market. Article 22 of the proposal provides for the protection of current and former employees, and directors of applicants for immunity from fines against criminal and administrative sanctions, provided that they cooperate with the authorities. The proposal stipulates, *inter alia*, that: "*Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are protected from any criminal and administrative sanctions and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the start of the criminal proceedings*". The provision is designed to alleviate the risk that the information provided by individuals be used against them in criminal proceedings.

In addition to the proposed Directive, in May 2017, the Commission's DG Justice and Consumers consulted a broad range of interested parties to gather views on the need for horizontal or further sectoral action at EU level to ensure minimum standards of protection of individuals as whistleblowers against retaliations. The consultation paper defines 'whistleblowers' as individuals who report or disclose information about acts or omissions which represent a 'threat or harm to the public interest', that they may have come across in the course of their work. (See http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254.) Whilst the consultation is now closed, the Commission has yet to issue its conclusions.

3. United Kingdom

In March 2017, the UK Competition and Markets Authority ("CMA") launched its first advertising campaign specifically designed to encourage individuals who have information about a cartel, whether they are directly involved or have witnessed one, to report it to the CMA. (See https://stopcartels.campaign.gov.uk/.) To those who are not directly involved, the CMA offers a financial reward of up to £100,000, in exceptional circumstances and at the CMA's discretion. The CMA also promises whistleblowers anonymity. Adverts have appeared in social media feeds such as Twitter and LinkedIn as well as on key websites.

The financial reward programme was introduced in 2008 by the then Office of Fair Trading ("OFT") for an initial period of 18 months, but it was kept in place thereafter and continued by the CMA when it took over the OFT's competition enforcement functions in April 2014.

In contrast with the EU approach, the CMA does not use an online portal that would guarantee absolute anonymity through an encrypted messaging system. However, the CMA recognises that informants will only be prepared to come forward if there is a guarantee that their identity as a whistleblower will not become known to third parties.

For this reason, the CMA informant reward policy provides that only specially trained officers, typically with a law enforcement background, will deal with the informant and will carefully safeguard any information provided to protect the whistleblower's identity from disclosure. Conversations can be initiated on a no-name basis if necessary, but the CMA will always prefer to know the identity of the informant from the start. The CMA guidelines provide that "*at [that] meeting we will need to know your identity as an essential part of assessing your credibility and the likely reliability of the information you may be able to give us. ... People may be tempted to give information for all sorts of reasons and it is important that we can explore all of your motivations for approaching us. This is for our protection as well as that of any persons or businesses which might otherwise be susceptible to unfounded allegations*" (see https://www.gov.uk/government/publications/cartels-informant-rewards-policy).

The informant reward policy further provides that the CMA will only use information as intelligence so as to protect the informant's identity from disclosure. As such, the informant's employer should never know that the informant assisted the CMA. Moreover, the Public Interest Disclosure Act 1998 on the Public Concern at Work provides that an employer cannot dismiss or otherwise penalise an employee for whistleblowing on illegal activity.

Whilst the reward policy applies to individuals who are not involved in a cartel, individuals who have been directly involved can apply for leniency under the CMA's leniency programme to avoid personal sanctions.

In the UK, cartel activities are illegal under both civil and criminal law. Under civil law, undertakings may be subject to fines of up to 10% of their turnover if found guilty of cartel activity. Under criminal law, individuals who engage in cartel activity may commit an offence and may be imprisoned for up to five years and may be given an unlimited fine. Any company directors implicated in cartel activities could also be disqualified from acting as a director in the future for up to 15 years.

A business which has participated in a cartel may receive total or partial immunity from fines if it comes forward with information about the cartel, provided certain conditions are met. It may also be granted immunity from criminal prosecution for any of its cooperating current or former employees or directors, and protection from director disqualification proceedings for all of its cooperating directors.

