DEPARTMENT OF JUSTICE

Leniency Program FAQ Updates: The Path Remains the Same

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The Antitrust Division of the U.S. Department of Justice (the Division) first implemented a leniency program in 1978 and substantially revised the program in 1993, issuing the current version of the Corporate Leniency Policy. The Division then issued a Leniency Policy for Individuals in 1994.[2] The Division's Corporate Leniency Policy is a voluntary disclosure program that allows the first company to confess participation in a criminal antitrust conspiracy, fully cooperate with the government's investigation, and meet other specified conditions to avoid being prosecuted and fined for participating in that conspiracy. Cooperating employees of a corporate leniency recipient may also avoid prosecution, prison terms, and fines.

History of the Leniency Program

The original version of the leniency program was an innovative idea developed in 1978 by Division prosecutors in an effort to crack secretive antitrust cartels that had been hard to detect. Through self-reporting the Division can learn from a cartel member about the illegal agreements made behind closed doors in the proverbial smoke-filled room. Secretive cartel agreements are often only known by those who made them, and if one company breaks ranks and self-reports, there are always remaining conspirators available for prosecution since it takes at least two parties to agree. The core concept of corporate leniency is that the Division will forego prosecution of a corporation for a criminal antitrust violation in exchange for being the first company to self-report and cooperate against other cartel members. Leniency creates a winner-take-all prisoner's dilemma where hesitation of mere minutes can cost a company millions of dollars in criminal fines and its cooperating executives substantial prison sentences. The original policy, however, failed to provide enough incentives to induce self-reporting of hard core cartel conduct. For this reason, the Division's original leniency program was rarely utilized. The Division reported that, on average, it received only about one leniency application per year under the original program, and the policy did not result in the detection of even one international or large domestic cartel.[3]

In August 1993, the Division revised its Corporate Leniency Policy to increase incentives for corporate cartel participants to self-report and cooperate with the Division.[4] Three major revisions were made to the program: (1) leniency is automatic for qualifying companies if the Division has not already received information about the conduct from any other source (Type A leniency); (2) leniency may still be available even if cooperation begins after the Division has received information about the conduct (Type B leniency); and (3) cooperating officers, directors, and employees who come forward with the company are

protected from criminal prosecution if certain conditions are met. These revisions were intended to make the corporate leniency program more transparent and predictable in an effort to entice companies to report criminal activity and cooperate with the Division.

These changes produced the desired results. The Division reported that the leniency application rate jumped from one per year prior to 1993, to an average of one per month by 2003,[5] and by 2010, the Division reported a nearly twenty-fold increase in the leniency application rate from the rate under the original program.[6] The Division's revised Corporate Leniency Policy is its most effective investigative tool, with statistics showing astonishing results for two decades. While the Division no longer discloses its leniency application rate, the leniency program continues to produce great results, and, according to Division statistics, as of 2010, companies had been fined more than $5 billion for U.S. antitrust crimes since 1996, with over 90 percent of this total tied to investigations assisted by leniency applicants.[7] Cartel enforcers around the globe saw the overwhelming success of the Division's revised corporate leniency program and began to follow suit. Today, more than 80 jurisdictions have leniency programs.

Leniency Transparency

Over two decades of Division experience has shown that for a leniency program to be effective, it must have three major cornerstones—heightened fear of detection, severe sanctions, and transparency in enforcement policies.[8] These three cornerstones drive the critical decision to seek leniency. The Division has a long history of providing guidance regarding the implementation of the leniency program in an effort to foster transparency and the confidence of the bar and encourage self-reporting.[9] Confidence among the bar is a critical part of the leniency program's success.

As part of this transparency effort, in November 2008, the Division issued Frequently Asked Questions Regarding the Division's Leniency Program and Model Leniency Letters (FAQs). These 33 FAQs consolidated years of leniency policy speeches in one document and described the Division's approach to several important topics, including how to apply for leniency, the criteria for leniency under both the corporate and individual policies, the issuance of leniency letters, and confidentiality.

Leniency Program FAQ Updates

On January 17, 2017,[10] the Division issued an updated version of the FAQs. The FAQs were updated in an effort to improve transparency by addressing certain issues that had arisen in the leniency context since 2008. Most of the questions and answers were unchanged. Some answers explain current practice or address recurring issues, including the scope of Leniency Program's application to non-antitrust crimes; the scope of corporate leniency coverage to provide non-prosecution protection to current employees; application of corporate leniency coverage to former employees; and a new FAQ describing the Division's approach to "Penalty Plus."

