

15. BUSINESS GROUP – DETERRENCE AND COMPLIANCE

15.1 PERCEPTIONS OF DETERRENCE - LIKELIHOOD OF BEING CAUGHT (CIVIL SANCTIONS VS CRIMINAL SANCTIONS)

Question

Fintro2 Now for a different scenario¹.....

F2a/F3a/F4a Ashley, a manager at Express Freight Company, considers whether to get together with representatives from Express Freight Company's competitors in order to make an agreement not to try to win over each other's customers.

This would mean Ashley does not have to discount prices or increase the quality of service in order to keep existing customers. This would increase firm revenues, and result in a positive impression of Ashley by top management.

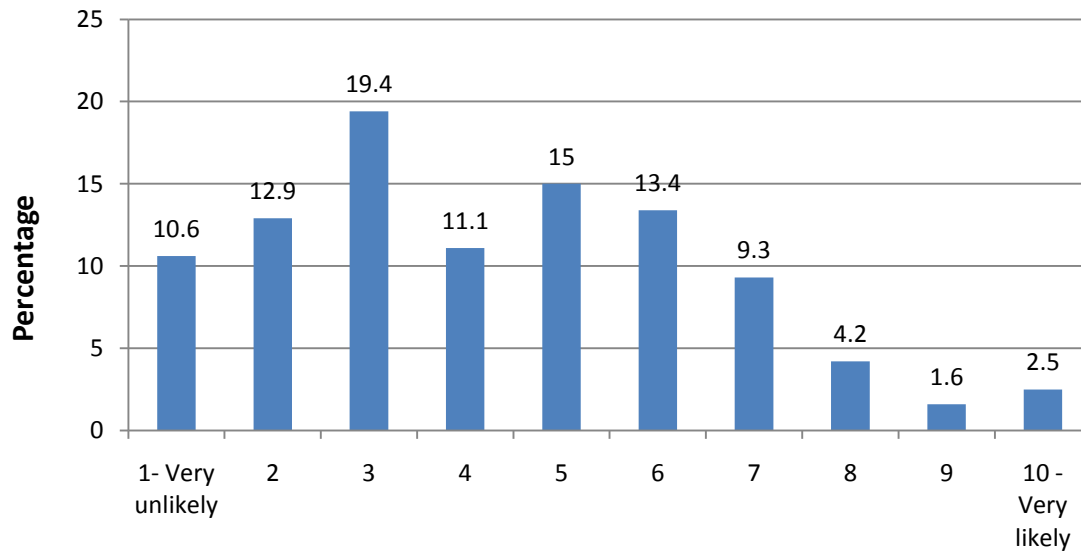
This conduct is against the law but it is **not a criminal offence**.

If Ashley goes ahead and agrees with the competitors not to win over each other's customers, how likely do you think it is that Ashley would be found out by the law enforcement authorities for doing this?

[Respondents were given an anchored scale of 1 to 10 marked very unlikely to very likely to respond to this question.]

¹ This is the basic scenario that all respondents were given. One third of respondents were also told: 'Express Freight Company is currently experiencing declining sales and revenues, and Ashley is struggling to meet sales targets. This agreement would stabilise revenues and secure Ashley's job.' Another third of respondents were also told: 'Ashley is friendly with several other managers in other parts of Express Freight Company who have engaged in similar conduct. They are encouraging Ashley to do so too.' The final third of respondents were not given any additional facts. All results are reported together in relation to perceptions of likelihood of being caught, likelihood of legal action and likelihood of jail because there was no significant difference between responses to the varied scenarios.

Figure 15.1A Likelihood that Ashley will be caught (civil sanctions)²



If Ashley goes ahead and agrees with the competitors not to win over each other's customers, how likely do you think it is that Ashley would be found out by the law enforcement authorities for doing this?

Question

Fintro2 This scenario is the same as the last one, except that this time, the conduct is against the law **and is a criminal offence.....**

Just to remind you, the full scenario is repeated below

F5a/F6a/F7a Ashley, a manager at Express Freight Company, considers whether to get together with representatives from Express Freight Company's competitors in order to make an agreement not to win over each other's customers.

This would mean Ashley does not have to discount prices or increase the quality of service in order to keep existing customers.

This would increase firm revenues, and result in a positive impression of Ashley by top management.

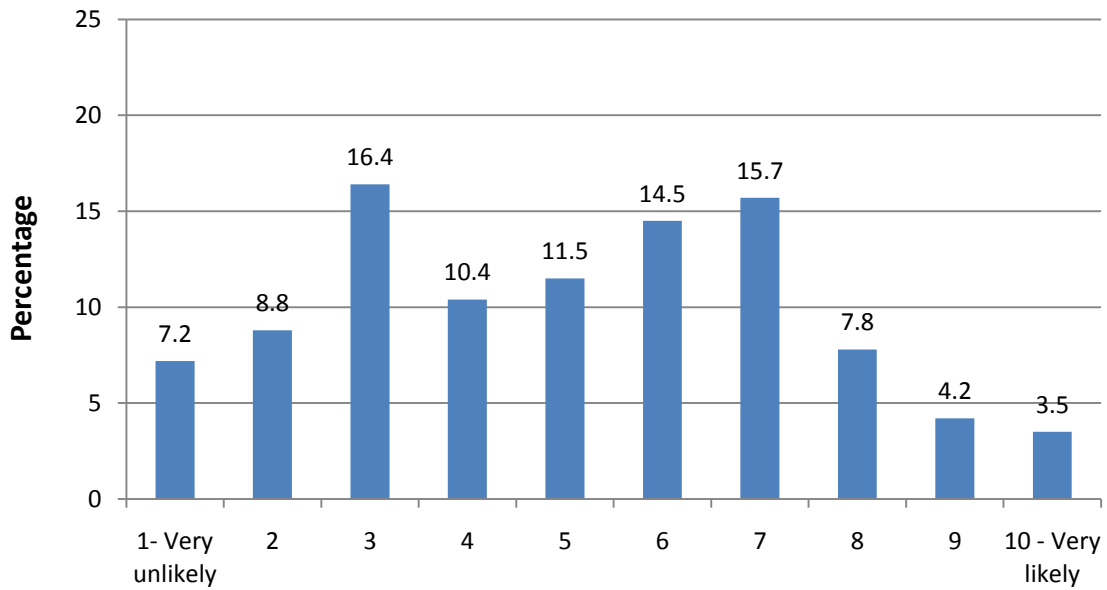
This conduct is against the law and **is** a criminal offence.

