



THE UNIVERSITY OF

MELBOURNE

The Cartel Project

REPORT ON A SURVEY OF THE AUSTRALIAN PUBLIC REGARDING ANTI-CARTEL LAW AND ENFORCEMENT

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TABLE OF CONTENTS

Executive summary.....	1
1. INTRODUCTION.....	6
1.1 Background – cartel criminalisation in Australia	6
1.2 About The Cartel Project	8
1.3 Why a survey of public opinion on cartel criminalisation?.....	10
1.3.1 The relevance of public opinion.....	10
1.3.2 The need for an empirical approach in ascertaining public opinion.....	12
1.3.3 Lack of empirical evidence of public opinion on cartel criminalisation	13
1.4 Scope of the survey	16
1.5 Purpose and scope of this report	17
2. METHODOLOGY.....	19
2.1 Survey instrument – structure, format and purposes	19
2.1.1 Demographic background.....	19
2.1.2 Interest in and attitudes towards business	20
2.1.3 Attitudes towards competition.....	21
2.1.4 Attitudes towards cartel conduct	21
2.1.5 Crime seriousness	32
2.1.6 Compliance and deterrence.....	36
2.1.7 Prior knowledge and comments.....	42
2.2 Survey medium	43
2.3. Survey design and administration stages	44
2.4 Survey design features.....	46
2.4.1 Vignettes.....	46
2.4.2 Open textboxes.....	49
2.4.3 Rating scales	49
2.5 Survey respondents	50
2.5.1 Sampling strategy	50

2.5.2	Recruitment and data collection process	52
2.5.3	Response rates.....	52
2.5.4	Representativeness and weighting process.....	52
2.5.5	Response times	53
3.	ABOUT THE PRESENTATION OF RESULTS IN THIS REPORT	55
4.	PRIOR AWARENESS OF CARTEL-RELATED TOPICS.....	56
4.1	Levels of prior awareness	56
4.2	Prior awareness and demographic factors	58
5.	BUSINESS AND COMPETITION	64
5.1	Interest in and attitudes towards business	64
5.1.1	Interest in business.....	64
5.1.2	Attitudes towards business as trustworthy/untrustworthy	67
5.2	Attitudes towards competition.....	72
5.2.1	Attitudes towards competition as healthy/harmful and demographic factors	75
6.	CARTEL CONDUCT AS AGAINST THE LAW	76
6.1	Price fixing as against the law	76
6.2	Market allocation as against the law	78
6.3	Output Restriction as against the law.....	80
6.4	Comparison between types of cartel conduct as against the law	82
7.	CARTEL CONDUCT AS A CRIMINAL OFFENCE	83
7.1	Price fixing as a criminal offence	83
7.1.1	Price fixing as a criminal offence and demographic factors	85
7.2	Market allocation as a criminal offence	88
7.2.1	Market allocation as a criminal offence and demographic factors	90
7.3	Output restriction as a criminal offence	91
7.3.1	Output restriction as a criminal offence and demographic factors.....	93
7.3.2	Output restriction as a criminal offence and business as trustworthy/untrustworthy.....	94
7.4	Comparison between types of cartel conduct as a criminal offence.....	95
8.	REASONS FOR CARTEL CONDUCT AS A CRIMINAL OFFENCE	96
8.1	Reasons for cartel conduct as a criminal offence – price fixing.....	96

8.2	Reasons for cartel conduct as a criminal offence – market allocation	99
8.3	Reasons for cartel conduct as a criminal offence – output restriction	102
8.4	Reasons for cartel conduct as a criminal offence – comparison between types of cartel conduct ...	105
9.	PENALTIES/REMEDIES FOR CARTEL CONDUCT	109
9.1	Companies	109
9.1.1	Companies – Price fixing - Penalties/remedies	109
9.1.2	Companies – Market Allocation - Penalties/remedies	112
9.1.3	Companies – Output restriction - Penalties/remedies	115
9.1.4	Companies – Comparison between types of cartel conduct - Penalties/remedies	118
9.2	Individuals	121
9.2.1	Individuals – Price fixing – Penalties/remedies	121
9.2.2	Individuals – Market allocation - Penalties/remedies	130
9.2.3	Individuals – Output restriction - Penalties/remedies	138
9.2.4	Individuals – Comparison between types of cartel conduct - Penalties/remedies	144
10.	FACTORS BEARING ON SERIOUSNESS OF CARTEL CONDUCT	147
10.1	Factors bearing on seriousness – price fixing	147
10.2	Factors bearing on seriousness – market allocation	149
10.3	Factors bearing on seriousness – output restriction	151
10.4	Factors bearing on seriousness - Comparison between types of cartel conduct	153
11.	IMMUNITY POLICY	156
11.1	Immunity Policy – price fixing	156
11.2	Immunity Policy – market allocation	158
11.3	Immunity policy – output restriction	160
11.4	Immunity policy - comparison between types of cartel conduct	162
12.	CRIME SERIOUSNESS RATINGS	163
12.1	Crime seriousness ratings – price fixing	163
12.2	Crime seriousness ratings – market allocation	165
12.3	Crime seriousness ratings – output restriction	167
12.4	Crime seriousness ratings – comparison between types of cartel conduct	169

13.	BUSINESS GROUP – SELECTION AND CHARACTERISTICS	174
13.1	Selection of Business Group	174
13.2	Business group vs general public sample - characteristics	177
14.	BUSINESS GROUP – KNOWLEDGE OF THE LAW	182
14.1	Knowledge that cartel conduct is against the law	182
14.2	Knowledge that cartel conduct is a criminal offence.....	183
14.3	Knowledge of penalties available for cartel conduct.....	185
14.4	Knowledge of the law and opinion of what the law should bE	187
15.	BUSINESS GROUP – DETERRENCE AND COMPLIANCE	189
15.1	Perceptions of deterrence - likelihood of being caught (civil sanctions vs criminal sanctions).....	189
15.2	Perceptions of deterrence - likelihood of legal action if caught (civil sanctions vs criminal sanctions)	193
15.3	Perceptions of deterrence - likelihood of jail if found guilty	196
15.4	Likelihood of breach - civil sanctions vs criminal sanctions.....	197
15.5	Likelihood of breach – different pressure conditions.....	203
15.6	Likelihood of enforcement and likelihood of breach.....	208
	APPENDIX A: Survey questionnaire	209
	APPENDIX B: Structure of survey.....	253
	B1. Overview of major pathways	253
	B2. Structure of section D	254
	B3. Survey structure – higher and lower order pathways combined.....	255
	B4. Structure of section F	256
	APPENDIX C: OPEN-ENDED RESPONSES TO SURVEY	257
	C1. Open responses for Section D	257
	C2. Business Group – Section F	336
	C3. Open-ended responses at end of the survey	346
	APPENDIX D: DEMOGRAPHIC PROFILE OF RANDOM SAMPLE REPRESENTATIVE OF AUSTRALIAN PUBLIC	355
	APPENDIX E: INVITATION TO PARTICIPATE AND PLAIN LANGUAGE STATEMENT	359
	E.1 Invitation to participate.....	359
	E2. Opening survey page.....	359

E3. Plain Language Statement..... 360

E4. Closing survey page..... 361

LIST OF FIGURES

Figure 4.1A Levels of prior awareness	56
Figure 4.1B Levels of prior awareness (no/low/medium/high)	57
Figure 4.2A Prior awareness and age	58
Figure 4.2B Prior awareness and gender	59
Figure 4.2C Prior awareness and education level	60
Figure 4.2D Prior awareness and voting preference	61
Figure 4.2E Prior awareness and work position	62
Figure 4.2F Prior awareness and workplace size and work position combined	63
Figure 5.1.1A Interest in business.....	65
Figure 5.1.1B Interest in business and prior awareness	66
Figure 5.1.2A Attitudes towards business as trustworthy/untrustworthy	68
Figure 5.1.2B Attitudes towards business as trustworthy/untrustworthy	69
Figure 5.1.2.1A Attitudes towards business as trustworthy/untrustworthy and education level	70
Figure 5.1.2.1B Attitudes towards business as trustworthy/untrustworthy and voting preference	71
Figure 5.2A Attitudes towards competition as healthy/harmful.....	73
Figure 5.2B Attitudes towards competition as healthy/harmful.....	74
Figure 5.2.1 Attitudes towards competition as healthy/harmful and age	75
Figure 6.1 Price fixing as against the law	77
Figure 6.2: Market allocation as against the law	79
Figure 6.3: Output Restriction as against the law.....	81
Figure 6.4: Comparison between types of cartel conduct as against the law	82
Figure 7.1: Price fixing as a criminal offence	84
Figure 7.1.1A Price fixing as a criminal offence and gender	85
Figure 7.1.1B Price fixing as a criminal offence and work position	86
Figure 7.1.1C Price fixing as a criminal offence and work position and workplace size combined	87
Figure 7.2: Market allocation as a criminal offence	89
Figure 7.2.1 Market allocation as a criminal offence and gender	90

Figure 7.3: Output restriction as a criminal offence.....	92
Figure 7.3.1 Output restriction as a criminal offence and gender.....	93
Figure 7.3.2 Output restriction as a criminal offence and trustworthiness of business.....	94
Figure 7.4 Comparison between types of cartel conduct as a criminal offence.....	95
Figure 8.1A Reasons for cartel conduct as a criminal offence – Price fixing	97
Figure 8.1B Reasons for cartel conduct as a criminal offence – Price fixing (most common response)	98
Figure 8.2A Reasons for cartel conduct as a criminal offence – Market allocation	100
Figure 8.2B Reasons for cartel conduct as a criminal offence – Market allocation (most common response) ..	101
Figure 8.3A Reasons for cartel conduct as a criminal offence – Output restriction	103
Figure 8.3B Reasons for cartel conduct as a criminal offence – Output restriction (most common response) ..	104
Figure 8.4 Reasons for cartel conduct as a criminal offence – Comparison between types of cartel conduct ..	105
Figure 9.1.1 Companies – Price fixing - Penalties/remedies.....	109
Figure 9.1.1.1 Companies – Price fixing - Penalties/remedies – Maximum fine	111
Figure 9.1.2 Companies – Market Allocation - Penalties/remedies	112
Figure 9.1.2.1 Companies – Market allocation - Penalties/remedies – Maximum fine	114
Figure 9.1.3 Companies – Output restriction - Penalties/remedies	115
Figure 9.1.3.1 Companies – Output restriction – Penalties/remedies – Maximum fine	117
Figure 9.1.4 Companies – Comparison between types of cartel conduct - Penalties/remedies.....	118
Figure 9.1.4.1 Companies – Comparison between types of cartel conduct – Penalties/remedies - Maximum fine	119
Figure 9.2.1 Individuals – Price fixing - Penalties/remedies.....	121
Figure 9.2.1.1 Individuals – Price fixing - Penalties/remedies – Go to Jail and Gender.....	123
Figure 9.2.1.2 Individuals – Price fixing - Penalties/remedies – Go to Jail and Prior awareness	124
Figure 9.2.1.3 Individuals – Price fixing - Penalties/remedies – Go to jail and Trustworthiness of business	125
Figure 9.2.1.4 Individuals – Price fixing - Penalties/remedies – Maximum fine	127
Figure 9.2.1.5 Individuals – Price fixing - Penalties/remedies – Maximum jail sentence	129
Figure 9.2.2.1 Individuals – Market allocation - Penalties/remedies	130
Figure 9.2.2.1A Individuals – Market allocation - Penalties/remedies - Go to jail and Gender	132
Figure 9.2.2.2 Individuals – Market allocation - Penalties/remedies - Go to jail and Prior awareness	133

Figure 9.2.2.3	Individuals – Market allocation - Penalties/remedies – Go to jail and Business as trustworthy/untrustworthy	134
Figure 9.2.2.4	Individuals – Market allocation - Penalties/remedies – Maximum fine	135
Figure 9.2.2.5	Individuals – Market allocation - Penalties/remedies – Maximum jail sentence	137
Figure 9.2.3	Individuals – Output restriction - Penalties/remedies.....	138
Figure 9.2.3.1A	Individuals – Output restriction – Penalties/remedies – Go to jail and Gender	139
Figure 9.2.3.2	Individuals – Output restriction – Penalties/remedies – Go to jail and Prior awareness.....	140
Figure 9.2.3.2	Individuals – Output restriction - Penalties/remedies – Maximum Fine	141
Figure 9.2.3.3	Individuals – Output restriction - Penalties/remedies – Maximum jail sentence	143
Figure 9.2.4	Individuals – Comparison between types of cartel conduct - Penalties/remedies	144
Figure 9.2.4.1	Individuals – Comparison between types of cartel conduct - Penalties/remedies – Maximum fine	145
Figure 9.2.4.2	Individuals – Comparison between types of cartel conduct - Penalties/remedies– Maximum jail sentence	146
Figure 10.1	Factors bearing on seriousness – Price fixing	147
Figure 10.2	Factors bearing on seriousness – Market allocation	149
Figure 10.3	Factors bearing on seriousness – Output restriction.....	151
Figure 10.4	Factors bearing on seriousness - Comparison between types of cartel conduct	153
Figure 11.1	Immunity policy – Price fixing.....	157
Figure 11.2	Immunity policy – Market allocation	158
Figure 11.3	Immunity policy – Output restriction	161
Figure 11.4	Immunity policy - Comparison between types of cartel conduct.....	162
Figure 12.1	Crime seriousness ratings – Price fixing.....	164
Figure 12.2	Crime seriousness ratings – Market allocation.....	166
Figure 12.3	Crime seriousness ratings – Output restriction	168
Figure 12.4	Crime seriousness ratings - Comparison between types of cartel conduct.....	169
Figure 13.1A	Summary of how respondents selected for Business group	174
Figure 13.1B	The main work position held by members of the Business group	175
Figure 13.1C	Relevant role – employees, managers and total Business group	176
Figure 13.2A	Age of Business group compared with general public	177
Figure 13.2B	Gender of Business group compared with general public.....	178

Figure 13.2C Highest education level achieved by members of Business group compared with general public	179
Figure 13.2D Main work position (employee or manager) of Business group compared with general public	180
Figure 13.2E Size of business in which members of Business group employed and proportion of businesses of each size in Australia	181
Figure 14.1 Do Business group respondents know that price fixing is against the law?	182
Figure 14.2A Business group respondents' knowledge that price fixing is a criminal offence?	183
Figure 14.2B Summary of Business group respondents' knowledge of law	184
Figure 14.3A Do Business group respondents know what penalties are available under the law for someone like Lee who agrees on prices with competitors?	185
Figure 14.3B Summary of Business group respondents' knowledge of penalties available under the law for someone who agrees on prices with competitors	186
Figure 14.4 Knowledge of the law (F1A) and view that price fixing should be against the law (D1)	187
Figure 15.1A Likelihood that Ashley will be caught (civil sanctions)	190
Figure 15.1B Likelihood that Ashley will be caught (criminal sanctions)	191
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)	191
Figure 15.2A Likelihood of legal action (civil sanctions)	193
Figure 15.2B Likelihood of legal action (criminal sanctions)	194
Figure 15.2C Likelihood of legal action (mean response to scenario with civil sanctions compared to mean response to scenario with criminal sanctions)	194
Figure 15.3A Likelihood that Ashley will be sentenced to jail (criminal sanctions only)	196
Figure 15.3B Likelihood that Ashley will be sentenced to jail (criminal sanctions only)	197
Figure 15.4A Likelihood of breach by Ashley (civil sanctions)	198
Figure 15.4B Likelihood of breach by Ashley (criminal sanctions)	199
Figure 15.4C Likelihood of breach by Ashley (civil sanctions vs criminal sanctions)	199
Figure 15.4D Likelihood of breach by respondent (civil sanctions)	200
Figure 15.4E Likelihood of breach by respondent (criminal sanctions)	201
Figure 15.4F Likelihood of breach by respondent (civil sanctions vs criminal sanctions)	201
Figure 15.5A Civil sanctions - Likelihood of breach by Ashley (no pressure vs economic pressure vs social pressure)	203
Figure 15.5B Criminal sanctions - Likelihood of breach by Ashley (no pressure vs economic pressure vs social pressure)	204

Figure 15.5C Civil sanctions - Likelihood of breach by respondent (no pressure vs economic pressure vs social pressure).....	205
Figure 15.5D Criminal sanctions - Likelihood of breach by respondent (no pressure vs economic pressure vs social pressure).....	206
Figure 15.5E Summary of differences in likelihood of breach under different pressure conditions	207
Figure 15.6 Summary of correlations between perceptions of likelihood of enforcement and likelihood of breach	208

EXECUTIVE SUMMARY

- Amongst the Australian public, there is substantial majority support for the view that cartel conduct is unacceptable in the sense that it should be against the law. This view is associated with a positive attitude towards competition as healthy. It is also associated with pre-existing awareness of cartel-related topics, such as the ACCC and price fixing.
- However, less than a majority support the view that cartel conduct should be a criminal offence and less than a quarter support the view that individuals should be jailed for it. There are few associations between views on whether cartel conduct should be a criminal offence or conduct for which individuals are jailed and demographic attributes such as age, education, work status and political affiliation. However, men are less lenient in their views than women in that they are more likely to consider that cartel conduct should be a crime and that individuals should go to jail for it.
- Insofar as there is support for treating cartel conduct as a criminal offence, that support is based on a wide range of reasons that encompass its economic effects, its moral character and the instrumental characteristics of the criminal law as a mechanism for deterrence and punishment.
- There is almost no support for the view that cartel conduct is behaviour for which either companies or individuals alone should be sanctioned; rather, there is almost universal support for the view that sanctions should attach to both.
- There is substantial majority support for the view that companies and individuals involved in cartel conduct should be publicly named and shamed and that they should be fined.
- There is clear majority support for the view that the fine imposed on a company for cartel conduct should at least disgorge the company of the illegal profits and strong (one third) support for basing the fine on treble the profits derived from the conduct. There is a significant gap between public opinion about the appropriate level of corporate fines for cartel conduct and the actual level of fines that have been imposed over the last decade in Australia. Opinion is divided on the level of the fine that should be imposed on an individual for cartel conduct as reflected in the fact that maxima of AU\$10,000 and AU\$500,000 attract similar levels of support.

- There is relatively less but still majority support for other legal consequences for corporate and individual offenders, such as the requirement that compensation be paid or compliance programs be implemented or, that in the case of individuals, disqualification orders be made.
- There is low support for the view that immunity from sanctions for cartel conduct should be available in return for being the first to report the conduct to the authorities even if, without such a report, the authorities are unlikely to have detected the conduct. There is thus a clear misalignment between enforcement policy with respect to immunity and public opinion.
- Cartel conduct is clearly regarded as serious insofar as it is seen as behaviour that:
 - should be treated as illegal, if not criminal;
 - should attract fines that, for companies at least, are considerable and public naming and shaming of those involved; and
 - should not be readily excused on grounds relating to the nature of the companies involved, the reasons for the conduct, or its effects.
- For those members of the public who consider that it should be a criminal offence, cartel conduct is seen as just as serious as a range of long-standing or well-established criminal offences such as theft, fraud, tax evasion, breach of directors' duties and insider trading. Consistent with findings generally in crime seriousness research, offences involving physical harm or the risk of such harm to other persons (including consumer protection offences involving misrepresentations over product safety) are seen as more serious than cartel conduct.
- The seriousness of cartel conduct is viewed generally by the public more in moral terms than in terms of its economic effects, as reflected in:
 - the fact that the reasons for treating such conduct as a criminal offence that attract greatest support are reasons relating to moral characterisations of the conduct as dishonest and deceptive (as distinct from characterizations based on economic effects);
 - the high level of support for publicly naming those involved in the conduct, suggesting this is conduct seen as warranting the stigma of community disapproval;

- the low level of support for allowing an offender to escape penalties in return for reporting the conduct, a response that sits more comfortably with a moral rather than an instrumental approach;
 - majority support for the view that cartel conduct should be seen as just as serious regardless of its effects or circumstances, that is, even if prices do not increase as a result of the conduct, the conduct would prevent factories from closing and would save jobs, or the companies involved are small businesses;
 - substantial majority support for the view that the conduct should be regarded as more serious when it has elements that make it less acceptable from a moral perspective, namely when it involves coercion of another company to join the cartel or where elaborate steps are taken to conceal the conduct from authorities.
- There are no significant differences in views on the legal treatment and seriousness of different types of cartel conduct, except to the extent that the public appears to take a more lenient view of market allocation than of price fixing or output restriction.
 - Business people who have roles that make the anti-cartel laws relevant to them have quite a low degree of knowledge of the fact that cartel conduct is a criminal offence. They also have low knowledge of the fact that jail is available for individuals for engaging in cartel conduct:
 - less than one quarter of the business respondents are aware that jail is available as a penalty for individuals for cartel conduct;
 - less than half are aware that cartel conduct is a criminal offence;
 - two thirds know that cartel conduct is a civil contravention but one third are either unsure or think it is not a civil contravention;
 - less than half are aware that a fine is available as a penalty for cartel conduct (whether they believe it is a civil contravention or criminal offence).
 - This same group of business people also perceive the likelihood of enforcement action against cartel conduct as fairly low. They rate the likelihood of being caught for engaging in cartel conduct, being subject to legal action for cartel conduct, and being sentenced to jail (if found guilty of a criminal offence of cartel conduct) as all fairly low.

- Business respondent perceptions of the likelihood of being caught or of being subject to legal action both increase modestly when they know that cartel conduct is a criminal offence. However:
 - being caught is still considered unlikely even when business people know cartel conduct is a criminal offence;
 - the likelihood of a person being subject to legal action once caught is perceived as a little higher than being caught in the first place, but it is still not seen as very likely, even when criminal sanctions apply.
- Even though perceptions of the likelihood of enforcement do increase when business respondents are told that cartel conduct is a criminal offence, overall the survey results suggest that many business people do not know (without being told) that cartel conduct is a criminal offence. Some do not even know it is a civil contravention. This low level of knowledge suggests that in real life many business people will tend to perceive the likelihood of enforcement against cartel conduct as low.
- Business respondents generally rate the likelihood of a hypothetical third person or themselves actually engaging in cartel conduct as fairly low, but there are still substantial numbers who report that engaging in cartel conduct would be likely in certain circumstances. In particular:
 - half of the business respondents report that a hypothetical person would be likely or very likely to engage in cartel conduct where only civil sanctions are available, and nearly one third still see cartel conduct by a hypothetical person as likely where criminal sanctions are available;
 - almost one in ten business respondents report that they themselves would be likely to engage in cartel conduct if the opportunity presented itself – even where criminal sanctions are available.
- Business people’s ratings of the likelihood of themselves or another person engaging in cartel conduct are lower when the respondent knows the conduct is criminal than when they know it is only a civil contravention. But, as mentioned above, the survey also shows that knowledge that cartel conduct is a criminal offence is in fact quite low. Therefore many

business people might still have a tendency to engage in cartel conduct if the opportunity arises, not knowing that it is a criminal offence.

- Preliminary analysis of the survey results suggests that business people are more likely to engage in cartel conduct when they are under economic pressure to do so, even though they know that criminal sanctions are available for such conduct. That is, knowing about criminal sanctions and the availability of jail may not outweigh economic pressure to engage in cartel conduct. Further analysis is necessary to test the robustness of this result.
- Not surprisingly, business respondents are more likely to rate another person as likely to engage in cartel conduct, than they are to rate themselves as likely to engage in such conduct. It is likely, however, that to some extent at least respondents' ratings of what another person is likely to do in fact reflect their own tendencies.
- Moreover business respondents see other business people as influenced by deterrence (that is the likelihood of enforcement) in making decisions about engaging in cartel conduct. They do not see themselves as influenced by likelihood of enforcement in deciding whether to engage in cartel conduct to the same extent as other people. It therefore seems likely that business people like to think of themselves as making decisions about engaging in cartel conduct on an ethical basis (in relation to the morality or harm of the conduct), rather than making a calculated decision about the costs and gains of non-compliance with anti-cartel law (on the basis of perceptions of the likelihood of deterrence). This is consistent with the survey findings that suggest that members of the public generally view cartel conduct through a moral rather than an economic lens.

1. INTRODUCTION

This survey has been undertaken in connection with a research project (The Cartel Project) that investigates various aspects of the criminalisation of cartel conduct in Australia. In section 1 of the Report we set out the background to cartel criminalisation in Australia (section 1.1) and explain the aims and components of The Cartel Project (section 1.2). We also set out why we decided to undertake this survey as part of The Cartel Project and, in particular, why we regard empirical evidence of public opinion on cartel criminalisation as relevant from various perspectives (section 1.3). The scope of the survey, as determined by the questions we were seeking to answer, is explained (section 1.4), and finally there is a note on the purpose and scope of this report (section 1.5).

1.1 BACKGROUND – CARTEL CRIMINALISATION IN AUSTRALIA

On 24 July 2009 the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* took effect, amending the *Trade Practices Act 1974* (Cth) (TPA)¹ and thereby introducing cartel offences and criminal sanctions for cartel conduct in Australia.² In broad terms, the offences relate to conduct involving price fixing, output restriction, market allocation and bid rigging.³ Liability attaches to both corporations and individuals. Upon conviction, corporate sanctions include fines with substantial maxima (the greatest of AU\$10 million, three times the gain derived from the offence or 10% of annual corporate group turnover over a 12 month period) and individual sanctions include a maximum jail sentence of 10 years.

In line with an international movement towards tougher sanctions for such conduct⁴, criminalisation was introduced on the basis that cartel conduct is seen as causing or having the potential to cause significant harm to Australia's economy and consumer welfare.⁵ Cartel conduct is regarded as anathema to competitive markets. It has been shown to raise prices

¹ From 1 January 2011, the TPA will be renamed the *Competition and Consumer Act 2010* (Cth).

² See Pt IV, Div 1 of the TPA (the offences are in ss 44ZZRF-44ZZRG).

³ See the definition of a 'cartel provision' in s 44ZZRD. This definition is based broadly on the definition adopted by the OECD in 1998 regarding the types of cartel conduct that should attract the toughest sanctions (labelled 'hard core' cartel conduct). See Organization for Economic Co-operation and Development, *Recommendation of the Council concerning Effective Action against Hard Core Cartels*, C(98)35/FINAL (14 May 1998).

⁴ See generally C Beaton-Wells and A Ezrachi, 'Cartel Criminalisation: Why Critical Studies?' in C Beaton-Wells and A Ezrachi, *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, Hart Publishing, 2011, ch. 1; C Harding, 'Business Collusion as a Criminological Phenomenon: Exploring the Global Criminalisation of Cartels' (2006) 14 *Critical Criminology* 181.

⁵ See Commonwealth, *Parliamentary Debates*, House of Representatives, 3 December 2008, 12 309, (Chris Bowen, Minister for Competition Policy and Consumer Affairs and Assistant Treasurer).

artificially, reduce consumer choice and impede business responsiveness and innovation.⁶ Driven by concern particularly about the damage caused by cross-border cartels, the international enforcement agency network has made tougher anti-cartel law and enforcement a top priority over the last decade.⁷ The campaign for criminal sanctions has been led by the United States in particular, based primarily on the view that individual accountability through incarceration is the most effective means of deterring and punishing cartel conduct.⁸

In Australia, the campaign for criminalisation was instigated in 2001 and led by the competition authority, the Australian Competition and Consumer Commission (ACCC).⁹ Its submission in support of criminalisation to an independent review committee ('the Dawson Committee') was accepted in 2003.¹⁰ The then conservative government in turn accepted the Dawson Committee's recommendation in favour of the criminal reform.¹¹ A working party was convened to examine the significant definitional and policy-related issues identified by the Dawson Committee and having considered the working party's report,¹² the Treasurer announced legislative proposals in 2005.¹³

The debate stalled over the next two years.¹⁴ It was revived by the imposition of record-breaking cartel-related penalties on one of Australia's largest manufacturing companies, Visy Ltd, accompanied by a public apology by Visy Chairman, billionaire Richard Pratt, in November 2007.¹⁵ In January 2008, the newly elected Labor government released an exposure draft bill for comment.¹⁶ Months of consultation and debate concerning technical aspects of the legislative

⁶ Organization for Economic Co-operation and Development, *Report on the Nature and Impact of Hard Core Cartels and Sanctions Against Cartels*, 9 April 2002; J Connor, A Foer and S Udwin, 'Criminalizing Cartels: An American Perspective' (2010) 1(2) *New Journal of European Criminal Law* 199, 200-202.

⁷ See International Competition Network, 'Trends and Developments in Cartel Enforcement' (Paper presented at the 9th Annual ICN Conference, Istanbul, Turkey, 29 April 2010).

⁸ See eg, S Hammond, *Charting New Waters in International Cartel Prosecutions*, Presentation to the 20th Annual National Institute on White Collar Crime, ABA Criminal Justice Section and ABA Center for Continuing Legal Education, San Francisco (Mar. 2, 2006) at 2; S Hammond, *The Evolution of Criminal Antitrust Enforcement over the Last Two Decades*, Presentation to the 24th Annual National Institute on White Collar Crime, ABA Criminal Justice Section and ABA Center for Continuing Legal Education, Florida (Feb. 25, 2010) at 4, 6-9.

⁹ See C Beaton-Wells, 'Criminalising Cartels: Australia's Slow Conversion' (2008) 31 *World Competition: Law & Economics Review* 205.

¹⁰ Trade Practices Review Committee, *Review of the Competition Provisions of the Trade Practices Act* (2003) 161-162.

¹¹ Treasurer, 'Commonwealth Government Response to the Review of the Competition Provisions of the Trade Practices Act 1974' (2003).

¹² Treasurer, 'Working Party to Examine Criminal Sanctions for Cartel Behaviour' (Press Release, 3 October 2003).

¹³ Treasurer, 'Criminal Penalties for Serious Cartel Behaviour' (Press Release, 2 February 2005).

¹⁴ See the account in C Beaton-Wells, 'The Politics of Cartel Criminalisation: A Pessimistic View from Australia' (2008) 3 *European Competition Law Review* 185.

¹⁵ See *Australian Competition and Consumer Commission v Visy Industries Holdings Pty Ltd [No 3]* (2007) 244 ALR 673.

¹⁶ See Treasury, 'Criminal penalties for serious cartel conduct: Draft Legislation' (11 January 2008).

and policy framework ensued. A revised exposure draft bill was released in October 2008.¹⁷ The final bill was introduced to Parliament in December 2008. A subsequent inquiry was held by the Senate Economics Committee which reported in February 2009 with the recommendation that the bill be passed unamended.¹⁸ Following amendments instigated by the government, the bill was passed on 26 June 2009 and took effect on 24 July 2009.

1.2 ABOUT THE CARTEL PROJECT

Criminalisation represents a major change in Australia's approach to cartel regulation. Since its enactment, the TPA has imposed civil sanctions only on anti-competitive conduct, including breaches of the cartel prohibitions. Despite substantial increases in the pecuniary penalty maxima on two occasions over the last 30 years, penalty levels have remained low.¹⁹ The introduction of cartel offences with penalties that are high by international standards for cartel conduct,²⁰ as well as by domestic standards for other business-related offences,²¹ is thus a dramatic development. Despite this, debate about the justifications for and likely effects of criminalisation has been shallow. Instead attention has focussed largely on the design of the legislation and the institutional framework governing enforcement.²²

The Cartel Project is an interdisciplinary empirical research project that is concerned to:

- investigate how and why criminalisation of serious cartel conduct has become bipartisan policy in Australia;
- assess the likely impact of criminalisation on deterrence and compliance with the law; and
- compare criminalisation policy and enforcement in overseas jurisdictions, with particular focus on the United States and the United Kingdom.

¹⁷ See Treasury, 'Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008' (27 October 2008).

¹⁸ Senate Standing Committee on Economics, *Report on the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008* (2009).

¹⁹ See C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, Cambridge University Press, 2011, ch 11, section 11.3.

²⁰ Other jurisdictions that have a maximum jail sentence of 10 years for cartel offences are the US and Mexico. There is only one jurisdiction with a higher maximum – Canada, where the maximum is 14 years.

²¹ Under the *Corporations Act 2001* (Cth) the offences of market manipulation (s 1041A), market rigging (ss 1041B and 1041C) and insider trading (s 1043A) all carry a maximum of five years imprisonment. Notably, however, shortly after passage of the cartel legislation, proposals to increase these maxima to 10 years were announced: see C Bowen, 'Greater Powers to the Corporate Regulator to Pursue Market Misconduct' (Media Release No 008, 28 January 2010). These increased penalties were incorporated into the Corporations Amendment (No 1) Bill 2010 (Cth). The Bill was introduced into Parliament on 24 June 2010. However it did not complete its passage into legislation before the calling of a Federal election and the proroguing of Parliament. It remains to be seen whether the Bill, in its current or a revised format, will be re-introduced and become law.

²² For an outline of the key technical debates that attended the process of legislative design, see C Beaton-Wells, 'Australia's Criminalisation of Cartels: Will It Be Contagious?' in R Zach, AHeinemann and A Kellerhals (eds), *The Development of Competition Law: Global Perspectives*, Academic Society for Competition Law Series, Edward Elgar, Cheltenham, UK, 2011.

The Cartel Project is funded by a three year (2009-2011) grant by the Australian Research Council. Led by Associate Professor Caron Beaton-Wells of the Melbourne Law School, University of Melbourne, the other researchers on the project team are Associate Professor Christine Parker (Melbourne Law School, University of Melbourne – compliance and regulation), Associate Professor Fiona Haines (School of Political and Social Sciences, University of Melbourne – criminology and regulation) and Professor David Round (Centre for Regulation and Market Analysis, University of South Australia – competition law and economics). Research and administrative assistance have been provided by Janette Nankivell and statistical assistance by Chris Platania-Phung, both of the University of Melbourne.

The Cartel Project has several components, of which the survey that is the subject of this report is one. Other components include:

- a detailed legal, practical and policy analysis of the new legislative scheme governing the regulation of cartel conduct in Australia, highlighting issues arising from the past 30 years of experience as well as issues arising from the 2009 amendments;²³
- a series of interviews with people previously involved in enforcement action brought by the ACCC for cartel conduct to obtain insights into the complex motivations and factors influencing engagement in such conduct, the impact of enforcement action and the potential effects of the shift to criminal prosecution and sanctions;²⁴
- a series of interviews with ‘stakeholders’ (encompassing government, enforcement agencies, business and consumer organisations, the legal profession, judges and the media) in Australia and the United Kingdom to obtain insights into the impetuses for cartel criminalisation, the challenges involved in criminal enforcement, and the likely effects – both in terms of cartel regulation and more broadly in terms of relationships between key constituencies in this field.²⁵

The Cartel Project aims to:

- generate awareness and understanding of the issues involved in this major policy change;
- provide important practical input to the implementation and enforcement of a criminal cartel regime, and the enforcement of competition law more generally;
- contribute to the effectiveness ultimately of criminalisation in reducing serious cartel conduct in Australian industry; and

²³ The results of this analysis are published in C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, Cambridge University Press, 2011.

²⁴ The results of this analysis are to be published in a separate report in the first half of 2011.

²⁵ The interviews with UK stakeholders were undertaken in 2009 (for a list of interviewees, see <http://cartel.law.unimelb.edu.au/go/project-news/uk-stakeholder-interviews>). The Australian stakeholders interviews have been begun and will be completed in 2011.

- inform current policy debates about the nature, process and effectiveness of regulatory reform generally, and about competition policy and business regulation particularly.

Further information about the Cartel Project – the team members, activities and outputs to date – is available at the Project website: <http://www.cartel.law.unimelb.edu.au>.

1.3 WHY A SURVEY OF PUBLIC OPINION ON CARTEL CRIMINALISATION?

1.3.1 THE RELEVANCE OF PUBLIC OPINION

The debate in relation to cartel criminalisation in Australia (as elsewhere in the world) has been dominated by legal and economic policymakers, enforcement officials, practitioners and academics. In this sense, it has been an elite debate, special to an ‘epistemic community’²⁶ interested in this highly specialised and technical area of the law and economic regulation. To some extent this is to be expected. Questions relating to the justification for and design of a criminal cartel regime are complex questions of legal-economic policy, statutory drafting and enforcement process.²⁷ They do not lend themselves readily to engagement with the views of the broader public.

Nevertheless, public perceptions of and attitudes towards cartels, anti-cartel law, competition law more generally and its enforcement should not be excluded from the discourse about cartel criminalisation. There are at least nine reasons why public opinion regarding cartel conduct and its treatment as a criminal offence and associated issues warrant study:

1. from the perspective of legal or moral philosophy, public support for the treatment of behaviour as an offence is seen as important to the integrity and coherence of the criminal law;²⁸
2. from the perspective of criminal justice policy insofar as it is concerned with cultivating compliance or deterring non-compliance, consistency between the standards imposed by

²⁶ M Drahos and F van Waarden, ‘Courts and (epistemic) communities in the convergence of competition policies’ (2002) 9 *Journal of European Public Policy* 913; S Wilks, ‘Competition Policy’ in W Grant, D Coen and G Wilson (eds) *The Oxford Handbook of Business and Government* (Oxford, Oxford University Press, 2010) 747.

²⁷ By way of illustration, see the analysis in C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, 2011, Cambridge University Press – for example, Ch 4 (on Cartel and Other Provisions) and Ch 8 (on Exceptions).

²⁸ See, eg, J Silvey, ‘The Criminal Law and Public Opinion’ (1961) *Criminal Law Review* 349; J Coffee, ‘Paradigms Lost: the Blurring of the Criminal and Civil Law Models – And What Can Be Done About It’ (1992) 101 *Yale Law Journal* 1875; P Robinson and T Darley, *Justice, Liability and Blame: Community Views and The Criminal Law*, 1996, Westview Press; R Williams, ‘Cartels in the Criminal Law Landscape’, in C Beaton-Wells and A Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, 2011, Hart Publishing, ch 13.

the criminal law and public opinion is seen as important if the law is to be effective in influencing behaviour;²⁹

3. from the perspective of enforcement policy, public opinion may be seen as relevant to assessing whether the public interest warrants prosecution of conduct (as distinct from treating it as a civil contravention or responding in some other way) and to determining the priority that is given as a matter of resources to any such prosecution;³⁰
4. from the perspective of both prosecutorial and defence strategy, public awareness and perceptions of the conduct in question may be seen as relevant in predicting jury responsiveness and attitudes towards particular types of evidence and lines of argument;³¹
5. from the perspective of sentencing policy and practice, public opinion may be seen as relevant to assessing appropriate types and levels of sanctions for different categories of conduct as well as in individual cases;³²
6. from the perspective of the outreach strategy of competition authorities in relation to cartels and competition law and enforcement generally, levels of public awareness of and opinion on cartel conduct are relevant to determining the appropriate level and content of and medium for outreach messages;
7. from the perspective of political support, public opinion may be seen as relevant in government decision-making about the nature and degree of powers and funding made

²⁹ See, eg, J Andeneas, 'The Moral or Educative Influence of Criminal Law' (1971) 27 *Journal of Social Issues* 17; P Robinson, 'The Utility of Desert' (1997) 91(2) *Northwestern University Law Review* 453; T Tyler, *Why People Obey the Law*, 2006, Princeton University Press, 2nd edn.

³⁰ See the role of the 'public interest' in Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth*, 2008, [2.8] and in the Australian Competition and Consumer Commission, *Compliance and Enforcement Policy*, 2009.

³¹ Such strategies should not be based on simplistic assumptions about jury hostility to or support for large corporations or senior executives, for example. There is a considerable body of research that suggests such assumptions are flawed: see, eg, V Hans, 'The Illusions and Realities of Jurors' Treatment of Corporate Defendants' [1998] 48 *DePaul Law Review* 327; V Hans, 'The Jury's Response to Business and Corporate Wrongdoing' (1989) 52(4) *Law and Contemporary Problems* 177; V Hans, *Business on Trial: the Civil Jury and Corporate Responsibility*, Yale University Press. Assumptions of jury incompetence in dealing with business issues or complex expert evidence are also problematic: see, eg, N Vidmar and S Diamond, 'Juries and Expert Evidence' [2001] 66 *Brooklyn Law Review* 1121; R Lempert, 'Civil Juries and Complex Cases: taking Stock after Twelve Years' in R Litan (ed), *Verdict: Assessing the Civil Jury System*, 1993, 181.

³² For an overview of the research on the role of public opinion in sentencing policy and practice, see J Roberts, 'Sentencing policy and practice: the evolving role of public opinion' in A Freiberg and K Gelb, *Penal populism, Sentencing Councils and Sentencing Policy*, 2008, Willan Publishing, ch 2, p. 15. The increasing value placed on public opinion and public confidence in the criminal justice system generally and sentencing specifically is reflected in the proliferation of sentencing councils, commissions and other advisory bodies, a key mandate of which is to ensure that community views are incorporated into the sentencing process. For a review of such developments around the world, see A Freiberg and K Gelb, *Penal populism, Sentencing Councils and Sentencing Policy*, 2008, Willan Publishing.

available to enforcement agencies, as well as in government resistance to potential lobbying by business groups interested in undermining enforcement efforts;³³

8. from a comparative perspective, evidence of public opinion in one country may facilitate comparisons of the impetuses generally and, in particular, levels and kinds of popular support for criminal cartel enforcement as between that country and other countries;
9. from an international perspective, this in turn may enable assessments to be made of the extent to which criminalisation should be analysed in terms of international convergence in competition policy and enforcement or whether should be treated essentially as a local phenomenon.³⁴

1.3.2 THE NEED FOR AN EMPIRICAL APPROACH IN ASCERTAINING PUBLIC OPINION

In general discourse, statements about ‘the public’ and ‘public opinion’ are common, and are to be treated with caution.³⁵ Rarely is the scope or basis for such statements articulated or clarified. Moreover, ‘the public’ is a problematic term. There is significant debate amongst political and social theorists regarding the construct and whether it exists in any meaningful sense at all.³⁶ The concept of ‘public opinion’ is equally complex. There are debates, for example, surrounding distinctions between public ‘opinion’, public ‘attitudes’ and public ‘judgment’.³⁷ Integral to such debates are questions such as whether public ‘opinion’ is instinctive or informed, rational or intuitive, simplistic or sophisticated, punitive or pragmatic.³⁸

Despite these difficulties, so-called ‘public opinion’ and variants thereon (such as ‘community sentiment’) are frequently invoked – particularly by politicians – in support of law reforms that

³³ See C Parker, ‘The ‘Compliance Trap: The Moral Message in Responsive Regulatory Enforcement’ (2006) 40(3) *Law & Society Review* 591.

³⁴ See A Ezrachi and J Kindl, ‘Cartels as Criminal? The Long Road from Unilateral Enforcement to International Consensus’ in C Beaton-Wells and A Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, 2011, Hart Publishing, ch 19.

³⁵ T Miethe, ‘Public Consensus on Crime Seriousness: Normative Structure or Methodological Artifact?’ (1982) *Criminology* 515; P Roberts, ‘Public opinion, crime and criminal justice’ in M Tonry (ed), *Crime and Justice: An Annual Review of Research*, 1992, Vol. 16, University of Chicago Press, Chicago.

³⁶ W Lippmann, *The Phantom Public*, 1927, Macmillan, New York; B Robbins (ed), *The Phantom Public Sphere*, 1993, University of Minnesota Press, Minneapolis, 1; J Habermas, *The Structural Transformation: An Inquiry into a Category of Bourgeois Society*, 1989, MIT Press, Cambridge; C Calhoun (ed), *Habermas and the Public Sphere*, 1992, MIT Press, Cambridge.

³⁷ See, eg, G Maassen, ‘An application of structural equation modelling in public opinion research: conceptualising public and opinions’ (1997) 2 *International Journal of Public Opinion Research* 146; D Yankelovich, *Coming to Public Judgment: Making Democracy Work in a Complex World*, 1991, Syracuse University Press; J Roberts and M Hough, *Understanding Public Attitudes to Criminal Justice*, 2005, Open University Press, UK.

³⁸ See, eg, D Green, ‘Public opinion versus public judgment about crime: Correcting the “comedy of errors”’ (2006) 46 *British Journal of Criminology* 131; P Almond, ‘Public Perceptions of Work-Related Fatality Cases: Reaching the Outer Limits of “Populist Punitiveness”?’ (2008) 48 *British Journal of Criminology* 448; A Durham, ‘Public opinion regarding sentences for crime: Does it Exist?’ (1993) 21(1) *Journal of Criminal Justice* 1; D McKillop and E. Helmes, ‘Public Opinion and Criminal Justice: Emotion, Morality and Consensus’ (2003) 10(1) *Psychiatry, Psychology and Law* 210.

involve a more punitive or intrusive approach to regulating behaviour.³⁹ The phenomenon of ‘popular punitiveness’,⁴⁰ as adopted by policymakers and legislators, has attracted a long tradition of empirical social science research. In particular, since the 1960s,⁴¹ public perceptions about the nature and seriousness of criminal behaviour have been an important area of empirical study.⁴² These studies have shown consistently that public opinion on issues relating to crime and criminal justice is far more complex and nuanced than presumptions of penal populism would suggest.⁴³

1.3.3 LACK OF EMPIRICAL EVIDENCE OF PUBLIC OPINION ON CARTEL CRIMINALISATION

There is no reliable empirical evidence of public opinion in Australia in relation to cartel conduct or associated topics. In September 2002, following a press statement by the then Chairman of the ACCC, Professor Allan Fels AO, in favour of jail sentences for executives involved in ‘hard core collusion’, the market research company Roy Morgan, conducted a telephone poll of 682 Australian electors aged 14 years or over.⁴⁴ Respondents were told:

Next, about the ACCC and Professor Allan Fels. The ACCC enforces the Trade Practices Act, which promotes competition, fair trading and consumer protection. Professor Allan Fels recently proposed changes to the Trade Practices Act which would allow jail terms to be imposed on individual executives and employees

³⁹ S Casey and P Mohr, ‘Law-and-Order Politics, Public Opinion Polls and the Media’ (2005) 12(1) *Psychiatry, Psychology and the Law* 141.

⁴⁰ A phrase coined by Bottoms to capture the practice of politicians ‘tapping into and using for their own purposes what they believe to be the public’s generally punitive stance’: see A Bottoms, ‘The Philosophy and Politics of Punishment and Sentencing’ in C Clark and R Morgan (eds) *The Politics of Sentencing Reform*, 1995, Oxford, Clarendon Press.

⁴¹ Starting with T Sellin and M Wolfgang, *The Measurement of Delinquency*, 1964, Wiley, New York.

⁴² See generally, S Stylianou, ‘Measuring crime seriousness perceptions: What have we learned and what else do we want to know’ (2003) 31 *Journal of Criminal Justice* 37. Crime seriousness surveys are predated, of course, by opinion polls administered by media organisations. These polls date back to the 1930s when they were pioneered by George Gallop (for a historical account, see F Fishkin, *The Voice of the People: Public Opinion and Democracy*, 1995, Yale University Press, New Haven), pp.76-80. Since then they have taken on a range of forms and have become a ubiquitous feature of western political and social life, carrying significance disproportionate to their scientific rigour. For a useful critique, see D Green, ‘Public opinion versus public judgment about crime: Correcting the “comedy of errors”’ (2006) 46 *British Journal of Criminology* 131.

⁴² See, eg, D Green, ‘Public opinion versus public judgment about crime: Correcting the “comedy of errors”’ (2006) 46 *British Journal of Criminology* 131; P Almond, ‘Public Perceptions of Work-Related Fatality Cases: Reaching the Outer Limits of “Populist Punitiveness”?’ (2008) 48 *British Journal of Criminology* 448; A Durham, ‘Public opinion regarding sentences for crime: Does it Exist?’ (1993) 21(1) *Journal of Criminal Justice* 1; D McKillop and E. Helmes, ‘Public Opinion and Criminal Justice: Emotion, Morality and Consensus’ (2003) 10(1) *Psychiatry, Psychology and Law* 210.

⁴³ See, eg, D Green, ‘Public opinion versus public judgment about crime: Correcting the “comedy of errors”’ (2006) 46 *British Journal of Criminology* 131; P Almond, ‘Public Perceptions of Work-Related Fatality Cases: Reaching the Outer Limits of “Populist Punitiveness”?’ (2008) 48 *British Journal of Criminology* 448; A Durham, ‘Public opinion regarding sentences for crime: Does it Exist?’ (1993) 21(1) *Journal of Criminal Justice* 1; D McKillop and E. Helmes, ‘Public Opinion and Criminal Justice: Emotion, Morality and Consensus’ (2003) 10(1) *Psychiatry, Psychology and Law* 210; J V Roberts and L J Stalans, *Public Opinion, Crime and Criminal Justice*, Westview Press, 1997; D Garland, *Culture of Control: Crime and Social Order in Contemporary Society*, 2001, Chicago, University of Chicago Press.

⁴⁴ Roy Morgan, ‘Majority of Australians Agree Executives Should be Jailed For Collusion’, Morgan Special Poll, finding 3555, 18 September 2002 <<http://www.roymorgan.com/news/polls/2002/2555/index>> (last viewed 11 March 2007).

found to be personally involved in such things as hard-core collusion, including secret price fixing, competitive bid rigging, and other activities that corrupt normal business competition.

Respondents were then asked:

Do you agree or disagree that the Trade Practices Act should be changed to allow jail sentences to be imposed on offenders?'

87% agreed, 6% disagreed, 7% could not say. When asked why they agreed with the proposal, the main reasons given by respondents (as summarised and interpreted by the pollster) 'centred around the belief that executives should be responsible and accountable for their actions, just as all other members of the community are.' There was also said to be a 'very strong sentiment that white-collar crime should be treated the same as any other and that such crime goes relatively unpunished.' Respondents were said not only to see collusion as 'wrong' but also to be concerned about the 'victims' (apparently identified as the consuming public). The view that fines did not pose a sufficient deterrent, and that the prospect of jail 'will make them think twice', was also said to be prevalent.

For those who disagreed with the proposal, the main reasons were identified as 'the perception that jail sentences should be reserved for more serious crimes', the concern that 'such laws would prevent people from running their business productively' and that 'jail sentences would simply be 'a waste of tax payers' money.'

The results of this poll should not be relied upon for the purposes of gauging public support in Australia for or views on cartel criminalisation. The sample size appears small, the age range too young (including a 14-17 age bracket) and there is no indication given as to its representativeness. Further, from the point of view of obtaining a representative sample, a telephone survey has certain limitations. It is difficult to find a time convenient to respondents. Many members of the public refuse to answer survey questions over the phone. Respondents may not understand the question or may feel rushed or pressured and this may not be discerned by the interviewer.⁴⁵ More significantly perhaps, there appears to have been no screening of respondents for understanding of the TPA, the role of the ACCC, or the activities referred to as 'hard core collusion' and their effects.

The information provided to respondents about these matters in the lead-up to the polling question was extremely limited and the question itself required consideration of a complex issue involving multiple variables. It is also material that the poll was carried out shortly after Fels' announcement which would have attracted significant attention in the mainstream media.⁴⁶ The fact that it was Fels making the call for jail terms may well also have coloured respondents' views

⁴⁵ See L Oksenberg and C Cannell, 'Effects of Interviewer Vocal Characteristics on Non-response' and L Stokes and Y Ming-Yih, 'Searching for Causes of Interviewer Effects in Telephone Surveys' in R Groves et al, *Telephone Survey Methodology* (John Wiley & Sons, 1988) 257, 357.

⁴⁶ See, e.g. Editorial, 'Jail will deter: Fels' Herald Sun (Melbourne), 13 September 2002, 7; A Fraser, 'Global threat to consumers ± Fels' The Australian (Sydney), 17 September 2002, 5; F Anderson and M Hart 'Corporate Crooks in firing line of action' The Courier Mail (Brisbane), 17 September 2002, 23.

given his positive and high public profile.⁴⁷ Furthermore, both the lead-up information (referring to ‘hard core’, a phrase more commonly associated with pornography or drugs and to ‘other activities that corrupt normal business competition’) and the question itself (referring to ‘offenders’) were value-laden and leading in nature, tantamount to asking ‘Should politicians be paid more?’ or ‘Should criminals be given tougher sentences?’

To our knowledge, there has been only one other survey of public opinion in relation to cartel conduct.⁴⁸ That was a survey of the British public undertaken by the Economic & Social Research Council Centre for Competition Policy in the United Kingdom in March 2007.⁴⁹ The UK survey was undertaken online in March 2007 by YouGov Plc, a British internet-based market research firm, on behalf of the CCP. It involved a representative sample of 1,219 British residents aged 18 or over. These survey results appear to suggest considerable British support for the punishment of serious cartel conduct (at least for price fixing, that being the activity at which most questions in the survey were directed).⁵⁰ However, beyond this, there is substantial ambiguity as to why and how such conduct should be punished. On the ‘‘why’’ issue, there is ambiguity particularly in relation to the grounds on which people hold the belief that punishment is warranted.⁵¹

There are also difficulties in applying the findings of the UK survey in the Australian context. The elements of the cartel offence under the *Enterprise Act 2002* differ in significant respects to the Australian offences – not least the former has an element of dishonesty that the latter do not.⁵² There are additional differences in the legal framework – for example, criminal liability applies only to individuals in the UK, whereas it applies both to corporations and individuals in Australia. It should also be borne in mind that active enforcement of cartel prohibitions and the imposition of penalties are relatively new to the UK,⁵³ whereas in Australia the ACCC has a strong track

⁴⁷ See generally the account in F Brenchley, *Allan Fels A Portrait of Power* (John Wiley & Sons Australia Ltd, 2003).

⁴⁸ There have been studies of media coverage of cartel cases, however, using media coverage as a proxy for levels of public engagement. See, eg, A Stephan, ‘The Battle for Hearts and Minds’: The Role of the Media in Treating Cartels as Criminal’ in C Beaton-Wells and A Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, 2011, Hart Publishing, ch 17; D Sokol, ‘Neo-Chicago Antitrust, Cartel Enforcement and Corporate Compliance’, *Antitrust Law Journal* (2011) (forthcoming).

⁴⁹ A Stephan, ‘Survey of Public Attitudes to Price-Fixing and Cartel Enforcement in Britain’ (2008) 5 *Competition Law Review* 123.

⁵⁰ A majority of respondents (73 %) recognised that price fixing is harmful and considered that it should be punished.

⁵¹ The key question which elicited support for the punishment of price fixing combined belief as to harm, with belief that the practice should be punished. A similar connection between belief as to dishonesty and support for punishment was not drawn or elicited in the survey. Hence, it is difficult to reach conclusions as to whether punishment is regarded as justified based on the harmfulness of price fixing and/or based on a view that it is dishonest.

⁵² For reflections on this difference, see A MacCulloch, ‘The Cartel Offence: Is Honesty the Best Policy?’ in BJ Rodger (ed), *Ten Years of Competition Law Reform* (Dundee, Dundee University Press, 2010) 283. For a critique of the element in the UK offence, eg, J Joshua, ‘D.O.A.: Can the UK Cartel Offence be Resuscitated?’ in C Beaton-Wells and A Ezrachi (eds), *Criminalising Cartels: Critical Studies of International Regulatory Movement*, 2011, Hart Publishing, ch 6. For background on the proposal and reasons as to why it was desirable not to have such an element in the Australian offence, see C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, 2011, Cambridge University Press, ch 2, section 2.4.1.

⁵³ See generally B Rodger and A MacCulloch, *Competition Law and Policy in the EC and UK*, Routledge Cavendish, 4th ed, Ch 2.

record of bringing legal proceedings and securing penalties against participants in cartel conduct for over 20 years.

1.4 SCOPE OF THE SURVEY

The Cartel Project survey was designed with a view to collecting empirical evidence on a range of aspects of public opinion concerning cartel criminalisation. In particular, the survey was addressed to the following broad questions:

- how the public considers cartel conduct should be treated as a matter of law, that is, whether the public considers that cartel conduct should be treated as legal or illegal and, to the extent that it is considered that such conduct should be treated as illegal, whether the public considers that cartel conduct should be treated as a criminal offence;
- the reasons why the public considers that cartel conduct should be treated as a criminal offence, with a view to exploring particularly the extent to which these reasons relate to the economic effects of the conduct, its moral character, and/or the instrumental features of the criminal law (for example, its deterrence capacity);
- whether the public considers that companies or individuals or both companies and individuals should be penalised for cartel conduct;
- what types of penalties and remedies the public considers should apply to companies and individuals responsible for cartel conduct and what the maximum level of such penalties (for example, fines or jail sentences) should be;
- the extent to which public views on cartel conduct – particularly whether it should be treated as a criminal offence and whether individuals should be jailed for it – are related to:
 - prior awareness of competition or cartel law-related topics;
 - public attitudes towards the trustworthiness of business;
 - public attitudes towards the value of competition;
 - demographic factors, such as gender, age, status and type of employment, level of education, political affiliation and the like;
- the extent to which public perceptions about the seriousness of cartel conduct are affected by different aspects or effects of the conduct, with a view to exploring particularly whether there are factors that the public regard as aggravating or mitigating of the seriousness of the conduct;
- how public compares cartel conduct to a range of other criminal offences in terms of seriousness;
- whether the public supports the ACCC's Immunity Policy for Cartel Conduct.

The relevance of such questions generally is explained in section 1.3.1 above. As noted in that section, one of the perspectives from which public opinion is relevant is the perspective of

cultivating compliance (or deterring non-compliance) with Australia's anti-cartel laws. In light of this, the survey was designed so as to enable the potential effects of criminal sanctions on compliance (or deterrence) to be tested specifically on a group of respondents who were likely in their work life to be involved in activity (for example, in setting prices or production levels or tendering for contracts) to which the anti-cartel laws apply (this group of respondents is referred to as the 'Business group' from hereon). The survey design assumes that in order for criminalisation of cartel conduct to have an effect on cartel behaviour, first business people must know about the law, second they must perceive enforcement of the law as likely and third they must respond by deciding not to engage in cartel conduct when the opportunity presents itself. Therefore in relation to the Business group, the survey was addressed to the following broad questions:

- the extent of knowledge of the law among business people, that is, whether business people know that cartel conduct is against the law, whether they know that it is a criminal offence, and whether they know what penalties are available for cartel conduct including jail;
- the perceived likelihood of enforcement of anti-cartel laws among business people, that is the extent to which business people perceive it as likely or unlikely that:
 - those who engage in cartel conduct will be found out;
 - if they are found out that legal action will be taken against them;
 - if legal action is taken against them and they are found guilty, that they will be jailed;
- the extent to which the perceived likelihood of enforcement increases where criminal sanctions are available compared with where only civil sanctions are available;
- how likely it is that business people would engage in cartel conduct where only civil sanctions are present and the extent to which this changes when criminal sanctions are present;
- the extent to which likelihood of engaging in cartel conduct varies when there is economic or social pressure on a business person to engage in cartel conduct.

Business people's opinions about whether cartel conduct should be illegal and criminal and whether it is immoral may also affect whether or not they comply with anti-cartel laws. Therefore, rather than asking the Business group to complete a separate survey with different questions, we asked the Business group to fill in the same survey as the general public (including all the questions about attitudes and opinions relevant to the criminalisation of cartel conduct) and to fill out an additional module of questions addressed to the issues outlined above.

The methodology relevant to identifying the Business group is explained in section 2.5.1 below.

1.5 PURPOSE AND SCOPE OF THIS REPORT

The purpose of this report is to communicate to the largest audience possible in Australia and overseas the rationale, methodology and key findings of the survey (the approach taken to the presentation of findings is set out in section 3 of the report). To this end the report is published online at The Cartel Project website (at <http://www.cartel.law.unimelb.edu.au>) and is thereby readily accessible to all. In accordance with the ethics protocols to which the research is subject, a full set of the data from the survey will be deposited within six months of completion of The Cartel Project (by mid-2012) with the [Australian Consortium for Social and Political Research Inc \(ACSPRI\)](#).

The report does not purport to set out exhaustively all of the potential results from the survey. It reports the principal results based on a thorough first round of analyses. Most of the analyses are bi-variate crosstabulations which do not take into account the role of other variables. Further statistical analysis, including multivariate analysis, will be undertaken over time to address this. This analysis may yield additional results that are reported in other sources. For instance, a variety of regression analyses may be conducted to identify the major and independent predictors of views on cartels, and attitudes towards business and competition.

The report does not contain any theoretical, policy or practical analysis of the results. This analysis will follow in other publications by the research team.

The research team welcomes approaches by any stakeholders interested in a briefing on the results and their potential implications. To date the results have been the subject of presentations by Associate Professor Caron Beaton-Wells at:

- the Annual Trade Practices Workshop of the Law Council of Australia (held in Queensland, Australia on 20-22 August 2010);
- the Annual Cartels Workshop of the International Competition Network, at the invitation of the ACCC (held in Yokohama, Japan on 4-7 October 2010);
- a meeting of the senior managers of the ACCC Enforcement and Compliance branch (in Melbourne, on 1 December 2010, with Associate Professor Christine Parker);
- the annual research workshop of the Asian Competition Law and Economics Centre (in Hong Kong on 4 December 2010).

2. METHODOLOGY

As there was no Australian precedent (or sufficiently closely comparable overseas precedent),⁵⁴ it was necessary to construct an entirely novel instrument for the purposes of the survey. That said, certain design features of the instrument (particularly the use of vignettes: see section 2.4.1 below) were influenced by the experience with surveys that have been used in other areas of white collar crime.⁵⁵

An expert social research agency, [The Social Research Centre](#) (principally through its Director of Research, Graham Challice), was engaged to assist in the design and to administer the survey.

Key features of the survey design and methodology are described below. The survey instrument is **Appendix A** to this report. Appendix B provides flow charts of the overall structure and pathways of the survey, as well as the number of respondents who ‘moved through’ the various pathways.

2.1 SURVEY INSTRUMENT – STRUCTURE, FORMAT AND PURPOSES

The survey instrument was divided into seven main sections:

- A. Demographic background
- B. Attitudes towards business
- C. Attitudes towards competition
- D. Attitudes towards cartel conduct
- E. Crime seriousness
- F. Compliance and deterrence
- G. Prior knowledge and comments

The purpose of each of these sections is identified and a brief description of the questions in each of them is given below.

2.1.1 DEMOGRAPHIC BACKGROUND

This section included 16 questions that are standard in population surveys, including questions on gender, age group, education level and work profile. The design of these questions drew heavily on the form of questions used in the Australian census administered by the Australian

⁵⁴ See section 1.3.3 above.

⁵⁵ See Y. Feldman and O. Perez, ‘How Law Changes the Environmental Mind: An Experimental Study of the Effect of Legal Norms on Moral Perceptions and Civic Enforcement’ (2009) 36(4) *Journal of Law and Society* 501. The design of the questions that measure perceptions of likelihood of enforcement and likelihood of engaging in cartel conduct were particularly based on work done by Professor Sally Simpson: see S Simpson, *Corporate Crime, Law, and Social Control*, 2002, Cambridge University Press.

