

## Project #3

# Cartel behaviour and boys' club dynamics: French cartel practice through a gender lens

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### Abstract

Besides their economic and legal dimensions, anticompetitive cartels are also social organisations structured around interpersonal relationships and cultural norms. In this context, the prevalence in many industries of male dominated informal networks, or “boys’ clubs”, could explain the creation and maintenance of cartels beyond what rational choice theory would predict.

In order to verify this hypothesis, we conducted an analysis of cartel decisions by the French competition authority, between 2010 and 2021, as well as a comprehensive review of relevant literature on behavioural economics applied to antitrust, gender dynamics in the workplace, and the role of informal professional networks in other white collar crimes, such as corruption or insider trading.

Our study confirms that there exist a correlation between the prevalence, in many economic sectors, of informal networks based on typical masculine values, and the permanence of cartel practices. Moreover, the very same mechanism that favours trust among men, and the emergence of illicit behaviour, also leads to the exclusion of women from dominant professional networks, thus limiting their opportunities for career development and promotion.

## 1. Introduction

In recent years, the OECD work stream on gender and competition policy has helped to shed some light on the need to include gender considerations in policymaking. In particular, it has raised the question as to whether identifying and analysing non-traditional aspects of consumers and firms' behaviour, such as those pertaining to gender, could make competition enforcement more objective and enhance its effectiveness (OECD, 2018).

Although a few studies on the topic have already been carried out, it appears that there exists little available research on the existence of a potential causal relationship between the gender structure within firms and the propensity to comply with competition rules (OECD, 2018). The analysis of anticompetitive practices, such as cartels, can thus provide an important starting point to further develop this specific aspect of the intersection between gender studies and competition law.

According to the OECD 2019 Recommendation of the Council concerning Effective Action against Hard Core Cartels<sup>1</sup>, cartels are defined as “*anticompetitive agreements, concerted practices or arrangements by actual or potential competitors to agree on prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by, for example, allocating customers, suppliers, territories, or lines of commerce.*”

Cartels are almost universally considered as the most harmful anticompetitive practice. Hence, a global consensus on the need to impose severe sanctions on such behaviour has emerged. However, despite the constant rise of the level of fines, and the significant risk of reputational damage faced by firms found guilty of such practices, cartel behaviour does not seem to be waning away (OECD, 2019). New approaches to cartel incentives and deterrence thus appear necessary, in order to ensure effective prevention and detection of cartel infringements.

One main feature of cartels is that they are formed through the social interactions of people, who gather and exchange seeking to replace competition with co-operation. Understanding the social context of cartel formation, and the dynamics of the group that is formed during such practices, seems to hold the key to a more precise assessment of the incentives to enter and remain in a cartel.

In particular, the interactions between individuals and the social groups they engage with are defined through expectations as to the role each person is supposed to play. This expected role influences performance, status and hierarchical position (Schmid Mast, 2004). Moreover, in the definition of the expected social role, the gender of a person plays a crucial part and is a key element used by others to appraise a given person during a social interaction (Eagly & Wood, 2012).

In line with this, (Haantz, 2002) underlines how any approach to understand criminality, and white collar crime especially, must be made in a gendered context. Analysing available literature on other white collar crimes, such as corruption (Debski, Mösle, Jetter, & Stadelmann, 2018) and financial misconduct (Wahid, 2019) and the way such behaviour is dealt with within firms (Healy & Serafeim, 2018), it indeed appears that the prevalence of same-sex environments and

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<sup>1</sup> OECD (2019), Recommendation of the Council concerning Effective Action against Hard Core Cartels <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0452>

masculine values can be identified as a key factor for the perpetration, concealment and under reporting of economic crimes.

In this article, cartels are considered as networks, whose interactions are based on social groups and norms. This research thus explores the hypothesis that lack of gender diversity within these groups constitutes a significant determinant of cartel formation and stability. In particular, the presence of “boys’ clubs” (see Chapter 3), based on male dominated informal professional networks, in a great number of firms and economic sectors, enables co-ordinated action and limits detectability of cartels.

To test this hypothesis, we build a theoretical framework at the crossroads of recent research on behavioural economics, cartel studies, white collar crime and gender studies in the workplace. On this basis, we demonstrate that the preservation of shared values, loyalty and homosocial patterns within male informal professional networks, is a key factor for the maintenance of cartel practices beyond what a purely rational calculation would dictate. This framework is then combined with a systematic analysis of horizontal anticompetitive agreements sanctioned by the French Competition Authority between 2010 and March 2021, to support each step of the reasoning with both quantitative findings and illustrative case studies.

In order to conduct this analysis we compiled and reviewed 60 cartel decisions from that period. As some of these decisions include several distinct practices<sup>2</sup>, this raises the total number of cartels to 68.

We then created a database reporting for each cartel: the year, the type of practice, the sector, the number of participants in the core coalition of the cartel, the number of women in the core coalition, the existence of a prior social relationship between the members of the core coalition, the number of women in a secretarial role, the number of women who acted as mavericks. These categories will be defined in depth in the following chapters.

Moreover, we also included additional qualitative details about the origin of the cartel, the social relationships at play during the practice, or the vocabulary used by cartel participants to refer to their behaviour.

In order to properly analyse gender dynamics within cartels, we then decided to exclude from our sample the 18 cartels based on purely formal networks, and to focus on the remaining 50 cartels based on informal or mixed (i.e. a combination of informal and formal) networks (see below Box 2 on the distinction between different types of networks). This decision was due to the fact that cartels based on purely formal networks do not give rise to the same type of social relationships and, in particular, they rely much less on interpersonal connections.

As a consequence, the statistics provided in the following chapters (except for the first part of Figure 1, based on the full sample) are based on a sample of 50 cartels, with a total of 374 individuals part of the cartels’ core coalitions, sanctioned by the French Competition Authority between 2010 and 2021.

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<sup>2</sup> 4 in decision 13-D-12, 2 in decision 18-D-15 and 5 in decision 19-D-19.

Unless otherwise stated, all references to cases in the developments below concern decisions from the French Competition Authority. To facilitate reading, each decision is designated only by its case number, which allows an easy access to decisions on the French Competition Authority's website<sup>3</sup>.

This study is structured as follows: Chapter 2 will focus on the recent contributions of behavioural economics to cartel analysis, underlining in particular the importance of shared values and implicit social norms for cartel participants. Chapter 3 will then confront these findings with the results of gender studies in the economic sphere, which highlight how the maintenance of gender biases within the most powerful informal networks continues to impact the role of women in the workplace. Finally, Chapter 4 will build on the literature on other types of white-collar crimes to show how a correlation between homosocial structures and entrenched gender bias, on the one hand, and the prevalence of economic crime, on the other hand, is verified in practice. Chapter 5 will conclude and provide preliminary policy recommendations for both competition authorities and corporate compliance programmes. All chapters include findings based on our cartel case analysis.

## 2. Cartels and behavioural considerations

Anticompetitive cartels are generally considered an economic phenomenon, with companies deciding to engage in illegal agreements on the base of rationality and profit maximising criteria. For decades, studies on cartel sustainability have therefore been based on the assumption, whether explicit or implicit, that anti-competitive practices are committed by rational operators, only refraining from illicit behaviour when the costs outweigh the benefits ( (Donsimoni, Economides, & Polemarchakis, 1986), (Connor & Lande, 2012)). In particular, a strong emphasis has been put on game theory, which focuses on series of interactions amongst rational decision-makers, structured around a limited set of conflicting incentives ( (Leslie, 2006), (Leslie, 2004), (Thoron, 1998)).

However, more recent studies have started to stress the limits of this rationality assumption, and consequently to include behavioural economics' considerations in antitrust (see also (Martin, 2017), (Nuñez, 2017), (Martin, 2019)). Indeed, drawing lessons from economics, psychology, sociology, neuroscience, and anthropology, behavioural economics has important implications for law and policy, providing key insights on the gap between classical economic theory and real markets (see also (CCP, 2013)).

Cartel behaviour is mainly carried out by human agents, acting on a broad variety of personal and psychological factors, such as culture, social norms, networks, personal interest, opportunity etc., but also in relation to the corporate culture and the institutional setting of the firm they belong to (Combe & Monnier-Schlumberger, 2016). Thus, the enrichment of cartel studies with non-rational elements has emerged as a necessity, in order to better understand why cartels occurred more and lasted longer than traditional analysis predicted. This anomaly was also observed in (Stucke, 2010) who notes: "*One answer may lie in the behavioral economics research: namely, price-fixers, like the test subjects in other experiments, may be more trustful and cooperative than rational choice theory predicts. As the behavioral experiments show, where trust will lead to more favorable outcomes, people tend to trust at a higher level than if all are operating under a traditional game theory*".

