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Evaluating the efficacy and future of ACPERA

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On April 11, 2019, the Department of Justice Antitrust Division hosted a roundtable discussion about the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”). ACPERA was enacted in 2004 to further incentivize companies to self-report collusive conduct. It complements the Antitrust Division’s Leniency Program by limiting a leniency applicant’s civil liability in follow-on civil suits to actual damages attributable to its own conduct, as opposed to treble damages caused by the entire unlawful conspiracy.

With ACPERA set to expire in 2020, the Antitrust Division assembled a roundtable of various stakeholders to discuss whether ACPERA is fulfilling its purpose and whether the statute should be amended by Congress when it comes up for reauthorization. Although the Antitrust Division continues to view ACPERA as a valuable tool to encourage self-reporting of collusive conduct, some commentators have expressed concerns that it is not working as intended or as well as it should.

Much of the discussion at the roundtable concerned the scope and timing of the cooperation that must be provided by leniency applicants to civil plaintiffs to qualify for ACPERA’s benefits. The statute does not specifically define the scope of the cooperation that must be provided to civil plaintiffs, which has resulted in some uncertainty about when and how much information must be provided, especially for cases in which civil plaintiffs allege a broader conspiracy than what is included in the Antitrust Division’s related criminal investigation. As a result, several proposals to provide more certainty to leniency applicants and to continue encouraging self-reporting were discussed at the roundtable.

As part of its evaluation of the future of ACPERA, the Antitrust Division is also accepting written comments until May 31, 2019, about the efficacy of ACPERA. We will continue to monitor and report about developments in this area. If you have any questions about ACPERA or this alert, please contact your Nixon Peabody attorney or:

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