

Balancing reactive and proactive cartel detection tools: Some Observations

OECD roundtable on
“Ex officio cartel investigations and the use of screens to detect cartels”

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Paris, France

Prof. dr. Maarten Pieter Schinkel
University of Amsterdam and ACLE



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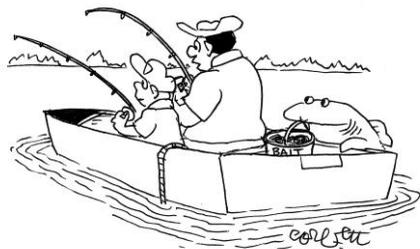
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Issues with Leniency

- Not clear at what stage of the investigation leniency was applied for
- Not obvious what the quality of the applications is:
 - May be primarily unsophisticated, old-and-dying, or long dead cartels
 - Cartels formed post-lenieny programs are leniency-resistant
- Leniency programs can over-burden the agencies:
 - Adverse selection of cases by officials
 - Detection probability for active cartels likely to go down
- Strategic abuse possible by sophisticated cartels and their advisors
- Crowding-out of private and public detection



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"STAY ALERT, SON. THE FISH HERE ARE REALLY SMART."



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Potential for Screening

- Screening to raise suspicion (“leads”, “tell-tale signs of collusion”)
- Screening is not primarily for finding hard evidence
- Instrument for setting priorities and to direct resources
- “You cannot catch a thief with an economist” is misconception
- Detection of sophisticated collusion requires good economists:
 - Simple tests already about quite complex economics
 - Tell-tale signs of collusion are constantly changing



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PRICE FIXING, BID RIGGING, AND MARKET ALLOCATION SCHEMES: WHAT THEY ARE AND WHAT TO LOOK FOR

An Antitrust Primer

This primer briefly describes the most common antitrust violations and outlines those conditions and events that indicate anticompetitive collusion.

Introduction

American consumers have the right to expect the benefits of free and open competition — the best goods and services at the lowest prices. Public and private organizations often rely on a competitive bidding process to achieve that end. The competitive process only works, however, when competitors set prices honestly and independently. When competitors collude, prices are inflated and the customer is cheated. Price fixing, bid rigging, and other forms of collusion are illegal and are subject to criminal prosecution by the

Federal Antitrust Enforcement

Enacted in 1890, the Sherman Act is among our country’s most important and enduring pieces of economic legislation. The Sherman Act prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Criminal prosecution of Sherman Act violations is the responsibility of the Antitrust Division of the United States Department of Justice.

Violation of the Sherman Act is a felony punishable by a fine of up to \$10 million for corporations, and a fine of up to \$350,000 or 3



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Detecting Bid Rigging, Price Fixing, And Other Types Of Collusion

Bids

- A company appears to be bidding substantially higher on some bids than on other bids, with no apparent cost differences to account for the disparity.
- Bid prices drop whenever a new or infrequent bidder submits a bid.

Prices

- Identical prices may indicate a price-fixing conspiracy, especially when:
 - Prices stay identical for long periods of time.
 - Prices previously were different.
 - Price increases do not appear to be supported by increased costs.

Source: website US DoJ, Antitrust Division



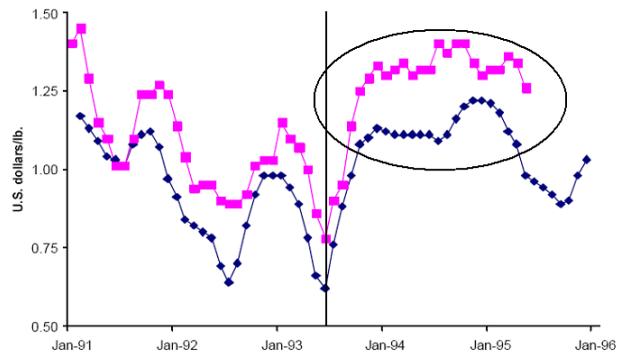
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Source: Connor (2008)



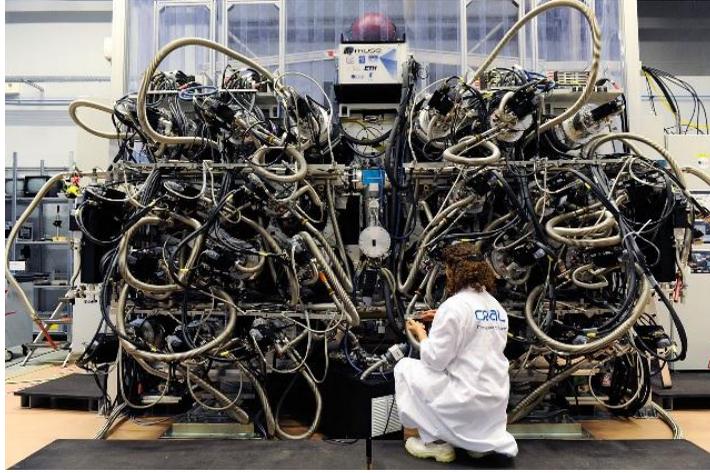
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Priorities in Pursuit

- Detecting cartels is a complex game of hide-and-seek
- Agencies are up against a professional private practice, adapting to new tools of enforcement
- Level of sophistication of the game dictates the right type of detection methods – cost-benefit approach
- Agencies need to stay ahead of the game – resources well spent



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