An individual who has directly participated in cartel activity may also apply for leniency, independently of their employer, and obtain full immunity from prosecution though a 'no-action letter', provided that they are the first to report and confess their involvement in the cartel and that they satisfy certain conditions, including admitting taking part in the cartel, not having coerced others, and cooperating completely and continuously with the CMA throughout the investigation. The CMA may treat the identity of the individual immunity applicant as secret where the safety of the individual would be in jeopardy or other serious adverse consequences would follow if the person's approach to the CMA were to be disclosed.

The CMA does not consider that an individual in such circumstances should ordinarily also obtain a financial reward. However, there may be circumstances where the CMA will consider a reward in addition to immunity from sanction under the leniency policy. This is most likely to be considered where the role of the individual in the cartel was relatively peripheral – for example, that of an employee who was occasionally directed by his superiors to attend a cartel meeting and who was not asked to take an active part in decision-making about the cartel.

4. Germany

In Germany, the *Bundeskartellamt* introduced an anonymous whistleblowing system in 2012 in response to situations where an

individual with insider knowledge or specific information about a cartel might be reluctant to alert the authorities for fear of reprisals.

For such cases, the *Bundeskartellamt* has set up a standardised online whistleblowing portal that guarantees the anonymity of the informant (see http://www.bundeskartellamt.de/EN/Banoncartels/Whistle-blower/whistle-blower_node.html and www.business-keeper.com). The information provided cannot be traced back to the informant as long as the informant does not enter any data that allows inferences about their identity. This online tool has been certified by a publicly appointed and sworn expert and is used in the anti-corruption systems of companies, and police authorities. Anonymous tip-offs can still be submitted by post or telephone, provided the name and address, phone number or other indicators of the identity of the informant are not discernable.

The *Bundeskartellamt* reported on its website that the very first tip-off it received since the launch of the portal led to the investigation against and, in 2015, the imposition of a total fine of EUR 75 million, on five automotive parts manufacturers.

When it receives an anonymous tip-off, the *Bundeskartellamt* makes sure that the information provided is factually accurate, sufficiently detailed, accompanied by conclusive factual evidence of the infringement, and has been confirmed by further research by the authority.

Although the *Bundeskartellamt* recognises the importance of anonymous tip-offs in its fight against cartels, it invites informants to disclose their name and relationship (business or personal) to the cartel, stating that such information is usually of higher information and evidential value than anonymous tip-offs.

Individuals who have participated in a cartel may be subject to a fine of up to €1 million and, under German rules, are invited to apply for leniency, independently of their employers in exchange of immunity from fines. However, as in the UK, there is no need for a separate application by an individual if the company has already applied for leniency, because the company's application will typically cover all of its employees involved in the cartel.

To benefit from immunity, the individual will have to be the first to come forward to the *Bundeskartellamt* and reveal the existence of the cartel. Immunity from fines can also be granted at a later stage, if the *Bundeskartellamt* is provided with decisive evidence without which the existence of a cartel could not have been established. The sole ringleader of the cartel, and cartel members who coerced others to participate in the cartel, however, cannot be granted immunity from fines. The fine can be reduced by up to 50% for all other leniency applicants depending on the value of their contributions to proving the offence.

Leniency applications cannot be submitted anonymously or via the whistleblowing system.

5. Denmark, Spain, Romania, Slovak Republic and Poland

Similar online encrypted messaging systems run by an external service provider have been developed in other EU Member States.

In 2013, Denmark's *Konkurrence- og Forbrugerstyrelsen* developed an anonymous online whistleblower tool on which the European Commission tool is modelled. Thorgaard Soerensen, the deputy director general of the Danish authority, explained that "*around 10 percent of what we get ends up in something that we investigate*" (American Bar Association on Antitrust Law 2017 Spring Meeting in Washington, March 2017, as reported by Mlex).

Both the European Commission and the Danish competition authority use the same software system provided by external supplier, SecWay, which offers the opportunity of a two-way communication system whilst ensuring complete anonymity of the informant (see http://www.kfst.dk/konkurrenceforhold/karteller/kontakt/ and http://secway.info/index.php).