Some members of the antitrust criminal defense bar have expressed concern that the FAQ updates signify a policy shift and "narrow the path" for obtaining leniency.[11] The Division takes these concerns very seriously because the success of the leniency program depends on the trust and confidence of the business community and private bar. But a closer examination of the updated FAQs reveals that such concerns are unwarranted. The quintessential Led Zeppelin concert film[12] comes to mind—counsel should rest assured that the path to leniency remains the same. Leniency remains the best option available for a company that has engaged in criminal antitrust activity.

Coverage of Individuals

The bar appears to be particularly concerned that it will be harder for individuals to obtain non-prosecution protection under the leniency program going forward, which would act to discourage corporate leniency applications. Contrary to this perception, the FAQs that discuss individual coverage reflect well-established principles that were first laid out in the 1993 Corporate Leniency Policy. In fact, the FAQs are a reminder of those well-established principles and the fact that in appropriate circumstances the Division has a practice of providing protections for individuals beyond what the 1993 Corporate Leniency Policy requires.

When discussing how concerns about coverage of individual directors, officers, and employees might disincentivize corporate leniency applications, the corporation's interests and responsibilities to shareholders and other directors, officers, and employees come into play as well. While companies are certainly comprised of people who do the work and make the decisions, a company's incentives to apply for leniency remain high, and applying for leniency certainly remains in the corporation's best interest. In choosing not to self-report under the

leniency program a corporation forgoes the opportunity for non-prosecution and subjects itself to significant criminal fines and perhaps other post-conviction remedial steps, as well as losing the opportunity to take advantage of the damages limitation provided in the Antitrust Criminal Penalty Enhancement and Reform Act of 2004.[13] In addition, if a corporation puts the interests of any particular individual above the company's and decides not to apply for leniency, the corporation exposes all of its culpable employees to potential prosecution, incentivizing them to cooperate separately with the government, which could result in the company losing a race for leniency to one of its own employees who could utilize the Individual Leniency Policy to self-report.

There are two updated FAQs that deal with coverage for individuals under the corporate grant of leniency. Again, both updates track the 1993 Corporate Leniency Policy.

FAQ 22: Conditions for leniency coverage for current directors, officers, and employees

FAQ 22 discusses the conditions for leniency protection for current cooperating directors, officers, and employees. The updated FAQ 22 discusses the coverage of current employees under the corporate grant of leniency in both Type A and Type B leniency situations. A leniency application that is made before the Division has received information about the illegal activity being reported from any other source is known as a "Type A" leniency application, because its conditions are described in Section A of the Corporate Leniency Policy.[14] If a company comes forward to apply for leniency after the Division has received information about the cartel, whether this is before or after an investigation has begun, but before the Division already has sufficient evidence against the company to result in a conviction, it is known as a "Type B" leniency application, because its conditions are described in Section B of the Corporate Leniency Policy.[15] If an individual employee does not meet the conditions laid out in Section C of the Corporate Leniency Policy—e.g., fails to cooperate, is not fully truthful, or does not admit the full scope of their involvement—he or she will not receive non-prosecution protection under the corporate grant of either Type A or Type B leniency. The Division reserves the right to revoke the conditional leniency protections for any covered employee who fails to comply fully with his or her obligations under the conditional leniency letter, who the Division determines caused the corporate applicant to be ineligible for leniency, who continued to participate in the reported conduct after the corporate applicant took action to terminate its participation and notified the individual to stop his or her participation, or who obstructed or attempted to obstruct the investigation.

These circumstances are rare, but the Division has and will exclude or remove an individual employee from coverage under a corporate grant of leniency if they occur.

The starting presumption is, and always has been, that, in a Type A leniency situation, current cooperating directors, officers, and employees will be covered under the corporate grant of leniency and not be charged criminally for the illegal antitrust activity reported, if they meet the other conditions laid out in Section C. The Division has said that if a corporation qualifies for Type A leniency, then all directors, officers, and employees who come forward with the corporation and agree to cooperate also receive automatic leniency.[16] That agreement must be fulfilled and thus cooperation must be truthful, full, continuing, and complete. The Corporate Leniency Policy is clear that employees must admit their involvement in the illegal antitrust activity with candor and completeness and continue to assist the Division throughout its investigations to qualify for non-prosecution protection under the corporate grant of leniency.