If Ashley goes ahead and agrees with the competitors not to win over each other's customers, how likely do you think it is that Ashley would be found out by the law enforcement authorities for doing this?

[Respondents were given an anchored scale of 1 to 10 marked very unlikely to very likely to respond to this question.]

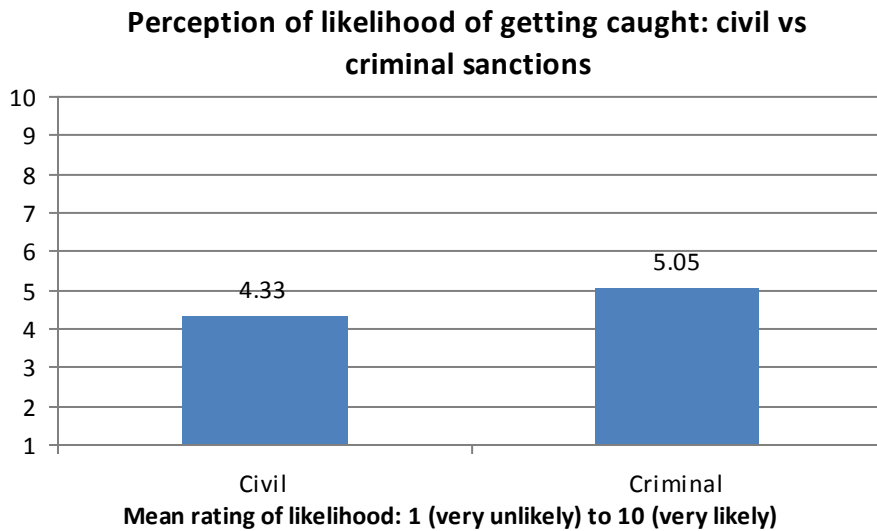
² n=567, total Business group.

Figure 15.1B Likelihood that Ashley will be caught (criminal sanctions)³



If Ashley goes ahead and agrees with the competitors not to win over each other's customers, how likely do you think it is that Ashley would be found out by the law enforcement authorities for doing this?

Figure 15.1C Likelihood that Ashley will be caught (mean response to scenario with civil sanctions compared to mean response to scenario with criminal sanctions)⁴



³ n=567, total Business group.

⁴ n=567, total Business group.

Comments

The mid-point of the scale on the likelihood rating above is 5.5 since the scale runs from 1 to 10 (very unlikely to very likely). Respondents on average consider it unlikely that Ashley will be caught if he/she engages in price fixing, especially where only civil sanctions are present. That is, they rate likelihood under the mid-point of the scale. Where criminal sanctions are present, they think Ashley is a little more likely to be caught, but still on average rate likelihood of being caught under the mid-point of the scale. There is a statistically significant difference between their ratings of likelihood where only civil sanctions are present as compared to where criminal sanctions are available. There is also a statistically significant correlation between believing in competition and rating it as a higher likelihood that Ashley will be caught.

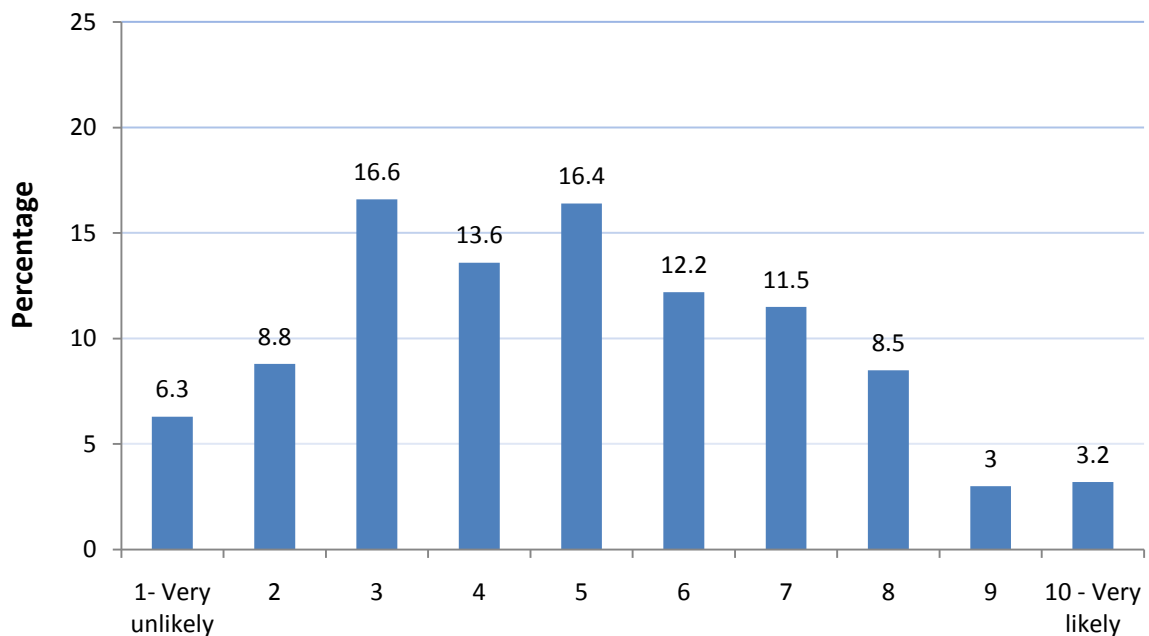
15.2 PERCEPTIONS OF DETERRENCE - LIKELIHOOD OF LEGAL ACTION IF CAUGHT (CIVIL SANCTIONS VS CRIMINAL SANCTIONS)

Question

F2b to F7b If Ashley is found out by the authorities, how likely do you think it is that the authorities will actually take legal action against Ashley?

[Respondents were given an anchored scale of 1 to 10 marked very unlikely to very likely to respond to this question.]