According to the Danish competition authority, when the board initiates an investigation based on information reported anonymously, it does not imply that the case will be investigated on a narrower basis than if the board was aware of the identity of the informant. On the contrary, the board imposes higher demands on the value of the information and the level of documentation when the identity of the informant is not known.

Romania's Consiliul Concurentei introduced a system of anonymous whistleblowing for individuals in December 2015. The system protects the informant's identity and also protects them from any alleged breach of confidentiality obligations under employment rules. (See http://www.consiliulconcurentei.ro/ro/despre-noi/contact/contact-ccr.html.)

While aimed primarily at employees of companies involved in cartel activities who may otherwise be reluctant to come forward for fear of retaliation, the authority anticipates that the platform will also be used by competitors or trading partners.

The system uses the same external supplier as the European Commission and Denmark's competition authority, SecWay. Similarly to the EU and Denmark, the tool is specifically designed to protect an informants' anonymity through an encrypted messaging system that allows two-way communications and the use of an external service provider that relays the information between the informant and the authority, ensuring complete anonymity as long as the informant does not disclose any information that would infer their identity.

In other EU Member States, whistleblower systems for individuals have been developed, but without encrypted tools that would guarantee full anonymity of the informants.

In 2014, Spain's *Comisión Nacional De Los Mercados Y La Competencia* ("CNMC") set up a dedicated email address for individuals to report, informally and confidentially, anticompetitive practices (see https://sede.cnmc.gob.es/en/tramites/competencia/colaboracion-para-la-deteccion-de-carteles). The identity of the person who provides the information is not registered unless the corresponding boxes on the online form are filled in. The tool is designed to complement existing procedures, including formal complaints and leniency applications.

According to a senior official at the CNMC: "*Many cartel cases in the last few years have come from workers who were upset with the way things were going in the company. ... They came (to us) and said 'I'm leaving this company but I want you to know this and this. I want you to have emails' ... We had a couple of cases like that and it was very useful to have them there with the inside information.*" (American Bar Association on Antitrust Law 2017 Spring Meeting in Washington, March 2017, as reported by Mlex).

In 2014, Slovak Republic's *Protimonopolný úrad* ("Antimonopoly Office") introduced a financial reward system for individuals who report information and evidence on cartel activities. (See http://www.antimon.gov.sk/cartel-informant-reward/.) An individual who is the first to provide the authority with significant evidence on cartel activity is entitled to a reward of up to 1% of the fines, imposed with a maximum of €100,000.

If requested by the informant, his or her identity will be protected from disclosure. To that effect, the informant is allocated a single contact person by the authority, and his or her consent is sought explicitly as and when additional employees of the authority are appointed to the case.

To ensure the protection of the informant, the legislation explicitly guarantees that by providing information to the authority, the individual does not breach any confidentiality obligations, *e.g.*, under the governing employment laws. The informant may also withdraw the notification at any point without negative consequences.

Poland's Office of Competition and Consumer Protection ("UOKiK") launched a pilot whistleblowing programme for individuals in April 2017 (see http://konkurencja.uokik.gov.pl/zglos-naruszenie/ and https://www.uokik.gov.pl/news.php?news_id=13103&news_page=2) for the reporting by individuals of cartel activities and any other types of competition law breach. The UOKiK currently uses a hotline and email address, but it is working to introduce a dedicated online encrypted tool which will provide a fully secure form of communication similar to that used by the European Commission, Germany, Denmark and Romania.

There have been no legislative changes as a result of this initiative but the UOKiK is working on integrating the concept of individuals as whistleblowers into national competition law, and on ensuring whistleblowers' adequate protection. UOKiK is also working on developing a financial incentive scheme.

6. United States

In the United States, there are a number of programmes and policies that encourage and protect whistleblowers. The most well-known of these is the Department of Justice ("DOJ") Antitrust Division's Leniency Programme, which offers protection to companies and individuals who have been involved in anticompetitive activities in exchange for early reporting and cooperation with the government. Most applicants that receive leniency through this programme are directly involved in a conspiracy and would not benefit from the ability to report anonymously, since the programme offers immunity to those who confess and comply with an investigation. Individuals who do not satisfy the criteria for the DOJ's Leniency Programme could either report possible violations of antitrust laws to the DOJ's Antitrust Division or, alternatively, pursue a *qui tam* action, which allows a private individual to sue on behalf of the government and collect a reward if the government has been harmed by a company's conduct.