Updated FAQ 22 now notes that, as the 2008 FAQs stated, and the Corporate Leniency Policy has always stated, the Division has more discretion regarding coverage of employees of Type B leniency applicants. Specifically, updated FAQ 22 explains,

> If a corporation qualifies for Type B Leniency, the Corporate Leniency Policy states that individuals who come forward with the corporation will still be considered for immunity from criminal prosecution on the same basis as if they had approached the Division individually. Thus, the Division has more discretion with respect to personnel of Type B Leniency applicants. The Division often chooses to include protection for current directors, officers, and employees of Type B Leniency applicants. However, the Division may exercise its discretion to exclude from the protections that the conditional leniency letter offers those current directors, officers, and employees who are determined to be highly culpable.

Some counsel have suggested that the Leniency Policy *requires* coverage for employees of an applicant, in a Type B leniency application situations. But that is not what the Leniency Policy requires or guarantees. Since its revision in 1993, the Corporate Leniency Policy has recognized a different standard for assessing coverage of individuals in a Type A and Type B situation. This distinction makes sense because, in a Type B leniency situation, the Division already has an open

investigation or information from another source, and so the Division will need to assess the scope of the evidence already obtained against the individual as compared to reported conduct.

The reference to "highly culpable" employees in FAQ 22 has raised some alarm bells among the bar. Again, such alarm is unnecessary. The Division has recently reaffirmed that it will continue its "practice of extending coverage to the vast majority of current officers, directors, and employees of Type B leniency applicants."[17] The Division is not signaling any change with the revised FAQ. The FAQ simply strives to point out that this coverage for Type B leniency applicants is not mandatory under the policy. The FAQ seeks to ensure that companies seeking Type B leniency have prepared their employees well to meet the conditions for coverage.

FAQ 24: Conditions for leniency coverage for former directors, officers, and employees

FAQ 24 was also updated to emphasize that former directors, officers, and employees are presumptively excluded from any grant of corporate leniency. The Corporate Leniency Policy does not refer to *former* directors, officers, or employees anywhere in its text. The impetus for this update is again that some counsel have argued that leniency coverage for former employees is *required* under the Corporate Leniency Policy when, in fact, this coverage has at all times been at the Division's discretion. While the Division is under no obligation to extend leniency to former directors, officers, or employees, at the Division's sole discretion, specific, named former directors, officers, or employees may receive non-prosecution protection under a corporate conditional leniency letter or by a separate non-prosecution agreement. Such protections are only offered when these employees provide substantial, noncumulative cooperation against remaining potential targets, or when their cooperation is necessary for the leniency applicant to make a confession of criminal antitrust activity sufficient to be eligible for conditional leniency. In these circumstances, the Division will make such decisions on a case-by-case basis, consistent with the Principles of Federal Prosecution.

Case-by-case determination of the status of individual former employees is necessary. Like other covered employees, former directors, officers, and employees must provide truthful, full, continuing, and complete cooperation to the Division throughout its investigation and resulting prosecutions. While the Division has often covered former employees under the corporate grant of leniency in the past, blanket coverage of former employees could prove

problematic since the leniency applicant company no longer has ready access to the employees and their employment information. For instance, the Division would not want to inadvertently provide leniency coverage to a former employee who refused to admit wrongdoing, failed to cooperate with the Division's investigation, or subsequently was employed by a corporate co-conspirator and continued to engage in the reported criminal conduct.

Other Updated FAQs

The Division also revised several other FAQs, and it added a FAQ to explain the Penalty Plus policy. Like the FAQs that discuss individual coverage, these other FAQs do not reflect any changes in Division policy or practice.

FAQ 6: Coverage of non-antitrust offenses

The most revised FAQ is number 6, which discusses coverage of non-antitrust crimes. The Division has seen an increase in investigations that involve both antitrust crimes and other conduct, typically some type of fraud. Therefore, other Department of Justice components may also investigate, and any reporting requirements contained in prior agreements with those components may be implicated. Parallel investigations bring leniency into a new dimension. Revised FAQ 6 provides updated guidance on the coverage available for non-antitrust crimes in the multi-dimensional reality we now see with increasing frequency.