Bureau of Statistics.⁵⁶ In addition, there were questions on the use of different sources to obtain news information and on political orientation.

One of the purposes of the questions in Section A was to elicit demographic information that would enable us to test the representativeness of the survey (see further section 2.5.4 below). Another purpose was to enable us to assess the extent to which views and attitudes expressed in the survey responses, particularly on the questions whether cartel conduct should be a criminal offence and whether individuals should be jailed for it, were related to demographic variables.

A range of work-related questions (relating, for example, to work place size, work role and type of work activity) were included also to identify respondents who were most likely to be involved in activity that could potentially breach the cartel prohibitions under the TPA and hence were also more likely than other respondents to have been aware of the relevant laws and possibly to have been the target of ACCC outreach, enforcement and compliance efforts. These respondents were later directed to additional questions in the second half of the survey (Section F, discussed in section 2.1.6 below).

2.1.2 INTEREST IN AND ATTITUDES TOWARDS BUSINESS

Section B of the survey instrument had two questions.

B1 was a question seeking to ascertain the respondent's level of interest in business issues generally. Respondents were given a scale of 1 to 7, with 1 representing "Not at all interested in business issues" and 7 representing "Very interested in business issues" with prompts at each end of the spectrum to assist respondents in determining their level of interest.

The purpose of this question was to attempt to ascertain the extent to which respondents' answers to subsequent questions regarding the legal status of and consequences for cartel conduct were likely to be influenced by respondent familiarity with business issues (see further the discussion of prior awareness, the subject of Section G of the survey, in section 2.1.7 below).

B2 was a question seeking to elicit attitudinal orientations by respondents in relation to their level of trust or confidence in business. Respondents were given a scale of 1 to 7, with 1 representing the view "I think business can mostly be trusted" and 7 representing the view "I am reluctant to trust business" with prompts at each end of the spectrum to assist respondents in determining their view.

The purpose of this question was to attempt to measure the extent to which views on the core issues under exploration (particularly on whether cartel conduct should be a criminal offence and an offence for which individuals should go to jail) are related to attitudes towards the trustworthiness of business.

It was considered important to test this relationship having regard to the fact that criminalisation advocates in Australia (principally the ACCC and the government) built the case for reform based

⁵⁶ See <http://www.abs.gov.au/websitedbs/D3310114.nsf/Home/Census>.

in large part on exploitation of public cynicism about the trustworthiness of big business.⁵⁷ This strategy was supported by social attitudes research that shows a large proportion of Australians to be concerned that ‘big business should have less power’,⁵⁸ together with evidence that of all the important social institutions that have suffered from declining levels of confidence,⁵⁹ it is Australia’s major companies that have suffered the largest and most sustained fall in public trust over the last 20 years.⁶⁰

2.1.3 ATTITUDES TOWARDS COMPETITION

Section C of the survey instrument had one question (C1) that, like B2 (attitudes towards business) sought to elicit attitudinal orientations by respondents in relation to their view on competition as either healthy or harmful. Again respondents were given a scale of 1 to 7, with 1 representing the view “Competition is healthy” and 7 representing the view “Competition is harmful” with prompts at each end of the spectrum to assist respondents in determining their view.

The purpose of this question was to attempt to measure the extent to which views on the core issues under exploration (particularly on whether cartel conduct should be a criminal offence and an offence for which individuals should go to jail) are related to attitudes towards competition.

It was considered important to test this relationship given that the case for the criminal reform in Australia was premised on acceptance of competition as being in the public interest and criminalisation was thus presented in large part as necessary to protect the economic benefits of competition.⁶¹

2.1.4 ATTITUDES TOWARDS CARTEL CONDUCT

This section had three subsections, each relating to a different type of cartel conduct: price fixing (D1), market allocation (D2) and output restriction (D3). Together with bid rigging, these are the

⁵⁷ See C Beaton-Wells and F Haines, ‘The Australian Conversion: How the Case for Criminalisation was Made’ (2011) *New Journal of European Criminal Law* (forthcoming).

⁵⁸ C Bean, ‘Is There a Crisis of Trust in Australia?’ in S Wilson et al (eds), *Australian Social Attitudes: The First Report* (UNSW Press, 2005), ch 8, 122, 132–3. This is to be contrasted with views in the 1970s and 1980s when people believed that the trade unions had too much power. See I McAllister, *Political Behaviour: Citizens, Parties and Elites in Australia* (Longman Cheshire, 1992).

⁵⁹ E Papadakis, ‘Constituents of Confidence and Mistrust in Australian Institutions’ (1999) 34 *Australian Journal of Political Science* 75; D Burchell and A Leigh (eds), *The Prince’s New Clothes: Why Do Australians Dislike their Politicians?* (UNSW Press, 2002). A similar ‘crisis of confidence’ has been observed in the US, and has generated a substantial literature on the associated concept of social capital: see S Lipset and W Schneider, *The Confidence Gap: Business, Labor and Government in the Public Mind* (The Free Press, 1983); R Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster, 2000).

⁶⁰ E Papadakis, ‘Constituents of Confidence and Mistrust in Australian Institutions’ (1999) 34 *Australian Journal of Political Science* 75, 76; C Bean, ‘Is There a Crisis of Trust in Australia?’ in S Wilson et al (eds), *Australian Social Attitudes: The First Report* (UNSW Press, 2005), ch 8, 122, 131–3.

⁶¹ See C Beaton-Wells and F Haines, ‘The Australian Conversion: How the Case for Criminalisation was Made’ (2011) 4 *New Journal of European Criminal Law* (forthcoming).

types of cartel conduct that have been classified as the most serious forms of collusion warranting the toughest of sanctions by the OECD.⁶² That classification was reflected in the definition of conduct attracting criminal and civil liability under the 2009 amendments to Australia's TPA.⁶³

The decision was made to exclude questions specific to bid rigging from the survey for two reasons. First, from an economic perspective, bid rigging is generally a species of price fixing and/or market allocation. Second, from a practical perspective, it was necessary to find ways to keep the survey to a manageable length (see further section 2.5.5 below on response times).

Each of D1, D2 and D3 adopted the same structure and questions, except that the questions in each related to a different type of conduct. There were 9 questions in each subsection. However, not all respondents answered all 9 questions. The number of questions that they answered was determined by their answers to preceding questions.

Each of the subsections started with a basic factual scenario (or vignette) that described conduct that would be classified at law as price fixing, market allocation or output restriction (as the case may be) (see further the discussion of the vignettes in section 2.4.1 below). They were then asked to respond to a series of questions that were based on the type of conduct described in the scenarios. For price fixing the conduct was referred to thereafter as "an agreement between competitors on prices", for market allocation, it was referred to as "an agreement between competitors to allocate customers" and for output restriction, it was referred to as "an agreement between competitors to reduce production levels".

2.1.4.1 CARTEL CONDUCT AS AGAINST THE LAW

The first question (D1, D2, D3) asked respondents: "Do you think that an agreement between competitors [on prices/to allocate customers/to reduce production levels] should be against the law?" Respondents had the choice of answering:

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Respondents also had the option of providing comments.

The purpose of this question was to measure the extent of agreement by respondents with the legal status of cartel conduct as a civil contravention, the status that has pertained in Australia since 1974. The label 'civil' was avoided as this is a technical term.⁶⁴

⁶² See n 3 above.

⁶³ See s 444ZZRD of the TPA.

⁶⁴ That said, the very low proportion of respondents (no more than 4%) who selected 'I think it should be against the law but not a criminal offence' (in answer to questions D1A, D2A or D3A - see section 2.1.4.2) and also the item 'The individuals should go to

Those respondents who answered “Yes” were directed to the next question. Those who answered “No” or “I’m not sure” were directed to the next subsection (ie, to questions about another type of cartel conduct).

2.1.4.2 CARTEL CONDUCT AS A CRIMINAL OFFENCE

The second question (D1A, D2A, D3A) asked respondents “Do you think that an agreement between competitors [on prices/to allocate customers/to reduce production levels] should be a criminal offence?” Respondents had the choice of answering:

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law but not a criminal offence
3. I’m not sure about whether it should be a criminal offence
4. I’m not sure about the difference between something being a criminal offence and something being against the law

Respondents also had the option of providing comments.

It was decided not to define “criminal offence”. This was essentially because we did not consider it possible to formulate a definition that was sufficiently brief and in lay language without invoking the applicability of jail as a potential sanction as a means of distinguishing criminal from civil liability. We did not want to introduce explicitly the concept of sanctions, and jail in particular, at this point of the survey as we sought to retain the capacity to capture respondents’ views on whether conduct should be labelled as a criminal offence separate from their views on whether conduct should be sanctioned as a criminal offence. This approach reflects the widely recognised distinction drawn in criminal theory and policy between the expressive or communicative function and the instrumental or consequentialist functions of the criminal law.⁶⁵ We were conscious nevertheless that some respondents may not be sure about the distinction between conduct being “against the law” and conduct being a “criminal offence”. Hence, we gave respondents the option of indicating as much.

Those respondents who answered “Yes, I think it should be a criminal offence” were directed to the next question about why cartel conduct should be a criminal offence. Those who selected one of the other 3 options were directed to subsequent questions regarding how the law should deal with companies and individuals involved in cartel conduct.

jail’ (in answer to questions D2B, D2D and D3D – see section 2.1.4.4B) indicated very few respondents conflated the notion of conduct being ‘against the law’ with the notion of it being a ‘criminal offence.’ This was consistent with the low proportions of respondents who selected ‘I’m not sure about the difference between something being a criminal offence and something being against the law’ (in answer to questions D1A, D2A or D3A – see section 2.1.4.2).

⁶⁵ For a useful summary of such theories (the literature on which is voluminous), see D Wood, ‘Punishment: Consequentialism’ (2010) 5(6) *Philosophy Compass* 455; D Wood, ‘Punishment: Nonconsequentialism’ (2010) 5(6) *Philosophy Compass* 470.

2.1.4.3 REASONS WHY CARTEL CONDUCT SHOULD BE A CRIMINAL OFFENCE

The third question (D1B, D2B, D3B) asked respondents: “Why do you think that an agreement between competitors [on prices/to allocate customers/to reduce production levels] should be a criminal offence?” The question gave 8 possible reasons and asked respondents to indicate their level of agreement or disagreement with each one on a 5 point scale ranging from “Strongly disagree” to “Strongly agree”.

The reasons were:

1. Because consumers may have to pay more
2. Because the conduct involves deceiving consumers
3. Because the conduct may harm or be unfair to other competitors
4. Because the conduct is dishonest
5. Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it
6. Because the conduct will harm competition or the free market
7. Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future
8. Because the conduct should be seen as the same as theft

The reasons were chosen to reflect the three main themes drawn upon in the case made for criminalisation by the ACCC,⁶⁶ namely:

- the effects/harmfulness of cartel conduct (as reflected in reasons 1, 3, 6)
- the moral character of cartel conduct (as reflected in reasons 2, 3, 4, 8)
- the instrumental features of the criminal law as a mechanism for deterrence and punishment (as reflected in reasons 5, 7).

Respondents also had the option of providing comments.

Responses to the soft launch (see section 2.3 below) reflected a high level of agreement (or strong agreement) with all of the possible reasons offered. In an attempt to elicit information about the ordering or weighting of reasons by respondents, the Comments box was amended to add the following text: “Comments (optional – please note that we are particularly interested to understand which reason or reasons are most important to you)”. A large proportion of respondents took up the invitation to provide us with comments responsive to our note (see

⁶⁶ See the discussion in C Beaton-Wells, ‘Criminalising Cartels: Australia’s Slow Conversion’ (2008) 31 *World Competition: Law & Economics Review* 205, 212-213.

further re respondent comments in section 2.4.2 below). Respondent comments are set out in Appendix C to this report.

2.1.4.4 HOW THE LAW SHOULD DEAL WITH THE COMPANIES AND INDIVIDUALS INVOLVED IN CARTEL CONDUCT

All respondents who had responded “yes” to the question whether cartel conduct should be against the law (D1, D2, D3) were required to answer also questions about how the law should deal with the companies and individuals involved in such conduct, irrespective of whether or how they had answered the question about whether cartel conduct should be a criminal offence (D1A, D2A, D3A). This was because, as noted above, we sought to distinguish between views on how conduct is labelled as a matter of law and views on what consequences might flow from conduct being unlawful (whether as a civil contravention or as a criminal offence).

A. How the law should deal with the companies involved in cartel conduct

The fourth question (D1C, D2C, D3C) asked respondents: “How do you think the law should deal with **COMPANIES** that make an agreement between competitors [on prices/to allocate customers/to reduce production levels]?” Respondents were asked to select all that should apply out of a list of 7 options. The options were:

1. The companies should pay a fine
2. The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct
3. The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct
4. The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)
5. There should be no penalties for the companies
6. Don't know
7. Other (please specify):

The penalties/remedies in options 1-4 reflect, broadly, the penalties/remedies applicable to corporations under the TPA. It was considered important also to give respondents the option to select “no penalties” so as not to assume that respondents would be of the view that penalties should apply to companies involved in cartel conduct (as opposed to a view, for example, that only individuals should be penalised or that no-one should be penalised). Respondents also had the option of providing comments.

Those respondents who selected option 1 (“The companies should pay a fine”) were directed to a follow up question (D1Ca, D2Ca, D3Ca) which asked: “If the companies each had to pay a fine for making an agreement between competitors [on prices/to allocate customers/to reduce

production levels], how should this fine be calculated?" In answer to this question respondents were able to select one of the following 7 options:

1. Ten per cent of the company's annual turnover
2. An amount that is three times the profits that the company made from the conduct
3. An amount that is equal to profits that the company made from the conduct
4. Up to \$10 million
5. Up to \$1 million
6. Don't know
7. Other (please specify):

Options 1, 2, and 4 represent the three possible maxima applicable to corporate fines under the TPA since January 2007 (prior to this, the maximum was AU\$10 million). In any given case it will be the greatest of the 3 options that applies as the maximum. However, the maximum of 10% of company turnover only applies if the treble gain measure is not ascertainable. The latter measure was introduced based on the widely accepted economic theory of 'optimal' deterrence. According to this theory deterrence through fines will only be achieved if, in basic terms, from the perspective of the person contemplating the violation, the expected fine exceeds the expected gain from the violation.⁶⁷ The expected fine equals the nominal amount of the fine discounted by the probability that a fine of an effective amount will be imposed. In theory, firms discount the expected costs of penalties by some factor that represents their view on the likelihood of detection and punishment. As detection and punishment rates are imperfect, optimal deterrence requires penalties to exceed the expected benefit from the illegal activity to compensate for imperfect detection and punishment.⁶⁸ Given the difficulties in calculating the

⁶⁷ See, e.g., K G Elzinga and W Breit, *The Antitrust Penalties : A Study in Law and Economics*, Yale University Press, New Haven, 1976, ch. 7; G Becker, 'Crime and Punishment: An Economic Approach' (1968) 76 *Journal of Political Economy*, 169; W Landes, 'Optimal Sanctions for Antitrust Violations' (1983) 50 *The University of Chicago Law Review* 652; R Posner, 'An Economic Theory of Criminal Law' (1985) 85 *Columbia Law Review* 1193, pp. 1201–8. These earlier contributions have led to interest in optimal deterrence theory in EU competition law. See, e.g., W Wils, 'Optimal Antitrust Fines: Theory and Practice' (2006) 29(2) *World Competition: Law & Economics Review* 183, 190; I Simonsson, *Legitimacy in EU Cartel Control*, Hart Publishing, Oxford, 2010, ch. 7.

⁶⁸ See, e.g., New Zealand Ministry of Commerce, *Penalties, Remedies and Court Processes under the Commerce Act 1986*, A Discussion Document, January 1998, pp. 8–9; L Bebchuk and L Kaplow, 'Optimal Sanctions and Differences in Individuals' Likelihood of Avoiding Detection' (1993) 13(2) *International Review of Law and Economics*, 217. The optimal deterrence theory has been criticised heavily. See, e.g., J Coffee, 'Corporate Crime and Punishment: A Non-Chicago View of the Economics of Criminal Sanction' (1980) 17 *American Criminal Law Review* 419; M Block and R Lind, 'Crime and Punishment Reconsidered' (1975) 4 *Journal of Legal Studies* 241; R Cooter, 'Prices and Sanctions' (1984) 84 *Columbia Law Review* 1523. More recently, see M Stucke, 'Am I a Price Fixer? A Behavioural Economics Analysis of Cartels' in C Beaton-Wells and A Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, Hart Publishing, Oxford, 2011, ch. 12. For criticisms by an Australian judge, see *Australian Competition and Consumer Commission v ABB Transmission and Distribution Ltd [No. 2]* (2002) 190 ALR 169, 175–6 [21]–[25] (Emmett J).

gain, the turnover measure is used as a proxy for cancelling out the gain. In other jurisdictions such as the US, a volume of commerce affected by the conduct is used as the proxy instead.⁶⁹

Option 2 (“an amount equal to the profits that the company made from the conduct”) was included to give respondents the option of determining whether the penalty should act solely as a measure for confiscating the illicit profits (a disgorgement approach) without any further element of deterrence or punishment.

Option 5 (“up to \$1 million”) was included to give respondents an option of expressing a view that fines should be calculated based on a maximum well below that prescribed by the legislature since 1993.⁷⁰ It would also enable us to test the extent to which the actual level of corporate fines imposed in practice are consistent with public opinion. The fines imposed in Australia have been well below the statutory maxima. For the 10 year period between 2000 and 2009, for example, the median corporate penalty was AU\$826,534 per contravention, ie, less than AU\$1 million during a period for most of which the statutory maximum was AU\$10 million.⁷¹

Respondents also had the option of providing comments. A large number of respondents took up this opportunity to explain the difficulties that they had in answering this question (see further section 2.4.2 below). Respondent comments are set out in Appendix C to this report.

B. How the law should deal with the individuals responsible for cartel conduct

The fifth question (D1D, D2D, D3D) asked respondents: “How do you think the law should deal with **INDIVIDUALS** responsible for making an agreement between competitors [on prices/to allocate customers/to reduce production levels]?” Respondents were asked to select all that should apply out of a list of 9 options. The options were:

1. The individuals responsible should go to jail
2. The individuals responsible should pay a fine
3. The individuals responsible should be banned from being a director or manager of any company for a number of years
4. The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct
5. The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct

⁶⁹ United States Sentencing Commission, *Federal Sentencing Guidelines Manual* § 2R1.1(d)(1), comment 3 (2009). More generally, beyond the US, see International Competition Network, Cartels Working Group, Subgroup 1 – General framework, *Setting of Fines for Cartels in ICN Jurisdictions*, Report to the 7th Annual Conference, Kyoto, April 2008, p. 15, p. 19.

⁷⁰ Prior to 1993, the maximum corporate penalty was AU\$250,000.

⁷¹ See C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, Cambridge University Press, 2011, p431.

6. The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)
7. There should be no penalties for the individuals responsible
8. Other

9. Don't know

The penalties/remedies in options 1-6 reflect, broadly, the penalties/remedies applicable to individuals under the TPA (option 1 (jail) have been available for conduct since July 2009 and option 3 (disqualification orders) have been available for conduct since January 2007).

As with companies, it was considered important to give respondents to select “no penalties” so as not to assume that respondents would be of the view that penalties should apply to individuals involved in cartel conduct (as opposed to a view, for example, that only companies should be penalised - a situation that pertains in many jurisdictions (in the EU, for example) - or that no-one should be penalised).

Respondents also had the option of providing comments. Respondent comments are set out in Appendix C to this report.

Those respondents who selected option 2 (“The individuals responsible should pay a fine”) were directed to a follow up question (D1Da, D2Da, D3Da) which asked: “If the individuals responsible each had to pay a fine for making an agreement between competitors [on prices/to allocate customers/to reduce production levels], how do you think this fine should be calculated?” In answer to this question respondents were able to select one of the following 5 options:

1. Up to \$10,000
2. Up to \$50,000
3. Up to \$100,000
4. Up to \$250,000
5. Up to \$500,000

These options were chosen so as to provide respondents with a wide range of potential maximum fines for individuals, from as low as anything below AU\$10,000 to as high as up to AU\$500,000. A maximum of AU\$500,000 has applied to civil contraventions of the TPA by individuals since 1993 (it was AU\$50,000 prior to 1993). The maximum criminal fine for individuals has been set at AU\$220,000.

As with corporate fines, we wanted to ensure that the range covered by the options reflected the level of fines imposed in practice. Like corporate fines, the level of individual fines has been below the statutory maximum. For the period 2000-2009, the median individual penalty has been AU\$31,986 – a period in which the statutory maximum was AU\$500,000.⁷²

Respondents also had the option of providing comments. Respondent comments are set out in Appendix C to this report.

Those respondents who selected option 1 (“The individuals responsible should go to jail”) were also directed to a follow up question (D1Db, D2Db, D3Db) which asked: “If a jail sentence was to be imposed on the individuals for making an agreement between competitors [on prices/to allocate customers/to reduce production levels], what should the maximum jail term be?” In answer to this question respondents were able to select one of the following 4 options:

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Again the options were designed to provide respondents with a wide range of potential maximum jail sentences for individuals, from as low as anything below 1 year to as high as up to 10 years. The maximum introduced by the 2009 amendments is 10 years and is on par with the highest maxima in the world (see section 1.2 above). As noted in section 1.2, five years is consistent with corporate law offences that could be considered comparable. In fact five years was the maximum that was proposed for cartel offences in the draft legislation formulated during the term of the former conservative government but was increased to 10 years by the subsequent Labor government after consultation – specifically on the question of whether the ACCC should have telecommunications interceptions powers (which require a maximum of 7 years). The ACCC proposed a seven year maximum in its submission in favour of criminalisation to the Dawson Committee, drawing attention to offences it considered comparable under the *Criminal Code* such as theft, obtaining property by deception and conspiracy to defraud a Commonwealth entity, all of which attract a maximum of 10 years.⁷³

Respondents also had the option of providing comments.

⁷² See C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, Cambridge University Press, 2011, p464. This is in fact a substantial decrease from the average fine for the period of 1993-1999 which was AU\$76,752. This decline in individual fines is difficult to explain.

⁷³ Australian Competition and Consumer Commission, *Submission to the Trade Practices Review*, June 2002, p 54.

2.1.4.5 FACTORS BEARING ON THE SERIOUSNESS OF CARTEL CONDUCT

The sixth question to which all respondents who considered cartel conduct should be against the law were directed (D1E, D2E, D3E) asked respondents to consider various additional facts to those with which they had been provided in the vignettes with a view to assessing how particular aspects of the context or circumstances surrounding cartel conduct might affect views as to its seriousness. The form of the question was as follows:

All things considered, please tell us how you would view an **agreement between competitors on prices/to allocate customers/to reduce production levels** if.....:

Less serious	Just as serious	More serious
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Prices did not go up as a result of the conduct

The conduct included bullying another company into joining the agreement

The reason for the conduct was that it would prevent factories from closing and would save jobs

The companies involved in the conduct were small businesses

Elaborate steps were taken to make sure the authorities did not find out about the conduct

The profits from the conduct were used to make products that are environmentally friendly

The factors chosen for this question were intended to reflect a range of possible factors that could be regarded as aggravating (eg “The conduct included bullying another company into joining the agreement” ; “Elaborate steps were taken to make sure the authorities did not find out about the conduct”) or mitigating (eg “The reason for the conduct was that it would prevent factories from closing and would save jobs”; “The companies involved in the conduct were small businesses”; “The profits from the conduct were used to make products that are environmentally friendly”) or if not mitigating then possibly neutral or irrelevant (eg “Prices did not go up as a result of the conduct”).

It was decided that it would make the survey instrument too complicated and unduly long to attempt to determine whether any such factors caused changes to respondent views on how the conduct should be characterised as a matter of law (ie whether or not it should be against the law or whether or not it should be criminal law) and how it should be dealt with (for example, whether or not it was conduct for which individuals should be sentenced to jail). Adopting a simple measure of “seriousness” for the purpose of the question enabled us to capture changes in views that, as a matter of policy, could then be tested against how the law characterises conduct for the purposes of liability, how prosecutorial discretion is or is proposed to be exercised and/or how defendants are sanctioned.

2.1.4.6 ACCEPTABILITY OF IMMUNITY POLICY

The seventh question to which all respondents who considered cartel conduct should be against the law were directed (D1F, D2F, D3F) gave respondents the following further facts:

Imagine one company decides to report the agreement [on prices/to allocate customers/to reduce production levels] to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

Respondents were then asked: “To what extent do you agree that it is acceptable to give the first company immunity?” and were given a 5 point scale on which to indicate the extent of their agreement or disagreement.

This question was included in the survey because a policy of offering the first eligible cartel member immunity from penalties or proceedings has become the front-line tool in cartel detection for competition authorities around the world. More than 50 jurisdictions now have some form of immunity policy in support of their anti-cartel enforcement activities.⁷⁴ The ACCC has had its current form of immunity policy in place since 2005⁷⁵ and the ACCC Chairman describes it as ‘absolutely vital’ in the Commission’s efforts to crack cartels⁷⁶ and as its primary source of disclosure of cartel activity.⁷⁷ Based on the game theoretic model known as the ‘prisoner’s dilemma’⁷⁸, the use of an immunity policy in anti-cartel law enforcement is justified on the basis that it is the most effective and least costly mechanism for detecting activity that is generally systematic, deliberate and covert.⁷⁹ It is also seen as a means of deterring the

⁷⁴ See S Hammond, ‘The Evolution of Criminal Antitrust Enforcement over the Last Two Decades’, Paper presented at the 24th annual National Institute on White Collar Crime conference, presented by the American Bar Association Criminal Justice Section and Center for Continuing Legal Education, February 25 2010, p. 1. See further on the adoption of immunity policies or revisions to such policies over the last decade in International Competition Network, *Trends and Developments in Cartel Enforcement*, Paper presented at the 9th Annual ICN Conference, Istanbul, Turkey, 29 April 2010, p. 7.

⁷⁵ Albeit the policy was amended in 2009 to reflect the introduction of the dual civil/criminal regime: see ACCC, *Immunity Policy for Cartel Conduct*, 2009.

⁷⁶ See E Sexton, ‘To Catch a Cartel’, *Sydney Morning Herald*, 21 March 2008, p. 35.

⁷⁷ G Samuel, ‘Cartel Reform and Compliance with the *Trade Practices Act*’, Paper presented at the Australian Corporate Lawyers Association National Conference, 13 November 2009, pp. 1, 6.

⁷⁸ See generally C Leslie, ‘Antitrust Amnesty, Game Theory and Cartel Stability’, *Journal of Corporation Law*, vol. 31, 2006, p. 453; C Leslie, ‘Trust, Distrust and Antitrust’, *Texas Law Review*, vol. 82, 2004, p. 515; G Spagnolo, ‘Leniency and Whistleblowers in Antitrust’, CEPR Discussion Paper No. 5794, Centre for Economic Policy Research, August 2006. In relation to the ACCC *Immunity Policy* specifically, see C Truong, ‘The ACCC’s Immunity Policy: A New Application of the “Prisoner’s Dilemma”’, *Trade Practices Law Journal*, vol. 15, 2007, p. 219.

⁷⁹ TO Barnett, ‘Seven Steps to Better Cartel Enforcement’, in C-D Ehlermann and I Atanasiu (eds), *European Competition Law Annual 2006: Enforcement of Prohibition of Cartels*, Hart Publishing, Oxford, 2007, p. 141, pp. 146–8.

formation of cartels.⁸⁰ These benefits are regarded as outweighing any adverse effects in terms of lower penalties overall as well as any adverse political or moral implications.⁸¹

Given its significance as an enforcement tool, we were interested to determine the extent to which the public supports the use of an immunity policy in the cartel context. The extent of such support is important as a matter of public policy in assessing the legitimacy of an immunity program. However, from a practical perspective, it is also relevant in evaluating how juries are likely to respond to prosecution witnesses who have been given immunity under such a program.⁸²

We also considered that responses to the question would provide additional insight into respondents' views of the seriousness of cartel conduct. We appreciated, however, that interpreting the results could be problematic. High support for immunity policy could indicate a perception that such conduct is so serious as to warrant using a measure that enables detection and prosecution even if it also means forgoing bringing one of the offenders (the immunity recipient) to justice. Equally, low support could indicate a perception of such seriousness that it would be unacceptable to let one of the offenders off 'scot-free', ie without prosecution or penalties.

2.1.5 CRIME SERIOUSNESS

This section had three subsections, each relating to a different type of cartel conduct: price fixing (E1), market allocation (E2) and output restriction (E3). Respondents were directed to only one of these subsections and to one relating to conduct that they had indicated should be a criminal offence in section D (in answer to question D1A, D2A or D3A). Each subsection started by reminding the respondent of the vignette that they had read in section D. The vignette was repeated and respondents were then told:

In this section we would like you to rate how SERIOUS you think a range of other crimes are, when compared with competitors agreeing [on prices/to allocate customers/to reduce production levels].

Respondents were then presented with a list of 10 criminal offences and asked to indicate by comparison how serious they thought each offence was relative to the relevant type of cartel conduct.

⁸⁰ G Spratling, 'Detection and Deterrence: Rewarding Informants for Reporting Violations', *George Washington Law Review*, vol. 69, 2001, p. 798; G Spagnolo, 'Divide et Impera: Optimal Leniency Programmes', CEPR Discussion Paper No 4840, Centre for Economic Policy Research, December 2004.

⁸¹ W Wils, 'Leniency in Antitrust Enforcement: Theory and Practice', *World Competition: Law and Economics Review*, vol. 31, 2007, p. 35.

⁸² For the concerns that this has raised in the UK, see J Joshua, 'Shooting the Messenger: Does the UK Criminal Cartel Offense Have a Future?' (2010), August, *Antitrust Source* 1.

Thus, for example, question E1 presented as follows:

		A lot less serious	A little less serious	Just as serious	A little more serious	A lot more serious	
A	A person stealing another person's property is...						than competitors agreeing on prices
B	An insurance company denying a valid claim to save money is...						
C	A company director using their position dishonestly to gain personal advantage is...						
D	A company misleading consumers about the safety of goods is...						
E	A company failing to ensure worker safety is...						
F	A person killing another person is...						
G	A person driving while drunk is...						
H	A company evading government income taxes is...						
I	A person using inside information in deciding to buy or sell shares is...						
J	A person sexually abusing another person is..						

There is an extensive literature on and a large body of precedents for crime seriousness ranking or rating surveys.⁸³ However, we found this material of limited assistance given the novelty of the conduct with which we were concerned (there has been no crime seriousness survey that has included cartel conduct in it, as far as we aware) and given that we were seeking to have respondents compare the seriousness of that conduct relative to various other crimes, rather than to engage in a ranking/rating exercise as such. We were also significantly circumscribed in the number of comparator offences that could be included by the overall length of the survey.⁸⁴ Further we were conscious of the criticisms in the literature regarding the construct of “seriousness” that is commonly employed in this context - its subjectivity and opaqueness and its failure to distinguish between the bases for seriousness (between ‘serious on moral grounds’

⁸³ For a useful review, see S Stylianou, ‘Measuring crime seriousness perceptions: what have we learned and what else do we want to know’ (2003) 31 *Journal of Criminal Justice* 37.

⁸⁴ In particular it was necessary in designing this section to bear in mind that respondents would have very little time to do this section relative to others, given that the respondents who see cartel as representing crime would have a lot of extra questions to respond to in Section D.

and ‘serious on harm grounds’, for example).⁸⁵ However, length restrictions again prevented us from adopting a design that would overcome these issues. Further, we were of the view that we would be able to discern respondent views on moral vs harm dimensions through responses to other questions (for example, the questions in section D that sought reasons as to why respondents considered cartel conduct should be a criminal offence and the questions that tested whether factors that might be regarded as mitigating or aggravating affected respondent views on seriousness).

Given these limitations, we sought to ensure that our chosen comparators reflected categories of offences that we considered important to present for comparison with cartel conduct for specific reasons. Those categories were:

- *property offences* as this is the category into which the ACCC would have the public think cartel conduct best fits; Australian politicians and enforcement officials regularly draw an analogy between cartel conduct and ‘theft’⁸⁶ – see comparator A (“A person stealing another person’s property is...”)
- *fraud offences* for the same reason as property offences; cartel conduct is sometimes described as a ‘fraud on the market’⁸⁷ – see comparator B (“An insurance company denying a valid claim to save money is...”)
- *breach of directors’ duties offences* as these are offences with which cartel conduct was often compared in the debate about dishonesty as a potential element of the Australian cartel offences – see comparator C (“A company director using their position dishonestly to gain personal advantage is...”)
- *consumer protection offences* as these are the other category of criminal offences under the TPA but have been rarely enforced – see comparator D (“A company misleading consumers about the safety of goods is...”)
- *organisational/corporate offences* as cartel conduct is much a corporate offence as it is an individual offence in Australia⁸⁸ (as well as in other jurisdictions, including the US) – see comparator E (“A company failing to ensure worker safety is...”)
- *offences against public order or a type of system* as it may be argued these are the best comparators for cartel conduct which should be seen conceptually as a crime against the

⁸⁵ See, eg, M Warr, ‘What is the perceived seriousness of crimes?’ (1989) 27(4) *Criminology* 795.

⁸⁶ See, eg, ACCC, ‘Submission No 56 to Parliament of Australia, Treasury, Trade Practices Act Review’, 2 June 2002, Part 2, 24; G Samuel, ‘Cracking Cartels: Australian and International Developments’ (Speech delivered at Cracking Cartels: International and Australian Developments — Law Enforcement Conference, Sydney, 24 November 2004) 1, 5; G Samuel, ‘Opening Statement’ (Visy News Conference, 2 November 2007) 3; Commonwealth, *Parliamentary Debates*, House of Representatives, 11 February 2009, 67 (Chris Bowen); Commonwealth, *Parliamentary Debates*, House of Representatives, 11 February 2009, 21 (Patrick Secker); ‘Current Issues on the ACCC’s Radar’ (Paper presented at Competition Law Conference, Sydney, 29 May 2010) 1, 3.

⁸⁷ See, e.g., Commonwealth, *Parliamentary Debates*, House of Representatives, 11 February 2009, 894 (Patrick Secker).

⁸⁸ For justifications for having corporate and individual criminal liability, see C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, 2011, Cambridge University Press, ch 2, section 2.4.2.

market system and thus analogous with crimes against other systems eg the tax system or the financial system⁸⁹ – see comparator H (“A company evading government income taxes is...” and comparator I (“A person using inside information in deciding to buy or sell shares is...”)

- *violent offences* to allow for testing in the cartel context of the finding that emerges consistently from other studies that offences involving physical harm to or violation of another person are considered more serious than crimes that do not (economic crimes, for example)⁹⁰ – see comparator F (“A person killing another person is...”) and comparator J (“A person sexually abusing another person is..”)
- *street offences* to allow for testing in the cartel context of the finding that emerges from other studies that so-called ‘street offences’ are considered less serious than so-called ‘suite offences’⁹¹ – see comparator G (“A person driving while drunk is...”).

We adopted the practice that has been adopted in the majority of crime seriousness ranking studies of using short descriptions of the conduct rather than using their offence label. We also attempted to be consistent in the degree of description given for all the comparators. However, we recognised that the lack of detail given in the description of the context and circumstances of the conduct would limit the conclusions that could be drawn from the data.

Although conscious that effects of conduct are important to people’s assessments of seriousness, we decided not to indicate the effects of the conduct in the descriptions (eg ‘company pollutes river used for drinking water’ vs ‘company pollutes river used for drinking water and hundreds contract serious illness as a result’; ‘competitors agree on prices’ vs ‘competitors agree on prices and make extra profits as a result’). This was for reasons of length but also because we considered it would be difficult if not impossible to be consistent in describing the degree of effects as between items (for example, if hundreds die from the polluted water, should millions of dollars be made in profits from the agreement on prices...?)

Similar reasons underscored our decision not to include explicit reference to a mens rea / fault element for the conduct. The literature is divided on this issue. On the one hand the presence of a mental element can be important in assessments of seriousness but on the other hand it is argued that people tend to assume intention unless otherwise stated (eg ‘company pollutes river used for drinking water’ is assumed to mean that the pollution was intentional, as opposed to negligent or reckless).

⁸⁹ See C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, 2011, Cambridge University Press, ch 2, section 2.4.1.4.

⁹⁰ F T Cullen, B G Link and C W Polanzi, ‘The seriousness of crime revisited’ (1982) 20(1) *Criminology*, 83. For a review see S Stylianou, ‘Measuring crime seriousness perceptions: what have we learned and what else do we want to know’ (2003) 31 *Journal of Criminal Justice* 37, 42-45.

⁹¹ See, e.g., N L Piquero, S Carmichael and A R Piquero, ‘Assessing the perceived seriousness of white-collar and street crimes (2008) 54(2) *Crime and Delinquency* 291-312; D J Rebovich and J L Kane, ‘An eye for an eye in the electronic age: gauging public attitude toward white collar crime and punishment’ (2002) 1(2) *Journal of Economic Crime Management* 1.

The order in which the comparator crimes were listed in the question was mixed in the sense that we avoided clustering categories of offence together. However, we decided not to have random ordering between respondents as a measure to check for potential ordering effects. This approach would further complicate an already complex survey design. Further, having the order of crimes identical across all respondents is a control measure in itself.⁹²

2.1.6 COMPLIANCE AND DETERRENCE

Only those who had been selected into the Business group were asked to complete section F of the survey since section F was concerned with measuring variables relevant to whether business people are likely to comply with the anti-cartel laws or not. (The selection of this group is explained further below in section 2.5.1.2. Data on the demographic profile of the Business group is provided in section 13.)

The design of Section F of the survey was based on the assumptions that if the law is going to influence business people's behaviour so that they do not engage in cartel behaviour, first the business people need to know about the law, then they need to think they are likely to be caught and face enforcement action and jail if they decide to break the law. Then we can examine whether their behaviour actually changes, and whether those changes are caused by their knowledge of the law and their perceptions of the likelihood of enforcement.

This model of how regulatory reform and criminalisation can change business compliance behaviour is based on a rich empirical literature on regulatory compliance by business.⁹³ Specifically, it assumes that compliance can be induced through the mechanism of deterrence. Deterrence is where the design of the law and its implementation through enforcement are intended to make business people calculate that it is in their rational self interest to comply because of fear of the likelihood of enforcement and consequent penalties.

The questions in Section F focus on measuring whether cartel criminalisation is likely to deter cartel conduct since this was the main justification used to introduce criminalisation of cartel conduct by the ACCC and by Australian and international policy-makers.⁹⁴ However there are also other mechanisms that may induce compliance with anti-cartel laws. Most importantly, if business people agree that the law should prohibit cartel conduct on the grounds that it is morally wrong or economically harmful, then this is an alternative (or additional) mechanism

⁹² See also the argument that the impact of ordering effects is negligible in Shipley, J.F. (1980). Crime seriousness ratings: the impact of survey questionnaire form and item context. *British Journal of Criminology*, 20(2), 123-135.

⁹³ See for example D Thornton, N Gunningham and R Kagan, 'General deterrence and corporate environmental behaviour' (2005) 27 *Law & Policy* 262; C Parker and V Nielsen (eds), *Explaining Compliance: Business Responses to Regulation*, 2011, Edward Elgar Publishing (forthcoming); S Simpson and C Koper, 'Deterring corporate crime' (1992) 30 *Criminology* 347; J Scholz, 'Enforcement Policy and Corporate Misconduct: The Changing Perspectives of Deterrence Theory' (1997) 60 *Law and Contemporary Problems* 253.

⁹⁴ See section 1.1 above and C Parker, 'Criminalisation and Compliance: The Gap Between Rhetoric and Reality' in C Beaton-Wells and A Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, Hart Publishing, 2011.

which might make them more likely to comply.⁹⁵ Since the Business group also answered Sections D and E of the survey, we do have responses relevant to testing whether this is in fact the case, and will be able to further explore this possibility in more sophisticated analyses.

Section F of the survey contained two sets of questions concerned with knowledge of anti-cartel law (F1) and perceptions of the likelihood of enforcement and likelihood of engaging in cartel conduct (F2 through F7). Each set of questions was based on a vignette. The vignettes, and the reasons for their use, are more thoroughly explained in section 2.4.1 below.

The first vignette (F1) was used to test the Business group's knowledge of the law. Respondents were given the vignette and then asked a series of questions designed to test their knowledge of the law and the penalties available for cartel conduct. The vignette used was a basic price fixing scenario which included details designed to make it clear that the scenario consisted of straight price fixing for which no excuses (legitimate or illegitimate) were available. The scenario made it clear that the conduct would have a harmful economic impact on a wide range of customers. If business people have even a fairly basic awareness of anti-cartel law, it should be absolutely clear that this is not only against the law, but also a criminal offence.

Before being able to respond to any questions about this scenario, respondents were told, "Please answer the next questions given what you think the law **ACTUALLY IS**, rather than what you think the law **SHOULD BE**." This was to clearly signal to the respondents that in this new section of the survey we were asking quite different questions than we had asked in the earlier vignettes.

Following the vignette (involving a hypothetical person called Lee), the first question (F1a) that was asked was: "Do you think that Lee has broken the law by agreeing on prices with competitors?" Respondents had the choice of answering:

1. Yes
2. No
3. I'm not sure

Respondents also had the option of providing comments.

The purpose of this question was to measure whether business respondents knew that cartel conduct (here, price fixing) is a civil contravention. This has been the legal status of cartel conduct in Australia since 1974.

The second question (F1b) was directed to all those who answered yes to Question F1a. The second question asked was "Do you think that Lee has committed a criminal offence by agreeing on prices with competitors?"

⁹⁵ See C Parker & VL Nielsen, 'What Do Australian Businesses Think of the ACCC and Does it Matter?' (2007) 35 *Federal Law Review* 187; T Tyler, *Why People Obey the Law*, Princeton University Press, 2006; S. Winter and P. May, 'Motivation for Compliance with Environmental Regulations' (2001) 20 *Journal of Policy Analysis and Management* 675.

Respondents had the choice of answering:

1. Yes
2. No
3. I'm not sure

Respondents also had the option of providing comments.

The purpose of this question was to assess whether Business group respondents were aware that cartel conduct had already been criminalized (as opposed to the previous questions in Section D of the survey that asked whether it should be a criminal offence).

The third question (F1c) was also directed to all those who had answered yes to Question F1a. Respondents were asked "As far as you know, what penalties are available under the law for someone like Lee who agrees on prices with competitors?" They were also reminded, "Please answer according to what you think the law **actually is**, rather than what you think the law **should be**." Respondents had the choice of the following responses and could mark as many as they thought applied:

1. Lee could be sent to jail
2. Lee could have to pay a fine
3. Lee could be banned from being a director or manager of any company for a number of years
4. Lee could be publicly named (e.g. on the TV news) as having been involved in the conduct
5. Lee could have to pay compensation to anyone who suffered loss or damage as a result of the conduct
6. Lee could be forced to take measures to ensure the conduct did not happen again (e.g. by taking part in a training program), or
7. No penalties would apply
8. I'm not sure

The purpose of this question was to assess whether Business group respondents were aware of the penalties available for cartel conduct and especially whether they were aware that jail is now available for individuals who engage in cartel conduct. If business people are not aware of the penalties, then those penalties will be less effective at deterring cartel conduct.

The second part of section F of the survey was a set of two vignettes designed to measure first, Business group respondents' perceptions of the likelihood of enforcement of the anti-cartel laws and jail if found guilty; and, second, their likely behaviour if given an opportunity to engage in cartel conduct.

The Business group respondents were each given two versions of the same basic market-sharing scenario (involving a hypothetical person called Ashley). First they were told that "This conduct is against the law but it is **not a criminal offence**" (civil sanctions). The second time they were told before the reading the scenario that "This scenario is the same as the last one, except that this time, the conduct is against the law **and is a criminal offence...**" They were also told again after the second scenario, "This conduct is against the law and **is** a criminal offence."

We explicitly told business respondents that the conduct in each case amounts to a civil or criminal offence because the purpose of the questions was to know whether the actual law –

and, importantly, the change in the law from civil to criminal - makes a difference to perceptions of likelihood of enforcement and to compliance behaviour.

The vignette is once again a very clear case of cartel conduct, in this case market sharing. Market sharing rather than price fixing was used because it was important that respondents stay interested and engaged in the survey process and read the vignette and questions properly in order to pay attention to the fact that they were being asked to answer a different type of question to the previous questions. We particularly wanted to avoid a “consistency bias” in the responses.⁹⁶ This might have occurred if it was too obvious to respondents that this was the same sort of scenario as the previous scenarios. That is, if they had previously answered that price fixing should be – and indeed was - against the law and then saw another very similar price fixing scenario, they might feel that they should answer the survey “consistently” by overestimating their own sense of deterrence and compliance. By changing the type of cartel conduct in the vignette, we intended to disrupt this process and make it more difficult for respondents to second guess what a “consistent” answer would be.

Another feature of the second set of vignettes and questions in Section F was that the respondents were randomly allocated into three groups. Each group was given two scenarios (first civil then criminal as described above). However the two scenarios for each group differed in that each group was given scenarios with a different “pressure” condition:

- The first group were given the two basic scenarios (civil and criminal) with no additional facts (“no pressure”).
- The second group was given the two basic scenarios but with facts indicating that the protagonist was under economic pressure to engage in cartel conduct (“economic pressure”).
- The third group was given the two basic scenarios but with facts indicating that the protagonist was under social pressure to engage in cartel conduct (“social pressure”).

This quasi-experimental design allows us to test the impact of different types of pressure on the likelihood of engaging in cartel conduct, as well as the influence of the availability of either civil or criminal sanctions. (This is further explained in section 2.4.1 below. The text of the vignettes and the different pressure conditions is also given in section 2.4.1.) We asked these questions because previous empirical research on cartel conduct suggests that quite often cartelists feel that they were under economic or social pressure to engage in the conduct.⁹⁷ Including these

⁹⁶ See B Mathews and A Diamantopoulos, ‘An Analysis of Response Bias in Executives’ Self-Reports’ (1995) 11 *Journal of Marketing Management*, 835

⁹⁷ C Parker, ‘Criminalisation and compliance: The gap between rhetoric and reality’ in C Beaton-Wells and A Ezrachi, *Criminalising Cartels: Critical Studies of an International Regulatory Movement*, Hart Publishing, 2011, ch. 11.

factors in the vignette allows us to test the extent to which this affects likely cartel behaviour, and whether or not deterrence by means of criminalisation “outweighs” this pressure.

After reading each scenario, respondents were first asked a series of questions about their perceptions of the likelihood of being found out for engaging in cartel conduct; being subject to legal action; and being jailed.

The first question (F2a/F3a/F4a/F5a/F6a/F7a) asked “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 a scale of 1 to 10 (marked “very unlikely” to “very likely”) on which to respond.

The second question (F2b/F3b/F4b/F5b/F6b/F7b) asked “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?” Again respondents were given a scale of 1 to 10 (marked “very unlikely” to “very likely”) on which to respond. It was important to ask this question in addition to the likelihood of being caught because it could be that business people feel that although they might be caught for misconduct, the authorities will use their discretion in deciding not to take formal legal enforcement action against them. Business regulators often informally settle potential prosecutions for business misconduct on the basis that the business agrees to comply in the future rather than taking businesses to court. Moreover businesses often put pressure on regulators to make sure this happens.⁹⁸

The third question (F5c/F6c/F7c) was only asked in relation to the criminal scenarios: “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 a scale of 1 to 10 (marked “very unlikely” to “very likely”) on which to respond.

The final two questions in relation to each scenario asked respondents to rate Ashley’s and their own likelihood of engaging in cartel conduct.

The text of the first of these questions in relation to the civil scenarios (F2c/F3c/F4c) was:

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?

The text of the same question in relation to the criminal scenarios (F5d/F6d/F7d) was:

⁹⁸ See C Parker, ‘The `Compliance Trap: The Moral Message in Responsive Regulatory Enforcement’ (2006) 40(3) *Law & Society Review* 591. The ACCC makes extensive use of a settlement strategy to resolve legal proceedings against cartel offenders: see C Beaton-Wells and B Fisse, *Australian Cartel Regulation: Law, Policy and Practice in an International Context*, 2011, Hart Publishing, ch 10, section 10.2.2, ch. 11, section 11.3.2.

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?

In both cases the respondents were given four options in response:

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

Respondents also had the option of providing comments.

Respondents were given only four options with no mid-point so that they had to make a choice between saying the conduct was likely or unlikely and could not "sit on the fence". This gives us more useful data for statistical analysis. It also avoids the possibility that respondents will refuse to give the "socially undesirable" answer that Ashley is likely to breach. (Where a mid-point on the scale is available, they might take the socially desirable option of choosing the mid-point rather than being honest about the likelihood of engaging in the conduct.) Similarly, by providing an option of both "likely" and "very likely", respondents could show that they thought that illegal conduct was likely without having to choose the most extreme (and most socially undesirable) option of "very likely".

We very clearly told respondents exactly what sanctions are available under both the civil and criminal offences of cartel conduct so that the survey questions would provide as accurate a test as possible of the likely effects of the actual law on compliance behaviour.

The second question about likelihood of breach in relation to each scenario asked "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?"

Again the respondents were given the same four options in response:

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

Respondents also had the option of providing comments.

It is even more important that the respondents be given no mid-point on the scale where they are responding about their own likely illegal conduct for the same reasons as mentioned above.

We asked respondents first about Ashley's likelihood of breaching the anti-cartel laws and then their own in order to avoid the "social desirability bias" that tends to occur when people are asked to report on their own illegal conduct (or in this case, tendency or likelihood to engage in

illegal conduct). There are two ways in which asking about Ashley first can reduce social desirability bias.

First, by asking about “Ashley” first, we give the respondents a chance to think of illegal conduct as something that an ordinary, rational business person might engage in. This means that when we ask about their own response second, they are less likely to feel quite so confronted about the social undesirability of reporting on their own likelihood to engage in cartel conduct. They should therefore be more honest in their responses.

Second, there is some evidence that when a survey asks respondents to report on a third party’s likelihood to engage in illegal or other socially undesirable conduct that most respondents will “project” their own likely behaviour onto that third party. Therefore we can use respondents’ answers about Ashley as an additional data source about their own likely illegal conduct.⁹⁹ At the most simple level, this suggests that it is possible to interpret the data reported here on respondents’ own likelihood to engage in cartel conduct in light of what respondents say about Ashley, in addition to what they say about themselves.

Finally, it is also important to point that previous studies have shown that social desirability bias is greatly reduced through the use of web-based surveys (as used here) compared with other forms of self-administered questionnaires; and that self-administered questionnaires in general reduce social desirability bias compared with interviewer-administered questionnaires.¹⁰⁰ It is expected therefore that our use of an online survey has already minimised social desirability bias to the extent possible in direct questioning about a respondent’s own likely behaviour. The use of indirect questioning (that is, asking about ‘Ashley’) in addition to direct questioning further alleviates social desirability bias.

2.1.7 PRIOR KNOWLEDGE AND COMMENTS

This section had two questions (G1 and G2). G1 asked respondents to indicate if they had heard or read about any of the following people, organisations or topics:

1. The Australian Competition and Consumer Commission (ACCC)
2. Cartels or cartel conduct
3. Graeme Samuel
4. Allan Fels¹⁰¹

⁹⁹ There are specific statistical techniques that can be used to do this, and these will be used as appropriate in later more, sophisticated analyses and publications in relation to this data: R Fisher, ‘Social Desirability Bias and the Validity of Indirect Questioning’ (1993) 20 *Journal of Consumer Research* 303.

¹⁰⁰ F. Kreuter, S. Presser and R. Tourangeau, ‘Social Desirability Bias in CATI, IVR, and Web Surveys: The Effects of Mode and Question Sensitivity’ (2008) 72 *Public Opinion Quarterly* 847.

¹⁰¹ This item was inserted only after the soft launch (see further section 2.3 below).

5. Price fixing
6. A case involving Visy and Amcor for price fixing
7. Criminal penalties for cartel conduct
8. A case involving Richard Pratt and the Australian Competition and Consumer Commission
9. Haven't heard or read about any of these.

The items in this list were selected on the basis that they were names or topics that had appeared regularly in the media over the last five years, either in association specifically with the debate over cartel criminalisation or more generally in association with competition law and enforcement related issues.

The purpose of the question was to attempt to have some basis on which to assess the extent of familiarity by respondents with the subject-matter under examination in the survey. It was considered necessary to be able to make this assessment given the view that there is a difference between public opinion that is 'top of mind' (in the sense that it is uninformed and instinctive) and public judgment that is based on some pre-existing awareness and understanding the subject-matter on which judgment is being made. The latter is said to be a superior measure for the purposes of influencing public policy.¹⁰²

G2 asked respondents: "Finally, is there anything else you would like to tell us about the scenarios or issues in this survey?" Given the scope and complexity of the matters covered in the survey we considered it important to give respondents an opportunity to raise issues or add qualifications that had not been addressed or allowed for in the course of the survey. A large proportion of respondents took up this opportunity (see further section 2.4.2 and Appendix C below).

2.2 SURVEY MEDIUM

For the medium of survey delivery we chose electronic communication as the best approach. Internet-based or online surveys are fast, flexible, cost-effective and are established as providing valid responses. In particular, as compared with more traditional pen-and-paper, telephone or face-to-face surveys, this medium:

- enables the survey to reach a large and diverse group of people¹⁰³;
- allows for immediate responses¹⁰⁴;

¹⁰² See, e.g., D Green, 'Public opinion versus public judgment about crime: Correcting the "comedy of errors"' (2006) 46 *British Journal of Criminology* 131.

¹⁰³ S D Gosling, S Vazire, S Srivastava, and O P John, 'Should we trust web-based studies? A comparative analysis of six preconceptions about internet questionnaires' (2004) 59 *American Psychologist* 93; B Duffy, K Smith, G Terhanian, J Bremer, 'Comparing data from online and face-to-face surveys' (2005) 47 *International Journal of Market Research* 615.

¹⁰⁴ K B Wright, 'Researching internet-based populations: advantages and disadvantages of online survey research, online questionnaire authoring software packages, and web survey services' (2005) 10 *Journal of Computer-Mediated Communication*.

- is cost-effective in terms of distribution¹⁰⁵ and in removing the need to manually enter participant responses¹⁰⁶;
- is flexible and enables the flow of the survey to be tailored readily to responses, thus avoiding the need for respondents to read questions that are not applicable to them¹⁰⁷;
- allows for the presentation of the survey to be made visually attractive and thus as interesting as possible for the respondent so as to retain attention and minimise fatigue;¹⁰⁸
- may avoid problems caused by biases tied to face-to-face interviewing and data collection mistakes and biases¹⁰⁹; and
- significantly reduces risk of human error in data entry.¹¹⁰

2.3. SURVEY DESIGN AND ADMINISTRATION STAGES

The development and administration of the survey underwent several stages.

Questions were drafted by the research team with a focus on how to elicit information that would address the research questions we were seeking to answer (see section 1.4 above).

Input was obtained from the Social Research Centre and from the statistical consultancy service of the University of Melbourne on issues relevant to the wording and comprehensibility of specific questions as well as on overall format, presentation, administrability, flow and length of the survey instrument. Input on the content and design of questions was also obtained from a range of academic experts with experience in surveys

The survey instrument was also cognitively tested by the Social Research Centre (from 13-16 April 2010). This involved the recruitment of ten respondents testing from lists held by a reputable qualitative research recruitment provider. Six of the respondents were members of the general public and four were persons meeting the agreed definition of an “informed” person, that is a person with a background in business with a view to testing the questions in Section F on Compliance and Deterrence, in particular. The interviews were conducted in person on the premises of The Social Research Centre. Respondents completed the questionnaire in

¹⁰⁵ R Kraut et al, ‘Psychological research online: report of Board of Scientific Affairs’ Advisory Group on the Conduct of Research on the Internet’ (2004) 59 *American Psychologist* 105.

¹⁰⁶ WG Zikmund, *Business Research Methods.*, 2003, Thomson-South Western.

¹⁰⁷ WG Zikmund, *Business Research Methods*, 2003, Thomson-South Western.

¹⁰⁸ MP Couper, MW Traugott, MJ Lamias, ‘Web survey design and administration’ (2001) 65 *Public Opinion Quarterly* 230

¹⁰⁹ B Duffy, K Smith, G Terhanian, J Bremer, ‘Comparing data from online and face-to-face surveys’ (2005) 47 *International Journal of Market Research* 615

¹¹⁰ American Psychological Association Policy and Planning Board (2009) ‘How technology changes everything (and nothing) in psychology: 2008 Annual Report of the APA Policy and Planning Board’ (2009) 64 *American Psychologist* 454.

paper form and were asked to give feedback on the comprehensibility of concepts and questions in the process of completion.

Feedback from the cognitive testing led to several changes to the wording, lay-out and structure of several questions and Sections to improve readability and comprehensibility. In particular, it prompted the redrafting of the vignettes in Section D in order to ensure that they presented scenarios to which a majority of respondents were likely to relate in their capacity as consumers and in relation to which respondents were unlikely to attempt to explain or justify the conduct in question by reference to circumstances unconnected with the anti-competitive purpose or effect of collusion. It also led to removal of a vignette concerned with bid-rigging with a view to shortening Section D, in particular, and the overall survey in general.

The questionnaire was then programmed into an online format by the Social Research Centre. The online version was reviewed by the research team to ensure that it was an accurate representation of the questionnaire. Completion of the online instrument was also trialled by the researchers and a number of their colleagues to test its operation in practice (for example, to ensure that respondents were directed to the correct sequence of questions depending on their answers, that respondents could not skip questions without answering and that they could go back and review answers to previous questions).

Once the online instrument was finalised, a soft launch of the survey was undertaken (from 2-6 June 2010). The objective of the soft launch were to confirm the duration of survey completion, to verify the capacity to accurately target “informed” persons and to check questionnaire performance in the online environment. Review of the data from the soft launch led to:

- two minor changes to Section A (adding a ‘Retired’ answer option to the work status question and an ‘Independent Candidates’ answer option to the question about political affiliation);
- a change to the Comments text box accompanying questions D1B, D2B and D3B (concerning Reasons for treating cartel conduct as a criminal offence) so that the box read ‘Comments (optional – but please note that we are particularly interested to understand which reason or reasons were most important to you)
- a change to the product used for the vignette relevant to the output restriction in section D3 (from milk to cheese) for reasons explained in section 2.4.1 below;
- addition of the name ‘Allan Fels’ as an item in the list of topics in Section G on Prior awareness.

The ‘hard launch’ of the survey was then undertaken (from 28 June to 7 July 2010). The survey responses were converted to a datafile by the Social Research Centre which was provided to the research team for analysis. Data screening and analysis were conducted using PASW Statistics, version 18 (SPSS, Chicago, IL).

2.4 SURVEY DESIGN FEATURES

Three key design features of the survey – vignettes, open textboxes and attitudinal rating scales – are described below.

2.4.1 VIGNETTES

The use of vignettes (simple factual scenarios) as the basis for eliciting responses on key questions about the legal status, characterisation and consequences of cartel conduct was a crucial aspect of the survey design. It presented respondents with a real-life application of the relevant conduct (price fixing, market allocation, output restriction), while avoiding the use of technical, leading or pejorative language (eg, ‘cartel’, ‘collusion’).

The vignette adopted for questions relating to **price fixing** in D1 was as follows:

There are two butchers in a town. In the past they have set their prices independently of each other. This has meant that if one butcher put up its prices, consumers could switch to the other butcher to find a lower price. The butchers have now reached an agreement with each other to set the prices they charge for the most popular cuts. As a result, they can charge higher prices because if consumers are unhappy with the price at one butcher, they are unable to switch to the other butcher for a better price.

In ensuing questions, the ‘tag’ that we used to refer to the type of conduct captured in this vignette was ‘an agreement by competitors on prices’.

The vignette adopted for questions relating to **market allocation** in D2 was as follows:

This time, there are two plumbing companies that compete against each other in providing plumbing services to a town. They are the only plumbing companies in the town. In the past, if one plumbing company put up its prices, customers could switch to the other plumbing company. The plumbing companies have now reached an agreement to allocate customers between them. One company will only service buildings north of the river; the other will only service buildings south of the river. As a result, they can charge higher prices because customers can’t switch between the plumbing companies when they are unhappy about the price they are being charged.

In ensuing questions, the ‘tag’ that we used to refer to the type of conduct captured in this vignette was ‘an agreement by competitors to allocate customers’.

The vignette adopted for questions relating to **output restriction** was as follows:

This time, there are two companies that compete against each other as producers of cheese. They are the only companies that produce cheese in a particular region. In the past they have decided what volume they would produce depending on how much consumers in the region wanted to buy. However, the companies have now made an agreement with each other to reduce the amount of cheese they produce. As a result of the agreement, they are no longer producing enough cheese to satisfy everyone in the region and can therefore charge higher prices. This is because consumers want to buy more cheese than is available for sale and are therefore prepared to pay more to try and get as much as they want.

In ensuing questions, the ‘tag’ that we used to refer to the type of conduct captured in this vignette was ‘an agreement by competitors to reduce production levels’.

In the soft launch stage, the output restriction vignette related to the production of milk rather than cheese. This appeared to have a distorting effect on responses. We noted that the vignette attracted a much higher proportion of responses in favour of treating this conduct as a criminal offence and jailing individuals for it than the other two vignettes. It also attracted a substantial

volume of comments from the content of which it became evident that respondents regarded the conduct as particularly egregious given the nature of milk as a basic commodity and one on which vulnerable groups, such as infants, rely. To avoid such distortion, we changed the product to cheese for the purposes of the hard launch.

In relation to all three vignettes we prioritised the use of products and businesses to which members of the general public were most likely to relate in their capacity as consumers. This was important given the economic rationale for the criminal reform being the adverse effect of cartel conduct on consumer welfare. We were keen to ensure that respondents appreciated the effect of cartel conduct on prices and hence on them as consumers. At the same time, we avoided industries (such as banking, telecommunications, supermarkets and airlines) that are commonly associated with anti-competitive conduct in the media (irrespective of the accuracy of such claims as a matter of law) so as to avoid biasing responses. This approach meant that the vignettes inevitably revolved around conduct by small businesses with effects at the retail level of the markets in which they operated. We were aware that this ran the risk of attracting a more sympathetic response than might have been the case had the vignettes related to big businesses operating in industrial settings. In an effort to address this risk, each of the subsections in section D commenced with the following statement:

In the next questions, we describe a number of imaginary business scenarios. These could apply to companies of **any** size in **any** industry. When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or the industry. (bold in original)

Vignettes were also used in Section F to elicit responses from the Business group relevant to assessing the deterrence and compliance impact of anti-cartel laws. In this section we were able to use slightly more complex scenarios with larger companies and industrial settings because we expected the Business group to have a better understanding of the conduct and its effects.

