



Pros and cons of exchange of information in the light of article 81

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Information sharing: pitfalls

- Questions on information sharing of economic data (prices; turnover; production):
 - Which information is needed to maintain an explicit cartel?
 - Which information is a focal point for price increases (an implicit trust)?
 - Which information sharing might be suspect but is necessary for an other competitive reason. Joined bidding which might increase competition in general?

Which information sharing tends not to be a problem?

- Information of more technical nature:
 - Standardization
 - on time delivery to competitors (e.g. bus time tables)
- Information sharing on individuals:
 - Clients reliability
 - personal reliability and qualities
- Technical information on production data on aggregated level:
 - Inventories control
 - Productivity
 - Profitability

Which information sharing is suspect

- Sudden change in information sharing between companies
- Disaggregated information sharing on prices, market shares
- Sharing of information which is very detailed and is unnecessary but for sustaining an implicit or explicit cartel
- Sometimes information exchange may be suspect but cartelization is difficult to prove

Example 1: on market shares

- In the Dutch galvanizing sector a cartel was found that divided customers so that market shares remained stable.
- (Bi)monthly individual market share information was exchanged, in order to determine which firm had obtained a larger (lower) market share.
- The firm with the higher market share acted such that (potential) customers were sent to the firm with the lower market share (for instance by offering too high a price).
- This information exchange was necessary in order to sustain a cartel agreement.

Example 2: unilateral information exchange

- In a small Dutch town a couple of construction firms let one of their competitors know that they were not going to offer a bid on a tender.
- This competitor had no agreement with these firms and also faced competition from yet another firm.
- This information exchange was unilateral and, hence, did not contain or imply an agreement.

Problems for competition authority

- How to judge information sharing
- Per Se Rules or Rules of Reason: that is the question
- Should there be kind of decision tree or checklist?
- Should there be save havens?
- Should it be looked into case by case?

Pros and cons of Per Se Rules: Pros

- No rules means no brakes: so some per se rules are always to be recommended, like for instance:
 1. “no individual current price information be exchanged”
 2. “no information exchange on individual contracts with customers should be allowed”
 3. “no information on future market conduct may be exchanged”
- I will illustrate the relevance of rule 3 by the Dutch case of mobile operators
- A case by case approach leads to a case in court in almost all circumstances

Example 3: no information on future market conduct

- Dutch mobile operators offer fees to dealers when dealers sell an operator's products and cell phones for free if customers buy their products
- Growth of demand declined which gave each operator an incentive to lower dealer-fees and selling phones instead of giving them away
- But there was 'a first mover disadvantage'
- Hence, the operators got together in order to determine the timing of their conduct

Pros and cons of rules: Cons

- Wrong rules lead to wrong decisions
- Rules tend to be very time dependent: ICT makes information sharing between companies easy and difficult to control
- What is the purpose of a rule? Should concern collusion threat
- Therefore I think an assessment scheme as proposed by Mrs. Caffara and Mr. Kühn a good idea

Assessment

- How can collusion be created in a specific case?
- What is the role of info sharing in this context?
- What are the benefits of info sharing?
- Give the company the benefit of the doubt: better no type I-errors

Airline fuel case

- In the case of the 'airline fuel' suspect parts:
 - Higher prices
 - 100% coverage
 - 40% ENI
- Case for more investigation

Conclusions

- Make a weighing of pros and cons
- Determine some per se rules and some 'safe havens'
- The assessment scheme can be helpful
- Give companies the benefit of the doubt