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Cartel Control, Public and Private Sanctions: Lessons Europe Can Learn from the American Experience

The American system of cartel control involves a mixture of private and public (including individual criminal) sanctions with a leniency programme specifically designed to destabilise collusive activity. The result of this system is both a substantial decrease in cartel recidivism and the payment of substantial damages to those affected by such conduct. This result advances the dual goals of ex ante deterrence of cartel activity and ex post compensation for their harms. I argue that the efficacy of the American system lies in three features: (1) a credible threat of individual punishment, (2) the predictability in calculating ones (personal or corporate) liability/exposure for anticompetitive conduct, and (3) an effective means of compensating harmed individuals (in the form of class actions fuelled by an aggressive plaintiffs' bar). The European cartel control system shares very little of the first and nothing of the latter two features of the American system. Indeed, the necessarily fragmented nature of Europe's systems of civil enforcement makes calculation of one's exposure to potential claims exceedingly difficult. Likewise, in the absence of effective means of class redress, it is unlikely that consumers can be adequately compensated for their losses. Further the limited treatment of individual sanctions reduces the destabilising effect which leniency programmes may possess. This papers draws upon the American experience to suggest some means of improving the European system in order to enhance its goals of deterrence and compensation.