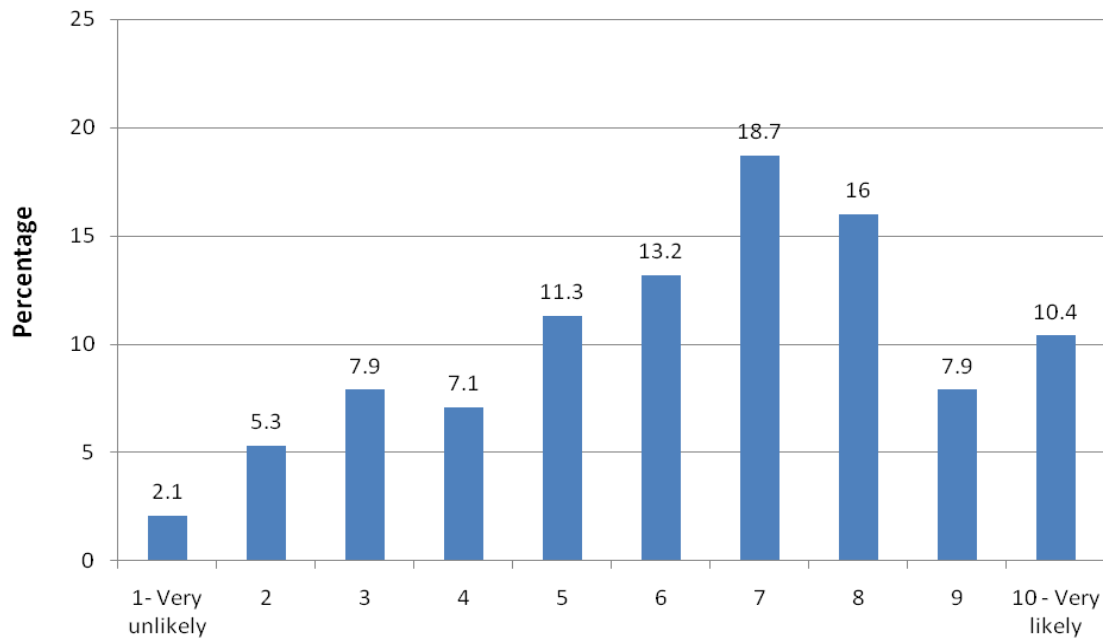
Figure 15.2A Likelihood of legal action (civil sanctions)⁵



If Ashley is found out by the authorities, how likely do you think it is that the authorities will actually take legal action against Ashley?

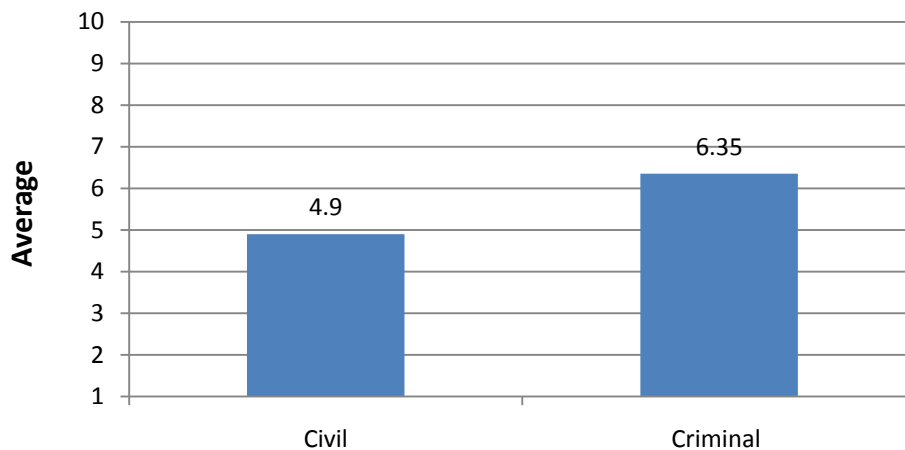
⁵ n=567, total Business group.

Figure 15.2B Likelihood of legal action (criminal sanctions)⁶



If Ashley is found out by the authorities, how likely do you think it is that the authorities will actually take legal action against Ashley?

Figure 15.2C Likelihood of legal action (mean response to scenario with civil sanctions compared to mean response to scenario with criminal sanctions)⁷



If Ashley is found out by the authorities, how likely do you think it is that the authorities will actually take legal action against Ashley?

⁶ n=567, total Business group.

⁷ n=567, total Business group.

Comments

Respondents on average consider it slightly more likely that Ashley will be subject to legal action if caught, than that Ashley will be caught in the first place. However, they still consider it unlikely that legal action will be taken against Ashley where there are only civil sanctions (the rating is still below the mid-point of the scale). Where criminal sanctions apply, respondents see it as more likely that there will be legal action. They rate the likelihood as above the mid-point on the scale, but still not very high. There is a statistically significant difference between the likelihood ratings when the scenario moves from civil sanctions only to criminal sanctions. Where civil sanctions apply, there is also a statistically significant correlation with belief in competition: those who believe in competition rate the likelihood of legal action more highly.

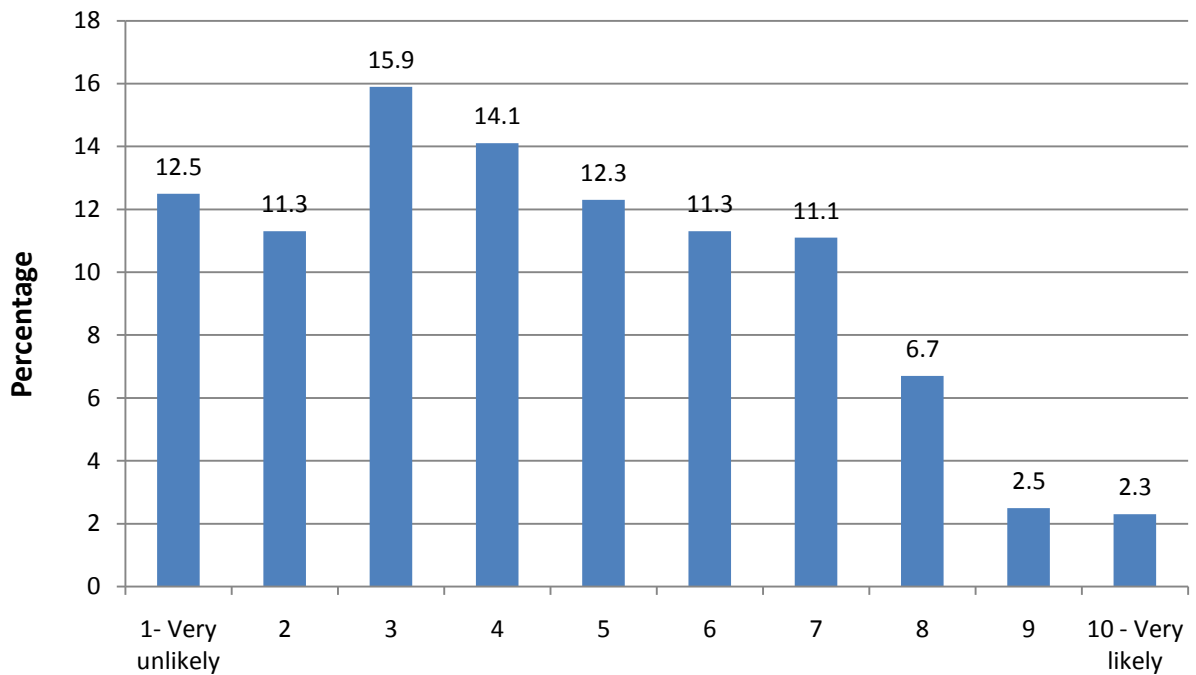
15.3 PERCEPTIONS OF DETERRENCE - LIKELIHOOD OF JAIL IF FOUND GUILTY

