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The Future of Effective Leniency Programmes – Note by the United States

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More documents related to this discussion can be found at
<https://www.oecd.org/competition/the-future-of-effective-leniency-programmes-advancing-detection-and-deterrence-of-cartels.htm>

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“Destabilizing Cartels: Detection *and* Defection”

1. Introduction

1. The Antitrust Division of the United States Department of Justice is deploying an aggressive array of investigative techniques and proactive strategies to ratchet up the risk of detection for cartelists engaged in fixing prices, rigging bids, and allocating customers and markets. The relationship between detection and defection is important for purposes of antitrust enforcement.
2. The Antitrust Division’s leniency program¹ is a pillar of antitrust enforcement in the United States. The longstanding success of the leniency program is predicated on the idea that a cartel member will defect from a secret price-fixing or bid-rigging conspiracy and disclose the illegal conduct to authorities. The concept of defection is commonly used in game theory in reference to the prisoner’s dilemma to describe the choice to confess to authorities and betray a co-conspirator.
3. Detection is therefore an exogenous risk that cartelists cannot control through group cohesion alone. This Submission focuses on how antitrust enforcers in the United States and around the world can take steps to increase the external risks of detection that in turn create mounting pressure towards defection within a cartel.
4. This Submission is divided into three sections:
 - First, the importance of detection risk in destabilizing cartels and the interplay between detection and defection in the context of a leniency program. This includes revisiting the familiar prisoner’s dilemma scenario mentioned above and discussing how law enforcement action can add players to the game and alter the incentives in favor of defection. (**Section 2.**)
 - Second, how antitrust enforcers can use the full panoply of detection tools, investigative techniques, and proactive strategies to uncover anticompetitive conduct. This includes affirmative strategies and policy changes to encourage whistleblowers and complainants that will further threaten cartel cohesion. (**Section 3.**)
 - Third, why law enforcement coordination at the international level bolsters the threat of detection and punishment for cartels. This includes intelligence sharing before investigations begin and consultations as investigations and prosecutions commence. (**Section 4.**)

¹ U.S. Dep’t of Justice, Antitrust Division, *Leniency Policy and Procedures* and other related documents are available at <https://www.justice.gov/atr/leniency-program>.

2. The Importance of Detection Risk

5. Instilling a growing fear of detection is at the core of a successful leniency program.² “[W]e have learned that leniency cannot be a stand-alone tool; to function properly it must work side-by-side with the full complement of other enforcement tools.”³ This has been a consistent feature of the Antitrust Division’s enforcement program, with a heightened risk of detection serving as one of three “cornerstones” to effective leniency, both in the United States and abroad.⁴

6. It is well understood that detection risk is a critical component to deterrence. To a would-be cartel, strong sanctions (criminal or civil) are only effective if they are perceived as real or likely outcomes.⁵ “If firms perceive the risk of being caught by antitrust authorities as very small, then stiff maximum penalties will not be sufficient to deter cartel activity.”⁶ As discussed below, in addition to ex ante deterrence, a mounting risk of detection is also important to incentivize ex post defection by members of an existing cartel.

2.1. The Prisoner’s Dilemma and Defection

7. The concept of defection is frequently used in game theory in reference to the prisoner’s dilemma. While already familiar to most antitrust lawyers, the commonly-referenced game theory scenario is easily summarized.⁷ Two prisoners who committed a crime and are apprehended by the authorities face a choice. If either one defects (i.e. confesses), that prisoner will go free while the other prisoner will serve a lengthy sentence. But if the prisoners cooperate with each other and neither confesses, both prisoners serve only a light sentence.

8. Looking at the prisoners as a collective group, the maximal outcome is an agreement to not defect/confess. In the aggregate, the total years of imprisonment is lowest if neither prisoner defects.⁸ Viewing each prisoner individually, however, each prisoner has the individual incentive to defect from that agreement because that individual could go free by being the first to confess. But this outcome, with one prisoner defecting, results in more combined prison time in total than if neither defects. These competing incentives to

² Richard A. Powers, Deputy Assistant Attorney General, *A Matter of Trust: Enduring Leniency Lessons for the Future of Cartel Enforcement*, ICN Workshop, (Feb. 2020) available at <https://www.justice.gov/atr/page/file/1250346/download>.

³ *Id.*

⁴ Scott D. Hammond, Director of Criminal Enforcement, *Cornerstones of an Effective Leniency Program*, ICN Workshop, (Nov. 2004) available: <https://www.justice.gov/atr/file/518156/download>.