In F1 a vignette featuring a price fixing scenario was used to assess **knowledge of anti-cartel law**. Respondents were given the vignette and then asked whether they thought the cartel conduct in the scenario was against the law, whether they thought it was a criminal offence, and what penalties were available:

Lee, a sales manager at Brick Company, considers whether to get together with representatives from companies that compete with Brick Company to agree on product prices for the next year. Brick Company is currently experiencing growing sales and revenues in an industry that is economically healthy. Lee's conduct would boost revenues further and therefore result in a very positive impression of Lee by top management.

Lee decides to meet with representatives from competitor brick companies to agree on the prices for the next year. As a result brick prices rise throughout the big city in which Brick Company and its competitors are based. This means that governments, companies and individuals all have to pay more for new buildings and houses and Brick Company makes millions of dollars in extra profits.

The above vignette was used in a similar way and with a similar rationale to the Section D vignettes. The difference was that instead of asking respondents what they believed the law should be, we asked what they believed the law actually was.

Vignettes were also used in F2 through F7 to assess respondents' perceptions **of the likelihood of enforcement against cartel conduct** and the **likelihood of engaging in cartel conduct**. Here

there was an additional purpose for using hypothetical vignettes in addition to those discussed above. The purpose of F2 was for the respondents to imagine themselves into the hypothetical scenario and to measure their likely perceptions of enforcement and their intended conduct if they were in that situation in real life. Vignettes were used to achieve a quasi-experimental design. That is, the same basic scenario was used in all vignettes, but certain features of the scenario were varied. The features that were varied were whether civil or criminal sanctions were available for the conduct, and whether the protagonist in the vignette was under economic pressure, social pressure or no pressure to engage in the cartel conduct. These variations in the vignette allow us to robustly measure whether these different conditions have any influence on respondents' perceptions and intended conduct.¹¹¹ The basic scenario used as the basis for the questions in F2 is as follows:

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.

One of the following sets of facts was also added to the vignette, with respondents randomly allocated to three different groups each of which received one of the following sets of additional facts:

[Economic pressure] 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.

[Social pressure] 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.

[No pressure] [No facts added]

Respondents were given the scenario twice. The first time they were told that the conduct was against the law but not a criminal offence. The second time they were told that this time the conduct was against the law and a criminal offence.

The disadvantage of this approach is that all our measures of respondents' perceptions and conduct are based on purely hypothetical scenarios imagined in the context of filling out a survey. We cannot be sure that people would think and behave that way in real life. We would expect people to generally underestimate their own likelihood of breaching the law compared to real life due to social desirability bias.¹¹² We would generally expect them to overestimate the

¹¹¹ See the references in note 55 above for examples of this technique being used in other research on similar issues.

¹¹² See C Nancarrow and I Brace, 'Saying the "right thing": coping with social desirability bias in marketing research' (2000) 3 *Bristol Business School Teaching and Research Review*, online edition.

chances of being caught compared with how they would think in real life, due to the fact that their attention is being drawn to the illegal conduct and the penalties available in the hypothetical scenario.¹¹³

The advantage of this approach is that it is otherwise virtually impossible to collect enough real life data of sufficient quality about these matters. The use of hypothetical vignettes therefore allows us to conduct a statistically robust and researcher-controlled ‘quasi-experiment’ as to how different sanctions and other conditions would likely affect illegal conduct and to draw robust conclusions from that experiment.¹¹⁴

2.4.2 OPEN TEXTBOXES

We were conscious that the issues raised by the survey are complex. Hence we considered it desirable that respondents have the opportunity to supplement or qualify their categorical responses in the forced choice formats through the provision of comments. To this end, open textboxes were provided after each of the questions in Section D, marked ‘Comments (optional)’. This device would also provide us with evidence to test the validity of the vignette-related questions by indicating, for example, the extent to which the respondents comprehended the scenarios in the way that was intended.

A large number of respondents took advantage of the open text box format to provide comments. For instance, 212 (16.4%) provided a comment on the issue of whether price fixing should be against the law. For Section F, there were open responses for all 14 questions where an opportunity was provided.

The comments provided in relation to each of the questions that provided the opportunity for comments are set out in **Appendix C**.

2.4.3 RATING SCALES

Questions to measure attitudes and likelihoods were presented as rating scales.

A 5-point likert scale was the most common format used in the survey. For these scales, each ordinal category had a label. The most common was for level of agreement: 1-strongly disagree, 2-disagree, 3-neither disagree nor agree, 4-agree, 5-strongly agree. It was used, for example, for

¹¹³ In real life their attention would not necessarily be drawn to the law and penalties. But one clear finding from previous empirical research on business deterrence is that many business managers do not make cost-benefit calculations about compliance and act on them - until something like a regulatory enforcement action or publicly reported breach or accident brings the risks of noncompliance to their attention: eg H. Genn, ‘Business Responses to the Regulation of Health and Safety in England’ (1993) 15 *Law & Policy* 219, 223; J. Mendeloff and W. Gray, ‘Inside the Black Box: How do OSHA Inspections Lead to Reductions in Workplace Injuries?’ (2005) 27 *Law & Policy* 219, 220-1; J. Scholz and W. Gray, ‘OSHA Enforcement and Workplace Injuries: A Behavioral Approach to Risk Assessment’ (1990) 3 *Journal of Risk and Uncertainty* 283, 302.

¹¹⁴ On the difficulties of conducting robust research on compliance conduct from which causal inferences can be drawn, see C Parker and V Nielsen, ‘The challenge of empirical research on business compliance in regulatory capitalism’ (2009) 5 *Annual Review of Law and Social Sciences* 45.

the questions relating to reasons why conduct should be a criminal offence (D1A, D2A, D3A) and questions relating to whether immunity policy is acceptable (D1F, D2F, D3F).

A 5-point categorical response scale was used when asking respondents to compare the relative seriousness of a cartel conduct to other examples of criminal offence. A self-report rating scale format is commonly employed in crime seriousness research.¹¹⁵

Rating scales were also used to measure perceived likelihoods of certain events occurring.

Section F on Compliance and Deterrence included questions on the perceived likelihood of those who engage in cartel conduct being caught, having legal action taken against them and being jailed. For these questions, a 10-point anchored scale was used, with 'very unlikely' and 'very likely' as the anchor labels. This allows more fine tuned measurement and statistical analysis.

Section F on Compliance and Deterrence also used rating scales to measure the likelihood of the protagonist in a vignette actually engaging in cartel conduct and the respondent him or herself doing so in the same situation. For these questions a 4-point categorical response scale was used with the options: very likely, likely, unlikely, very unlikely. There was no mid-point in the scale in order to 'force' respondents to choose whether engaging in the conduct was likely or unlikely. This is a common strategy in survey research asking respondents to self-report their own propensity to engage in illegal conduct. It avoids the situation where some respondents use the mid-point of the scale to avoid saying that they might breach the law (an aspect of the social desirability bias).

2.5 SURVEY RESPONDENTS

We had two objectives in relation to the profile of survey respondents:

- for the questions relating to the legal status, characterisation and consequences of cartel conduct (Sections B-E), we were seeking a random sample that was representative of the Australian public;
- for the questions relating to impact of sanctions and other variables on the decision to engage (or to refrain from engaging) in cartel conduct (Section F), we were seeking a non-random sample of people with a work profile that would allow us to test likely responses to sanctions and other variables by way of compliance or non-compliance with the law (ie the Business group).

2.5.1 SAMPLING STRATEGY

The strategies employed and considerations relevant to obtaining the two samples identified above are outlined in this section.

¹¹⁵ See, e.g., M O'Connell and A Whelan 'Taking wrongs seriously: public perceptions of crime seriousness' (1996) 36(2) *British Journal of Criminology* 299 ; M Warr, 'What is the perceived seriousness of crimes?' (1989) 27(4) *Criminology* 795; PH Rossi, E Waite, CE Bose and RE Berk 'The seriousness of crimes: normative structure and individual differences' (1974) 39 *American Sociological Review* 224.

2.5.1.1 STRATEGY FOR OBTAINING RANDOM SAMPLE REPRESENTATIVE OF AUSTRALIAN PUBLIC

A stratified random sampling approach was employed. In terms of stratification, the parameters of the panel group (see section 2.5.2 below) were designed to be representative of the Australian public in terms of age, gender and location of residence by state or territory. The stratified random selection process involved sending an invitation to every ninth panel member of strata organised by age and gender within an area of residence. The process of invitation deployment by stratum took into account potential biases in responsiveness – for instance, knowledge of different invitation response rates by younger and older adults.¹¹⁶

For studies that involve public participation in surveys there is no sample data that is perfectly random and representative of the general population. On the whole the sample was well matched to the Australian population in terms of age, gender and location, and less so on education level. Data on the demographic profile of the random is in **Appendix D** to this report. Divergences in representativeness were corrected by applying weights to the data. The weighting methodology in this study is described in section 2.5.4.

2.5.1.2 STRATEGY FOR OBTAINING NON-RANDOM SAMPLE (THE BUSINESS GROUP)

The selection of respondents for the Business group drew on responses to Part A of the survey as follows:

- Respondents who reported in Part A that they had a role as middle manager or above were automatically included in the Business group, and therefore went on to complete Section F of the survey after completing the preceding Sections of the survey.
- Respondents who reported in Part A that they were employees without managerial responsibility were included in the Business group (and therefore also completed Part F of the survey) where they also indicated having, as part of their work, any of a list of roles that would involve conduct (such as setting prices) potentially relevant to the prohibitions of the TPA (see question A10). However, employees without managerial responsibility who only indicated involvement in one of these roles - 'dealing with customers in any capacity' - were later excluded from the Business group at the analysis stage of the study on the grounds that it was thought this would cast the net too widely.

In the design of the study the strategy of stratified random sampling was seen as unlikely to provide a sufficient number of respondents to effectively evaluate survey design for Section F. In order to achieve a larger Business group for the first round of data collection therefore, a 'booster sample' was obtained. For this sub-sample, potential participants were identified by ResearchNow (see section 2.5.2) through information on panel member occupational background. This sampling approach was successful in that 86.2% of the booster sample

¹¹⁶ More detail on the sampling methodology and sample characteristics are available from the authors upon request.

completed Section F. At the same time 38.9% of respondents from the main stratified random sample completed Section F – around 9% more than what was anticipated. This suggested that a further booster sample would not be required in order to obtain enough respondents for section F. This turned out to be the case, with sufficient Section F respondents attained through the initial booster sample from the soft launch and those filtered through from the main sample in the soft and hard launches.

2.5.2 RECRUITMENT AND DATA COLLECTION PROCESS

For data collection, the Social Research Centre arranged for a commercial online survey panel provider, ResearchNow, to provide a panel for the purposes of the survey. The particular panel that was provided was the ‘Valued Opinions’ panel (see <http://www.valuedopinions.com.au/>). This panel is exclusively “research only”, with panelists recruited by email and online marketing, with over 125 diverse online affiliate partners (to avoid bias associated with panel recruitment from limited sources).

The proposed survey study was rigorously reviewed and approved by the University of Melbourne Human Research Ethics Committee. Prospective participants were informed, through a plain language statement, that participation was voluntary, anonymity and confidentiality would be protected throughout the research and reporting process, and participants could contact the researcher team and ethics committee if they had concerns (for the invitation to participate and plain language statement, see **Appendix E**).

2.5.3 RESPONSE RATES

There were 1,334 participants in the randomly-selected sample. Results in the current report are based on this sample.

Completion rates relative to invitation to the survey were as follows:

- For the soft launch random sampling there were 1595 invitations released, of which 19.2% were responded to.
- For the hard launch there were 12,318 invitations released, and of these 8.3% were responded to.
- Combined, for invitations sent at random, there were 13,913 and a 9.6% response rate. Approximately one in every ten people who received an invitation responded by completing the survey.¹¹⁷

2.5.4 REPRESENTATIVENESS AND WEIGHTING PROCESS

¹¹⁷ According to the Social Research Centre, for studies involving online surveys of this length, these response rates are comparably good.

The final sample was biased in ways commonly found in population survey research.¹¹⁸ In particular, individuals of a higher level of education were over-represented. In order to optimise generalisation of the current sample to the general population a weighting approach was adopted to correct for such imbalances in representation. Weighting is a common approach to increasing representativeness in online survey research.¹¹⁹ In 'unweighted' survey data, cases assume a value of one (i.e. they are all represented equally in an analysis). For individual cases, under-representation is corrected by applying weight values above one, and over-representation by applying weight values between zero and one.

As there were a number of factors where there can be a divergence in representation from the general population, such as age and sex, rim weighting was adopted to correct for multiple factors. The current sample was rim weighted on the basis of age, sex, education level and locality of residence. Rim weights were provided by The Social Research Centre, using Quantum to generate weights for each case. In setting the weighting matrix, parameters for the target population were based on the 2006 Census of Australia.

While weights were established for the stratified random sample, weights were not generated specifically for the Business group. General parameters of the population are required to define weights and to our knowledge such parameters are not available for business groups in Australia, and in particular, for the population defined for inclusion in Section F. For this reason we used the unweighted data for analysis of the Business group.

2.5.5 RESPONSE TIMES

There was a wide variation in survey response times. Outliers were observed primarily for longer response times due to respondents leaving the survey and coming back to it at later times while the online survey was active. Given extreme durations, the average response time would not provide an accurate reflection of a 'typical' duration. Instead, the median was used as a measure of the typical response time. For the randomly selected sample, after taking into account extreme outliers, the median response time was 921 seconds (15.4 minutes). 15 minutes was the duration aimed for at the start of the study.

The data was screened for 'suspect' respondents on the basis of rapidity of survey response times. Section-specific completion timings were available, permitting a detailed analysis for identifying suspect response sets that may reduce the validity of the data. Data organised by survey sections with completion times available for each section was a strength of the survey design and data collection, in terms of identifying cases where data quality may be poor. However, it presented complexities in screening and cleaning. Suspect cases could not be identified through an overall minimum cut-off, as it was possible for a respondent to do some

¹¹⁸ See, e.g., G Loosveldt and Sonck, 'An evaluation of the weighting procedures for an online access panel survey' (2008) 2(2) *Survey Research Methods* 93.

¹¹⁹ See G Loosveldt and Sonck, 'An evaluation of the weighting procedures for an online access panel survey' (2008) 2(2) *Survey Research Methods* 93.

sections properly, and others not. In addition, section timings could vary within sections (e.g. branching in sub-sections D1, D2 and D3) and respondents varied markedly in the number of pathways taken through the survey.

Given these complexities, a multi-stage process of screening and cleaning was established. First, minimum completion times for each section were estimated to flag a suspect case. Defining what is a suitable minimum time was difficult. The following considerations were taken into account when deciding on cut-off times – the distribution of completion times for the full data set; consideration of the specifics of each section (e.g. number and length of questions, major follow-up pathways within a section, and response formats); that respondents would ‘speed up’ in their completion of the survey after familiarisation of the content of repeat questions (especially for parts of Section D); and observations during the pilot study that rapid responses may not necessarily indicate that the survey was not attended to in a genuine fashion. Second, each respondent was assigned an overall score for the number of sections completed below the minimum cut-off. Third, criteria were established for deciding how many sections overall a respondent would do below the minimum time, to identify as consistently fast and therefore most likely to have provided poor data, while at the same time not reducing the possibility of removing participants who were fast on some sections but provided valid responses overall. A criterion was set for each of three common general sequences – seven sections (for those who skipped sections E and F), eight sections (for those who completed either E or F), and nine sections (those who completed all sections of the survey). Where seven or eight sections were completed, respondents were removed if they did three or more sections below a minimum time. Where nine sections were completed, respondents were removed if they did four or more sections below the minimum time. Based on these steps, 42 respondents were deemed to be suspect (38 from the general population random sample, and four from the booster sample) and therefore removed from the data set.

3. ABOUT THE PRESENTATION OF RESULTS IN THIS REPORT

The remainder of this report (sections 4-15) sets out results from the survey. The following aspects of the presentation of the results should be noted.

The order in which the results are presented follows the order of the sections of the survey (as explained in section 2.1 above), except that we have presented the results on Prior awareness of cartel-related topics (section 4 below) first. The questions relating to Prior awareness in Section G of the survey came at the end of the survey so as not to bias or distort responses to earlier questions.

The results are presented in the form of figures, each of which is followed by a brief comment that seeks to highlight the key results in narrative form. As noted in section 1.5, the report does not contain any theoretical, policy or practical analysis of the results or their implications.

In respect of each section of results, the results on the questions relevant to that section are presented. However, in some sections, relationships between those results and results on other sections, where those relationships are statistically significant, are also presented. For example, in section 7, sub-section 7.1 presents the results on 'Price fixing as a criminal offence'. In addition, sub-section 7.1.1 presents the relationships between 'Price fixing as a criminal offence' and 'Demographic factors'. In this sub-section, relationships between 'Price fixing as a criminal offence' and 'Gender' and 'Price fixing as a criminal offence' and 'Work position' only are presented as these were the only statistically significant relationships between the results on 'Price fixing as a criminal offence' and results relating to questions in section A of the survey on demographic background of respondents.

The probability level chosen as a cut-off for statistical significance was 0.05. Readers who would like details of statistical results (e.g. chi-square statistics, significance levels and standardised residuals) should contact the research team for more information.

4. PRIOR AWARENESS OF CARTEL-RELATED TOPICS

4.1 LEVELS OF PRIOR AWARENESS

Question

G1. Prior to completing this survey, had you heard or read about any of the following people, organisations or topics? *Please mark all that apply*

Figure 4.1A Levels of prior awareness¹²⁰

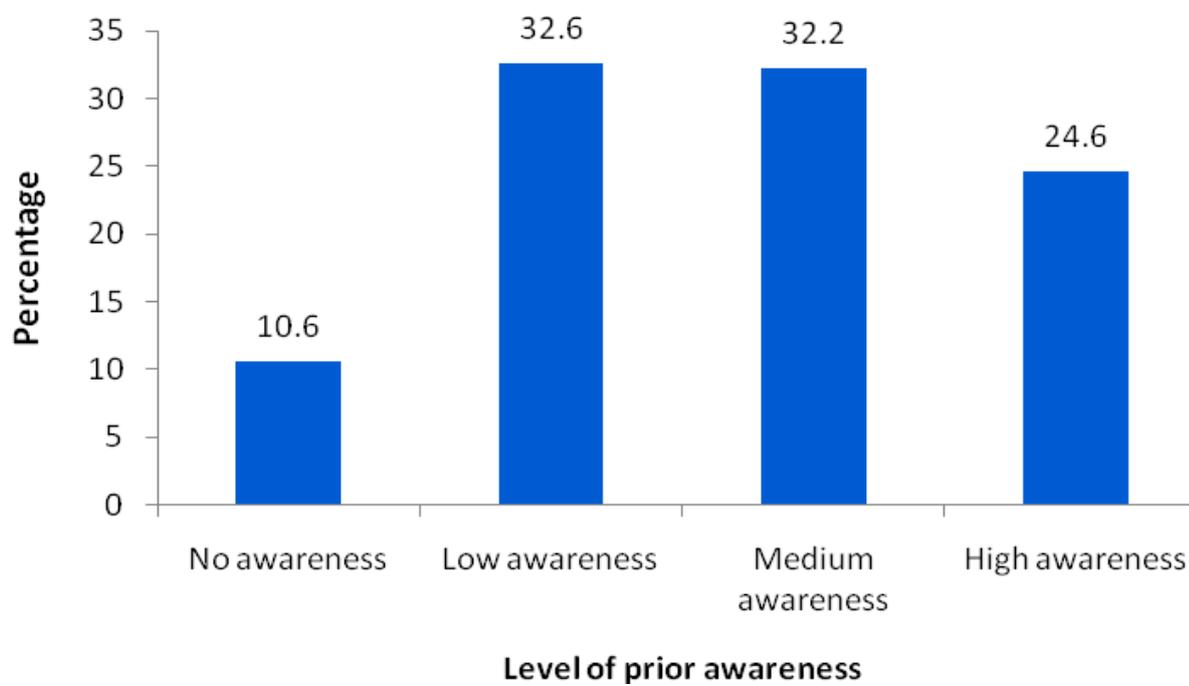
	NO (%)	YES (%)
The Australian Competition and Consumer Commission (ACCC)	21.4	78.6
Cartels or cartel conduct	71.3	28.7
Graeme Samuel	80.0	20.0
Allan Fels	64.3	35.7
Price fixing	19.4	80.6
A case involving Visy and Amcor for price fixing	60.8	39.2
Criminal penalties for cartel conduct	84.9	15.1
A case involving Richard Pratt and the Australian Competition and Consumer Commission	53.2	46.8
Haven't heard or read about any of these.	89.4	10.6

Comments

9 out of 10 respondents had heard of at least one of these topics; whereas only 1 out of 10 had heard of none.

¹²⁰ n=1296, all respondents.

Figure 4.1B Levels of prior awareness (no/low/medium/high)¹²¹

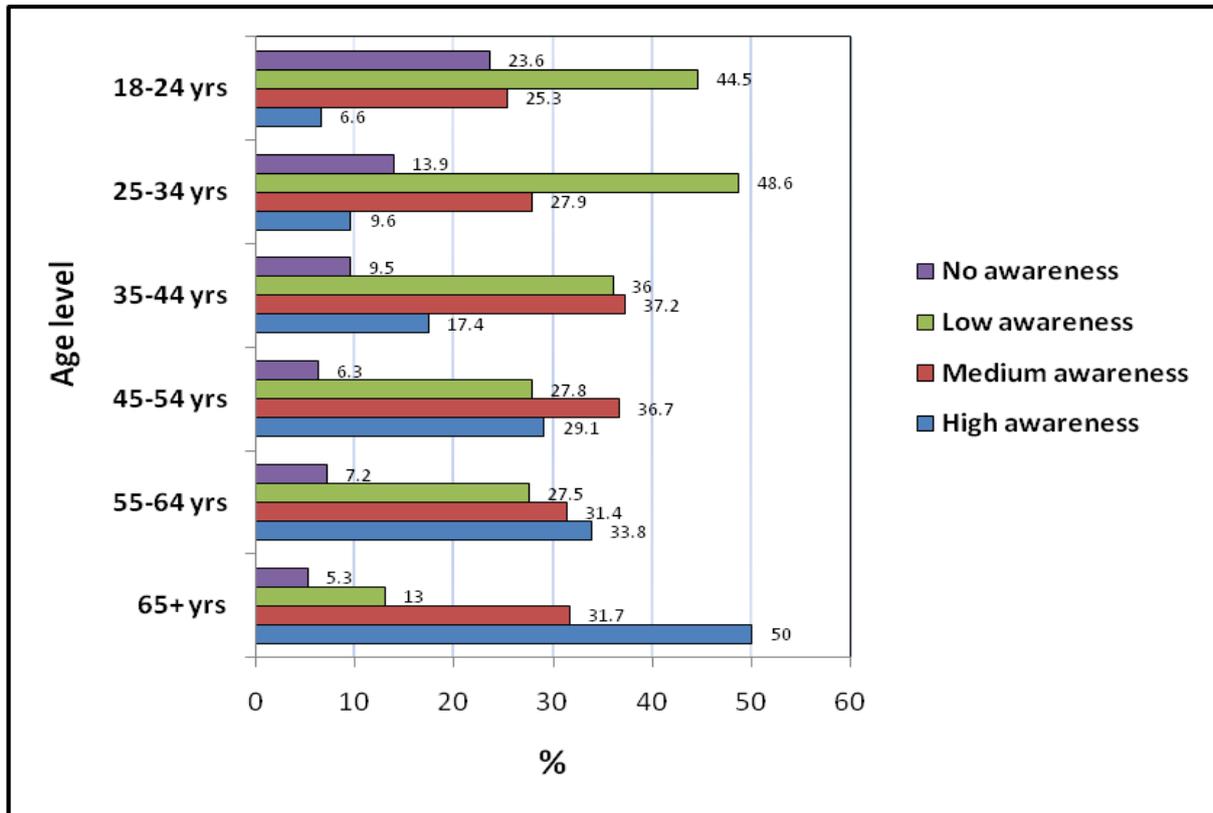


Comments

On these measures, 56.8% of respondents had medium or high awareness of cartel-related topics, whereas 43.2% had no or low awareness. The highest proportion (32.6%) had low awareness.

¹²¹n=1296, all respondents. In order to examine the relationships between level of prior awareness and responses to questions about the legal status, characterisation and consequences of cartel conduct, an overall measure of prior awareness was created. First, a total score on prior awareness was derived from summing the number of 'yes' responses to the following topics: ACCC; cartels or cartel conduct; Graeme Samuel; Price fixing; a case involving Visy and Amcor; criminal penalties for cartel conduct; a case involving Richard Pratt and the ACCC. The total score ranged from 0 to 7. In order to simplify analysis, and with interest in creating relatively even size groups, the scores were then recoded into four categories: 'no awareness' (if total score was 0), 'low awareness' (if total score was 1 or 2), 'medium awareness' (if total score was 3 or 4), and 'high awareness' (if score was between 5 and 7). These scores did not include the item of 'Allan Fels'. This was because we wanted to create an overall score in order to compare across *all* participants in the random general population. The 'Allan Fels' item had not been present in the question when the survey was administered on soft launch. See further Section 2.3 above.

Figure 4.2A Prior awareness and age¹²²



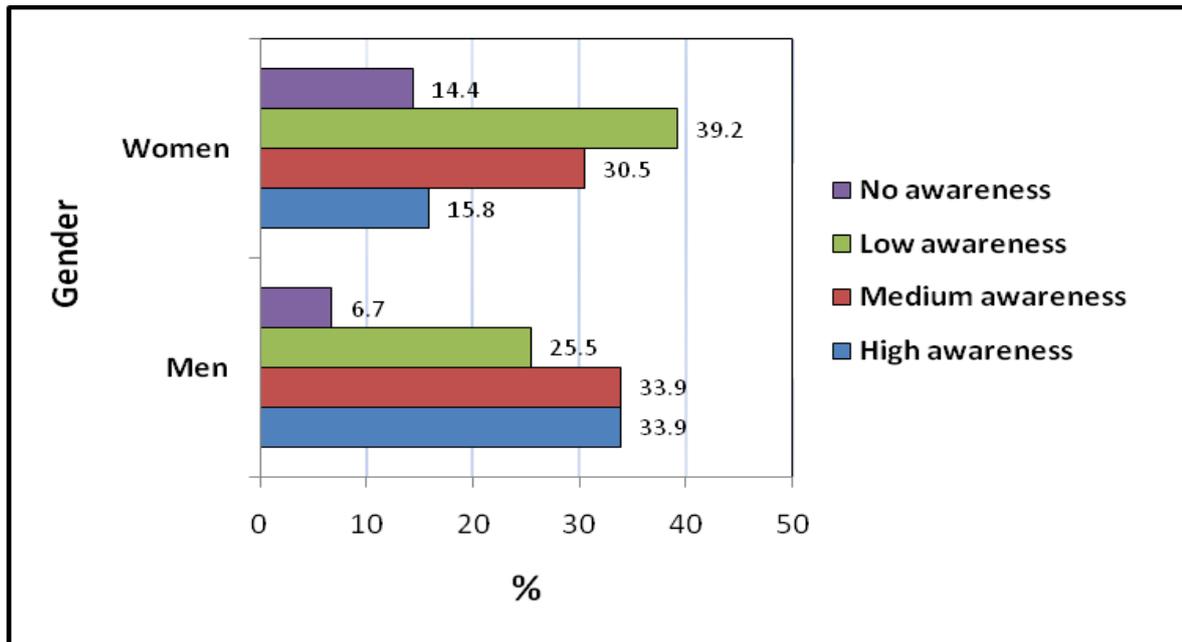
Comments

The Figure presents distributions of awareness within each age group. For instance, for the 18-24 age group 23.6% had no awareness, 44.5% had a low level of awareness, 25.3% had a medium level of awareness and 6.5% had a high level of awareness.

There was a tendency for awareness to increase with age group. 44.5% of respondents aged between 18 and 24 years had a low level of awareness. Half of those aged 65 years and over had a high level of awareness compared to 6.6% of those between 18 and 24 years of age.

¹²² n=1296, all respondents.

Figure 4.2B Prior awareness and gender¹²³

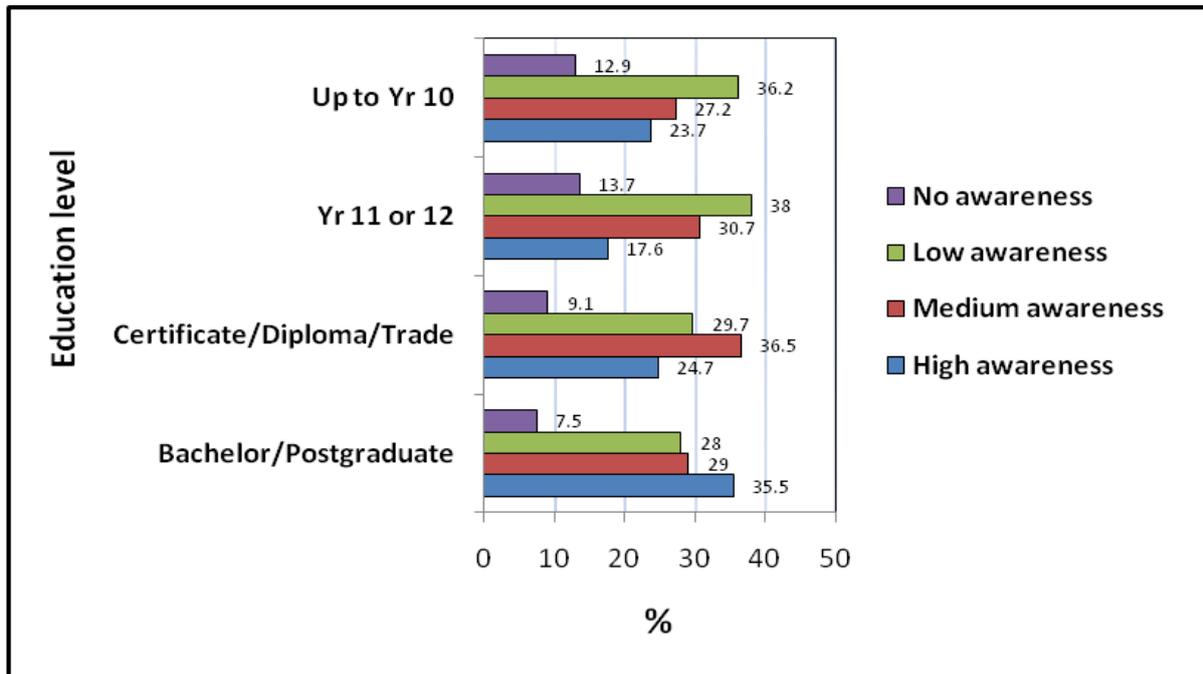


Comments

Men reported a higher level of awareness than women. Around twice as many men than women had a high level of awareness (33.9% compared to 15.8% respectively). 54.4% of women had no or low awareness, as compared to 32.2% of men.

¹²³ n=1296, all respondents.

Figure 4.2C Prior awareness and education level¹²⁴

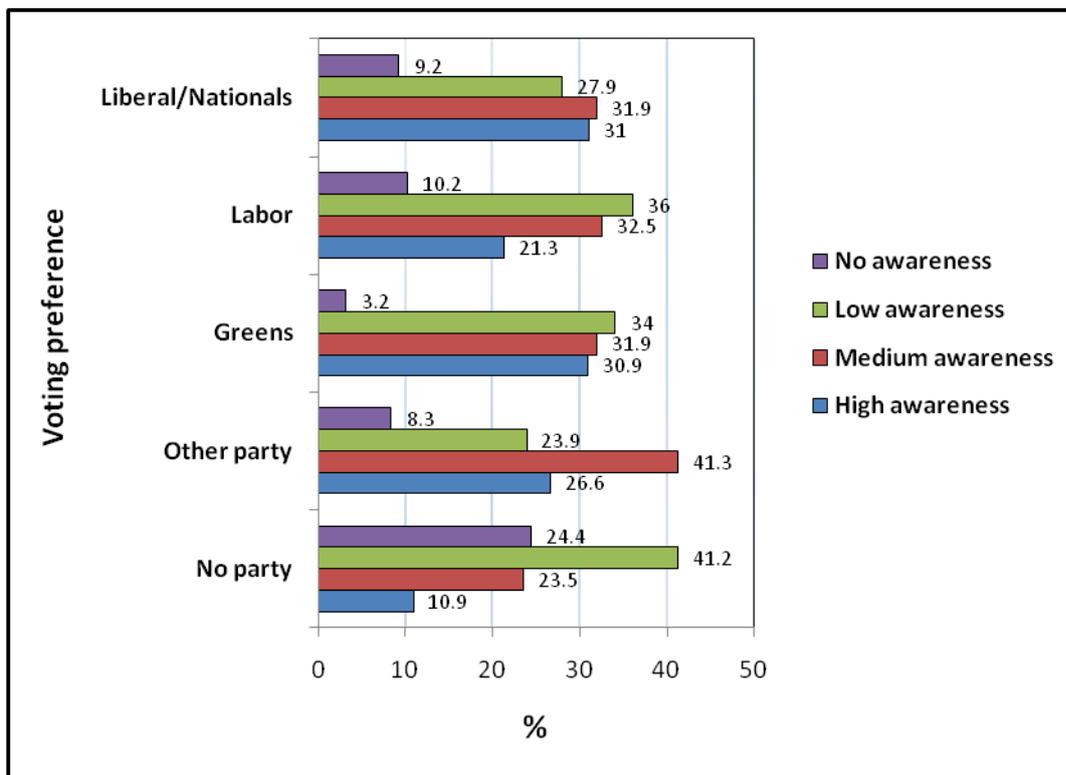


Comments

64.5% of respondents with a bachelor or postgraduate level of education had a medium to high level of awareness, and 61.2% of respondents with a certificate, diploma or trade qualification.

¹²⁴ n=1296, all respondents.

Figure 4.2D Prior awareness and voting preference¹²⁵

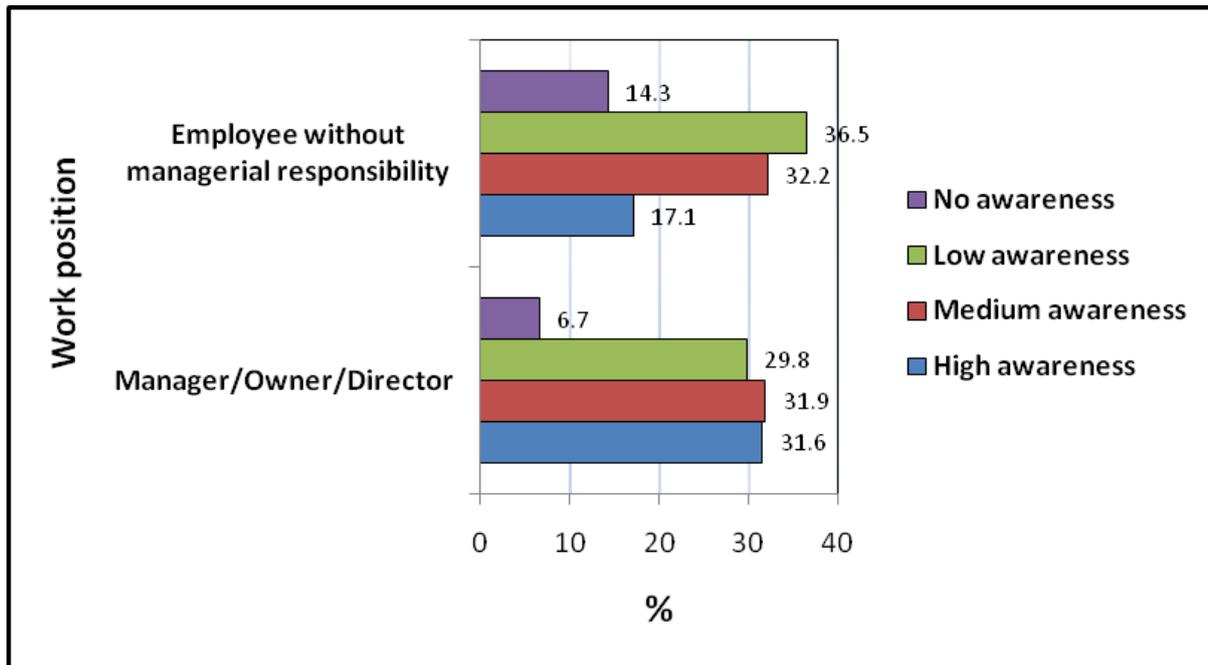


Comments

62.9%, 53.8% and 62.8% of respondents who had a voting preference for Liberal/Nationals, Labor or Greens respectively had a medium or high level of awareness, as compared to 9.2%, 10.2% and 3.2% with no awareness. This is compared to respondents who did not identify with a party, 33.4% of whom had a medium or high level of awareness, as compared to 24.4% with no awareness.

¹²⁵ n=1296, all respondents.

Figure 4.2E Prior awareness and work position¹²⁶

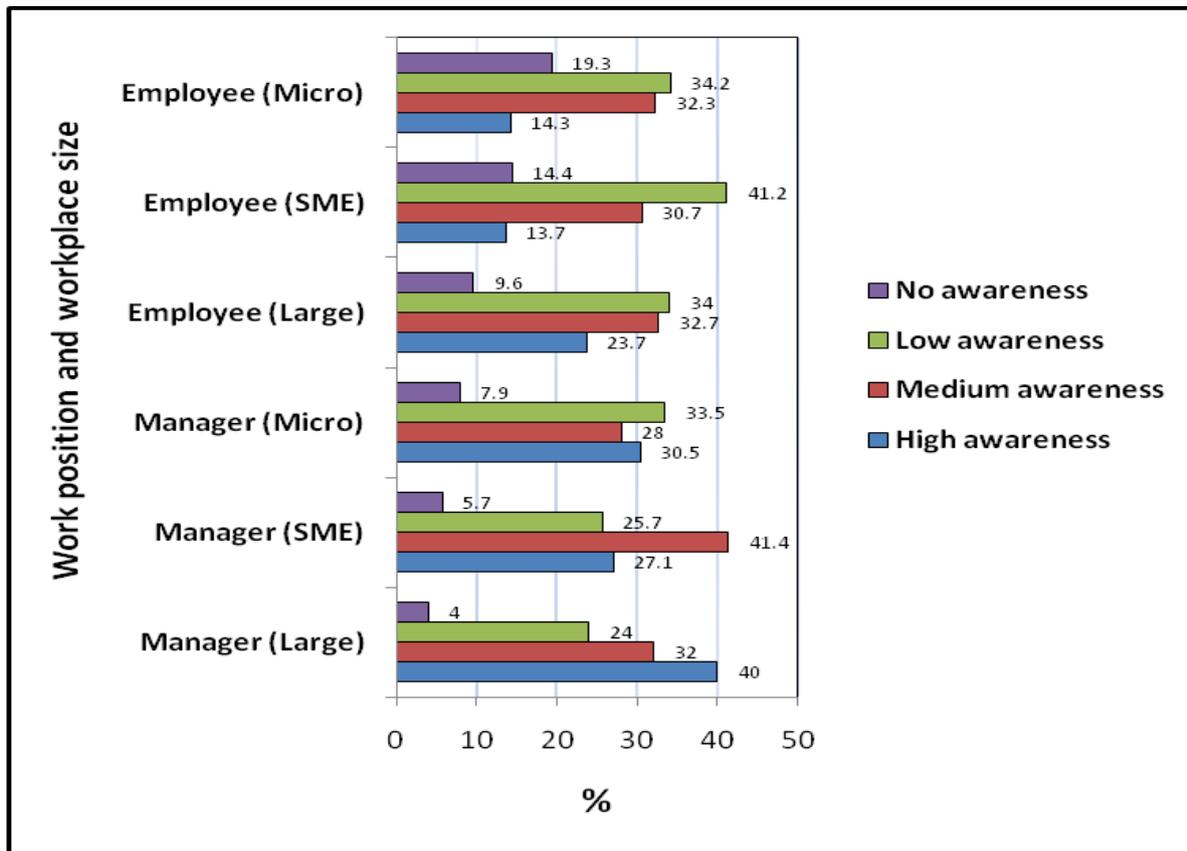


Comments

Differences were most pronounced when comparing the low awareness and no awareness groups. 31.6% of managers reported high awareness, compared to 17.1% of non-managers. With respect to no awareness, 6.7% of managers fell in this category, compared to 14.3% of non-managers.

¹²⁶ n= 754 (representing respondents who responded 'Yes' to 'Last week, did you do any paid work of any kind?', Question A7).

Figure 4.2F Prior awareness and workplace size and work position combined¹²⁷



Comments

Employees from micro and SME work places were the most common groups to report no awareness (19.3% and 14.4% respectively). In terms of a medium level of awareness, SME managers represented the largest proportion among all groups (41.4%). In terms of high awareness, managers in large workplaces represented the largest proportion among all groups (40%).

¹²⁷ n= 754 (representing respondents who responded 'Yes' to 'Last week, did you do any paid work of any kind?', Question A7). In this Figure, 'large' equates to a workplace with 200 or more employees, 'SME' (small to medium) equates to a work place with between 20-199 employees and 'micro' to a workplace of between 0-19 employees. There was not a test of statistical significance for this cross-tabulation as at least one of the cells had an insufficient frequency.

5. BUSINESS AND COMPETITION

5.1 INTEREST IN AND ATTITUDES TOWARDS BUSINESS

5.1.1 INTEREST IN BUSINESS

Question

B1 Overall, how interested are you in business issues generally?

1	2	3	4	5	6	7
---	---	---	---	---	---	---

Not at all interested

Very interested

in business issues

in business issues

I don't follow business issues in the news

I follow business issues in the news

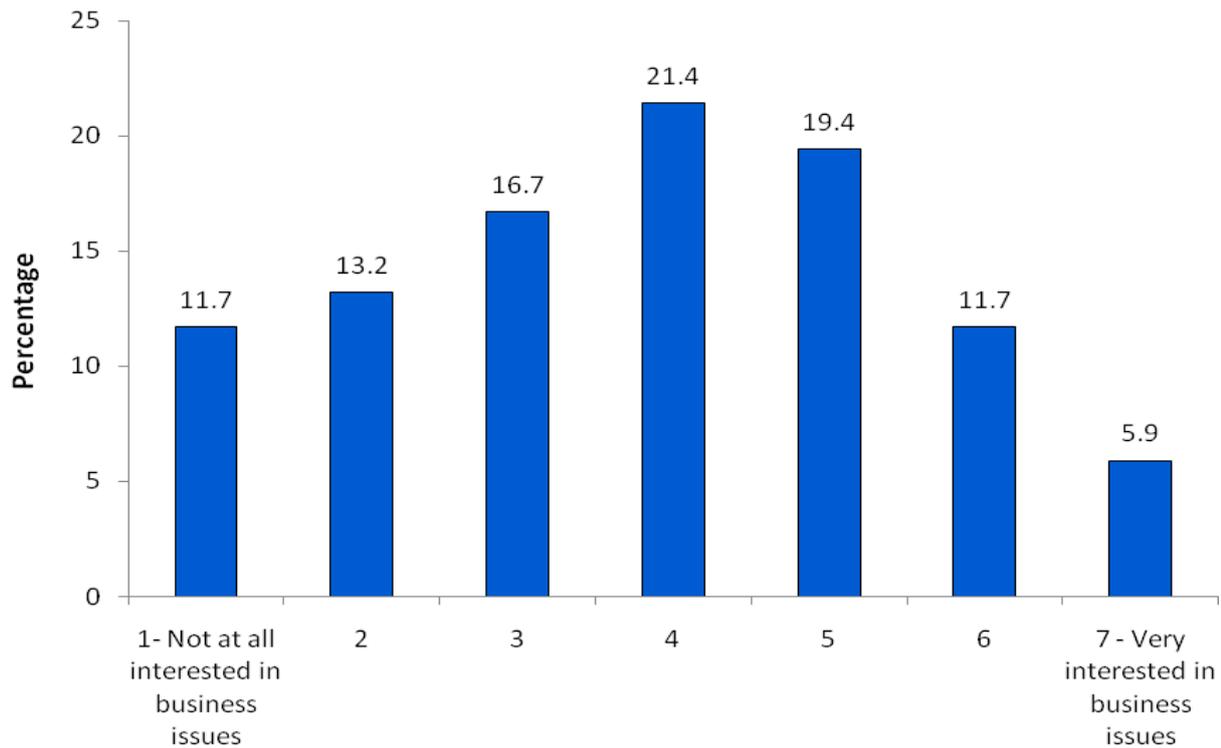
I rarely read the business section of the newspaper – I typically read other sections first

I tend to look at the business section first in the newspaper

I'm not really interested in the stock market

I take an interest in the stock market

Figure 5.1.1A Interest in business¹²⁸



Overall, how interested are you in business issues generally?

Central tendency

Average*	Median	Mode
3.83	4	4

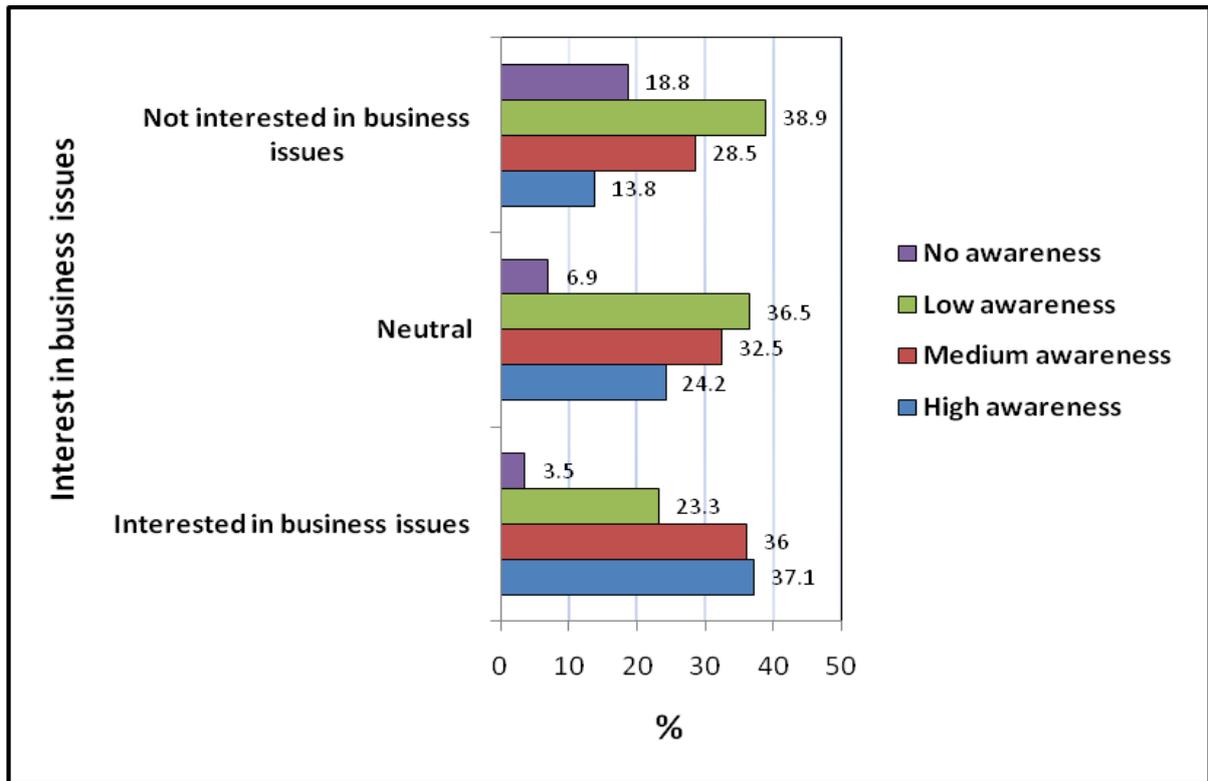
*Standard deviation is 1.71.

Comments

Overall, there was a diverse range of responses with respect to interest in business issues. Interest in business issues followed a normal distribution. The median response was neutral in that it was located midway between ‘very interested’ and ‘not at all interested’.

¹²⁸ n=1296, all respondents.

Figure 5.1.1B Interest in business and prior awareness¹²⁹



Comments

Interest in business issues was associated with level of awareness. For instance, of those with an interest in business issues 37.1% had a high level of awareness and 3.5% had no awareness, in contrast to those with no interest in business issues who had 13.8% high awareness and 18.8% no awareness.

¹²⁹ n=1296, all respondents. For purposes of simplifying the analysis and presentation of results, interest in business was divided into three categories – ‘Not interested in business issues’ (for scores of 1, 2 and 3), ‘Neutral’ (for a score of 4), and ‘Interested in business issues’ (for scores of 5, 6 and 7).

5.1.2 ATTITUDES TOWARDS BUSINESS AS TRUSTWORTHY/UNTRUSTWORTHY

Question

B2. On the scale below, where would you place your own views on the **trustworthiness of business**?

1	2	3	4	5	6	7
---	---	---	---	---	---	---

I think business

I am reluctant

can mostly be trusted

to trust business

Business tries to provide goods and services that are safe and meet consumer needs

Business sometimes skimps on safety, or advertises in a misleading way

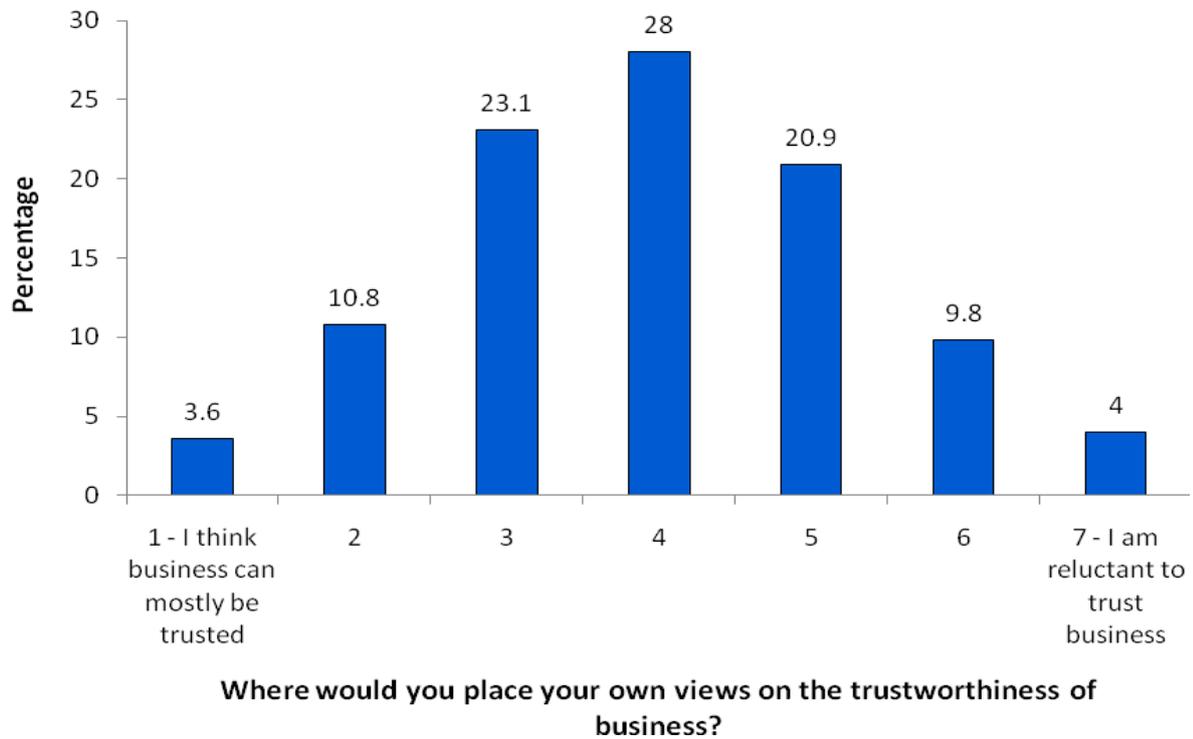
By and large business tries to be fair with employees

Business tries to get away with paying unfair wages

Business contributes to the community in various other ways

Business could do more good generally in society

Figure 5.1.2A Attitudes towards business as trustworthy/untrustworthy¹³⁰



Central tendency

Average*	Median	Mode
3.97	4	4

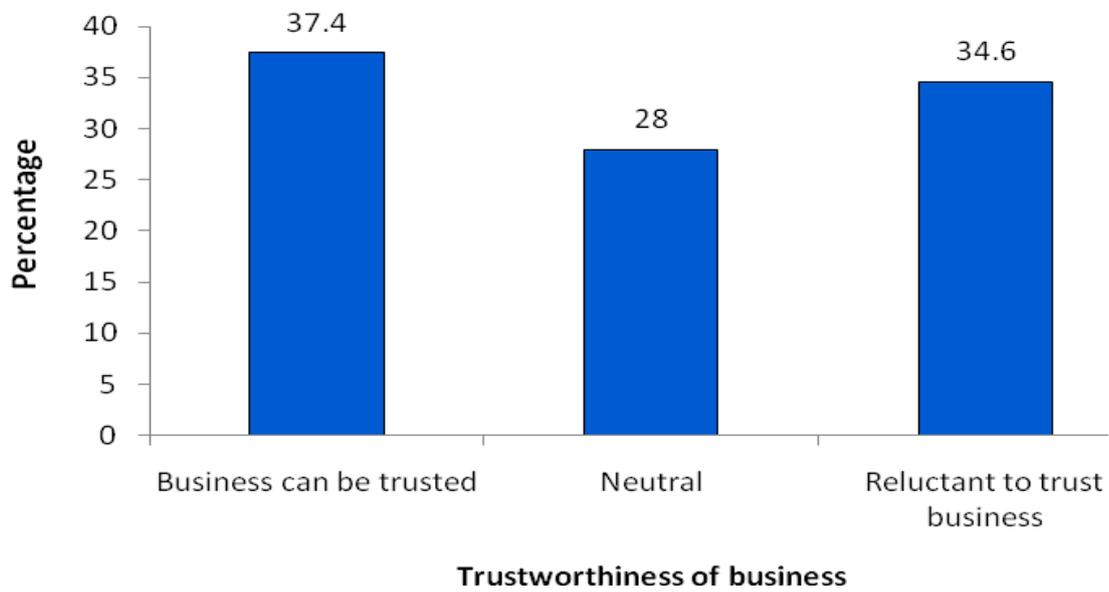
*Standard deviation is 1.39

Comments

The most common response was ‘midway’ between mostly trusting of and reluctant to trust business.

¹³⁰ n=1296, all respondents.

Figure 5.1.2B Attitudes towards business as trustworthy/untrustworthy¹³¹



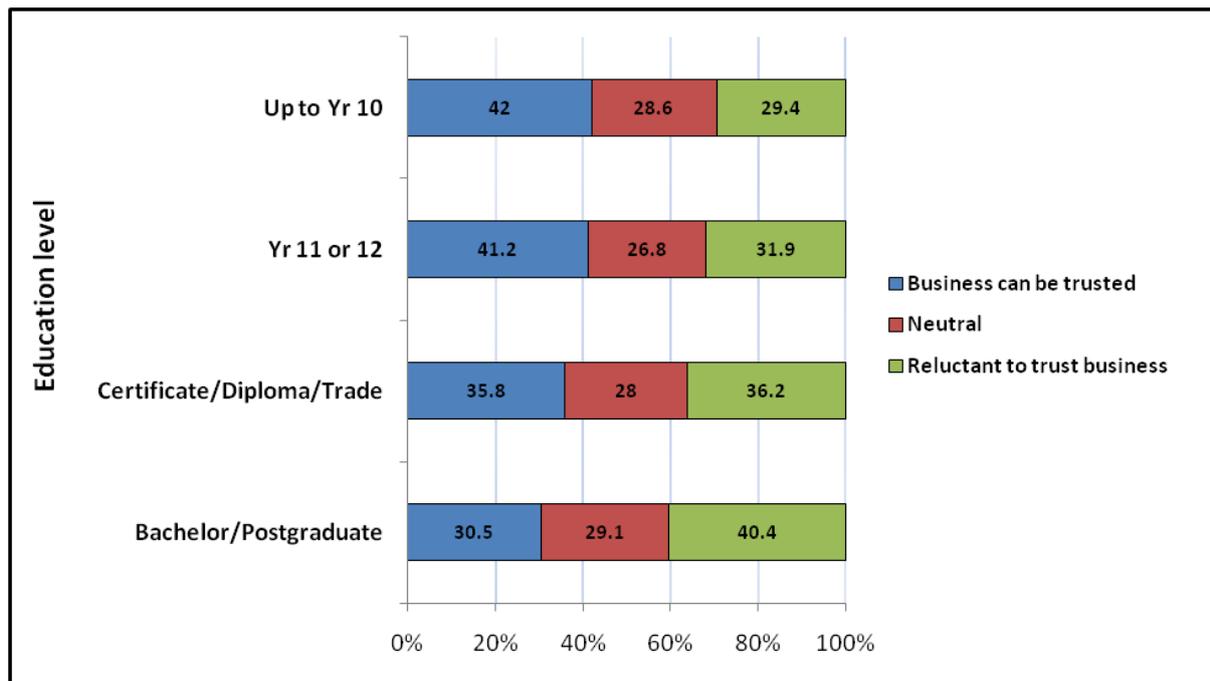
Comments

After grouping levels of trust in business it became clear that there were similar levels of trust and reluctance to trust business (37.4% and 34.6% respectively), and that respondents were highly divided on trustworthiness of business.

¹³¹ n=1296, all respondents. In order to simplify analysis and presentation of results, trustworthiness of business was reduced to three categories: 'Business can be trusted' (for original scores 1 to 3), 'Neutral' (for original score of 4) and 'Reluctant to trust business' (for original scores of 5 to 7).

5.1.2.1 ATTITUDES TOWARDS BUSINESS AS TRUSTWORTHY/UNTRUSTWORTHY AND DEMOGRAPHIC FACTORS

Figure 5.1.2.1A Attitudes towards business as trustworthy/untrustworthy and education level¹³²

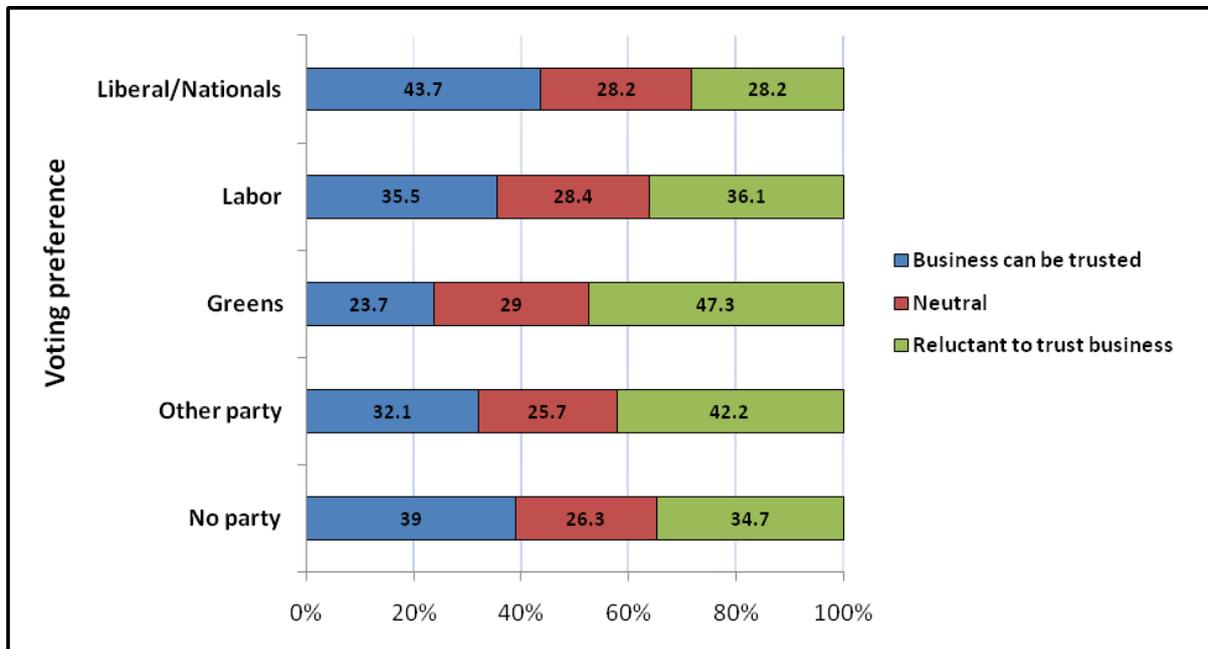


Comments

Higher levels of formal education were associated with higher levels of reluctance to trust business. 29.4% of respondents with up to Year 10 education level were reluctant to trust business, in comparison with 40.4% of respondents with a bachelor or postgraduate education.

¹³² n=1296, all respondents.

Figure 5.1.2.1B Attitudes towards business as trustworthy/untrustworthy and voting preference¹³³



Comments

Respondents with a voting preference for the Liberal/Nationals were similar to respondents favouring Labor or the Greens in terms of neutrality on trustworthiness of business. However, 43.7% of respondents with a voting preference for the Liberal/Nationals indicated that business can be trusted, in comparison to 35.5% of those with a voting preference for Labor and 23.7% of those with a voting preference for the Greens. At the same time, 28.2% of those with a voting preference for the Liberal/Nationals were reluctant to trust business, in comparison to 47.3% of those with a voting preference for the Greens and 36.1% with a voting preference for Labor.

¹³³ n=1296, all respondents.

5.2 ATTITUDES TOWARDS COMPETITION

Question

C1. On the scale below, where would you place your own views on **competition** between businesses?