The Division has always recognized that the leniency program would be undermined if a company that reported an antitrust crime could be prosecuted for that same conduct under another statute. At the same time, the Corporate Leniency Policy applies only to charges under the Sherman Act brought by the Division, not to other statutes or other Departmental components. That has been the policy and practice since 1993, and the Division cannot promise otherwise.

FAQ 6 previously described covered conduct as any act or offense committed "in connection with an antitrust violation." The FAQ now seeks to be more precise by using the term "acts or offenses integral to the violation" and states that the conditional leniency letter provides protections for offenses committed prior to the date of the leniency letter "in furtherance of" the reported antitrust violation. While the facts are more important to determining the scope of leniency coverage than the specific terms used to describe the coverage, these clarifications were made to better reflect the scope and original intent of coverage. The Division has recently reaffirmed that it "intends to continue to exercise its discretion and continue the long-standing practice of also covering those crimes

that are committed to further that antitrust crime, thereby making them 'integral' to the antitrust offense."[18] This does not, however, mean that it is safe to assume that an applicant will receive coverage under the Division's Corporate Leniency Policy for what is primarily another type of fraud or corruption rather than an act in furtherance of an antitrust offense.

Given the growing number of companies with existing reporting requirements under prior dispositions with the Department, revised FAQ 6 also makes clear that applying for leniency does not excuse the applicant from complying with reporting requirements, nor from the consequences of breaching prior agreements.

The revisions reflect what has always been the Division's approach to these issues and do not narrow the scope of protection offered by the Corporate Leniency Policy.

FAQ 10: Penalty Plus

The Penalty Plus policy was previously described in Division speeches,[19] but new FAQ 10 provides a complete statement of the policy in one place. Under the Penalty Plus policy, if the Division independently uncovers evidence that a company, which previously pleaded guilty to an antitrust crime, was also involved in one or more additional antitrust crimes that it did not report to the Division by the time of the prior guilty plea, then at sentencing for those additional crimes the Division will seek an appropriate sentencing enhancement. Although it is not a leniency-related policy, this statement was included in the leniency FAQs because companies that fail to uncover additional antitrust crimes before they plead guilty to an antitrust offense forgo the opportunity for Leniency Plus[20] credit and are subject to more severe Penalty Plus punishment if they later plead guilty or are found guilty of them. The Penalty Plus FAQ does not reflect anything new in the Division's application of the Penalty Plus policy.

FAQs 2 & 7: Markers

Time is of the essence when a company is trying to be the first company to apply for leniency. Corporate counsel may have indications of a possible criminal antitrust violation but not have sufficient information to know whether the corporation has engaged in such a violation. The Division has established a marker system to hold an applicant's place in the line for leniency for a finite period of time while the applicant gathers more information to support its leniency application. The abundance of Leniency Plus applications and resulting

markers in recent years precipitated the need to address in more detail the Division's practice with respect to the scope of marker protections.

There are two updated FAQs addressing markers. Revised FAQ 2 discusses the marker process, and revised FAQ 7 discusses the scope of a marker when additional conduct is discovered. Neither update changes the process or standard for receiving a marker. The primary message is that the scope of the marker and leniency coverage is coextensive with the scope of the antitrust conspiracy reported. The Division has learned through experience that when an investigation begins to produce numerous marker requests, it may require more detailed information to determine whether leniency is available, and, if so, the appropriate scope of the marker. For instance, FAQ 2 explains that the Division may require more information about the specific product or service that is the subject of the anticompetitive agreement reported or the identification or location of co-conspirators or customers in order to determine the availability or appropriate scope of the marker. The revised FAQs strive to put counsel on notice about the type of information that may be requested when they request a marker.

The intent of these revisions is to allow the Division more quickly to determine whether additional markers are available where one or more markers have already been extended and, if so, extend the available marker to a leniency applicant. While the FAQ revisions will not change the Division's practice of issuing a marker covering an entire product, service, or industry where appropriate, there may be times when the Division concludes that a more narrow marker is warranted based on the nature of the product, service, industry, or conspiracy that is the subject of the marker request. Ultimately, the leniency applicant will receive a conditional leniency letter reflecting the full scope of the conspiracy it reports even if broader than the marker it initially receives, assuming it otherwise meets the conditions for leniency.

