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Govts turn up the heat on business cartels  [Clip](#)

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OECD and other organisations have estimated the harm caused by cartels in billions of dollars each year. Developing countries are particularly vulnerable. A World Bank paper estimated that in 1997, developing countries imported \$81.1 billion worth of goods from industries which witnessed price fixing conspiracies during 1990s; this represents 6.7% of the imports and 1.2% of the GDP in the developing countries. Japan & USA, respectively, estimated that cartels raised prices by 16.5% and 60-70%.

A number of countries reported price declines after anti-cartel enforcement, eg, Sweden and Finland reported 20-25% fall in asphalt, UK 30% in football replica kits, and Israel 40-60% in envelopes. On average, over-charges are estimated between 20-30% with higher over-charges in case of international cartels. Cartels have variously been described as “highway robbery” and the “supreme evil of anti-trust”.

Competition laws generally treat cartels as per se violations, not requiring actual proof of harm. Penalties for cartels can be significantly higher than for other violations. In addition, competition laws/authorities have been reaching for special investigative powers and incentives to unearth evidence. A tool of recent origin is the hugely effective leniency or amnesty programme under which a cartel member that provides vital information and cooperates with the competition authority can expect lower penalties. Competition authorities have begun receiving numerous leniency applications as parties rush to be the first at the door of the competition authority.

Some countries treat cartels as criminal offences including the US, Canada, Japan and UK. This is based on the logic that while the laws provide severe fines, in practice, this presents problems because a fine may be too high for the enterprise to bear, leading to bankruptcy and loss of jobs. Thus, punishment for natural persons is required, and is provided in many countries, including imprisonment in nine countries. Punishment for individuals can also increase the effectiveness of leniency programmes.

Many countries have been tightening their laws eg, Australia is considering a proposal for criminalization of cartels and barring individuals from office as directors; Brazil has created an intelligence centre for cartel investigation plus provision for dawn raids and wire tapping; and France, Hungary, Israel, Japan, Netherlands and European Commission have introduced leniency programmes. International cooperation has reached its highest level against cartels.

Several competition authorities have undertaken awareness programmes for business, procurement agencies, consumers and others. Conditions that particularly help cartels are a homogeneous product (like cement, sugar,

tyres, and vitamins), few suppliers and many buyers, price or bidding transparency and, of course, lax laws or enforcement. Platforms that enable rivals to frequently meet can often help them to plan cartel activities, for example, industry associations can sometimes be the cover or even a means for cartelization. Such suspicions have been expressed even in India, eg, in the case of timber, trucking, cement and also airlines.

The strengthening anti-cartel consensus among competition authorities has brought to light numerous cartels. In the global vitamins cartel, one of the most pervasive and harmful cases ever uncovered, the companies received fines of around \$755 million in addition to prison sentences for senior executives. Similarly, the unraveling of the global lysine cartel marked a turning point in the US drive against this pernicious offence.

The German Bundeskartellamt carried out nationwide search of 37 companies and several smaller companies in 2002/03 and unearthed a cement cartel operating, in some cases, since the 1970s! It imposed total fine of more than Euro 700 million, including on Heidelberg Cement and Lafarge Cement. In the Slovak Republic, discovery of a letter from the cement industry association led to the detection and successful prosecution of the cartel. In many of these cases, the leniency provisions also helped.

The Canadian Competition Bureau found a cartel in rubber chemicals that involved regular meetings, communications, agreements to coordinate times and amounts of price increases and sharing of customers and sales volumes. One company applied for leniency. Finally, fines of over \$100 million were imposed along with prison sentences and fines on individuals.

Bid rigging is a form of cartel activity and is of great concern to procurement authorities. Bid rigging and collusive bidding by the Dutch and UK construction industries have become landmark cases revealing industry-wide culture of collusive behaviour in tendering. In Netherlands, the disease was so widespread that the Dutch authorities called construction companies to come clean and admit their offences; as a result almost 500 construction companies did so.

The industry finally had to undertake major reform of its practices. In UK, the authorities declared this as one of the biggest cartel investigations. Dawn raids were carried out on 57 companies; 38 companies applied for leniency. Between 2000 and 2006, collusive tendering occurred in thousands of tenders approaching a value of 3 billion. The authorities made extensive use of the leniency provisions.

Forms of bid-rigging are bid suppression, complementary bidding, bid-rotation and sub-contracting. Competition agencies in many countries have undertaken awareness programmes for procurement authorities including check lists of suspicious behaviour to help identify signs of bid-rigging, for example in Canada, US and Sweden. The US list of possible signs of bid-rigging includes: the same company always winning a particular procurement, the same suppliers submitting bids and each supplier seeming to take turn in being the successful bidder, some bids being inexplicably higher, and bid prices dropping whenever a new bidder enters the fray.

In the Indian Competition Act 2002, cartels are presumed to be anticompetitive; the penalty can be 10% of turnover or three times the illegal gains, compensation claim can be made, search and seizure raids can be carried out with a magistrate's permission, and there is a 'leniency' provision for a cartel member who makes a full and true disclosure that is vital. It is important that the business community makes itself conversant with the law and companies develop internal compliance.

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