Settlements in the Presence of Leniency Programs: Costs and Benefits

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The paper in a nutshell

• Cartel settlement: a firm is granted a lower fine in exchange for pleading guilty, thereby: (i) making sure the firm is found guilty; (ii) saving time and resources for all involved

• The paper looks at the interaction between settlements and leniency programmes: important topic, nice paper!

• Potential drawback of settlements: if too high a fine reduction, then lower incentives to apply for leniency.

• Main result: If well designed, a settlement program can make collusion more difficult
Comments, I: literature

• Trade-off between ex post desistence and ex ante encouragement of cartel due to anticipated lower penalties (e.g., Motta & Polo, 2003) here takes another interesting twist

• Authors may want to cite Chen and Rey (JLE 2013):
  - leniency after an investigation is started. Not a similar flavour as settlement here?
  - Here: Settlement must be asymmetric: somehow evocative of Chen & Rey’s result that leniency should be offered only to the first informant?

• Incidentally, can the AA actually make discriminatory offers to cartelists? Not sure, all firms have to be treated equally...
Comments, II: reality?

- A description/discussion of cartel settlements (Canada, US or EU...) -- perhaps in the light of the results of the paper – would be helpful: are AAs doing things right or not? Are settlements often used, and in which circumstances?
- Also, I understand that settlements typically take place when the probability of conviction is close to 1, and its main objective is to speed up things.
- In the EC’s Settlements practice, the fine’s reduction associated with settlements is not very high (10%) – about right, or insufficient? (tricky, I know...)
Comments, III: another trade-off...

• Settlements may have an impact on follow-on damages actions: they may affect firms’ exposure to private litigation by making it more likely.

• If the settlement increases the probability of private actions, and damages to be paid to private plaintiffs are significant, a fine reduction would not be sufficient to induce a cartelist to settle...
  • (Again, what happens in reality?)