



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

*Washington, D.C. 20530*

December 11, 2020

The Honorable Russell Vought  
Director  
Office of Management and Budget  
Washington, DC 20503

Dear Mr. Director:

This letter responds to your request for the views and recommendations of the Department of Justice (the Department) on enrolled bill S. 2258, the “Criminal Antitrust Anti-Retaliation Act of 2019” (the “Bill”), which would provide additional whistleblower, or anti-retaliation, protections for certain individuals who report criminal antitrust violations to the federal government or to their supervisor. The Department recommends that the President support the Bill and sign it into law.

The Bill, if enacted, would establish new whistleblower civil protections and remedies for employees and other covered individuals who report conduct that they reasonably believe to violate the criminal antitrust laws. The Bill prohibits employers from taking punitive action against a covered individual for reporting potential criminal antitrust violations. It also affords protections to covered individuals who assist a federal government investigation or proceeding.

The Bill allows covered individuals to vindicate those protections by filing a complaint with the Department of Labor, or under certain circumstances, by bringing an action in U.S. district court. It provides that a prevailing covered individual “shall be entitled to all relief necessary to make the covered individual whole.” The three forms of compensatory damages included in the general grant of relief include, but are not limited to (1) reinstatement with the same level of seniority; (2) back pay with interest; and (3) “compensation for any special damages . . . including litigation costs, expert witness fees, and reasonable attorney’s fees.”

The Department supports the Bill, because it encourages witnesses to potential criminal antitrust conduct to come forward by offering safeguards to those who provide information to supervisors or federal prosecutors related to antitrust crimes. In this way, the legislation will complement and enhance the Department’s criminal antitrust cartel enforcement activities, because it may result in more leniency applications and the prosecution of more antitrust crimes.

The Antitrust Division’s criminal enforcement program is a cornerstone of its mission to protect the American consumer. The Antitrust Division’s criminal prosecutions from fiscal year

2010 to 2019 have resulted in over \$9 billion in criminal fines and penalties, along with jail terms for more than 250 individuals. The Division's record is in part due to the self-reporting of antitrust crimes through the Division's Leniency Program, which may increase as a result of the passage of the Bill.

In recent years, the Antitrust Division has prioritized expanding on its successes in detecting, prosecuting, and deterring criminal cartels. For example, in recent years the Antitrust Division spearheaded the launch and expansion of the Procurement Collusion Strike Force, an interagency collaboration that ferrets out collusion in government procurement. The Procurement Collusion Strike Force has developed a wide-ranging interagency network to detect crimes in government procurement—which by their nature lead to overpayment by taxpayers—and to ensure that taxpayer and government victims obtain the remedy and recovery they deserve. Meanwhile, the Antitrust Division advocated for and supported the President's authorization of the Antitrust Criminal Penalty Enhancement and Reform Permanent Extension Act, and has launched an expanded corporate compliance program to incentivize the prevention of antitrust crimes. The Criminal Antitrust Anti-Retaliation Act of 2019 supplements these efforts and furthers this important priority by encouraging individuals to expose corporate wrongdoing by antitrust violators, supporting detection of antitrust crimes, and ultimately deterring them.

Thank you for the opportunity to present our views. Please do not hesitate to contact this office if we may be of additional assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Blanche Hankey". The signature is written in a cursive, flowing style.

Mary Blanche Hankey  
Deputy Assistant Attorney General and  
Chief of Staff