

Corporate Leniency Programs in the Cartel Lifecycle: ‘Cleaning out the Closet’*

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Abstract

In the US and the EU, corporate leniency programs for cartels are commonly judged a success due to the large number of applications they attract. In recent years, the vast majority of cartel investigations in these jurisdictions either resulted from or was facilitated by self-reporting of cartel members in return for reduced fines. Leniency is therefore regarded a poster child for cartel detection. Its effectiveness in destabilizing cartels in theory is studied in Motta and Polo (2003), Spagnolo (2004) and Harrington (2005).

In a pool of heterogeneous cartels, the quality of the applications received by the antitrust authority is uncertain however. To be efficient, leniency programs should yield primarily novel cartel cases that would otherwise remain undetected. Recent empirical findings in Stephan (2006) suggest however, that the majority of applications to the European Commission follow on to earlier filings to the US authorities and that firms choose to notify the least profitable cartels, or even cartels that were long terminated but still form a liability if discovered.

There is reason to believe that this is the case both in the US and in Europe. Increased enforcement activity in the 1990s translated into a rise in the perceived probability of detection for cartels, which destabilized the weaker cartels first. After the subsequent introduction of the corporate leniency programs several years later, it may be these cartels that are the most likely ones to apply for leniency.

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In this paper, we theoretically analyze in which stage of the cartel lifecycle applications for leniency occur. We show that the ratio of collapsed to active cartels that self-report can be substantial for modest detection probabilities. If in addition the competition authority is budget constrained, so that dealing with many leniency cases takes away resources from active detection and reduces the chance of discovery, the competition authority may find itself cleaning out the closets of firms which want to get rid off their past cartel liabilities. Our findings provide a warning that, whilst giving incentives for cartel members to self-report can surely add to cartel detection, antitrust authorities should not rely on this channel for policing cartels too heavily.

Keywords: Leniency, cartel, detection, antitrust.

JEL-codes: L4, K21.