1	2	3	4	5	6	7
---	---	---	---	---	---	---

Competition

is healthy

Competition means lower prices for consumers

Competition leads to better quality goods or services

Competition provides greater choice for consumers

Competition

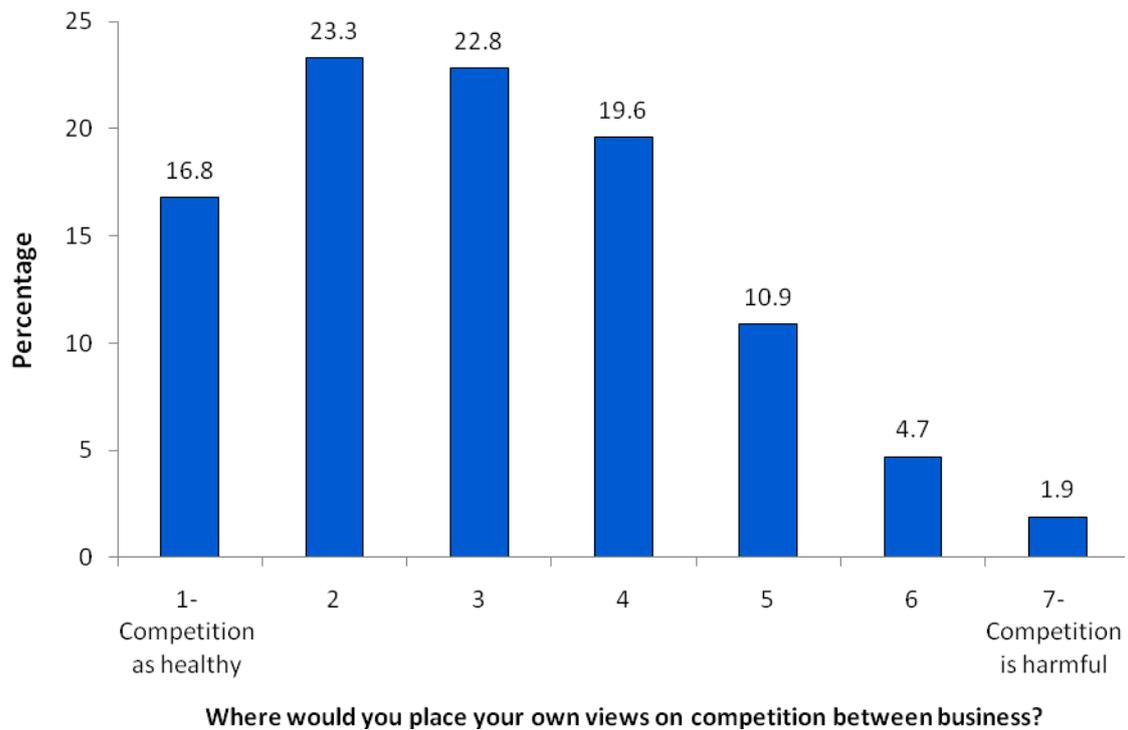
is harmful

Competition makes it hard for small businesses to have a 'fair go'

Competition results in cost-cutting and may lead to lower wages

Competition can disadvantage consumers in rural or regional areas

Figure 5.2A Attitudes towards competition as healthy/harmful¹³⁴



Central tendency

Average*	Median	Mode
3.06	3	2

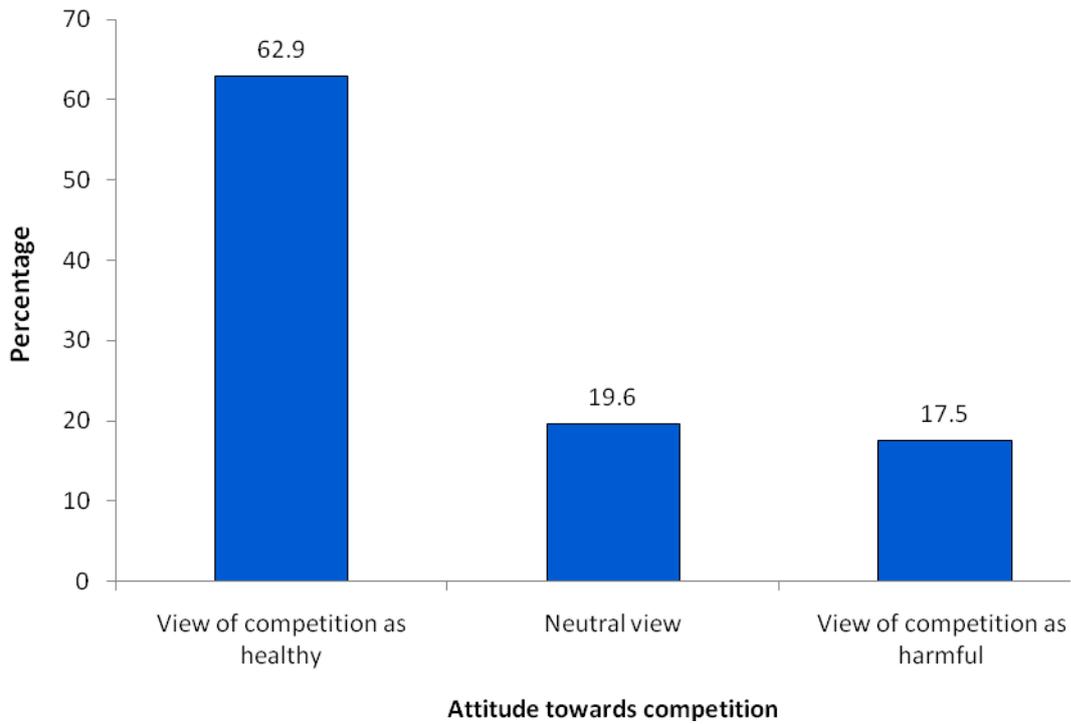
*Standard deviation is 1.50

Comments

Overall respondents leaned towards been in favour of competition as healthy.

¹³⁴ n=1296, all respondents.

Figure 5.2B Attitudes towards competition as healthy/harmful¹³⁵



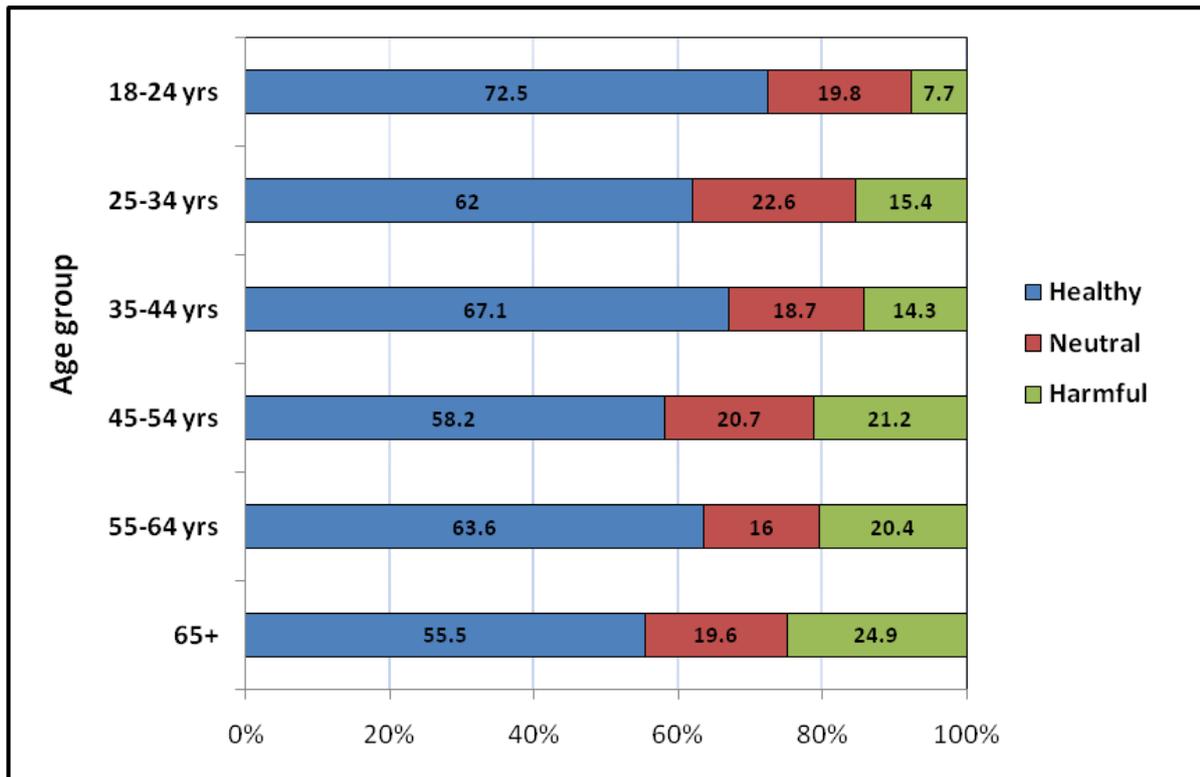
Comments

62.9% of respondents viewed competition as healthy compared to 17.5% of respondents who viewed competition as harmful. There were similar proportions of those who held a 'neutral' view and those who viewed competition as harmful (19.6% versus 17.5%).

¹³⁵ n=1296, all respondents. In order to simplify analysis and presentation of results, trustworthiness of business reduced to three categories: 'View of competition as healthy' (for original scores 1 to 3), 'Neutral' (for original score of 4) and 'View of competition as harmful' (for original scores of 5 to 7).

5.2.1 ATTITUDES TOWARDS COMPETITION AS HEALTHY/HARMFUL AND DEMOGRAPHIC FACTORS

Figure 5.2.1 Attitudes towards competition as healthy/harmful and age¹³⁶



Comments

The oldest age group (65+ years) was more likely to view competition as harmful than view competition as healthy. In contrast to this, the youngest age group (18-24 years) was more likely to view competition as healthy, than view competition as harmful.

¹³⁶ n=1296, all respondents.

6. CARTEL CONDUCT AS AGAINST THE LAW

6.1 PRICE FIXING AS AGAINST THE LAW

Question

Dintro

In the next questions, we describe a number of imaginary business scenarios.

These could apply to companies of **any** size in **any** industry.

When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or industry.

- D1 There are two butchers in a town. In the past they have set their prices independently of each other. This has meant that if one butcher put up its prices, consumers could switch to the other butcher to find a lower price.

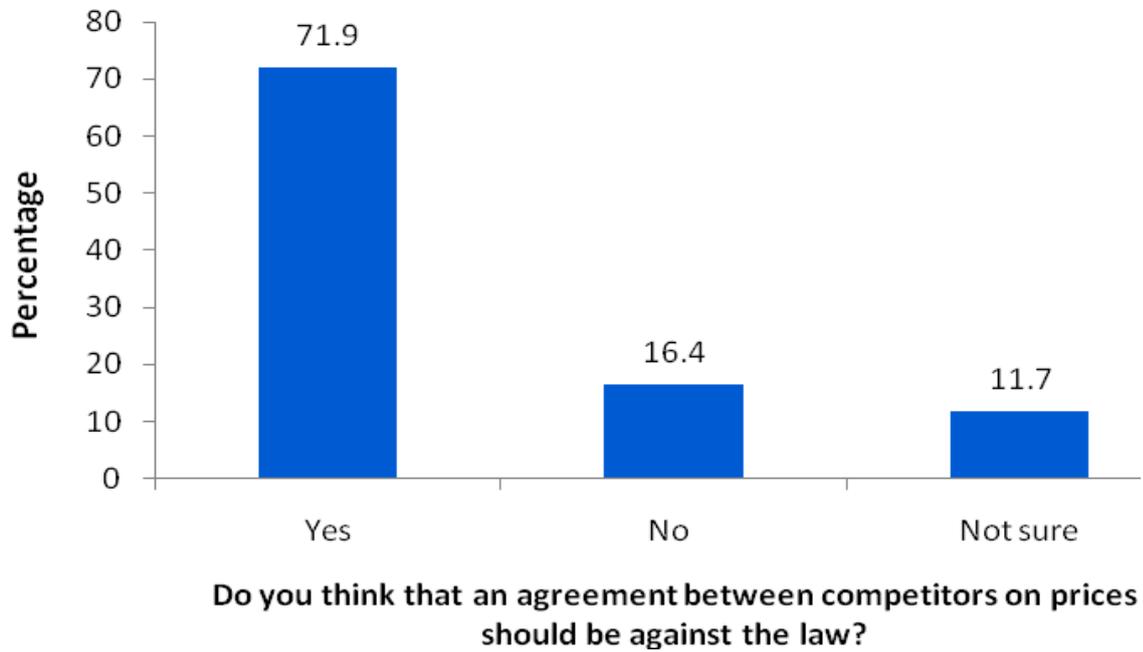
The butchers have now reached an agreement with each other to set the prices they charge for the most popular cuts. As a result, they can charge higher prices because if consumers are unhappy with the price at one butcher, they are unable to switch to the other butcher for a better price.

Do you think that an **agreement between competitors on prices** should be against the law?

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Comment (optional):

Figure 6.1 Price fixing as against the law¹³⁷



Comments

A high proportion (71.9%), more than two thirds, of respondents considered that an agreement between competitors on prices should be against the law. Only 16.4%, less than a fifth of respondents, considered it should be lawful.

¹³⁷ n=1296, all respondents.

Question

D2int. Now for a different scenario....

Remember, the scenario could apply to a company of **any** size in **any** industry.

When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or the industry.

D2 This time, there are two plumbing companies that compete against each other in providing plumbing services to a town. They are the only plumbing companies in the town. In the past, if one plumbing company put up its prices, customers could switch to the other plumbing company.

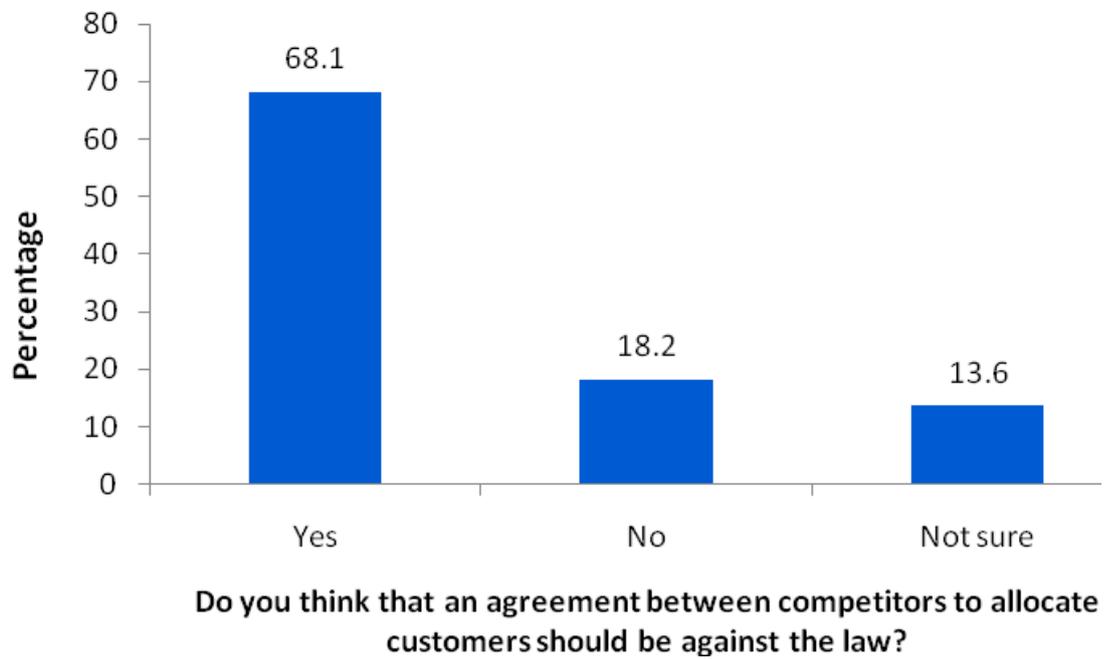
The plumbing companies have now reached an agreement to allocate customers between them. One company will only service buildings north of the river; the other will only service buildings south of the river. As a result, they can charge higher prices because customers can't switch between the plumbing companies when they are unhappy about the price they are being charged.

Do you think that an **agreement between competitors to allocate customers** should be against the law?

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Comment (optional):

Figure 6.2: Market allocation as against the law¹³⁸



Comments

As with an agreement between competitors on prices, a high proportion (68.1%), more than two thirds, of respondents considered that an agreement between competitors to allocate customers should be against the law. Only 18.2%, less than a fifth of respondents, considered it should be lawful.

¹³⁸ n=1296, all respondents.

Question

D3int. Now for one more scenario....

Again, the scenario could apply to a company of **any** size in **any** industry.

When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or the industry.

D3. This time, there are two companies that compete against each other as producers of cheese. They are the only companies that produce cheese in a particular region. In the past they have decided what volume they would produce depending on how much consumers in the region wanted to buy.

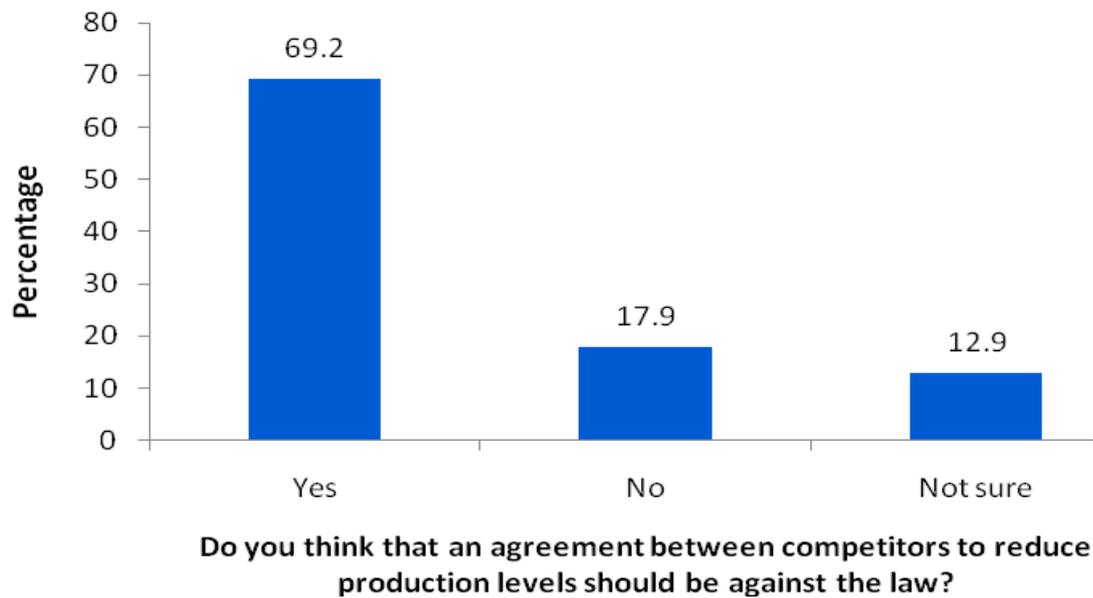
However, the companies have now made an agreement with each other to reduce the amount of cheese they produce. As a result of the agreement, they are no longer producing enough cheese to satisfy everyone in the region and can therefore charge higher prices. This is because consumers want to buy more cheese than is available for sale and are therefore prepared to pay more to try and get as much as they want.

Do you think that an **agreement between competitors to reduce production levels** should be against the law?

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Comments (optional):

Figure 6.3: Output restriction as against the law¹³⁹

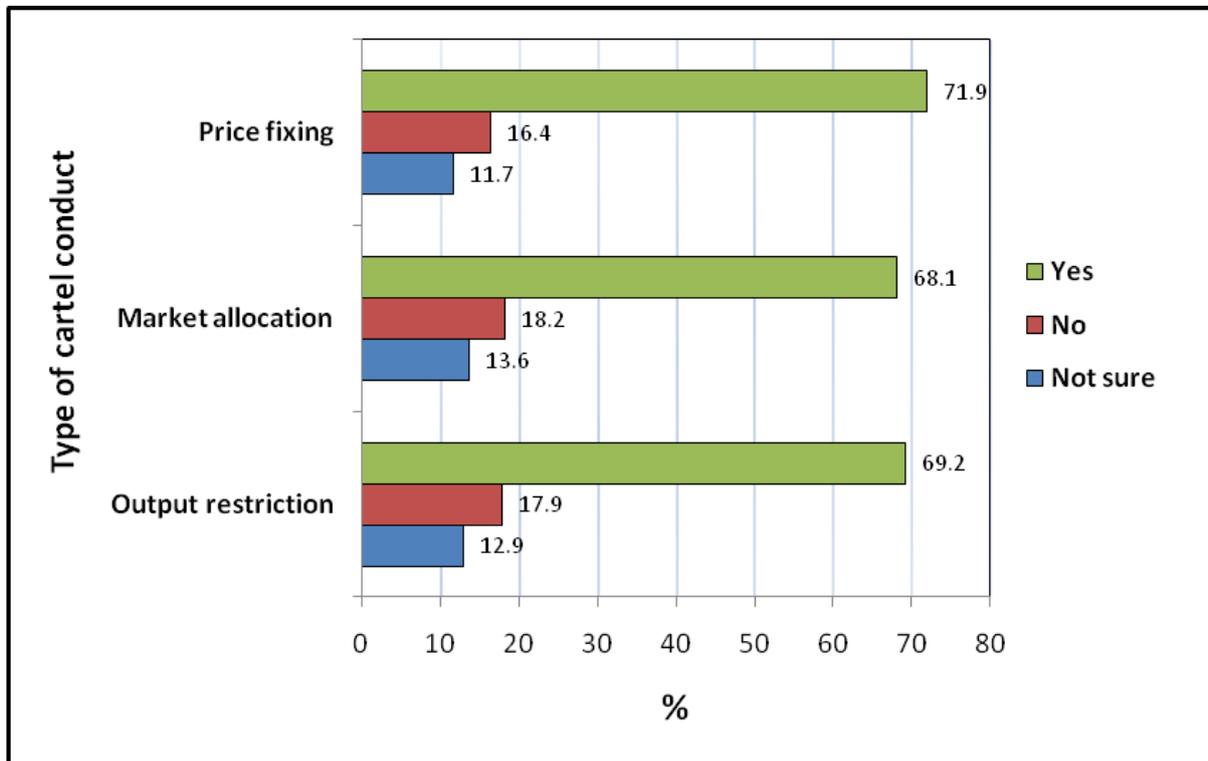


Comments

As with agreements between competitors on prices and to allocate customers, a high proportion (69.2%), more than two thirds, of respondents considered that an agreement between competitors to reduce production levels should be against the law. Only 17.9%, less than a fifth of respondents, considered it should be lawful.

¹³⁹ n=998 (representing respondents who were presented with the 'cheese' scenario for output restriction). See further the explanation given in Section 2.4.1 of changing from a vignette about milk to a vignette about cheese after the soft launch.

Figure 6.4: Comparison between types of cartel conduct as against the law¹⁴⁰



Comments

There were no major differences between types of cartel conduct on views as to whether the particular type of conduct should be against the law.

¹⁴⁰ n=1296, all respondents.

7. CARTEL CONDUCT AS A CRIMINAL OFFENCE

7.1 PRICE FIXING AS A CRIMINAL OFFENCE

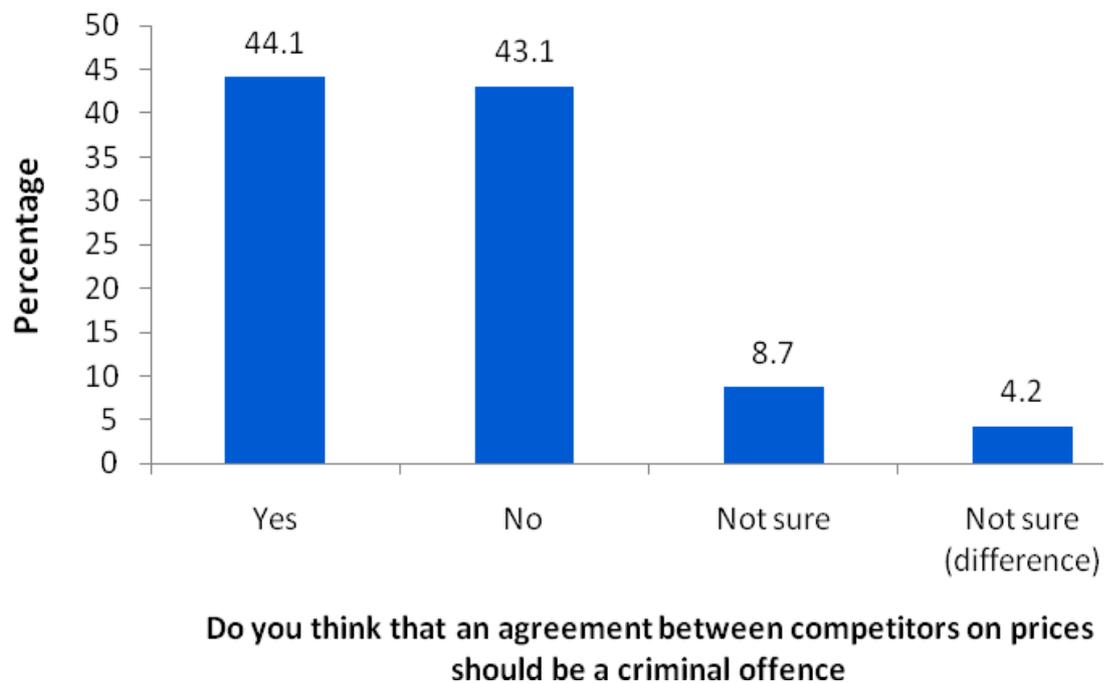
Question

D1A Do you think that an **agreement between competitors on prices** should be a criminal offence?

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law but not a criminal offence
3. I'm not sure about whether it should be a criminal offence
4. I'm not sure about the difference between something being a criminal offence and something being against the law

Comments (optional):

Figure 7.1: Price fixing as a criminal offence¹⁴¹



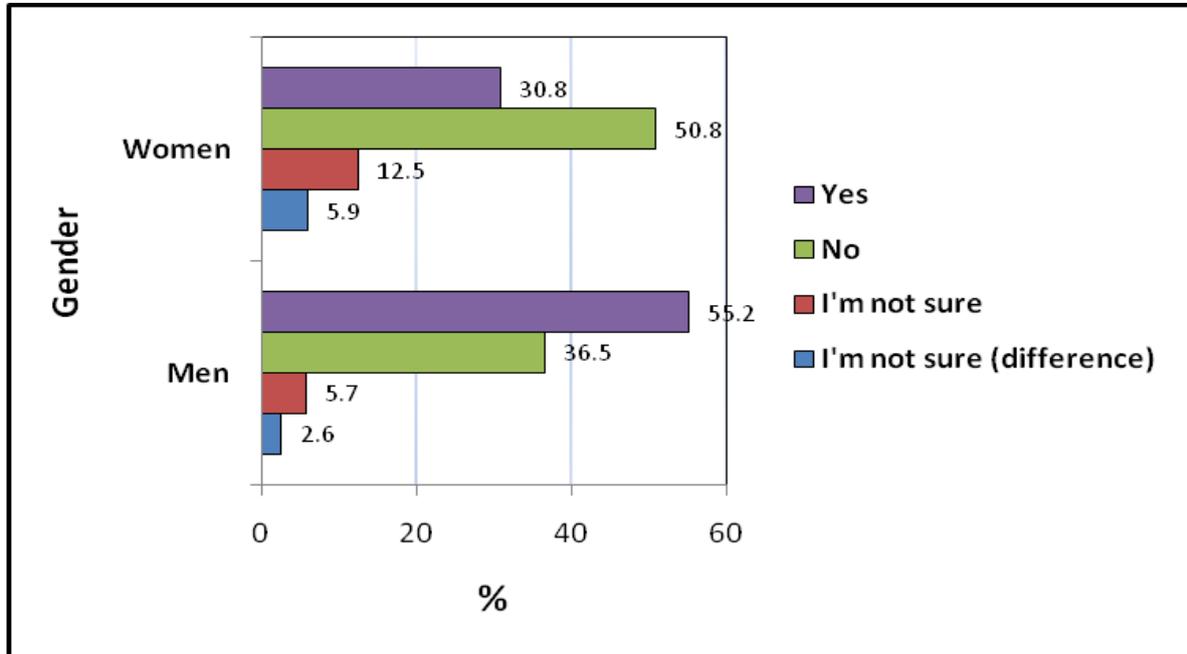
Comments

The proportion of respondents who considered an agreement between competitors on prices should be a criminal offence and the proportion who considered it should be against the law but not a criminal offence were similar – 44.1% and 43.1% respectively. A much lower proportion considered such conduct should be a criminal offence as compared to the proportion who considered it should be against the law (71.4% – see Figure 6.1). Less than 10% of respondents were not sure about whether an agreement between competitors on prices should be a criminal offence and less than 5% were not sure about the difference between conduct being against the law and conduct being a criminal offence.

¹⁴¹ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1) .

7.1.1 PRICE FIXING AS A CRIMINAL OFFENCE AND DEMOGRAPHIC FACTORS

Figure 7.1.1A Price fixing as a criminal offence and gender¹⁴²

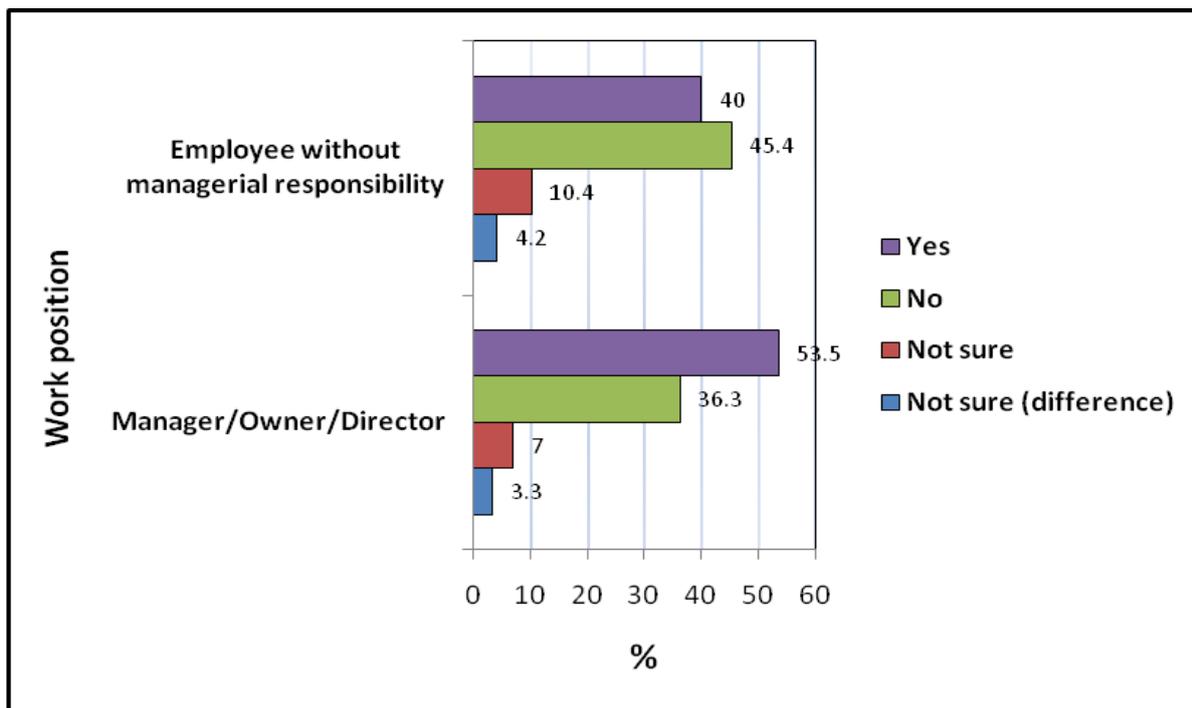


Comments

Compared to women, men were more likely to indicate that an agreement between competitors on prices should be a criminal offence (30.8% women versus 55.2% men), less likely to indicate that such an agreement should not be a criminal offence (50.8% women versus 36.5% men), and less likely to be unsure about whether it should be a criminal offence (5.7% men versus 12.5% women).

¹⁴² n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1).

Figure 7.1.1B Price fixing as a criminal offence and work position¹⁴³

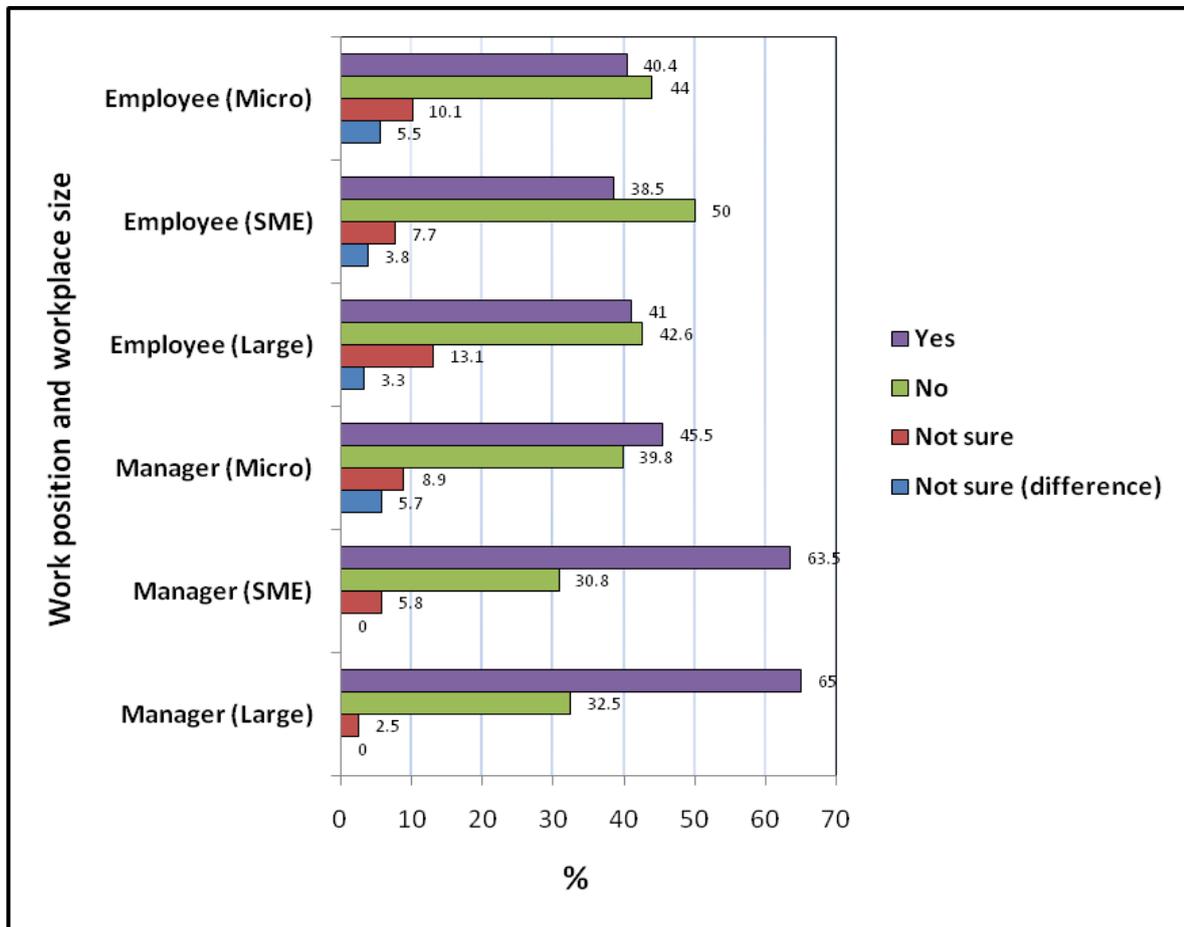


Comments

Comparing respondents who indicated that an agreement between competitors should be a criminal offence to those who indicated that it should not, there was a larger gap in opinion for managers than for non-managers. For managers, 53.5% indicated that an agreement between competitors on prices should be a criminal offence, compared to 36.3% who indicated that it should not be. As compared with managers (53.5%), 40% of employees without managerial responsibility considered an agreement between competitors on prices should be a criminal offence, while 45.4% considered it should not be.

¹⁴³ n=563 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'Last week, did you do any paid work of any kind?', Question A7).

Figure 7.1.1C Price fixing as a criminal offence and work position and workplace size combined¹⁴⁴



Comments

While for employees of any size workplace there were no major differences on whether an agreement between competitors on prices should be a criminal offence, there were marked differences between managers, depending on the size of the workplace. For SMEs and large businesses around twice as many managers indicated that an agreement between competitors on prices should be a criminal offence than those who indicated it should not be. For managers in micro size workplaces, 45.5% indicated that an agreement between competitors on prices should be a criminal offence and 39.8% indicated it should not be.

¹⁴⁴ n=755 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'Last week, did you do any paid work of any kind?', Question A7). In this Figure, 'large' equates to a workplace with 200 or more employees, 'SME' (small to medium) equates to a workplace with between 20-199 employees and 'micro' to a workplace of between 0-19 employees. There was not a test of statistical significance for this cross-tabulation as at least one of the cells had an insufficient frequency.

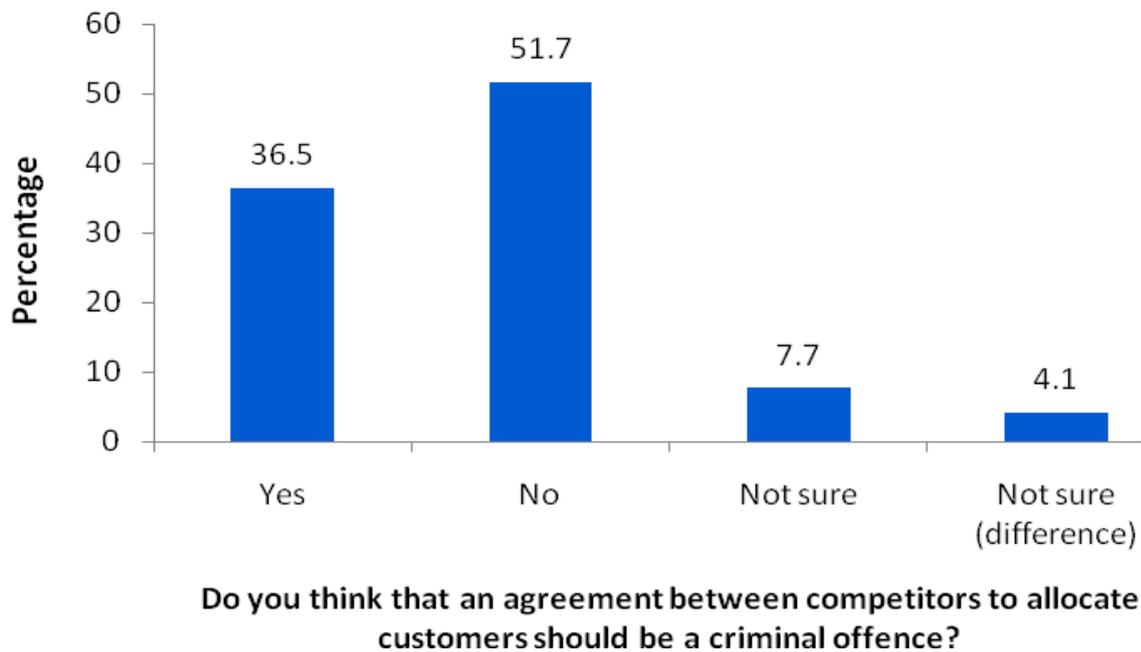
Question

D2A. Do you think that an **agreement between competitors to allocate customers** should be a criminal offence?

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law but not a criminal offence
3. I'm not sure about whether it should be a criminal offence
4. I'm not sure about the difference between something being a criminal offence and something being against the law

Comments (optional):

Figure 7.2: Market allocation as a criminal offence¹⁴⁵

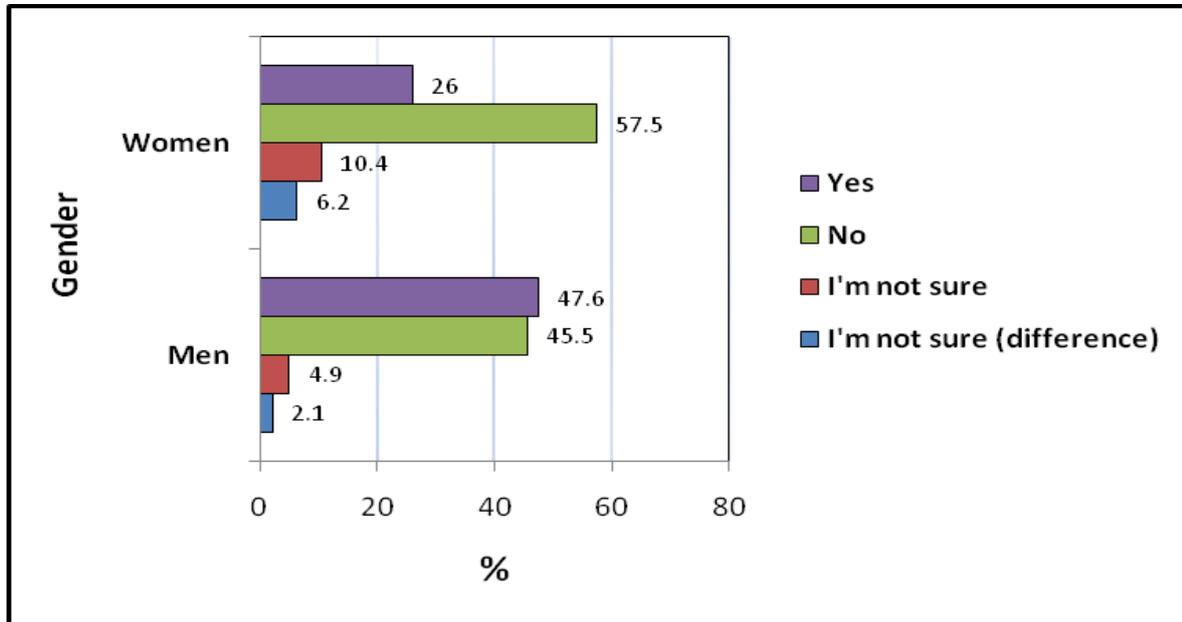


Comments

Just over half of respondents (51.7%) considered an agreement between competitors to allocate customers should not be a criminal offence. 36.5% respondents considered such conduct should be a criminal offence, as compared to 68.1% who considered such conduct should be against the law (see Figure 6.2). Less than 10% of respondents were not sure about whether an agreement between competitors to allocate customers should be a criminal offence and less than 5% were not sure about the difference between conduct being against the law and conduct being a criminal offence.

¹⁴⁵ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2).

Figure 7.2.1 Market allocation as a criminal offence and gender¹⁴⁶



Comments

While for men there was little difference in proportion for or against on the question whether an agreement between competitors to allocate customers should be a criminal offence, there was a large gap for women, where 26% indicated such conduct should be a criminal offence compared to 57.5% who indicated it should not.

¹⁴⁶ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2).

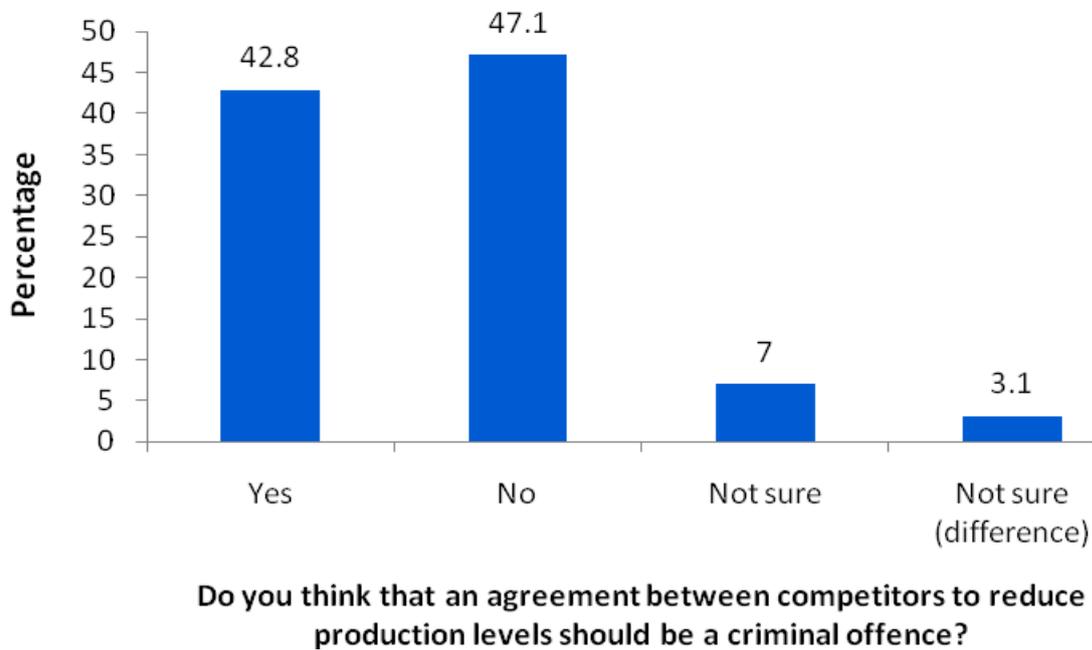
Question

D3int. Do you think that an **agreement between competitors to reduce production levels** should be a criminal offence?

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law but not a criminal offence
3. I'm not sure about whether it should be a criminal offence
4. I'm not sure about the difference between something being a criminal offence and something being against the law

Comments (optional):

Figure 7.3: Output restriction as a criminal offence¹⁴⁷

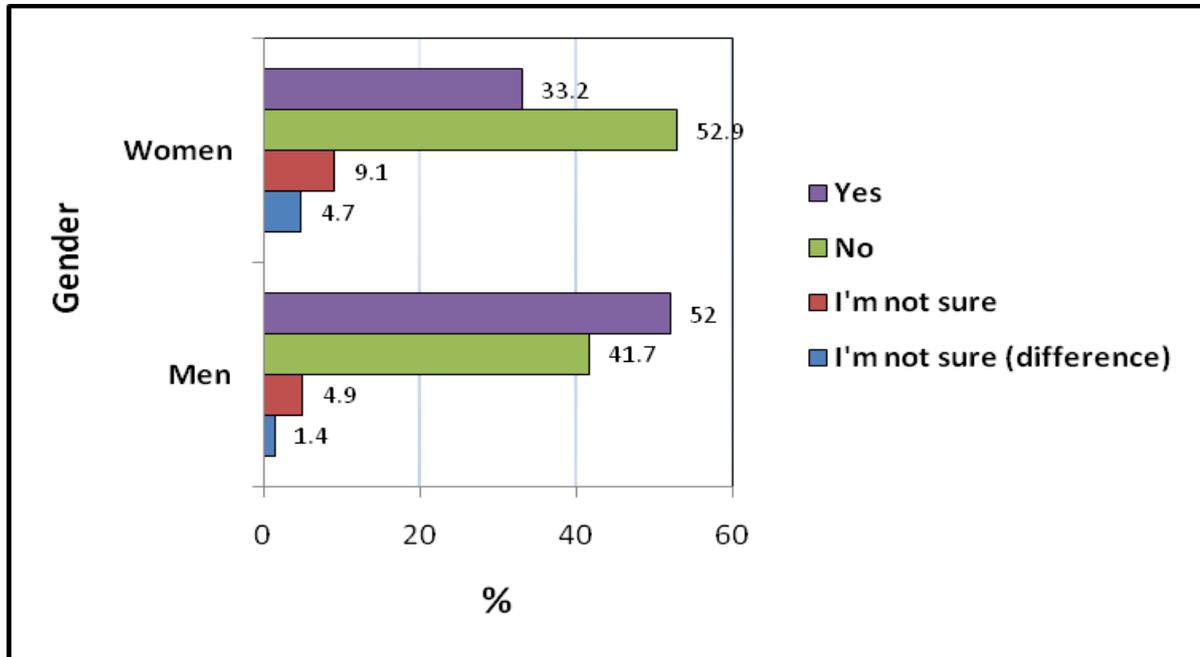


Comments

The proportion of respondents who considered an agreement between competitors to reduce production levels should be a criminal offence and the proportion who considered it should be against the law but not a criminal offence were similar – 42.8% and 47.1% respectively. A much lower proportion considered such conduct should be a criminal offence as compared to the proportion who considered it should be against the law (69.2% - see Figure 6.3). Less than 10% of respondents were not sure about whether an agreement between competitors to reduce production levels should be a criminal offence and less than 5% were not sure about the difference between conduct being against the law and conduct being a criminal offence.

¹⁴⁷ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

Figure 7.3.1 Output restriction as a criminal offence and gender¹⁴⁸



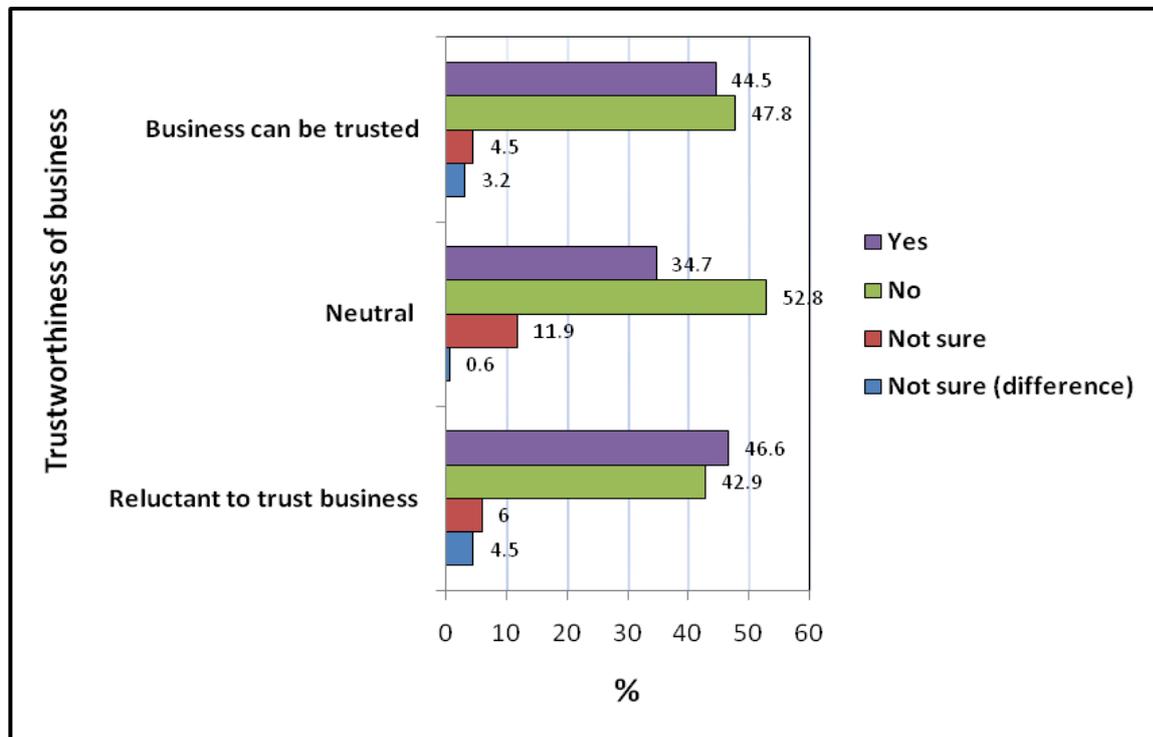
Comments

Around half of men (52%) indicated that an agreement between competitors to reduce production levels should be a criminal offence, while around half of women (52.9%) held the opposite view.

¹⁴⁸ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

7.3.2 OUTPUT RESTRICTION AS A CRIMINAL OFFENCE AND BUSINESS AS TRUSTWORTHY/UNTRUSTWORTHY

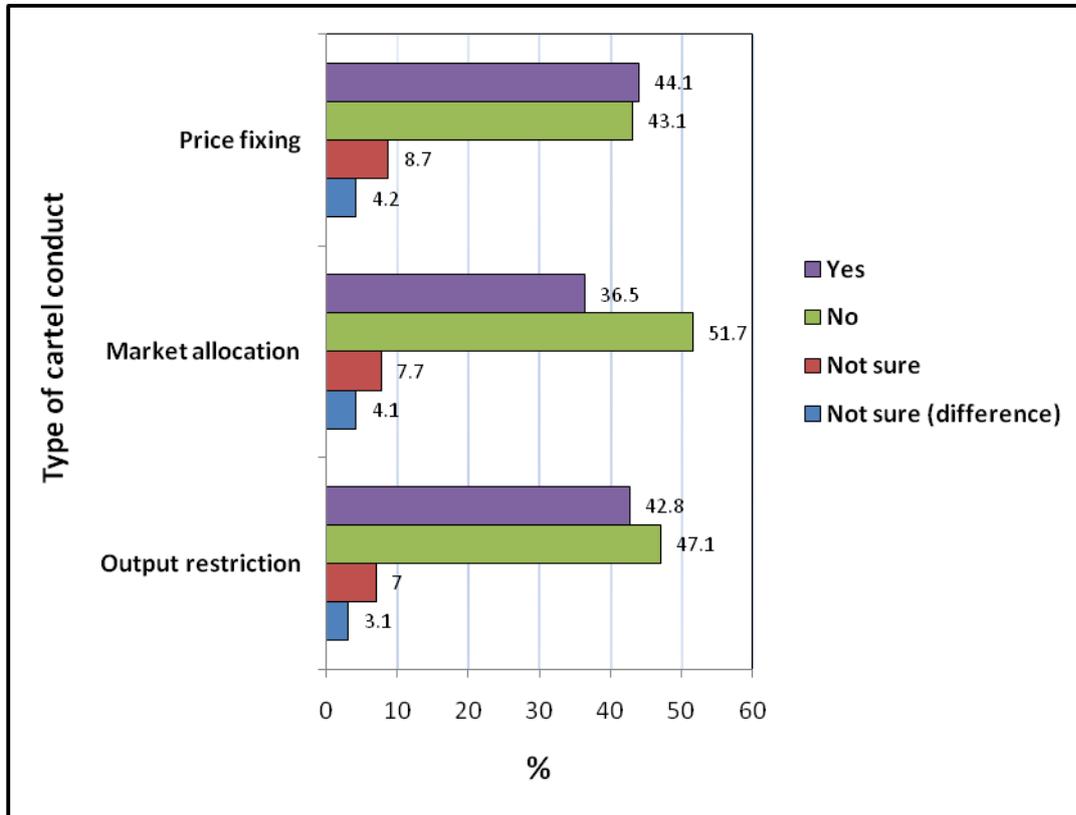
Figure 7.3.2 Output restriction as a criminal offence and trustworthiness of business¹⁴⁹



Comments

Of respondents who were 'neutral' on trustworthiness of business, 34.7% indicated that output restriction should be a criminal offence, while 52.8% indicated that it should not be.

¹⁴⁹ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

Figure 7.4 Comparison between types of cartel conduct as a criminal offence¹⁵⁰

Comments

The largest divide in opinion for and against cartel conduct as a criminal offence was found for market allocation, where 36.5% indicated it should be a criminal offence and 51.7% indicated it should not be. While not presented in the figure above, it was found that of the group of respondents, in the hard launch stage, who were asked their views on the three types of cartel conduct, around one third indicated that all three types should be a criminal offence.

¹⁵⁰ For price fixing, n= 952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1); market sharing, n= 898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2); output restriction, n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

8. REASONS FOR CARTEL CONDUCT AS A CRIMINAL OFFENCE

8.1 REASONS FOR CARTEL CONDUCT AS A CRIMINAL OFFENCE – PRICE FIXING

Question

Why do you think that an **agreement between competitors on prices** should be a criminal offence?

Strongly disagree Disagree Neither disagree nor agree Agree Strongly agree

Because consumers may have to pay more

Because the conduct involves deceiving consumers

Because the conduct may harm or be unfair to other competitors

Because the conduct is dishonest

Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it

Because the conduct will harm competition or the free market

Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future

Because the conduct should be seen as the same as theft

Comments (optional):

Figure 8.1A Reasons for cartel conduct as a criminal offence – Price fixing¹⁵¹

	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree
Because consumers may have to pay more	2.1	1.8	4.1	41.6	50.4
Because the conduct involves deceiving consumers	2.2	0.2	1.4	31.6	64.6
Because the conduct may harm or be unfair to other competitors	2.0	4.1	6.1	44.4	43.4
Because the conduct is dishonest	2.2	0.5	4.7	29.2	63.5
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	2.6	0.6	4.3	39.9	52.6
Because the conduct will harm competition or the free market	2.5	0.6	4.7	37.2	55.0
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	1.7	1.7	4.5	32.5	59.7
Because the conduct should be seen as the same as theft	2.8	2.8	9.2	37.2	48.0

¹⁵¹ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1).

Figure 8.1B Reasons for cartel conduct as a criminal offence – Price fixing (most common response)¹⁵²

	MOST COMMON RESPONSE
Because consumers may have to pay more	Strongly agree
Because the conduct involves deceiving consumers	Strongly agree
Because the conduct may harm or be unfair to other competitors	Agree
Because the conduct is dishonest	Strongly agree
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	Strongly agree
Because the conduct will harm competition or the free market	Strongly agree
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	Strongly agree
Because the conduct should be seen as the same as theft	Strongly agree

Comments

High proportions of respondents agreed or strongly agreed with all of the reasons offered for why an agreement between competitors on prices should be a criminal offence. The most common response for all reasons was ‘Strongly agree’ (except ‘Because the conduct may harm or be unfair to other competitors’ to which the most common response was ‘Agree’). The highest levels of strong agreement related to the reasons – ‘Because the conduct involves deceiving consumers’ and ‘Because the conduct is dishonest’ (64.6% and 63.5% respectively).

¹⁵² n=952 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors on prices should be against the law?’, Question D1, and ‘Yes’ to ‘Do you think than an agreement between competitors on prices should be a criminal offence?’, Question D1A).

8.2 REASONS FOR CARTEL CONDUCT AS A CRIMINAL OFFENCE – MARKET ALLOCATION

Question

D2B. Why do you think that an **agreement between competitors to allocate customers** should be a criminal offence?

Strongly disagree Disagree Neither disagree nor agree Agree Strongly agree

Because consumers may have to pay more

Because the conduct involves deceiving consumers

Because the conduct may harm or be unfair to other competitors

Because the conduct is dishonest

Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it

Because the conduct will harm competition or the free market

Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future

Because the conduct should be seen as the same as theft

Comments (optional):

Figure 8.2A Reasons for cartel conduct as a criminal offence – Market allocation¹⁵³

	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree
Because consumers may have to pay more	0.3	2.4	4.1	45.4	47.9
Because the conduct involves deceiving consumers	0.3	1.8	5.2	38.6	54.1
Because the conduct may harm or be unfair to other competitors	1.6	0.7	10.6	44.2	42.9
Because the conduct is dishonest	0.3	0.8	4.4	32.8	61.6
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	0.3	0.0	5.9	45.8	48.0
Because the conduct will harm competition or the free market	0.8	0.4	5.0	43.7	50.0
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	0.3	1.5	5.0	39.6	53.6
Because the conduct should be seen as the same as theft	0.3	2.8	11.3	40.2	45.5

¹⁵³ n=898 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be a criminal offence?’, Question D2A).

Figure 8.2B Reasons for cartel conduct as a criminal offence – Market allocation (most common response)¹⁵⁴

	MOST COMMON RESPONSE
Because consumers may have to pay more	Strongly agree
Because the conduct involves deceiving consumers	Strongly agree
Because the conduct may harm or be unfair to other competitors	Agree
Because the conduct is dishonest	Strongly agree
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	Strongly agree
Because the conduct will harm competition or the free market	Strongly agree
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	Strongly agree
Because the conduct should be seen as the same as theft	Strongly agree

Comments

High proportions of respondents agreed or strongly agreed with all of the reasons offered for why an agreement between competitors to allocate customers should be a criminal offence. The most common response for all reasons was ‘Strongly agree’ (except ‘Because the conduct may harm or be unfair to other competitors’ to which the most common response was ‘Agree’). The highest levels of strong agreement related to the reasons – ‘Because the conduct involves deceiving consumers’ and ‘Because the conduct is dishonest’ (54.1% and 61.6% respectively).

¹⁵⁴ n=898 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be a criminal offence?’, Question D2A).

Question

D3B. Why do you think that an **agreement between competitors to reduce production levels** should be a criminal offence?

Strongly disagree Disagree Neither disagree nor agree Agree Strongly agree

Because consumers may have to pay more

Because the conduct involves deceiving consumers

Because the conduct may harm or be unfair to other competitors

Because the conduct is dishonest

Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it

Because the conduct will harm competition or the free market

Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future

Because the conduct should be seen as the same as theft

Figure 8.3A Reasons for cartel conduct as a criminal offence – Output restriction¹⁵⁵

	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree
Because consumers may have to pay more	0.5	0.4	3.1	36.4	59.7
Because the conduct involves deceiving consumers	0.5	0.0	2.1	31.2	66.2
Because the conduct may harm or be unfair to other competitors	0.8	4.0	11.6	41.3	42.2
Because the conduct is dishonest	0.5	0.0	3.4	27.4	68.7
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	0.5	0.4	4.2	35.7	59.2
Because the conduct will harm competition or the free market	0.8	2.4	9.1	39.4	48.3
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	0.8	1.6	4.5	34.1	58.9
Because the conduct should be seen as the same as theft	0.5	1.6	7.9	35.0	55.0

¹⁵⁵ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be a criminal offence?', Question D3A).