⁵ Gregory J. Werden, Scott D. Hammond, and Belinda A. Barnett, *Deterrence and Detection of Cartels: Using All the Tools and Sanctions*, ABA Criminal Justice Section, National Institute on White Collar Crime, (March 2012) available at <https://www.justice.gov/atr/file/518936/download>.

⁶ Scott D. Hammond, Director of Criminal Enforcement, *Cornerstones of an Effective Leniency Program*, ICN Workshop, (Nov. 2004) available at <https://www.justice.gov/atr/file/518156/download>.

⁷ E.g., <https://plato.stanford.edu/entries/prisoner-dilemma/>.

⁸ *Id.*

either cooperate with the other prisoner and stay silent or defect and confess are at the core of the prisoner's dilemma.⁹

9. Consequently, at least in the more austere environment of game theory, trust is the key variable to solving the prisoner's dilemma. If the prisoners can agree not to defect, then they determine the outcome of the game and can know with certainty that they are minimizing the punishment that they face. In this regard, the decision on whether to defect is based on endogenous factors that are within the prisoners' collective control.

2.2. The Leniency Policy and Encouraging Defection from Ongoing Cartels

10. The Antitrust Division's leniency program is divided into two types based on when a cartel member is the first to self-report criminal conduct. Type A leniency is granted when a cartel member defects before the Antitrust Division has begun an investigation.¹⁰ Type B leniency is given when a cartel member defects after an investigation is underway.¹¹ Since 2019, the Antitrust Division has made significant policy changes in the areas of compliance and the timeliness of self-reporting to further encourage defection from an ongoing conspiracy.

11. Before 2019, the Antitrust Division's policy was not to consider a company's compliance program at the charging stage "because the Justice Manual recognized a special consideration for antitrust crimes due to the Antitrust Division's Leniency Policy, under which the Division will not criminally charge the first company to report a criminal antitrust violation."¹² Now, however, the Antitrust Division can consider the effectiveness of a company's compliance program at the charging stage, which may impact the type of resolution that a company receives.¹³

12. By encouraging a "culture of compliance," the Antitrust Division is incentivizing companies to invest in compliance and receive benefits for prompt self-reporting whether or not they win the race for leniency.¹⁴ To that end, the Antitrust Division published updated guidance regarding the evaluation of corporate compliance programs in the context of criminal investigations.¹⁵

⁹ The classic prisoner's dilemma also has an outcome where both prisoners confess such that neither gets the full benefit and goes free, but that scenario is not present in the U.S. leniency context, which employs a purely first-in-time leniency marker system. See U.S. Dep't of Justice, Antitrust Division, *Frequently Asked Questions*, no. 3, available at <https://www.justice.gov/atr/page/file/1490311/download>.

¹⁰ See Justice Manual 7-3.310, available at <https://www.justice.gov/jm/jm-7-3000-organization-division#7-3.300>.

¹¹ See Justice Manual 7-3.320, available at <https://www.justice.gov/jm/jm-7-3000-organization-division#7-3.300>.

¹² Note by the United States, *Competition Compliance Programmes*, (May. 2021) available at <https://www.justice.gov/atr/page/file/1403156/download>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. Dep't of Justice, Antitrust Division, *Evaluation of Corporate Compliance Programs*, (July 2019) available at <https://www.justice.gov/atr/page/file/1403156/download>.

13. In 2022, the Antitrust Division updated the leniency policy to require companies to promptly self-report criminal conduct in order to qualify for leniency.¹⁶ While the leniency policy previously required prompt termination of anticompetitive conduct, the prompt self-reporting requirement is triggered when an “authoritative representative of the applicant for legal matters” is informed of the misconduct.¹⁷

14. Practically, this means that a cartel member needs to promptly report participation in cartel conduct, including an ongoing conspiracy, but need not immediately withdraw from the conspiracy as a condition of receiving leniency. This is intended to maximize the incentive to defect from an ongoing conspiracy while still providing the Antitrust Division with the opportunity to gather evidence in real time.

