

CARTELS, CORPORATE COMPLIANCE, AND WHAT  
PRACTITIONERS REALLY THINK  
ABOUT ENFORCEMENT

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APPENDIX II: CROSS TABLES

On question 13, “In the past 2 years, what number of discovered hard-core cartels (no matter who discovers the cartel) involving your clients were situations where your clients never sought or ignored prudent legal advice prior to a U.S. investigation that results in an adverse ruling?” cross tables divided respondents into four groups: zero (group A), one to five (group B), more than five (group C), and N/A (group D). Very few lawyers are in group C, meaning that most lawyers had fewer than five discovered hard-core cartels in which clients either ignored or did not seek legal advice. Similar to group A lawyers, half of group B lawyers (those with one to five clients) disagreed that clients are more concerned about the effect of U.S. private litigation than U.S. government based enforcement (and both criminal and civil sanctions) in the cartel setting. These same group B lawyers think that federal government cartel enforcement is presently more effective since the modern leniency and penalty increases were put into place in the early 1990s. Half of group B respondents indicated that their answers to the effectiveness of anti-cartel enforcement related questions would be the same as the present based on enforcement prior to the increase in maximum penalties under the Sherman Act (2004) and strongly/moderately agree that “cartels are being effectively deterred” with effective defined as efficiency enhancing. The characteristic of group A lawyers is that they are more likely to have defense side practice at a law firm, are more likely to be at the partner level within the firm, and think that their answer to the effectiveness of anti-cartel enforcement related questions would be the same as present.

In the past 2 years, what number of discovered hard-core cartels (no matter who discovers the cartel) involving your clients were situations where your clients never sought or ignored prudent legal advice prior to a U.S. investigation that results in an adverse ruling?

		Q12A			
		0	1-5	5+	Not applicable
		Count	Count	Count	Count
Q15A. In the cartel setting, clients are more concerned about the effect of U.S. private litigation than with U.S. government (federal and state) based enforcement and sanctions both criminal and civil?	Agree	18	18	1	8
	Neutral	9	7	0	4
	Disagree	25	30	4	28
	Not applicable	5	0	0	28
Q16A. Is federal government cartel enforcement presently more effective (with effective defined as efficiency enhancing) as opposed to U.S. federal government enforcement actions brought prior to the revisions of the Corporate Leniency Program (1993)...?	More effective	31	38	5	30
	The same	8	10	0	3
	Less effective	6	6	0	5
	Not applicable	11	1	0	29
Q17A. Would your answers to the questions 12-15 involving the effectiveness of anti-cartel enforcement change based on enforcement prior to the increase in maximum penalties under the Sherman Act (2004)?	More effective	14	13	0	7
	The same	24	36	5	14
	Less effective	4	2	0	4
	Not applicable	13	3	0	42
Q18A. How much do you agree with the following statement "cartels are being effectively deterred" with effective defined as efficiency enhancing?	Agree	27	35	4	27
	Neutral	9	6	0	8
	Disagree	14	13	1	16
	Not applicable	6	1	0	17
Q30. In presidential elections I more often than not vote:	Republican	19	21	2	19
	Democratic	27	28	2	33
	Other	1	3	0	1
Q31. The antitrust economics views closest to my own are:	Chicago School	25	20	1	18
	Post-Chicago School	23	31	3	31
Q32. Years of practice:	1-5	2	3	0	1
	6-10	4	4	1	8
	11-20	11	12	2	14
	21-30	11	14	0	15
	31+	22	19	2	16
Q33. You currently have the following type of practice:	In-house: Exclusively plaintiff	4	0	0	0
	In-house: Primarily plaintiff	1	0	0	0
	In-house: Primarily defense	8	3	0	3
	Law firm: Exclusively plaintiff	1	0	0	0
	Law firm: Primarily plaintiff	3	0	0	7
	Law firm: Exclusively defense	8	6	1	6
	Law firm: Primarily defense	23	43	4	37
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	Yes	16	16	2	17
	No	34	36	3	37
Q35. Your current title is:	Partner	19	38	3	32
	Counsel/Of Counsel	13	5	2	12
	Associate	6	6	0	5
	Other	11	3	0	5

The next question asked how often in the past two years did clients seek assistance with hard core cartel issues that never led to investigation. Only 35 percent responded that this scenario did not happen at all. An additional 35 percent responded that this occurred one to five times, with 2 percent responding that it occurred six to ten times, 1 percent responded eleven to twenty times and 27 percent responded not applicable. This answer suggests that the Penalty Plus component of leniency might not have sufficient deterrent value. It also suggests that internal compliance may not be as effective as has been hoped. Again, cross tables were used to divide respondents into four groups: zero (group A), one to five (group B), more than five (group C), and N/A (group D). Only four lawyers comprise group C. Compared to group A, significantly more group B lawyers agree that clients are more concerned about the effect of U.S. private litigation than with U.S. government (federal and state) based enforcement and sanctions (both criminal and civil). Additionally, more group B lawyers handle primarily defense matters at law firms.

