

“Cartel Prosecution: Stopping Price Fixers and Protecting Consumers”

Senator Klobuchar’s QFRs for Margaret Levenstein

QUESTION:

Is there a correlation between cartels and industries that have become more concentrated as a result of mergers? Should DOJ focus cartel detection resources on more highly concentrated industries? Can you name a few industries they should focus on? Should DOJ and FTC’s decisions to approve or reject a merger weigh whether there has been collusive activity?

RESPONSE:

1. Most examples of cartels prosecuted in the last two decades were in highly concentrated industries. Many of these cartels were international in scope and membership, and the global markets were highly concentrated, with four-firm concentration ratios above 75%. See Levenstein and Suslow (2011).
2. There have been many examples of recidivism among cartel members, even firms that had received amnesty for their participation in earlier cartels (Levenstein and Suslow 2010). This suggests that increased surveillance and skepticism regarding the competitive behavior of former cartel members is warranted and should be considered in any future merger reviews.
3. Industry concentration in the United States has increased substantially over the last several decades. (Peltzman 2014.) This suggests that the potential for explicit and tacit collusion has increased. Enforcement resources to detect and deter collusion are therefore critical to prevent increases in collusion. Policies that encourage new entry are also very important as it makes both tacit and explicit collusion more difficult.

Levenstein, Margaret C. and Valerie Y. Suslow (2011) “Breaking Up is Hard to Do: Determinants of Cartel Duration,” *Journal of Law and Economics*, 54:2, 455-492.

Levenstein, Margaret and Valerie Suslow (2010) “Constant Vigilance: Maintaining Cartel Deterrence During the Great Recession,” *Competition Policy International* 6(2) 145-162.

Peltzman, Sam (2014), “Industrial Concentration under the Rule of Reason,” *Journal of Law and Economics*, forthcoming.