2.3. Adding More Players to the Game

15. The risk of detection is nonetheless a critical exogenous factor to destabilizing cartels and adding incentives that favor defection. In the real world, of course, there are many more variables than in the simplified game-theory model with only prisoners and jailers. First and foremost, there is law enforcement, which in the United States is increasingly not just the Antitrust Division, but a government-wide response to addressing competition, as discussed further below. In addition to law enforcement, there are a number of additional entry points by which a cartel might be exposed. Suppliers and customers, distributors and retailers, and other industry participants could all be complainants. A firm’s current and former employees (and their families and friends) might be whistleblowers.

16. With the goal of destabilizing cartels, then, it is imperative for antitrust enforcers to add more players to the game that the prisoners do not control. To that end, the Antitrust Division is taking an across-the-board approach to maximize these and other means by which a cartel can be exposed.

3. Increasing the Risk of Detection

17. The Antitrust Division is now at the leading edge of broader federal efforts to address competition issues. As reflected in President Biden’s July 9, 2021 Executive Order, the Antitrust Division is part of a “whole-of-government” approach to addressing anticompetitive conduct by, among other things, harnessing the combined power of various federal agencies to promote competition across different industries.¹⁸ This means that the Antitrust Division is working ever more closely with other law enforcement and prosecution components as well as federal agencies that act as purchasers and regulators.

18. As discussed in more detail below, the Antitrust Division is deploying the full array of investigative tools and is working with an increasing number of law enforcement and

¹⁶ Jonathan Kanter, Assistant Attorney General, *Opening Remarks at 2022 Spring Enforcers Summit*, (April 2022) available at <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-opening-remarks-2022-spring-enforcers>.

¹⁷ See U.S. Dep’t of Justice, Antitrust Division, *Frequently Asked Questions*, nos. 21, 22, available at <https://www.justice.gov/atr/page/file/1490311/download>.

¹⁸ Available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

federal agency partners as force multipliers. That includes launching a data analytics project to build capacity to screen for collusion and hiring data scientists to develop new detection tools. The Division is also taking steps to encourage whistleblowers and is making affirmative outreach to targeted industries while also evaluating ways to improve our public complaint process.

3.1. Proactive Investigations

19. The Antitrust Division is pursuing proactive investigations, sometimes referred to as ex officio investigations, at a pace not seen in decades.¹⁹ Many of these matters are intelligence-driven at inception and involve consultation with other antitrust enforcers. Other proactive investigations are predicated on complaints from industry participants, tips from citizens, and referrals from other agencies.

20. While Type A and Type B leniency applicants continue to play a central role in our caseload, in a number of critical industries, the Antitrust Division is actively pursuing leads that were not originated by leniency applicants. In pursuing these matters, we are using all investigative techniques at our disposal. Current Antitrust Division investigations involve the use of grand jury subpoenas, search warrants, wire taps, consensually recorded conversations, undercover agents, confidential informants, and more.²⁰

3.2. Working with Partners as Force Multipliers

21. Increasingly, antitrust investigations and prosecutions are not being run by the Antitrust Division alone but are being conducted in consultation and often coordination with local U.S. Attorney's Offices, the general prosecution arm of the federal government in the United States. This is part of a larger trend of congruence between the Antitrust Division and the larger Department of Justice, which is illustrated in part by the recent announcement of a department-wide voluntary self-disclosure policy for companies that is consistent with the Antitrust Division's leniency policy.²¹

22. Working with law enforcement partners extends the reach of the Antitrust Division. The Procurement Collusion Strike Force (PCSF), first launched in 2019, serves as a model for the Antitrust Division and the wider U.S. Department of Justice's interagency approach to combating antitrust violations and collusion in public procurement.²² In only a few years of existence, the PCSF has already recorded a number of noteworthy successes, including in international enforcement.²³

¹⁹ Manish Kumar, Deputy Assistant Attorney General, *Remarks at Second Annual Spring Enforcers Summit*, (March 2023) available at <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-manish-kumar-delivers-remarks-second-annual-spring>.

²⁰ *Id.*

²¹ Lisa Monaco, Deputy Attorney General, *Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group*, (Sept. 2022) available at <https://www.justice.gov/opa/speech/file/1535301/download>.

²² For more information on the PCSF, see <https://www.justice.gov/procurement-collusion-strike-force>.

²³ Philip Andriole and Chris Maietta, Trial Attorneys, New York Office, *The PCSF: A Global Presence for a Global Problem*, DOJ Journal of Federal Law and Practice, (Dec. 2022) available at <https://www.justice.gov/usao/page/file/1559136/download>.