Question

F5c/F6c/F7c If Ashley is found guilty, how likely do you think it is that Ashley will be sentenced to jail for making an agreement with competitors not to try to win over each other's customers?

[Respondents were given an anchored scale of 1 to 10 marked very unlikely to very likely to respond to this question.]

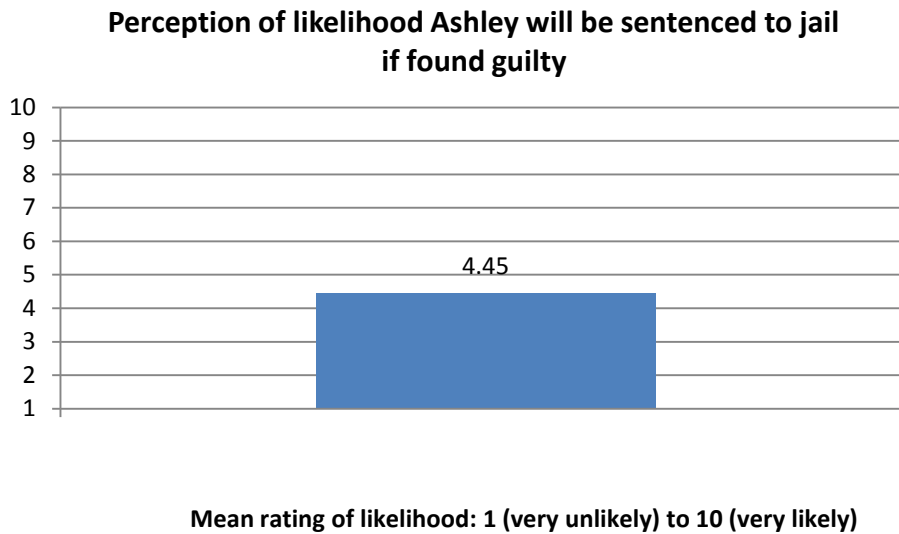
Figure 15.3A Likelihood that Ashley will be sentenced to jail (criminal sanctions only)⁸



If Ashley is found guilty, how likely do you think it is that Ashley will be sentenced to jail for making an agreement with competitors not to try to win over each other's customers?

⁸ n=567, total Business group. This question was only asked in relation to the criminal sanctions versions of the scenario since jail is only available where there is a criminal offence.

Figure 15.3B Likelihood that Ashley will be sentenced to jail (criminal sanctions only)⁹



Comments

Respondents do not see it as very likely at all that Ashley would be sentenced to jail if found guilty of price fixing - even though they have been explicitly told that this conduct is a criminal offence.

15.4 LIKELIHOOD OF BREACH - CIVIL SANCTIONS VS CRIMINAL SANCTIONS

Question

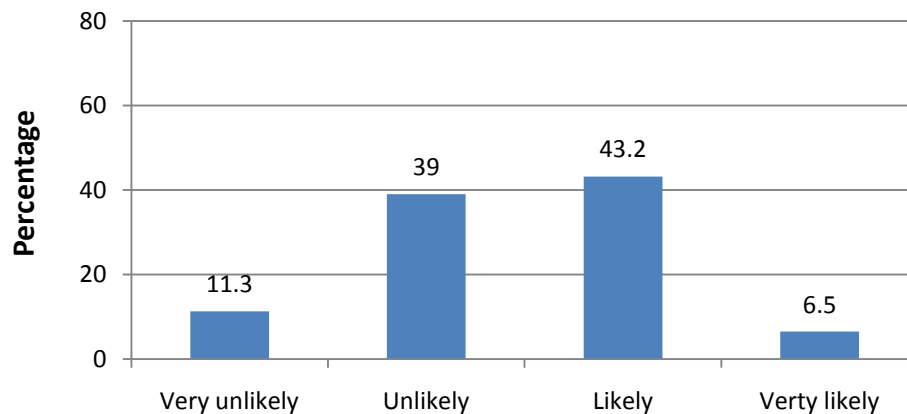
F2c/F3c/F4c In recent years the average fine that the courts have imposed on individuals involved in the same sort of conduct that Ashley is considering has been \$40,000. The maximum fine available under the law against individuals for this sort of conduct is \$500 000. The law also says that individuals who take part in this sort of conduct can be banned from managing a company in the future.

All things considered, how likely do you think it is that Ashley will decide to make an agreement with competitors not to try to win over each other's customers?

1. Very unlikely
2. Unlikely
3. Likely
4. Very likely

⁹ n=567, total Business group.

Figure 15.4A Likelihood of breach by Ashley (civil sanctions)¹⁰



All things considered, how likely do you think it is that Ashley will decide to make an agreement with competitors not to try to win over each other's customers?

Question

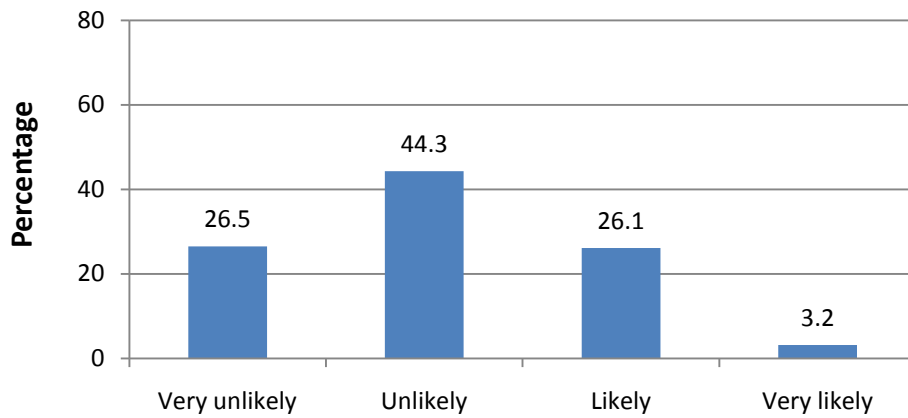
F5e/F6e/F7e The law says that people who engage in the sort of conduct that Ashley is considering can be convicted and put in jail. The maximum jail term available under the law against individuals for this sort of conduct is 10 years. The law also says that individuals who take part in this sort of conduct can be banned from managing a company in the future.