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<sup>3</sup> <https://www.autoritedelaconurrence.fr/fr/liste-des-decisions-et-avis>

Insights from behavioural economics can thus prove extremely valuable for competition authorities to “put themselves in the skin of the economic agent” (Tirole, 2016) and understand how illicit behaviour comes to be. (Moncuit, 2020) remarks that “*the reason why people break the law is analysed differently by supporters of rational economic theory and supporters of behavioural economic theories*”. In particular, when confronted with the law, economic agents’ choice “*to break or comply with rules is not made in the light of a rational fear of being punished. Heuristics and behavioural biases are major influences in the choice to break the law*”.

It is apparent that, in practice, efficient collusion is achieved through objective discussions on prices, clients and other competitive variables, but also by resorting to social norms such as loyalty, trust, respect for precedent and preservation of the respectability of the profession as a whole. Moreover, several biases can affect the price-fixer’s cost-benefit analysis (see (Stucke, 2012)).

Further considerations on this aspect can be found in (Skitmore & Zarkada-Fraser, 2000), whose research aims at identifying the factors that influence real-life decision-makers’ attitudes and decisions, in the context of collusive tendering. The authors remark how participation is “*first and foremost a decision made by an individual: a person with certain personal characteristics and attitudes, a sense of right and wrong and a set of personal and organisational objectives to meet*”. Therefore, it is crucial to have an enhanced understanding of the individual behavioural aspects of collusive practices, not only to gain insights into the motivations underlying collusive behaviour, but also to strengthen and advance the development of preventative measures.

In particular, in order to examine factors affecting behavioural intent towards collusive tendering, the paper analyses responses to a questionnaire submitted to 72 people, working for the most part in middle-management positions, in the construction sector in Australia. Looking specifically at a distinct group of respondents, who stated that the action of becoming involved in a collusive tendering agreement was permissible ‘contingent’ on certain circumstances applying at the time, the study provides useful information on the perceptions of this group of respondents, in terms of which elements they would take into consideration when deciding if to collude or not.

Amongst the critical factors for their decision making process, the group that would consider colluding ranks personal and company relationships with other tenderers very highly. As stressed by the authors, these two types of relationships are necessary “in order to be able not only to communicate and negotiate a collusive tendering agreement, but, most importantly, in order to trust the participants to the cartel that they will neither cheat nor divulge any information about the agreement to third parties”. In addition, over half of the respondents think that personal relationships and the effect of the action on the award of the contract would “tip the scales for them”. Further, it appears that for this group of respondents acceptability of their actions is important. However, acceptability is intended in terms of what employers and colleagues would think of their conduct, rather than society’s perception of their actions or acceptability in front of the law. Finally, respondents that would consider colluding rank very low the moral dimension of their choice, as well as organisational codes and penalties and the risk of being caught.

This study shows that the contingent nature of the decision to collude can be understood only through a comprehensive and accurate assessment of situational factors, notably relationships and reputation. In fact, as suggested by behavioural economics studies, humans do not behave under certain scenarios as economic theory predicts. Their behaviour is intricate, multifaceted, and may precisely vary depending upon situational variables.

These situational variables, and the extent to which they contribute to illegal behaviour, need to be further explored in the context of antitrust analysis in order to better understand not only why corporate actors engage in cartel activity, but also how to make deterrence more effective. (Stucke, 2010) reports ten relevant situational factors that are correlated, albeit imperfectly, with cartel behaviour, highlighting how what is missing in antitrust analysis today is precisely the extent to which such factors contribute to criminal cartel activity.

In particular, what emerges from his analysis is that it is oftentimes the case that cartels arise “innocuously out of social networks”, with friends sharing useful pieces of competitively-sensitive information, in a context of norms that allows for this to happen. A corporate culture that believes, for example, that “*our competitors are our friends. Our customers are the enemy*” (Connor, 2001), fosters criminal behaviour, also thanks to mechanisms such as reframing illicit conduct to make it more acceptable, or creating opportunities for the diffusion of responsibilities and reduced salience. Linked to this, and in addition to a company’s ethical and moral norms, another relevant aspect is “the extent within this corporate culture that co-workers are encouraged to and actually do dissent” and, further, if verbal dissent can transform into non-compliance with the illicit conduct.

Factors that facilitate trust, such as social norms, long-standing personal relations, and peer pressure, are key for the creation and maintenance of cartel agreements, and are closely intertwined not only with corporate culture, but also with industry culture. Indeed, as the study points out, “to facilitate trust, cartel members may promote a group identity with its own ethical norms of behaviour”. This leads to another critical element for our understanding of cartels.

Notably, the author underlines how in reality the exit costs for cartel members are greater than expected. In fact, cartelists “likely have social bonds with their co-workers and industry participants. Their identity may be intertwined with their employer, which brings them status within their community”. Considering that generally antitrust violators collude with the other major companies in that industry, “to extricate themselves from the cartel, the executives must not only exit the company, but depending on the cartel’s geographic scope, the industry altogether”, with important implications for their incentives to maintain the agreement.

Confirming the aforementioned literature, the decisions of the French authority we reviewed are filled by documentary evidence showing cartel participants using such social norms to insist on the application of agreed behaviour and the preservation of secret. Interpersonal relations between participants and feelings of loyalty are often called upon in order to increase predictability in participants’ behaviour, in the absence of legal means of enforcement. Words such as “fairness”<sup>4</sup>, “solidarity” and “transparency”<sup>5</sup>, “loyal competition”<sup>6</sup> or “common values”<sup>7</sup> carry deep moral implications regarding the ethical construction of cartel members. Competitors

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<sup>4</sup> 12-D-06, 12-D-09, 13-D-14.

<sup>5</sup> 12-D-08.

<sup>6</sup> 16-D-09.

<sup>7</sup> 18-D-15.

are “*confrères*”<sup>8</sup>, clients become “patrimony”<sup>9</sup>, high prices are meant to “respect the product”<sup>10</sup> and competitive prices become “abnormally low prices”<sup>11</sup>.

This cultural framework builds a mental structure that departs from legal norms such as competition rules. Indeed, the primacy of the group’s business culture is a key requirement for a cartel. Cartel participants referred to “usages” and “acceptance by economic community”<sup>12</sup> to justify a collective tariff list. Market sharing practices are “so traditional and recurring, it is difficult to change habits”<sup>13</sup> and price fixing is necessary in order to “regulate” the market<sup>14</sup>. In order to avoid costly deviation, it is important to respect the “spirit of the association”<sup>15</sup> or to keep a “good confraternal atmosphere”<sup>16</sup>.

Recognition of one’s reliability and ability to respect tradition and precedent create a reframed moral context, where collusion between competitors becomes the norm and effective competition the infringement. This finding is coherent with Stucke’s analysis of values inversions in certain US companies, where “price-fixing may be reframed as honoring one’s word with competitors”<sup>17</sup>.

**Box 1. *Building loyalty – alternative norm creation in a cartel***

In order to ensure group cohesion and predictability, cartel participants can use a variety of techniques to create a specific cultural framework as a support for collusion. Rules for price setting or client allocation, regularity of meetings, types of vocabulary or conflict resolution modes help participants build an alternative reality where anticompetitive practices become the dominant norm.

Case 10-D-39, issued 22 December 2010, concerns a very structured and coherent cartel in road signage and, as such, presents a wide and varied panel of this type of techniques.

During the sanctioned practices, all cartel meetings had to follow a dedicated “rulebook”. This rulebook defined the frequency and the agenda of meetings, but included also very detailed rules for price determination and client allocation, for each type of buyer and each type of public tender.

This rulebook was referred to by every cartel member as “our bible” and it was supposed to cover every possible situation in terms of public procurement. The way the rulebook was written showed it was intended as a normative instrument: use of simple present tense, verbs such as “should”, “will” or “authorise”, notion of “reference price” or mention of directly applicable penalties. Moreover, within this rulebook, cartel participants were consistently referred to collectively as “the club”.

<sup>8</sup> 11-D-02 and 15-D-19. “Confrère” is a French word used to designate members of a similar order, society or organised profession. The etymology of the word refers to the notion of “brotherhood”.

<sup>9</sup> 10-D-39 and 16-D-02

<sup>10</sup> 16-D-17

<sup>11</sup> 19-D-19.

<sup>12</sup> 11-D-01.

<sup>13</sup> 11-D-02

<sup>14</sup> 13-D-12.

<sup>15</sup> 15-D-19.

