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Client Memorandum

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DOJ Awards $1 Million in First-Ever Antitrust Whistleblower Payment

- **Large whistleblower rewards for reporting antitrust violations are now a reality**. Employees have a financial incentive to "blow the whistle and beat their companies to the [Antitrust] Division's doorstep," potentially thwarting their employer's bid for corporate leniency.
- **Robust compliance programs remain critical**. Companies should maintain antitrust compliance programs with relevant training and clear internal channels for anonymous reporting.
- **Antitrust compliance should be part of M&A due diligence**. This case illustrates the pitfalls from acquiring a company with criminal antitrust exposure.

On January 29, 2026, the Antitrust Division of the U.S. Department of Justice (DOJ) and the U.S. Postal Service announced payment of the first-ever whistleblower reward under the agencies' new Whistleblower Rewards Program, which was launched in July 2025. According to the DOJ, the individual provided information that led to a deferred prosecution agreement (DPA) including a $3.28 million criminal fine. As a result, the whistleblower will receive $1 million. This case is one example of the DOJ's increasing use of multiple investigative tools to uncover antitrust conspiracies and signals that employees and insiders now have powerful financial incentives to report suspected anticompetitive activity to the government.

Background

According to the Information filed in this case, at least as early as 2015, individuals at EBlock (the defendant) allegedly conspired with individuals at Company A and others in violation of section 1 of the Sherman Act to suppress and eliminate competition for used vehicles sold on the defendant's platform. The conspirators allegedly "discuss[ed] which vehicles would be bid on by which co-conspirators." The same co-conspirators are alleged to have agreed to use the platform to re-sell these vehicles. They allegedly engaged in "shill bidding": placing fake bids to artificially inflate vehicle prices. And they developed software that automatically placed bids under the names of real auto dealerships without their knowledge or consent, in violation of the federal wire fraud statute. EBlock acquired Company A in 2020. A whistleblower provided the DOJ with original information about the conduct.

The Antitrust Division's Whistleblower Rewards Program

The Criminal Antitrust Anti-Retaliation Act of 2019, 15 U.S.C. § 7a-3, (CAARA) provides anti-retaliation protections for employee whistleblowers who report antitrust violations. In July 2025, the DOJ, in partnership with the United States Postal Service, announced a Whistleblower Rewards Program to incentivize such reporting. The Postal Service has statutory authority to use money from criminal penalties to reward those who report "violations of law affecting the Postal Service." Assistant Attorney General Abigail Slater explained that the program "creates a new pipeline of leads from individuals with firsthand knowledge of criminal antitrust and related offenses that will help us break down those walls of secrecy and hold violators accountable." The new whistleblower program gives antitrust enforcers an option similar in effect to statutory incentive programs that support securities (15 U.S.C. § 78u-6), commodities (7 U.S.C. § 26), and tax (26 U.S.C. § 7623) enforcement, for example. The European Union has long had a whistleblower program offering protections from retaliation (but not incentive payments) for individuals who report breaches of law.

What Are the Requirements?

To be eligible for a reward, a whistleblower must meet several criteria.

- **Individuals must be eligible to receive the award**. Individuals who coerced others to participate in the illegal activity, were the leader or originator of the activity, or are current or former employees of the Department of Justice, the U.S. Postal Service, or law enforcement agencies (or their close family members) are not eligible.
- **Information must be provided voluntarily**. It must be communicated directly to the Antitrust Division, USPIS, or USPS OIG before any formal demand (such as a grand jury subpoena) is served, and the individual must have no preexisting obligation to report the information (including as part of an employer's leniency application).
- **Information must be original**. Only truthful and complete information derived from independent knowledge or analysis, not already known to the government, and not exclusively derived from public sources, judicial or administrative proceedings, or news media. Information obtained through attorney-client privileged communications, internal compliance functions, or illegal means does not qualify as original.
- **Information must secure results**. The information has to lead to a criminal fine of at least $1 million or equivalent recovery from a deferred prosecution or non-prosecution agreement.

The award amount is in the sole discretion of the government, with a presumptive range of 15% to 30% of the recovered criminal fine. Multiple factors may affect the award amount, including whether the information was directly related to a successful prosecution, whether it was reliable and complete, whether the whistleblower provided ongoing cooperation, and whether the whistleblower participated in the criminal conduct or faced unique hardships for reporting.

Interaction with Leniency Program

The Whistleblower Rewards Program operates alongside, and in some tension with, the Antitrust Division's long-standing Corporate Leniency Policy. Under the leniency program, the first company to report its participation in illegal antitrust activity—before the Division has received information from another source—may receive immunity from criminal prosecution if it meets specified conditions, including providing full and continuing cooperation. This "Type A" leniency would be extended automatically to cover cooperating corporate directors, officers, and employees. Individual leniency is similarly available to the first individual who reports before an investigation begins.

The whistleblower program accelerates the consequential race for DOJ leniency, increasing the risk that employees report misconduct before their companies. As a senior DOJ official noted, "the race is faster now, because employees and their attorneys are incentivized to beat their companies to the Division's doorstep." The official reportedly said recently that the DOJ is seeing a "frenzy" of individuals coming forward in the hopes of qualifying as a whistleblower. In the situation where the whistleblower wins the race, the company may still qualify for "Type B" leniency, though here protection for a company's directors, officers, and employees is discretionary.

