

House Passes Antitrust Whistleblower Protections Authored by Senators Grassley, Leahy

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Congratulations to Senator Chuck Grassley and Patrick Leahy for the passage in the House of Representatives of their bipartisan legislation that has already passed the Senate that aims to protect whistleblowers who come forward with information on criminal antitrust violations. In a December 8, 2020 Press Release Senator Grassley said, “The Criminal Antitrust Anti-Retaliation Act encourages and shields from reprisal private sector employees to shine a light on activities that violate our antitrust laws. This bipartisan bill is an important step to safeguarding fair marketplaces as well as the whistleblowers who support them. It’s earned broad support in both chambers of Congress, and I urge President Trump to sign it into law without delay.” The *Criminal Antitrust Anti-Retaliation Act*, which unanimously passed the Senate last year, must now be signed by the President to become law.

The bill allows an employee who believes he or she is the victim of retaliation for providing information to the Department of Justice related to criminal antitrust violations to file a complaint with the Secretary of Labor. The bill does not provide potential compensation to a whistleblower. A whistleblower, however, may be reinstated to their former status if the Secretary finds in their favor. “The Criminal

Antitrust Anti-Retaliation Act encourages and shields from reprisal private sector employees to shine a light on activities that violate our antitrust laws,” Grassley said in the statement.

Additional original cosponsors of the legislation are: Sens. Richard Blumenthal (D-Ct.), John Kennedy (R-La.), Chris Coons (D-Del.), Amy Klobuchar (D-Minn.), Dianne Feinstein (D-Calif.) and Elizabeth Warren (D-Mass.).

This legislation, if signed by the President, is an important, but modest, step in the right direction of establishing whistleblower incentives for criminal antitrust violations on par with incentives for exposing violations of the SEC and other financial regulation statutes. The SEC, CFTC and other agencies regularly report massive enforcement actions spurred on by whistleblowers. A major difference, however, is that whistleblowers in these other areas are incentivized to take the risk and expense of coming forward by having the potential to receive financial awards as part of any settlement the government recovers. If you believe, as I do, that it is an extremely difficult thing for a whistleblower to come forward, often with devastating financial and career consequences, these financial incentives are necessary. The Grassley-Leahy bill, if signed into law, is a good start. It shows Congressional awareness of the lack of whistleblower protection for criminal antitrust violations and hopefully will be the beginning of a movement that will eventually also offer potential financial award for whistleblowers who successfully expose criminal antitrust violations.

This is an area that I have written about extensively because I believe financial incentives for antitrust whistleblowers can be just as successful as the financial incentives awarded to SEC whistleblowers. For some previous articles, see:

- Cartel Capers, July 22, 2020, Happy 10th Birthday SEC Whistleblower Statute.
- It's A Crime There Isn't a Criminal Antitrust Whistleblower Statute, Robert Connolly and Kimberly Justice, April 5, 2018, Antitrust Law Daily
- *The Political Stars Align for a Criminal Antitrust Whistleblower Statute*, Robert Connolly and Kimberly Justice, Antitrust Law Daily, February 2019
- Cartel Capers, September 25, 2018, A (Hypothetical) Whistleblower Story,
- Cartel Capers, June 20, 2018, “Benefits of a Criminal Antitrust Whistleblower Statute–Part 1

There is already a legal path for a whistleblower to expose criminal antitrust violations where the federal government is the victim. Where the federal government is the victim, a whistleblower can file a False Claims Act qui tam action and alert the government to a bid rigging scheme. If the government successfully prosecutes the case and recovers damages, the whistleblower is entitled to a portion of the recovery. That happened in 2018 when the Antitrust Division announced that three South Korean companies had agreed to plead guilty and to enter into civil settlements for rigging bids on United States Department of Defense Fuel Supply Contracts ([here](#)). The case was discussed in a speech by Makan Delrahim ([here](#)). The investigation was started by a whistleblower filing a False Claims Act complaint. The whistleblower(s) is in line to collect a significant award. It simply makes no sense to incentivize whistleblowers to come forward when the federal government is the victim of illegal collusion but not have similar legislation that provides a financial incentive for coming forward with information about criminal antitrust violation victimizing the private sector.

More to come. Thanks for reading.

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