The Antitrust Division's Citizen Complaint Center allows private individuals to submit concerns and complaints by email, regular mail, or phone. The Center asks complainants to fully describe the nature of the concern and identify the involved companies and potential competitors, the relevant product and geographic market, and the harm caused by the alleged violations. Although the complaint process is not anonymous, the identity of the complainants and the information they provide is kept confidential by the Department. If the complaint raises sufficient concern under Federal laws, additional research is conducted and a formal investigation may be opened.

A *qui tam* statute authorises a private individual to file a legal action, individually and on behalf of the government, to prosecute third parties that violate their statutory obligations to the government, and to receive a share of any proceeds recovered. Unlike private antitrust actions, individual whistleblowers in *qui tam* actions need not have been a victim of the misconduct giving rise to the litigation. As such, *qui tam* suits are a potential avenue for employees, competitors or consumers to report anti-competitive activity. However, the action must be brought under one of the four federal *qui tam* statutes: the False Claims Act, the Patent Act, or one of two Indian Protection laws.[1] Generally, *qui tam* antitrust fraud suits are brought under the False Claims Act, which attaches liability (in relevant part) where a person knowingly presents a false or fraudulent claim for payment, or knowingly makes or uses a false record or statement that is material to a false or fraudulent claim. In order for the *qui tam* relator to be successful, there must have been injury to the government. Direct harm to consumers as a result of anti-competitive activity may be insufficient for a *qui tam* suit under the False Claims Act, absent proof of this harm.

Regardless of their leniency eligibility, individual whistleblowers in the United States may be protected from an employer's retaliatory behaviour by state and federal laws. Typically, companies adopt anti-retaliation policies across the board in response to federal anti-retaliation statutes and therefore strictly prohibit any retaliatory behaviour. However, at the state level, protections are often provided by state whistleblower statutes or through legal precedent.[2] Many states have employee protection statutes that prohibit retaliatory behaviour as a matter of public policy, or carve out a public policy exception to at-will employment.[3] At the federal level, the most commonly referenced whistleblower protection law is the False Claims Act, which covers whistleblower claims relating to corporate fraud or misconduct that causes the government financial harm. There are also whistleblower protection provisions in the Dodd Frank/Wall Street Reform Act and the Sarbanes-Oxley Act which cover whistleblower claims relating to fraud or misconduct in the sale or trading of securities or commodities. Finally, if passed, the Criminal Antitrust Anti-Retaliation Act of 2017 would create antitrust-specific federal protection for whistleblowers, further shielding individuals from retaliation by employers.[4]

7. Australia

The Australian Competition and Consumer Commission's ("ACCC") immunity policy for cartel conduct is designed to provide incentives for applicants to disclose cartel conduct by making a company or individual eligible for conditional immunity from ACCC proceedings (but not from private actions) in specified circumstances. However, under current Australian law, individual whistleblowers have only minor protections. Under the Competition and Consumer Act 2010 ("CCA"), informants (who have knowledge of the conduct but are not directly involved) and complainants (who have some limited knowledge of the conduct and wish to report the matter to the ACCC) are protected from intimidation or other coercive conduct they may be subjected to as a result of cooperation with the ACCC (Section 162A of the CCA).

