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Cracking Cartels With Leniency Programs

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The Single Greatest Investigative Tool

- Since its revision in 1993, the Antitrust Division's Corporate Leniency Program has been the Division's most effective investigative tool
 - Cooperation from leniency applicants has cracked more cartels than all other tools at our disposal combined -- searches, FBI "drop-in" interviews, informants, Interpol red notice watches, etc.
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Benefits of a Leniency Program

- A company will admit conduct before investigation is opened or turn on others after investigation underway
 - Provide critical cooperation of inside participants
 - Access to documents regardless of location
 - Access to witnesses regardless of nationality
 - May provide opportunity for covert operations
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The Success of the Leniency Program

- Led to detection and dismantling of the largest global cartels ever prosecuted and resulted in record-breaking fines in the U.S., EU, Canada, Australia, and elsewhere
 - In US, resulted in over \$2 billion in criminal fines; EU figure even higher
- Many of these cartels would not have been cracked and may have remained undetected

- to this day without the lure of leniency
- E.g., the "Vitamins, Inc." cartel
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Sample Investigations Advanced By Leniency (U.S. fine figures only)

- Vitamins
 - F. Hoffmann-La Roche \$500 Million
 - BASF \$225 Million
 - DRAM
 - Samsung \$300 Million
 - Hynix \$185 Million
 - Infineon \$160 Million
 - Graphite Electrodes
 - SGL \$135 Million
 - Mitsubishi \$134 Million
 - UCAR \$110 Million
 - Fine Arts Auctions
 - Sotheby's \$ 45 Million
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The Carrot

- Huge incentives to be the first to self report and implicate the other conspirators
 - No charges filed against the company
 - No charges filed against cooperating employees
 - No criminal or administrative fine
 - Promise of confidentiality
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The Stick

- Full immunity is only available to the first company to self report and meet the conditions of the program
 - The second company - even if second by only a matter of minutes or hours as has been the case - and those that follow (as well as their executives) face severe sanctions
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The Race

- The winner-take-all approach creates distrust and panic within the cartel and *destabilizes* it
 - There is no honor among thieves
 - With the stakes so high, the cartel members can no longer afford to trust one another and go back to being cutthroat competitors
 - The "empty seat at the table" scenario
 - Individual exposure creates a race between the company and its own employees
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Leniency Programs Are Uniquely Designed for Fighting Cartels

- Leniency programs would make no sense for most other offenses
 - Cartels are inherently difficult to prove - you need an insider willing to cooperate
 - Cartels are conspiracies – so always other remaining companies/individuals left to prosecute after the first one reports the conduct
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Cornerstones of an Effective Leniency Program

- Threat of Severe Sanctions
 - Heightened Fear of Detection
 - Transparent Application of Program
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The Threat of Severe Sanctions

- Avoiding the risk of prison is the greatest inducement to self reporting
 - The EU's success relying on heavy fines
 - *BUT* the threat of criminal sanctions will act as a *DISINCENTIVE* to reporting unless policy is clear in advance that public prosecutor will not prosecute leniency recipients
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Cultivating a Fear of Detection

- Cultivating a fear of detection requires a demonstrated track record of cracking cartels
- Over 50% of our international investigations initiated as result of a lead generated in

completely separate market (see cartel profiling, amnesty plus, and penalty plus policies)

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Transparency is Essential

- If company cannot predict how it will be treated, it is far less likely to report
 - Experience of US and others with failed programs
 - 20-fold increase in U.S. applications after we revised our program to make it more transparent and predictable
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Resources

- U.S. Corporate Leniency Documents and Speeches available at <http://www.usdoj.gov/atr/public/criminal.htm>
- ICN Cartel Working Group Website
<http://www.internationalcompetitionnetwork.org/cartels.html>
- Request a Free Copy of DVD from 2004 ICN Leniency Workshop:

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