Discussion

Optimal deterrence of illegal behavior under imperfect corporate governance

CPB-EZ-TILEC Workshop

January 2014

Nicole Rosenboom

seo economisch onderzoek

Outcome of model for each situation

System	No contract on detection	Contract on detection
Pure corporate	N	N, R
Pure individual	C, R	C, R
Mixed	N, R	N, R

- **A system with the possibility to contract has more socially desirable outcomes.**
  - **Pure corporate system can result in R**
  - **The range for R increases in mixed system**

What do conclusions mean in practice?

- **In case of pure corporate system (situation NL until 2007, and EU) or mixed system (situation NL as from 2007), outcomes cannot be C. (under contracting and no contracting)**

  - **How does this correspond with the existence of cartels in the Netherlands and EU?**

  - **Corporate system: meaning $\lambda I^p > \Delta\pi - c$ does not hold:**

    - Too low I^p? (corporate fine)

    - Too low λ? (probability of detection)

- **Individual sanction is restricted to $\bar{I}$. In the Netherlands $\bar{I}$ = 45K. In Germany $\bar{I}$ = 1 million (hardcore). What is the limit concerning marginal deterrence considerations?**

How would conclusions change by adding…

1. **Existence of leniency programme to the model?**

2. **Existence of private damage claims to deter cartels?**

3. **Dynamic effects: deterrence based on fines previously imposed and expectations of lower fines after appeal?**

4. **P paying the fine for A with no contracting on detection?**

Final remarks

- **Both P and A can experience reputation damage of cartel behaviour.**
  - **Also in pure corporate system, A can experience reputation damage in the form of career damage, having a deterrent effect.**
- **Model assumes that legal risks are known to P and A.**
  - **Research shows that for 30% of questioned companies it was not clear to them when the ACM considered arrangements and conduct to be prohibited under cartel law.**
  - **This affects the perceived detection rate.**
- **Can this model also be applied to other illegal actions that are profitable for companies? F.e. fraud?**