All things considered, how likely do you think it is that Ashley will decide to make an agreement with competitors not try to win over each other's customers?

1. Very unlikely
2. Unlikely
3. Likely
4. Very likely

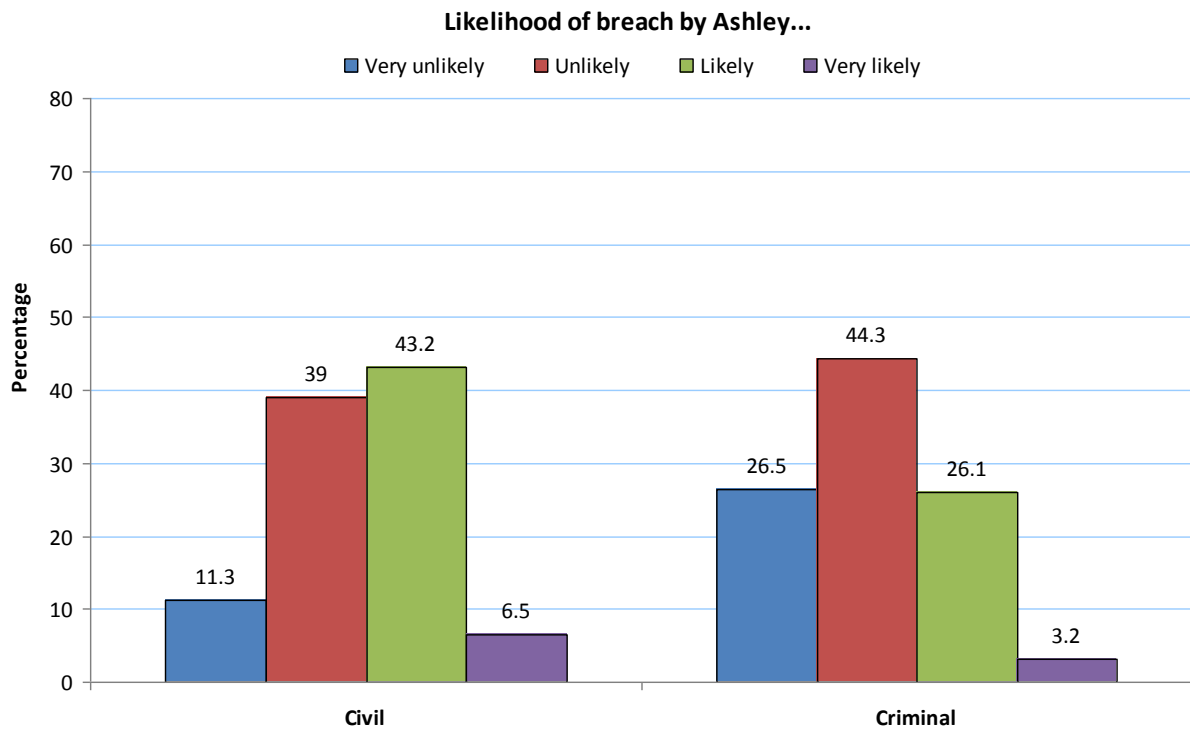
¹⁰ n=567, total Business group.

Figure 15.4B Likelihood of breach by Ashley (criminal sanctions)¹¹



All things considered, how likely do you think it is that Ashley will decide to make an agreement with competitors not to try to win over each other's customers?

Figure 15.4C Likelihood of breach by Ashley (civil sanctions vs criminal sanctions)¹²



¹¹ n=567, total Business group.

¹² n=567, total Business group.

Comments

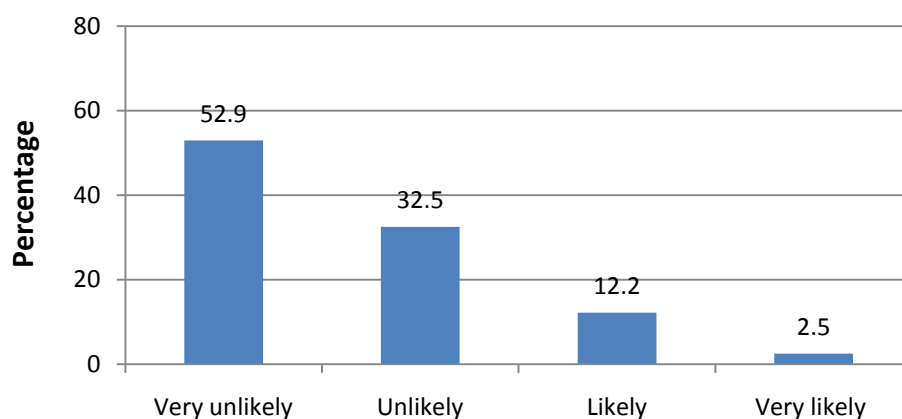
Under civil sanctions, half the respondents see it as likely that Ashley would engage in cartel conduct (that is, combining those who see it as likely and very likely). 70% of respondents rate Ashley as unlikely or very unlikely to engage in cartel conduct once it moves from being a civil offence to a criminal offence (20% more than see it as unlikely where only civil sanctions are present). However 29% (nearly a third) still see Ashley as likely to engage in cartel conduct under criminal sanctions.

Question

F2d/F3d/F4d If you found yourself in the same circumstances as Ashley, how likely is it that you would make an agreement with your competitors not to try to win over each other's customers?