Figure 8.3B Reasons for cartel conduct as a criminal offence – Output restriction (most common response)¹⁵⁶

	MOST COMMON RESPONSE
Because consumers may have to pay more	Strongly agree
Because the conduct involves deceiving consumers	Strongly agree
Because the conduct may harm or be unfair to other competitors	Strongly Agree
Because the conduct is dishonest	Strongly agree
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	Strongly agree
Because the conduct will harm competition or the free market	Strongly agree
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	Strongly agree
Because the conduct should be seen as the same as theft	Strongly agree

Comments

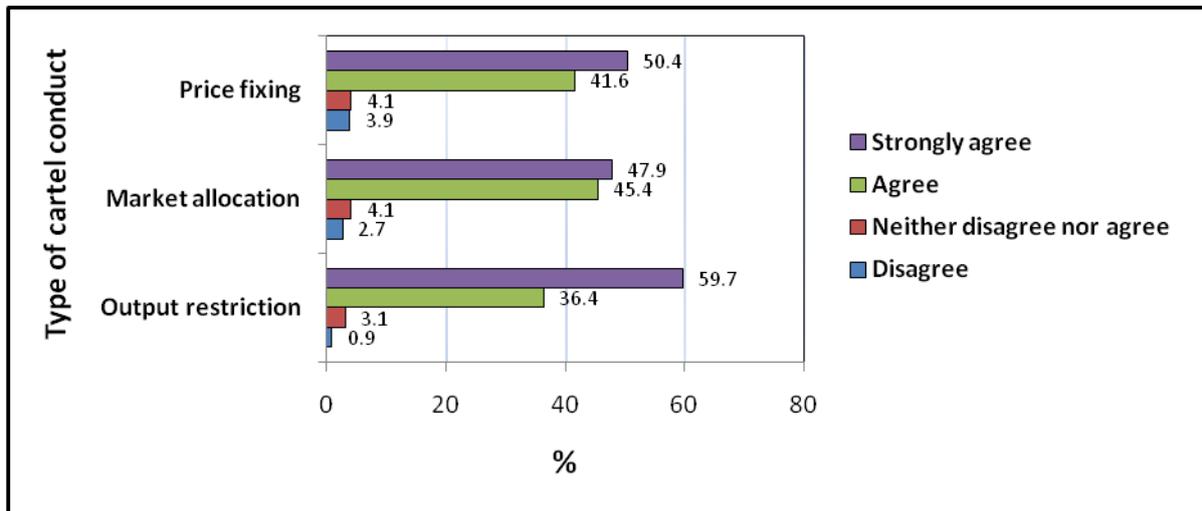
High proportions of respondents agreed or strongly agreed with all of the reasons offered for why an agreement between competitors to reduce production levels should be a criminal offence. The most common response for all reasons was ‘Strongly agree’. The highest levels of strong agreement related to the reasons – ‘Because the conduct involves deceiving consumers’ and ‘Because the conduct is dishonest’ (66.2% and 68.7% respectively).

¹⁵⁶ n=920 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be against the law?’, Question D3, and ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be a criminal offence?’, Question D3A).

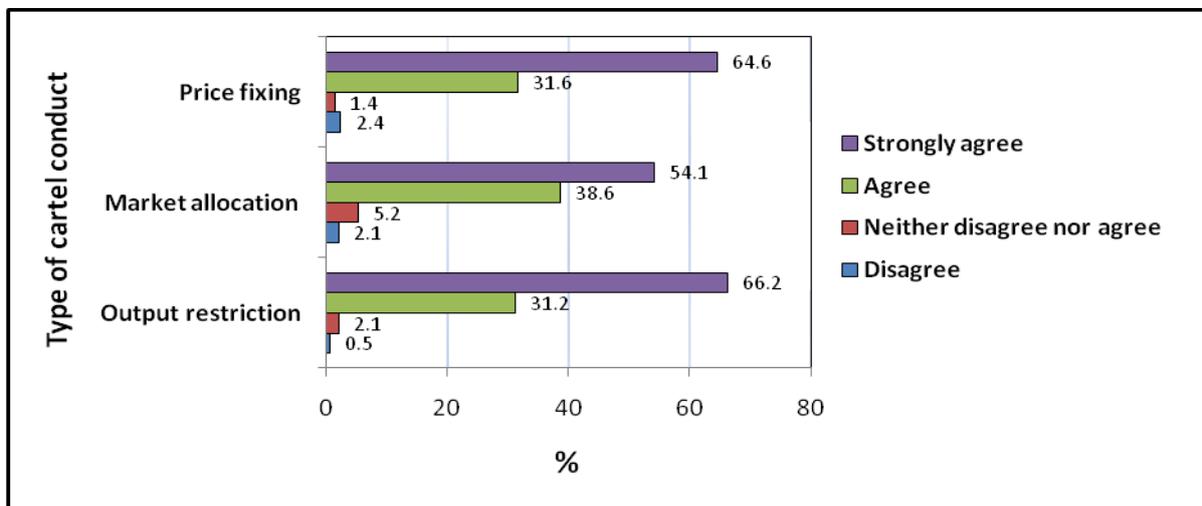
8.4 REASONS FOR CARTEL CONDUCT AS A CRIMINAL OFFENCE – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT

Figure 8.4 Reasons for cartel conduct as a criminal offence – Comparison between types of cartel conduct¹⁵⁷

Because consumers may have to pay more:

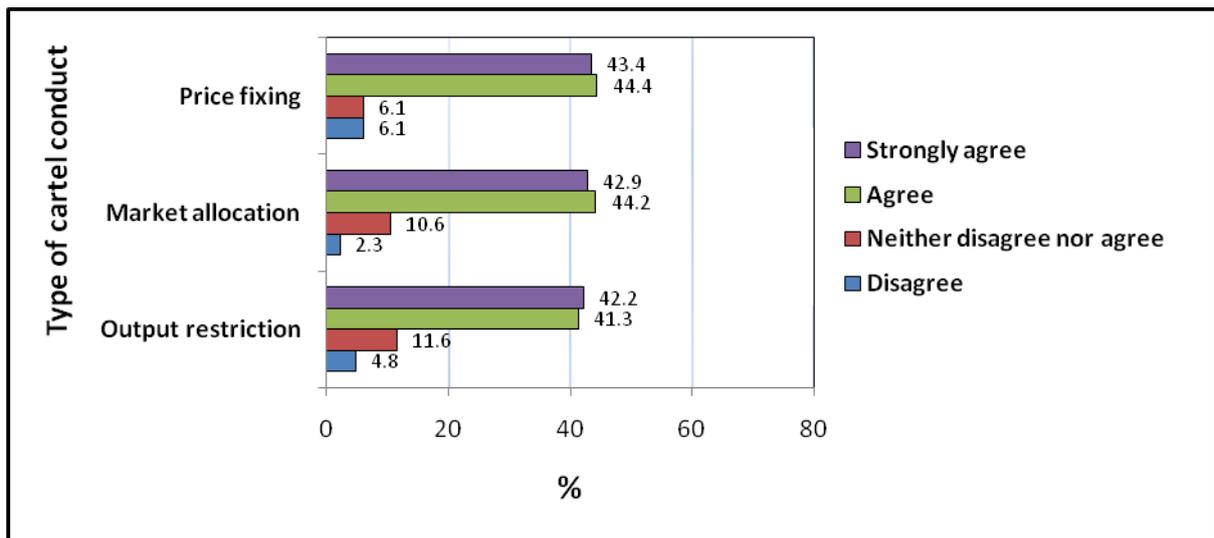


Because the conduct involves deceiving customers:

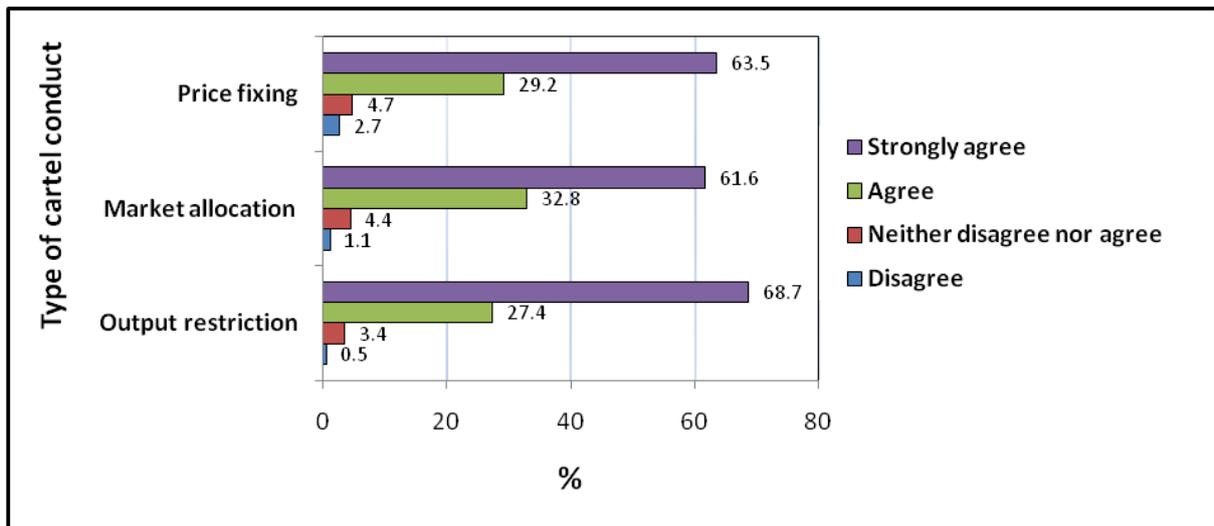


¹⁵⁷ For purposes of brevity the proportions for 'strongly disagree' and 'disagree' were combined (presented as 'disagree' in these figures) as overall levels of disagreement were very low. For price fixing, n= 952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'Do you think than an agreement between competitors on prices should be a criminal offence?', Question D1A); market sharing, n= 898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2 and 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be a criminal offence?', Question D2A); output restriction, n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be a criminal offence?', Question D3A).

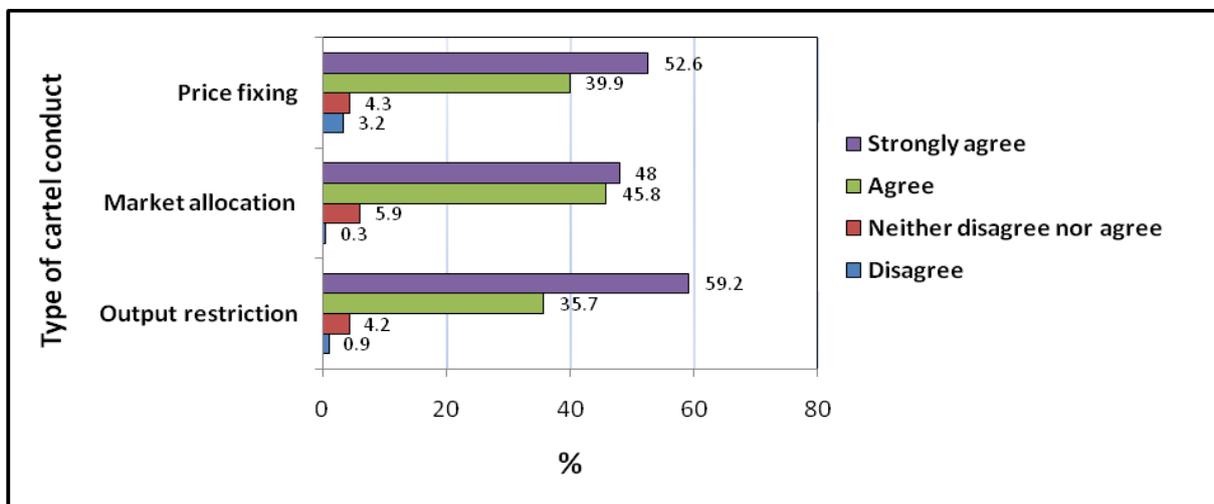
Because the conduct may harm of be unfair to other competitors:



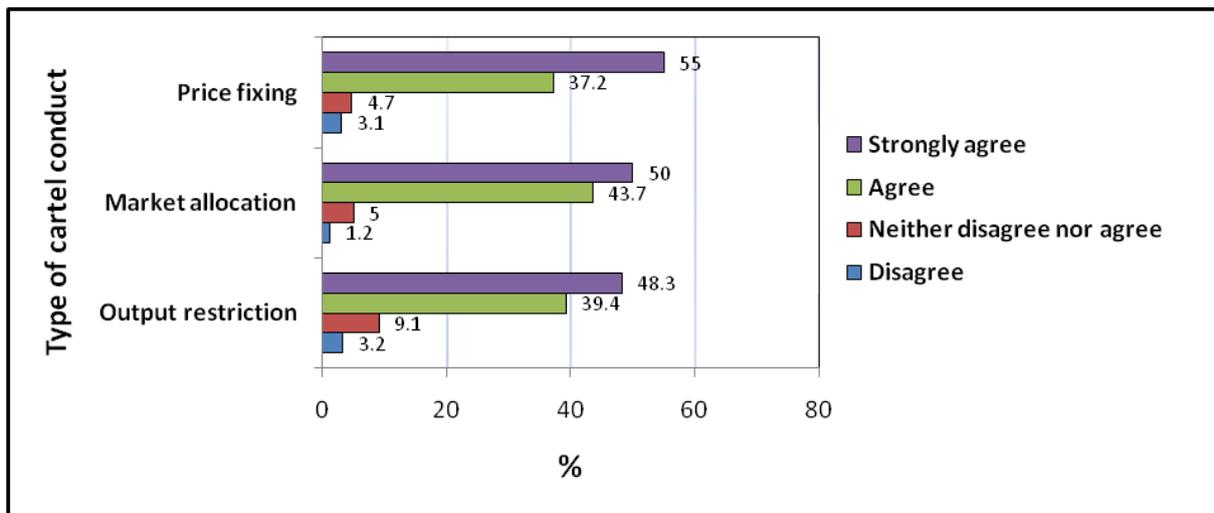
Because the conduct is dishonest:



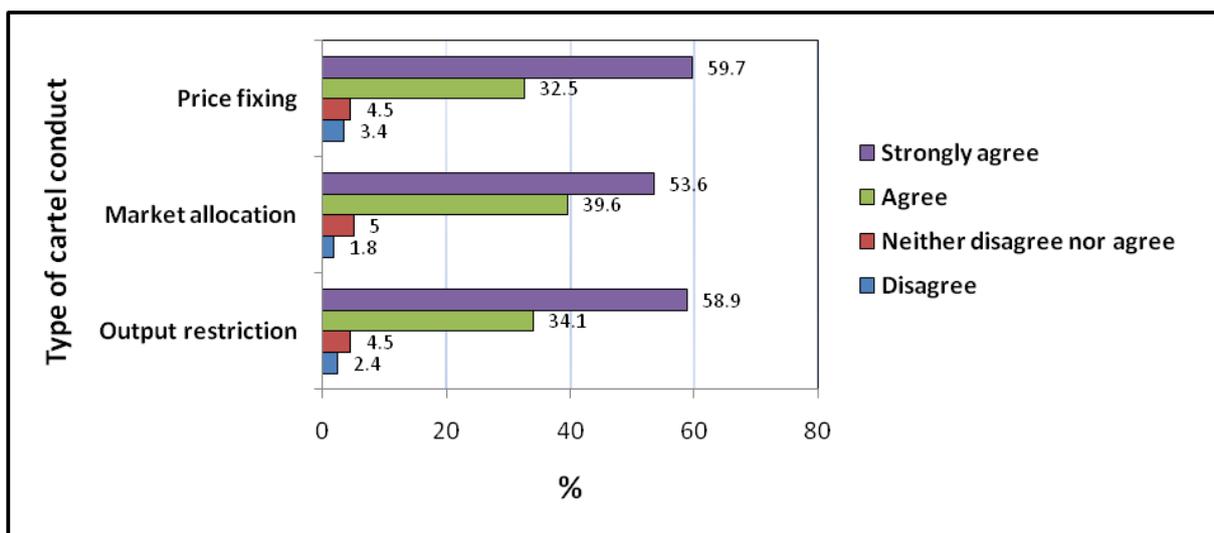
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it:



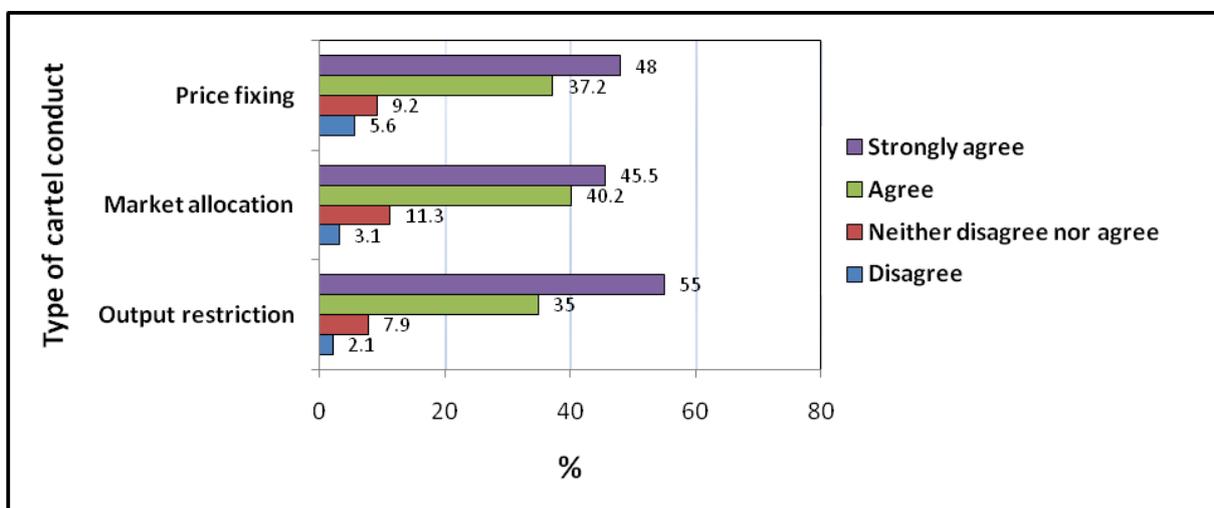
Because the conduct will harm competition or the free market:



Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future:



Because the conduct should be seen as the same as theft:



Comments

There were high levels of agreement with all the reasons presented, irrespective of the type of cartel conduct. Worthy of note were strong levels of agreement across the types of conduct for the following reasons: 'Because the conduct is dishonest' (where there was over 60% in strong agreement) and 'Because the conduct involves deceiving customers' (where there was over 54% in strong agreement).

9. PENALTIES/REMEDIES FOR CARTEL CONDUCT

9.1 COMPANIES

9.1.1 COMPANIES – PRICE FIXING - PENALTIES/REMEDIES

Question

D1Cint. Now we would like you to think about how the law should deal with this conduct. First we will ask you about how the law should deal with the COMPANIES involved. Then we will ask you about how the law should deal with the INDIVIDUALS responsible for the conduct while working for the companies.

D1C How do you think the law should deal with **COMPANIES** that make an **agreement between competitors on prices?**

Please mark all that apply

Figure 9.1.1 Companies – Price fixing - Penalties/remedies¹⁵⁸

	NOT SELECTED Freq. (%)	SELECTED Freq. (%)
The companies should pay a fine	18.6	81.4
The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct	19.9	80.1
The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct	46.8	53.2
The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)	35.3	64.7
There should be no penalties for the companies	99.8	0.2
Don't know	99.5	0.5
Other	98.1	1.9

¹⁵⁸ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1). Nine respondents did not choose 'The companies should pay a fine', however did include fines in their open-ended response to the 'other' category.

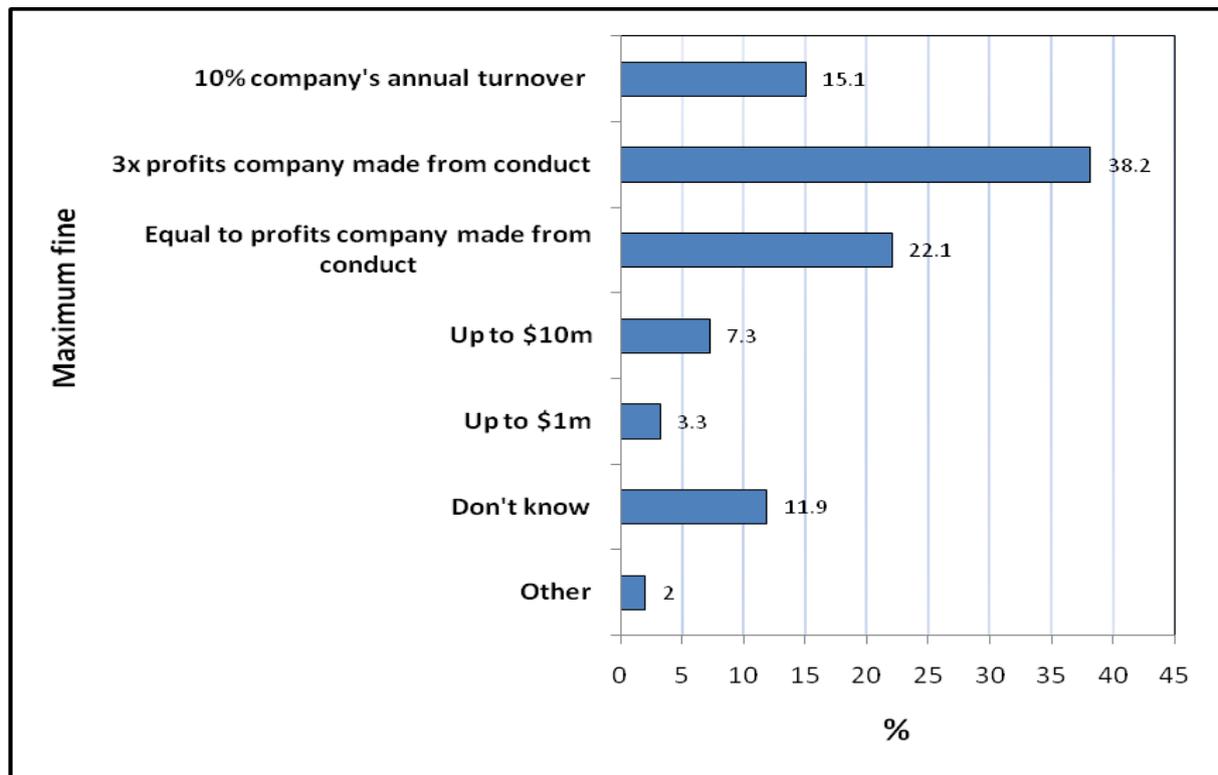
Comments

In considering how the law should deal with companies involving in making an agreement between competitors on prices, the highest levels of support were for payment of a fine (81.4%) and the company being publicly named for its involvement in the conduct (80.1%). Only just over half of respondents considered the companies should have to pay compensation. There was negligible support for the view that the companies should not have to face penalties.

Question

D1Ca. If the companies each had to pay a fine for making an agreement between competitors on prices, how should this fine be calculated?

Figure 9.1.1.1 Companies – Price fixing - Penalties/remedies – Maximum fine¹⁵⁹



Comments

More than a third of respondents considered that the fine for a company involved in making an agreement between competitors on prices should be calculated based on a maximum of three times the profit the company made from the conduct. Less than 10% of respondents considered the maximum fine should be \$10 million and less than 5% thought that the maximum should be \$1 million.

¹⁵⁹ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'The companies should pay a fine', Question D1C_1).

Question

D2Cint. Now we would like you to think about how the law should deal with this conduct. First we will ask you about how the law should deal with the COMPANIES involved. Then we will ask you about how the law should deal with the INDIVIDUALS responsible for the conduct while working for the companies.

D2C How do you think that the law should deal with **COMPANIES** for making an **agreement between competitors to allocate customers**?

Please mark all that apply

Figure 9.1.2 Companies – Market Allocation - Penalties/remedies¹⁶⁰

	NOT SELECTED (%)	SELECTED (%)
The companies should pay a fine	22.8	77.2
The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct	24.9	75.1
The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct	40.5	59.5
The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)	40.2	59.8
There should be no penalties for the companies	99.6	0.4
Don't know	97.8	2.2
Other	99.0	1.0

¹⁶⁰ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2). Four respondents did not choose 'The companies should pay a fine', however did include fines in their open-ended response to the 'other' category.

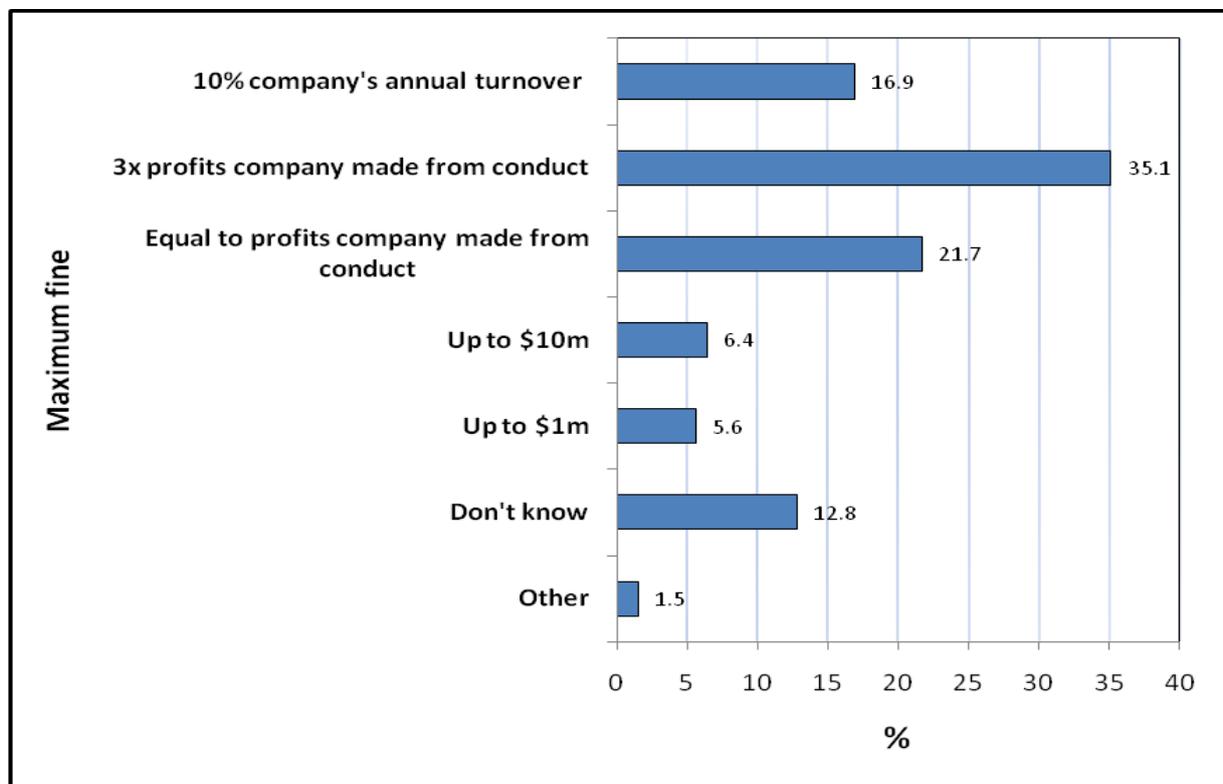
Comments

In considering how the law should deal with companies involving in making an agreement between competitors to allocate customers, the highest levels of support were for payment of a fine (77.2%) and the company being publicly named for its involvement in the conduct (75.1%). There were similar levels of support for the company having to pay compensation and having to take measures to make sure the conduct does not happen again (59.5% and 59.8% respectively). There was negligible support for the view that the companies should not have to face penalties.

Question

D2Ca. If the companies each had to pay a fine for making an **agreement between competitors to allocate customers**, how should this fine be calculated?

Figure 9.1.2.1 Companies – Market allocation - Penalties/remedies – Maximum fine¹⁶¹



Comments

More than a third of respondents considered that the fine for a company involved in making an agreement between competitors to allocate customers should be calculated based on a maximum of three times the profit the company made from the conduct. Less than 10% of respondents considered the maximum fine should be \$10 million.

¹⁶¹ n=703 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2, and 'Yes' to 'The companies should pay a fine', Question D2C_1).

9.1.3 COMPANIES – OUTPUT RESTRICTION - PENALTIES/REMEDIES

Question

D3Cint. Now we would like you to think about how the law should deal with this conduct. First we will ask you about how the law should deal with the COMPANIES involved. Then we will ask you about how the law should deal with the INDIVIDUALS responsible for the conduct while working for the companies.

D3C How do you think that the law should deal with COMPANIES for making an **agreement between competitors to reduce production levels?**

Please mark all that apply

Figure 9.1.3 Companies – Output restriction - Penalties/remedies¹⁶²

	NOT SELECTED Freq. (%)	SELECTED Freq. (%)
The companies should pay a fine	18.0	82.0
The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct	19.2	80.8
The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct	47.0	53.0
The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)	36.1	63.9
There should be no penalties for the companies	100.0	0.0
Don't know	98.5	1.5
Other	98.7	1.3

¹⁶² n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3). Four respondents did not choose 'The companies should pay a fine', however did include fines in their open-ended response to the 'other' category.

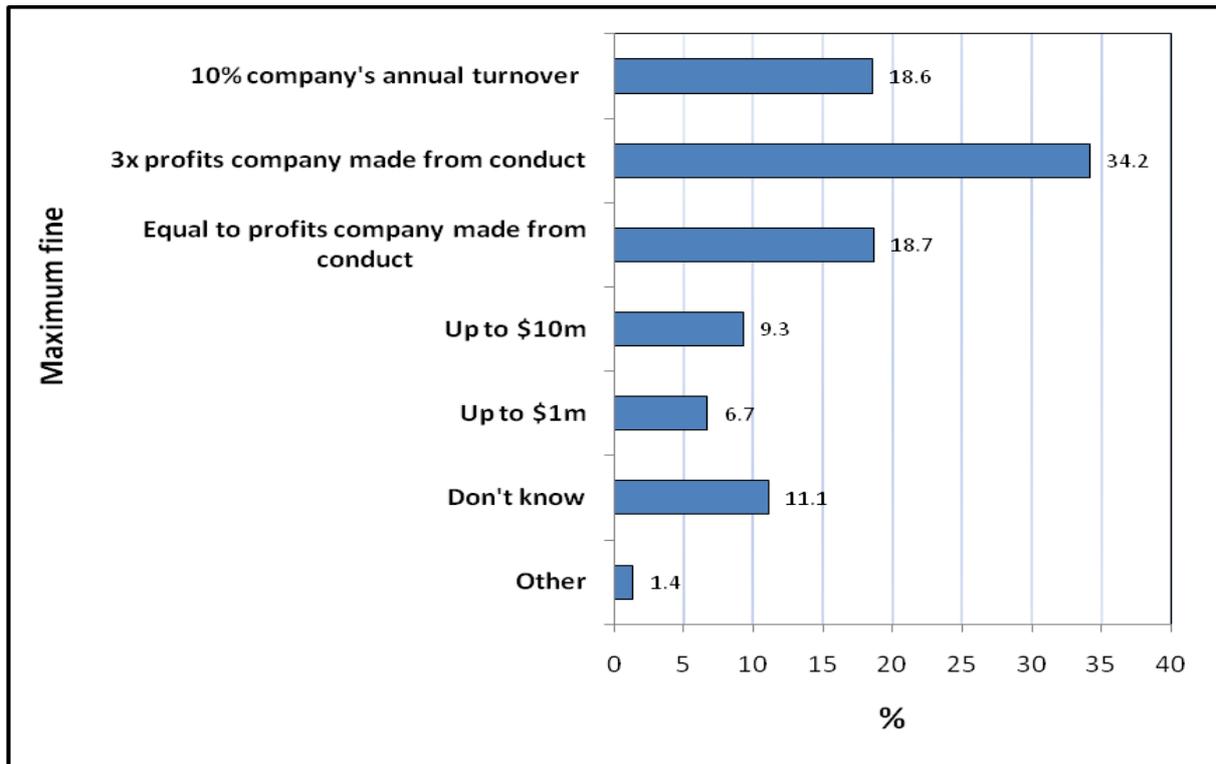
Comments

In considering how the law should deal with companies involving in making an agreement between competitors to reduce production levels, the highest levels of support were for payment of a fine (82%) and the company being publicly named for its involvement in the conduct (80.8%). Only just over half of respondents considered the companies should have to pay compensation. There was no support for the view that the companies should not have to face penalties.

Question

D3Ca. If the companies each had to pay a fine for making an **agreement between competitors to reduce production levels**, how do you think this fine should be calculated?

Figure 9.1.3.1 Companies – Output restriction – Penalties/remedies – Maximum fine¹⁶³



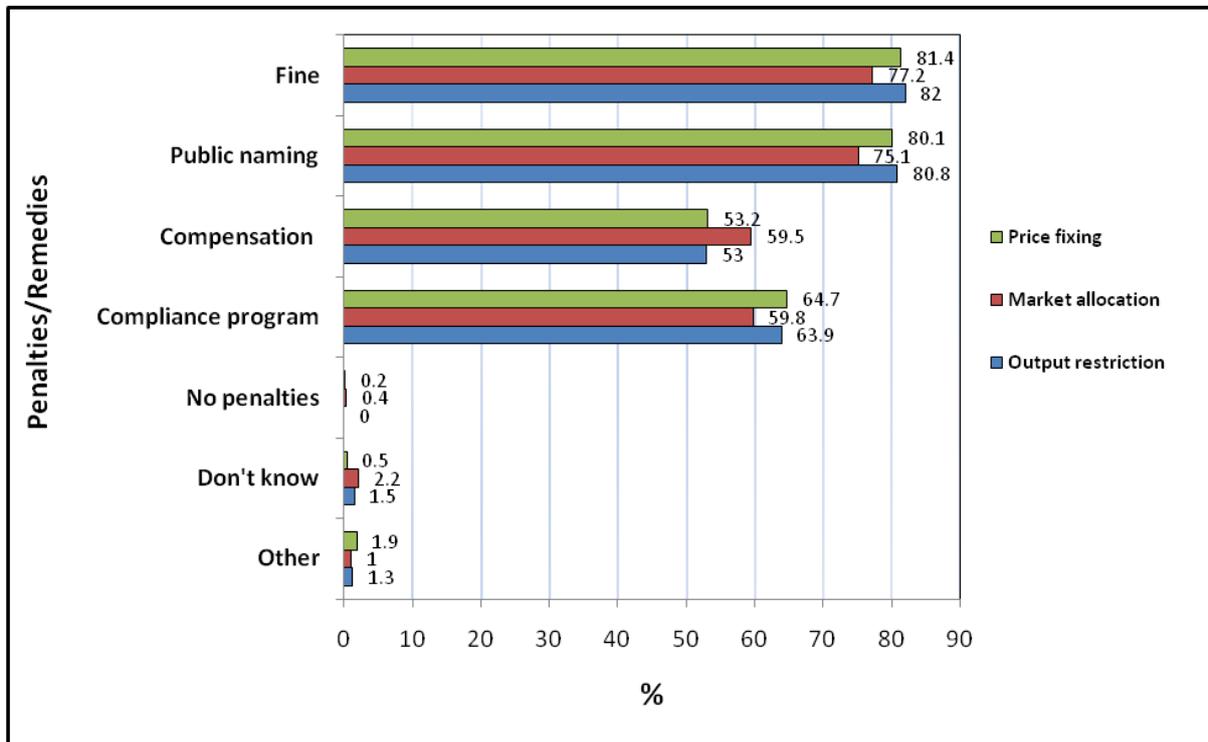
Comments

More than a third of respondents considered that the fine for a company involved in making an agreement between competitors to reduce production levels should be calculated based on a maximum of three times the profit the company made from the conduct. Less than 10% of respondents considered the maximum fine should be \$10 million.

¹⁶³ n=756 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and 'Yes' to 'The companies should pay a fine' Question D3C_1).

9.1.4 COMPANIES – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT - PENALTIES/REMEDIES

Figure 9.1.4 Companies – Comparison between types of cartel conduct - Penalties/remedies¹⁶⁴



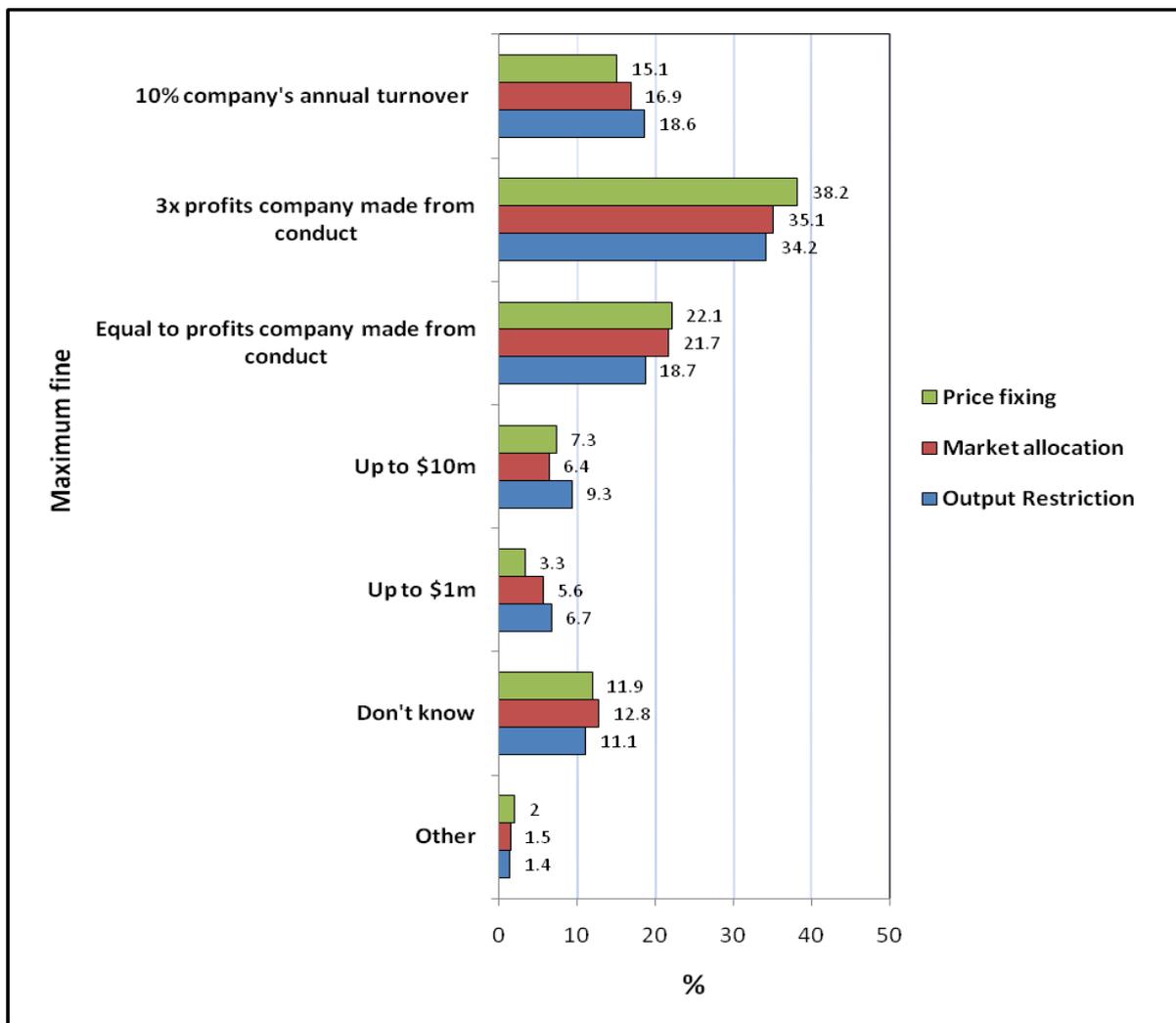
Comments

The most common types of penalty/remedy selected across all three types of cartel conduct were ‘fine’ and ‘public naming’. There were no major differences between types of cartel conduct in the choice of penalty/remedy.

¹⁶⁴ For price fixing, n=781 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors on prices should be against the law?’, Question D1, and ‘Yes’ to ‘The companies should pay a fine’ Question D1C_1); market sharing, n=703 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and ‘Yes’ to ‘The companies should pay a fine’ Question D2C_1); output restriction, n=756 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be against the law?’, Question D3, and ‘Yes’ to ‘The companies should pay a fine’ Question D3C_1).

9.1.4.1 COMPANIES – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT - PENALTIES/REMEDIES -MAXIMUM FINE

Figure 9.4.1.1 Companies – Comparison between types of cartel conduct – Penalties/remedies - Maximum fine¹⁶⁵



¹⁶⁵ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'The companies should pay a fine', Question D1C_1); n=703 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2, and 'Yes' to 'The companies should pay a fine', Question D2C_1.); n=756 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and 'Yes' to 'The companies should pay a fine' Question D3C_1).

Comments

The most common types of penalty maximum selected across all three types of cartel conduct was 'three times the profits that the company made from the conduct'. There were no major differences between types of cartel conduct in the choice of method for calculating the penalty maximum.

9.2 INDIVIDUALS

9.2.1 INDIVIDUALS – PRICE FIXING – PENALTIES/REMEDIES

Question

D1D. How do you think that the law should deal with **INDIVIDUALS** responsible for making an **agreement between competitors on prices**?

Please mark all that apply

Figure 9.2.1 Individuals – Price fixing - Penalties/remedies¹⁶⁶

	NOT SELECTED (%)	SELECTED Freq. (%)
The individuals responsible should go to jail	84.2	15.8
The individuals responsible should pay a fine	29.0	71.0
The individuals responsible should be banned from being a director or manager of any company for a number of years	33.8	66.2
The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct	34.7	65.3
The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct	65.0	35.0
The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)	45.8	54.2
There should be no penalties for the individuals responsible	99.1	0.9
Don't know	98.7	1.3
Other	98.8	1.2

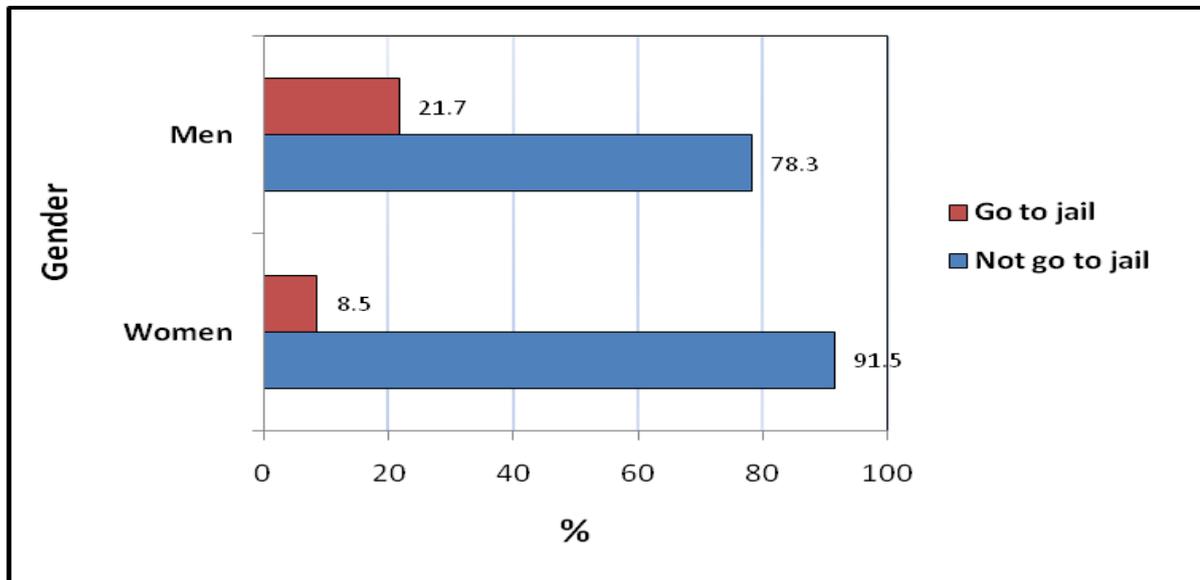
¹⁶⁶ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1). One respondent did not choose 'The individuals responsible should go to jail', however did include jail in their open-ended response to the 'other' category. Similarly, one respondent did not choose 'There should be no penalties for the individual's responsible', however did include 'no penalties' in their open-ended response to the 'other' category.

Comments

In considering how the law should deal with individuals involving in making an agreement between competitors on prices, the highest level of support was for payment of a fine (71.0%), the individual being banned from being a director or manager of any company for a number of years (66.2%) and the individuals being publicly named for involvement in the conduct (65.3%). 54.2% of respondents considered the individuals should have to take measures to make sure the conduct does not happen again. Only 15.8% indicated that individuals should go to jail. There was negligible support for the view that the individuals should not have to face penalties.

9.2.1.1 INDIVIDUALS – PRICE FIXING - PENALTIES/REMEDIES – GO TO JAIL AND DEMOGRAPHIC FACTORS

Figure 9.2.1.1 Individuals – Price fixing - Penalties/remedies – Go to Jail and Gender¹⁶⁷



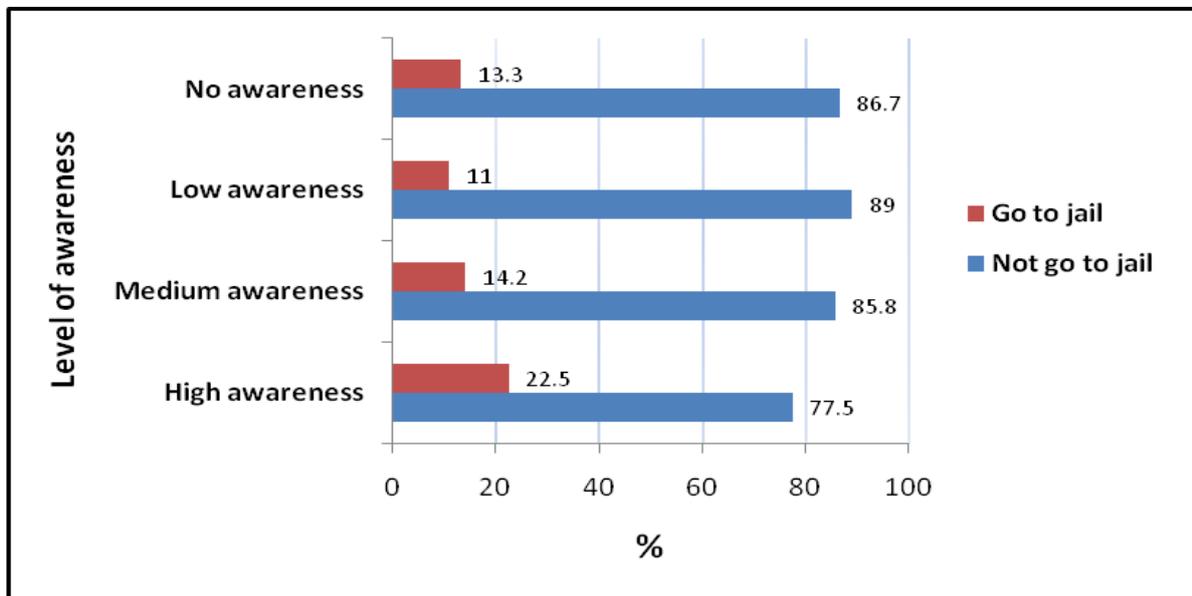
Comments

21.7% of men indicated that individuals should go to jail for price fixing, compared to 8.4% of women.

¹⁶⁷ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1).

9.2.1.2 INDIVIDUALS – PRICE FIXING - PENALTIES/REMEDIES – GO TO JAIL AND PRIOR AWARENESS

Figure 9.2.1.2 Individuals – Price fixing - Penalties/remedies – Go to Jail and Prior awareness¹⁶⁸



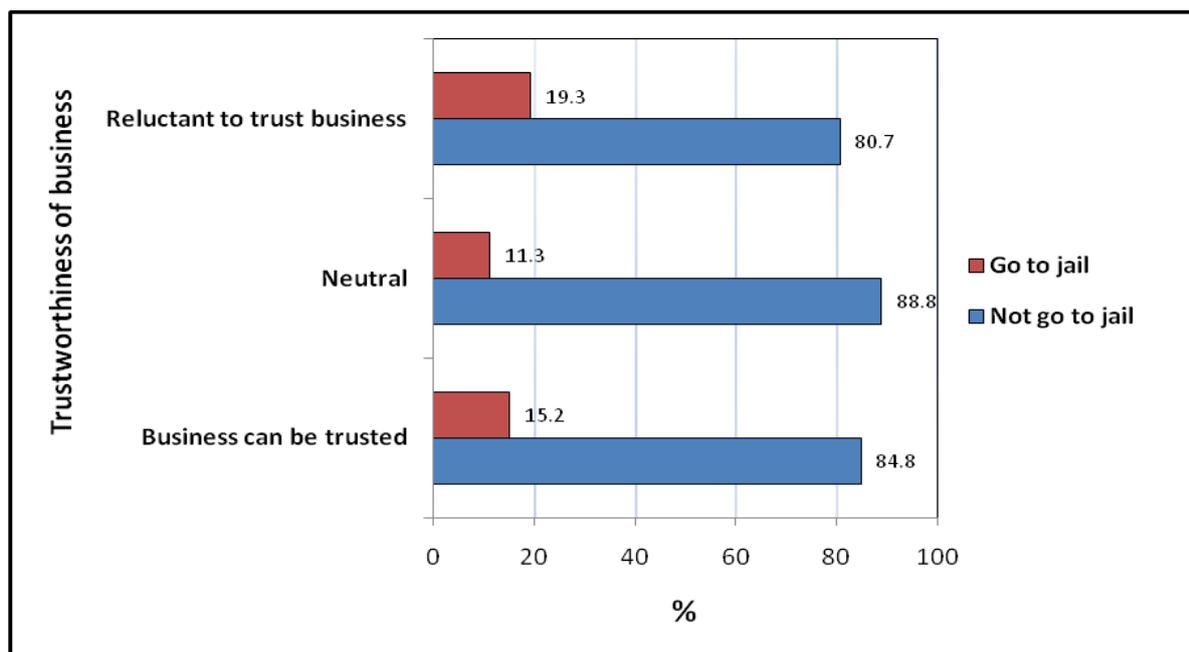
Comments

For the high awareness group 22.5% selected jail while 77.5% did not. For the no awareness group 13.3% selected jail while 86.7% did not. Less than a quarter of the high awareness group selected jail.

¹⁶⁸ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1.

9.2.1.3 INDIVIDUALS – PRICE FIXING - PENALTIES/REMEDIES – GO TO JAIL AND BUSINESS AS TRUSTWORTHY/UNTRUSTWORTHY

Figure 9.2.1.3 Individuals – Price fixing - Penalties/remedies – Go to jail and Trustworthiness of business¹⁶⁹



Comments

Over 80% of each of the trustworthiness of business groups did not select 'go to jail' as a penalty or remedy for price fixing.

¹⁶⁹ n=678 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1.

9.2.1.4 INDIVIDUALS – PRICE FIXING - PENALTIES/REMEDIES –MAXIMUM FINE

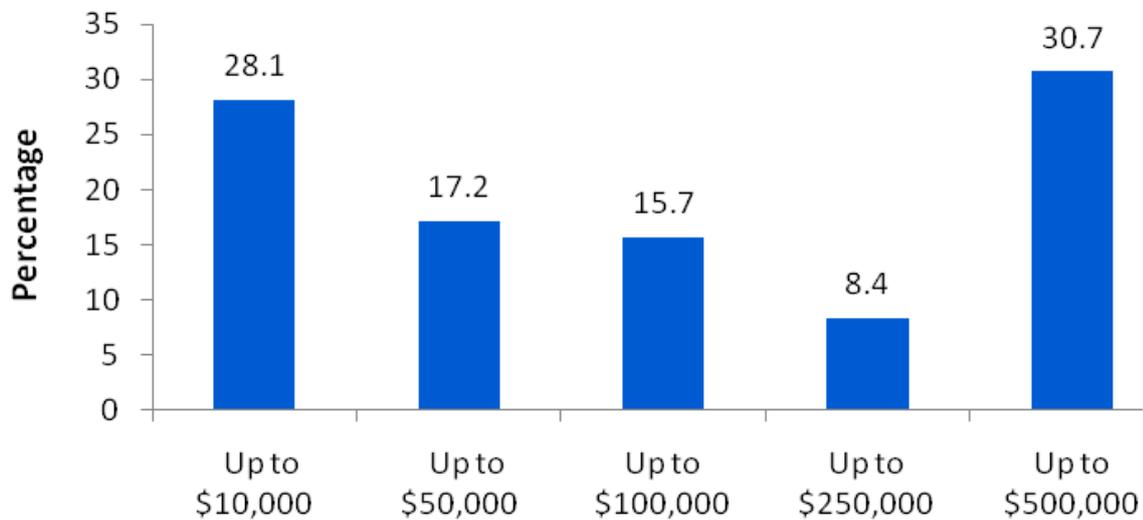
Question

D1Da. If the individuals responsible each had to pay a fine for making an **agreement between competitors on prices**, how do you think this fine should be calculated?

1. Up to \$10,000
2. Up to \$50,000
3. Up to \$100,000
4. Up to \$250,000
5. Up to \$500,000

Comments (optional):

Figure 9.2.1.4 Individuals – Price fixing - Penalties/remedies – Maximum fine¹⁷⁰



If the individuals responsible each had to pay a fine for making an agreement between competitors on prices, how do you think this fine should be calculated?

Comments

The fine category for price fixing that was selected the most was 'up to \$500,000' (30.7%), followed by 'up to \$10,000' (28.1%). Overall respondents were highly divided over what should be the maximum individual fine for an agreement between competitors on prices.

¹⁷⁰ n=678 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'The individuals responsible should pay a fine', Question D1D_2).

9.2.1.5 INDIVIDUALS – PRICE FIXING - PENALTIES/REMEDIES – MAXIMUM JAIL SENTENCE

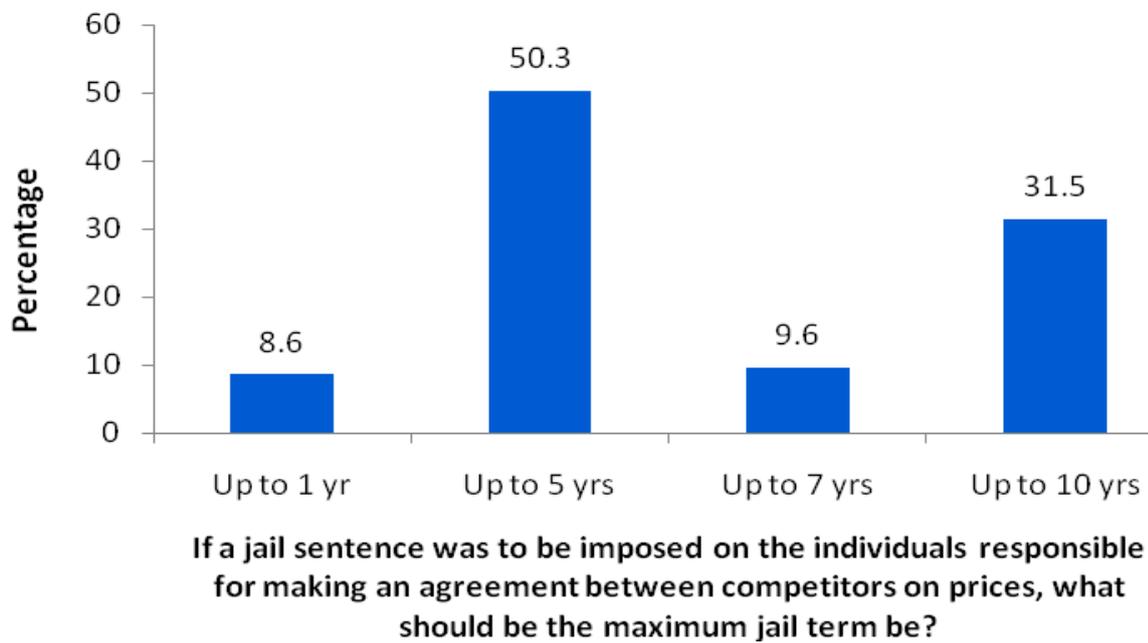
Question

D1Db. If a jail sentence was to be imposed on the individuals responsible for making an **agreement between competitors on prices**, what should the maximum jail term be?

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Comments (optional):

Figure 9.2.1.5 Individuals – Price fixing - Penalties/remedies – Maximum jail sentence¹⁷¹



Comments

The maximum jail sentence for an agreement between competitors on prices that was selected the most was 'up to 5 years' (50.3%), followed by 'up to 10 years' (31.5%). There were much lower percentages for 'up to 1 year' (8.6%), and 'up to 7 years' (9.6%).

¹⁷¹ n=157 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1, and 'Yes' to 'Individuals responsible should go to jail', Question D1D_1).

9.2.2 INDIVIDUALS – MARKET ALLOCATION - PENALTIES/REMEDIES

Question

D2D. How do you think that the law should deal with **INDIVIDUALS** responsible for making an **agreement between competitors to allocate customers**?

Please mark all that apply

Figure 9.2.2.1 Individuals – Market allocation - Penalties/remedies¹⁷²

	NOT SELECTED (%)	SELECTED (%)
The individuals responsible should go to jail	85.7	14.3
The individuals responsible should pay a fine	30.3	69.7
The individuals responsible should be banned from being a director or manager of any company for a number of years	39.2	60.8
The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct	35.6	64.4
The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct	56.0	44.0
The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)	46.9	53.1
There should be no penalties for the individuals responsible	98.9	1.1
Don't know	96.8	3.2
Other	99.6	0.4

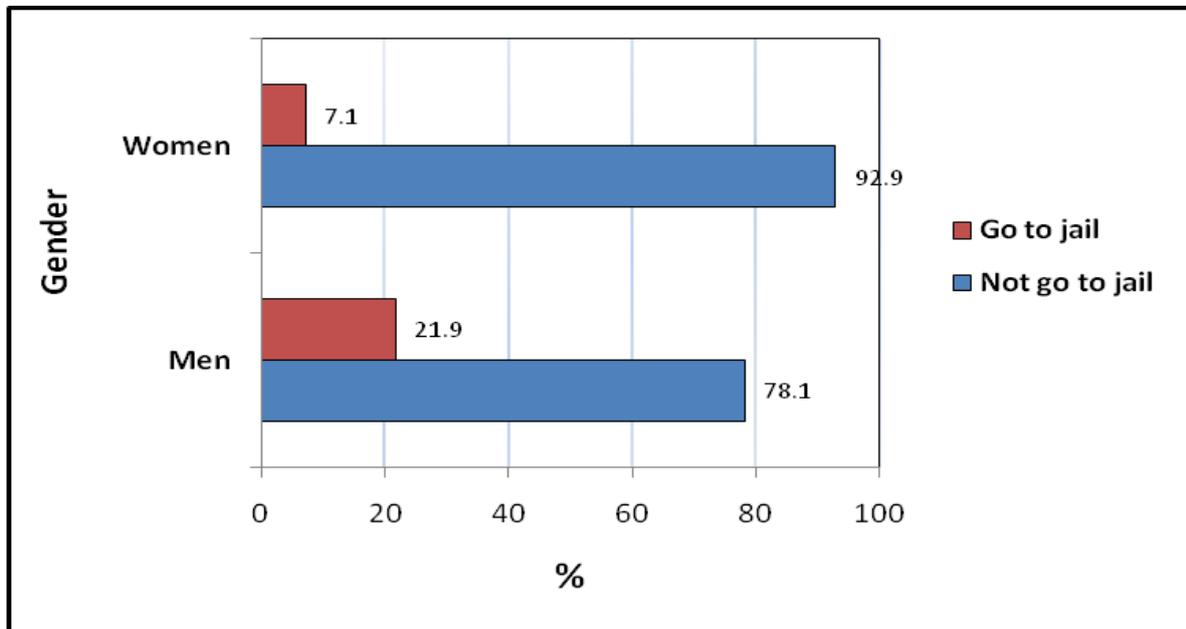
¹⁷² n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2). One respondent did not choose 'The individuals responsible should go to jail', nor 'The individuals responsible should pay a fine', however did include jail and fine in the open-ended response to the 'other' category: "Fine for first offence, jail for subsequent offences".

Comments

In considering how the law should deal with individuals involved in making an agreement between competitors to allocate customers, the highest level of support was for payment of a fine (69.7%), the individual being banned from being a director or manager of any company for a number of years (60.8%) and the individuals being publicly named for involvement in the conduct (64.4%). Just over half of respondents considered the individuals should have to take measures to make sure the conduct does not happen again. Only 14.3% indicated that individuals should go to jail. There was negligible support for the view that the individuals should not have to face penalties.

9.2.2.1 INDIVIDUALS – MARKET ALLOCATION - PENALTIES/REMEDIES - GO TO JAIL AND DEMOGRAPHIC FACTORS

Figure 9.2.2.1A Individuals – Market allocation - Penalties/remedies - Go to jail and Gender¹⁷³



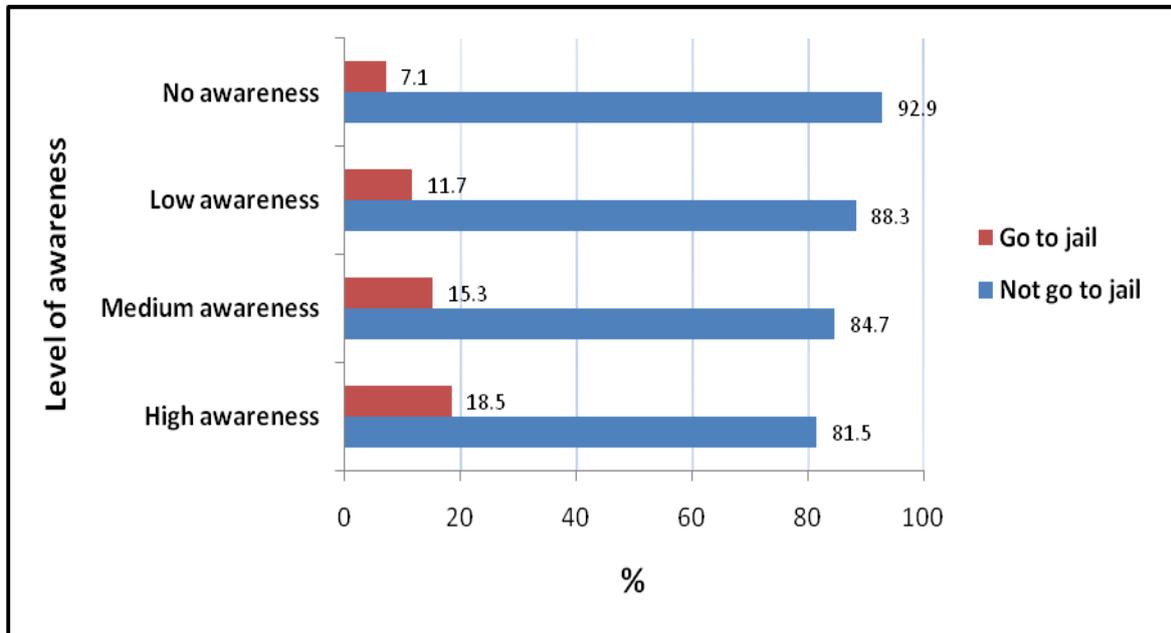
Comments

21.9% of men indicated that individuals should go to jail for making an agreement between competitors to allocate customers, compared to 7.1% of women.

¹⁷³ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2).

