Combatting Cross Border Cartels: An Empirical Study

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COMBATING CROSS BORDER CARTELS: AN EMPIRICAL STUDY
37 Competition Authorities participated in the Study
I. Legislation

Problems on cross border cartels (CBC) investigations which are legal in nature:

• Absence of extraterritorial reach of competition legislation in developing jurisdictions
• Underdeveloped leniency programs in young competition regimes
• Lack of convergence of competition laws regarding sanctions for participation in CBC
• Differences in investigative procedures and time limits set for investigations
II. Enforcement

• Combating cartels is a high priority for all the competition authorities (CAs) participating in the Study
• Most of the jurisdictions consider CBC to be significant threat for their economies
• Only 12 out of 37 respondents have experience in combating CBC
II. Enforcement

Identification tools for CBC

- Leniency: 8
- Market inquiries: 3
- Foreign CA: 7
- Media: 5
- Info from PA: 4
- Whistleblower: 1
Major challenges of combating CBC:

- Evidence gathering
- Requesting information from undertakings located outside the national jurisdictions of CAs
- Presence of foreign defendants at case hearings
- Lack of time for CBC investigations
- Various legal restrictions (i.e. exchange of confidential information with a foreign CA)
III. International Cooperation

• International cooperation is an important element when it comes to efficient enforcement

• 14 Competition Authorities do not have experience of international cooperation in specific cases

• The ones who have international cooperation experience prefer to use non-binding tools…
III. International Cooperation

- 16% Request for information
- 16% Virtual consultations
- 10% In-person consultations
- 10% Exchange of opinions on investigative methods
- 13% Exchange of opinions on absence/existance of a violation
- 13% Exchange of confidential information
- 8% Exchange of confidential documents
- 6% Simultaneous dawn raids
- 5% Joint market inquires
- 2% Joint dawn raids
- 2% Enforcement actions on behalf of a foreign jurisdiction
IV. Ways Forward

Reasons of absence for CBC investigations

- Never faced
- No knowledge
- Impossible to sanction
- No resources
- Legislation does not allow
- Transfer to Supranational level
IV. Ways Forward

International Measures to Combat CBCs

- Convergence of national competition legislations
- Active international cooperation among CAs
- Creation of global approaches and standards
- International entrenchment of tools on combating CBCs
- Unified international database on CBC cases
- International organization on combating CBCs
V. Conclusions

• Currently many competition agencies, especially developing ones, do not have experience in CBC investigations

• Challenges faced are of legal or practical nature, including difficulties related to establishing contacts with foreign competition authorities

• The international competition community can significantly contribute to enhancing CBC enforcement worldwide
V. Conclusions

- Capacity building and technical assistance for developing competition agencies as well as consultations, inter alia, under Section F of the UN Set of Principles on Competition
- Establishing tools and mechanisms of CBC investigations on an international level. The UNCTAD could lead this process
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