Whilst there is a hotline available for parties wishing to apply for or enquire about immunity, it is unclear how individuals fit into the current immunity and cooperation system. This fact has been recognised by the ACCC. In his evidence to the Parliamentary Joint Committee on Corporations and Financial Services, in February 2017 – as part of the latter's inquiry into 'Whistleblower protections in the corporate, public and not-for-profit sectors' – ACCC chairman Rod Sims noted that the success of ACCC investigations is heavily reliant upon the cooperation of individuals, particularly in respect of alleged contraventions which involve coercive or covert behaviour (see http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Submissions [submission 12]). He explained that existing protections would not adequately extend to circumstances outside of the ACCC's control which can result from assistance being provided to the ACCC, including, *e.g.*, contractual actions against the individual. According to the ACCC chairman, the lack of whistleblower protections under the CCA has led to cases being directly impacted, with witnesses unwilling to provide information (or cooperate fully) with the ACCC due to a range of

commercial and safety concerns. He proposed that the current law be reformed so as to:

- increase penalties for intimidation and coercive conduct so as to provide sufficient deterrence against intimidating whistleblowers; and
- provide a formal third party whistleblower regime in a similar manner to the Corporations Act, which provides that a third party whistleblower can be protected from civil or criminal liability, as well as from liability or termination arising from enforcement of any other form of right or remedy, such as a contract.

It is not yet clear whether a formal third party whistleblower regime will be implemented in response to these suggestions.

8. Canada

Canada's Competition Act contains criminal provisions that prohibit anti-competitive business activities. These include conspiracies that prevent or lessen competition unduly (*e.g.*, price-fixing or market-allocation agreements), bid-rigging, and false or misleading representations. There are also civil provisions relating to mergers, abuse of dominant position and false or misleading representations. A party implicated in criminal anti-competitive activity which violates the Act may offer to cooperate with the Bureau and request immunity. A company may, but does not have to, initiate an application on behalf of its employees. Employees may approach the Competition Bureau on their own behalf. (See http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03155.html.)

The Competition Bureau does not offer monetary incentives to whistleblowers who report possible competition law violations. However, the Competition Bureau has an ongoing whistleblowing initiative that allows members of the public to provide information to the bureau regarding possible criminal activities under the Competition Act (see http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04043.html).

The Competition Act provides certain protections to whistleblowers, including protecting the identities of people who report competition law offences to the Competition Bureau and prohibiting employers from dismissing or retaliating against employees who, acting in good faith and on the basis of reasonable belief, report potential competition law offences.

9. South Korea

The Korean Fair Trade Commission ("KFTC") operates a leniency programme for cartels under the Monopoly Regulation and Fair Trade Act ("MRFTA") which provides immunity from civil fines or corrective measures for applicant undertakings. Individuals are not subject to civil fines for competition law breaches under the regime and hence there is no separate leniency programme for individuals (see https://uk.practicallaw.thomsonreuters.com/3-500-5604?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

The KFTC has implemented a reward programme for whistleblowers to encourage people to report anti-competitive practices. The KFTC offers a reward of up to KRW 3 billion for those reporting cartels and issued awards totalling KRW 835 million (approximately US$ 711,000) to 54 whistleblowers who provided critical information in 2016, with 87.4% of the total amount being paid in relation to cases involving cartel activities (see http://www.mlex.com//Attachments/2017-019_4H2D4K827V7ZBI77/KFTC_statement_Awards_19JAN.PDF).

South Korea's Public Interest Whistleblower Protection Act, which came into effect on 30 September 2011, upon which the KFTC reward programme is based, provides whistleblowers who report violations of the public interest with protection from retaliatory measures by employers. A 'violation of the public interest' includes acts that could harm consumer interests and fair competition.

10. Conclusion

Competition authorities around the world are showing resourcefulness in their determination to strengthen their enforcement activities by increasingly making it easier for individuals to report cartel activities, or other breach of competition law, anonymously. Should these new reporting mechanisms and financial incentive schemes prove successful over time, businesses should expect an increase in investigations.

The success of these tools will depend on the quality and reliability of the information supplied. The volume of information that can be supplied via the online tools is rather limited. The EU and Danish tools, for example, do not allow the uploading of files. Competition authorities have therefore the challenging task of verifying the accuracy and good faith of the information received through their own resources.

The success of these tools also supposes adequate and effective protection of informants against retaliations, and a guarantee of their anonymity. In most jurisdictions, these new reporting mechanisms have been introduced without legislative changes. Whilst in some jurisdictions steps are under way to fully integrate these new whistleblower programmes in the competition legislative framework, it is not the case everywhere and the interaction between these tools and the rules on confidentiality under employment law remain unclear in a number of jurisdictions.

