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Cartel Investigation and Enforcement

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**Seminar on Best Practices in the Enforcement
of Competition Policy
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Cartel

Investigation and Enforcement

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Today's Topics

- U.S. Cartel Enforcement
- Detecting Cartels
- Investigative Tools
- Requesting and Analyzing Documents
- Leniency Programs



In the U.S., We Prosecute Criminally Hard Core Horizontal Restraints of Trade

Agreements among Horizontal Competitors to:

- Fix Prices
- Rig Bids
- Allocate Markets (Customers/Territories)
- Allocate Sales Volumes/Restrict Output

- All Criminal Violations Fall into *Per Se* Rule
- Not All *per Se* Violations Are Criminal (tying agreements; resale price agreements)



U.S. Penalties

- Individuals – 3 Years in Jail & \$350,000 Fine
- Corporations - \$10 million Fine
- Alternative Fine = Double the Gain or Double the Loss



Challenges in Cartel Investigations

- Obtaining Sufficient Evidence to Prosecute
- Nature of Crime — Secret Conspiracy
Hidden from Law Enforcement and
Customers/Victims
- Most “Evidence” Subject to False but
Plausible Innocent Explanation
- Lack of Enforcement Resources



How U.S. Cartel Investigations Begin

- Amnesty Applicants Are the Best Source
- Defendant in one Case Trying to Get Better Sentencing Deal
- Public Agency or Corporate Complaints
- Citizen Complaints (customers)



How U.S. Cartel Investigations Begin

- Tips From Insiders
 - Fired Employees, Ex-spouses, Former Girl/Boyfriends, Angry Family
- Private Bar
- Proactive Outreach Efforts
 - Educate those working directly in the marketplace



Detecting Cartels: Lessons from U.S. Cartel Prosecutions

- Market Conditions Conducive to Collusion:
 - Limited Number of Producers
 - Homogeneous (commodity) Products
 - High Entry Costs
 - Input Product Needed by Large Buyers
 - Cost of Input Small Relative to Value of End Product



Investigative Tools Used in U.S. Cartel Investigations

DOCUMENTS

- Grand Jury Subpoenas for Documents
- Search Warrants — Offices and Homes
 - Best Evidence
 - Powerful Statement



Investigative Tools Used in U.S. Cartel Investigations

WITNESSES

- Informants
- Witness Interviews - FBI Agents
 - Field Questioning (the Drop-in)
- Grand Jury Testimony
 - Subpoenas for Testimony Under Oath



Investigative Tools Used in U.S. Cartel Investigations

- **Consensual Recording** (Telephone and Body Wires of Conversations/Meetings)



Types of Documents to Seek

- Corporate Structure
- Identifying Information on Officers, Directors, and those Responsible for Pricing Decisions
- Trade Associations – Competitors
- Customers



Types of Documents to Seek

- Calendars, Appointment Books, Travel Records, Telephone Logs, Passports — Responsible Individuals
- Agreement Documents — Never Get Any
- Contact/Meeting Documents — Sometimes
- Price Lists/Announcements
- Market Studies — Capacity — Annual Reports



Types of Documents to Seek

- Correspondence with Competitors (Ask for email)
- Pricing Documents
- Score Sheets
- Documents Indicating a Territory or Region
- Bid Documents
- Invoices



Ask Ask Ask
and You Shall Receive
(Sometimes)

Form of Documents

- Originals (purple pen principle)
- In Original Order/Folders (not shuffled)
- Electronic Data (utilize technical experts)
- Ask for an Index



Non-Compliance with Request for Documents

- Treat Compliance Seriously
 - Set Deadlines (and keep them)
 - Memorialize Agreements to Alter Requests in Writing
 - Require Certification of Compliance
- Contempt
- Obstruction of Justice
- False Declarations



The Most Effective Investigative Tool — The Antitrust Division Corporate Leniency Policy

- Pre-Investigation — Automatic To First To Quality
- Available After Investigation Begins
- All Cooperating Directors, Officers, Employees Of Qualifying Corporation Also Receive Amnesty
- Company Must Pay Restitution To Victims (if possible)
- The Catch — Only The First To Qualify Gets It



The Division's Corporate Leniency Policy

- Motivated Cooperation
 - Ensure the Company Remains in Program
- Hammer
 - Failure to Cooperate Fully = Removal from Program
 - Subject to Prosecution
 - All Evidence Provided May Be Used Against Company



Evidence Of Leniency Program's Value

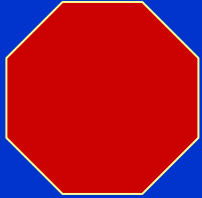
- Major Role In Cracking International Cartels
 - Last Six Years — Over \$2 Billion In Fines
 - Not So Much Absolution For The Guilty As It Is The Anti-Cartel Enforcer's Most Potent Weapon
- Vitamins
 - F. Hoffman-La Roche \$500 Million
 - BASF \$225 Million
- Graphite Electrodes
 - UCAR \$110 Million
 - SGL \$135 Million
 - Mitsubishi \$134 Million
- Fine Arts Auctions
 - Sotheby's \$ 45 Million



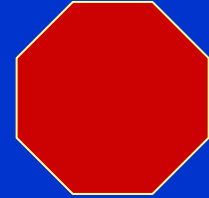
Amnesty for Cooperating Executives

- **Could Be The Program's Biggest Reward**
 - Graphite Electrodes —
 - Amnesty Executives = No Prosecution
 - UCAR Executives = 17 Months; 9 Months; & Indicted Fugitive
 - Vitamins —
 - Amnesty Executives = No Prosecution;
 - Six Hoffmann -La Roche & BASF Executives = Jailed In US
 - Fine Arts Auctions —
 - Amnesty Executives = No Prosecution;
 - Sotheby's Chairman — One Year In Jail





WARNING!!!



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- Leniency Programs Will Not Work to Combat Cartels Without
 - Dedication to Enforcement
 - Significant Fear of Detection
 - Sufficient Penalties

Cracking Down on Cartels

- Aggressively investigating and prosecuting cartel activity that affects your businesses and consumers
- Impose Penalties that are Truly Deterrent
- Raise Awareness
- Create effective leniency programs