23. The PCSF initiative shows the force multiplier concept at work. Through the PCSF, antitrust prosecutors in the five criminal offices of the Antitrust Division can collaborate through preexisting partnerships with more than twenty U.S. Attorney's Offices around the country. In addition to the FBI, the PCSF also adds ten more federal law enforcement agencies that can assist in Antitrust Division investigations, with specialist investigators in Offices of the Inspector General from the Department of Defense to the Environmental Protection Agency, among others.

3.3. Data Analytics

24. The United States is also putting resources into data analytics, sometimes referred to as "cartel screens," to identify warning signs of potential collusion.²⁴ To that end, the PCSF Data Analytics Project, launched in 2020, works to encourage the application of data analytics to procurement data throughout the federal government.²⁵ This training, which has included investigators, analysts, auditors, and data scientists for various federal agencies with procurement and investigation functions, focuses on recognizing suspicious bid patterns and identifying other red flags of collusion. The PCSF collaboration on this front has extended internationally, including work with two global leaders on data analytics, the Danish Competition and Consumer Authority and Switzerland's Competition Commission.²⁶

25. In developing data analytics, one of the core goals is to supplement and inform traditional investigatory techniques following an industry complaint, whistleblower allegation, or leniency application. Federal agencies have a plethora of procurement platforms that can act as sources for data screening. In addition, the Antitrust Division is investing in cutting-edge collusion detection methods by building out our internal capacity. As has been publicly announced, the Division is actively hiring data scientists to work alongside its attorneys and economists.²⁷

3.4. Encouraging and Protecting Whistleblowers

26. Increasingly, cartel members risk defection not just by a fellow cartel member that seeks leniency, but from their own current and former employees or other individuals that may act as whistleblowers. While less heralded than the Corporate Leniency Program, the Antitrust Division's Individual Leniency Program provides eligible individuals with the same broad protections from prosecution as the Corporate Leniency Program.²⁸ This means that so long as certain conditions are met, an individual can come forward to report an

²⁴ Note by the United States, *Data Screening Tools for Competition Investigations*, (Nov. 2022) available at [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2022\)35/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2022)35/en/pdf).

²⁵ See <https://www.justice.gov/atr/division-operations/division-update-spring-2021/pcsf-expansion-and-early-success>.

²⁶ Note by the United States, *Data Screening Tools for Competition Investigations*, (Nov. 2022) available at [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2022\)35/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2022)35/en/pdf).

²⁷ David Mamone, *Kanter: DOJ hiring more data scientists*, Global Competition Review, (March 2023) available at <https://globalcompetitionreview.com/gcr-usa/article/kanter-doj-hiring-more-data-scientists>.

²⁸ U.S. Dep't of Justice, Antitrust Division, *Individual Leniency*, Justice Manual 7-3.330, available at <https://www.justice.gov/jm/jm-7-3000-organization-division#7-3.330>.

antitrust violation in the United States, whether they were a witness or even a participant, without fear of criminal prosecution.

27. The Individual Leniency Program was recently bolstered by the passage of the Criminal Antitrust Anti-Retaliation Act (CAARA).²⁹ Signed into law on December 23, 2020, CAARA provides robust legal protections for whistleblowers by prohibiting retaliation by employers for assisting in the investigation of a criminal antitrust violation.³⁰ The law is broad in the scope of persons protected from retaliation, as it includes not just employees, but also agents, contractors, and subcontractors.³¹ The Individual Leniency Program and CAARA therefore protect a would-be whistleblower from potential prosecution by the Antitrust Division or retribution from an employer.

28. At this stage, there is no direct financial incentive for antitrust whistleblowers under the Sherman Act. Where the federal government is a victim of an antitrust conspiracy, however, both Section 4A of the Clayton Act and the federal False Claims Act can be invoked as one of the means to recover damages, as was the case when the Antitrust Division prosecuted three South Korean companies for bid rigging fuel supply contracts to the United States military.³² Whistleblowers in these types of False Claims Act cases, sometimes referred to as *qui tam* actions, typically receive between 15 and 30 percent of the government's recovery.³³ Therefore, a mechanism already exists to incentivize whistleblowers in cases where the United States is a victim of price fixing, bid rigging, or the like.

3.5. Affirmatively Identifying Industry Complainants

29. Historically, industry complainants have been an important source of investigative leads for the Antitrust Division. The Antitrust Division has been taking affirmative steps to identify potential complainants that may have information that leads to the successful discovery of cartel activity.