It remains to be seen how the success of individual whistleblower tools will impact on the effectiveness of leniency programmes for companies, which typically rely on employees coming forward in the context of internal investigations and often on the basis of carefully designed company compliance programmes that may incentivise employees that are involved in or know of illegal activity to self-report within the company, often also on an anonymous basis. Competition authorities should be mindful to clarify the rules on protection of individual whistleblowers, as well as the interaction between whistleblower programmes for individuals and leniency programmes for companies.

Endnotes

1. *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S.. 765, 768-9 n.1 (2000).
2. For example, in *Lewis v. Bay Industries, Inc.*, 51 F.Supp.3d 846 (E.D. Wis. 2014), the court notes that the Wisconsin Supreme Court established a narrow public policy exception to the rule of employment at-will where an employee is fired for his refusal to violate a constitutional or statutory provision. The plaintiff asserted that he was wrongfully discharged as a result of asserting that he would testify truthfully about antitrust matters, but failed to offer evidence that he was directed to violate any antitrust statute. See also *Risk v. Allstate Life Ins. Co.*, 2006 WL 2021597 (N.D. Ok. 2006) (noting that in order to state a claim for wrongful discharge as a whistleblower, the plaintiff must state that he was fired for complaining about violations under Oklahoma law, and reporting violations of IRS and federal treasury regulations do not implicate the employer in any wrongdoing under Oklahoma law); *Blackburn v. United Parcel Service*,

Inc., 3 F.Supp.2d. 504 (D.N.J. 1998) (considering whether an employee established a *prima facie* case of whistleblower retaliation for reporting alleged antitrust violations under New Jersey's Conscientious Employee Protection Act).

3. *Id.*

4. The Criminal Antitrust Anti-Retaliation Act of 2017 ("CAARA") is an amendment to the Antitrust Criminal Penalty Enhancement and Reform Act ("ACPERA") which offers protection to any "employee, contractor, subcontractor, or agent of an employer" who provides information to the federal government about potential violations of antitrust laws. ACPERA was recently criticised by the GAO for providing no protections or incentives to innocent third parties who reported criminal cartels and other antitrust violations. On April 4, 2017, Sens. Grassley and Leahy re-introduced the newest iteration of the legislation. Similar legislation had been introduced in both the 114th and 113th Congress, where it was unanimously passed by the Senate each time, but never addressed by the House. The recent legislation has been referred to the Committee on the Judiciary. See Debra S. Katz, The Senate 'Makes Good' On Congress' Antitrust Promises, Law 360 (Aug. 6, 2015), available at: https://www.law360.com/articles/684611?scroll=1; see also Baker Donelson, Antitrust "Whistleblower" Protection Legislation Reintroduced in the Senate, JDSupra (May 5, 2017), available at: http://www.jdsupra.com/legalnews/antitrust-whistleblower-protection-38344/.

Acknowledgment

The authors wish to thank Tiffany Rider, a Counsel in Skadden Arps' Washington, D.C. office, for her contribution to the US section of this chapter.

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Ingrid Vandenborre is the partner in charge of Skadden's Brussels office. Her practice focuses on EU and international merger control and competition law enforcement. She has consistently been named as a leading practitioner in *Who's Who Legal* guides in both competition and life sciences and was recognised by *Global Competition Review* on various occasions. In 2016, she received the ILO Client Choice Award for the category of EU Competition and Antitrust, awarded by The International Law Office in recognition of individual partners who excel across the full spectrum of client service.

Ms. Vandenborre also has successfully assisted companies in obtaining conditional immunity with the European Commission and other competition law agencies in and outside the EU. Recent representations include the immunity and leniency applicants in the EU power cables and car battery recycling cartel investigations, respectively. Ms. Vandenborre also represents companies in proceedings before the European General Court against European Commission findings of cartel infringements, and is involved in the defence against civil claims arising from these findings.

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