9.2.2.2 INDIVIDUALS – MARKET ALLOCATION - PENALTIES/REMEDIES - GO TO JAIL AND PRIOR AWARENESS

Figure 9.2.2.2 Individuals – Market allocation - Penalties/remedies - Go to jail and Prior awareness¹⁷⁴



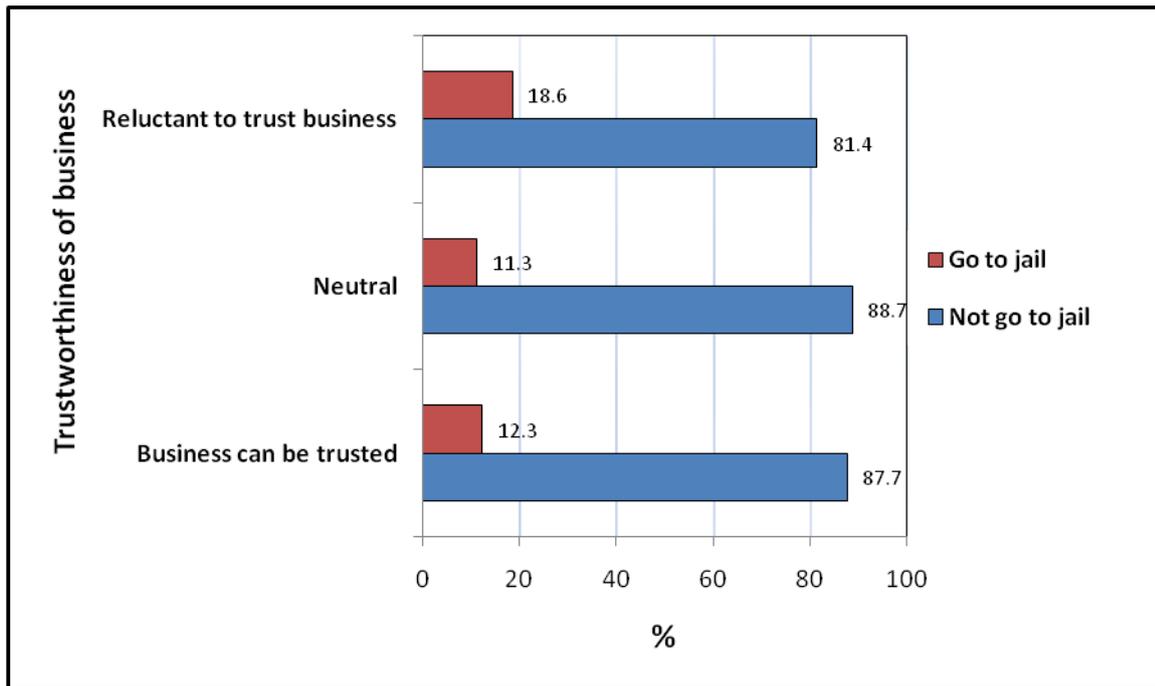
Comments

With higher awareness respondents were more likely to select 'Go to jail'. 7.1% of the no awareness group selected jail, compared to 18.5% of the high awareness group.

¹⁷⁴ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2).

9.2.2.3 INDIVIDUALS – MARKET ALLOCATION - PENALTIES/REMEDIES – GO TO JAIL AND BUSINESS AS TRUSTWORTHY/UNTRUSTWORTHY

Figure 9.2.2.3 Individuals – Market allocation - Penalties/remedies – Go to jail and Business as trustworthy/untrustworthy¹⁷⁵



Comments

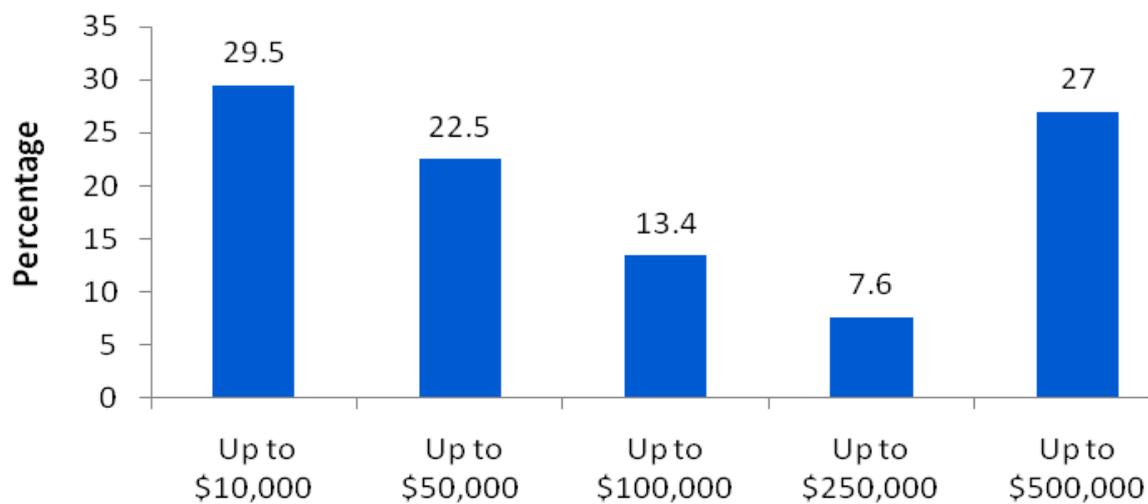
Respondents who were reluctant to trust business were more likely to hold the view that the individuals responsible for an agreement between competitors to allocate customers should go to jail, than not go to jail.

¹⁷⁵ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2).

Question

D2Da. If the individuals responsible each had to pay a fine for making an **agreement between competitors to allocate customers**, how do you think this fine should be calculated?

Figure 9.2.2.4 Individuals – Market allocation - Penalties/remedies – Maximum fine¹⁷⁶



If the individuals responsible each had to pay a fine for making an agreement between competitors to allocate customers, how do you think this fine should be calculated?

Comments

The fine category for market allocation that was selected the most was ‘up to \$10,000’ (29.5%), followed closely by ‘up to \$500,000’ (27%) and ‘up to \$50,000’ (22.5%). Overall respondents were highly divided over what should be the maximum individual fine for an agreement between competitors to allocate customers.

¹⁷⁶ n=633 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and ‘Yes’ to ‘The individuals responsible should pay a fine’, Question D2D_2).

9.2.2.5 INDIVIDUALS – MARKET ALLOCATION - PENALTIES/REMEDIES – MAXIMUM JAIL SENTENCE

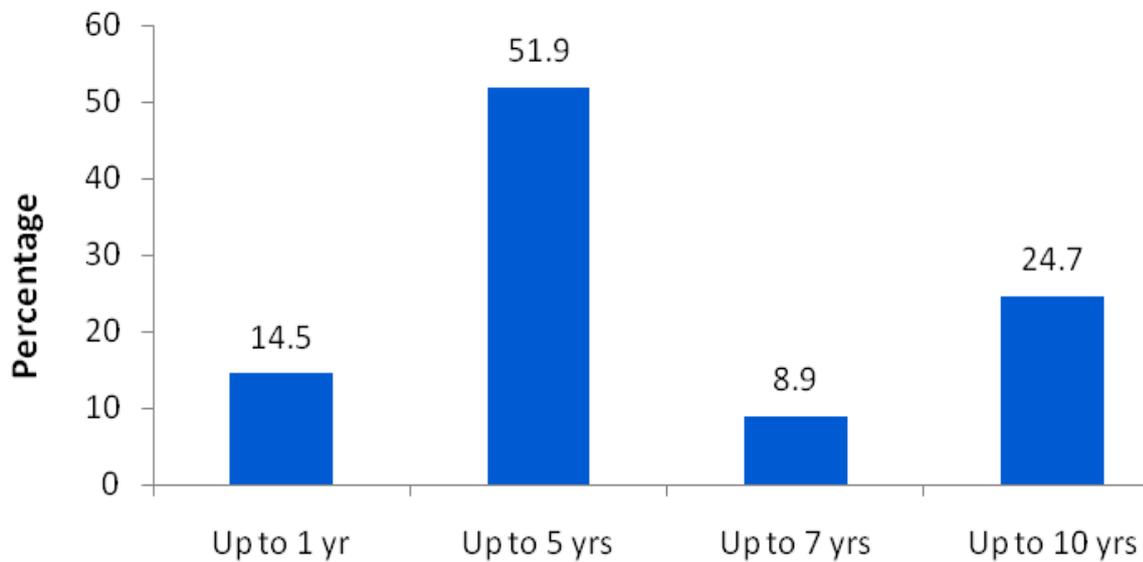
Question

D2Db. If a jail sentence was to be imposed on the individuals responsible for making an **agreement between competitors to allocate customers**, what should the maximum jail term be?

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Comments (optional):

Figure 9.2.2.5 Individuals – Market allocation - Penalties/remedies – Maximum jail sentence¹⁷⁷



If a jail sentence was to be imposed on the individuals responsible for making an agreement between competitors to allocate customers, what should the maximum jail term be?

Comments

Just over half of respondents considered the maximum jail term for individuals involved in making an agreement to allocate customers should be 5 years. Less than a quarter supported a maximum of 10 years.

¹⁷⁷ n=131 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2, and 'Yes' to 'The individuals responsible should go to jail', Question D2D_1).

9.2.3 INDIVIDUALS – OUTPUT RESTRICTION - PENALTIES/REMEDIES

Question

D3D. How do you think that the law should deal with **INDIVIDUALS** responsible for making an **agreement between competitors to reduce production levels**?

Please mark all that apply

Figure 9.2.3 Individuals – Output restriction - Penalties/remedies¹⁷⁸

	NOT SELECTED (%)	SELECTED (%)
The individuals responsible should go to jail	81.0	19.0
The individuals responsible should pay a fine	23.3	76.7
The individuals responsible should be banned from being a director or manager of any company for a number of years	34.1	65.9
The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct	29.8	70.2
The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct	54.9	45.1
The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)	45.9	54.1
There should be no penalties for the individuals responsible	99.2	0.8
Don't know	98.0	2.0
Other	99.9	0.1

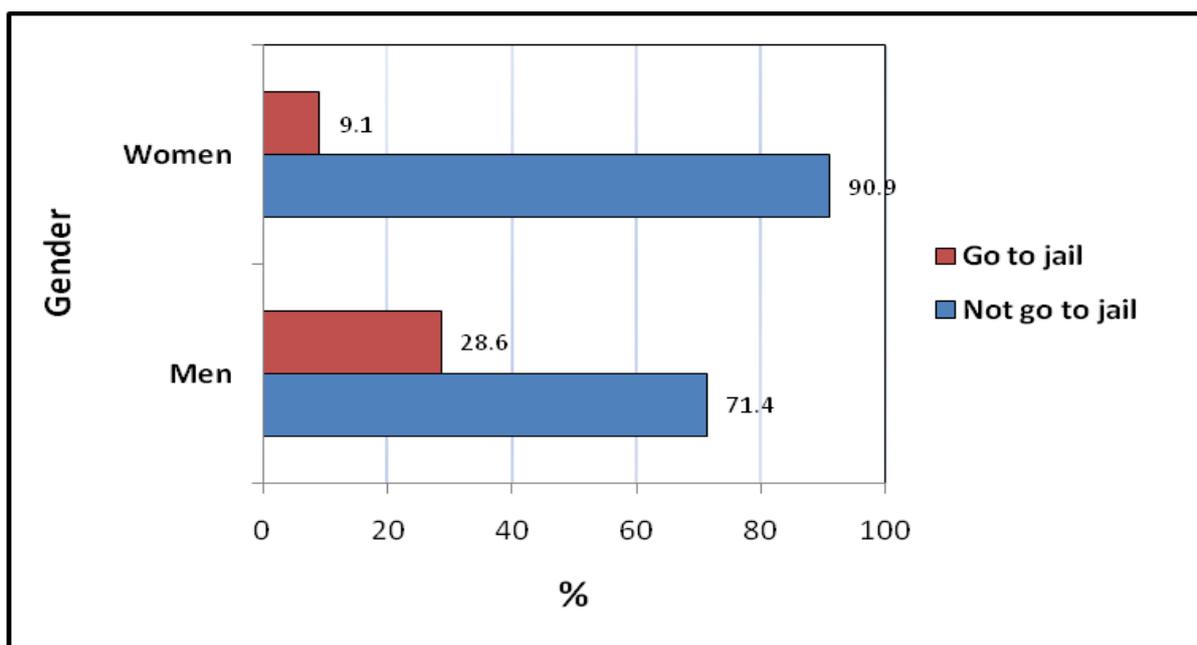
¹⁷⁸ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

Comments

In considering how the law should deal with individuals involving in making an agreement between competitors to reduce production levels, the highest level of support was for payment of a fine (76.7%), the individual being banned from being a director or manager of any company for a number of years (65.9%) and the individuals being publicly named for involvement in the conduct (70.2%). Just over half of respondents considered the individuals should have to take measures to make sure the conduct does not happen again. 19% (just less than a fifth) indicated that individuals should go to jail. There was negligible support (less than 1%) for the view that the individuals should not have to face penalties.

9.2.3.1 INDIVIDUALS – OUTPUT RESTRICTION – PENALTIES/REMEDIES – GO TO JAIL AND DEMOGRAPHIC FACTORS

Figure 9.2.3.1A Individuals – Output restriction – Penalties/remedies – Go to jail and Gender¹⁷⁹



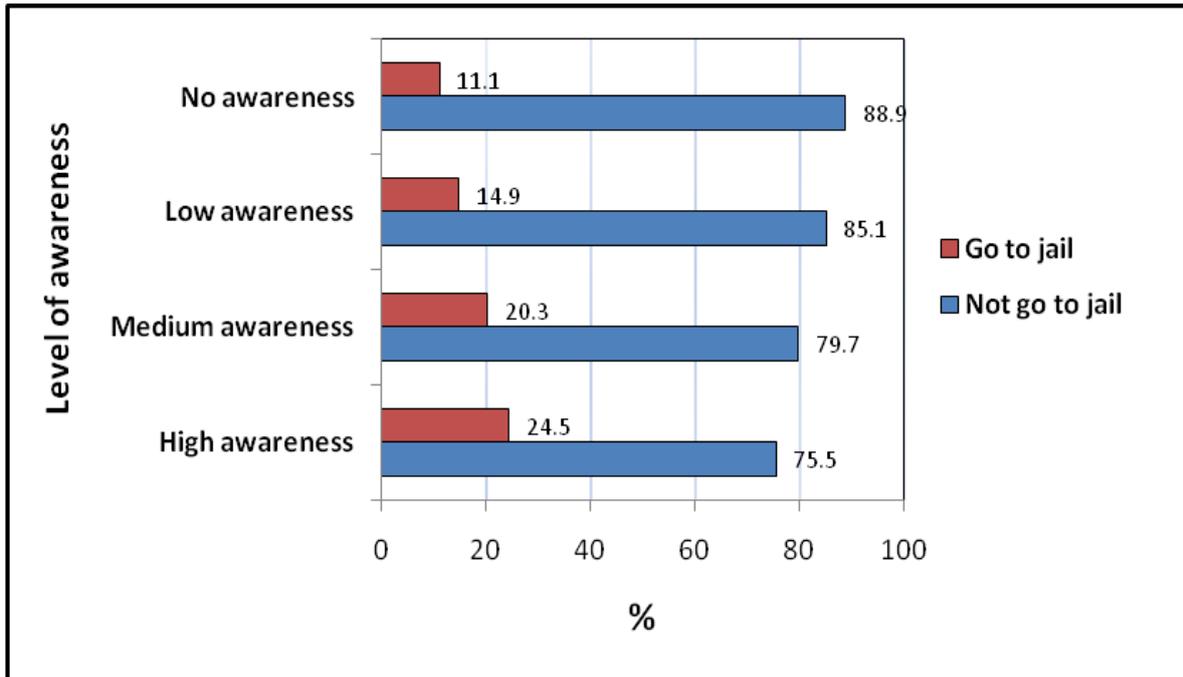
Comments

28.6% of men indicated that individuals should go to jail for an agreement between competitors to reduce production levels, compared to 9.1% of women.

¹⁷⁹ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

9.2.3.2 INDIVIDUALS – OUTPUT RESTRICTION – PENALTIES/REMEDIES – GO TO JAIL AND PRIOR AWARENESS

Figure 9.2.3.2 Individuals – Output restriction – Penalties/remedies – Go to jail and Prior awareness¹⁸⁰



Comments

Moving from no awareness to high awareness there was an incremental increase in proportion of respondents who selected 'go to jail' as a penalty for output restriction. 24.5% of the high awareness group chose 'go to jail' while 14.9% of the low awareness group and 11.1% of the no awareness group chose 'go to jail'.

¹⁸⁰ n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

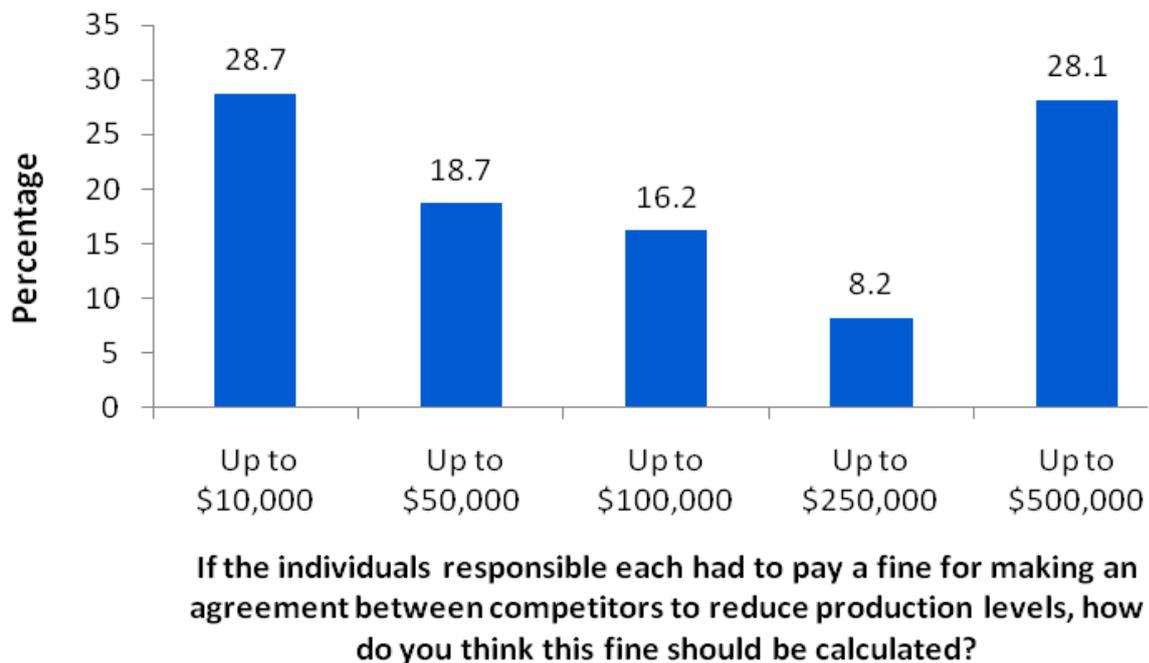
9.2.3.2 INDIVIDUALS – OUTPUT RESTRICTION - PENALTIES/REMEDIES – MAXIMUM FINE

Question

D3Da. If the individuals responsible each had to pay a fine for making an **agreement between competitors to reduce production levels**, how do you think this fine should be calculated?

- 1. Up to \$10,000
- 2. Up to \$50,000
- 3. Up to \$100,000
- 4. Up to \$250,000
- 5. Up to \$500,000

Figure 9.2.3.2 Individuals – Output restriction - Penalties/remedies – Maximum Fine¹⁸¹



¹⁸¹ n=695 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and 'Yes' to 'The individuals responsible should pay a fine', Question D3D_2).

Comments

The fine category for output restriction that was selected the most was 'up to \$10,000' (28.7%), followed closely by 'up to \$500,000' (28.1%). 8.2% selected 'up to \$250,000'.

9.2.3.3 INDIVIDUALS – OUTPUT RESTRICTION - PENALTIES/REMEDIES – MAXIMUM JAIL SENTENCE

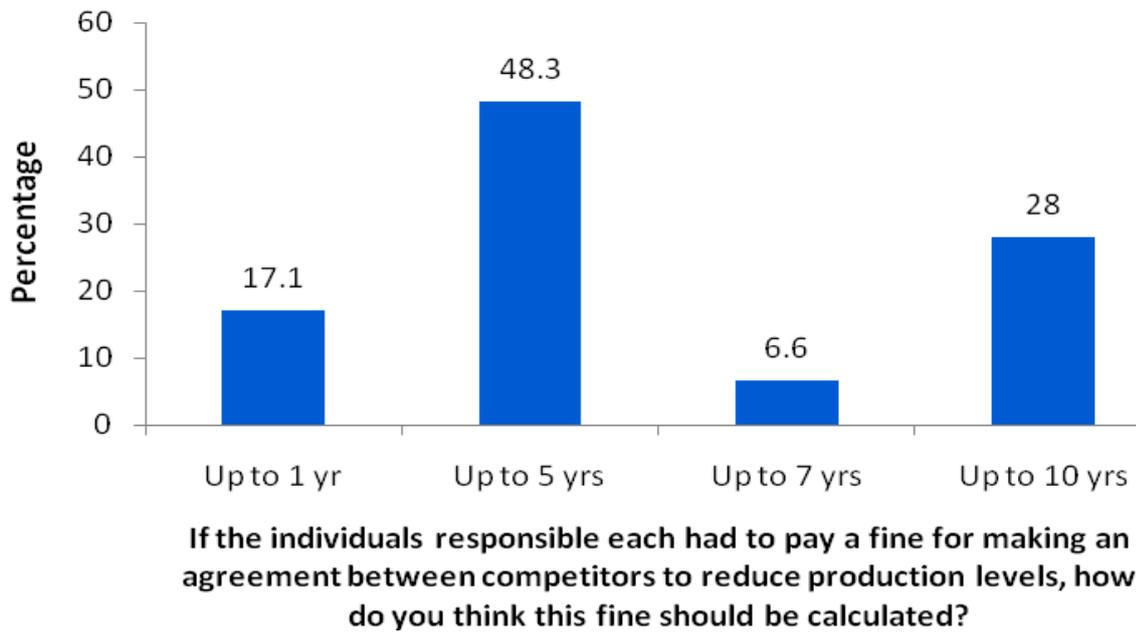
Question

D3Db. If a jail sentence was to be imposed on the individuals responsible for making an **agreement between competitors to reduce production levels**, what should the maximum jail term be?

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Comments (optional):

Figure 9.2.3.3 Individuals – Output restriction - Penalties/remedies – Maximum jail sentence¹⁸²



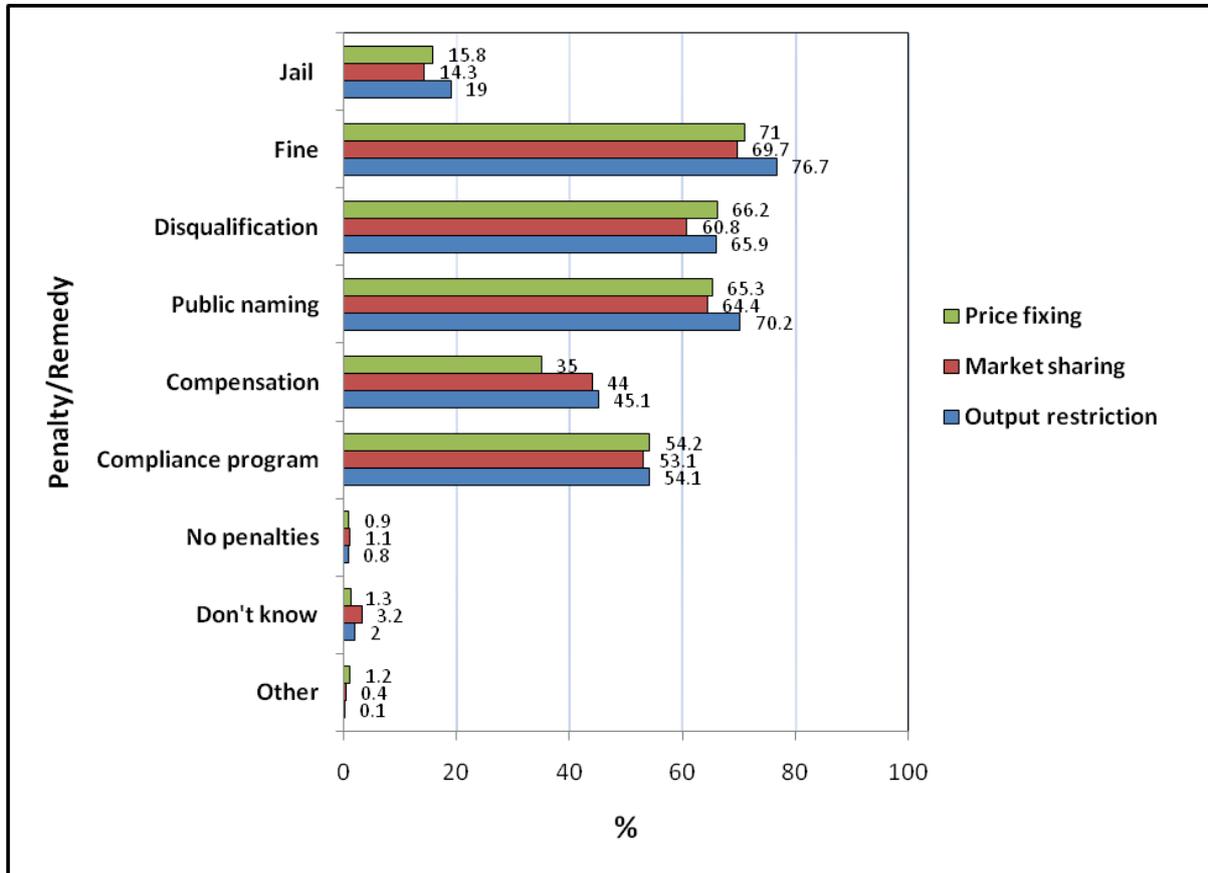
Comments

Just under half of respondents considered the maximum jail term for individuals involved in making an agreement to reduce production levels should be 5 years. Just over a quarter supported a maximum of 10 years.

¹⁸² n=172 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and 'Yes' to 'The individuals responsible should go to jail', Question D3D_1).

9.2.4 INDIVIDUALS – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT - PENALTIES/REMEDIES

Figure 9.2.4 Individuals – Comparison between types of cartel conduct - Penalties/remedies¹⁸³



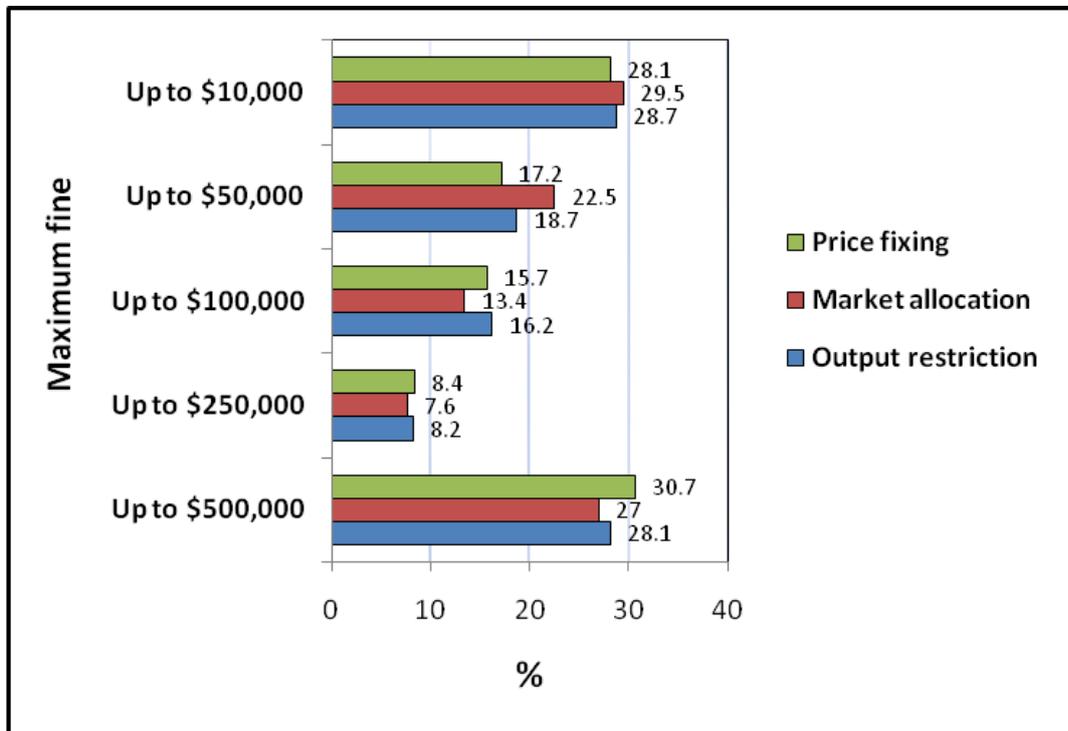
Comments

There were no major differences between types of cartel conduct in the choice of penalty/remedy for individuals.

¹⁸³ For price fixing, n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1); market sharing, n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2); output restriction, n=920 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

9.2.4.1 INDIVIDUALS – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT – PENALTIES/REMEDIES – MAXIMUM FINE

Figure 9.2.4.1 Individuals – Comparison between types of cartel conduct - Penalties/remedies – Maximum fine¹⁸⁴



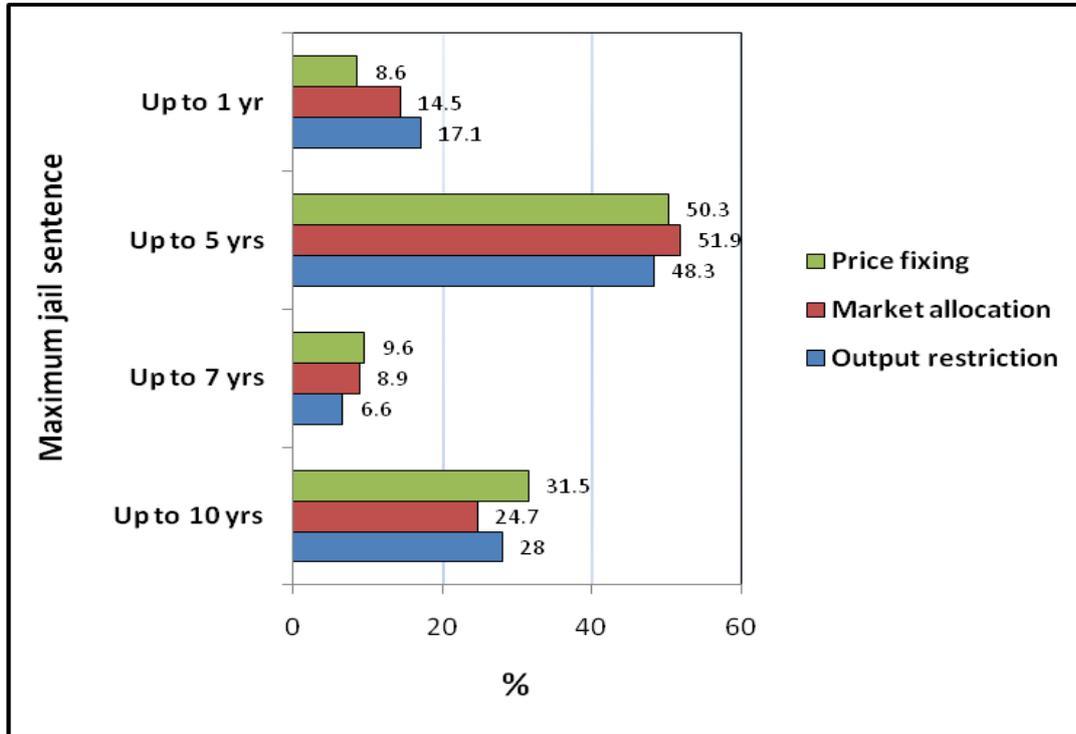
Comments

For all types of cartel conduct the most common responses in relation to maximum fines for individuals were ‘up to \$10,000’ and ‘up to \$500,000’.

¹⁸⁴ For price fixing, n=678 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors on prices should be against the law?’, Question D1, and ‘Yes’ to ‘The individuals responsible should pay a fine’, Question D1D_2); market sharing, n=633 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and ‘Yes’ to ‘The individuals responsible should pay a fine’, Question D2D_2); output restriction, n=695 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be against the law?’, Question D3, and ‘Yes’ to ‘The individuals responsible should pay a fine’, Question D3D_2).

9.2.4.2 INDIVIDUALS – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT - PENALTIES/REMEDIES– MAXIMUM JAIL SENTENCE

Figure 9.2.4.2 Individuals – Comparison between types of cartel conduct - Penalties/remedies– Maximum jail sentence¹⁸⁵



Comments

For all types of cartel conduct, the most common responses in relation to maximum jail sentences for individuals were for ‘up to 5 years’ and ‘up to 10 years’.

¹⁸⁵ For price fixing, n=157 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors on prices should be against the law?’, Question D1, and , and ‘Yes’ to ‘The individuals responsible should go to jail’, Question D1D_1); market sharing, n=131 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and , and ‘Yes’ to ‘The individuals responsible should go to jail’, Question D2D_1); output restriction, n=172 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be against the law?’, Question D3, and ‘Yes’ to ‘The individuals responsible should go to jail’, Question D3D_1).

10. FACTORS BEARING ON SERIOUSNESS OF CARTEL CONDUCT

10.1 FACTORS BEARING ON SERIOUSNESS – PRICE FIXING

Question

D1E. Now we would like you to consider the following additional facts to see if they change your view.

All things considered, please tell us how you would view an **agreement between competitors on prices** if.....:

Figure 10.1 Factors bearing on seriousness – Price fixing¹⁸⁶

	Less serious	Just as serious	More serious	MOST COMMON RESPONSE
Prices did not go up as a result of the conduct	40.7	57.8	1.5	Just as serious
The conduct included bullying another company into joining the agreement	1.1	16.1	82.8	More serious
The reason for the conduct was that it would prevent factories from closing and would save jobs	46.2	49.3	4.5	Just as serious
The companies involved in the conduct were small businesses	16.5	79.9	3.6	Just as serious
Elaborate steps were taken to make sure the authorities did not find out about the conduct	1.4	20.3	78.2	More serious
The profits from the conduct were used to make products that are environmentally friendly	15.8	79.2	5.1	Just as serious

¹⁸⁶ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1).

Comments

In terms of the most common response, none of the factors were seen as making an agreement between competitors on prices 'less serious', although a significant minority (40.7% and 46.2% respectively) of respondents considered that it would be 'less serious' when 'Prices did not go up as a result of the conduct' and 'The reason for the conduct was that it would prevent factories from closing and would save jobs'.

In terms of the most common response, the only two factors that were considered to make the conduct 'more serious' were 'The conduct included bullying another company into joining the agreement' and 'Elaborate steps were taken to make sure the authorities did not find out about the conduct' (82.8% and 78.2% respectively).

In two cases where 'the companies involved in the conduct were small businesses' and 'The profits from the conduct were used to make products that are environmentally friendly' the clear majority (79.9% and 79.2% respectively) considered the conduct 'just as serious'.

10.2 FACTORS BEARING ON SERIOUSNESS – MARKET ALLOCATION

Question

D2E. Now we would like you to consider the following additional facts to see if they change your view.

All things considered, please tell us how you would view an **agreement between competitors to allocate customers** if....

Figure 10.2 Factors bearing on seriousness – Market allocation¹⁸⁷

	Less serious	Just as serious	More serious	Most common response
Prices did not go up as a result of the conduct	43.1	54.9	2.1	Just as serious
The conduct included bullying another company into joining the agreement	1.1	18.2	80.7	More serious
The reason for the conduct was that it would prevent factories from closing and would save jobs	41.0	54.8	4.2	Just as serious
The companies involved in the conduct were small businesses	14.5	82.0	3.5	Just as serious
Elaborate steps were taken to make sure the authorities did not find out about the conduct	1.6	24.0	74.4	More serious
The profits from the conduct were used to make products that are environmentally friendly	15.6	80.7	3.7	Just as serious

Comments

In terms of the most common response, none of the factors were seen as making an agreement between competitors to allocate customers 'less serious', although a significant minority (43.1% and 41% respectively) of respondents considered that it would be 'less serious' when 'Prices did not go up as a result of the conduct' and 'The reason for the conduct was that it would prevent factories from closing and would save jobs'.

¹⁸⁷ n=898 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2).

In terms of the most common response, the only two factors that were considered to make the conduct 'more serious' were 'The conduct included bullying another company into joining the agreement' and 'Elaborate steps were taken to make sure the authorities did not find out about the conduct' (80.7% and 74.4% respectively).

'Just as serious' was the most common response by a clear majority where 'The profits from the conduct were used to make products that are environmentally friendly', and 'The companies involved in the conduct were small businesses' (80.7% and 82% respectively).

10.3 FACTORS BEARING ON SERIOUSNESS – OUTPUT RESTRICTION

Question

D3E. Now we would like you to consider the following additional facts to see if they change your view.

All things considered, please tell us how you would view an **agreement between competitors to reduce production levels** if....

Figure 10.3 Factors bearing on seriousness – Output restriction¹⁸⁸

	Less serious	Just as serious	More serious	Most common response
Prices did not go up as a result of the conduct	33.0	64.0	3.1	Just as serious
The conduct included bullying another company into joining the agreement	1.0	19.1	79.9	More serious
The reason for the conduct was that it would prevent factories from closing and would save jobs	38.8	57.0	4.2	Just as serious
The companies involved in the conduct were small businesses	13.1	82.7	4.2	Just as serious
Elaborate steps were taken to make sure the authorities did not find out about the conduct	1.4	22.3	76.3	More serious
The profits from the conduct were used to make products that are environmentally friendly	17.1	78.1	4.8	Just as serious

Comments

None of the factors were regarded by respondents as rendering an agreement between competitors to reduce production levels as ‘less serious’, although a significant minority felt that where prices did not go up or the agreement was to prevent loss of jobs did feel that the conduct would be less serious (33.0% and 38.8% respectively).

In terms of the most common response, the only two factors that were considered to make the conduct ‘more serious’ were ‘The conduct included bullying another company into joining the

¹⁸⁸ n=920 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be against the law?’, Question D3).

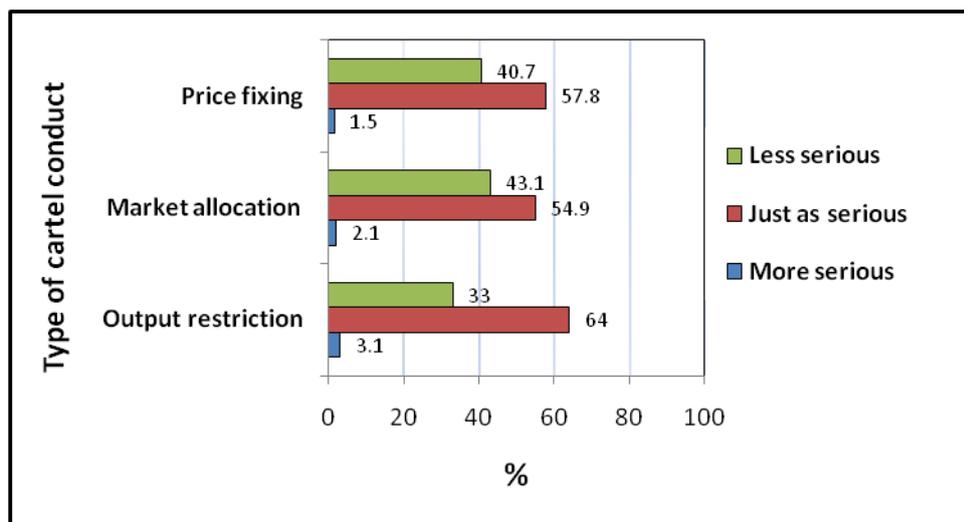
agreement' and 'Elaborate steps were taken to make sure the authorities did not find out about the conduct' (79.9% and 76.3% respectively).

'Just as serious' was the most common response for a clear majority where 'The profits from the conduct were used to make products that are environmentally friendly', and where 'The companies involved in the conduct were small businesses' (78.1% and 82.7% respectively).

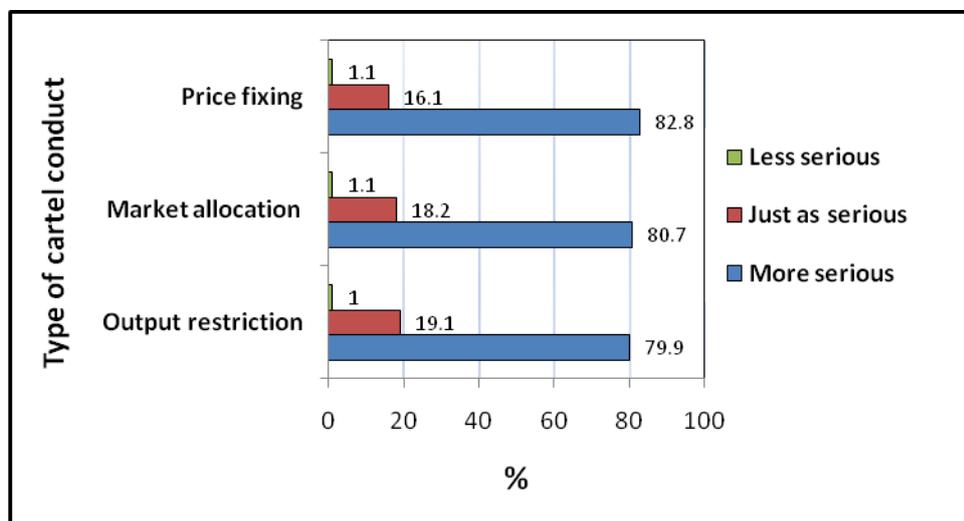
10.4 FACTORS BEARING ON SERIOUSNESS - COMPARISON BETWEEN TYPES OF CARTEL CONDUCT

Figure 10.4 Factors bearing on seriousness - Comparison between types of cartel conduct¹⁸⁹

Prices did not go up as a result of the conduct

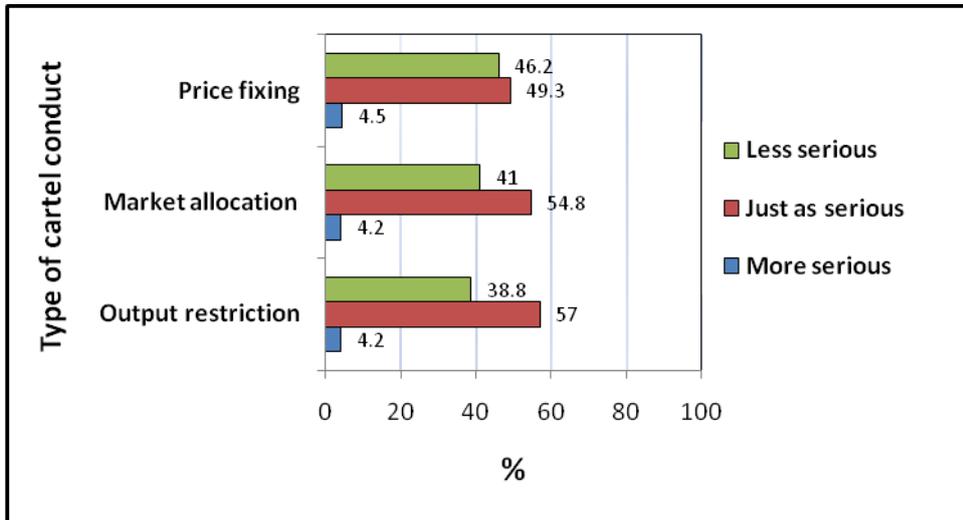


The conduct included bullying another company into joining the agreement

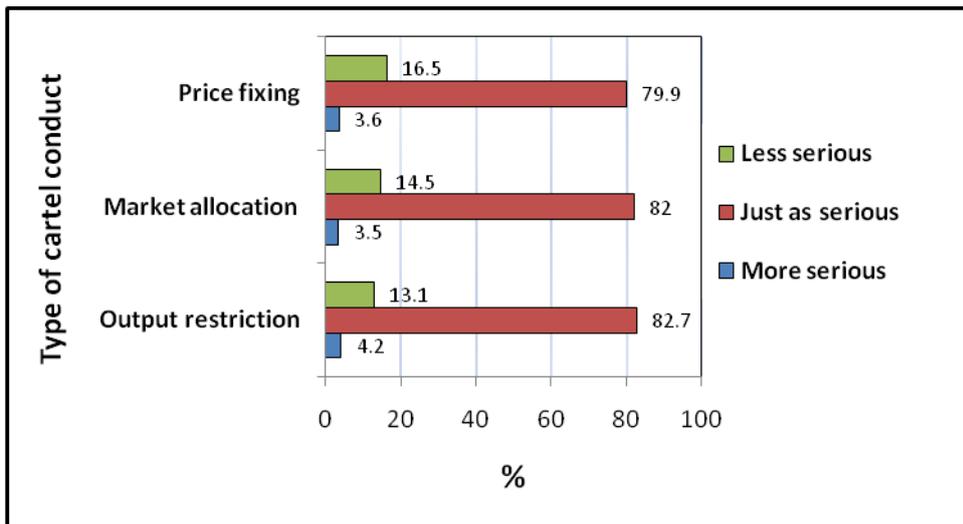


¹⁸⁹ For price fixing, n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1); market sharing, n=898 (those representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', Question D2); output restriction, n=920 (those representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3).

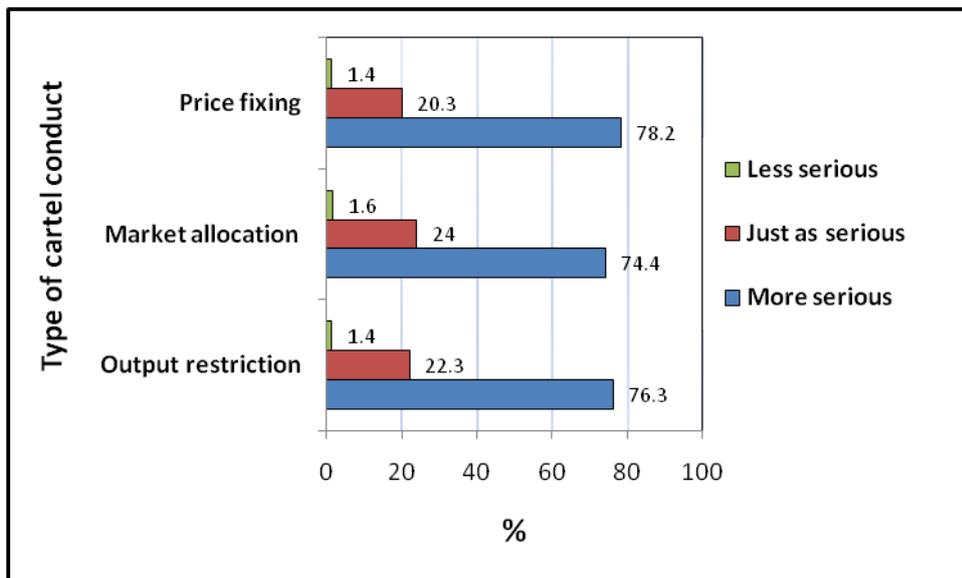
The reason for the conduct was that it would prevent factories from closing and would save jobs



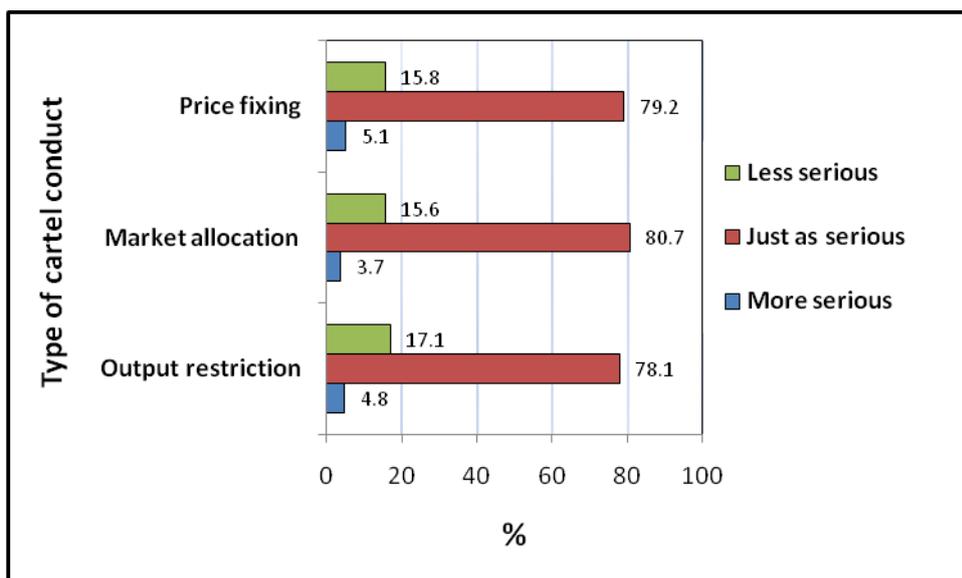
The companies involved in the conduct were small businesses



Elaborate steps were taken to make sure the authorities did not find out about the conduct



The profits from the conduct were used to make products that are environmentally friendly



Comments

For each reason that may have a bearing on respondent perceptions of the seriousness of cartel conduct there were similar levels of seriousness across the types of cartel conduct. For instance, when considering the scenario that the companies were small businesses, the proportions for 'just as serious' were 79.9% for price fixing, 82% for market allocation, and 82.7% for output restriction.

11. IMMUNITY POLICY

11.1 IMMUNITY POLICY – PRICE FIXING

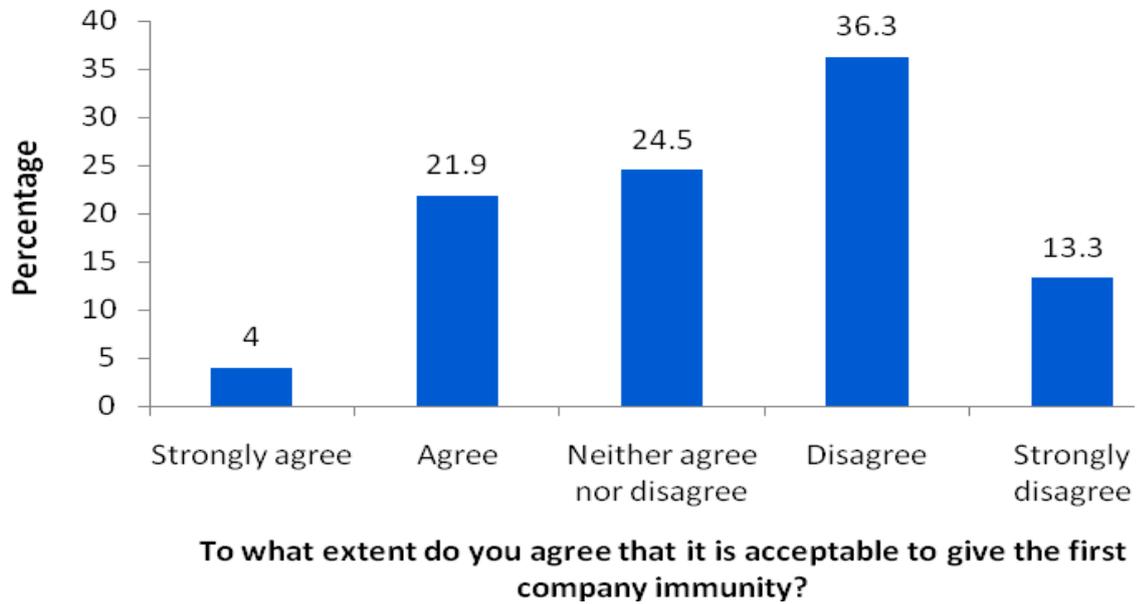
Question

D1F. Imagine that one company decides to report the **agreement on prices** to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

To what extent do you agree that it is acceptable to give the first company immunity?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

Figure 11.1 Immunity policy – Price fixing¹⁹⁰



Comments

25.9% of respondents agreed with the acceptability of immunity policy in a case of an agreement between competitors on prices (of which 4% strongly agreed). Almost 50% of respondents disagreed (of which 13.3% strongly disagreed) with the acceptability of such a policy in this context and more than a third were undecided or neutral on the question.

¹⁹⁰ n=952 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors on prices should be against the law?', Question D1).

11.2 IMMUNITY POLICY – MARKET ALLOCATION

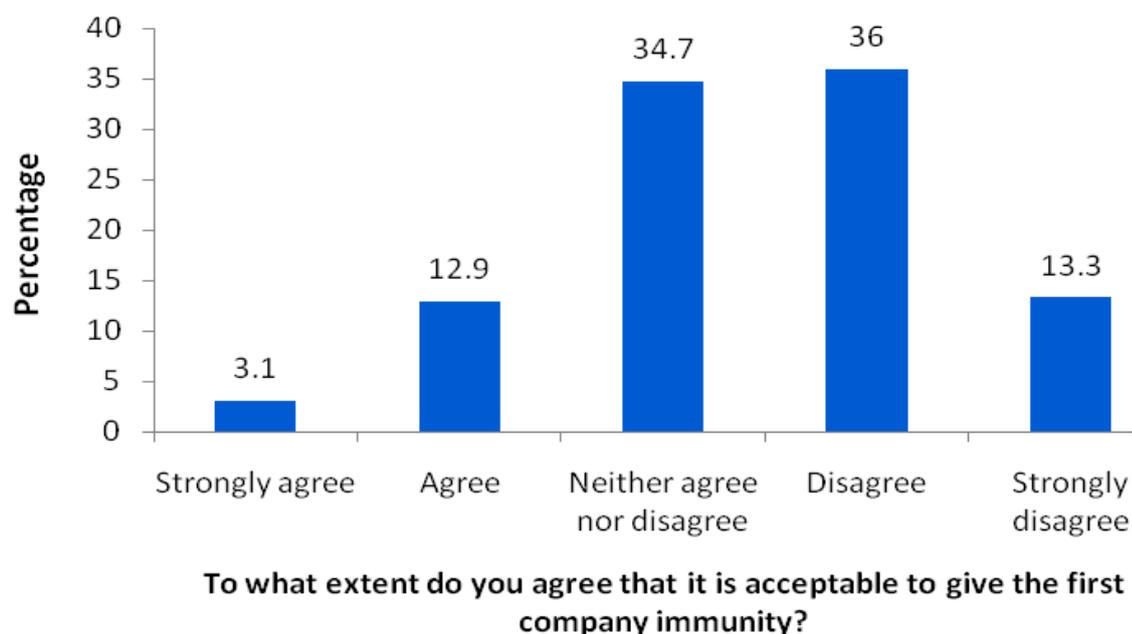
Question

D2F. Imagine that one company decides to report the **agreement to allocate customers** to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

To what extent do you agree that it is acceptable to give the first company immunity?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

Figure 11.2 Immunity policy – Market allocation¹⁹¹



¹⁹¹ n=156 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to allocate customers should be against the law?', and for price fixing did not do the question on immunity policy – i.e. Question D1F).

Comments

16% of respondents agreed with the acceptability of immunity policy in a case of an agreement between competitors to allocate customers (of which 3.1% strongly agreed). Almost half of respondents disagreed (of which 13.3% strongly disagreed) with the acceptability of such a policy in this context and more than a third were undecided or neutral on the question.

11.3 IMMUNITY POLICY – OUTPUT RESTRICTION

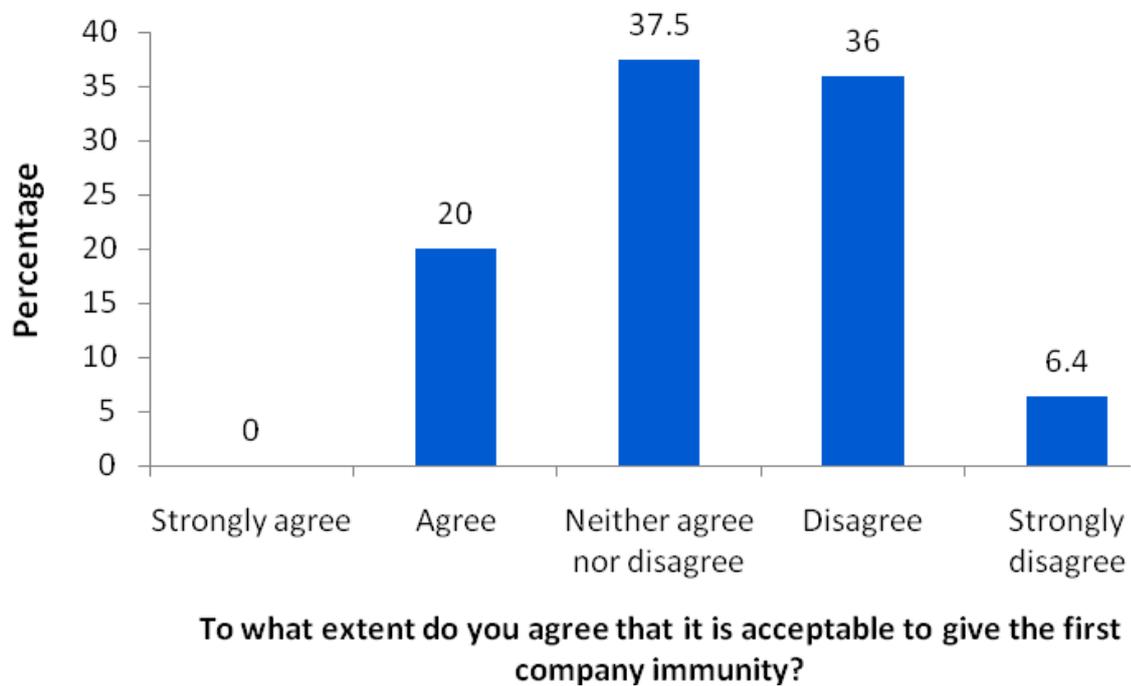
Question

D3F. Imagine that one company decides to report the **agreement between competitors to reduce production levels** to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

To what extent do you agree that it is acceptable to give the first company immunity?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

Figure 11.3 Immunity policy – Output restriction¹⁹²

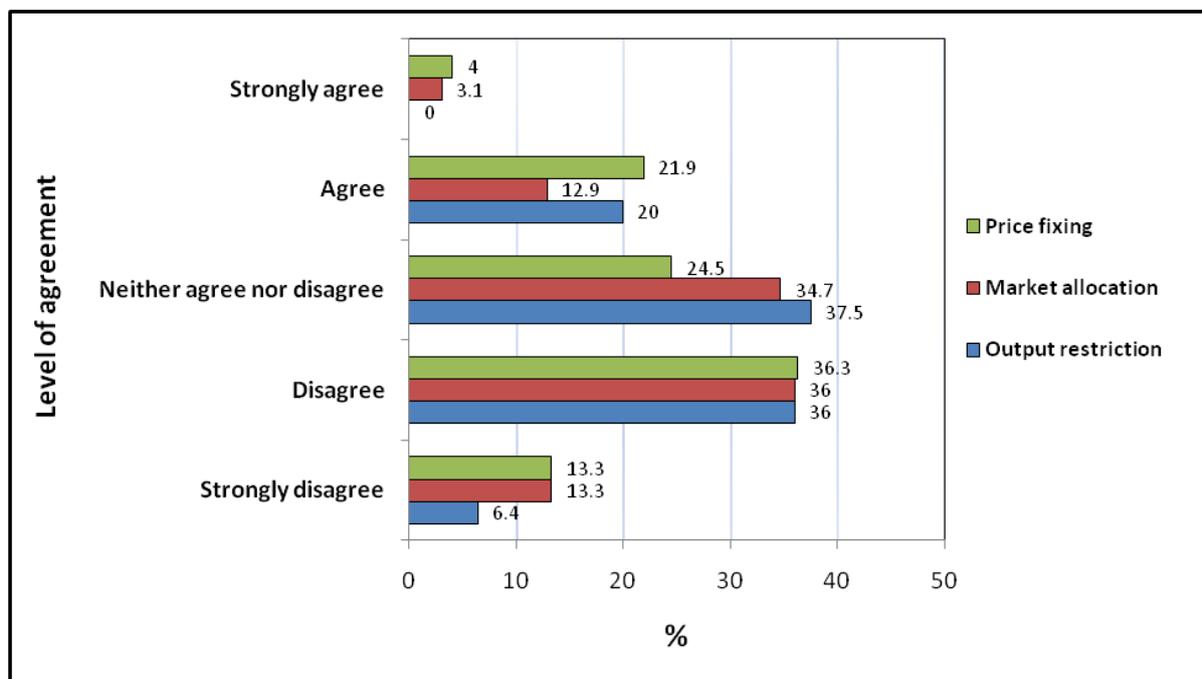


Comments

20% of respondents agreed with the acceptability of immunity policy in a case of an agreement between competitors to reduce production levels (of which no one strongly agreed). 42.4% of respondents disagreed (of which 6.4% strongly disagreed) with the acceptability of such a policy in this context and 37.5% were undecided or neutral on the question.

¹⁹² n=60 (representing respondents who responded 'Yes' to 'Do you think that an agreement between competitors to reduce production levels should be against the law?', Question D3, and for either or both price fixing and market allocation did not do the question on immunity policy – i.e. Questions D1F and D2F).

Figure 11.4 Immunity policy - Comparison between types of cartel conduct¹⁹³



Comments

Across the three types of cartel conduct, disagreement with the view that it is acceptable to give the first company immunity ranged from 42.4% to 49.6%. Strong agreement with the view that it is acceptable to give the first company immunity was very low, regardless of the type of cartel conduct – 4% for price fixing, 3.1% for market allocation, and 0% for output restriction.

¹⁹³ For price fixing, n= 952 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors on prices should be against the law?’, Question D1); market sharing, n= 156 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to allocate customers should be against the law?’, Question D2, and for price fixing did not do the question on immunity policy – i.e. Question D1F); output restriction, n=60 (representing respondents who responded ‘Yes’ to ‘Do you think that an agreement between competitors to reduce production levels should be against the law?’, Question D3, and for either or both price fixing and market allocation did not do the question on immunity policy – i.e. Questions D1F and D2F).

12. CRIME SERIOUSNESS RATINGS

12.1 CRIME SERIOUSNESS RATINGS – PRICE FIXING

Question

E1 Earlier in the survey you were asked to consider the following scenario:

There are two butchers in a town. In the past they have set their prices independently of each other. This has meant that if one butcher put up its prices, consumers could switch to the other butcher to find a lower price. The butchers have now reached an agreement with each other to set the prices they charge for the most popular cuts. As a result, they can charge higher prices because if consumers are unhappy with the price at one butcher, they are unable to switch to the other butcher for a better price.