Conclusion

The Division's leniency program has enjoyed incredible success because the Division has built a track record of transparent, predictable, and fair dealings with leniency applicants. The members of the antitrust bar who regularly advise clients to seek leniency and bring them in to the Division to apply are often the best proponents of the program, and their trust is critical to its success. These counsel zealously represent their clients before the Division and are quick to raise perceived deviations from leniency policy or practice. The revised FAQs seek to address the expectations and parameters of the current leniency program as it has developed over the last two decades to ensure robust transparency. Just as it did in 1993, the Division will again build a post-FAQ update track record providing leniency program predictability. The Division has every confidence that the bar will quickly see that the path to leniency remains the same, and, with that renewed confidence, continue to advise clients that the incentives to seek leniency remain high.

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[1] The views expressed do not necessarily reflect those of the U.S. Department of Justice.

[2] Since 1994, the Antitrust Division also has had a leniency policy for individuals to allow a way for individuals to come forward when their employers do not. U.S. DEP'T OF JUSTICE, LENIENCY POLICY FOR INDIVIDUALS (1994), www.justice.gov/atr/public/guidelines/0092.pdf. The individual leniency program is primarily intended to create the possibility of a race to the prosecutor's door between a whistleblowing employee and its recalcitrant employer. This paper, however, focuses on corporate leniency.

[3] *See* Scott D. Hammond, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, The Evolution of Criminal Antitrust Enforcement over the Last Two Decades 2 (Feb. 25, 2010), www.justice.gov/atr/public/speeches/255515.htm [hereinafter Evolution of Criminal Antitrust Enforcement].

[4] U.S. DEP'T OF JUSTICE, CORPORATE LENIENCY POLICY (1993), https://www.justice.gov/atr/corporate-leniency-policy [hereinafter CORPORATE LENIENCY POLICY].

[5] James M. Griffin, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, The Modern Leniency Program After Ten Years: A Summary Overview of the Antitrust Division's Criminal Enforcement Program 8 (Aug. 12, 2003), www.justice.gov/atr/public/speeches/201477.htm [hereinafter The Modern Leniency Program].

[6] *See* Evolution of Criminal Antitrust Enforcement, *supra* note 3, at 3.

[7] *Id.*

[8] *See* Scott D. Hammond, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Cornerstones of an Effective Leniency Program (Nov. 22-23, 2004), www.justice.gov/atr/public/speeches/206611.htm [hereinafter Cornerstones].

[9] *See* Gary R. Spratling, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, The Corporate Leniency Policy: Answers to Recurring Questions (Apr. 1, 1998), http://www.justice.gov/atr/public/speeches/1626.htm; Gary R. Spratling, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Making Companies an Offer They Shouldn't Refuse (Feb. 16, 1999), http://www.justice.gov/atr/public/speeches/2247.htm; Scott D. Hammond, Dir. Criminal Enf't, Antitrust Div., U.S. Dep't of Justice, Fighting Cartels—Why and How? Lessons Common to Detecting and Deterring Cartel Activity (Sept. 12, 2000), https://www.justice.gov/atr/speech/fighting-cartels-why-and-how-lessons-common-detecting-and-deterring-cartel-activity; Scott D. Hammond, Dir. Criminal Enf't, Antitrust Div., U.S. Dep't of Justice, Detecting and Deterring Cartel Activity through an Effective Leniency Program (Nov. 21-22, 2000), http://www.justice.gov/atr/public/speeches/9928.htm [hereinafter Detecting and Deterring]; Scott D. Hammond, Dir. Criminal Enf't, Antitrust Div., U.S. Dep't of Justice, When Calculating the Costs and Benefits of Applying for Corporate Amnesty, How Do You Put a Price Tag on an Individual's Freedom? (Mar. 8, 2001), http://www.justice.gov/atr/public/speeches/7647.htm [hereinafter Calculating Costs and Benefits]; The Modern Leniency Program, *supra* note 5; Cornerstones, *supra* note 8; Scott D. Hammond, Cracking Cartels with Leniency Programs (Oct. 18, 2005), https://www.justice.gov/atr/speech/cracking-cartels-leniency-programs; Interview by David Vascott with Scott Hammond, Dir. Criminal Enf't, Antitrust Div., U.S. Dep't of Justice (May 1, 2008); Evolution of Criminal Antitrust Enforcement, *supra* note 3.

