



Cartels, and Economics

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How can economics help fight cartels?

How does collusion work, which factors facilitate it?

- Economics helps identify harmful v. legitimate practices, as a matter of “policy rules”
- Less useful in concrete hard-core cartel cases:
 - We need documentary evidence to establish coordination vs. ‘intelligent adaptation to existing and anticipated conduct of competitors’ (Woodpulp)
 - Behavioral screening (higher prices than ‘control’, unusual unjustified price rises, stable prices despite cost shocks, highly stable market shares) in principle useful, but data-intensive and costly (and does not prove infringement!)

A gray area: How to deal with information exchanges?

Information and collusion

Enforcement: firms need to monitor deviations from (tacit or explicit) collusive actions, to 'discipline' deviators

➡ Info on past/current prices and outputs is crucial

Coordination: communication needed to achieve best possible collusive outcomes and avoid 'involuntary' price wars

➡ Unilateral information about intended future prices and outputs may help coordinate on particular outcomes (e.g., interviews in *3G auctions*)

➡ Disclosure of "private signals" about market variables (cost, demand etc) may avoid "misunderstandings" and avoid wars (e.g.: some features in *Chiquita*)

Pro-competitive effects of info exchange

Past prices/outputs: may perhaps be efficient (e.g., by guiding investment decisions), **but**

➡ need not be detailed/disaggregated/very recent

Future price announcements: do help customers shop around (transparency on demand side), **but**

➡ Public (good) v. private (bad) announcements

➡ If public, announcements must also have commitment value; else, they amount to price discussions (e.g.: *Airline Tariff Publishers*)

➤ Hard to see procompetitive effects in future price announcements, unless public and with commitment value

Policy implications

Unilateral disclosure of future prices/output:

- ➡ *Prohibit* private announcements among firms, as attempts to coordinate
- ➡ *Prohibit* public announcements without commitment values (i.e. *intentions*), as they can be used to coordinate

Prohibit also *unilateral* disclosure of market intelligence (e.g. why should a firm reveal unilaterally signal on state of demand?)



Examples

Firm A advertises in newspaper tomorrow price.
Good: stimulates consumer search

Firm A sends rival email on future price intentions.
Bad: amounting to price discussion

Firm A's CEO tells journalists her company not interested in certain 'slots' of auction.
Bad: it is aiming at market sharing

Firm A's CEO tells journalists demand is scarce and prices need to decrease.

Bad: she is telling rivals lower prices will be due to market conditions, not intention to break collusion



Container liner shipping (EC)

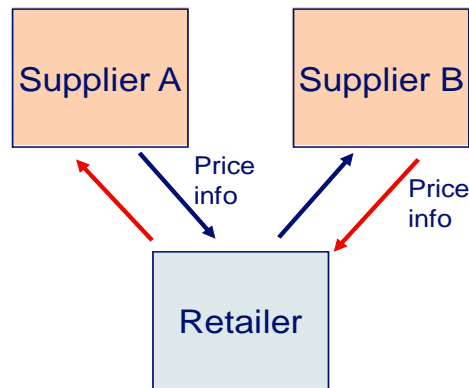
2013: concern that 15 container-shipping companies may use public announcements of “general rate increases” as price signaling

Announcements of intentions, without commitment value to spot customers (who may not know the total price they would pay).

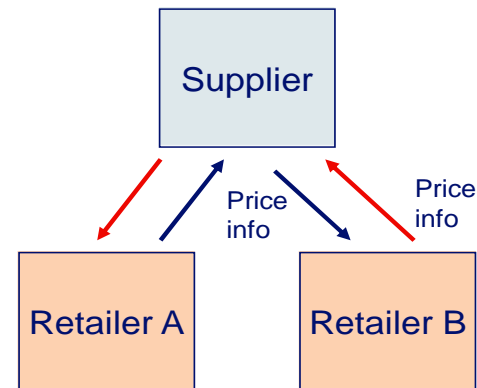
16 Feb 2016: Commitments offered: price announcements will include main elements of total price; not made more than 31 days before sailing date; binding for announced period of validity (but lower price always possible).

Hub and Spoke Collusion

Supplier to Retailer to Supplier



Retailer to Supplier to Retailer



- 1: Information may not only be on prices, (e.g., e-books).
- 2: Vertical or horizontal agreement?
- 3: Which incentives for the 'hub' to promote collusion?



Hasbro (OFT, 2002)

- Price-fixing btw. *Hasbro*, a toy manufacturer, and two distributors, *Argos* and *Littlewoods*.
- Hasbro published RRP and invited distributors to maintain retail margins. Distributors followed RRP assured that the rival would adopt same policy.
- CAT upheld. *Argos* and *Littlewoods*' appeal: neither direct contact btw. the distributors, nor an invitation to collude.
- The Court of Appeal dismissed the appeal. However, it stressed the *need to prove that there was an invitation to collude*, i.e., that the distributors effectively knew that the information they were giving to Hasbro on their retail pricing strategy would be passed on to their competitor.



UK Court of Appeal: *Toys and Kits*

A retailer, supplier and another retailer may be properly regarded as parties to a concerted practice, having as its object the restriction of competition, in circumstances where:

- (a)** retailer A discloses to supplier B its future pricing intentions;
- (b)** A may be taken to intend that B will make use of that information to influence market conditions by passing that information to other retailers (of whom C is, or may be, one);
- (c)** B does, in fact, pass that information to C;
- (d)** C may be taken to know the circumstances in which the information was disclosed by A to B; and
- (e)** C does, in fact, use the information in determining its own future pricing intentions.



E-TURAS

Court Judgment (referral from Lithuanian Court), 21-01-2016

E-TURAS is a common online travel booking system.

25/8/09: Its director sent emails asking addressee to vote on whether to reduce online discount rate from 4% to 1%-3%.

27/8/09: the administrator of the E-TURAS system sent, through the internal messaging system, a message saying that following travel agencies' proposals and wishes, the discount rate would be "capped" to 3% to help preserve the amount of the commission and normalise the conditions of competition.

After 27/8/09: websites of eight travel agencies displayed advertisements concerning a discount of 3% on travel packages

Travel agencies not prevented from granting greater discounts, but additional technical steps required to do so.



E-TURAS, cont'd

Competition Council: concerted practice, E-Turas facilitator.

Court of Justice (upon referral): presumption that travel agencies were aware of the content of that message. (§ 40)

Presumption rebuttable, e.g. by proving that they did not receive that message or that they did not look at the section in question(§ 41); or by distancing clearly from that practice or reporting it to the administrative authorities (§ 46-48);

The concept of a concerted practice implies concerting among each other and also subsequent conduct on the market and a relationship of cause and effect between the two. (§ 42)

Presumption of a causal connection between the concertation and the market conduct could be rebutted by a systematic application of a discount exceeding the cap in question." (§ 49)