Marketers and Price-Fixing Conspiracies: Collusion as Practice

Abstract
A growing corpus of work has articulated the relationship between certain forms of corporate crime (such as competition law) and marketing (see, for example, Tadajewski, 2010; Ashton and Pressey, 2008; Shocker, 2007). What remains overlooked, however, is how marketers organize certain corporate crimes that may be quite complex in nature. In this study, we examine how marketers organize price-fixing cartels, and in so doing, we employ Practice Theory (Reckwitz, 2002; Barry and Slater, 2002; Callon, 1998) in order to identify the modes of exchange (practices, routines, and objects) that actors engage in to undertake collusive practices. We provide three contrasting examples of modes of exchange illustrated by price-fixing conspiracies operated by firms in the European Union. The practices of marketers in our cases suggests that collusive practices are reproduced by the routines of its participants and can be framed in significantly different ways, with idealised forms of conspiracy favouring routines and practices that render them difficult to detect.

Introduction
The media is replete with stories of marketers committing corporate crimes such as bribery, corruption, or the miss-selling of goods and services. A growing corpus of work has articulated the relationship between certain forms of corporate crime (such as competition law) and marketing (Tadajewski, 2010; Ashton and Pressey, 2008; Gundlach and Phillips, 2002; Bush and Gelb, 2005; Shocker, 2007). What remains overlooked, however, is how marketers organize certain corporate crimes that may be quite complex in nature, (such as collusion to fix prices between firms that are traditionally competitors). In this study, we examine one form of corporate crime committed by marketers: illegal price-fixing cartels, and explain the possible modes of organizing price-fixing cartels through the lens of Practice Theory.

Studies in economic sociology and marketing demonstrate that markets can be viewed as emergent entities composed by the practices of actors (Kjellberg and Helgesson, 2007a). The notion of practices can be found in the work of a number of divergent authors in the social sciences such as Bourdieu (1992, 1984), Giddens (1984) and de Certeau (1984), to denote the routines, techniques and habits that give rise to social structures and purpose (Latour, 2005). Practice Theory emphasises the actions of what actors do, with what, how and when. Through the application of Practice Theory and three vignettes of price-fixing cartels in the European Union, we demonstrate that illegal price-fixing networks forged by marketing managers in competing organizations can be viewed as bundles of practices and give rise to contrasting structures or modes of exchange.

Theories of Collusion
Many forms of horizontal relationships are well understood in the marketing literature (such as joint ventures, strategic alliances, and joint distribution and marketing activities, cf. Bengtsson and Kock, 2000). Less well understood are illegal horizontal relationships such as bid-rigging agreements, or price-fixing cartels. In this study we focus on price-fixing cartels – a practice that refers to agreements between two or more independent firms who collude to control the terms of business in a particular market (Dick, 1996). Despite the theoretical connectedness of cartels and marketing theory and practice, collusive practices such as price-fixing networks between organizations have received limited attention by marketers. This can be contrasted with the fields of organizational criminology and industrial economics where some studies of industrial collusion and price-fixing cartels have been undertaken.
Worthy of special mention are two studies of price-fixing cartels. The first is a meta-study by industrial economists Levenstein and Suslow (2006). Based on twenty-one data sets of cross-sectional studies of cartels spanning 1880-1997, they found that (i.) the more members in a cartel, the shorter its duration, (ii.) successful cartels create mechanisms to share information, decision-making, and incentives “through self-imposed carrots and sticks” (Levenstein and Suslow, 2006: 86), (iii.) concentration aids cartel stability (i.e. “successful” cartels are conceived and maintained by a small number of dominant actors), and (iv.) cartel co-ordination among multiple actors is inherently complex. In the second study, sociologists Baker and Faulkner (1993) draw on a typology of two types of communication networks: centralized and decentralized. By definition, in centralized cartel networks a single actor (or a small number of actors) acts as a “hub” in a hierarchical fashion. Decentralized cartel networks in contrast are defined as networks where no central actor dominates and all actors may be more or less all linked.

Although collusive practices such as price-fixing have been extensively studied by industrial organization economists, “the internal social organization of conspiracies is treated as a “black box”” (Baker and Faulkner, 1993: 841) and, as such, is not well understood. Scherer (1980: 225) elaborates further, concluding that “the relationship between an industry’s informal and formal social structure and its ability to coordinate pricing behaviour ... lies beyond the reach of conventional economic analysis”. In support, Hay and Kelley (1974: 25) note that the social structure of price-fixing cartels “cannot be quantified”. Studies that do not conform to these “principles” of cartel formation (for example, Sonnenfeld and Lawrence, 1978; Posner, 1970) have been categorized as “puzzling anomalies” by industrial economists and has compelled them “to make assumptions that oversimplify the social organization of price-fixing conspiracies” (Baker and Faulkner, 1993: 842).