[10] *See* U.S. DEP'T OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT THE ANTITRUST DIVISION'S LENIENCY PROGRAM AND MODEL LENIENCY LETTERS (Jan. 17, 2017), https://www.justice.gov/atr/page/file/926521/download. On January 26, 2017, the Division reissued its Frequently Asked Questions About the Antitrust Division's Leniency Program and Model Leniency Letters because a footnote referencing the possibility of anonymous markers was inadvertently omitted from the January 17 version. No other changes were made.

[11] *See, e.g.*, Elizabeth Prewitt, Robert Bell, & Dina Hoffer, *DOJ Narrows Paths to Immunity for Antitrust Crimes*, HUGHES HUBBARD & REED LLP (Jan. 19, 2017, 8:48 PM), https://www.law360.com/competition/articles/882090/doj-narrows-paths-to-immunity-for-antitrust-crimes; Cale Johnson, Howard Iwrey, & Cody Rockey, *Major DOJ Antitrust Policy Shift on Immunity for Employee*s, DYKEMA GOSSETT PLLC (Jan. 27, 2017, 12:55 PM), https://www.law360.com/competition/articles/885379/major-doj-antitrust-policy-shift-on-immunity-for-employees.

[12] *The Song Remains the Same* is a concert documentary featuring the rock band Led Zeppelin. LED ZEPPELIN: THE SONG REMAINS THE SAME (Warner Bros 1976).

[13] Pub. L. No. 108-237, §§ 201-214, 118 Stat. 666–67 (2004) (codified at 15 U.S.C. § 1 note).

[14] CORPORATE LENIENCY POLICY, *supra* note 4, at Section A.

[15] *Id.* at Section B.

[16] Detecting and Deterring, *supra* note 9, at 2.

[17] Mark Rosman & Brent Snyder, *Some FAQs About the Leniency FAQs*, CARTEL & CRIMINAL PRACTICE COMM. NEWSLETTER, Spring 2017, at 4.

[18] *Id.*at 5.

[19] Calculating Costs and Benefits, *supra* note 9; Scott D. Hammond, Dir. of Crim. Enforcement, Antitrust Div., U.S. Dep't of Justice, A Summary Overview of the Antitrust Division's Criminal Enforcement Program 7 (Jan. 23, 2003), https://www.justice.gov/atr/file/518876/download; The Modern Leniency Program, *supra* note 5; Phillip H. Warren, Chief, San Francisco Office, Antitrust Div., U.S. Dep't of Justice, An Overview of Recent Developments in the Antitrust Division's Criminal Enforcement Program 15-16 (Oct. 21, 2004), http://www.atrnet.gov/subdocs/207228.pdf; Cornerstones, *supra* note 8; Scott D. Hammond, Acting Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, An Overview of Recent Developments in the Antitrust Division's Criminal Enforcement Program 10-11 (Jan. 10, 2005), https://www.justice.gov/atr/file/517886/download; Scott D. Hammond, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, An Update of the Antitrust Division's Criminal Enforcement Program 12 (Nov. 16, 2005), https://www.justice.gov/atr/file/517831/download; Scott D. Hammond, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Measuring the Value of Second-In Cooperation in Corporate Plea Negotiations 7 (Mar. 29, 2006), https://www.justice.gov/atr/file/518436/download; Scott D. Hammond, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Recent Developments, Trends, and Milestones in the Antitrust Division's Criminal Enforcement Program 14 (Nov. 16, 2007), http://www.atrnet.gov/subdocs/227740.pdf; Scott D. Hammond, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Recent Developments, Trends, and Milestones in the Antitrust Division's Criminal Enforcement Program 15-16 (Mar. 26, 2008), https://www.justice.gov/atr/file/519651/download.

[20] The Division's Leniency Plus policy provides that if a company negotiating a settlement for its participation in one conspiracy discloses its involvement in another antitrust conspiracy, and applies and qualifies for leniency, the company will receive leniency for the second offense and a substantial additional reduction (the "plus") in the calculation of the fine for its participation in the first offense. The Division's Leniency Plus program creates an attractive inducement for encouraging companies that are already under investigation to report the full extent of their antitrust crimes and begin to put the matters behind them.