



Electronic Dispatch

# Business Law Information Memo

July 2004

[Go to BS&K Business and Transactions Home Page](#)

## ANTITRUST PENALTIES INCREASED AND WHISTLEBLOWER INCENTIVES ENHANCED

On June 22, President Bush signed into law amendments to federal antitrust law which significantly increase maximum criminal penalties. The amendments also provide new incentives for companies to report illegal antitrust activity to the government and to cooperate with claimants' civil lawsuits.

### Criminal Penalties

Both a corporation and individuals may be criminally punished for some violations of federal antitrust law (for example, price fixing by competitors). Under the amendments, the maximum criminal fine for an individual has been increased from \$350,000 to \$1 million, and the individual may also be imprisoned for up to 10 years (increased from three years). The maximum fine for a corporation has been increased from \$10 million to \$100 million.

There is another federal law which allows the judge to impose a larger alternative fine equal to twice the gain or loss caused by the crime.

### Whistleblower Incentives

For several years, the U.S. Department of Justice has published formal leniency policies to encourage corporations and individuals involved in illegal antitrust activity to report the activity and to cooperate with the Justice Department. However, even though such "whistleblowers" could avoid criminal prosecution, they faced significant potential liability in civil lawsuits. When it is discovered that a company is involved in a criminal antitrust violation, the company can expect that customers, suppliers, competitors or other claimants may bring separate civil actions, or a class action, against the company to recover money damages. Under federal antitrust law, a company's potential liability in a civil lawsuit is to pay treble damages (three times the actual damages caused). Also, a company has "joint and several liability" with all other companies involved in illegal conduct, which means that one company can be held liable for the damages owed by all companies.

The amendments provide that companies which enter into leniency agreements with the government and cooperate with claimants in civil lawsuits can limit their liability in civil lawsuits. Under the amendments, a company which: (1) signs a leniency agreement with the federal government and (2) cooperates with private claimants, will now only be liable for the actual damages it caused, eliminating the risks of treble damages and of joint and several liability. (There is a sunset provision applicable to the new whistleblower incentives; the incentives expire in June 2009.)

### Antitrust Investigation

If you learn that your company is a target or subject of an antitrust investigation, you should immediately consult a lawyer. If there is any risk of liability, you should obtain legal advice about available opportunities to substantially reduce your exposure to criminal penalties and civil damages. Generally, the first participant to report and cooperate will be considered for favorable treatment; other participants who delay may be ineligible for leniency.

### Antitrust Compliance Program

The increased criminal penalties for antitrust violations and the new incentives for whistleblowing make an antitrust compliance program more important than ever to minimize the risk of antitrust liability. If your organization does not have an antitrust compliance program to educate management and employees on complying with the requirements of antitrust law, we recommend you consider

[Bond, Schoeneck & King, PLLC](#) ■ [New York](#) ■ [Albany](#) [Buffalo](#) [Garden City](#) [Ithaca](#) [New York](#) [Oswego](#) [Syracuse](#) [Utica](#) ■ [Kansas](#) ■ [Overland Park](#)  
[Bond, Schoeneck & King, P.A.](#) ■ [Florida](#) ■ [Bonita Springs](#) [Naples](#)



such a program. An effective antitrust compliance program can help your company by alerting management to risk areas, avoiding antitrust violations, mitigating penalties, and demonstrating to employees that the company supports the American free market system and obedience to our nation's laws.

<b>Maximum Criminal Penalties</b>	
<u>Old</u>	<u>New</u>
<b>For individuals:</b>	
\$350,000 fine	\$1 Million fine
3 years imprisonment	10 years imprisonment
<b>For companies:</b>	
\$10 Million fine	\$100 Million fine

If you would like assistance in reviewing your current program or in establishing a new antitrust compliance program for your organization, please contact your BS&K attorney or one of the attorneys listed below.

In the Capital District, call 518-533-3000 or e-mail:

Gregory J. Champion     gchampion@bsk.com

In Central New York, call 315-218-8000 or e-mail:

Meghan M. Beakman     mbeakman@bsk.com  
 Edward R. Conan       econan@bsk.com  
 Suzanne O. Galbato     sgalbato@bsk.com  
 David M. Hayes         dhayes@bsk.com  
 George R. McGuire      gm McGuire@bsk.com

In the New York Metro area, call 646-253-2300 or e-mail:

Louis P. DiLorenzo     ldilorenzo@bsk.com

In Western New York, call 716-566-2800 or e-mail:

Richard C. Heffern      rheffern@bsk.com