



An optimal enforcement system against cartels

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Optimal design should aim at:



- General deterrence
- Detect and terminate existing cartels
- Punish the infringement
- Prevent recidivism
- Compensate the victims

FIGHTING SECRET CARTELS: A FINE BALANCE



DETECT

- Dedicated enforcer
- Investigation powers
- Incentives to self-report

- Detection risk
- Choice of procedure
- Standard of proof

ENFORCE

DETER

- Sanctions
- Enforcement record
- Appeal-success rate
- Damages claims

PUNISH

DETECTION OF SECRET CARTELS (I)



- Investigation powers
- Reputation (enforcement record, investigation powers and resources)
- Complaints, whistleblowers
- Encouraging self-reporting: leniency policy

DETECTION OF SECRET CARTELS (II): Optimal design of leniency policy



MAIN OBJECTIVES:

- Creating the race to self report
- Encouraging reporting from cartel leaders
- Destabilizing the cartel
- Uncover secret cartels and obtaining decisive evidence thereof

MEANS:

- Only the first gets immunity/amnesty
- Decreasing reductions for other decisive contributions of evidence
- Inspections
- Link to sanctions
- Right reward
- What about immunity plus?

TIMELY PUNISHMENT: Sanctions



- A matter of proportion
- Affected commerce? Profit?
- Gravity
- Duration and relative role of the companies involved
- Recidivism
- Settlements to use resources better and increase detection rate?

DETECTING CARTELS:

Understanding the companies' choice



INCENTIVES:

- Profits,
- Benefits,
- Assurances (preservation of status quo),
- Pressure

DETECTING FACTORS:

- Infringing the law,
- Perceived risk of detection & prosecution,
- Stigmatisation,
- Level and sort of sanction (corporate, individual, criminal...)
- Damages
- *What about recidivism and multiple infringements?*

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Brief reference to EU provisions and policy



- Cartel prohibition
- DG Competition: Cartel Directorate
- Investigation powers and standard of proof
- Enforcement record
- Leniency policy
- Guidelines on fines
- Coordination with EEA Member States and other Agencies
- Developing instruments: settlements



FINAL REMARKS