**COMPARISONS OF COLUMN PROPORTIONS<sup>b</sup>**

		Q12A			
		0	1-5	5+	Not applicable
		Column N %	Column N %	Column N %	Column N %
Q15A	1	31.6%	32.7%	20.0%	11.8%
	2	15.8%	12.7%	.0%	5.9%
	3	43.9%	54.5%	80.0%	41.2%
	6	8.8%	.0%	.0%	41.2%
Q16A	1	55.4%	69.1%	100.0%	44.8%
	2	14.3%	18.2%	.0%	4.5%
	3	10.7%	10.9%	.0%	7.5%
	6	19.6%	1.8%	.0%	43.3%
Q17A	1	25.5%	24.1%	.0%	10.4%
	2	43.6%	66.7%	100.0%	20.9%
	3	7.3%	3.7%	.0%	6.0%
	6	23.6%	5.6%	.0%	62.7%
Q18A	1	48.2%	63.6%	80.0%	39.7%
	2	16.1%	10.9%	.0%	11.8%
	3	25.0%	23.6%	20.0%	23.5%
	6	10.7%	1.8%	.0%	25.0%
Q30. In presidential elections I more often than not vote:	1	40.4%	40.4%	50.0%	35.8%
	2	57.4%	53.8%	50.0%	62.3%
	5	2.1%	5.8%	.0%	1.9%
Q31. The antitrust economics views closest to my own are:	1	52.1%	39.2%	25.0%	36.7%
	2	47.9%	60.8%	75.0%	63.3%
Q32. Years of practice:	1	4.0%	5.8%	.0%	1.9%
	2	8.0%	7.7%	20.0%	14.8%
	3	22.0%	23.1%	40.0%	25.9%
	4	22.0%	26.9%	.0%	27.8%
	5	44.0%	36.5%	40.0%	29.6%
Q33. You currently have the following type of practice:	1	8.3%	.0%	.0%	.0%
	2	2.1%	.0%	.0%	.0%
	4	16.7%	5.8%	.0%	5.7%
	5	2.1%	.0%	.0%	.0%
	6	6.3%	.0%	.0%	13.2%
	7	16.7%	11.5%	20.0%	11.3%
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	1	32.0%	30.8%	40.0%	31.5%
	2	68.0%	69.2%	60.0%	68.5%
Q35. Your current title is:	1	38.8%	73.1%	60.0%	59.3%
	2	26.5%	9.6%	40.0%	22.2%
	3	12.2%	11.5%	.0%	9.3%
	4	22.4%	5.8%	.0%	9.3%

In the past 2 years, what proportion of discovered hard-core cartels (no matter who discovers the cartel) involved your clients who never sought or ignored prudent legal advice prior to a U.S. investigation that results in an adverse ruling?

		Q13A		
		0-20%	20%-100%	Not applicable
		Count	Count	Count
Q15A. In the cartel setting, clients are more concerned about the effect of U.S. private litigation than with U.S. government (federal and state) based enforcement and sanctions both criminal and civil?	Agree	25	9	11
	Neutral	10	5	5
	Disagree	33	24	29
	Not applicable	5	0	28
Q16A. Is federal government cartel enforcement presently more effective (with effective defined as efficiency enhancing) as opposed to U.S. federal government enforcement actions brought prior to the revisions of the Corporate Leniency Program (1993) and an	More effective	44	29	31
	The same	12	4	5
	Less effective	6	5	6
	Not applicable	10	0	30
Q17A. Would your answers to the questions 12-15 involving the effectiveness of anti-cartel enforcement change based on enforcement prior to the increase in maximum penalties under the Sherman Act (2004)?	More effective	17	10	7
	The same	36	24	19
	Less effective	4	2	4
	Not applicable	13	1	43
Q18A. How much do you agree with the following statement "cartels are being effectively deterred" with effective defined as efficiency enhancing?	Agree	38	23	31
	Neutral	10	5	8
	Disagree	18	9	17
	Not applicable	6	1	17
Q30. In presidential elections I more often than not vote:	Republican	24	15	22
	Democratic	36	18	34
	Other	2	2	1
Q31. The antitrust economics views closest to my own are:	Chicago School	27	15	22
	Post-Chicago School	35	20	31
Q32. Years of practice:	1-5	3	1	2
	6-10	4	5	7
	11-20	11	11	17
	21-30	16	8	15
	31+	31	11	17
Q33. You currently have the following type of practice:	In-house: Exclusively plaintiff	4	0	0
	In-house: Primarily plaintiff	1	0	0
	In-house: Primarily defense	9	1	4
	Law firm: Exclusively plaintiff	1	0	0
	Law firm: Primarily plaintiff	3	0	7
	Law firm: Exclusively defense	8	5	8
	Law firm: Primarily defense	37	30	38
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	Yes	20	12	19
	No	45	24	39
Q35. Your current title is:	Partner	31	26	34
	Counsel/Of Counsel	15	5	12
	Associate	5	5	6
	Other	13	0	6

