

Effectiveness of Leniency Programs

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Leniency Programs: some lessons from the recent experience

- Leniency Programs (LP) were first introduced in 1978 in the US.
- They have been reformed in 1993 and then they have been adopted in several other jurisdictions including the EU (from 1996).
- The rules of LP have been often redesigned and adapted over time, with an on-going learning process
- There is today a wide experience in the design and application of LP.
- As a general lesson, the effectiveness of LP depends on their design and on other important elements that characterize the enforcement policy towards cartels.

LP: different rules at work

- LP differ across jurisdictions on internal rules and external elements of the enforcement policy
- Internal rules:
 - Eligibility:
 - Timing when an application can be submitted:
 - Before v. after an investigation is opened
 - First reporter v. late reporters
 - Role: exclusion of ring-leaders
 - Behaviour: on going cooperation and value added during the investigations

LP and Enforcement policy

- Other elements of the enforcement policy:
 - Independent ability to prove the existence of the cartel (object/effect, evidence)
 - Level of fines
 - Nature of fines (monetary v. imprisonment, companies v. individuals)
 - Commitment (explicit rules, discretion, control of the process, private enforcement and damages)

Are the LP effective?

- Since the introduction of LP we have a wide evidence of their use in handling cartel cases.
- Can we conclude that the LP are effective?
- Reasons to be cautious:
 - The empirical evidence must be evaluated with care: observing more cases brought to the attention of the enforcer is not enough: more cartels or more cartels detected?
 - The theoretical analysis suggests that LP can have anti-collusive (higher expected fines, more effective prosecution) and pro-collusive effects (lower expected fines for applicants)
 - Theory and experience suggest that the devil is in the details.

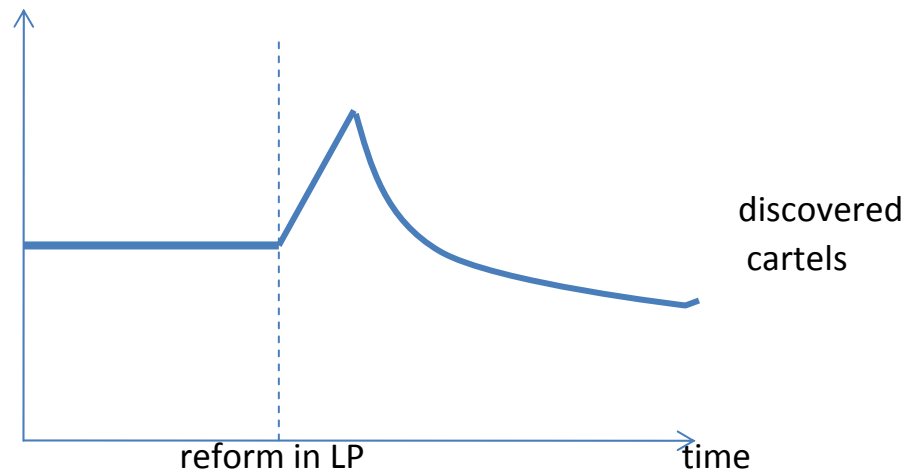
Effectiveness: theory

- A rich theoretical literature on the impact of LP on cartel formation and cartel detection.
- Basic trade-off: LP destabilize cartels (cheating + reporting, more resources due to shorter cases) v. reinforce cartels (lower expected fines)
- LP are more effective in case of:
 - Larger fine discounts (or even rewards for applicants)
 - Fine discounts after an investigation is opened
 - Full amnesty to the first reporter
 - Individual sanctions/rewards

Effectiveness: evidence

- An observed increase in the number of discovered cartels is not enough to establish effectiveness:
 - Number of on-going cartels depends on:
 - The rate of formation of new cartels
 - The rate of dissolution of existing cartels
 - The rate of discovery of existing cartels
 - Given the number of on-going cartels, the discovery rate determines the number of **discovered cartels**
 - The time path of on-going cartels determines the average **duration** of (existing and discovered) cartels
 - The number of discovered cartels and their duration are observable, while the main measure of deterrence (number of on-going cartels) is not.

Effectiveness: evidence



Miller (AER 2009): a (successful) reform in LP that increases the rate of detection and reduces the rate of formation initially increases the number of discovered cartels (due to the first effect) and then reduces the number of discovered cartels below the initial level (due to the lower number of on-going cartels): consistent with US data 1985-2005 (207 cartels). The 1993 reform increased significantly the rate of detection and reduced significantly the rate of formation of cartels.

Conclusions

- LP are an interesting laboratory for the design of effective prosecution of cartels
- It benefits from the joint contribution of
 - theoretical models (that identify relevant tools),
 - empirical research (that tests how these innovations affect the effectiveness using hard information) and
 - experience of the practitioners (that adds up soft information on the reaction of applicants to innovations).