30. While many of these efforts are not in public view, there are important outreach efforts that the Antitrust Division does publicly announce for purposes of deterrence and lead generation. For example, in February 2022, the Antitrust Division announced a global supply chain initiative to deter and detect price fixing and other collusive schemes aimed at exploiting global supply chain disruptions and other inflationary pressures following the Covid-19 pandemic.³⁴

31. Upstream suppliers, downstream customers, distributors, retailers, and other types of market participants are uniquely positioned to detect cartel behavior in their respective industries. Generally speaking, the Antitrust Division does not publicly discuss the details

²⁹ 15 U.S.C. § 7a-3.

³⁰ See <https://www.justice.gov/opa/pr/antitrust-division-observes-national-whistleblower-appreciation-day-0>.

³¹ *Id.*

³² See <https://www.justice.gov/opa/pr/three-south-korean-companies-agree-plead-guilty-and-enter-civil-settlements-rigging-bids>.

³³ See <https://www.justice.gov/opa/pr/justice-department-recovers-over-22-billion-false-claims-act-cases-fiscal-year-2020>.

³⁴ See <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-protect-americans-collusive-schemes-amid-supply-chain>.

of industry-specific outreach or the factors that led to that outreach. Indeed, the Antitrust Division treats this information confidentially, as it would information from any other confidential human source that is assisting an investigation. It is the Antitrust Division's consistent practice to "protect the identity of complainants and the information they provide to the full extent of the law."³⁵

32. Confidential sources that cooperate with the Antitrust Division and the FBI agents and other law enforcement personnel involved in the investigations are a key component in detection efforts. The Antitrust Division currently is—and will continue—working with individuals and with good corporate citizens in the business community as part of the effort to ferret out bad actors.

3.6. Improving Accessibility and Ease for Public Complainants

33. The Antitrust Division has long maintained a public tip line for citizen complaints. Over the decades, members of the public have submitted complaints that have generated countless leads for both civil and criminal antitrust investigations. The Antitrust Division's current incarnation of a tip line, the Citizen Complaint Center, was launched in 2009, and includes a public website with step-by-step instructions for how public complaints can be submitted via a toll-free number and email.³⁶ In 2019, the PCSF launched a companion PCSF Citizen Complaint portal that allows for complaints to be submitted online.³⁷

34. The Antitrust Division is currently undertaking a review of ways to update or improve the Citizen Complaint Center as part of the U.S. Department of Justice's broader Access to Justice efforts.³⁸ Guided by the Access to Justice principles, the Antitrust Division is exploring ways to promote accessibility, ensure fairness, and increase efficiency in how members of the public can register antitrust complaints and concerns. This includes potential updates to the Citizen Complaint Center to incorporate user-friendly information about the whistleblower protections in CAARA and potential avenues for whistleblower recovery, such as the False Claims Act referenced above.

4. International Cooperation and Detection

35. With supply chains and distribution channels that increasingly span the globe, timely and effective international cooperation among antitrust enforcers is critical for cartel detection. This is a time when "[w]e must deepen cooperation among jurisdictions committed to the shared values that underlie free and open markets. . . . This demands and requires increasing collaboration from enforcers."³⁹

36. The Antitrust Division is working to bring the international antitrust enforcement community closer together. In March 2023, the Antitrust Division, along with the Federal

³⁵ See <https://www.justice.gov/atr/confidentiality-policy-regarding-complainants>.

³⁶ See <https://www.justice.gov/atr/citizen-complaint-center>.

³⁷ See <https://www.justice.gov/atr/pcsf-citizen-complaint>.

³⁸ See <https://www.justice.gov/atj>.

³⁹ Jonathan Kanter, Assistant Attorney General, *Remarks for the 2022 International Bar Association Competition Conference*, (Sept. 2022) available at <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-delivers-virtual-remarks>.

Trade Commission, hosted an Enforcers Summit in Washington, D.C. The summit convened enforcement agencies from the United States and around the globe “to discuss enforcement priorities and strategies for effective coordination.”⁴⁰ The Enforcers Summit reinforced “how we have been pursuing the increased detection of cartels through engagement with the international community of enforcers.”⁴¹

37. The Antitrust Division also serves as a co-chair of the International Competition Network’s Cartel Working Group (ICN CWG), alongside our counterparts at Chile’s Fiscalía Nacional Económica (FNE) and Italy’s Autorità Garante Della Concorrenza e del Mercato (AGCM). With the FNE and AGCM, the Antitrust Division launched a multi-year project called “Back to Basics,” a series of experiential learning programs designed to help ICN CWG members improve cartel detection and enforcement techniques. Since the launch of the “Back to Basics” project in 2022, the ICN CWG has hosted programs on the practicalities of conducting search warrants (also known as dawn raids), a roundtable on cartel enforcement techniques, and most recently in May-June 2023, the ICN CWG’s first-ever Virtual Leniency Workshop.

