

An Empirical Evaluation of the Normative Justifications for Cartel Criminalisation

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BACKGROUND

- Cartel conduct can involve price fixing, bid-rigging in tendering, restricting output and/or dividing customers based on location.
- It has been criminalised by a number of jurisdictions, while others have chosen to treat it as a purely civil or administrative matter.
- Critics cite cartels as an example of over-criminalisation and argue economic harm cannot justify a criminal offence, unless there is sufficient moral opprobrium as well.
- Normative arguments in favour of criminalisation generally assume that members of the public expect competition and object to cartel practices.

METHODOLOGY

- Public surveys from the UK, US, Germany and Italy provide the first empirical evidence to help us determine whether these assumptions hold true.
- The paper critically analyses the normative arguments before evaluating them in light of the survey results.

KEY FINDINGS

- The surveys show a majority of consumers expect prices to be set independently by competing businesses, and understand that cartel conduct is harmful.
- Yet many of those same respondents are unsure whether cartels are unlawful.
- Attitudes are shown to be a little weaker when comparing cartel conduct to other forms of wrongdoing, but most equate cartels to fraud and white collar crime.
- The findings strengthen the normative justifications for cartel criminalisation, even though support for the imprisonment of cartelists is weak.

POLICY ISSUES

- The finding that respondents expect prices to be calculated independently lends weight to the suggestion that clandestine cartel behaviour amounts to a deception. This provides a normative basis for cartel criminalisation.

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- It also justifies the punitive approach to cartel enforcement that exists in all enforcement regimes (whether criminal or administrative).
- There appears to be a need for greater public awareness of the law.

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