You thought that an agreement between competitors on prices should be a criminal offence.

In this section we would like you to rate how SERIOUS you think a range of other crimes are, when compared with competitors agreeing on prices.

Figure 12.1 Crime seriousness ratings – Price fixing¹⁹⁴

		MOST COMMON RESPONSE	
A	A person stealing another person’s property is...	Just as serious	than competitors agreeing on prices
B	An insurance company denying a valid claim to save money is...	Just as serious	
C	A company director using their position dishonestly to gain personal advantage is...	Just as serious	
D	A company misleading consumers about the safety of goods is...	A lot more serious	
E	A company failing to ensure worker safety is...	A lot more serious	
F	A person killing another person is...	A lot more serious	
G	A person driving while drunk is...	A lot more serious	
H	A company evading government income taxes is...	Just as serious	
I	A person using inside information in deciding to buy or sell shares is...	Just as serious	
J	A person sexually abusing another person is..	A lot more serious	

Comments

The respondents to this question were respondents who considered an agreement on prices should be a criminal offence. These respondents regarded none of the comparator crimes listed as less serious than competitors agreeing on prices. They regarded five crimes as ‘a lot more serious’: ‘A company misleading consumers about the safety of goods’; ‘A company failing to ensure worker safety’; ‘A person killing another person’; ‘A person driving while drunk’ and ‘A person sexually abusing another person’. The other five comparators were considered ‘Just as serious’.

¹⁹⁴ n=425 (representing respondents who responded either ‘Yes’ to all questions on whether cartel conduct should be a criminal offence (D1A, D2A and D3A), or ‘Yes’ to both D1A and D2A, or ‘Yes’ to both D1A and D3A, or ‘Yes’ to D1A only.

Question

E2 Earlier in the survey you were asked to consider the following scenario:

This time, there are two plumbing companies that compete against each other in providing plumbing services to a town. They are the only plumbing companies in the town. In the past, if one plumbing company put up its prices, customers could switch to the other plumbing company. The plumbing companies have now reached an agreement to allocate customers between them. One company will only service buildings north of the river; the other will only service buildings south of the river. As a result, they can charge higher prices because customers can't switch between the plumbing companies when they are unhappy about the price they are being charged.

You thought that an agreement between competitors to allocate customers should be a criminal offence.

In this section, we would like you to rate how SERIOUS you think a range of other crimes are, when compared with competitors agreeing to allocate customers.

Figure 12.2 Crime seriousness ratings – Market allocation¹⁹⁵

		MOST COMMON RESPONSE	
A	A person stealing another person’s property is...	Just as serious	than competitors agreeing to allocate customers
B	An insurance company denying a valid claim to save money is...	Just as serious	
C	A company director using their position dishonestly to gain personal advantage is...	Just as serious	
D	A company misleading consumers about the safety of goods is...	A lot more serious	
E	A company failing to ensure worker safety is...	A lot more serious	
F	A person killing another person is...	A lot more serious	
G	A person driving while drunk is...	A lot more serious	
H	A company evading government income taxes is...	Just as serious	
I	A person using inside information in deciding to buy or sell shares is...	Just as serious	
J	A person sexually abusing another person is..	A lot more serious	

Comments

The respondents to this question were respondents who considered an agreement to allocate customers should be a criminal offence. These respondents regarded none of the comparator crimes listed as less serious than competitors agreeing to allocate customers. They regarded five crimes as ‘a lot more serious’: ‘A company misleading consumers about the safety of goods’; ‘A company failing to ensure worker safety’; ‘A person killing another person’; ‘A person driving while drunk’ and ‘A person sexually abusing another person’. The other five comparators were considered ‘Just as serious’.

¹⁹⁵ n=63 (representing respondents who responded ‘Yes’ to D2A only (out of D1A, D2A and D3A) or randomly allocated respondents of the group who responded ‘Yes’ to D2A and D3A (and did not do, or did not indicate ‘Yes’ for D1A), where the other question for allocation was E3).

Question

E3 Earlier in the survey you were asked to consider the following scenario:

This time, there are two companies that compete against each other as producers of cheese. They are the only companies that produce cheese in a particular region. In the past they have decided what volume they would produce depending on how much consumers in the region wanted to buy. However, the companies have now made an agreement with each other to reduce the amount of cheese they produce. As a result of the agreement, they are no longer producing enough cheese to satisfy everyone in the region and can therefore charge higher prices. This is because consumers want to buy more cheese than is available for sale and are therefore prepared to pay more to try and get as much as they want.

You thought that an agreement between competitors to allocate customers should be a criminal offence.

In this section, we would like you to rate how SERIOUS you think a range of other crimes are, when compared with competitors agreeing to allocate customers.

Figure 12.3 Crime seriousness ratings – Output restriction¹⁹⁶

		MOST COMMON RESPONSE	
A	A person stealing another person’s property is...	Just as serious	than competitors agreeing to reduce production levels
B	An insurance company denying a valid claim to save money is...	Just as serious	
C	A company director using their position dishonestly to gain personal advantage is...	Just as serious	
D	A company misleading consumers about the safety of goods is...	A lot more serious	
E	A company failing to ensure worker safety is...	A lot more serious	
F	A person killing another person is...	A lot more serious	
G	A person driving while drunk is...	A lot more serious	
H	A company evading government income taxes is...	Just as serious	
I	A person using inside information in deciding to buy or sell shares is...	Just as serious	
J	A person sexually abusing another person is..	A lot more serious	

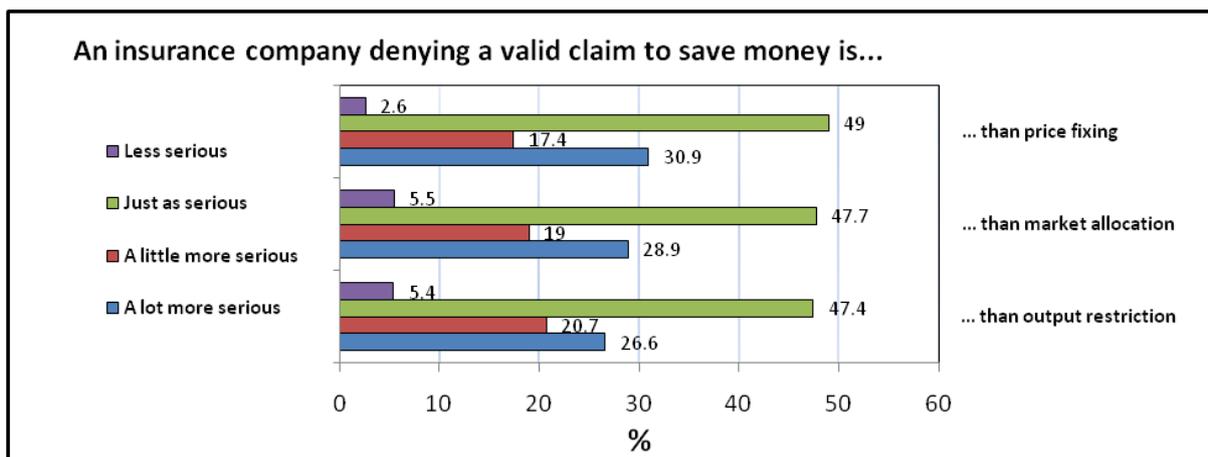
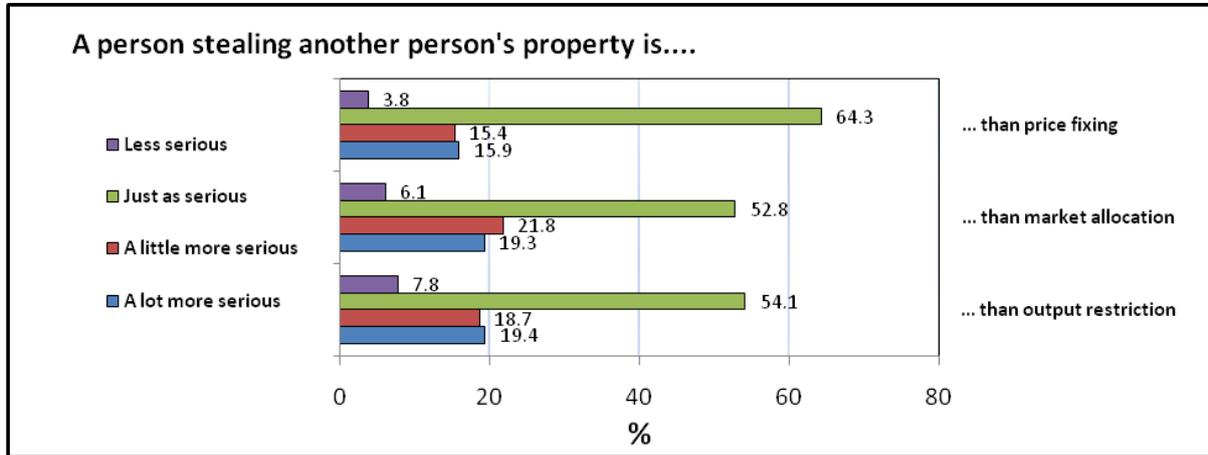
Comments

The respondents to this question were respondents who considered an agreement to reduce production levels should be a criminal offence. These respondents regarded none of the comparator crimes listed as ‘less serious’ than competitors agreeing to reduce production levels. They regarded five crimes as ‘a lot more serious’: ‘A company misleading consumers about the safety of goods’; ‘A company failing to ensure worker safety’; ‘A person killing another person’; ‘A person driving while drunk’ and ‘A person sexually abusing another person’. The other five comparators were considered ‘Just as serious’.

¹⁹⁶ n=126 (representing respondents who responded ‘Yes’ only to D2A (out of D1A, D2A and D3A) or randomly allocated respondents of the group who responded ‘Yes’ to D2A and D3A (and did not do, or did not indicate ‘Yes’ for D1A), where the other question for allocation was E2).

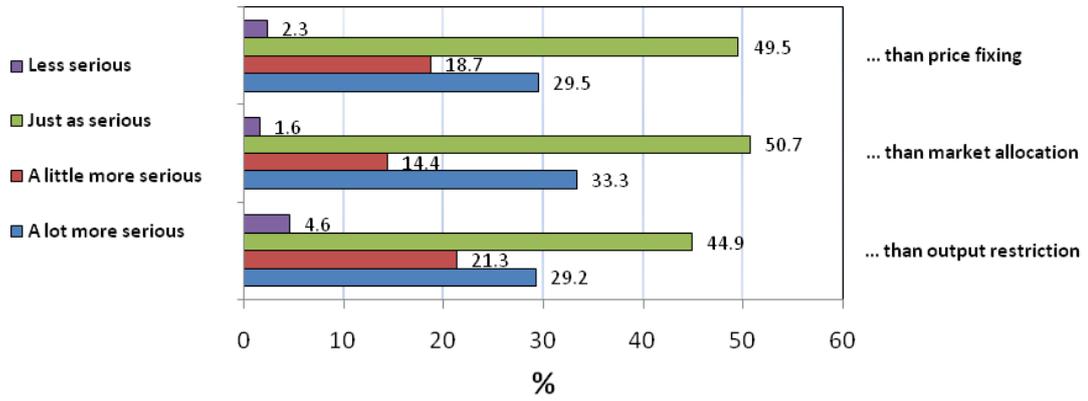
12.4 CRIME SERIOUSNESS RATINGS – COMPARISON BETWEEN TYPES OF CARTEL CONDUCT

Figure 12.4 Crime seriousness ratings - Comparison between types of cartel conduct¹⁹⁷

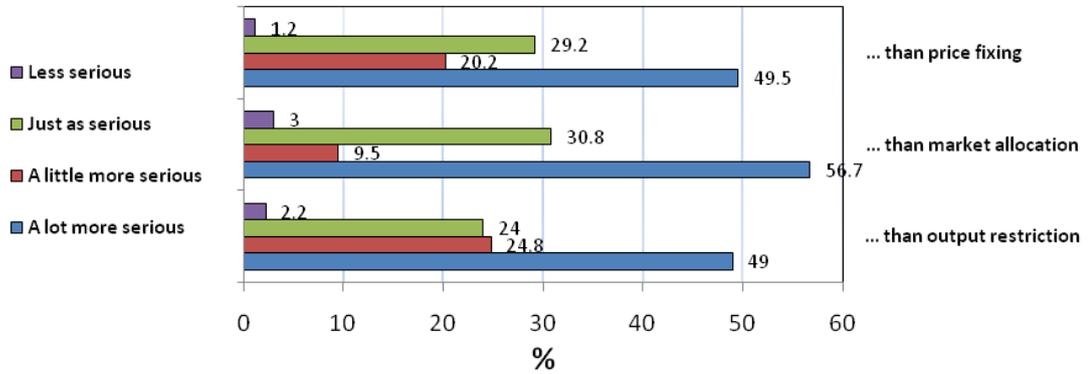


¹⁹⁷ For purposes of brevity the proportions for 'a lot more serious' and 'a little more serious' were combined (presented as 'less serious' in these figures) as overall levels of 'less serious' were very low. For price fixing, n= 425 (representing respondents who responded either 'Yes' to all questions on whether cartel conduct should be a criminal offence (D1A, D2A and D3A), or 'Yes' to both D1A and D2A, or 'Yes' to both D1A and D3A, or 'Yes' to D1A only); market allocation, n= 63 (out of D1A, D2A and D3A) or randomly allocated respondents of the group who responded 'Yes' to D2A and D3A (and did not do, or did not indicate 'Yes' for D1A), where the other question for allocation was E3); output restriction, n=126 (representing respondents who responded 'Yes' only to D2A (out of D1A, D2A and D3A) or randomly allocated respondents of the group who responded 'Yes' to D2A and D3A (and did not do, or did not indicate 'Yes' for D1A), where the other question for allocation was E2).

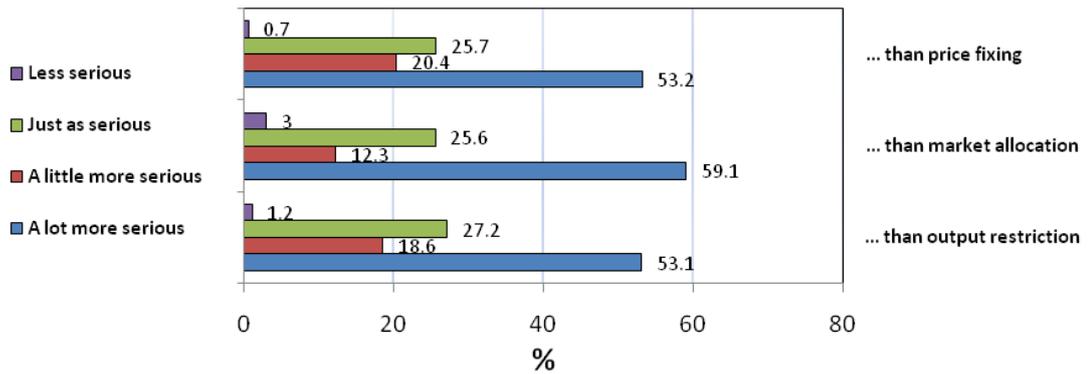
A company director using their position dishonestly to gain personal advantage is....

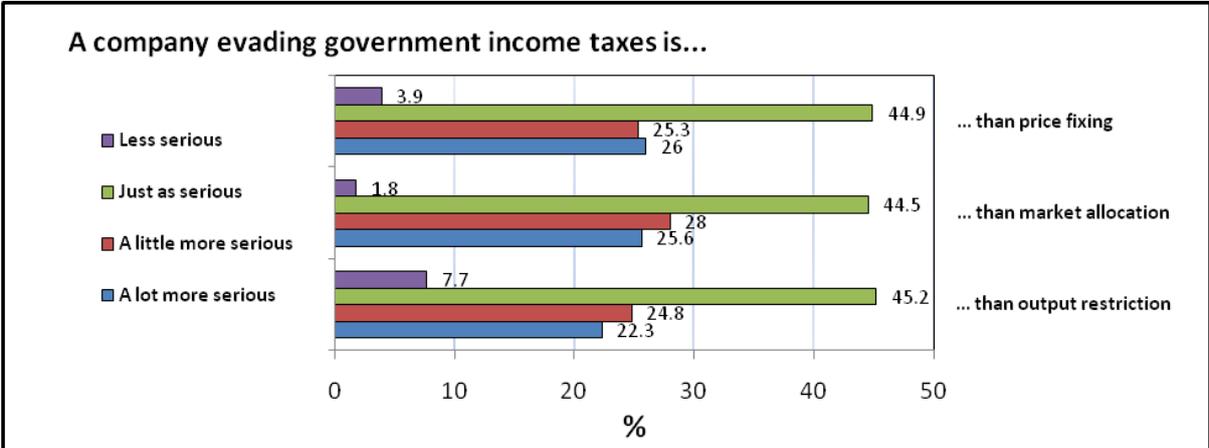
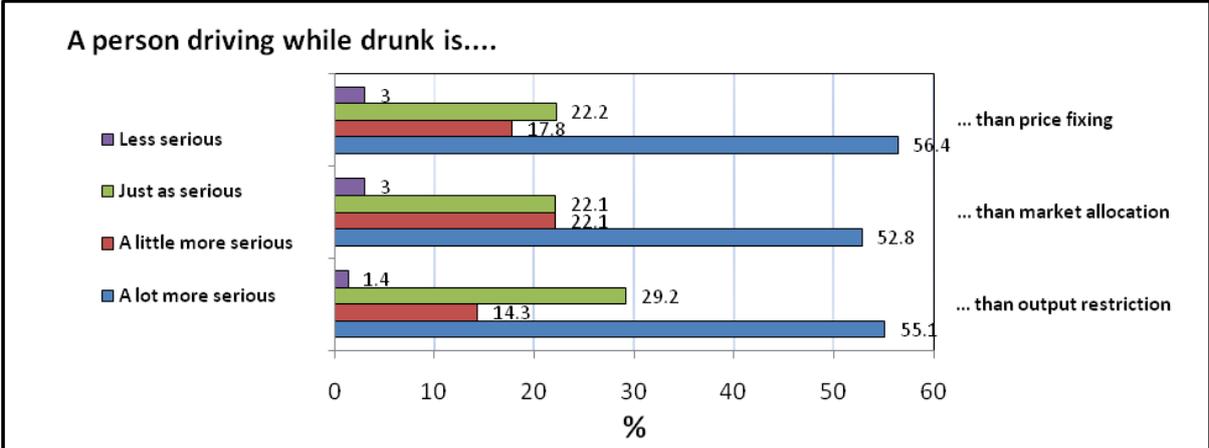
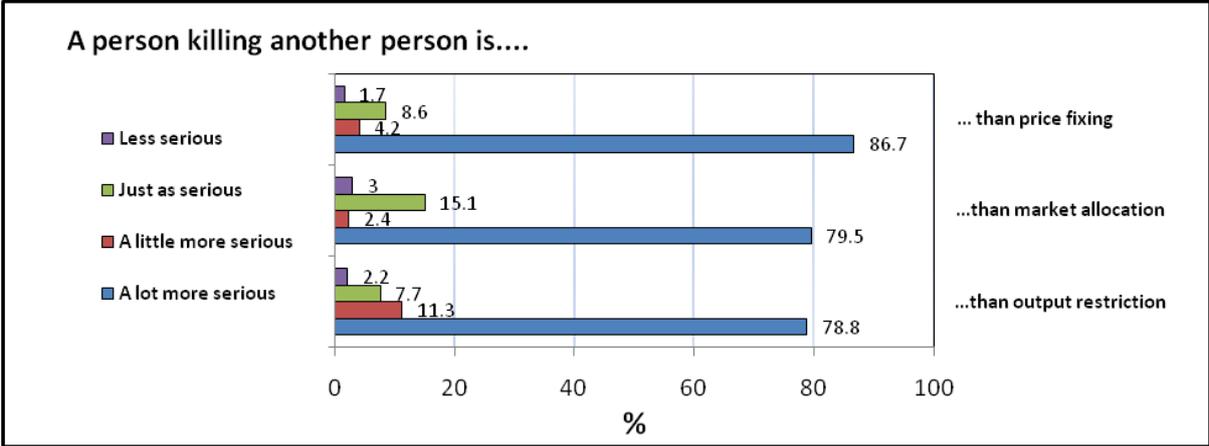


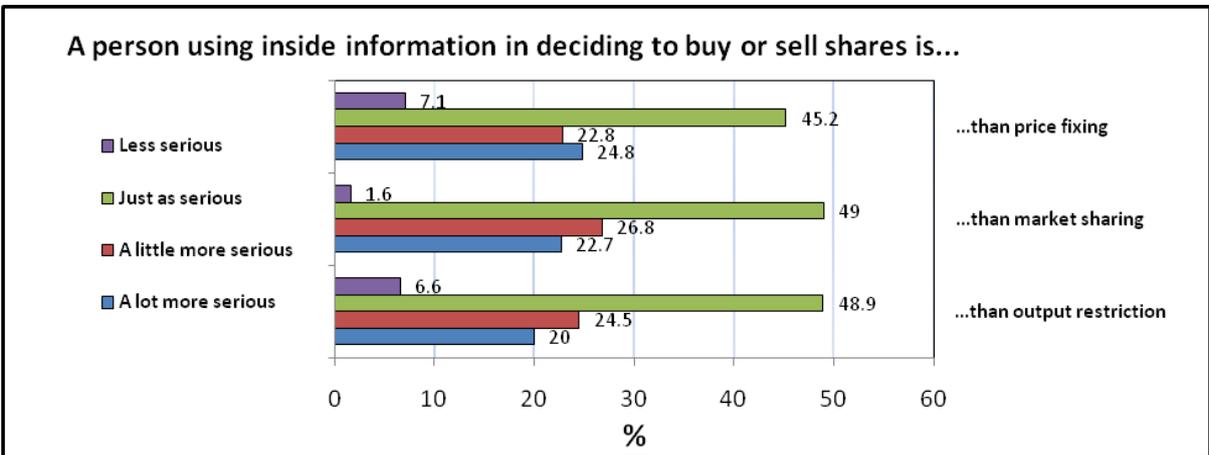
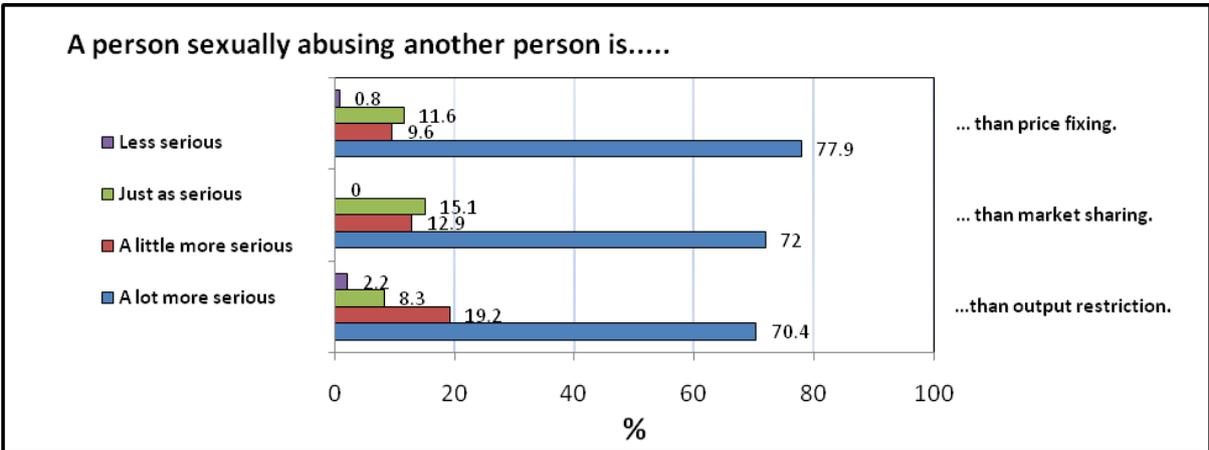
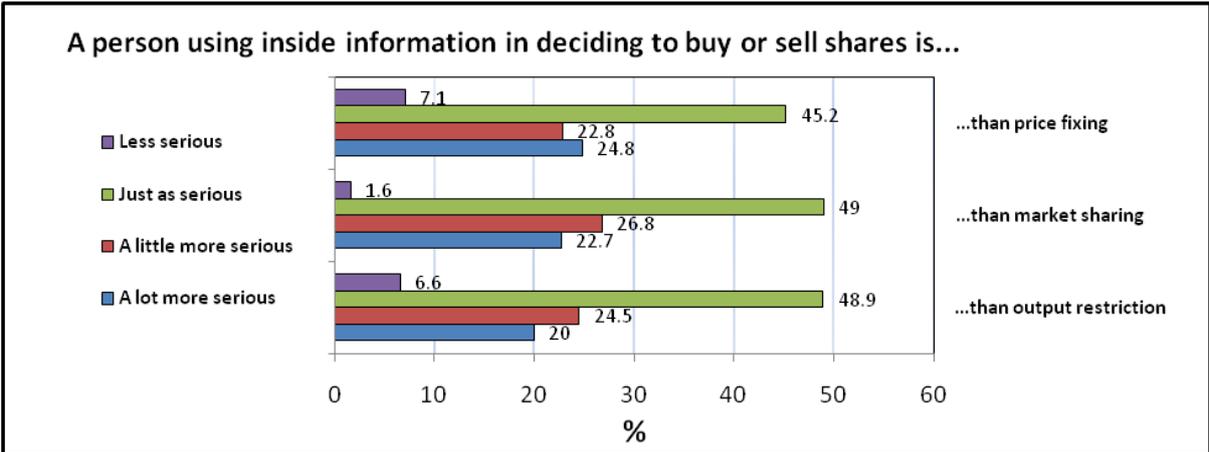
A company misleading consumers about the safety of goods is....



A company failing to ensure worker safety is....







Comments

The respondents to these questions were respondents who considered an agreement [on prices/to allocate customers/to reduce production levels] should be a criminal offence. In general there were no major differences in the views of these respondents between types of cartel conduct based on ratings of seriousness of the particular conduct in relation to other types of crime. The crimes to be most commonly rated as ‘a lot more serious’ than cartel conduct (irrespective of type of cartel conduct) were ‘a person sexually abusing another person’, ‘a

person killing another person', 'a company misleading consumers about the safety of goods', and 'a person driving while drunk'. There were high proportions of respondents (between 44% and 65%) who viewed certain crimes as 'just as serious' as cartel conduct – these were 'a person using insider information to buy and sell shares', 'a company evading government income taxes', 'a company director using their position dishonestly to gain personal advantage', 'an insurance company denying a valid claim to save money' and 'a person stealing another person's property'.

13. BUSINESS GROUP – SELECTION AND CHARACTERISTICS

13.1 SELECTION OF BUSINESS GROUP

Figure 13.1A Summary of how respondents selected for Business group

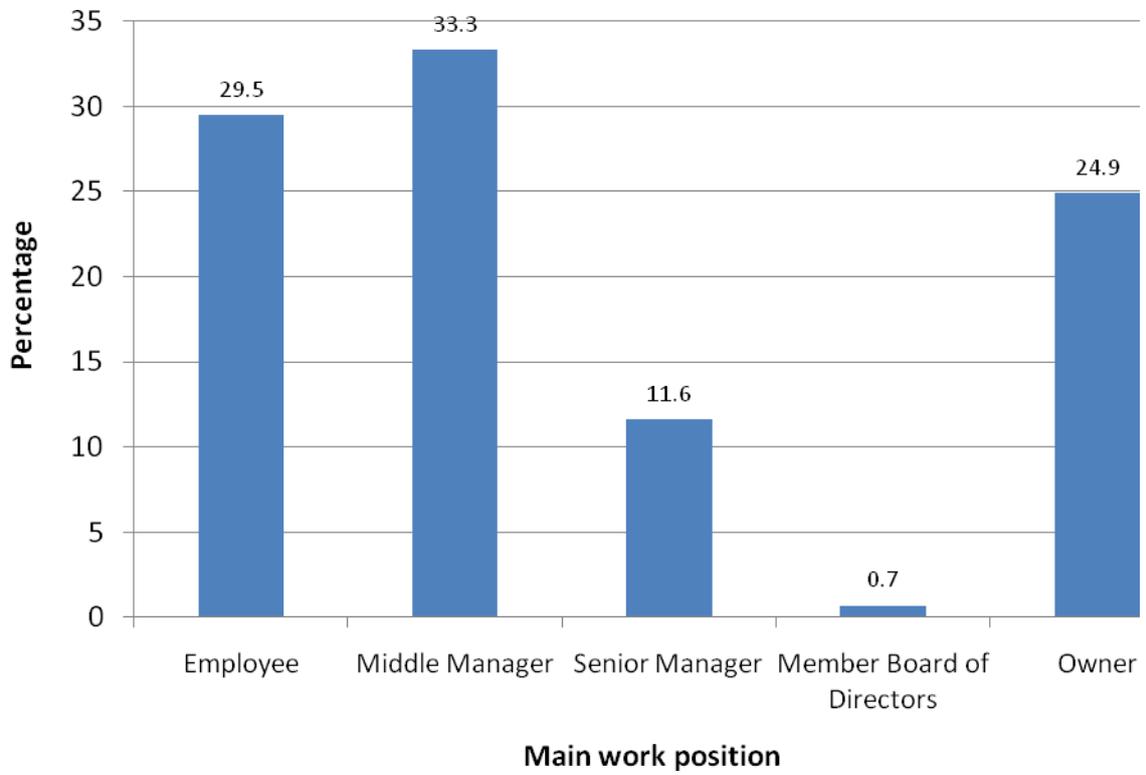
Basis for selection into Business group:	Number selected into Business group:
Main job you held last week = owner, member of board of directors, senior manager or middle manager (Question A9)	400
Main job you held last week = employee without managerial responsibility (Question A10) AND role included aspect for which anti-cartel laws are relevant (Question A9)	167
Total Business group	567

Comments

The Figure above summarises how respondents were selected into the Business group (explained in section 2.5.1.2 above) and how many were selected into each category. Most were selected into the Business group because of their managerial position in business (400). Some employees without managerial responsibility (167) were also selected in the Business group because their role included aspects (eg setting of prices or production levels – see Figure 13.1C) which might put them in a position to comply or not comply with the anti-cartel laws.

A9. Which of the following best describes the main position that you held in your job last week?

Figure 13.1B The main work position held by members of the Business group¹⁹⁸



¹⁹⁸ n=567

A10. In the main job you held last week, did your role include any aspect of:

Please mark all that apply

Figure 13.1C Relevant role – employees, managers and total Business group

	Employees n=167	Managers n=400	Total n=567
Deciding, revising or negotiating prices for goods or services	21.6%	42.3%	36.2%
Deciding, revising or negotiating the cost of producing goods or supplying services	7.2%	29%	22.6%
Marketing or promoting goods or services	37.7%	37.8%	37.7%
Setting production, capacity or supply levels	17.4%	19.3%	18.7%
Tendering for contracts	6.0%	19.0%	15.2%
Dealing with customers in any capacity (<i>note that employees were excluded if they only ticked this role and no other role¹⁹⁹</i>)	79.0%	73.8%	75.3%
Dealing with suppliers in any capacity	59.9%	53.5%	55.4%
Dealing with competitors in any capacity	15.6%	21.0%	19.4%

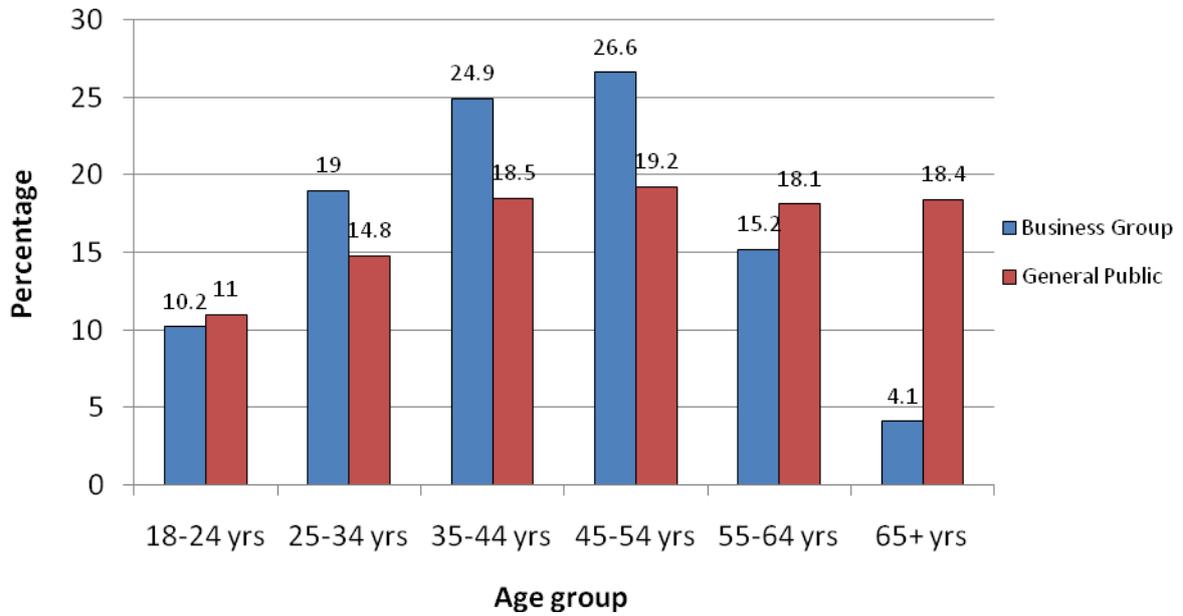
Comments

The figures above show the breakdown of how members of the Business group were selected into the Business group. As shown in Figure 13.1B, a total of 70% of the Business group were senior managers, owners or members of boards of directors and were chosen on that basis. The other 30% of the Business group were employees. These were only included in the Business group if they ticked one of the roles in Question A10 that would put them in position where they might have the opportunity to breach or comply with the anti-cartel laws. Figure 13.1C shows the breakdown of how many employees and how many managers responded that they performed each role that would be relevant to anti-cartel law compliance.

¹⁹⁹ This resulted in 117 employees (or 40% of those who chose this role) being excluded from the analysis. See further explanation at 2.5.1.2 above.

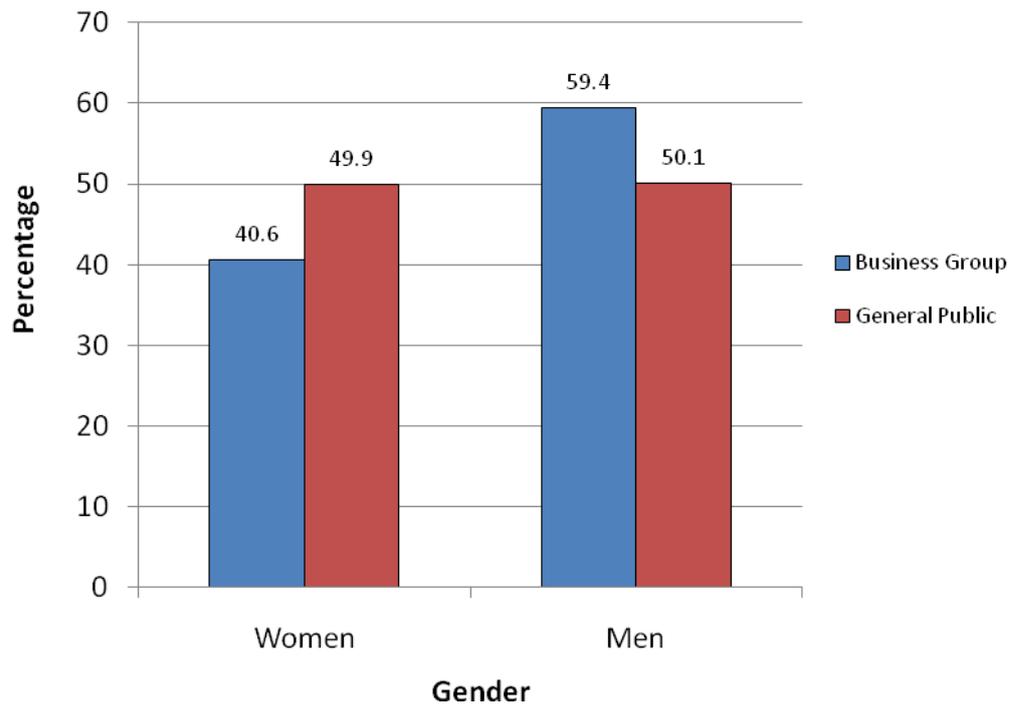
13.2 BUSINESS GROUP VS GENERAL PUBLIC SAMPLE - CHARACTERISTICS

Figure 13.2A Age of Business group compared with general public²⁰⁰



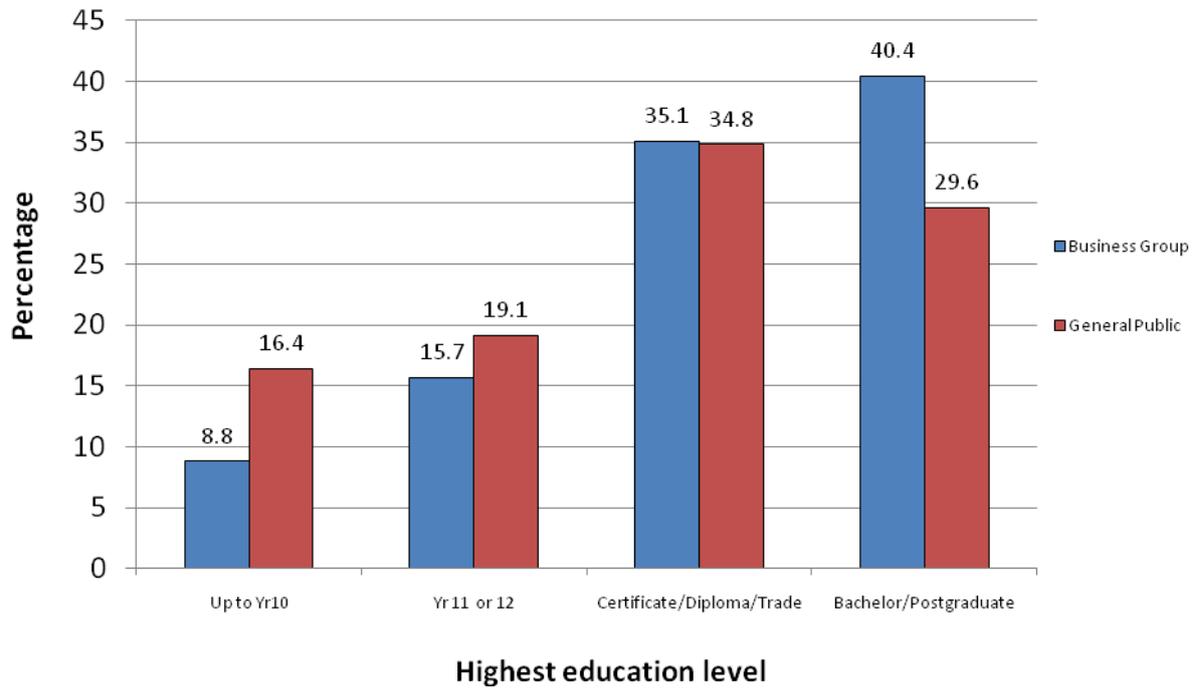
²⁰⁰ Business group (n=567), General public (n=1296).

Figure 13.2B Gender of Business group compared with general public²⁰¹



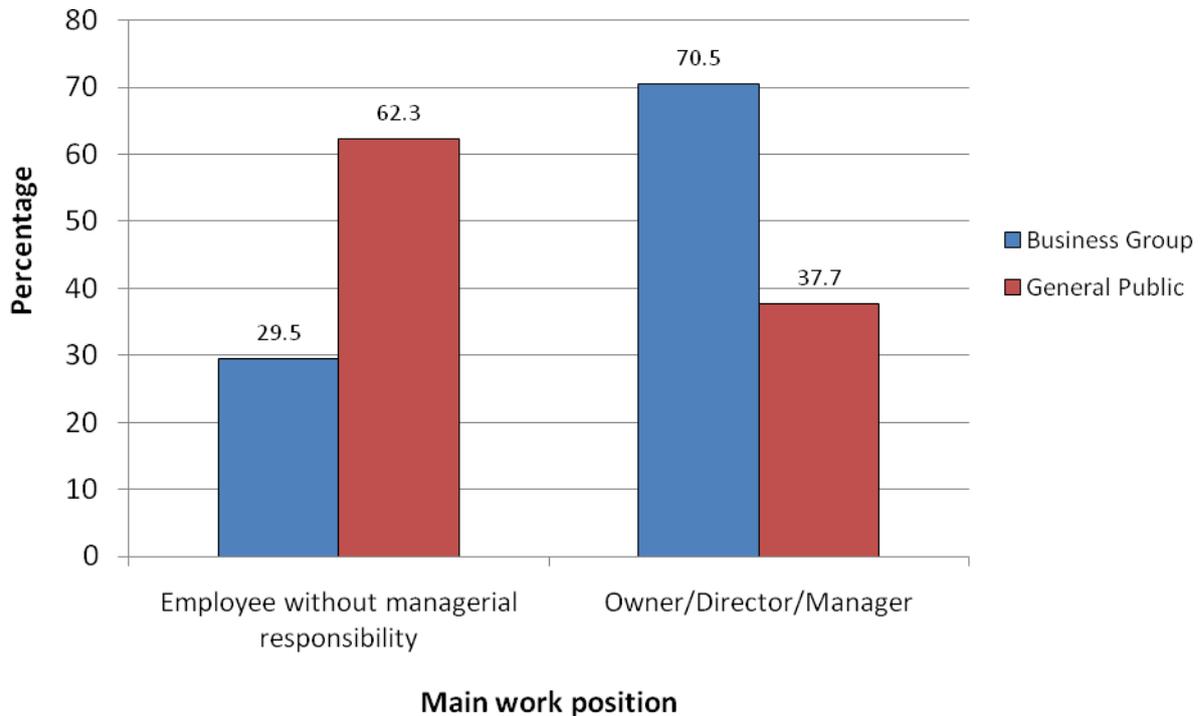
²⁰¹ Business group (n=567), General public (n=1296).

Figure 13.2C Highest education level achieved by members of Business group compared with general public²⁰²



²⁰² Business group (n=596), General public (n=1296)

Figure 13.2D Main work position (employee or manager) of Business group compared with general public²⁰³



Comments

To our knowledge there are no statistics available as to the demographic characteristics of people who work in business in Australia in general against which we can compare our Business group. Moreover there are no statistics available as to the characteristics of those business people who might be in a position to breach the anti-cartel laws. Therefore we compare the Business group with our random sample of the general public to give a sense of how representative the Business group might be. It is important to note that we expect the Business group to differ in systematic ways from the general public in relation to characteristics such as age, gender and education. The Business group had the profile with respect to age, gender and educational level that we would expect as compared with the general public sample. That is, members of the Business group cluster more around the middle ages (25-54) than the general public; there are slightly more men in the Business group than the general public, and members of the Business group are more likely to have university level education than our random sample from the general public.

Due to our selection process (explained above) there are also a greater proportion of senior managers, owners of businesses and members of boards of directors in the Business group than the random sample from the general public.

²⁰³ Business group (n=596), General public (n=1296)

Figure 13.2E Size of business in which members of Business group employed and proportion of businesses of each size in Australia

How many people are employed at your workplace?	Business group (n=567)	All Australian employing businesses ²⁰⁴
Micro (0-19)	52%	89%
SME (20-199)	27%	10%
Large (200 +)	22%	<1%

Comments

We also provide the proportions of members of the Business group employed in different size businesses to show the spread of business people included in the group. This is shown compared with the number of businesses that fall into each category according to Australian Bureau of Statistics (ABS) figures. Note that the ABS figures are for number of employing businesses (excluding solo operators), while the Business group figures are for individuals employed in the businesses. So we do not expect the proportions in each column to directly correspond to one another. We would expect many more individuals to be employed in the larger businesses. In that context our Business group appears to represent a reasonable representation of likely spread of employment in the business sector.

²⁰⁴ Based on information from the Australian Bureau of Statistics: Australian Bureau of Statistics, *Counts of Australian Businesses, Including Entries and Exits, 8165.0, June 2007 to June 2009, 2010* at p8.

14. BUSINESS GROUP – KNOWLEDGE OF THE LAW

14.1 KNOWLEDGE THAT CARTEL CONDUCT IS AGAINST THE LAW

F1a Intro

In this next section, we have a few more business scenarios that we'd like you to consider very carefully....

F1a. Lee, a sales manager at Brick Company, considers whether to get together with representatives from companies that compete with Brick Company to agree on product prices for the next year. Brick Company is currently experiencing growing sales and revenues in an industry that is economically healthy. Lee's conduct would boost revenues further and therefore result in a very positive impression of Lee by top management.

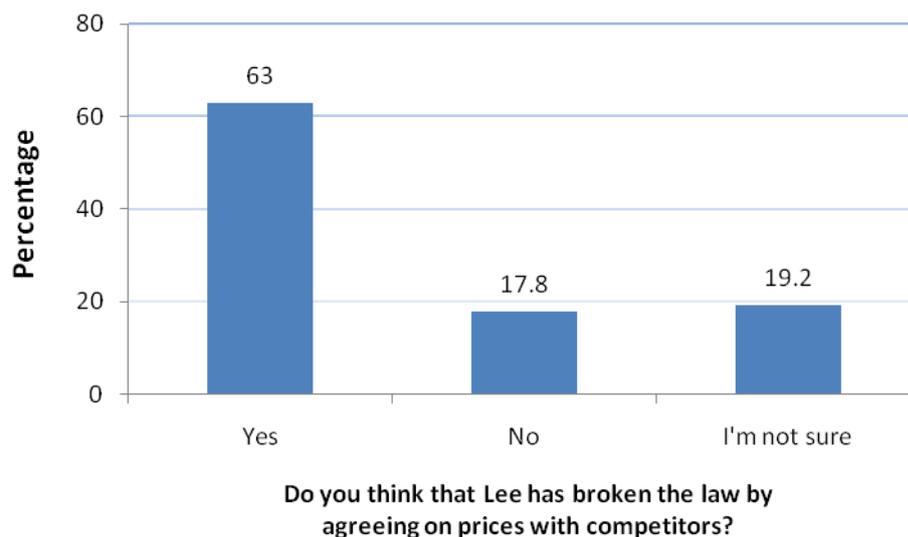
Lee decides to meet with representatives from competitor brick companies to agree on the prices for the next year. As a result brick prices rise throughout the big city in which Brick Company and its competitors are based. This means that governments, companies and individuals all have to pay more for new buildings and houses and Brick Company makes millions of dollars in extra profits.

Please answer the next questions given what you think the law **ACTUALLY IS**, rather than what you think the law **SHOULD BE**.

Do you think that Lee has broken the law by agreeing on prices with competitors?

1. Yes
2. No
3. I'm not sure

Figure 14.1 Do Business group respondents know that price fixing is against the law?²⁰⁵



²⁰⁵ n=567, total Business group.

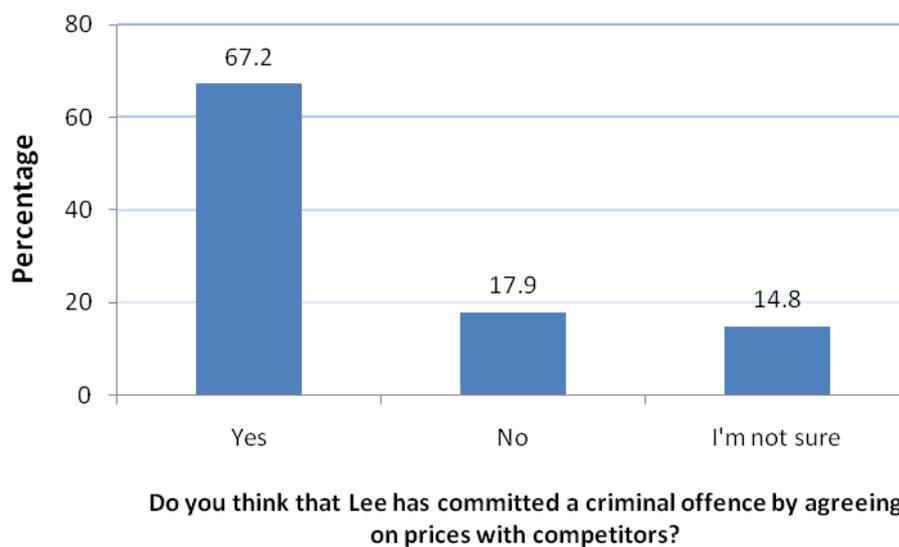
Comments

Only 63% know that Lee has broken the law by meeting with representatives from competitor brick companies to agree on the prices for the next year.

14.2 KNOWLEDGE THAT CARTEL CONDUCT IS A CRIMINAL OFFENCE

F1b. Do you think that Lee has committed a criminal offence by agreeing on prices with competitors?

Figure 14.2A Business group respondents' knowledge that price fixing is a criminal offence?²⁰⁶

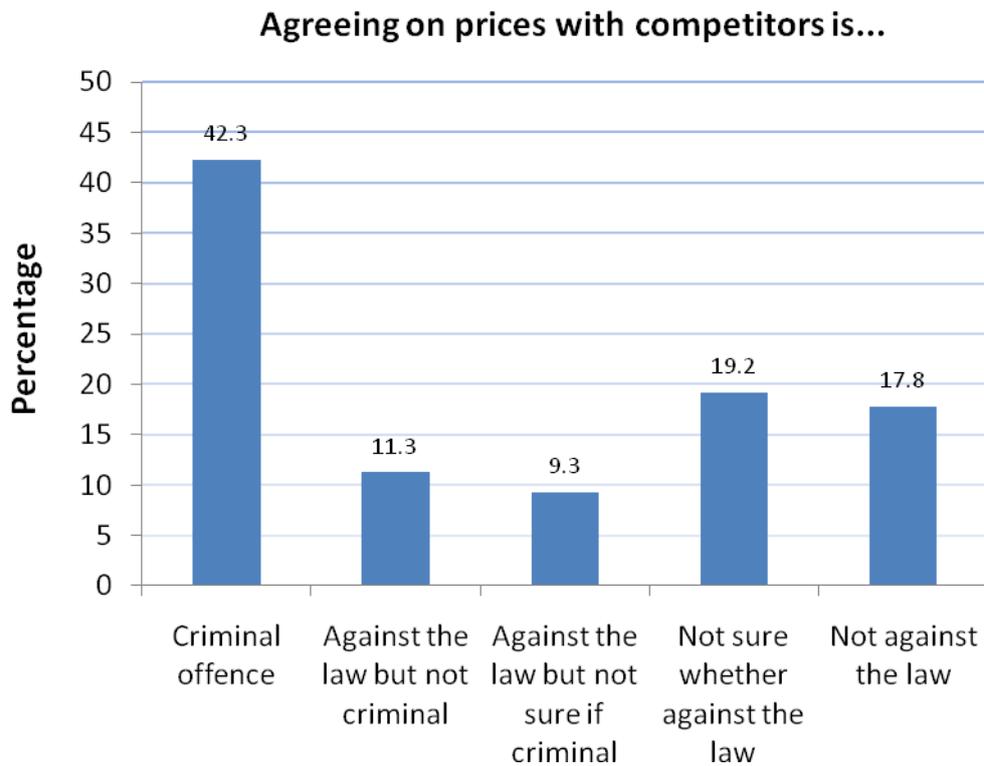


Comments

Of the 63% who knew that Lee had broken the law by agreeing on prices with competitors, we went on to ask whether they thought that Lee had “committed a criminal offence by agreeing on prices with competitors”? Only 67.2% of the 63% know that Lee has committed a criminal offence.

²⁰⁶ n=357 (63% of 567), respondents who answered ‘yes’ to previous question: ‘Do you think that Lee has broken the law by agreeing on prices with competitors?’ i.e. shown as a proportion of those who do know cartel conduct is against the law).

Figure 14.2B Summary of Business group respondents' knowledge of law²⁰⁷



Comments

Figure 14.2B summarises the knowledge of the whole Business group. Only 42% (less than half) of the whole Business group know that agreeing prices with competitors is a criminal offence. The remaining 58% do not know it is a criminal offence. Of the total group, 37% believe either that it is not against the law at all or are not sure whether it is against the law, while 20.6% know it is against the law but either think it is not a criminal offence or are not sure whether it is a criminal offence.

²⁰⁷ n=567, total Business group.

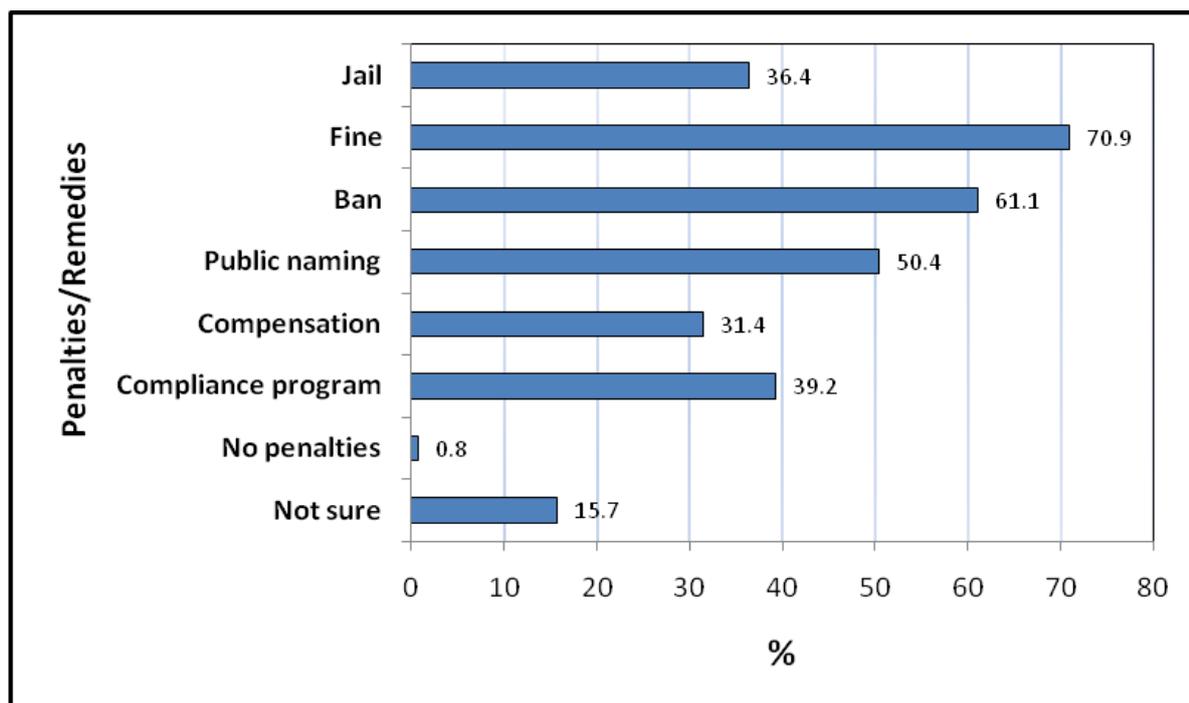
14.3 KNOWLEDGE OF PENALTIES AVAILABLE FOR CARTEL CONDUCT

F1c As far as you know, what penalties are available under the law for someone like Lee who agrees on prices with competitors?

Please answer according to what you think the law **actually is**, rather than what you think the law should be. *Please mark all that apply*

1. Lee could be sent to jail
2. Lee could have to pay a fine
3. Lee could be banned from being a director or manager of any company for a number of years
4. Lee could be publicly named (e.g. on the TV news) as having been involved in the conduct
5. Lee could have to pay compensation to anyone who suffered loss or damage as a result of the conduct
6. Lee could be forced to take measures to ensure the conduct did not happen again (e.g. by taking part in a training program), or
7. No penalties would apply
8. I'm not sure

Figure 14.3A Do Business group respondents know what penalties are available under the law for someone like Lee who agrees on prices with competitors?²⁰⁸

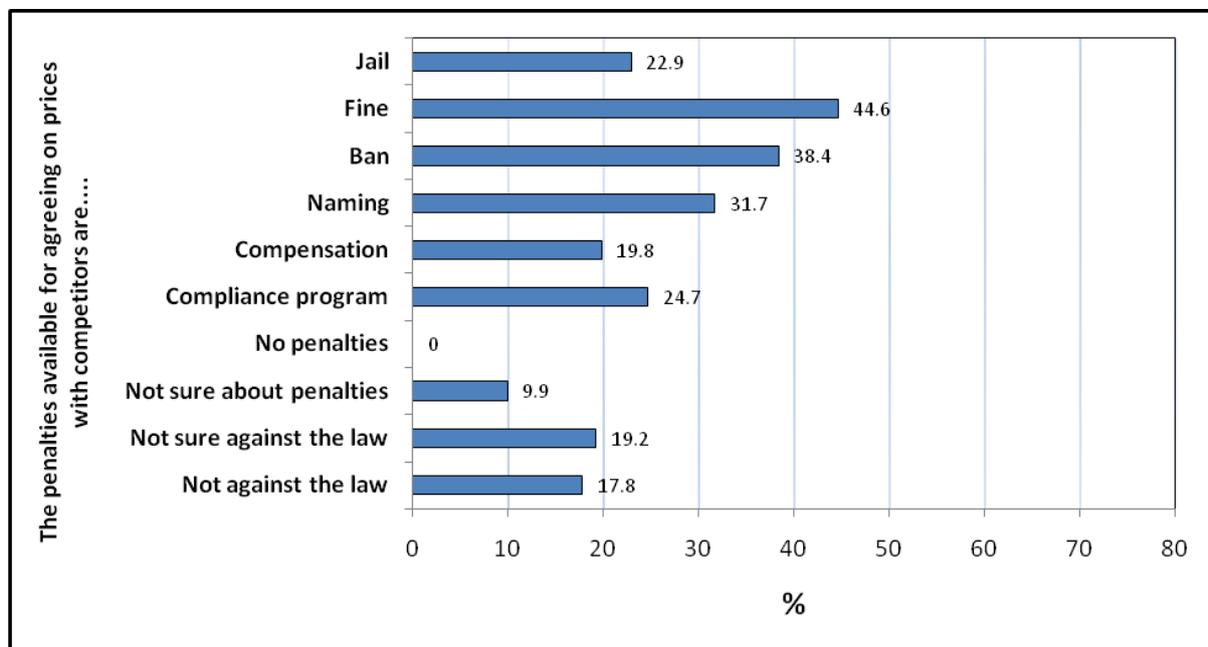


²⁰⁸ n=357 (63% of 567), respondents who answered 'yes' to previous question: 'Do you think that Lee has broken the law by agreeing on prices with competitors'? Shown as a proportion of those who do know price fixing is against the law.

Comments

Of the 63%, who thought that Lee had broken the law we also went on to ask: “As far as you know what penalties are available under the law for someone like Lee who agrees on prices with competitors?” Respondents could choose as many responses as they liked from a list. Only 36.4% (just over a third) of those who thought price fixing was against the law thought that jail was available as a penalty for this conduct. 70.9% of those who thought price fixing was against the law thought that a fine was available as a penalty.

Figure 14.3B Summary of Business group respondents’ knowledge of penalties available under the law for someone who agrees on prices with competitors²⁰⁹

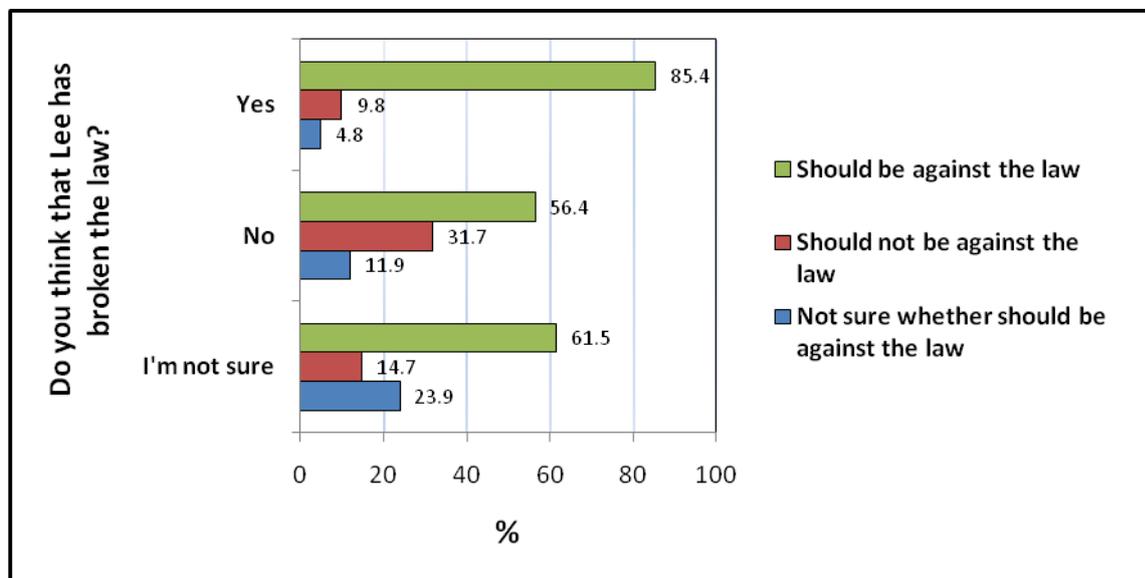


Comments

Looking at the whole Business group, 22.9% (less than one quarter) of the whole Business group think that jail is available as a sanction for this type of behaviour, and 44.6% (less than half) of the whole sample think that a fine is available as a penalty for this type of behaviour.

²⁰⁹ n=567, total Business group. The precise proportion for ‘no penalties’ was 0.005.

Figure 14.4 Knowledge of the law (F1A) and view that price fixing should be against the law (D1)²¹⁰



Comments

There is a very high – and statistically significant - correlation between Business group respondents knowing that Lee has broken the law and answering that they think price fixing should be against the law in the earlier part of the survey: 85.4% of those who think Lee has broken the law also think that price fixing should be against the law, while only 56.4% of those who think Lee has not broken the law think that price fixing should be against the law.²¹¹

There were also significant correlations²¹² between knowing that Lee has broken the law and:

- interest in business issues (measured in Section B1 of the survey), i.e. those who are more interested in business issues were more likely to know that Lee has broken the law;
- trust in business (measured in Section B2 of the survey), i.e. those who are reluctant to trust business were more likely to think Lee has broken the law and those who are neutral about business were less likely to say he has broken the law;

²¹⁰ n=567, total Business group.

