The Value of Leniency to Sophisticated Cartels

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Pros and Cons of Leniency and Criminalisation
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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
“A plague upon it when thieves cannot be true to one another!”

- Falstaff, Henry IV, Part 1: William Shakespeare
Thank You