

Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool?

KEYWORDS: cartel enforcement; whistleblower rewards

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BACKGROUND

- The defining characteristic of modern cartel enforcement is the use of leniency programmes. This innovation, first employed by the US in the late 1970s, has been emulated by the vast majority of competition law enforcement regimes around the world.
- The basic principle of these programmes is to offer immunity to the first firm to report a cartel infringement to the competition authority.
- It is thought leniency programmes have been instrumental in destabilising and uncovering cartel infringements, thereby undermining the trust that exists between cartel members and increasing the rate at which cartels are detected.
- Despite the offer of leniency and the increasing levels of fines imposed on cartels, competition authorities continue to uncover a high volume of infringements. This might suggest that more could be done to strengthen deterrence in cartel enforcement. It has been suggested that the next logical step in advancing antitrust enforcement may be the use of rewards or bounties to individual whistle-blowers.

METHODOLOGY

- The author considers whether the use of individual informant rewards is a viable cartel detection tool.
- The analysis focuses on the Korean Fair Trade Commission's system of rewards for informants, with some coverage of practices in the UK, Hungary, Pakistan and the US.

KEY FINDINGS

- The author concludes that the Korean innovation of providing rewards to individual whistle-blowers in cartel cases is a viable enforcement tool:
 - Informant rewards provide a way of increasing detection and deterrence without the need for significant additional resources.
 - Informants will potentially uncover cartels not revealed through leniency or ordinary investigations.
 - There is a need for someone within the group of wrongdoers to provide sufficient evidence of what is going on. Therefore, informant rewards should not exclude individuals directly involved in an infringement: insiders may be the only plausible whistle-blowers or may have been pressured into getting involved in the infringement.
 - Measures designed to protect whistle-blowers from the retaliatory actions of their employers do not go far enough and fail to create a sufficient incentive for individuals to come forward. Whistle-blowing is associated with very significant costs and risks for the individual. These must be compensated for by the informant reward.
 - The use of informant rewards is associated with a number of risks, but it is argued that these have been exaggerated or can be countered in a straightforward way.

POLICY ISSUES

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- The biggest challenge for informant reward schemes is providing prospective whistle-blowers with sufficient certainty as to how they will be treated once they come forward. Competition authorities rightly want to retain significant discretion so as to ensure rewards are not paid out without good justification. For the whistle-blower, however, this discretion provides significant uncertainty. The danger that they will come forward only to be turned away or refused a reward because the case is not taken up, poses a significant disincentive.
- The levels of informant reward offered by the UK, Hungary and Pakistan appear particularly inadequate as an incentive to whistle-blow, although Korea has shown that it is still possible to attract some informants with significantly lower sums.

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