<sup>16</sup> 13-D-14.

<sup>17</sup> Stucke (2010), page 24.

Distinct documents, called “Patrimony” (“Patrimoine » in French), listed all important contracts, and in particular all cities counting more than 10 000 inhabitants, along with their respective “owner”. These clients therefore constituted “possessions” and every time a company would win a contract that was previously held by another competitor, this would trigger a right to compensation. This system of compensation was organised through a constant system of credit and debt, and regular payments were consented by companies obtaining contracts against other cartel members.

Finally, cartel participants maintained and updated regularly a “black list” of resellers that were not supposed to benefit from commercial discounts from any of the participants, because of their “unprofessional behaviour”, that is the fact that they used to pass on most of the discount to the final buyer.

The combination of all these methods led to a situation where collusion became, for the members of the “club”, the usual way of doing business.

The available literature as well as the evidence from French cartel cases show how, in the context of competition law, which for the most part targets firms as the main perpetrators of potentially illicit conduct, behavioural economics can serve as a gap filler, “namely, to understand better observed behaviour that neoclassical economic theory cannot satisfactorily explain” (Stucke, 2012). Between cartel participants, insistence on loyalty and the preservation of a shared culture of doing business ensure greater cohesion and control of individual behaviour.

The crucial importance of culture indicates that, in order to understand interpersonal interactions within a cartel, it is necessary to take into account not only social values carried by individuals, but also social and institutional norms ( (Stucke, 2010); (Armstrong & Huck, 2010)). It would indeed be erroneous to apply a strict dichotomy between the motivations of individuals, marked by personal feelings and cognitive bias, and those of organised structures, based on objective and rational anticipations. Organisations and individuals interact both culturally and economically in order to set out a context conducive, or not, to breaches of competition rules.

The cultural context within corporations and industrial sectors is significantly affected by gendered values. Indeed, gender studies in the workplace have brought to light the fact that most, if not all, human organisations are gendered and reproduce gender stereotypes and biases (Healy & Serafeim, 2018). It is therefore necessary to determine how and to what extent situational factors and informal dynamics behind illicit conduct are affected by gender.

### **3. Gender and cartel informal networks**

Gender appears to be one of the main characteristics by which an individual is identified and perceived in a social context. Indeed, while the word “gender” has been used since the 1950s (Money, 1955) to distinguish between the biological sex, on one hand, and the social construct of sexual identity, on the other hand<sup>18</sup>, the etymology of “gender” refers, paradoxically, to a set of essential attributes (Bard & Le Nan, 2019). In both our native languages, French and Italian, the word used to translate “gender” refers to “the essential and distinctive characteristics of a category”<sup>19</sup>. Therefore, while being the result of social and cultural circumstances, the gender of

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<sup>18</sup> The authors acknowledge that it is not possible in the present article to account properly for the complex interplay between biological attributes and cultural attitudes. Such interactions are constantly investigated by researchers from a diverse range of study fields.

<sup>19</sup> « Genere » in Italian and « genre » in French.



a person, in day to day life, encompasses a series of largely accepted and implicit features, that are in general not subject to discussion or debate, because they are deemed “natural”.

Despite, or rather because of, its implicit nature, gender affects the way individuals interact, share information, and make decisions (Clacher, García Osma, Scarlat, & Shields, 2020). In particular, in the context of work, men and women are subject to different expectations, especially in the way they interact with others (Schmid Mast, 2004).

These gender distinctions then become so embedded in the inner workings of organisations that they take the form of what Pyke describes using the notion of “ideological hegemony” (Pyke, 1996): *“Ideological hegemony refers to the process of attaining consensus between dominant and subordinate groups, such as men and women, respectively. An ideology is hegemonic when three characteristics are present. First, those social arrangements that are in the best interest of the dominant group are presented and perceived as being in everyone’s best interests. Hence, subordinates frequently and nonconsciously accept dominant group interests as their own. Second, the ideology becomes part of everyday thought and is taken for granted as the way things are and should be. Third, by ignoring the very real contradictions in the interests of the dominant and subordinate groups, a hegemonic ideology creates social cohesion and cooperation where otherwise there would be conflict”*.

As a consequence of these expectations, large firms are effectively gendered organisations, reproducing internally the gender biases that exist in the society at large (Hearn & Collinson, 2018). In particular, recent work from the OECD on masculine norms and their impact on gender relations has shown how the workplace *“is a major site for the construction and reconstruction of what it means to be a man, as a crucial part of gender socialisation (Morgan, 1992). As such, the workplace can constitute a place in which men attempt to secure their manhood and dominance over women and other men. Dominance over others is notably achieved by having relative control over valued physical, social and economic resources, including money and influence (Fiske & Berdahl, 2007)”* (OECD, 2021).

The implicit and consensual nature of established gender relations at work is a key element in the context of cartel behaviour. In his previously mentioned study, (Stucke, 2010) shows that people can engage in illicit conduct more easily and more effectively when the content of these actions is not formulated at once and explicitly, but is gradually impressed on actors as the usual framework of their day to day activities. In this context, a large majority of personal and cultural determinants of choice and action remain implicit, and understandable only by those who are part of the same cultural environment. Gendered expectations as to the type of behaviour displayed by an individual therefore constitute a powerful contributor to the inner workings of a cartel. In particular, the reproduction of gender-related prejudices in the workplace leads to a distinct but related phenomenon: common identity bias.

Common identity bias refers to the fact that people belonging to the one specific group usually prefer to work and interact with other people belonging to the same group. In particular, (Akerlof & Kranton, 2000) argue that *“identity and, in particular, gender identity shapes economic behaviour”*. Additional research ( (Alesina & La Ferrara, 2002); (Amore, Garofalo, & Minichilli, 2014); (Matsa & Miller, 2011)) confirms that *“individuals behave differently depending on whether they perceive others to share a common identity”*. This tendency to homophily tends to favour trust and predictability among participants. Indeed, prior research shows that male domination of senior ranks in most business organisations is accompanied by inherent biases

favoring other men over women (see (Schein, Mueller, Lituchy, & Liu, 1996), (Banaji & Greenwald, 1995), (Greenwald, McGhee, & Schwartz, 1998), (Berreby, 2005), and (Turco, 2010)).

**Box 2. Formal and informal networks**

The social network perspective refers to a tradition in social science which focuses on the relationships between participants in a social system. Rather than examining actors in isolation, the social network perspective sees them as parts of networks of interconnected relationships (Kenis & Oerlemans, 2009). In particular, social network researchers distinguish between formal and informal networks. These two types of organisation differ both in their intrinsic characteristics and in the advantages and constraints they entail for individuals (van Emmerik, 2006).

**Formal networks** are formally prescribed relationships among functionally defined groups that exist for the purpose of accomplishing some organisational task (Ibarra, 1993)). Formal networks tend to be public, official, and have clear boundaries, they also tend to have an identifiable membership, explicit structure and are officially recognised by employers (McGuire, 2000).

**Informal networks**, on the contrary, tend to be personal, voluntary, and have fluid boundaries. Participation in informal networks is not formally governed or officially recognised (McGuire, 2000). Informal social network activities gather members who share, for instance, common social interests and are often used as a means to socialise among colleagues and to participate in activities they enjoy.

Formal and informal networks are also distinct in terms of the social resources they provide, informal networks being significantly more related to increased social capital and accelerated promotion than formal ones (Greguletz, Diehl, & Kreutzer, 2018), (Shipilov, Labianca, Kalynsh, & Kalynsh, 2007)). In particular, informal networks that include top management officers and other influential employees of a company are those providing the most crucial advantages (Brass, 1985).

In our present study, we apply the formal/informal network dichotomy as a fundamental distinction between cases.

Practices emerging from formal networks are those that originate from an established organisational structure. This can refer to restrictions included in a formal contract or convention such as consortia or economic interest groupings (16-D-26), practices implemented within official meetings of a professional order or union (16-D-20), or restrictions implemented within working groups organised by public authorities (10-D-28). Cartels using informal networks do not rely directly any pre-existing structure. They are organised through direct contacts between individual participants (16-D-27), meetings before or after official events of professional associations (17-D-20) or regular lunches in restaurants (11-D-17). Finally, some cartels mentioned in our study use a combination of both types of networks, which reinforces the impact of the infringement (20-D-17).

The impact of common identity bias is particularly powerful in the context of informal male social networks, where women are usually seen as outsiders ( (Brass, 1985), (Kanter, 1977), (Ibarra, 1992), (Ibarra, 1995), and (Blair-Loy, 2001)). These male dominated informal networks are often referred to in literature as “boys’ clubs” or “old boys network” ( (Brass, 1985), (Clacher, García Osma, Scarlet, & Shields, 2020)).