The organizational crime literature recognises that organizational crimes are committed by individuals for the benefit of the organization rather than the individual (although they may hope to benefit through pay rises, promotion and so on), whether in the form of bribery, pollution, antitrust violations, or other criminal activities (Shapiro, 1976: 14). Both organizational criminologists and industrial economists have attempted to understand the illegal practices of firms through macro-level forces (such as industry structure, state of the economy, business cycle), where declining firm performance and market share have (rather unsurprisingly) been observed as common catalysts for corporate wrongdoings (Shapiro, 1980; Clinard and Yeager, 1980; Staw and Szwajkowski, 1975). Organizational criminologists accept that social structures and mechanisms support antitrust practices (Simpson, 1986), but also oversimplifies the social organization of collusion, where small numbers of actors working closely together are regarded as the archetype of collusion (see, for example, Siegel, 1989; Malz and Pollack, 1980).

In summary, Shapiro (1980: 29) maintains that “the study of crime and deviant behaviour has been negligent ... in its lack of attention to the form and social organization of criminal activity. We know a great deal about criminals ... but very little about the activity itself.” In the intervening period, little research appears to have been undertaken to assuage Shapiro’s (1980) criticisms. Indeed, Clinard and Yeager (2006: 279) note that “The complex structural relationships in large corporations make it difficult, if not impossible, to disentangle delegated authority, managerial discretion, and ultimate responsibility.” Though not without their merit, our understanding of collusive marketing practices and their structure would appear to be limited to a handful of cross-sectional studies of cartels operating in the 1990s and earlier.

Our departure from these studies is to examine the practices and modes of exchange that constitute these deviant exchanges undertaken by marketers to fix prices in European cartels, who does what, with whom, where and for what purpose? We inform this understanding through the lens of practice theory.
Practice Theory

Practices shape markets (Barry and Slater, 2002; Callon, 1998); more specifically, it is “Managerial practice [that] shapes the contours of the market” (Cochoy, 1998). Practices designate and explain what actors do, and can be defined as: “A routinized type of behaviour which consists of several elements, interconnected to one another: forms of bodily activities, forms of mental activities, ‘things’ and their use, a background knowledge in the form of understanding, know-how, states of emotion and motivational knowledge” (Reckwitz, 2002: 249). By examining interconnected practices over time, we are able to infer modes of exchange (essentially networks of practices) (Kjellberg and Helgesson, 2007a) – combinations of practices that generates economic exchange (Lie, 1992). This enables us to expose the architecture and construction of markets and the individuals (and their actions) that constitute them through their actions.

Practice Theory offers an insightful lens or heuristic device through which to understand collusive behaviours as it helps explain the routines and actions that constitute action; it is the practices that actors engage in that translate into performances: “what is being done, and how does this connect to other things that are being done in the same context” (Czarniawska, 2004: 783-784). This can be employed to inform how collusive behaviour is shaped by practices, which can be understood in terms of a series of elements including:

i. The actual on-going practices and routines by actors that collectively give rise to emergent market structures (Callon, 1998),

ii. Rules, norms and interconnections of activities (Kjellberg and Helgesson, 2007a, 2007b); and

iii. Objects and artefacts (Reckwitz, 2002; Schatzki, 2001).

Practice Theory has been employed to understand legitimate economic exchange in areas as divergent as the rise of self-service in Swedish retailing (Kjellberg and Helgesson, 2007b) and Nordic walking (Shove and Pantzar, 2005). The following section we provide three examples of collusive price-fixing agreements between marketers and the practices that constitute different modes of exchange.

Three Vignettes of Collusive Practices

Our three vignettes of price-fixing agreements are constructed from detailed investigations and prosecutions undertaken by the market regulator in the EU, the Directorate General for Competition and published in the form of detailed reports. Price-fixing refers to the collaboration between two or more independent firms to agree prices charged to customers and is per se illegal in the EU and most developed economies (Connor, 2008). The ‘currency’ of exchange in these three cases is similar: the sharing of pricing data, customer information and market share data. As we will demonstrate, however, the practices undertaken in each cartel differ markedly.

