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Leniency Program for Cartel Participants: The Russian Case

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Motivation

- Leniency Program (LP hereafter) represents important instrument to discover and deter collusion
- To achieve these goals both design of LP and effectiveness of collusion prevention without LP are important
- Russia's case shows that an attempt to introduce LP may lead to «unexpected» results only due to mistake in design (literarily just in wording)
- Also it shows one more time that LP *alone* cannot achieve objective of effective deterrence of collusion

Plan of Presentation

- Leniency program and collusion deterrence
- Cartel deterrence in Russia
- Design of LP in Russia: from collusion support to collusion deterrence.

Leniency program and collusion deterrence

Conditions for effectiveness of LP

- Fight against cartels does matter (Connor, 2005, Connor and Helmers, 2005; Connor and Lande, 2005; Connor and Bolotova, 2007)
- Fixed fines and confidentiality influence LP effectiveness (Motchenkova, 2004)
- Contradictory LP results even with necessary conditions compliance (Hinloopen, Onderstal, 2011; Buccirosi and Spagnolo, 2006; Brenner, 2009; Klein, 2010)

Cartel deterrence in Russia

Frame for Russian LP

- Cartel disclosure probability does matter for effective fines along with amount of penalties
- The probability of disclosing collusions by competition authority on its own depends on resources endowment, scope of authority and antitrust officers incentives.
- Currently, these factors still constrain the effectiveness of both prevention of cartel agreements and application of LPs in Russia

Budgets of competition authorities

| Country | Thousandths of a % of GDP in 2006 |
|--------------------|-----------------------------------|
| Argentina | 3,5 |
| Brazil | 7,0 |
| Germany | 7,2 |
| France | 14,3 |
| Russian Federation | 20,1 |
| United States | 26,2 |
| Canada | 33,0 |
| Czech Republic | 40,4 |
| Estonia | 54,8 |
| Ukraine | 57,7 |
| United Kingdom | 58,6 |
| Denmark | 66,1 |
| Australia | 99,1 |

Resources available for competition authority staff (2006)

| Country | Total staff | GDP in national currency / GDP in USD by PPP | Budget in million USD by PPP, IMF estimate | Thousands USD per employee) |
|-----------|-------------|----------------------------------------------|--------------------------------------------|-----------------------------|
| RF | 2200 | 15,41 | 34,79 | 16 |
| Ukraine | 904 | 1,5 | 20,55 | 23 |
| Brazil | 400 | 1,37 | 11,86 | 27 |
| Estonia | 37 | 8,3 | 51,34 | 36 |
| Argentina | 48 | 1,05 | 2,18 | 45 |
| Germany | 280 | 0,9 | 18,52 | 67 |
| Czech Rep | 114 | 13,55 | 9,55 | 84 |
| Canada | 399 | 1,24 | 38,17 | 96 |
| Australia | 598 | 1,47 | 67,4 | 110 |
| France | 240 | 0,92 | 27,65 | 115 |
| US | 1874 | 1,02 | 251,75 | 134 |
| Denmark | 92 | 8,26 | 13,12 | 143 |
| UK | 823 | 0,61 | 124,35 | 150 |

Collusion deterrence by Russian competition authority

- Price-fixing and market sharing are illegal per se BUT...
- Till 2007 small amount of fines for collusion participants
- Since 2007 penalties up to 15% of companies turnover on the market affected by collusion
- Restricted ability of competition authorities to carry out investigations against companies involved in collusion
- In spite of very large number of cases against participants of horizontal agreements (from 200 to 400 annually in the first decade of the century) only small fraction of them is against 'classical' collusion

What is and might be an effect of LP introduction?

Design of LP in Russia: from collusion support to collusion deterrence

LP-2007 in Russia: requirements

- reporting collusion and its participants or concerted practices to the Federal Antimonopoly Service of the Russian Federation;
- providing information about collusions or concerted practices;
- refusal to participate in collusions or concerted practices (zero cost for deviations detecting).

Russia, USA and EU compared

| United States | EU | Russia -2007 |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The first cartel participant/automatically/100% discount | The first member reporting the cartel is automatically granted partial amnesty, although complete amnesty is also not excluded (but is not automatic). | There is no limit to the number of exempted participants. |
| The scale of the amnesty does not depend on the value of the information about the cartel | The extent of the discount rate is heavily dependent on the amount of evidence provided. | It is possible to provide a full exemption from administrative liability, discount may not depend on evidence provided. |
| The cartel participants who reported their participation later do not get the right to a discount (partial amnesty) | The cartel participants who reported their participation later may be eligible for reduction of fines. | There are no clear instructions for the case of successively received applications for exemption from administrative liability. |
| If an investigation is initiated, complete amnesty is possible, but cannot be guaranteed | If an investigation is initiated, maximum discount for the first participant who reported the cartel is 50 percent. | Participation in the LP is possible at any stage of the review of the administrative case by competition authority , discount does not depend on the state of review of the case by competition authority. |

Impact on the collusion participants behavior

- On the stage of investigation by competition authority: to apply for leniency *irrespective of what the results of investigation would be (including in the cases when agreement does not restrict competition)*
- On the stage of collusion formation: to enter into collusion agreement easily, since the expected fine for participants is zero (because of opportunity to apply for full leniency by any number of participants and at any stage of investigation)
- **Anti-deterrence effect on collusion both due to:**
 - **increase the probability of Type I errors**
 - **decrease of expected penalties for collusion participants**

LP-2007: some results

- 500 applications in about two years

However:

- Coordinated disclosure (application for leniency)
- No hard core cartels discovered due to LP
- Instead: participants of agreements which hardly can restrict competition applied 'just in case'

LP-2009

- only the company which has submitted the application first becomes eligible for exemption from prosecution.
- the application filed simultaneously on behalf of several persons wouldn't be subjected to review by competition authority
- exemption from criminal liability

LP-2009: some results

- About 40 applications for 2010-2011
- Together with improvement of LP design there are first examples of successful secret investigation
- Together with the first examples of imposition of high penalties on the companies breached the competition law
- In spite of impossibility to evaluate the effectiveness of new LP design it at least does not enhance new cartel formation

Conclusions-I

- LP is an important antitrust policy tool against cartels but not every LP leads to the desired and announced results as in Russia's case.
- Results of LP is very sensitive to elements of design. Russian case was characterized by two problems: reduction of restraining force of penalties for collusion and increase of likelihood of errors of Type I appearance in cases of agreements.

Conclusions-II

- Changing the design of the program in 2009 formally reduced the demand for it among market participants but eliminated the sources of negative externalities.
- The probability of disclosing collusions by competition authority on its own depends on its resource endowment and scope of authority. Currently, these factors still constrain the effectiveness of both prevention of cartel agreements and application of LPs in Russia

Thank you for attention!