

PUBLICATION

Look Who's Listening Now: New statutory authority means the Antitrust Division may be using wiretaps

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Watch your words: The federal government and others may be listening—and recording. Federal law now allows prosecutors to obtain wiretaps and make surreptitious recordings of conversations in antitrust investigations.

Until last year, federal law enforcement officers could not obtain a wiretap to investigate antitrust offenses. But one of the amendments to the USA Patriot Act adopted in 2006 expanded federal wiretap authority, lumping antitrust offenses in with terrorism, drug trafficking, and exploitation of children.

The lawyers of the Justice Department's Antitrust Division may now use wiretaps and other means of electronic surveillance to investigate suspected criminal violations of the Sherman Act. These are illegal restraints of trade (Section 1), illegal monopolization (Section 2), and illegal restraints of trade in the District of Columbia (Section 3).