The Flat Glass Cartel (2003-2005)
The Flat Glass cartel was instigated by four manufacturers from Japan, the U.S., the UK, and France, who claimed to be responding to steadily declining prices in the European market for glass (a market valued at 8000 million Euros per annum at the time of the cartel). The documentary evidence obtained paints a picture of a highly co-ordinated and bureaucratic Pan-European cartel controlled chiefly through a series of multilateral meetings held in hotels and restaurants across Europe, and referred to as “Marketing meeting[s]”, held in Paris, Belgium, Germany, and Luxembourg. The notes obtained from the meetings depict a highly organized and concerted group endeavour to “fix the status quo” on competition across Europe and ensure that “prices should be kept absolutely stable”. Rules were agreed by the group of firms to ensure the price-fixing conspiracy (“Price increase agreed. No aggression ... No attack ...”). The investigation also uncovered a number of objects and artefacts created to manage the cartel
The Vitamin Cartel (1989-1999)
Our second vignette exposes a price-fixing cartel operating akin to a hub and spoke mode of exchange involving thirteen firms from five countries managed by the heads of marketing for their organizations. The rationale for co-operation in the Vitamin cartel was in the face of aggressive price cutting in the late 1980s and early 1990s in the face of competition from Chinese and Russian manufacturers. Against this, the purpose of the cartel was to fix-prices for the worldwide sale of vitamins, allocate sales quotas, and implement price increases in a market worth EUR 3.25 billion. The structure of the cartel was created to ensure “complete security” and “on a ‘more discreet basis’”. In the attempt to avoid drawing attention to the cartel “no...group meetings [took place] but only one-on-one contacts as necessary” where one manufacturer (Roche) acted as the ‘hub’ and line of communication for the manufacturers that “organised, orchestrated and policed” the cartel and facilitated through “relationships of trust” in meetings often held at private residencies. The cartel established rules and agreements to destroy all sensitive documents as soon as the relevant parties had studied them resulting in very few objects being uncovered.

Our final vignette outlines a price-fixing conspiracy where actors operated in a highly dispersed or atomised fashion that EU regulators found challenging to unravel and expose, and was only detected by authorities after one of the cartel members gave evidence against the conspiracy. The market regulator held the view that the cartel probably existed prior to 1996, although no evidence was available to confirm this. The purpose of the cartel was to attempt to eliminate competition in Europe in a market worth EUR 550 million through agreements to fix-prices, to stabilize prices in the face of weakening demand. Marketing Executives from six manufacturers from Europe and the US played a central role in the planning and co-ordination of cartel practices. The cartel was conducted “...a clandestine fashion, [with] meetings held in secret, most frequently in a non-member country, and for the associated documentation to be reduced to a minimum”. Occasional meetings were held in social settings over dinner or on the way to dinner, in bars, hotel rooms, and via email, but “telephone contacts between the competitors...played an important role in assuring the efficient running of the cartel [and] were particularly important in assuring that cartel agreements were being complied with”. With the exception of some handwritten notes, very little documentary evidence of the cartel was detected. The regulator concluded that “direct corroboration of one party’s allegation could only occur through admission by the other party of the same contacts”, such was the secrecy of the cartel.

Discussion: The Practice of Collusion
Participants in illegal networks such as price-fixing seek to maximize their concealment (Simmel, 1950; Goffman, 1970), as well as any incriminating evidence, in order to avoid detection. Our findings identify three contrasting modes of exchange that marketers engage in to perform and construct collusive networks which we label bureaucratic, hub and spoke and atomised means of social ordering. Each mode employed different means of attempting to ensure
the stability of the cartel in order to aid its security and secrecy, and evade detection (see Figure I).

**Figure I: Practices to Perform Collusion: Three Modes of Exchange**

<table>
<thead>
<tr>
<th>Stabilizing mechanisms</th>
<th>Bureaucratic</th>
<th>Hub and Spoke</th>
<th>Atomised</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Norms and rules</td>
<td>Group meeting ethos;</td>
<td>No collective meetings;</td>
<td>Few collective meetings;</td>
</tr>
<tr>
<td>- Objects and artefacts</td>
<td>Numerous objects and artefacts;</td>
<td>Directive to destroy all objects and artefacts created;</td>
<td>Few objects or artefacts created;</td>
</tr>
<tr>
<td>- Practices and routines</td>
<td>Multilateral, collective meetings and action among all actors.</td>
<td>Bilateral meetings facilitated by a single broker organization.</td>
<td>Bilateral meetings without a broker.</td>
</tr>
</tbody>
</table>