The phrase “boys’ club” has been used in both gender anthropology studies and journalistic references as a code name to designate patriarchy (Delvaux, 2019), continued gender

imbalance in certain economic sectors or areas of society<sup>20</sup>, or certain types of sexist behaviours in the workplace<sup>21</sup>. Without a more precise definition, one runs the risk of being both over-inclusive, that is seeing any expression of masculine culture at the workplace as the illustration of an ever-present “boy’s club”, and being under-inclusive, by missing the structural and economic factors that allow the creation and maintenance of powerful, male dominated, networks.

“Boys’ Club” comes from the English culture of “good old boys’ club”, a network gathering the alumni of prestigious, exclusively male schools. The meaning evolved in the context of the American society to emphasise connections through business and private clubs. In its brief of amicus curiae before the US Supreme Court in the famous “*Roberts vs. Unites States Jaycees*” case<sup>22</sup>, the National Organisation for Women (Now) defined the “Old Boys’ Network” as : “[...] *that series of linkages with influential elders, ambitious peers and younger men on their way up which men develop as they move through school, work, professional and community service organizations, and private clubs. It provides men with knowledgeable allies who help them to advance in their careers, teach them who the cast of characters is and how to behave in a new position, and assist them in getting the earliest news of job openings, business opportunities and financial grants.*”

At its core, a “boys’ club” is an organisation recruiting and selecting men who then create a circle of solidarity both horizontally, among peers, and vertically, through mentoring relationships between junior and more senior members. An essential element of this definition is the fact that “boys’ clubs” are based on relationships that are in no way confined to the boundaries of the employing company. Men belonging to one of such networks meet each other in a variety of contexts: university, company workplace, business relationships, sport clubs, charities etc. As a consequence, they create links and build personal loyalties they may prove stronger than the obligations due to one’s employer.

The centrality of this type of informal network in day to day business relationships is reflected in our cartel case review. The analysis of the full sample of 68 cases from the French competition authority (see Introduction above) shows that 74% of sanctioned cartels are based, at least in part, on informal networks, involving a “core coalition” of participants that presents several distinctive characteristics of a typical “boys’ club”. Moreover, as shown in Figure 1, in 58% of such cases prior relationships exist between participants.

These relationships can be due to common participations to certain formal networks such as professional councils in regulated professions<sup>23</sup>, or less structured professional associations or

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<sup>20</sup> <https://www.forbes.com/sites/servicenow/2021/03/08/solving-the-tech-industrys-boys-club-problem/?sh=1136606338c7>

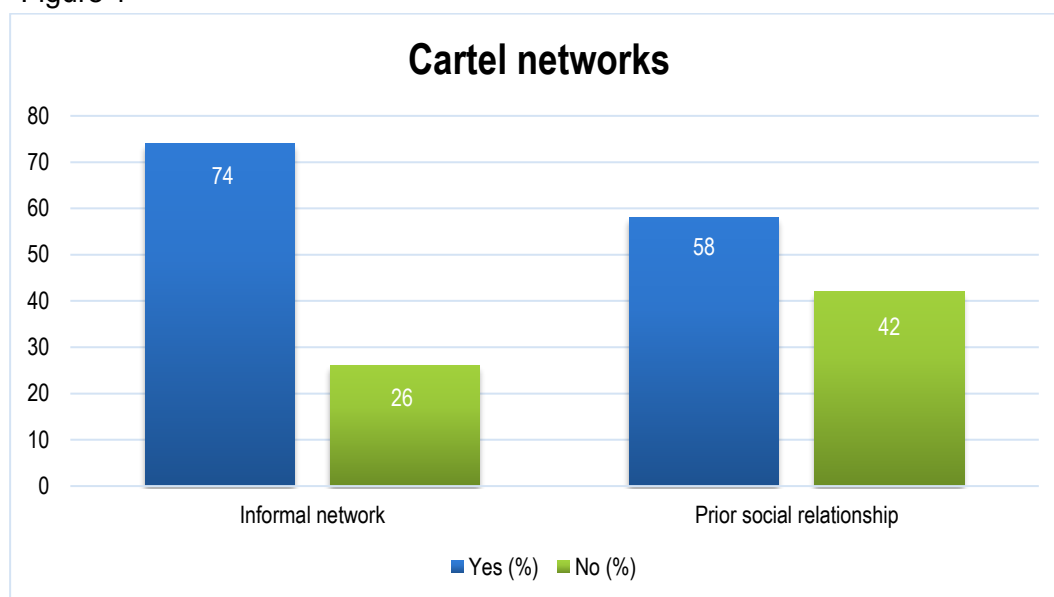
<sup>21</sup> In particular, the terms « Boy’s club » have been largely used in the context of two scandals in France that both concerned groups of male journalists mocking and harassing their female colleagues: “La Ligue du LOL” in 2019 and a recent documentary on the situation of female reporters in sport press in March 2021.

<sup>22</sup> 468 U.S. 609 (1984).

<sup>23</sup> 19-D-19, 20-D-12, 20-D-17.

unions<sup>24</sup>. They can also be due to personal business links<sup>25</sup>, or personal history such as being alumni of the same school or university<sup>26</sup>, or having worked in the same company in the past<sup>27</sup>. Sometimes, more simply, the practices are so old that they date back to the participants' grandfathers<sup>28</sup>. The personal nature of the relationship can also be expressed by the fact that meetings are organised in private locations, that mails containing sensitive information are sent to private homes<sup>29</sup>, or that meetings take place during social events such as sport tournaments<sup>30</sup>.

Figure 1



*Notes: The percentage of cartels based on informal networks is calculated on the full sample of 68 cartels. The percentage of cartels where members of the core coalition had a prior social relationship is calculated from the sub-sample of cartels based, at least partially, on informal networks.*

*Source: Analysis of cartels sanctioned by the French Competition Authority between 2010 and 2021.*

<sup>24</sup> 14-D-19, 13-D-12, 15-D-04, 17-D-20.

<sup>25</sup> 19-D-24, 20-D-09, 13-D-12.

<sup>26</sup> 14-D-19

<sup>27</sup> 21-D-06, 12-D-27, 14-D-16, 18-D-05.

<sup>28</sup> 18-D-19.

<sup>29</sup> 14-D-19, 15-D-03, 15-D-04.

<sup>30</sup> 12-D-09.

### **Box 3. Boys' club behaviour and the "milieu" effect**

In case 13-D-12, issued on the 28<sup>th</sup> of May 2013, relationships between cartel participants present striking similarities with the definition of "Old Boys Network" proposed by the National Organisation for Women in the context of the "*Roberts vs. Unites States Jaycees*" case (McClain, 2019). The 2013 decision concerned a series of anticompetitive agreements in the chemical industry, in several French regions. Even though national headquarters of most companies involved were aware of the situation, each agreement was organised at a local level.

The structure and content of the various meetings and contacts show the importance of a "milieu" effect, between people who were involved in the same industry within the same geographical area. Indeed, most cartel participants were former managers of local undertakings that had been recently acquired by national or international groups. Therefore, they had strong previous connections within their respective local environment.

As a result, the practices' main objective was to preserve the stability and balance of the regional industry organisation for that specific sector. The need to respect habits and historical margin levels, for all companies involved, was frequently stated. Joint meetings between salespeople belonging to different companies were organised by senior managers "so as to know each other and agree on the field".

A major imperative was to avoid new entrants. Indeed, one participant admitted that he preferred to help a familiar competitor to remain in the market, rather than face a potentially unknown one.

This perception of each local environment as a collective entity was reinforced by the fact that employees moved easily between companies involved. Their contacts within their former company could then be used to strengthen the ties between competing firms. Top managers recently nominated in the area were quickly introduced to other company leaders. The importance of mentoring relationships is also observed. In particular, junior employees were told about the practices when they replaced their former boss.

The informal nature of this network of relationships is also reflected in the way certain infringements were initiated. Agreements could be reached through joking and other casual ways of speaking and talking, in order to progressively come to a conclusion, without the need to formally acknowledge it.

Collusion could also be the expression of a disagreement with policies decided at the company level, and the wish to preserve a local environment. This could go as far as maintaining the cartel even when explicitly instructed to stop by one's employer. Practices effectively ended only when individual participants left their jobs, which confirms the personal nature of the relationships within the illicit practices.

Finally, almost all participants to these agreements were men. Only two women participated directly to meetings or other contacts, but none were part of the professional environment of the other cartel members. The first one had no relationship with clients. She had purchasing functions and participated in meetings only because asked to by her management. The second one was not locally based and her participation remained distant at all times, mostly limited to a few phone calls.