1. Very unlikely
2. Unlikely
3. Likely
4. Very likely

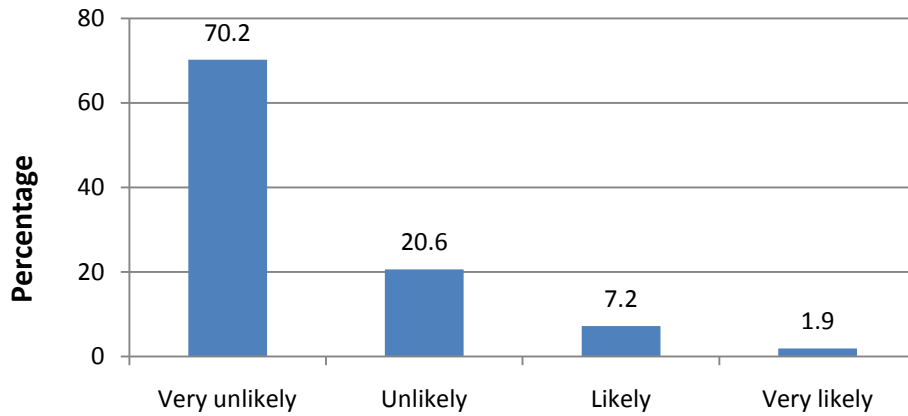
Figure 15.4D Likelihood of breach by respondent (civil sanctions)¹³



If you found yourself in the same circumstances as Ashley, how likely is it that you would make an agreement with your competitors not to try to win over each other's customers?

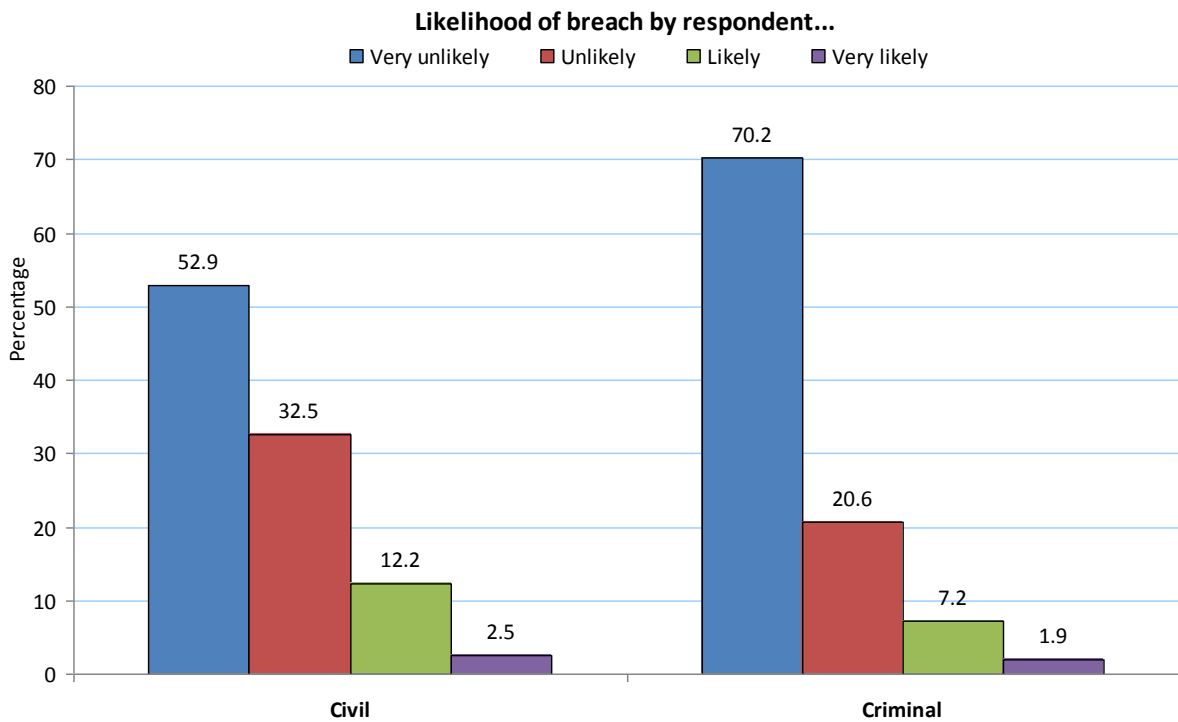
¹³ n=567, total Business group.

Figure 15.4E Likelihood of breach by respondent (criminal sanctions)¹⁴



If you found yourself in the same circumstances as Ashley, how likely is it that you would make an agreement with your competitors not to try to win over each other's customers?

Figure 15.4F Likelihood of breach by respondent (civil sanctions vs criminal sanctions)¹⁵



¹⁴ n=567, total Business group.

¹⁵ n=567, total Business group.

Comments

Respondents estimate themselves as much less likely to breach than their estimation of likelihood of breach for Ashley – under both civil and criminal conditions. Half see Ashley as likely to breach under civil sanctions, but only 15% report themselves as likely to breach. The proportions are even lower under criminal sanctions – only 9% say they would be likely or very likely to breach, compared with 29% saying Ashley would be likely or very likely to breach. However, this is still nearly one in ten of the Business group being willing to say that they would be likely or very likely to breach – even where they are told that criminal sanctions (including jail) are available for the conduct.

15.5 LIKELIHOOD OF BREACH – DIFFERENT PRESSURE CONDITIONS

Question

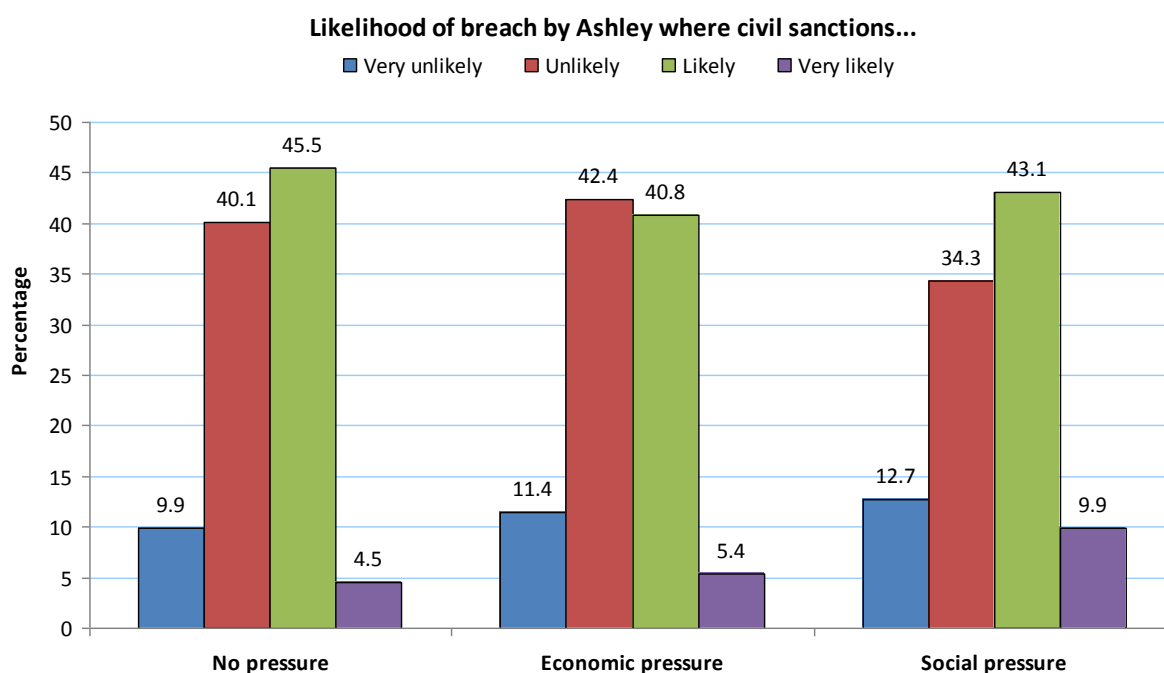
In relation to the scenarios above:

