

On the Design of Leniency Programs

BACKGROUND

- Cartel detection and deterrence are among antitrust authorities' highest priorities. One of the most important developments in the area of antitrust policy is the introduction of leniency programs. First adopted in 1978 in the US, leniency programs allow corporations or individuals involved in illegal cartel activity to receive amnesty if they come forward and denounce the cartel. The success of programs in the US has encouraged many other countries to adopt their own leniency programs.
- A basic trade-off between two opposite forces is associated with leniency programs: leniency can destabilise cartels, by encouraging firms to report and bring evidence to the antitrust authority; but leniency can also reduce the expected penalties that cartel members face, making cartels more profitable and, by the same token, more robust.

METHODOLOGY

- The authors develop a simple framework for analysing the optimal design of leniency programs. A standard model of tacit collusion in a repeated competition game is employed, with a focus on stationary antitrust policies which rely on random investigations and fines for exposed cartels.
- The optimal leniency rates are characterised, both before any investigation and once an investigation is opened.
- The effectiveness of alternative rules for late informants and repeated offenders is compared.

KEY FINDINGS

- The authors show that offering leniency, before or after an investigation is launched, can help fight collusion.
- Whenever random audits are *not* very effective in uncovering cartels, it is desirable to offer some amnesty, at least in the absence of any ongoing investigation.
- Optimal leniency rates increase as random investigations become less successful; when success is quite unlikely, it is always optimal to offer

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leniency programs both pre- and post-investigation, however frequent these investigations are.

- It is optimal to offer less leniency once an investigation is already underway, when investigations are *infrequent* but likely to succeed once they are launched. But when investigations are frequent but *unlikely* to succeed, it can be desirable to offer more leniency once an investigation is underway in order to make those investigations more effective.

POLICY IMPLICATIONS

- The analysis confirms the usefulness of restricting leniency to the first informant only. The analysis does not appear to support a limitation on leniency for repeated offenders, although increasing the monitoring of such industries appears desirable.
- Leniency programs usually do not offer more amnesty post-investigation than pre-investigation. The analysis shows that such policies may not be optimal when investigations are quite frequent or (more realistically) relatively unlikely to succeed in the absence of self-reporting.

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 (CCP Working Paper 08-18) and more information about CCP and its research is available from our website: www.ccp.uea.ac.uk

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