

Growing international commerce and national competition policies

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The concern that private anticompetitive practices could erode the benefits of trade reform is one of long standing, as the proposed competition policy sections of the Havana Charter in the 1940s make clear. However, in recent year these concerns have heightened as a sizeable body of evidence on the extent of and harm caused by private international cartels developed. This, in turn, has raised the questions of whether binding international agreements are needed to complement national initiatives to tackle cartels and other anticompetitive practices.

During the 1990s the United States and the European Commission prosecuted over forty international cartels made up of private firms located in 31 different economies. Several of these cartels—for example, in lysine, vitamins, and graphite electrodes—were worldwide in reach. Twenty four of these cartels lasted four or more years, suggesting that market forces alone cannot be guaranteed to undermine these international conspiracies (Evenett, Levenstein, and Suslow, 2001). Although estimates vary, prices tend to fall between 20 to 40 percent after international cartels are broken up (Levenstein and Suslow, 2001).

The overcharges caused by these cartels run into billions of dollars. Some indication of this is given by the magnitude of the fines imposed in Europe and the United States, which are based in part on estimates of the amount that a cartel overcharges its customers. Since 1993 fines imposed by American authorities on members of international cartels have exceeded US\$1.9 billion. Last year the European Commission fined international cartel members over a billion euros. Recently, the overcharges on vitamins trade during the ten year global conspiracy involving these products were conservatively estimated to be US\$2.7 billion, a substantial amount for a single international cartel. Moreover, there is evidence that this cartel deliberately raised prices by more in jurisdictions without active cartel enforcement regimes (Clarke and Evenett, 2003.) Finally, evidence from 12 private international cartels suggests that by the turn of the decade developing countries imported between US\$8-

12 billion of goods that part of international conspiracies to raise cartels (Evenett and Ferrarini, 2002).

The damage done by private international cartels may reinforce the case for national enforcement measures, but does it provide a case for international collective action? Specifically, is there an argument for having some minimum standards for national cartel enforcement? Two arguments, borne out in the enforcement experience of the 1990s, suggest that this may well be case. First, public announcements in one nation about cartel enforcement actions tend to trigger investigations by trading partners. For example, Korea began investigating the graphite electrodes cartel after reading about American enforcement actions against this cartel. Trading partners therefore benefit from active enforcement abroad—and these benefits are likely to be reinforced over time as formal and informal cooperation between competition authorities deepens.

The second argument is based on the fact that prosecuting an international cartel almost always requires securing testimony and documentation about the nature, extent, and organization of the conspiracy. To the extent that an international cartel hides such documentation in a jurisdiction that cannot or will not cooperate with foreign investigations into the cartel's activities, this jurisdiction's actions have adverse effects on their trading partners' interests. The key point is that when a nation does not rigorously enforce its cartel laws then the damage done is rarely confined to its own borders. An international accord on the enactment and enforcement of cartel laws can go some way to eliminating safe havens for domestic as well as international cartels.

Some are concerned about the cost of enforcing national cartel laws. This concern might be all the more pressing were it not for the fact that countries at every stage of development have found it advantageous to prosecute cartels in recent years. Indeed, 12 developing economies reported in submissions to the OECD's Global Fora on Competition that they have prosecuted 28 cartels during the 1990s. Interestingly, six of these cartels involved big-rigging; that is, deliberate attempts to defraud the state. Furthermore, the reduction in overcharges on a single international cartel in nations where the threat of cartel enforcement activity was higher accounted for a large proportion of a many of these nations' state outlays on their entire competition enforcement regimes (Clarke and Evenett, 2003). This suggests that the total benefits of cartel enforcement are quite likely to exceed any implementation costs.

The Working Group on the Interaction between Trade and Competition Policy continues to the pros and cons of a multilateral framework on competition that might include provisions on hard core cartels, on non-discrimination and transparency in competition enforcement, and on modalities for voluntary cooperation.