



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

The Value of Leniency to Sophisticated Cartels

Isolde Goggin, Chairperson

Pros and Cons of Leniency and Criminalisation

Stockholm, 13th November, 2015



Who we are



- Combined competition and consumer protection agency (CCPC.ie)
- Formed 31 October 2014
- Mission: *to make markets work better for consumers and businesses*

Issues affecting motivation

- Companies versus individuals
- Immunity versus leniency (first in/second in)
- Single versus multiple cartels



Companies and individuals

- Different motivations (especially if regime provides for individual sanctions, including jail time)
- Principal-agent problems
- Different timescales/mobility



Immunity versus leniency

- Orchestrating applications opens up the possibility of cheating on the cheating cheaters ...
- Possibility of mutual escalation – A turns in a small cartel in which B also operates, so B applies for leniency and also turns in a large cartel ...



Single versus multiple cartels



« Dans ce pays-ci, il est bon de tuer de temps en temps un amiral pour encourager les autres »

- Voltaire, *Candide*



Single versus multiple cartels

- Is the right audience listening?
- How do orchestrated applications fit with the motivation?
- Again, the problem of cheating on the cheaters ...



Ideally, a cartel enforcement mechanism would be:

- Direct
- Timely
- Safe
- Big



Is strategic use of leniency an effective tool?

- Indirect – different industry, different people
- Delayed – only apparent in 2 years' time when there's a decision
- Risky – could backfire depending on “penalty-plus” situation; risk of personal penalties
- Small – competing on the larger market would have a greater effect



Association Management Companies

“EC Decisions are notifying everyone that Fides/AC Treuhand provides cartel consulting and services”



AMCs – Irish experience

- Citroen Dealers (2002 – 2008)



- Home Heating Oil
(2001 – 2012)



- Ford Dealers (2004 – 2007)



Citroen Dealers

- Collusion to fix price of new and second-hand Citroen vehicles and accessories
- 14 convictions – 8 individuals and 6 undertakings; fines and suspended sentences
- Secretary of the Citroen Dealers Association convicted of **aiding and abetting** the commission of the offence of price-fixing



Home Heating Oil

- Collusion to fix the retail price of kerosene and gas oil
- 18 convictions – 8 individuals and 10 undertakings
- First jury conviction for price-fixing in Europe
- Meetings held under guise of safety issues
- Retired executive was “enforcer” – checked distributors’ dockets



Ford Dealers

- Cartel within Irish Ford Dealers' Association
- Guide prices for vehicles – discounting prohibited
- “Mystery shoppers” used to police agreement
- “Cheating” punished by fines to IFDA
- Cartel facilitator convicted of aiding and abetting a cartel – no other convictions



Finally ...



“A plague upon it
when thieves
cannot be true to
one another!”

- Falstaff, Henry IV, Part 1:
William Shakespeare





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Thank You

