Ten Strategies For Winning The Fight Against Hardcore Cartels

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1: Dedicate Sufficient Resources to Make Anti-cartel Enforcement a Top Priority

- Detection and prosecution of hard core cartels is the highest priority of USDOJ Antitrust Division
- Dedicated Cartel Units
- Trained Investigators
- Support proactive outreach efforts to assist in the detection of hard core cartels
2: Treat Hard Core Cartels As Crimes, And Cartel Members As Criminals

• In our experience, individual accountability through the imposition of jail sentences is the single greatest deterrent.

• We have recently discovered numerous cartels that violated competition laws around the world but chose not to extend cartel activity to U.S. market, because they feared U.S. detection and sanctions.

• The risk of under-punishment is that cartels will target your businesses and consumers.
3: Use All Available Criminal Investigative Tools

- Search Warrants
- Use of Informants
- Consensual Monitoring / Wiretap Authority
- International Cooperation Agreements
- INTERPOL Red Notices / Border Watches
- Extradition
4: Use Trained Investigators to Obtain Sworn Witness Statements

- When No “Hot Documents” Are Uncovered by Investigators — a Frequent Event As Increased Deterrence Will Cause Cartels to Become More Sophisticated — Individual Admissions Are Needed to Prove Existence of Cartels
- The Ability to Compel Testimony Under Oath and Under Penalty of Perjury Is an Invaluable Tool
- Use Investigators Trained in Interviewing

*You Can’t Catch a Thief With an Economist*
5: Reward Cooperation and Penalize Those Who Fail to Accept Responsibility

- Heightened importance of obtaining the cooperation of inside participants in cartel cases
- Inducing self reporting by implementing an effective leniency program
- Significant rewards for the second in the door

Using “the stick” on those who lose the race
6: Maximize Transparency and Predictability Across Enforcement Policies

- Prospective cooperating parties come forward in direct proportion to the predictability and certainty of their treatment following cooperation.
- Establish transparent standards also for:
  - opening “hard core” cartel investigations
  - deciding whether to bring charges
  - calculating and imposing sanctions
7: Vigorously Prosecute Conduct Aimed At Obstructing An Investigation

• Results of ICN cartel workshop survey
• High incidence of document destruction, false statements, and witness tampering in cartel investigations
  – Highly sophisticated offenders with a lot to lose
• To deter obstruction, punishment for obstruction needs to be on par with potential sentence if convicted of cartel offense
• Proof of obstruction is the best evidence of consciousness of guilt
8: Develop Cooperative Relationships With Other Law Enforcement Agencies

• Cooperation and Coordination With:
  – Public Prosecutor
  – Other Domestic Investigative Agencies
  – Foreign Competition Authorities
  – Government Procurement and Debarment Agencies

• Cooperative Relationships:
  – Generate New Leads
  – Assist Investigations
9: Investigate Cartel Offenses Together With Other Related Offenses

- Great source for leads and for creating “inducements” to cooperate
  - Exposure to sanctions for a collateral offense can lead to cooperation on the cartel offense
- E.g., Kickbacks paid to purchasing agents in order to corrupt the competitive bidding process charged as fraud and/or bribery
  - Tax offenses for failing to report kickbacks as income
10: Close The Information Gap

• Take Proactive Steps to Change the Corporate Culture Towards, and Public Perception Of, Hardcore Cartels

• Advocate Strong Anti-cartel Deterrent Message to the Media, Business Community, Consumer Groups, and Defense Bar

• Engage in Outreach Efforts to Help Others Identify and Report Hardcore Cartel Offenses