This example shows how "Boys' clubs", or "Old Boys' Networks", operate at the crossroads of personal friendships, industry culture, local identity and mentoring relationships along career paths.

While male dominated informal networks help strengthen trust and co-operation among men, they also favour the exclusion of women from certain key arenas of the economy. Studies of informal networks within companies show how this type of social interactions tend to segregate along gender categories. While women are as able as men to develop networks within the firm they work in, they are still excluded from certain male dominated circles, because of a tendency to homophilous preferences by men belonging to the most powerful groups, or "dominant coalitions" ( (Brass, 1985), (Greguletz, Diehl, & Kreutzer, 2018)). Further, studies suggest that women are often seen as outsiders in informal male social networks ( (Brass, 1985), (Kanter, 1977), (Ibarra, 1992), (Ibarra, 1995), and (Blair-Loy, 2001)).

#### **Box 4. Core coalitions**

In order to understand group dynamics within a cartel from a social point of view, one must first refine the notion of what constitutes a “participant” to a cartel. Indeed, in most jurisdictions, even the most passive participation to collusive meetings can trigger liability for the whole practice, regardless of the intensity of the relationship with other cartel members. As a consequence, competition agencies seldom enter into the details of the personal relationships between the persons present during the illicit contacts, except to signal out the extreme cases of the “ringleader”, on the one hand, and the “maverick” on the other hand.

In our analysis of French cartel cases, almost all cases involving informal networks demonstrate the existence of an inner circle of participants who entertained more intensive and durable relationships. Rather than “ringleaders”, we therefore use the term “core coalition” to designate the group of people that participate in almost all collective contacts and also complement them with more direct exchanges between them.

Core coalitions come in various forms in cartel cases. They can be formed by members of relatively structured and durable networks, between clearly identified leaders (11-D-02, 12-D-09, 15-D-04, 15-D-19, 16-D-09, 18-D-15, 19-D-24) or with organised systems of co-optation (10-D-39, 11-D-17, 13-D-03, 14-D-19, 14-D-20).

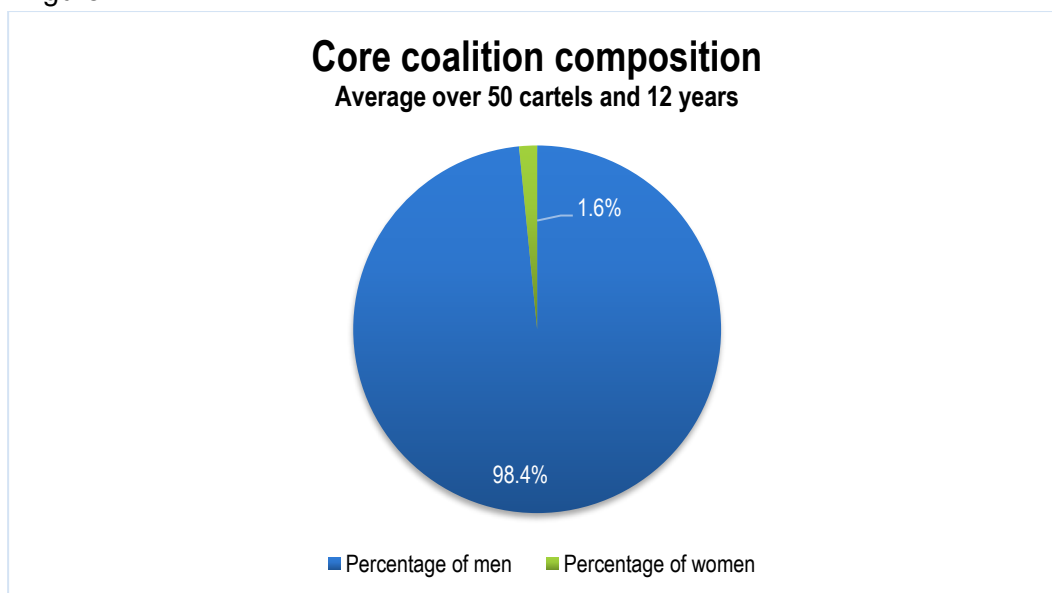
In this configuration, the selection of members is a very structured process, where newcomers are often presented as “successors” by a former member leaving his post (11-D-17). After being vetted by other members the newcomer can then be “knighted” and join the practice (14-D-19). In any case, participants see themselves as members of a “club” (10-D-39, 13-D-03, 14-D-20). Certain competitors are not included in the “club” because they are not trusted enough (14-D-20). In this type of structure, it is particularly important “to see company leaders regularly” (11-D-02).

Core coalitions can also exist as looser groups of people having the most interest and implication in the cartel, often motivated by personal links of friendship (10-D-35, 12-D-27, 13-D-12, 14-D-16, 15-D-03, 16-D-17, 17-D-20, 18-D-05, 18-D-19, 18-D-24, 21-D-06). In this context, meetings are also due to « *the wish to see each other*” and the “*friendliness*” between implicated individuals (17-D-20). Each participant preserves a degree of non-disclosure of the content of the practice towards his or her respective employers, on the ground that other members are “personal friends” (13-D-12).

Finally, in the context of practices combining formal and informal networks, in particular concerning regulated professions, the core coalition refers to a limited number of professionals pushing most actively in favour of the infringement, including through private contacts outside of the official meetings of the council or the union (10-D-11, 10-D-15), or within associations or unions created separately from the council (13-D-14, 19-D-12, 19-D-19, 20-D-17).

This again is confirmed by our case analysis, which shows that women are usually treated as “outsiders” in the context of cartel practices. Indeed, even when they rank as high or higher than their male counterparts, they are usually excluded from the “core coalition” of the cartel.

Figure 2



Source: Analysis of cartels sanctioned by the French Competition Authority between 2010 and 2021.

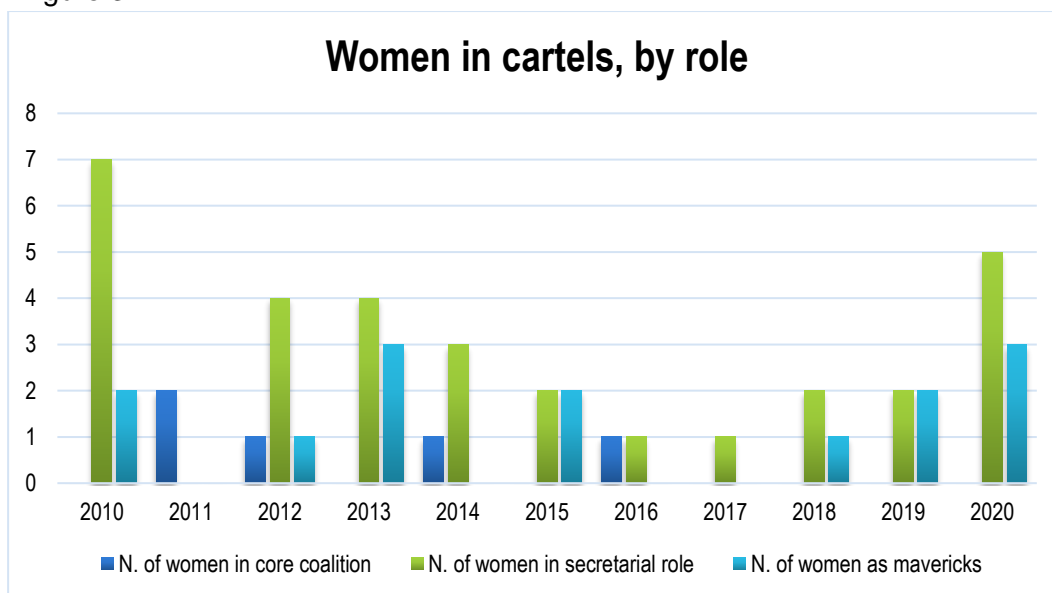
Within the functioning of the cartel, this exclusion perpetuates an intuitive division of labor where men specialise in core operational tasks while women focus on support functions (Eagly & Wood, 2012). Indeed, literature on the representation in media of women committing white collar crimes shows that traditional gender roles in business activity are reproduced in the context of business-related crimes (Gottschalk & Smith, 2013). In this context, women are either invisibilised or portrayed as performing subservient roles.

This division of labour is also found in cases sanctioned by the French Competition Authority. For every cartel reviewed we classified female participation in one of three categories (see also Figure 3 below):

- core coalition : women are full members of the cartel and are invited to most key contacts or meetings;
- secretarial role : women are not recognised participants to the collusion and perform merely organisational or implementation tasks;
- mavericks: women distance themselves from the practice or advocate different means of action.