**COMPARISONS OF COLUMN PROPORTIONS<sup>b</sup>**

		Q13A		
		0-20%	20%-100%	Not applicable
		(A)	(B)	(C)
Q15A	1	C		
	2			
	3			
	6		. <sup>a</sup>	A
Q16A	1		C	
	2			
	3			
	6		. <sup>a</sup>	A
Q17A	1			
	2	C	C	
	3			
	6			A B
Q18A	1			
	2			
	3			
	6			A B
Q30. In presidential elections I more often than not vote:	1			
	2			
	5			
	6			
Q31. The antitrust economics views closest to my own are:	1			
	2			
Q32. Years of practice:	1			
	2			
	3			
	4			
	5			
	1		. <sup>a</sup>	. <sup>a</sup>
	2		. <sup>a</sup>	. <sup>a</sup>
	4		. <sup>a</sup>	. <sup>a</sup>
Q33. You currently have the following type of practice:	5		. <sup>a</sup>	. <sup>a</sup>
	6		. <sup>a</sup>	. <sup>a</sup>
	7		. <sup>a</sup>	. <sup>a</sup>
	8		. <sup>a</sup>	. <sup>a</sup>
	1		A	
	2			
	1			
	2			
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	1			
	2			
	3			
	4		. <sup>a</sup>	
Q35. Your current title is:	1			
	2			
	3			
	4		. <sup>a</sup>	

Results are based on two-sided tests with significance level 0.05. For each significant pair, the key of the category with the smaller column proportion appears under the category with the larger column proportion.

a. This category is not used in comparisons because its column proportion is equal to zero or one.

b. Tests are adjusted for all pairwise comparisons within a row of each innermost subtable using the Bonferroni correction.

		Q13A		
		0–20%	20%–100%	Not applicable
		Column N %	Column N %	Column N %
Q15A	1	34.2%	23.7%	15.1%
	2	13.7%	13.2%	6.8%
	3	45.2%	63.2%	39.7%
	6	6.8%	.0%	38.4%
Q16A	1	61.1%	76.3%	43.1%
	2	16.7%	10.5%	6.9%
	3	8.3%	13.2%	8.3%
	6	13.9%	.0%	41.7%
Q17A	1	24.3%	27.0%	9.6%
	2	51.4%	64.9%	26.0%
	3	5.7%	5.4%	5.5%
	6	18.6%	2.7%	58.9%
Q18A	1	52.8%	60.5%	42.5%
	2	13.9%	13.2%	11.0%
	3	25.0%	23.7%	23.3%
	6	8.3%	2.6%	23.3%
Q30. In presidential elections I more often than not vote:	1	38.7%	42.9%	38.6%
	2	58.1%	51.4%	59.6%
	5	3.2%	5.7%	1.8%
Q31. The antitrust economics views closest to my own are:	1	43.5%	42.9%	41.5%
	2	56.5%	57.1%	58.5%
Q32. Years of practice:	1	4.6%	2.8%	3.4%
	2	6.2%	13.9%	12.1%
	3	16.9%	30.6%	29.3%
	4	24.6%	22.2%	25.9%
	5	47.7%	30.6%	29.3%
Q33. You currently have the following type of practice:	1	6.3%	.0%	.0%
	2	1.6%	.0%	.0%
	4	14.3%	2.8%	7.0%
	5	1.6%	.0%	.0%
	6	4.8%	.0%	12.3%
	7	12.7%	13.9%	14.0%
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	1	30.8%	33.3%	32.8%
	2	69.2%	66.7%	67.2%
Q35. Your current title is:	1	48.4%	72.2%	58.6%
	2	23.4%	13.9%	20.7%
	3	7.8%	13.9%	10.3%
	4	20.3%	.0%	10.3%

In the past 2 years, by total number of matters, how often have clients come to you with hard-core cartel issues that to your and/or their knowledge never got investigated by U.S. government (federal and state) enforcers as opposed to situations where the underlying behavior ultimately led to U.S. investigation of your client?