One third of respondents were also told: 'Express Freight Company is currently experiencing declining sales and revenues, and Ashley is struggling to meet sales targets. This agreement would stabilise revenues and secure Ashley's job.' **[Economic pressure]**

Another third of respondents were also told: 'Ashley is friendly with several other managers in other parts of Express Freight Company who have engaged in similar conduct. They are encouraging Ashley to do so too.' **[Social pressure]**

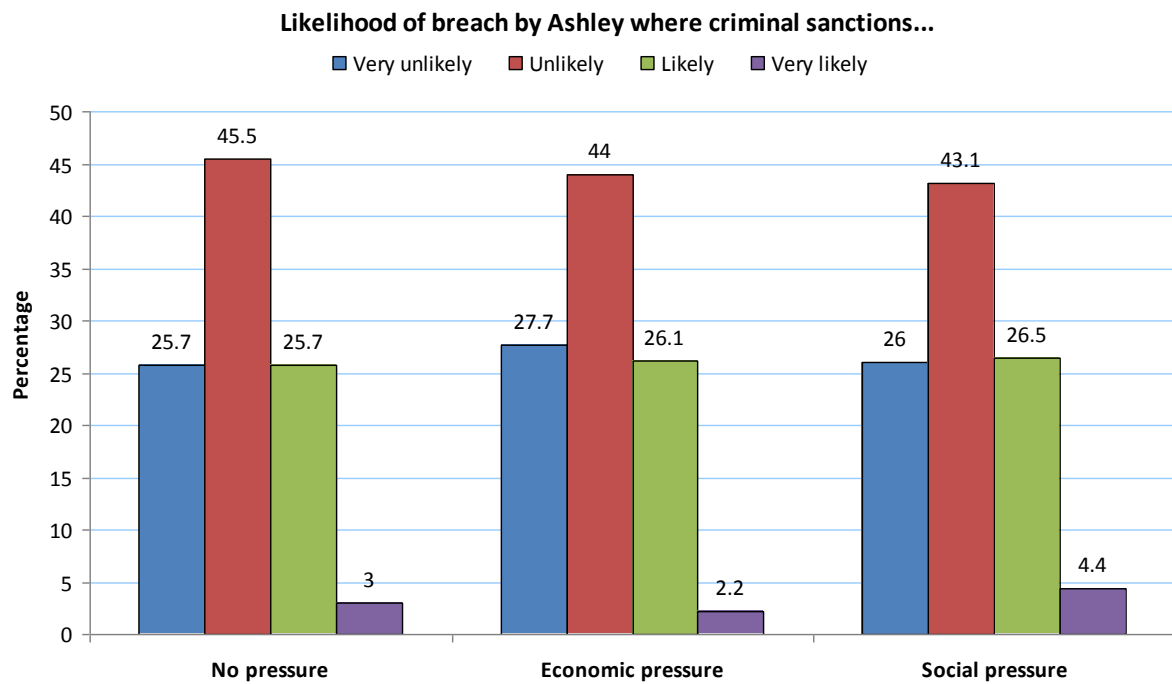
The final third of respondents were not given any additional facts. **[No pressure]**

Figure 15.5A Civil sanctions - Likelihood of breach by Ashley (no pressure vs economic pressure vs social pressure)¹⁶



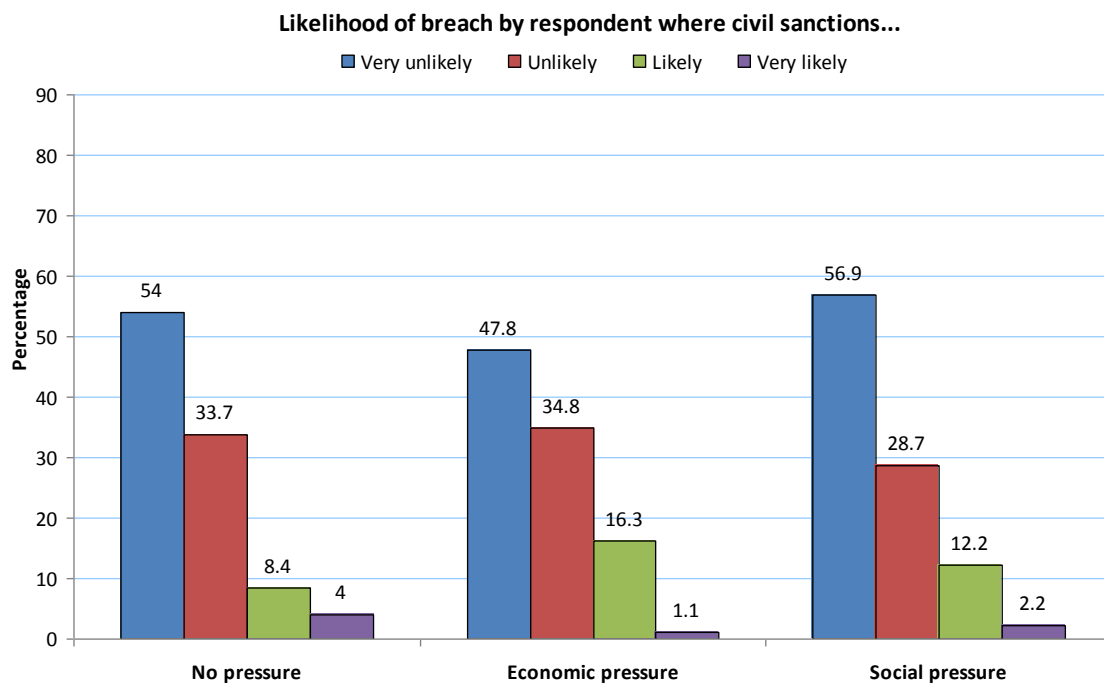
¹⁶ No pressure (n=202), Economic pressure (n=184), Social pressure (n=181).

