

March 2012

 Keep to sustain
 or keep to
 exploit?

CCP Executive Summary

Keep to Sustain or Keep to Exploit?

Why Firms Keep Hard Evidence

BACKGROUND

- Several cartels have been dismantled in various jurisdictions in recent decades, either because some of their members have blown the whistle to antitrust authorities or because antitrust authorities' own investigations have exposed hard evidence of cartel activity.
- Moreover, numerous cartels have been prosecuted based on indirect evidence when the antitrust authorities' investigations failed to disclose hard evidence.
- Many collusive firms keep hard evidence, even when the enforcement policy does not encompass a leniency programme.

METHODOLOGY

- The author develops a theoretical model to address key questions pertaining to the decision of firms to keep or to destroy hard evidence of cartel activity:
 - why do firms keep hard evidence when a leniency programme is not available?
 - what is the impact of a leniency programme on the decision to keep or to destroy hard evidence?
 - why do firms keep hard evidence but not report it to the antitrust authority?

KEY FINDINGS

- Firms are more likely to keep hard evidence when:
 - I. the cartel's sustainability is more sensitive to hard evidence; or
 - II. the probability of cartel detection is less dependent on hard evidence; or
 - III. the ratio of the fine to collusive profits is high.
- The introduction of a leniency programme reinforces firms' incentives to keep hard evidence. Firms may keep the hard evidence, not only to enhance the stability of the cartel, but also to exploit the leniency programme.
- Firms are more likely to keep hard evidence without reporting it to the antitrust authority when:
 - I. the probability of the cartel collapsing in the absence of hard evidence increases;
 - II. the ratio of the fine to collusive profits increases; and
 - III. the incremental probability of detection with hard evidence decreases.

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THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper (12-5) and more information about CCP and its research is available from our website: www.competitionpolicy.ac.uk

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