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.
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
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
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
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
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
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
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
Cornerstones of an Effective Leniency Program

- Threat of Severe Sanctions
- Heightened Fear of Detection
- Transparent Application of Program
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
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)
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
Resources


- Request a Free Copy of DVD from 2004 ICN Leniency Workshop:

  Freedom of Information Act Unit  
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