38. Organized by the Antitrust Division, the Virtual Leniency Workshop provided competition agency staff with an opportunity to learn from experienced practitioners about the practical aspects of developing an investigation based on leniency and working with leniency applicants using a hypothetical case exercise. The workshop included over 160 people from 36 different countries participating as attendees, speakers, role players, and facilitators. As ICN CWG co-chair, the Antitrust Division will continue to lead the work of the “Back to Basics” project, including future work on a “Proactive Detection and Sanctions Toolkit” which will begin next year.

39. The Antitrust Division is also working to expand successful national initiatives to the international level. Building on the success of the PCSF, the PCSF: Global initiative was launched with an inaugural presentation to the OECD’s Competition Committee in 2020. PCSF: Global works to expand the reach of the PCSF to include international competition enforcers in a coordinated effort to combat collusion.⁴² PCSF: Global has already conducted workshops, trainings, and presentations in countries ranging from the Republic of Korea to Bosnia-Herzegovina, and to audiences including U.S. and foreign criminal investigators, prosecutors, analysts, and auditors. Not surprisingly, the PCSF has already recorded its first successful international prosecution, which yielded a significant criminal fine for a price-fixing conspiracy targeting the United States Department of Defense.⁴³

40. PCSF: Global and the Enforcers Summit are part of concerted efforts by the Antitrust Division to deepen ties and build capacity within the international antitrust

⁴⁰ See <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-hold-annual-spring-enforcers-summit>.

⁴¹ Manish Kumar, Deputy Assistant Attorney General, *Remarks at Second Annual Spring Enforcers Summit*, (March 2023) available at <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-manish-kumar-delivers-remarks-second-annual-spring>.

⁴² See <https://www.justice.gov/atr/division-operations/division-update-spring-2021/pcsf-expansion-and-early-success>.

⁴³ See U.S. DOJ Office of Public Affairs, *Belgian Security Services Firm Agrees to Plead Guilty to Criminal Antitrust Conspiracy Affecting Department of Defense Procurement*, (June 2021) available at <https://media.defense.gov/2021/Jul/09/2002758992/-1/-1/1/210625-BELGIAN-SECURITY-SERVICES-FIRM-A.PDF>.

enforcement community. In the last fiscal year, the Antitrust Division has cooperated on five criminal matters with six jurisdictions. We have also engaged in consultations covering a wide range of criminal enforcement topics from leniency to data analytics with at least 24 jurisdictions. The Antitrust Division mentored Kenya and Chile through the International Cartel Network's Bridging Project. And we conducted 31 technical assistance programs spanning criminal, civil, and policy topics for jurisdictions across the globe.

41. As part of the global supply chain initiative, the Antitrust Division is working with a number of antitrust enforcers around the globe, including the European Commission's Directorate General for Competition, the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission, and the United Kingdom Competition and Markets Authority.⁴⁴ As a result of these and other bilateral and multilateral conversations, the Antitrust Division has proactively initiated multiple cartel investigations, some of which are not yet public.⁴⁵

5. Conclusion

42. For decades, the Antitrust Division has extolled the importance of heightened detection risk as a cornerstone of an effective leniency program. Proactive investigations, then, are rightly thought of as a component of, not an alternative to, a thriving leniency program. As discussed above, each cartel member faces a choice about whether it is in its interest to defect from a conspiracy and seek leniency. The risk of detection, the proactive use of investigative tools and strategies, and robust international cooperation all lead to the same conclusion: seeking leniency is the right choice, both in game theory and in the real world.

⁴⁴ Richard A. Powers, *Keynote at the University of Southern California Global Competition Thought Leadership Conference*, (June 2022) available at <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-richard-powers-delivers-keynote-university-southern>.

⁴⁵ Manish Kumar, Deputy Assistant Attorney General, *Remarks at Second Annual Spring Enforcers Summit*, (March 2023) available at <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-manish-kumar-delivers-remarks-second-annual-spring>.