

The Value of Policy Diversification in Cartel Detection and Deterrence

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*Ex Officio Cartel Investigations and the
Use of Screens to Detect Cartels*

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Context

- Leniency Revolution Since Early 1990s
 - US reforms and broad global adoption
 - Visible increase in cases, punishments
- Issue: Utility of Other Detection Devices?

Agenda

- Designing an Anti-Cartel Program: Options
- Why “Screens” Are Difficult to Apply
- Why Diversification Is Important
- Suggestions for Next Steps
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- Resources: Marshall & Marx, *The Economics of Collusion* (MIT Press 2012)

How to Build an Anti-Cartel Program?

- Establish Categorical Prohibitions?
- Broaden Evidence that Proves Agreement?
- **Increase Likelihood of Detection?**
- Increase Likelihood of Prosecution?
- Improve Adjudication Mechanism?
- Raise Sanctions?
- Note: Interdependence

Obstacles to Diversification

- Perception that Previous Experiments with Screens Have Been Largely Unsuccessful
 - DOJ/FTC experience in 1970s with crude screening techniques
 - Establishing effective “but for” criteria
- Agency Leadership Incentives
 - Leniency: visible, measurable results
 - Screens: more speculative, long-term outlays
- Burdens on Poorly Funded Agencies

Case for Policy Diversification

- Enforcement/Collusion Arms Race Since 1889
- Business Managers: Adaptable, Ingenious
 - Substantial incentives to succeed
 - Demonstrated capacity to learn and adjust
- Historical Lesson: Countermeasures Arise to Cope with Enforcement Innovations

Larger Context

- How to Invest Resources to Address Cartels?
 - Adjust the law enforcement mechanism
 - E.g., improve tools for detection
 - Advocate adjustments to policies that facilitate collusion
 - E.g., Publicly-imposed barriers to entry

Next Steps: Substantive Measures

- Predictive Factors Derived from Past Cases
 - Recurring cartel behaviors
- Adaptation of Models Used to Calculate Damages

Next Steps: Who Does It

- Better Funded Competition Agencies
- Cooperation with Universities and Other Research Centers
- Regional Initiatives

Final Thoughts

- Importance of Continued R&D Investments
- Recall that Leniency Was Product of Policy Innovation and Risk-Taking
 - Merged theory (prisoner's dilemma) and practice
 - Anne Bingaman reforms faced internal opposition
- Policy Environment Is Dynamic and Requires Ongoing Innovation and Adaptation by Public Authorities