Notably, an individual may not qualify as an eligible whistleblower if they have a preexisting obligation to report information "as part of an employer's application to the Antitrust Division's Corporate Leniency Policy." This means employees eligible to provide cooperation as part of a corporate leniency application cannot separately claim whistleblower rewards for that same information.

Consequences for Companies

The whistleblower program has several important consequences for companies. *First*, it increases the risk that antitrust violations will be detected, as employees with knowledge of wrongdoing now have a significant financial incentive to report. *Second*, it accelerates the timeline for reporting—companies considering whether to seek leniency must now account for the possibility that an employee might report first. *Third*, it underscores the importance of robust and effective compliance programs that encourage internal reporting and provide clear, confidential channels for employees to raise concerns. *Fourth*, companies that retaliate against employees who report criminal antitrust violations subject themselves to the remedies provisions of the CAARA.

The EBlock Resolution

Terms of the DPA

In addition to the $3.28 million monetary penalty and commitment to ongoing cooperation, EBlock also agreed to continue to review the adequacy of its compliance policies, procedures and internal controls and to implement an appropriate antitrust compliance program. The DPA sets out elements that the program should include. These largely reflect the elements of effective compliance programs set out in the DOJ's Evaluation of Corporate Compliance Programs In Criminal Antitrust Investigations issued in 2019 and updated in November 2024: comprehensive design tailored to the company's business and risk profile, senior and knowledgeable leaders, a culture of compliance, periodic risk-based reviews, adequate training and communication, and reporting and guidance. Within a year the company must report to the DOJ on the status of its remediation efforts and its progress in implementing policy improvements.

Why a Deferred Prosecution Agreement?

The use of a DPA here is notable because DPAs are rare. Typically, criminal antitrust matters are resolved with a plea deal and consequent conviction. The Antitrust Division has a relatively high bar for DPAs and several prior DPAs have involved defendants facing collateral consequences in regulated industries and/or public procurement. None of these circumstances is present here.

Instead, the DPA identifies several other "relevant considerations" that influenced the DOJ's decision to defer prosecution of this particular defendant. First, EBlock "inherited the problem conduct" through its November 2020 acquisition of Company A-an acquisition hampered by COVID-19 travel restrictions that "prevented travel from Canada (where EBlock's parent and executives are located) to the United States and hampered due diligence and integration." Second, the misconduct was carried out by legacy Company A employees on a separate platform not under EBlock's direct control until July 2021. Third, EBlock did not participate in or condone the misconduct and took steps to stop it once discovered-though "Company A's legacy employees intentionally hid their continued problem conduct, making it difficult for" EBlock to stop it entirely. Fourth, EBlock timely cooperated with the DOJ, "producing all requested documents and data, answering all questions, and making current employees available for voluntary interviews."

Note on the DOJ's M&A Safe Harbor Policy

In October 2023, the Department of Justice announced a Department-wide Safe Harbor Policy for voluntary self-disclosures in the M&A context designed to encourage acquirers to disclose misconduct discovered at acquired entities. While apparently not applicable in this case, it may be relevant in similar scenarios.

In general, the Department-wide Safe Harbor Policy provides that an acquiring company will receive a presumption of declination if it: (1) voluntarily discloses misconduct discovered at the acquired entity within six months of closing; (2) fully cooperates with the ensuing investigation; (3) remediates the misconduct within one year of closing; and (4) pays any applicable disgorgement, forfeiture, or restitution. These deadlines may be extended based on transaction complexity, but misconduct threatening national security or involving imminent harm must be disclosed "expeditiously."

However, if the misconduct to be disclosed involves an antitrust violation, a presumption of declination will be granted only if the parties, in addition to meeting the above criteria, also: (1) qualify for leniency under the Antitrust Division's leniency policy; (2) disclose the misconduct to the Antitrust Division (and the FTC if it is investigating the merger) before closing the transaction; and (3) agree that they will extend the merger review period and/or not close until some agreed time after conditional leniency is granted or the marker lapses.

Takeaways and Action Items

In light of the various incentives created by the DOJ's criminal antitrust enforcement program, companies should consider the following actions:

- **Enhance Antitrust Compliance Programs.** Companies should implement or strengthen antitrust compliance programs that include regular training, clear reporting channels, and mechanisms for employees to raise concerns confidentially and without fear of retaliation.
- **Prioritize Competition Compliance in M&A Due Diligence.** Compliance must have "a prominent seat at the deal table." Companies considering acquisitions should conduct thorough compliance-focused due diligence to identify any potential

antitrust violations at target companies before closing. Failure to do so means the acquirer will be subject to "full successor liability for that misconduct under the law."

- **Develop Rapid Response Protocols.** If misconduct is discovered—whether through due diligence, post-acquisition integration, or internal reporting—companies should have protocols in place to quickly assess the situation and determine whether voluntary self-disclosure is appropriate.
- **Understand the Corporate Leniency Program.** Companies should ensure that management and counsel understand the requirements and benefits of the Antitrust Division's leniency program. Being first to report can mean the difference between immunity and prosecution.
- **Consider the Whistleblower Dynamic.** Recognize that individuals now have significant financial incentives to report antitrust violations directly to the government. Now, beyond the risk that another company might report first, companies must also consider the likelihood that their own employees, or other individuals in the industry with knowledge might blow the whistle on the collusion. This will likely accelerate decision-making about whether to seek leniency and underscores the importance of creating an internal culture where employees feel comfortable raising concerns.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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