From an assessment of the 50 available cases, it appears that the dominant function of women involved in a cartel is the “secretarial role”. In particular, women have a secretarial role in 79% of cartels where at least one woman is involved, and in 38% of all cartels considered.

Figure 3



Source: Analysis of cartels sanctioned by the French Competition Authority between 2010 and 2021.

In our case analysis, women are confined to these types of functions even when they rank as high or higher than their male counterparts<sup>31</sup> or when they are normally in charge of customer relationships<sup>32</sup>. Moreover, cases concerning regulated professions show that female professional elected to regulatory bodies often perform organisational functions and are excluded from general strategic discussions<sup>33</sup>. In other cases, this division of labour within cartels corresponds to the fact that women perform types of employments that correspond to traditional gender roles: secretaries of male participants helping with cartel implementation<sup>34</sup>, general secretary/union co-ordinator organising meetings or transmitting union policy<sup>35</sup>, or internal lawyer drafting guidelines or articles<sup>36</sup>.

Finally, in the context of corrupted networks, (Bjarnegård, 2013) remarks how women are perceived as a possible source of unpredictability in male dominated networks. One reason for this may be an implicit gender stereotype that men are more hierarchical and women more egalitarian (Schmid Mast, 2004). While this stereotype does not appear to be confirmed, at least in the long run (Schmid Mast, 2001), it may induce rejection of women in order to preserve balance of power within the group.

<sup>31</sup> 14-D-19, 18-D-24, 17-D-20, 20-D-09.

<sup>32</sup> 14-D-16.

<sup>33</sup> 13-D-14, 19-D-19.

<sup>34</sup> 13-D-12, 20-D-05.

<sup>35</sup> 15-D-19, 18-D-06.

<sup>36</sup> 19-D-19, 20-D-17.



### **Box 5. Maverick behaviour**

Decision 19-D-24, issued on the 17<sup>th</sup> of December 2019, concerned a price-fixing and market-sharing cartel in the sector of fruit compotes. In this case, the French Competition Authority granted one company, Andros, a fine reduction for “maverick behaviour”. This status of “maverick” is very seldom recognised by the agency (in only four cartel cases since the current guidelines on fines were issued in May 2011).

In this decision, the status of maverick is mainly linked to a change towards a more aggressive commercial policy concomitantly to the replacement of the director in charge of the sector, a man, by a woman, named “Mrs. B” in the decision. After the arrival of Mrs. B, Andros started to gain market shares over its competitors, doubling its volume in the market concerned by the practices. In subsequent meetings, other cartel participants regularly complained about the deviant attitude of Andros.

This lack of respect for cartel discipline is also reflected in terms of personal involvement in the practice. Before the arrival of Mrs. B, meetings in hotels or restaurants between cartel members were frequent, but after she took her post Andros ceased all multilateral meetings and almost all bilateral contacts. Mrs. B only discussed with one cartel member, who then passed some of the information to other participants.

Despite attempts to include her into the cartel coalition, Mrs. B seems to have maintained a clear distance from other participants. She described her encounter with one cartel member in a professional fair in Amsterdam with these terms: “*There was only a brief introduction. It was a tall balding man, whose name I don't remember*”. This meeting was her only physical meeting with other participants.

This case illustrates the correlation, identified throughout our analysis, between the level of inclusion of corporate leaders in industry networks and effective cartel participation. More specifically, it highlights the fact that lower participation in informal professional networks can reduce the incentives to respect cartel discipline, when leaving the cartel altogether is not a viable option.

More data would be needed to identify a clear causal link between the significantly lower involvement of women in cartels and their continued exclusion from male dominated informal networks. However, greater insight can be provided by literature on other types of white collar crimes, which deals more abundantly with this particular issue and can serve as a good reference point for the analysis of cartel behaviour.

## **4. Informal networks and illicit behaviour: lessons from white collar crimes**

The role of social norms, informal network dynamics, behavioural considerations and gender has been analysed with respect to a variety of white collar crimes (e.g. corruption, financial fraud, and insider trading), but, at this stage, no such literature has been found specifically for cartels. Although these types of illegal conduct entail different elements and dynamics, parallels can be made between cartels and other white collar crimes, which share similarities, such as the element of collusive activity<sup>37</sup>, and which can be used as proxies in this analysis.

The past decades have seen a succession of definitions for white collar crime. Initially, in contrast to common crime, white collar crime was defined in Sutherland's pioneering work as “*crime committed by a person of respectability and high social status in the course of his occupation*” (Sutherland, 1949). This definition then evolved, following a new approach based on the type of offense committed rather than the status of the offender, to a conception of white collar crimes as “*economic offenses committed through the use of some combination of fraud, deception, or collusion*” (Wheeler, Weisburd, & Bode, 1982), see also (Shapiro, 1981)).

<sup>37</sup> <https://law.jrank.org/pages/2312/White-Collar-Crime-History-an-Idea-evolution-white-collar-crime.html>

In line with this, (Weisburd, Wheeler, Waring, & Bode, 1991) highlight how white collar crimes often share a common, everyday character. In particular, *“their basic ingredients are lying, cheating, and fraud, and for every truly complicated and rarified offense there are many others that are simple, and could be carried out by almost anyone who can read, write and give an outward appearance of stability”*<sup>38</sup> (see also (Weisburd & Waring, 2001) ). Although amongst scholars the debate on the concept of white collar crime is still ongoing, nowadays it is widely accepted that specific types of crime belong to this category, namely corruption, financial and consumer fraud, insider trading, and antitrust offenses.

The wealth of research and literature available for neighbouring white collar crimes can be used as reference point to develop an understanding of the dynamics of illicit behaviour. This allows us to complement evidence from past cartel cases with meaningful lessons from the literature on the gender-white collar crime nexus ( (Benson & Harbinson, 2019), (Haantz, 2002), (Klenowski, Copes, & Mullins, 2011), (Coleman, 1987)).

In the vast majority of white collar crime cases the offenders are men (see also (Dodge, 2009), (Gottschalk, 2012), (Gottschalk, 2013), (Holtfreter, 2005)) and this is found to be true also for cartels. In fact, from the analysis of 50 cartel decisions by the French Competition Authority, from 2010 and 2021, it emerges that on average 98.4% of the members of cartels’ core coalitions are men (as shown in Figure 2, Chapter 3), and that in more than 90% of the cartels in the sample the core coalition participants are exclusively male.

Existing studies consider multiple variables that can explain human behaviour in white collar crimes, and show that men and women do not behave in the same way with regard to illicit behaviour. This is found not to be linked to intrinsic differences, such as higher moral or ethical standards in women ( (Goetz, 2007), (Holtfreter, 2015), (Davies, 2003)), but rather to workplace, social and gendered barriers (see also (Dodge, 2016)).

For instance, looking at a sample of more than 240 female executives, some of which incarcerated for white collar crimes, (Collins & Collins, 1999) empirically show that *“female criminals and non-criminals do not differ on variables that are known traditionally in male samples to predict criminal behaviour”*. In particular, their study identifies main differences between the two groups in terms of social dominance, peer-involvement, socialisation, responsibility and measures of leadership. In a similar vein, (Dodge, 2016) explains that *“women are no more honest, no more decent, and no more moral than men. The only reason they had lower crime rates, particularly white collar crime, was because they had fewer opportunities to commit crime”* (see also (Dodge, 2009), (Simon, 1975) , (Adler, 1975), (Adler & Simon, 1979)).

(Holtfreter, 2015) reflects on the importance of opportunity in the understanding of individual-level behaviour, especially of the workplace context. In line with previously mentioned studies, she remarks that *“while the backgrounds of male and female white-collar offenders may indeed be similar, research in the field of organisational theory suggests that workplace context is an important albeit understudied component in white-collar crime”*. This is in line with our previous chapter. On the whole, men and women appear to be more alike than different in terms of the intrinsic factors that predict their involvement in white-collar crime, but *“likely differ with regard to motivation and opportunity”*.

Indeed, current research on gender differences associated with criminal behaviour and white collar crime shows that the glass ceiling that continues to block opportunities in the workforce, is also a main factor in blocking women's participation in white collar crime offenses (Dodge, 2016), as one crucial driver of female participation is opportunity.

The role of opportunity, which is affected by specific network dynamics, the so-called "boys' club dynamics" in particular (see chapter 3) cannot be understated (Benson, Madensen, & Eck, 2009). In the context of corruption, (Goetz, 2007) argues that "*gender does indeed shape opportunities for corruption, but this is different from the new myth that women's gender determines their reactions to corruption*". Notably, gender relations limit those opportunities, in that white collar crimes function "*primarily through all-male networks and in forums from which women are socially excluded*".