		Q14A			
		1	2	3	6
		(A)	(B)	(C)	(D)
Q15A	1		A		
	2		D		
	3	D			
	6			. a	A B
Q16A	1		D		
	2				
	3				
	6			. a	A B
Q17A	1		D		
	2	D	D		
	3			. a	
	6				A B
Q18A	1				
	2				
	3				
	6			. a	A B
Q30. In presidential elections I more often than not vote:	1			. a	
	2			. a	
	5	. a		. a	
Q31. The antitrust economics views closest to my own are:	1				
	2				
Q32. Years of practice:	1			. a	
	2			. a	
	3				
	4				
	5				
Q33. You currently have the following type of practice:	1			. a	. a
	2		. a	. a	. a
	4			. a	
	5	. a	. a		. a
	6			. a	
	7			. a	
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	1			. a	
	2			. a	
Q35. Your current title is:	1				
	2				
	3			. a	
	4			. a	



**COMPARISONS OF COLUMN PROPORTIONS<sup>b</sup>**

		Q14A			
		1	2	3	6
		(A)	(B)	(C)	(D)
Q15A	1		A D		
	2				
	3	D			
Q16A	6			. <sup>a</sup>	A B
	1		D		
	2				
Q17A	3				
	6			. <sup>a</sup>	A B
	1		D		
Q18A	2	D	D		
	3			. <sup>a</sup>	
	6				A B
Q30. In presidential elections I more often than not vote:	1			. <sup>a</sup>	
	2			. <sup>a</sup>	
	5	. <sup>a</sup>		. <sup>a</sup>	
Q31. The antitrust economics views closest to my own are:	1				
	2				
Q32. Years of practice:	1			. <sup>a</sup>	
	2			. <sup>a</sup>	
	3				
	4				
	5				
Q33. You currently have the following type of practice:	1			. <sup>a</sup>	. <sup>a</sup>
	2		. <sup>a</sup>	. <sup>a</sup>	. <sup>a</sup>
	4			. <sup>a</sup>	
	5	. <sup>a</sup>	. <sup>a</sup>		. <sup>a</sup>
	6			. <sup>a</sup>	
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	7			. <sup>a</sup>	
	8		A		
	1			. <sup>a</sup>	
Q35. Your current title is:	2			. <sup>a</sup>	
	3			. <sup>a</sup>	
	4			. <sup>a</sup>	
	4			. <sup>a</sup>	

		Q14A			
		0	1-5	5+	Not applicable
		Column N %	Column N %	Column N %	Column N %
Q15A	1	18.2%	43.1%	25.0%	7.8%
	2	12.1%	10.8%	25.0%	7.8%
	3	62.1%	43.1%	50.0%	33.3%
	6	7.6%	3.1%	.0%	51.0%
Q16A	1	58.5%	67.7%	50.0%	40.0%
	2	16.9%	10.8%	25.0%	4.0%
	3	9.2%	12.3%	25.0%	6.0%
	6	15.4%	9.2%	.0%	50.0%
Q17A	1	22.6%	24.6%	25.0%	5.9%
	2	53.2%	56.9%	50.0%	15.7%
	3	4.8%	7.7%	.0%	3.9%
	6	19.4%	10.8%	25.0%	74.5%
Q18A	1	58.5%	52.3%	25.0%	41.2%
	2	10.8%	16.9%	25.0%	7.8%
	3	24.6%	26.2%	50.0%	17.6%
	6	6.2%	4.6%	.0%	33.3%
Q30. In presidential elections I more often than not vote:	1	42.6%	44.1%	.0%	31.6%
	2	57.4%	49.2%	100.0%	65.8%
	5	.0%	6.8%	.0%	2.6%
Q31. The antitrust economics views closest to my own are:	1	50.0%	40.0%	25.0%	37.1%
	2	50.0%	60.0%	75.0%	62.9%
Q32. Years of practice:	1	7.0%	1.7%	.0%	2.6%
	2	7.0%	15.0%	.0%	10.3%
	3	21.1%	25.0%	25.0%	28.2%
	4	21.1%	20.0%	50.0%	33.3%
	5	43.9%	38.3%	25.0%	25.6%
Q33. You currently have the following type of practice:	1	5.5%	1.7%	.0%	.0%
	2	1.8%	.0%	.0%	.0%
	4	16.4%	5.0%	.0%	5.3%
	5	.0%	.0%	25.0%	.0%
	6	5.5%	3.3%	.0%	13.2%
	7	20.0%	11.7%	.0%	7.9%
Q34. Prior to private practice, have you ever worked as an attorney for the Department of Justice Antitrust Division, Federal Trade Commission or for a State antitrust enforcer on antitrust matters?	1	33.3%	35.0%	.0%	28.2%
	2	66.7%	65.0%	100.0%	71.8%
Q35. Your current title is:	1	48.2%	58.3%	75.0%	66.7%
	2	26.8%	18.3%	25.0%	12.8%
	3	10.7%	11.7%	.0%	10.3%
	4	14.3%	11.7%	.0%	10.3%