Figure 15.5B Criminal sanctions - Likelihood of breach by Ashley (no pressure vs economic pressure vs social pressure)¹⁷



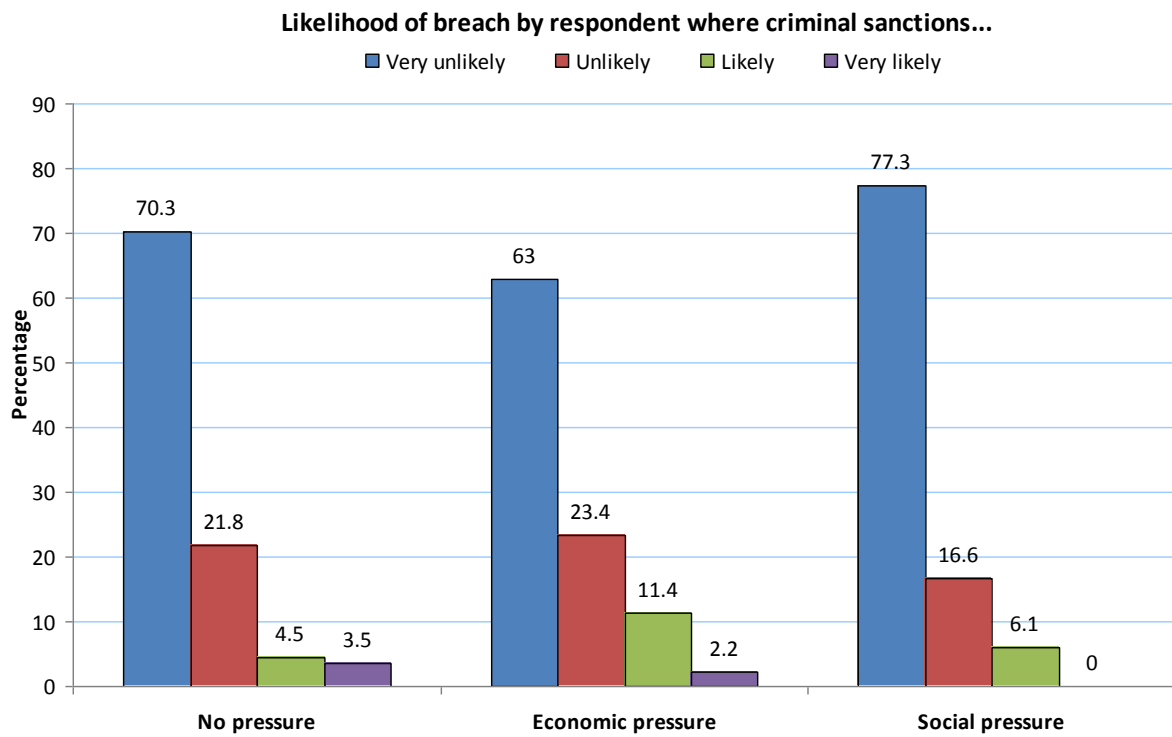
¹⁷ No pressure (n=202), Economic pressure (n=184), Social pressure (n=181).

Figure 15.5C Civil sanctions - Likelihood of breach by respondent (no pressure vs economic pressure vs social pressure)¹⁸



¹⁸ No pressure (n=202), Economic pressure (n=184), Social pressure (n=181).

Figure 15.5D Criminal sanctions - Likelihood of breach by respondent (no pressure vs economic pressure vs social pressure)¹⁹



¹⁹ No pressure (n=202), Economic pressure (n=184), Social pressure (n=181).

Figure 15.5E Summary of differences in likelihood of breach under different pressure conditions²⁰

Ashley	Civil sanctions	More likely to breach where social pressure. Less likely to breach where economic pressure.
	Criminal sanctions	All similar.
Respondent	Civil sanctions	More likely to breach where economic pressure. Less likely where no pressure.
	Criminal sanctions	More likely to breach where economic pressure. Less likely to breach where social pressure.

Comments

There appear to be some differences by different pressure conditions, but further analysis is necessary in order to test whether these differences are statistically significant. In particular economic pressure appears to become important where criminal sanctions are present, but not where only civil sanctions are present.

²⁰ n=567, total Business group.

15.6 LIKELIHOOD OF ENFORCEMENT AND LIKELIHOOD OF BREACH

Figure 15.6 Summary of correlations between perceptions of likelihood of enforcement and likelihood of breach²¹

Perception of likelihood of enforcement:	Likelihood of breach where sanctions are....			
	Civil		Criminal	
	Ashley	Respondent	Ashley	Respondent
Likely to be caught	Breach less likely*	No correlation	Breach less likely*	No correlation
Legal action likely	Breach less likely	No correlation	Breach less likely*	Breach less likely*
Jail sentence likely	NA	NA	Breach less likely	No correlation

* Asterisk indicates strongest results

Comments

The table above contains a summary of statistical tests as to whether there is a correlation between respondents' perceptions of the likelihood of enforcement (as discussed in section 15.3) and their ratings of the likelihood of breach for each situation (Ashley and respondent, civil and criminal). The text in the boxes indicates whether higher perceptions of the likelihood of enforcement correlates with lower estimates of likelihood of engaging in cartel conduct.

Overall these results suggest that respondents think that Ashley will make rational calculations about whether to engage in cartel conduct - and will therefore be deterred where there is a greater likelihood of enforcement. On the other hand respondents see themselves as less likely to engage in the conduct in the first place, and also appear to be less affected by perceptions of deterrence. Comments in the open text boxes (see Appendix C2) make it clear that respondents often see themselves as engaging in ethical decision making about cartel conduct rather than rationally calculating about the chances of being caught and jailed.

²¹ n=567, total Business group.