The practices of the marketers behind the *Flat Glass* cartel created a highly bureaucratic, multilateral and managerial structure. Bureaucratic collusive networks are organized through multilateral agreements and operate in a similar fashion to legitimate corporate projects where firms co-operate and hence are ‘managerial’ in their network structure analogous in nature to any management project such as a negotiating and supervising a joint venture or strategic alliance. The need for monitoring reflects low levels of trust between cartel participants. In addition, even though they clearly do not have the option of legal redress if one party does not follow agreed behaviour and rules, these networks may seek to impose sanctions and penalties for transgressors. Some forms of corporate crime (such as price-fixing) can be highly complex and bureaucratic in nature (Simpson and Piquero, 2002; Barnett, 1982), as Friedrichs (2004: 39) has observed: “corporate offenders have a bureaucratic need to maintain records, and this need may conflict with their desire to destroy incriminating evidence”. It was the bureaucratic practices in the *Flat Glass* cartel that rendered it detectable, in contrast to the *Vitamins* and *Butadiene Rubber* cartels.

In contrast, the *Vitamins* cartel is analogous to the management of transportation systems where single or multiple hubs provide connectivity to a broader network of actors. A single actor adopts the role of broker for the conspiracy (must have legitimacy and authority) who provide “…a connection between communities of practice” (Wenger, 1998: 107). The broker ensures limited lines of communication, and operates with few rules and objects, emphasising a bilateral structure to reduce its visibility to customers and regulators.

Finally, the *Butadiene Rubber* cartel exposed a mode of exchange between participants that was dispersed and atomised, emphasised minimal contacts and connections between actors, and produced few objects or artefacts. Analogous to these forms of collusion are the organization of terrorist cell networks as well as the illegal trade of drugs such as heroin and arms trafficking, as Zelinski and Shubik (2009: 330) outline: “There is little, if any, contact among cells; common ideology is the glue which holds ... organizations together” and “…are advantaged by being difficult to track, infiltrate and find. By hermetically sealing (or never connecting) component cells, [they] can survive even when many parts of the organization are destroyed”.

**Conclusions**

Our use of Practice Theory has helped us to identify three contrasting modes of collusive exchange undertaken by marketers. Our vignettes can be understood as bundles of practices and routines; actors shaping exchange giving rise to “combinations of practices” (Kjellberg and Helgesson, 2007a: 872), that produced three different configurations of collusion with the same goal: to control prices through illegal means. Although they all had the central aim of price-fixing, the marketing managers involved employed different stabilizing practices in the form of
agreed norms and rules, objects and artefacts, and the practices and routines engaged in, to differing results.

What can we learn from our analysis and the co-constitution of collusion by marketers? Our analysis reveals that the application of Practice Theory helps us to explain the doing of deviance that has confounded many industrial economists and organizational criminologists (cf. Clinard and Yeager, 2006; Baker and Faulkner, 1993; Shapiro, 1980; Sonnenfeld and Lawrence, 1978; Posner, 1970). The practices of marketers in our three cases suggests that collusive practices are reproduced by the routines of its participants and can be framed in significantly different ways, with idealised forms of conspiracy favouring routines and practices that render it undetectable.

Finally, why would marketers engage in illegal activities such as price-fixing? We might attribute this to a number of factors such as the boundary spanning nature of marketing professionals (Wilkie and Moore, 1999) and the relationships they have both within and outside the organization to engage in ‘team crimes’ (Mars, 1982) like price-fixing, the expendability of marketers who can protect the involvement of more senior managers involved in corporate crime (Goffman, 1970), and the narcissism and flattery managers experience when being called upon by senior managers to undertake actions that facilitate organizational survival (Schwartz, 1987), such as price-fixing with competitors in order to avoid a potentially ruinous drop in prices. These motives require further research and explanation if we are to understand the corporate crimes committed by marketers in any meaningful way and wish to help regulators to frustrate and disrupt such practices. The implications of our analysis also suggest a need for marketers to engage with the law related to corporate crime (such as competition law), as Tadajewski (2010) notes “If marketing education does not engage with these [antitrust] issues – which arguably it does not at present – it can be speculated that we have not heard the last of collusive interfirm relationships.”

References


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