The relevance of these factors for women's participation in white collar crimes, already mentioned in Chapter 3, is also reflected in the analysis conducted by (Steffensmeier, Schwartz, & Roche, 2013), who use a database covering 83 corporate frauds and 436 defendants to analyse corporate conspiracy networks from a gendered perspective. Findings show that women were typically not part of conspiracy groups, and when they were involved "*they had more minor roles and made less profit than their male co-conspirators*". Women's participation in white collar crime was defined by two main pathways: utility, i.e. occupied a financial-gateway corporate position, or relational, i.e. close personal relationship with a main male co-conspirator. The study by (Steffensmeier, Schwartz, & Roche, 2013) reaches a similar conclusion to (Holtfreter, 2015), suggesting a powerful parallel between gendered labor market segmentation processes, that "*limit and shape women's entry into economic roles*", and gendered process in illegitimate activities, or in other words, sex segregation in corporate criminality that hinders women's participation.

These findings are in line with evidence from the French cartel cases sample. Indeed, as mentioned above, women participating in cartels are likely to have minor "outsiders" roles, either as support functions or "mavericks". Moreover, among the five women that were found to be full members of a core coalition, five participated in a rather formal capacity and not through co-optation by an informal network:

- two were not part of the inner circle of day to day participants but were higher ranking officials (CEOs) who intervened only in case of conflict<sup>39</sup>;
- one was the successor of a long-standing male participant and was involved only during a few months before the cartel stopped<sup>40</sup>;
- one had very limited autonomy and appeared to be following instructions given by a higher ranking male manager<sup>41</sup>.

Finally, the woman that was the most involved as co-conspirator, of all the cases reviewed<sup>42</sup>, declared that she entered the cartel because of her close friendship with a male co-conspirator (see Box 6 below).

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<sup>39</sup> 11-D-17 and 12-D-27.

<sup>40</sup> 11-D-17.

<sup>41</sup> 16-D-27.

<sup>42</sup> 14-D-19

### **Box 6. A woman in the core coalition**

Case 14-D-19 of the 18<sup>th</sup> of December 2014 concerns a series of information exchanges about pricing policy for supermarkets, in the sectors of personal care and home care. The practices involved three different forums of collusion. Two were specific to each sector, and gathered commercial managers of each company involved in the practices. These two forums had a similar structure, similar names (“Team PCP” and “Team HP”), and functioned in parallel. A majority of companies were present in both sectors, and therefore participated in both “Teams”.

The third forum was slightly different in nature, as it concerned both industries and was created later, in reaction to a regulation shock, i.e. a price reduction imposed by the Ministry of Economy in 2004. Participants had a lower rank in their respective company and were mostly sales managers. This forum was created by two people, Mrs. Y and Mr. H., who decided together the planning of the meetings, and was nicknamed “Amis”, “Friends” in English.

According to Mrs. Y, the main determinants of her initiative to create the “Friends” forum were the fact that she had responsibilities in the industry’s professional association at the time of the regulation shock, and her close friendship with another major participant in the practices, Mr. H. Within this forum, Mrs. Y was also in charge of compiling all the information shared by competitors on turnover, prices and contracts, and sending it to cartel participants.

Mrs. Y’s managers were informed of the practices, but she used the information from competitors only for her own business activity, without sharing it more largely with her colleagues from the same company. Throughout the practices, Mrs. Y kept frequent contacts with M. H outside of planned multilateral meetings.

Although it is an isolated instance, precedes shows that Mrs Y’s participation in the “Amis” forum was built on the same social assets than male participants in other cartel cases: preexisting responsibilities in formal networks, and prior friendship with counterparts in competing companies.

The way opportunity comes to have a key role for a gendered analysis of white collar crime, as well as the broader mechanisms at play in the involvement of women, or lack thereof, revolve around the importance of homosocial trust in male-dominated networks and common identity bias in white collar crimes, as explained in the previous chapter.

For example, in the context of insider trading, (Clacher, García Osma, Scarlat, & Shields, 2020) argue that “gender influences insiders’ access to and use of firm private information, where insiders benefit from greater information sharing with top executives of their same gender”. Using a large sample of US firms between 1995 and 2016, their research shows that common gender enables private information sharing, and creates gender-driven differences in the information insiders receive, leading to “*greater clustering of insiders’ trades around the trades made by common-gender top executives*”, with “*higher (lower) insider trading profitability for female (male) insiders in the presence of a female CEO or CFO*”. The important dynamics emphasised in this study, building on the common identity bias literature, could indicate that similar considerations may also apply to across-firms information flows, relevant for cartel agreements.

Other relevant insights can be found in the literature on the gender-corruption nexus. The research by (Stockemer, Wigginton, & Sundström, 2020) clearly uncovers a number of important mechanisms linked to social norms and the role of homosocial trust, that are the root of women’s exclusion. In particular, in the context of corrupt networks, i.e. networks at the core of illicit behaviour, as cartel core coalitions are, the authors underline how women generally do not fit into these homosocial networks, which prioritise male membership, and thus are not trusted as much as male insiders (see also (Wängnerud, 2012)). The study points out how such networks, “exhibit an in-group bias and limit the admission of outsiders, such as women”. Moreover, the

existing perception of women as being less corrupt than men may increase suspicion towards them.

These factors are linked to the inherent need for trust in corrupt networks, which, just like cartel coalitions “place a high value on predictability as any disruption to the usual flow of events could create risks of exposure or otherwise interrupt the illicit flow of resources”. Women are thus seen not only as outsiders, but also as “mavericks”, as explained in Chapter 3, i.e. individuals that by thinking and acting independently, outside the core network, behave differently from the expected way, thus representing a risk for the preservation of the illicit conduct’s dynamics. In particular, (Bjarnegård, 2013) underlines how there is thus a perceived “*inherent instability in letting women enter a male network*”, as boys’ clubs are seen as safeguarding informal predictability, critical for collusive crimes.

Labelling women as “not one of the boys” (Dodge, 2016) has important implications for illicit behaviour, in that the close personal relationships they are excluded from serve friendship and instrumental functions simultaneously. Moreover, “*it seems that male-dominant networks renew themselves*”, as noted in (Stockemer, Wigginton, & Sundström, 2020), which can explain why these dynamic are so persistent over time.

Our analysis of cartels sanctioned by the French Competition Authority confirms that this tendency not to trust women in the context of illicit practices is the result of a cultural bias. Indeed, we did not find evidence of any female participant leaving the practice abruptly or disclosing it to competition authorities<sup>43</sup>. In most cases where women displayed maverick behaviour, this attitude was not due to disagreements with the content of the practices but rather to the choice for more structured and formalised means of action<sup>44</sup>, or to the wish to ascertain that participation in the cartel was acknowledged and validated by their internal hierarchy<sup>45</sup>. When female participants enjoyed top management situations (CEOs), maverick behaviour was linked to a desire to personally distantiate themselves from the social relationships within the core coalition, while not leaving the cartel altogether<sup>46</sup>.

This paradox of women acting as mavericks by resorting to formal networks is mirrored by the attitude and perceptions of male cartel participants. While certain cartel participants refer humorously to the illegal nature of their behaviour (e.g. “Association de Malfaiteurs du Papier Peint”<sup>47</sup>), anticompetitive practices are not perceived by them as a disruption of the social order, but on the contrary as a preservation of collective balance and established hierarchies<sup>48</sup>.

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<sup>43</sup> Even though a “women as weak links” category was indeed ran during the early stage of the case review. This line of analysis proved unfruitful.

<sup>44</sup> see in particular cases 10-D-11, 12-D-26, 13-D-14, 19-D-12, 19-D-19 part IV

<sup>45</sup> 13-D-12 parts I and III.

<sup>46</sup> (cases 15-D-19, 18-D-24, 19-D-24).

<sup>47</sup> 14-D-20

<sup>48</sup> This could lead to a reassessment of the common perception that such illicit practices constitute an expression of heroic masculinity (see on other white collar crime Gottschalk and Smith, 2013). Indeed, linking cartel infringements to a masculine tendency to individualistic behaviour and disruption of social norms, would fail to capture the fact that cartel members seek to preserve the cohesion of the group and avoid excesses of competition amongst them. In particular, the frequent calls to peaceful and amicable behaviour in order to maintain a culture of cohesion within cartels, are reminiscent of Ulysses’ speech

From this analysis it results that women, because they are effectively excluded from the male dominated informal networks, can act as agents of disruption, not out of a particular desire to deconstruct this social organisation, but simply because they prefer to adhere to the structure and the values of more formal networks. This preference is not surprising, given the fact that formalised processes and structures are usually more likely to favour women's careers than informal ones (Cheng, Groysberg, Healy, & Vijayaraghavan, 2017). By playing formal organisations against informal ones, women constitute a threat to the implicit, but more deeply rooted, masculine social order.

