LENIENCY PROGRAMS, ENFORCEMENT ERRORS AND EFFECTS FOR COOPERATION AGREEMENTS

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Background

Leniency programs in Russia:
2007 -> 2009 -> 2012
• In 2008 FAS Russia ran 358 investigations of anticompetitive agreements - twice as much as in 2007
• In 2008 more than 500 companies applied for leniency

Horizontal cooperation agreements
• Article 11 on collusion, part 1 names per se prohibited clauses
• Part 1 Article 13 establishes a rule of reason approach to some agreements, but not those prohibited per se in Article 11
• Since 2012 - Part 1.1 Article 13, rule of reason for cooperation agreements, even if they include clauses named in Part 1 Article 11
MOTIVATION

- In 2008 FAS Russia ran 358 investigations of anticompetitive agreements - twice as much as in 2007
- In 2008 more than 500 companies applied for leniency
- Many cases - not cartels, but concerted practices, vertical and conglomerate agreements (Yusupova, 2013). Perhaps horizontal cooperation agreements?

Problem of type I errors?
- Standards of economic analysis: collusion vs. cooperation
- Asymmetric information between firms and the AA

Type I errors
BENCHMARK MODELS

- Motta, Polo (2003) - include type II errors
- Ghebrihiwet, Motchenkova (2010) - include type I errors, but:
  - “innocent” firms can’t participate in the program;
  - the probabilities of conviction are the same for both “innocent” and “guilty” firms.

No assessment of the impact on cooperation agreements that benefit social welfare
ASSUMPTIONS

1. Symmetric firms
2. $\Pi_M, \Pi_D, \Pi_{COOP}, \Pi_N$
3. Firms confess -> R or don’t -> F. The investigation lasts 1 or 2 periods.
4. Leniency
   - full leniency for every firm that applies
   - application possible after the investigation starts
5. The AA opens an investigation with probability $\alpha_i$, which ends in conviction with probability $p_i$
6. $\alpha_N=0,2\alpha$, $\alpha_D=0,4\alpha$, $\alpha_{COOP}=0,6\alpha$, $\alpha_M=\alpha$
7. $p_N=0,2p$, $p_D=0,4p$, $p_{COOP}=0,6p$, $p_M=p$
ASSUMPTIONS

1) N - Not Collude or Cooperate;
2) CNR - Collude and Not Reveal;
3) CR - Collude and Reveal;
4) DNR - Deviate and Not Reveal;
5) DR - Deviate and Reveal;
6) COOPNR - Cooperate and Not Reveal;
7) COOPR - Cooperate and Reveal.
EQUILIBRIUM IN MOTTA, POLO (2003)
EQUILIBRIUM WITH TYPE I ERRORS AND COOPERATION
EFFECTS OF LENIENCY

- Deserved punishment effect
- Disrupted cooperation effect
- Prevented cooperation effect
CONCLUSION

1. Effects of hostility tradition
2. Shavell, Polinsky (1989) - type I errors increase incentive for breaking rules
   vs.
   Png (1986) - type I errors increase compliance
⇒ both effects are visible
THANK YOU!
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