



## European Commission Launches Competition Law Anonymous Whistleblower Tool

### IN SHORT

**The Situation:** The European Commission has launched a new tool that will allow individuals to anonymously report anticompetitive conduct for the first time.

**The Impact:** The Commission's new access to anonymous inside information could increase the risk of exposure for companies engaging in anticompetitive conduct in the European Union and destabilize cartels.

The European Commission has introduced a new tool to encourage individuals to disclose anticompetitive conduct on an anonymous basis. Individuals are invited to supply inside knowledge to help the Commission uncover cartels and other anticompetitive practices. Previously, the Commission was not permitted to pursue tip-offs from individuals who declined to reveal their identity. The goal of this initiative is to enhance detection and prosecution and to further deter companies from engaging in anticompetitive conduct.

#### What Innovation

The Commission's new tool is innovative in that it is designed to guarantee full anonymity. Accessible on the Commission's competition website ([Anonymous Whistleblower Tool](#)), it consists of a specially designed encrypted messaging system run by an external service provider. The service provider acts as an intermediary between the whistleblower and the Commission and relays only the content of the received messages, without forwarding any metadata that could identify the individual (e.g., by IP address). The messaging service also allows for two-way communication, where the individual agrees. This functionality enables the Commission to request further details and clarifications where necessary and increases the likelihood that the information obtained is sufficiently precise and reliable to enable a follow-up investigation. The tool enables individuals to request that the Commission reply to their messages. Individuals willing to reveal their identity can, of course, still always contact the Commission directly via its dedicated whistleblower phone number and email address.

#### Why Such Initiative

The initiative takes place in the context of falling numbers of leniency applications. The Commission is highly dependent on its leniency program, which has helped to uncover two-thirds of all detected cartels. However, the increasing threat of follow-on damages actions is seen as discouraging companies from blowing the whistle. The new tool will provide new incentives for companies to do so, as it will undoubtedly increase the threat of employees taking matters into their own hands. Under the leniency program, a company obtains immunity from fines only where the Commission did not yet possess sufficient valuable information on the concerned practice. Therefore, companies will be under pressure to act before their own employees do so. For the same reason, the new tool could also help to address criticisms that the leniency program has predominantly acted to uncover past practices, rather than active cartels.

It is important to note that the new anonymous whistleblower tool does not target only cartel infringements. Any information on any anticompetitive conduct can be submitted. Thus, vertical restrictions in distribution chains or even abuses of dominance could be reported.

#### Anticipated Limits of Tool

Some features may limit the effectiveness of the new tool. Notably, it is missing the strong incentive of financially rewarding reporting individuals. Ethical considerations to "do the right thing" will be countered by negative perceptions of "snitching."

Individuals will also be considering their loyalty to the company and job security. Indeed, subjecting a company to investigation is likely to negatively affect the company's financial health. The



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risk of being revealed as the whistleblower also does not entirely disappear (as most often, very few employees are aware of the illegal conduct).

In practice, the new initiative is likely to appeal most to only a limited number of disgruntled employees. In addition, the tool can function only if employees are aware of its existence and, more generally, aware of competition law principles and wrongdoings by their companies. Furthermore, the initiative could potentially work as a disincentive for companies to cooperate with the Commission, since companies turned in by an employee consequently have diminished chances of obtaining immunity under the leniency program. Also, under the tool's current version, the amount of information that can be supplied is limited, as it appears that no documents can be uploaded. Lastly, the tool could potentially work to the detriment of companies' internal reporting systems, since employees are likely to favor the former over the latter, as the Commission's tool offers the guarantee of anonymity.

## THREE KEY TAKEAWAYS

1. Anonymous whistleblower tools for reporting competition violations are increasingly common in EU Member States.
2. The Commission's offer of anonymity could incentivize employees to report anticompetitive behavior directly to the EU instead of using companies' internal reporting systems.
3. Companies that have engaged in anticompetitive conduct and are now considering leniency applications will need to evaluate the increased threat of employees using the new tool to self-report before the companies have had the opportunity to disclose.

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## CONTACTS



**Charlotte Breuvart**  
Brussels



**Matt Evans**  
London



**Philipp Werner**  
Brussels



**Henry de la Barre**  
Brussels

[All Contacts >>>](#)

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