Overall, what emerges is that the opportunity to join coalitions at the core of illicit behaviour, such as a cartel, is shaped by social norms and dynamics of networks that are strongly male-dominated. Women are thus seen as outsiders, or potential disruptive mavericks, and as such are to be excluded.

Finally, additional research focuses on changes in gendered network dynamics and their impact on the likelihood of illicit behaviour. For instance, (Wahid, 2019) assesses the impact of board gender diversity on financial misconduct, and provides insight into the mechanism through which gender diversity may impact the likelihood of financial misconduct. The study finds that *"firms with gender diverse boards commit fewer financial reporting mistakes and engage in less fraud"* and this does not seem to be driven by differences in effort or quality, in terms of independence and expertise, of female and male directors. Most importantly, the analysis indicates that the *"impact of gender diversity on decreasing the likelihood of financial misconduct may be a result of a change to board group dynamics"*.

These examples show that the disruption of male-dominated networks, through an increase in gender diversity, could therefore effectively alter the dynamics shaping persistent cartel behaviour.

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urging Achilles to accept Agamemnon's offers and rejoin the ranks of the Greeks (Iliad, IX, 225 to 240). The hero ultimately refused and maintained an unco-operative attitude until the very last moment.

### **Box 7. Common gender co-operation in professions cases**

Cases of horizontal collusion in the context of professions present specific characteristics. In particular, they include formal networks to a greater extent, and they intervene in a specific cultural context, marked by the importance of regulation and, consequently, a narrower development of competition (see for example (Canada Competition Bureau, 2007)).

Despite these specificities, professions cases represent a major interest in the context of our study, precisely because they include more formal networks, such as orders, boards or councils, in which women are usually represented. In particular, two cases among those we reviewed allow direct comparisons between men and women in terms on how they manage these types of infringements. Moreover, since these two cases include the interactions between formal and informal networks, they provide concrete examples on how men and women make use of different types of collusion channels.

Case 10-D-11, issued on 24 March 2010, concerned a boycott practice organised by a national union of ophthalmologists, against a private healthcare insurer. In this case, male representatives chose to send letters to opticians, based on a model drafted by one individual doctor. The letters were clearly threatening, and mentioned the fact that any collaboration with the insurer would amount to a « war declaration ». The letters were sent by a handful of people, with no control of formal bodies over the content or the list of recipients. The only two female participants, on the other hand, chose to contact together the headquarters of optician's franchisors and draft guidelines that were then sent to each franchisee optician.

Case 20-D-17, issued on 12 novembre 2020, concerned a complex set of boycott practices implemented by dentists' organisations against private insurers. Once again in this instance, the practice originates in meetings between leaders of two distinct organisations. Male leaders of these two organisations chose to orchestrate a campaign of « confraternal complaints » and public « name and shame » operations, aimed at pressuring professionals co-operating with private insurers.

Separately, the head of the deontology department of the national order, a woman, drafted official guidelines on contracts with private insurers, in co-operation with the lawyers of the council, also all women. These guidelines were based on articles of the deontology code of dentists and were officially sent to local council. All local councils that effectively used these guidelines directly in their communication were presided by women. Moreover, presidents of these local councils considered these guidelines as a trusted legal reference, and referred to their author as a recognised authority.

While these cases cannot be considered sufficiently representative to draw definitive conclusions, they show that, when women participate in anticompetitive practices organised within professions, they tend to use means that are both more outward and more formally organised than men. Moreover, common gender co-operation appears to be preferred and leads to efficient action.

## **5. Concluding remarks and policy recommendations**

Most cartels sanctioned by competition authorities are based on powerful male dominated networks, which include participants controlling important levels of resources and influence within the economic sector they are operating in. These dominant networks, often coined as “boys’ clubs”, create ties of interpersonal relationships that span across companies and corporations, and thus foster co-operation between competitors.

The very same mechanism that favours trust among men also leads to the exclusion of women from the most central informal networks, and thus limits their opportunities for career development and promotion. This exclusion seems to be also reflected in actual cartel participation. Indeed, when women are present, they are almost always excluded from the core coalition and their participation remains limited both in time and in depth.

As mentioned by (Holtfreter, 2015), “*white-collar crime research that is informed by gender is not just theoretically important, but is also critical for the development and advancement of crime prevention strategies*”. In our case, both convincing theoretical foundations and compelling factual evidence confirm that there exist a correlation between the maintenance, in many economic sectors, of informal networks based on typical masculine values, and the permanence of cartel practices. This conclusion appears noteworthy, for three main reasons:

First, it demonstrates that behavioural analysis of economic agents and of their relations, both amongst them and with the institutions they work for, may very well constitute the core of cartel analysis. These aspects could be key to determine how perpetrators balance the terms of incentives and deterrence, and going forward should no longer be included only as marginal explanations.

Second, it shows that the wealth of research and literature available in neighbouring white collar crimes, such as corruption and financial misconduct, can be used as reference point to develop our understanding of the dynamics of anticompetitive behaviour.

Third, it appears that the continued exclusion of women from a number of work opportunities, on the one hand, and increased sustainability of cartels, on the other hand, share common factors and circumstances.

We thus demonstrate that continued gender imbalance constitutes an important risk factor for cartel practices, and should therefore be considered as a major point of attention by both competition authorities and compliance officials within corporate organisations.

Concerning competition authorities, it appears that even minor changes to their enforcement and advocacy policies could have a major impact on both objectives of promoting gender equality and ensuring cartel deterrence. Three types of actions could be considered at this point:

First, competition authorities have a key role to play in facilitating the development of a gender lens within competition policy. A simple but necessary step is to systematically use gender denominations in published decision, every time this is possible without affecting anonymity. Published decisions could also develop interpersonal relationships between individuals. In particular, a significant part of the decisions analysed in our study started with a list of all individuals implicated in the practices and the characteristics of their relationships. This made it easier to understand group dynamics within each cartel.

Second, competition authorities should take into account the gender structure of firms and other behavioural considerations in order to set investigation priorities. This entails obtaining access to real life data on this matter. In order to do so, agencies could rely on already existing documentation. Indeed, reporting on gender balance and professional equality between men and women has become common practice at both firm and industry level in most industrialised countries, either developed through voluntary initiatives or imposed by legal requirements. Asking for this type of documents, when available, could become common practice for investigators.

More generally, our study emphasises the role of informal social structures and behavioural components, such as business culture and the importance of opportunity in the participation of anticompetitive practices. Competition authorities could therefore consider expanding their



detection activities to more informal networks such as alumni associations, local business groups, sports and cultural associations, or charities.

Third, our research shows that deterrence expressed in potential financial cost for firms is not sufficient to avoid behaviours that originate from strong interpersonal links. Competition authorities could take this element into account in their advocacy policies by including examples of social interactions and networks that are conducive to cartel formation, in order to better inform businesses of the types of situations that represent a danger to them. Competition advocacy should thus consider continued gender imbalance, not only at board level, but most importantly in key corporate units (such as sales or business operations), as a major risk factor.

Concerning corporate organisations, our study underlines the importance, in cartel behaviour, of shared values and social norms that do not necessarily reflect official corporate culture. In particular, when designing programs aimed at ensuring antitrust compliance, legal practitioners should bear in mind the fact that informal networks dynamics can limit the impact of such programmes. Reinforcing mixity in training groups, in terms of gender but also of function, rank or geographical location could help reduce these issues.

Our study also shows that a great proportion of cartels happen at the interface between formal and informal networks, for example before or after official meetings of business associations. A tighter control of the designation and of the actual activities of firm's representatives in this type of organisation, with an awareness of the role that informal networks and boys' clubs can have in cartel formation, could help reduce the risk of participation in illicit practices. Frequent changes of the identity of the firm's representative, with particular attention to gender balance, is also advisable.

Moreover, firms could consider favouring interdisciplinarity within compliance programs. Mixing issues such as antitrust, other white collar crimes (such as corruption or insider trading), and gender issues in the workplace may help create cultural synergies favouring adhesion to a general compliance culture.

Finally, companies developing internal audit capacities could take into account gender imbalance within specific business units or functions when setting priorities for control activities.

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