²¹¹ It was not possible to do a similar test for business respondents' knowledge that price-fixing is a criminal offence and their opinion as to whether it should be a criminal offence. Nor was it possible to compare respondents' views on what the penalties are and what the penalties should be.

²¹² Cross-tabs and statistical tests of significance are available from the authors upon request.

- prior awareness of cartel issues (measured in Section G of the survey), i.e. those with more prior awareness more likely to know Lee has broken the law;
- gender (measured in Section A of the survey), i.e. men more likely to know Lee has broken the law than women; and
- education (measured in Section A of the survey), i.e. those with university education more likely to know Lee has broken the law, and those with Year 11 or 12 as highest level of education were less likely to know Lee has broken the law.

There is also a significant correlation between gender and knowing that Lee agreeing prices with competitors is a criminal offence (men are more likely to know it is a criminal offence). We have not identified any other significant correlations between any other characteristics, attitudes or opinions and knowledge that cartel conduct is a criminal offence. In particular, we did check whether there was any correlation between position (employee or manager) and knowledge of the law and between size of workplace and knowledge of the law, but found no significant correlations.

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 scenario²¹³.....

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.

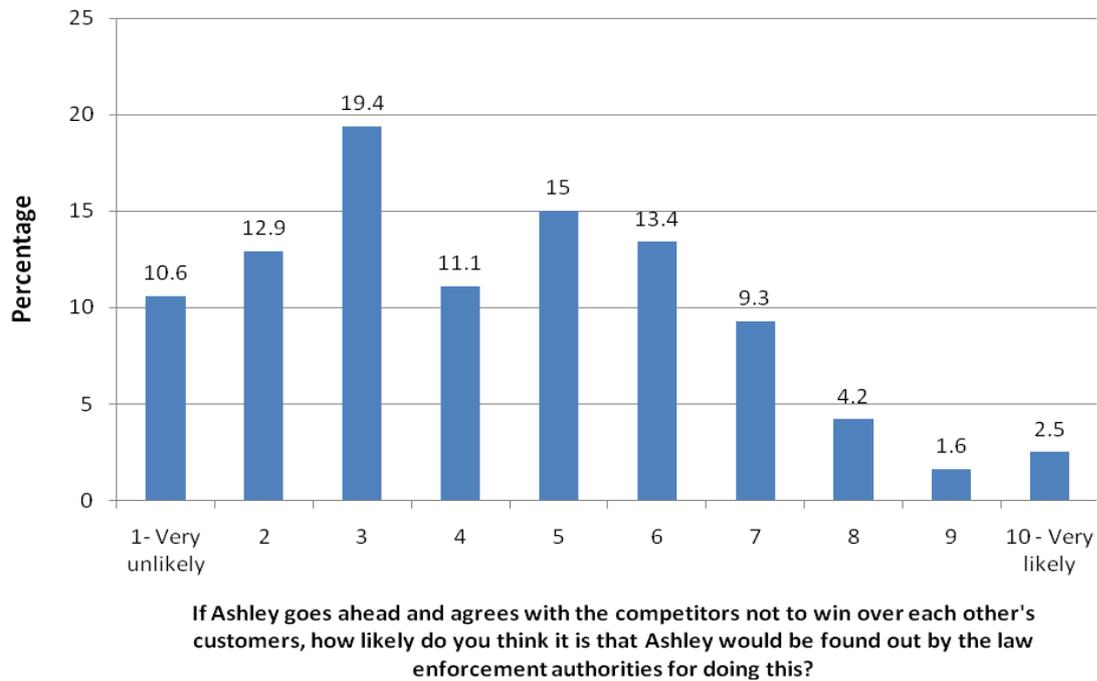
This conduct is against the law but it is **not a criminal offence**.

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.]

²¹³ 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)²¹⁴



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.

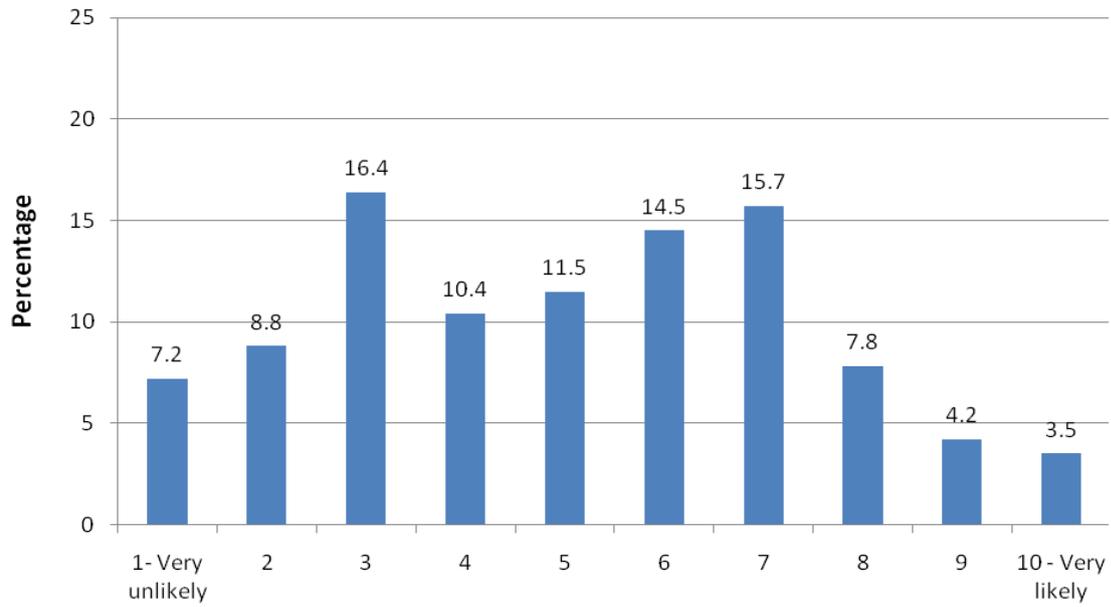
This conduct is against the law and **is** a criminal offence.

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.]

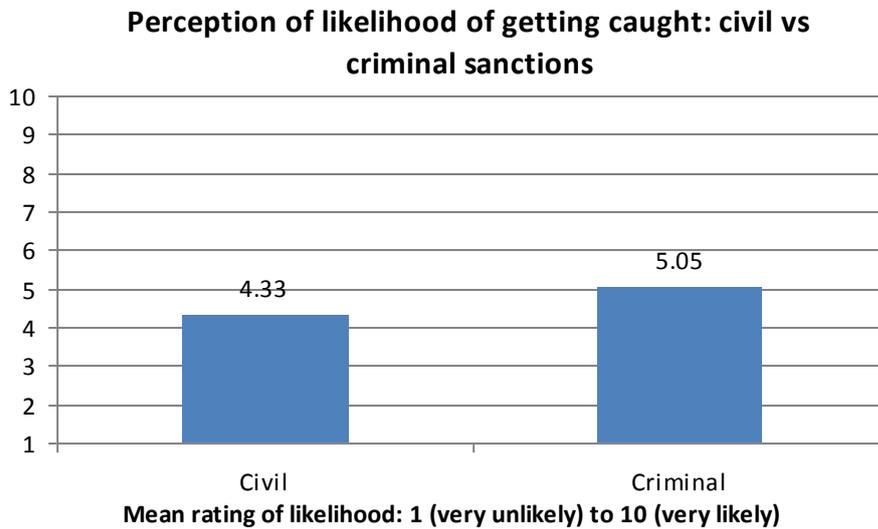
²¹⁴ n=567, total Business group.

Figure 15.1B Likelihood that Ashley will be caught (criminal sanctions)²¹⁵



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)²¹⁶



²¹⁵ n=567, total Business group.

²¹⁶ 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.

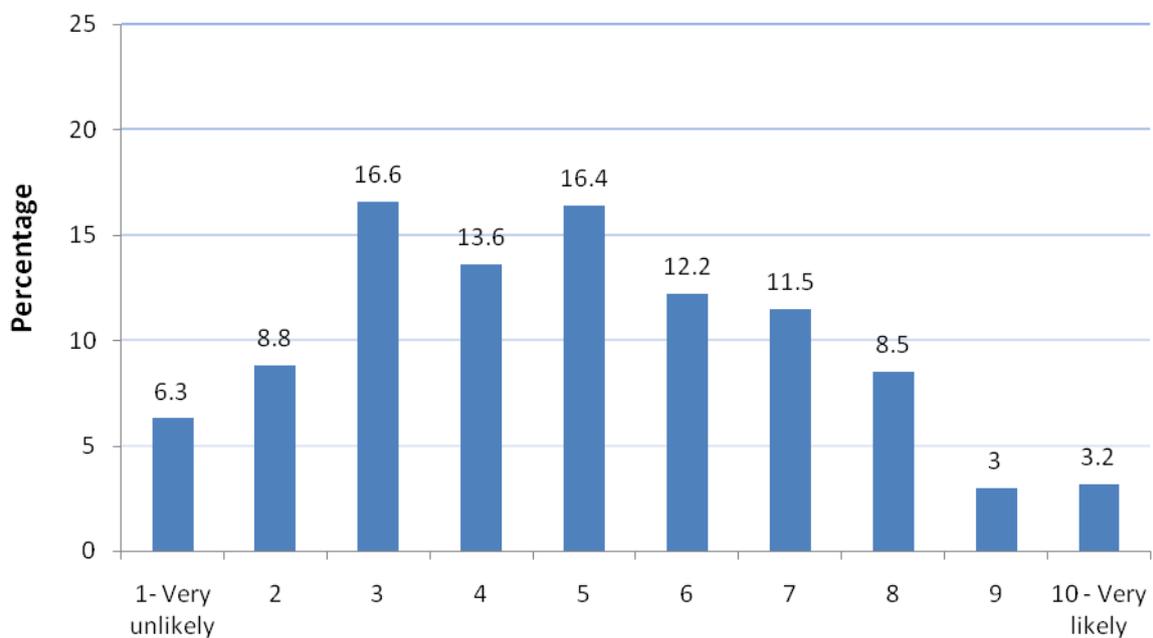
15.2 PERCEPTIONS OF DETERRENCE - LIKELIHOOD OF LEGAL ACTION IF CAUGHT (CIVIL SANCTIONS VS CRIMINAL SANCTIONS)

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.]

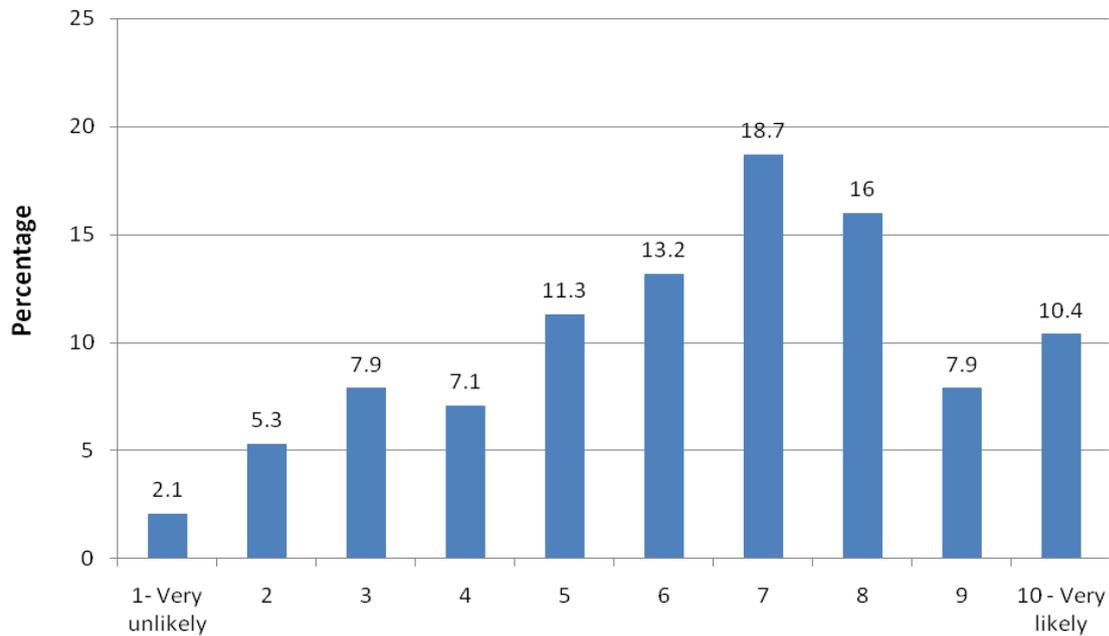
Figure 15.2A Likelihood of legal action (civil sanctions)²¹⁷



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?

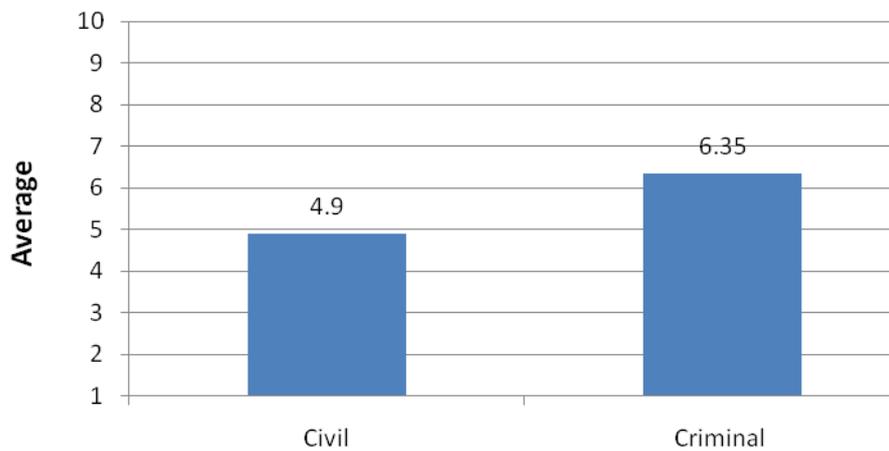
²¹⁷ n=567, total Business group.

Figure 15.2B Likelihood of legal action (criminal sanctions)²¹⁸



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)²¹⁹



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?

²¹⁸ n=567, total Business group.

²¹⁹ 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.

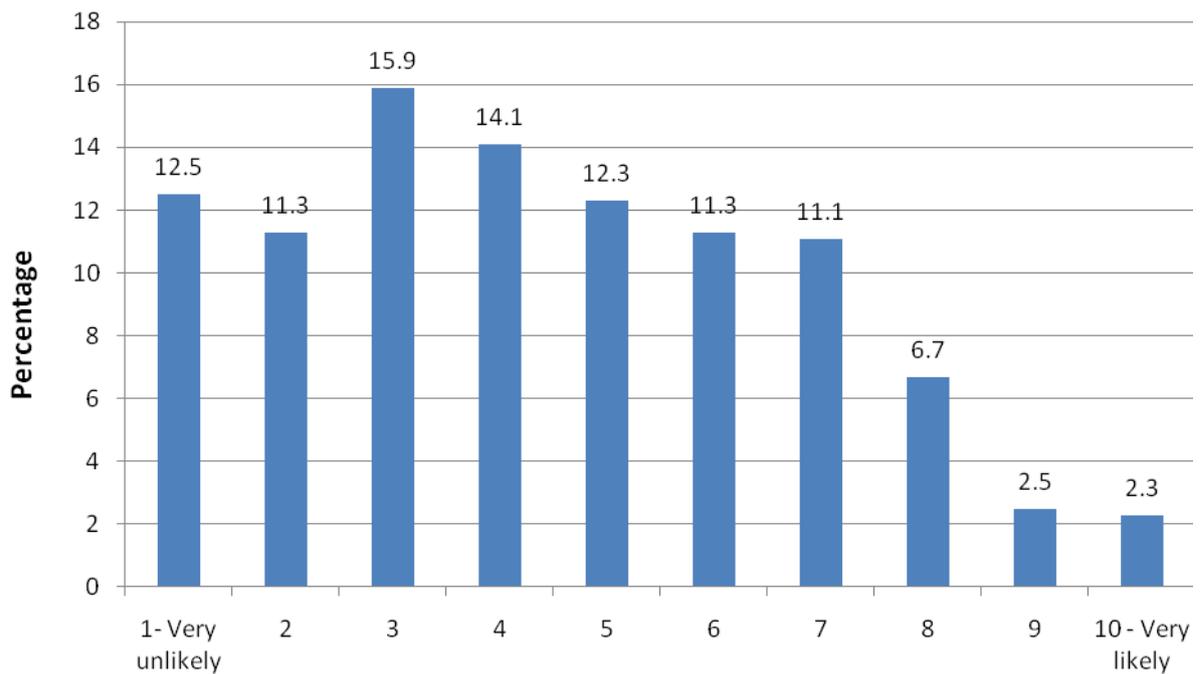
15.3 PERCEPTIONS OF DETERRENCE - LIKELIHOOD OF JAIL IF FOUND GUILTY

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.]

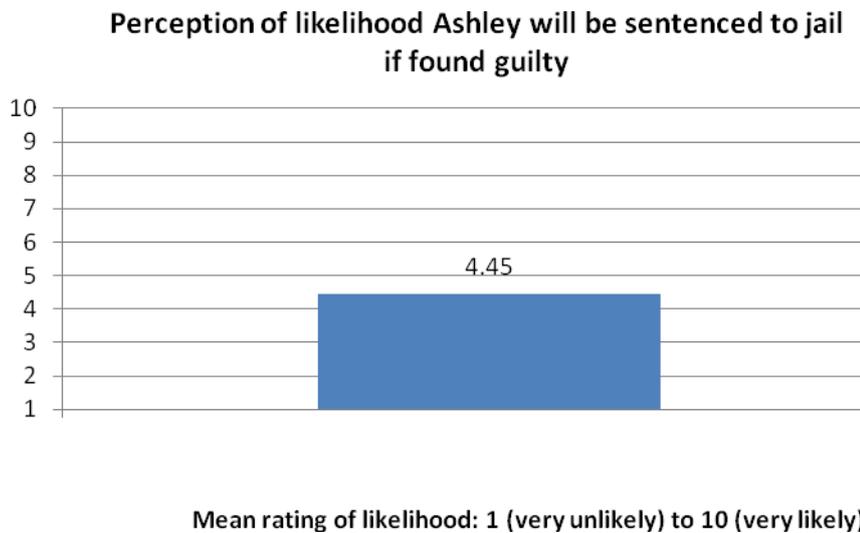
Figure 15.3A Likelihood that Ashley will be sentenced to jail (criminal sanctions only)²²⁰



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?

²²⁰ 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)²²¹



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

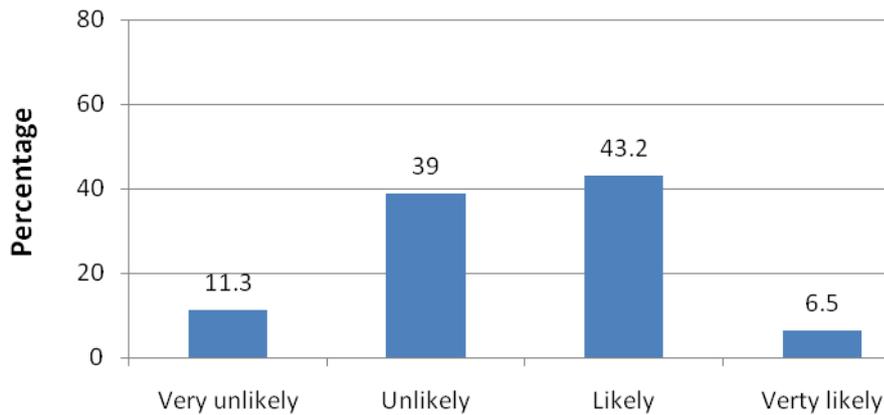
F2c/F3c/F4c In recent years the average fine that the courts have imposed on individuals involved in the same sort of conduct that Ashley is considering has been \$40,000. The maximum fine available under the law against individuals for this sort of conduct is \$500 000. The law also says that individuals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

²²¹ n=567, total Business group.

Figure 15.4A Likelihood of breach by Ashley (civil sanctions)²²²



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

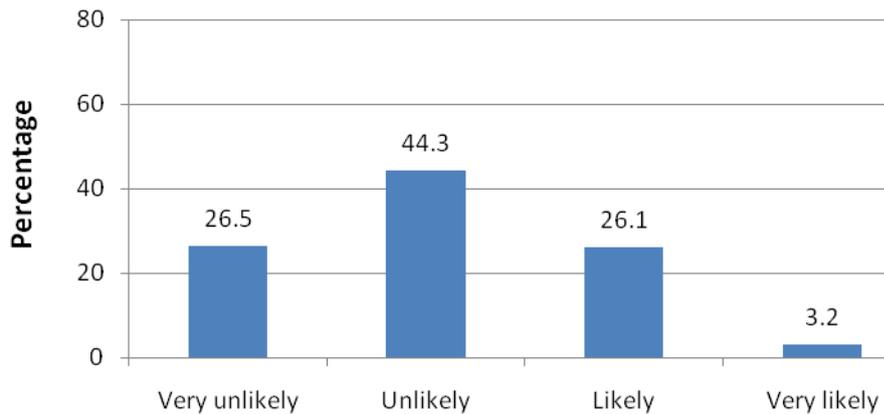
F5e/F6e/F7e The law says that people who engage in the sort of conduct that Ashley is considering can be convicted and put in jail. The maximum jail term available under the law against individuals for this sort of conduct is 10 years. The law also says that individuals who take part in this sort of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

5. Very unlikely
6. Unlikely
7. Likely
8. Very likely

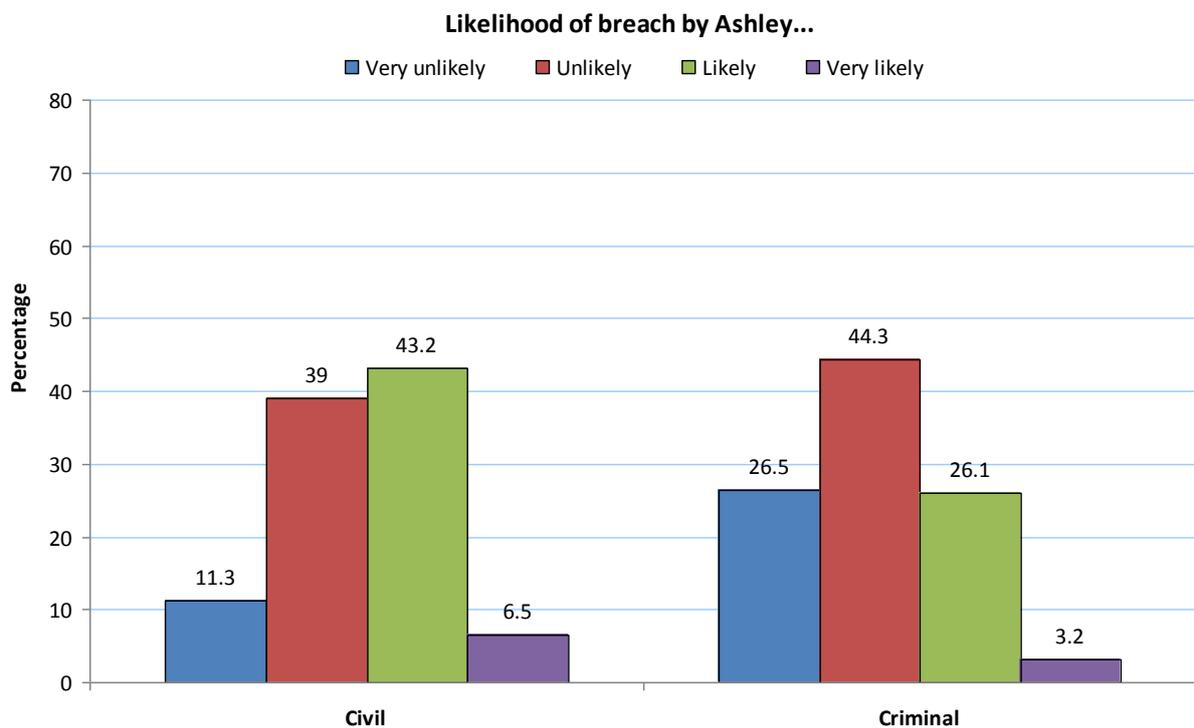
²²² n=567, total Business group.

Figure 15.4B Likelihood of breach by Ashley (criminal sanctions)²²³



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)²²⁴



²²³ n=567, total Business group.

²²⁴ n=567, total Business group.

Comments

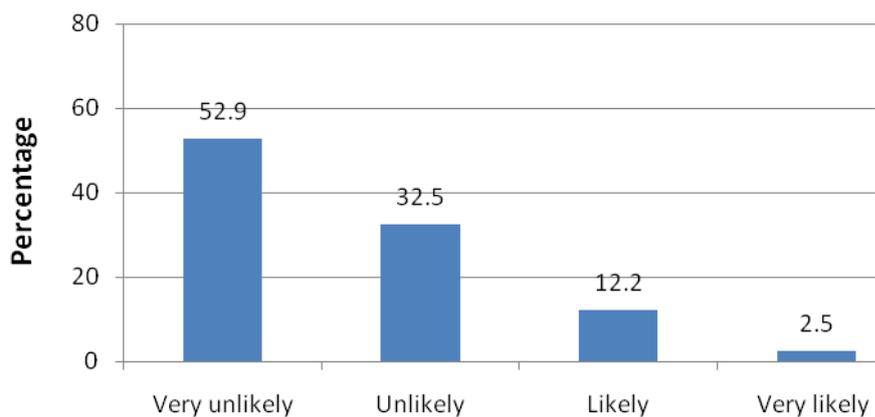
Under civil sanctions, half the respondents see it as likely that Ashley would engage in cartel conduct (that is, combining those who see it as likely and very likely). 70% of respondents rate Ashley as unlikely or very unlikely to engage in cartel conduct once it moves from being a civil offence to 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

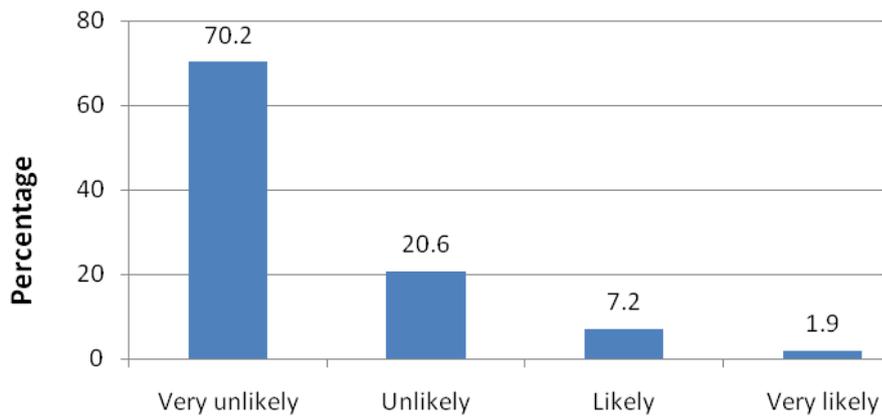
Figure 15.4D Likelihood of breach by respondent (civil sanctions)²²⁵



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?

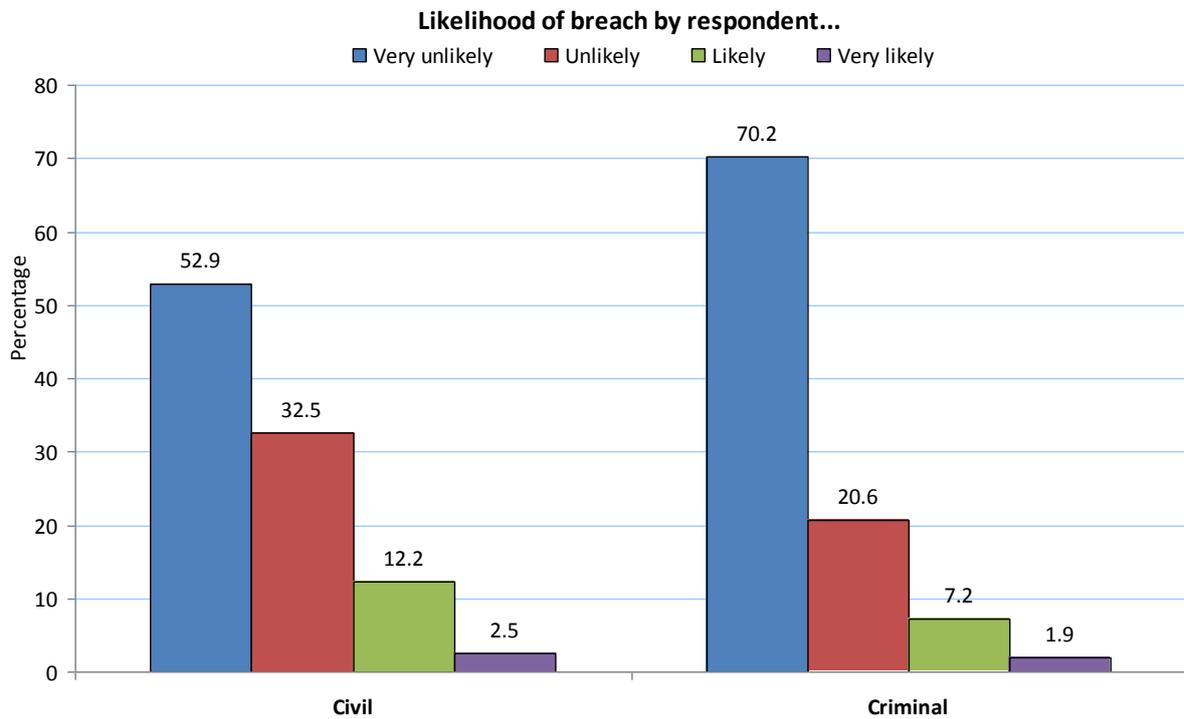
²²⁵ n=567, total Business group.

Figure 15.4E Likelihood of breach by respondent (criminal sanctions)²²⁶



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)²²⁷



²²⁶ n=567, total Business group.

²²⁷ 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

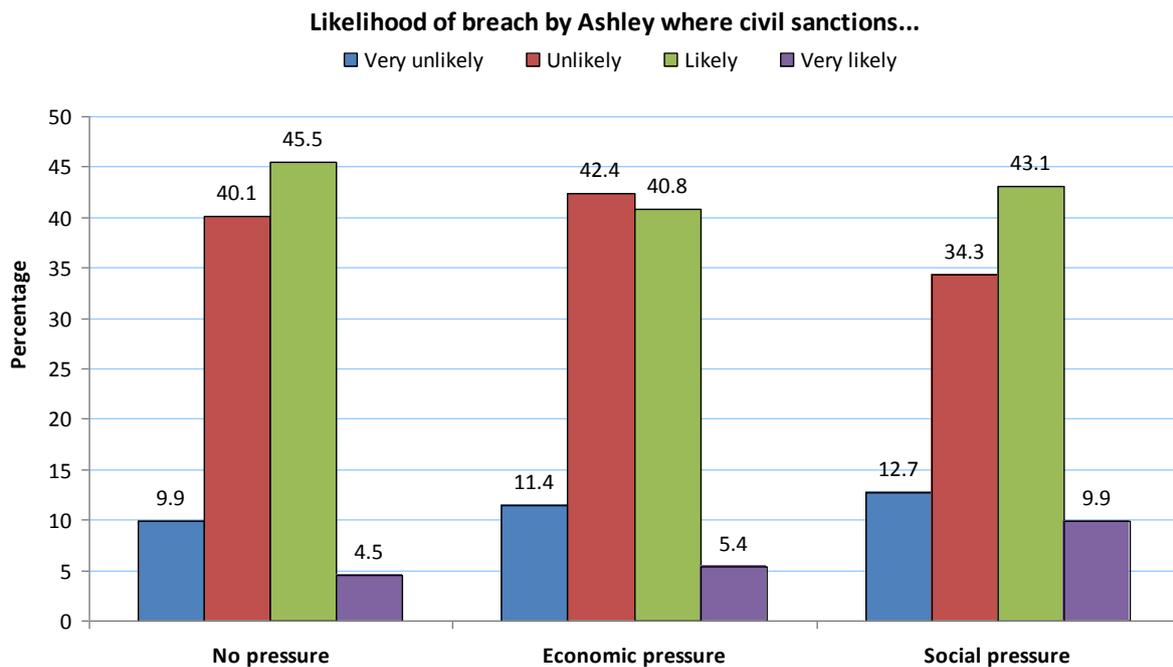
In relation to the scenarios above:

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]**

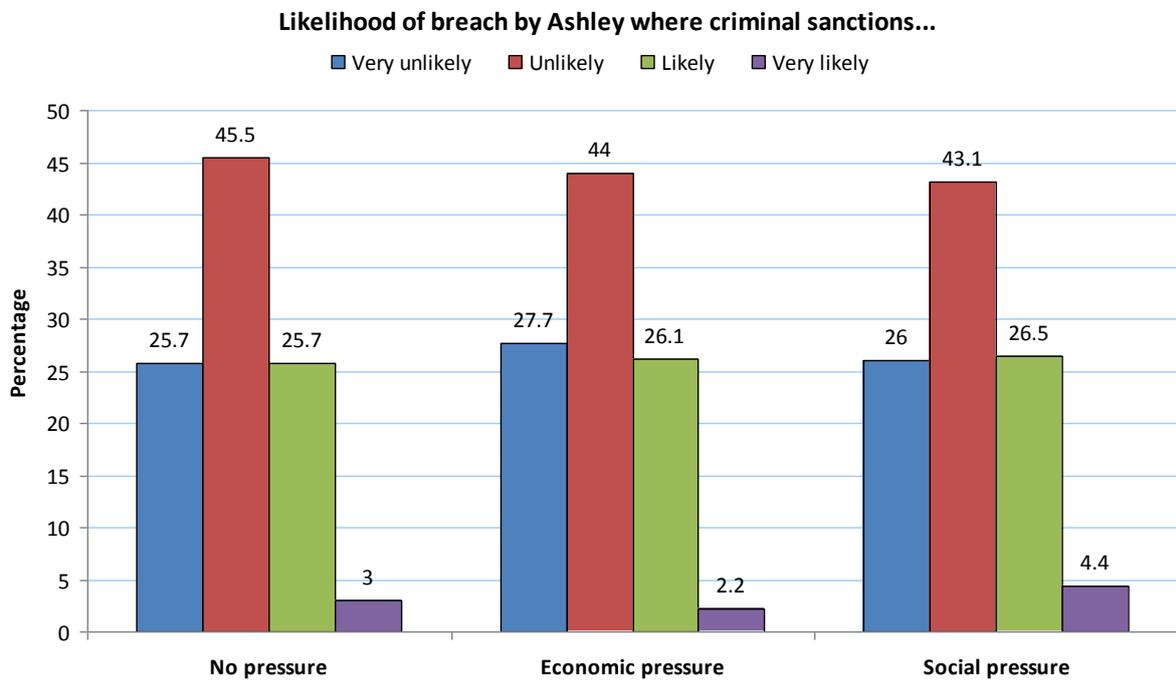
The final third of respondents were not given any additional facts. **[No pressure]**

Figure 15.5A Civil sanctions - Likelihood of breach by Ashley (no pressure vs economic pressure vs social pressure)²²⁸



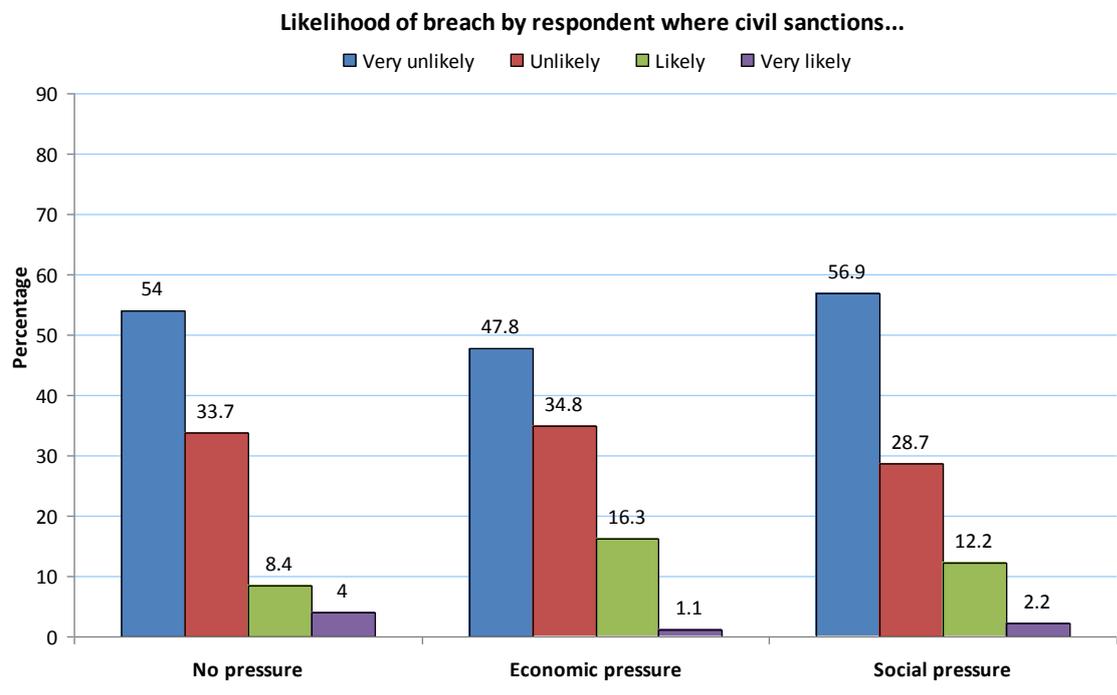
²²⁸ No pressure (n=202), Economic pressure (n=184), Social pressure (n=181).

Figure 15.5B Criminal sanctions - Likelihood of breach by Ashley (no pressure vs economic pressure vs social pressure)²²⁹



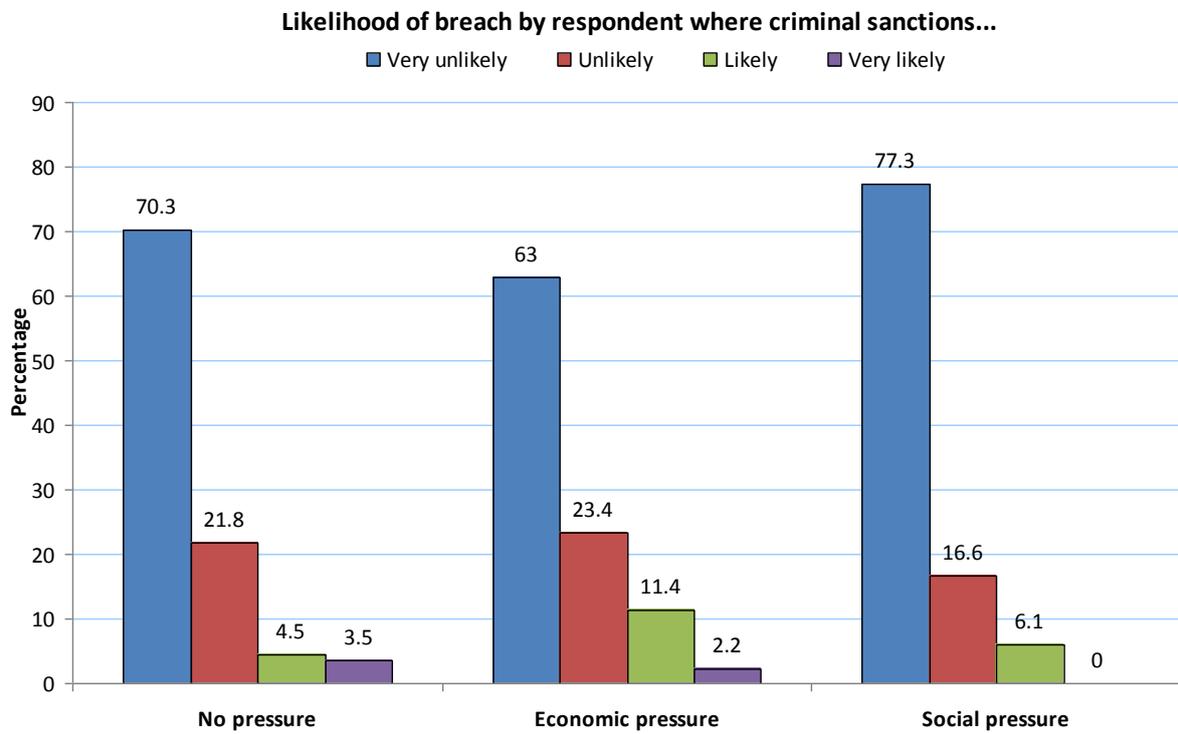
²²⁹ No pressure (n=202), Economic pressure (n=184), Social pressure (n=181).

Figure 15.5C Civil sanctions - Likelihood of breach by respondent (no pressure vs economic pressure vs social pressure)²³⁰



²³⁰ 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)²³¹



²³¹ 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 conditions²³²

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.

²³² n=567, total Business group.

Figure 15.6 Summary of correlations between perceptions of likelihood of enforcement and likelihood of breach²³³

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.

²³³ n=567, total Business group.

University of Melbourne

Cartel Survey

Questionnaire script for main study (22 June 2010)

Incorporates changes arising from review of soft launch data

Contents

Section A: Demographic background

Section B: Attitudes towards business

Section C: Attitudes towards competition

Section D: Attitudes towards cartel conduct

D1 Price fixing

D2 Market sharing

D3 Output restriction

Section E: Crime seriousness

Section F: Compliance and deterrence

F2. Civil sanctions - no pressure

F3. Civil sanctions - economic pressure

F4. Civil sanctions - social pressure

F5. Criminal sanctions - no pressure

F6. Criminal sanctions – economic pressure

F7. Criminal sanctions - social pressure

Section G: Prior knowledge and comments

Section A: Demographic background

*[ALL]

A1. What is your age?

1. 18-24 years
2. 25-34 years
3. 35-44 years
4. 45-54 years
5. 55-64 years
6. 65+ years

*[ALL]

A2. Are you male or female?

1. Male
2. Female

*[ALL]

A3. What is your postcode?

□□□□

*[ALL]

A4. What is the highest level of education you have completed?

1. Year 8 or below
2. Year 9 or 10 (or equivalent)
3. Year 11 or 12 (or equivalent)
4. Certificate, Diploma (TAFE or business college) or trade qualification
5. Bachelor Degree (including Honours)
6. Postgraduate Degree or Postgraduate Diploma

*A4=5 or 6 ('bachelor' or 'postgraduate' for A4]

A5. Do you have a formal qualification in law (undergraduate or postgraduate)?

1. Yes
2. No

*A4=5 or 6 ('bachelor' or 'postgraduate' for A4]

A6. Do you have a formal qualification in economics, commerce or business (undergraduate or postgraduate)?

1. Yes
2. No

*[ALL]

A7. Last week, did you do any paid work of any kind?

1. Yes
2. No

*A7=2 [Did not do paid work of any kind last week]

A7a. Were you mainly....?

1. Doing volunteer work
2. Unemployed and looking for work
3. Not in paid employment (e.g. home duties)
6. Retired
4. Studying
5. Other (please specify):

*A7=1 [Did paid work of any kind last week]

A7b. Were you?

1. Self-employed
2. Employed for wages or salary
3. Other (please specify):

*A7=1 [Did paid work of any kind last week]

A8. About how many people are employed at your workplace?

Note: this question refers to the site / branch / office where you work

1. 0-19 employees
2. 20-199 employees
3. 200 or more employees

*A7=1 [Did paid work of any kind last week]

A9. Which of the following best describes the main position that you held in your job last week?

1. Owner
2. Member of Board of Directors
3. Senior manager
4. Middle manager
5. Employee without managerial responsibility

*A7=1 [Did paid work of any kind last week]

*programmer note: option 10 is an exclusive code

A10. In the main job you held last week, did your role include any aspect of:

Please mark all that apply

1. Deciding, revising or negotiating prices for goods or services
2. Deciding, revising or negotiating the cost of producing goods or supplying services
3. Marketing or promoting goods or services
4. Setting production, capacity or supply levels
5. Dealing with customers in any capacity
6. Dealing with suppliers in any capacity
7. Dealing with competitors in any capacity
8. Tendering for contracts
9. Overseeing or managing any of the above
10. None of the above

*[ALL]

A11. Which of the following ranges best describes your household's approximate income from all sources, before tax is taken out, over the last 12 months?

1. Less than \$50,000
2. Between \$50,000 and \$149,999
3. Between \$150,000 and \$249,999
4. \$250,000 and over
5. Don't know

*[ALL]

A12. Which one of the following sources of information would you say you rely on MOST for news and information?

1. ABC and/or SBS television
2. Commercial television (free-to-air)
3. Pay-TV
4. ABC and/or SBS radio
5. Talkback radio
6. Commercial radio
7. Newspapers, either in print or online
8. Internet sites
9. Friends and family
10. I don't follow the news

*[ALL]

A13. On how many days in a typical week do you read the newspaper (in print or online)?

1. Every day
2. Most days
3. 2 to 3 days a week
4. Once a week

5. Less than once a week
6. Never read the newspaper

*Refer to separate mapping of newspaper to state

*A13 not 6 [Reads newspaper]

A14. Which newspapers do you usually read (in print or online)?

Please mark all that apply

1. The Australian
2. Australian Financial Review
3. Sydney Morning Herald
4. Daily Telegraph
5. Sunday Telegraph
6. The Age
7. Herald Sun
8. The Courier Mail
9. Adelaide Advertiser
10. West Australian
11. Hobart Mercury
12. Canberra Times
13. Northern Territory News
14. The Gold Coast Bulletin
15. Weekly Times
16. National Indigenous Times
17. The Advocate
18. Other newspaper (please specify):

*[ALL]

A15. If a federal election was held today, which one of the following parties or candidates would you vote for?

1. Liberal
2. Labor (ALP)
3. National
4. Australian Democrats
5. Green
6. One Nation
7. Family First
10. Independent candidates
8. No Party
9. Other Party (please specify):

*A15 not 8 [Nominated party at A15]

A16. Would you call yourself a very strong, fairly strong or not very strong supporter of that party?

1. Very strong supporter
2. Fairly strong supporter
3. Not very strong supporter

Section B: Attitudes towards business

*[ALL]

B1 Overall, how interested are you in business issues generally?

1	2	3	4	5	6	7
---	---	---	---	---	---	---

Not at all interested

Very interested

in business issues

in business issues

I don't follow business issues in the news

I follow business issues in the news

I rarely read the business section of the newspaper – I typically read other sections first

I tend to look at the business section first in the newspaper

I'm not really interested in the stock market

I take an interest in the stock market

*[ALL]

B2. On the scale below, where would you place your own views on the **trustworthiness of business**?

1	2	3	4	5	6	7
---	---	---	---	---	---	---

I think business

I am reluctant

can mostly be trusted

to trust business

Business tries to provide goods and services that are safe and meet consumer needs

Business sometimes skimps on safety, or advertises in a misleading way

By and large business tries to be fair with employees

Business tries to get away with paying unfair wages

Business contributes to the community in various other ways

Business could do more good generally in society

Section C: Attitudes towards competition

*[ALL]

C1. On the scale below, where would you place your own views on **competition** between businesses?

1	2	3	4	5	6	7
---	---	---	---	---	---	---

Competition

Competition

is **healthy**

is **harmful**

Competition means lower prices for consumers

Competition makes it hard for small businesses to have a 'fair go'

Competition leads to better quality goods or services

Competition results in cost-cutting and may lead to lower wages

Competition provides greater choice for consumers

Competition can disadvantage consumers in rural or regional areas

*[ALL]

Dintro

In the next questions, we describe a number of imaginary business scenarios.

These could apply to companies of **any** size in **any** industry.

When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or the industry.

Section D: Attitudes towards cartel conduct

***D1 Price fixing**

*PROGRAMMER NOTE: RESPONDENTS MUST SELECT ONE OF OPTIONS 1 TO 3 AT D1. RESPONDENTS CANNOT PROGRESS IF THEY HAVE ONLY SELECTED THE 'COMMENT' OPTION.

*[ALL]

D1 There are two butchers in a town. In the past they have set their prices independently of each other. This has meant that if one butcher put up its prices, consumers could switch to the other butcher to find a lower price.

The butchers have now reached an agreement with each other to set the prices they charge for the most popular cuts. As a result, they can charge higher prices because if consumers are unhappy with the price at one butcher, they are unable to switch to the other butcher for a better price.

Do you think that an **agreement between competitors on prices** should be against the law?

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Comment (optional):

*D1=1 [Thinks agreement between competitors on prices should be against the law]

D1A Do you think that an **agreement between competitors on prices** should be a criminal offence?

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law but not a criminal offence
3. I'm not sure about whether it should be a criminal offence
4. I'm not sure about the difference between something being a criminal offence and something being against the law

*D1A=1 [Thinks agreement between competitors on prices should be a criminal offence]

D1B. Why do you think that an **agreement between competitors on prices** should be a criminal offence?

	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree
Because consumers may have to pay more	1	2	3	4	5
Because the conduct involves deceiving consumers	1	2	3	4	5
Because the conduct may harm or be unfair to other competitors	1	2	3	4	5
Because the conduct is dishonest	1	2	3	4	5
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	1	2	3	4	5
Because the conduct will harm competition or the free market	1	2	3	4	5
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	1	2	3	4	5
Because the conduct should be seen as the same as theft	1	2	3	4	5

Comments (optional - please note that we are particularly interested to understand which reason or reasons are most important to you):

*D1=1 [Thinks agreement between competitors on prices should be against the law]

D1Cint. Now we would like you to think about how the law should deal with this conduct. First we will ask you about how the law should deal with the **COMPANIES** involved. Then we will ask you about how the law should deal with the **INDIVIDUALS** responsible for the conduct while working for the companies.

*Codes 5 and 6 are exclusive codes

*D1=1 [Thinks agreement between competitors on prices should be against the law]

D1C How do you think the law should deal with **COMPANIES** that make an **agreement between competitors on prices**?

Please mark all that apply

1. The companies should pay a fine
2. The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct
3. The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct
4. The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)
5. There should be no penalties for the companies
6. Don't know
7. Other (please specify):

*D1C=1 [Thinks companies should pay fine for agreement between competitors on prices]

D1Ca. If the companies each had to pay a fine for making an **agreement between competitors on prices**, how should this fine be calculated?

1. Ten per cent of the company's annual turnover
2. An amount that is three times the profits that the company made from the conduct
3. An amount that is equal to profits that the company made from the conduct
4. Up to \$10 million
5. Up to \$1 million
6. Don't know
7. Other (please specify):

8. Comments (optional):

*Codes 7 and 8 are exclusive codes

*D1=1 [Thinks agreement between competitors on prices should be against the law]

D1D. How do you think that the law should deal with **INDIVIDUALS** responsible for making an **agreement between competitors on prices**?

Please mark all that apply

1. The individuals responsible should go to jail
2. The individuals responsible should pay a fine

3. The individuals responsible should be banned from being a director or manager of any company for a number of years
4. The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct
5. The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct
6. The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)
7. There should be no penalties for the individuals responsible
8. Other

9. Don't know

Comments (optional):

*D1D=2 [Thinks individuals responsible should pay fine]

D1Da. If the individuals responsible each had to pay a fine for making an **agreement between competitors on prices**, how do you think this fine should be calculated?

1. Up to \$10,000
2. Up to \$50,000
3. Up to \$100,000
4. Up to \$250,000
5. Up to \$500,000

Comments (optional):

*D1D=1 [Thinks individuals responsible should go to jail]

D1Db. If a jail sentence was to be imposed on the individuals responsible for making an **agreement between competitors on prices**, what should the maximum jail term be?

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Comments (optional):

*D1=1 [Thinks agreement between competitors on prices should be against the law]

D1E. Now we would like you to consider the following additional facts to see if they change your view.

All things considered, please tell us how you would view an **agreement between competitors on prices** if.....:

Less serious Just as serious More serious

Prices did not go up as a result of the conduct

The conduct included bullying another company into joining the agreement

The reason for the conduct was that it would prevent factories from closing and would save jobs

The companies involved in the conduct were small businesses

Elaborate steps were taken to make sure the authorities did not find out about the conduct

The profits from the conduct were used to make products that are environmentally friendly

Comments (optional):

*D1=1 [Thinks agreement between competitors on prices should be against the law]

D1F. Imagine that one company decides to report the **agreement on prices** to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

To what extent do you agree that it is acceptable to give the first company immunity?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

***D2 Market sharing**

*[ALL]

D2int. Now for a different scenario....

Remember, the scenario could apply to a company of **any** size in **any** industry.

When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or the industry.

D2 This time, there are two plumbing companies that compete against each other in providing plumbing services to a town. They are the only plumbing companies in the town. In the past, if one plumbing company put up its prices, customers could switch to the other plumbing company.

The plumbing companies have now reached an agreement to allocate customers between them. One company will only service buildings north of the river; the other will only service buildings south of the river. As a result, they can charge higher prices because customers can't switch between the plumbing companies when they are unhappy about the price they are being charged.

Do you think that an **agreement between competitors to allocate customers** should be against the law?

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Comment (optional):

*D2=1 [Thinks agreement between competitors to allocate customers should be against the law]

D2A. Do you think that an **agreement between competitors to allocate customers** should be a criminal offence?

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law but not a criminal offence
3. I'm not sure about whether it should be a criminal offence
4. I'm not sure about the difference between something being a criminal offence and something being against the law

*D2A=1 [Thinks agreement between competitors to allocate customers should be a criminal offence]

D2B. Why do you think that an **agreement between competitors to allocate customers** should be a criminal offence?

Strongly disagree Disagree Neither disagree nor agree Agree Strongly agree

Because consumers may have to pay more

Because the conduct involves deceiving consumers

Because the conduct may harm or be unfair to other competitors

Because the conduct is dishonest

Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it

Because the conduct will harm competition or the free market

Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future

Because the conduct should be seen as the same as theft

Comments (optional- please note that we are particularly interested to understand which reason or reasons are most important to you):

*D2=1 [Thinks agreement between competitors to allocate customers should be against the law]

D2Cint. Now we would like you to think about how the law should deal with this conduct. First we will ask you about how the law should deal with the **COMPANIES** involved. Then we will ask you about how the law should deal with the **INDIVIDUALS** responsible for the conduct while working for the companies.

*Codes 5 and 6 are exclusive codes

*D2=1 [Thinks agreement between competitors to allocate customers should be against the law]

D2C How do you think that the law should deal with **COMPANIES** for making an **agreement between competitors to allocate customers**?

Please mark all that apply

1. The companies should pay a fine
2. The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct
3. The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct
4. The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)
5. There should be no penalties for the companies
6. Don't know
7. Other (please specify):

*D2C=1 [Thinks companies should pay a fine for agreement between competitors to allocate customers]

D2Ca. If the companies each had to pay a fine for making an **agreement between competitors to allocate customers**, how should this fine be calculated?

1. Ten per cent of the company's annual turnover
2. An amount that is three times the profits that the company made from the conduct
3. An amount that is equal to profits that the company made from the conduct
4. Up to \$10 million
5. Up to \$1 million
6. Don't know
7. Other (please specify):

Comments (optional):

*Codes 7 and 8 are exclusive codes

*D2=1 [Thinks agreement between competitors to allocate customers should be against the law]

D2D. How do you think that the law should deal with **INDIVIDUALS** responsible for making an **agreement between competitors to allocate customers**?

Please mark all that apply

1. The individuals responsible should go to jail
2. The individuals responsible should pay a fine

3. The individuals responsible should be banned from being a director or manager of any company for a number of years
4. The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct
5. The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct
6. The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)
7. There should be no penalties for the individuals responsible
8. Don't know
9. Other (please specify):

Comments (optional):

*D2D=2 [Thinks individuals responsible should pay a fine for making agreement between competitors to allocate customers]

D2Da. If the individuals responsible each had to pay a fine for making an **agreement between competitors to allocate customers**, how do you think this fine should be calculated?

1. Up to \$10,000
2. Up to \$50,000
3. Up to \$100,000
4. Up to \$250,000
5. Up to \$500,000

Comments (optional):

*D2D=1 [Thinks individuals responsible should go to jail for making agreement between competitors to allocate customers]

D2Db. If a jail sentence was to be imposed on the individuals responsible for making an **agreement between competitors to allocate customers**, what should the maximum jail term be?

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Comments (optional):

*D2=1 [Thinks agreement between competitors to allocate customers should be against the law]

D2E. Now we would like you to consider the following additional facts to see if they change your view.

All things considered, please tell us how you would view an **agreement between competitors to allocate customers** if....

Less serious Just as serious More serious

Prices did not go up as a result of the conduct

The conduct included bullying another company into joining the agreement

The reason for the conduct was that it would prevent factories from closing and would save jobs

The companies involved in the conduct were small businesses

Elaborate steps were taken to make sure the authorities did not find out about the conduct

The profits from the conduct were used to make products that are environmentally friendly

Comments (optional):

*D2=1 [Thinks agreement between competitors to allocate customers should be against the law] and *D1F not populated [i.e. do not ask D2F if already answered immunity question at D1F]

D2F. Imagine that one company decides to report the **agreement to allocate customers** to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

To what extent do you agree that it is acceptable to give the first company immunity?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

***D3 Output restriction**

*[ALL]

D3int. Now for one more scenario....

Again, the scenario could apply to a company of **any** size in **any** industry.

When you answer the questions, please focus on **how the businesses have acted**, rather than the type of business or the industry.

*[ALL]

D3. This time, there are two companies that compete against each other as producers of cheese. They are the only companies that produce cheese in a particular region. In the past they have decided what volume they would produce depending on how much consumers in the region wanted to buy.

However, the companies have now made an agreement with each other to reduce the amount of cheese they produce. As a result of the agreement, they are no longer producing enough cheese to satisfy everyone in the region and can therefore charge higher prices. This is because consumers want to buy more cheese than is available for sale and are therefore prepared to pay more to try and get as much as they want.

Do you think that an **agreement between competitors to reduce production levels** should be against the law?

1. Yes, I think it should be against the law
2. No, I don't think it should be against the law
3. I'm not sure whether it should be against the law

Comments (optional):

*D3=1 [Thinks agreement between competitors to reduce production levels should be against the law]

D3A. Do you think that an **agreement between competitors to reduce production levels** should be a criminal offence?

1. Yes, I think it should be a criminal offence
2. No, I think it should be against the law, but not a criminal offence
3. I'm not sure about whether it should be a criminal offence
4. I'm not sure about the difference between something being a criminal offence and something being against the law

*D3A=1 [Thinks an agreement between competitors to reduce production levels should be a criminal offence]

D3B. Why do you think that an **agreement between competitors to reduce production levels** should be a criminal offence?

	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree
Because consumers may have to pay more	1	2	3	4	5
Because the conduct involves deceiving consumers	1	2	3	4	5
Because the conduct may harm or be unfair to other competitors	1	2	3	4	5
Because the conduct is dishonest	1	2	3	4	5
Because making the conduct a criminal offence will mean that the companies or people involved can be punished for it	1	2	3	4	5
Because the conduct will harm competition or the free market	1	2	3	4	5
Because making it a criminal offence will deter companies or people from engaging in this sort of conduct in the future	1	2	3	4	5
Because the conduct should be seen as the same as theft	1	2	3	4	5

Comments (optional- please note that we are particularly interested to understand which reason or reasons are most important to you):

*D3=1 [Thinks agreement between competitors to reduce production levels should be against the law]

D3Cint. Now we would like you to think about how the law should deal with this conduct. First we will ask you about how the law should deal with the **COMPANIES** involved. Then we will ask you about how the law should deal with the **INDIVIDUALS** responsible for the conduct while working for the companies.

*Codes 5 and 6 are exclusive codes

*D3=1 [Thinks agreement between competitors to reduce production levels should be against the law]

D3C How do you think that the law should deal with COMPANIES for making an **agreement between competitors to reduce production levels?**

Please mark all that apply

1. The companies should pay a fine
2. The companies should be publicly named (e.g. on the TV news) as having been involved in the conduct
3. The companies should pay compensation to anyone who suffered loss or damage as a result of the conduct
4. The companies should have to take measures to make sure the conduct does not happen again (e.g. by providing a training program for its employees)
5. There should be no penalties for the companies
6. Don't know
7. Other (please specify):

*D3C=1 [Thinks companies should pay a fine]

D3Ca. If the companies each had to pay a fine for making an **agreement between competitors to reduce production levels**, how do you think this fine should be calculated?

1. Ten per cent of the company's annual turnover
2. An amount that is three times the profits that the company made from the conduct
3. An amount that is equal to profits that the company made from the conduct
4. Up to \$10 million
5. Up to \$1 million
6. Don't know
7. Other (please specify):

Comments (optional):

*Codes 7 and 8 are exclusive codes

*D3=1 [Thinks agreement between competitors to reduce production levels should be against the law]

D3D. How do you think that the law should deal with **INDIVIDUALS** responsible for making an **agreement between competitors to reduce production levels?**

Please mark all that apply

1. The individuals responsible should go to jail
2. The individuals responsible should pay a fine

3. The individuals responsible should be banned from being a director or manager of any company for a number of years
4. The individuals responsible should be publicly named (e.g. on the TV news) as having been involved in the conduct
5. The individuals responsible should pay compensation to anyone who suffered loss or damage as a result of the conduct
6. The individuals responsible should have to take measures to make sure the conduct does not happen again (e.g. by taking part in a training program)
7. There should be no penalties for the individuals responsible
8. Don't know
9. Other (please specify):

Comments (optional):

*D3D=2 [Thinks individuals should pay a fine]

D3Da. If the individuals responsible each had to pay a fine for making an **agreement between competitors to reduce production levels**, how do you think this fine should be calculated?

1. Up to \$10,000
2. Up to \$50,000
3. Up to \$100,000
4. Up to \$250,000
5. Up to \$500,000

Comments (optional):

*D3D=1 [Thinks individuals should go to jail]

D3Db. If a jail sentence was to be imposed on the individuals responsible for making an **agreement between competitors to reduce production levels**, what should the maximum jail term be?

1. Up to 1 year
2. Up to 5 years
3. Up to 7 years
4. Up to 10 years

Comments (optional):

*D3=1 [Thinks agreement between competitors to reduce production levels should be against the law]

D3E. Now we would like you to consider the following additional facts to see if they change your view.

All things considered, please tell us how you would view an **agreement between competitors to reduce production levels** if....

Less serious Just as serious More serious

Prices did not go up as a result of the conduct

The conduct included bullying another company into joining the agreement

The reason for the conduct was that it would prevent factories from closing and would save jobs

The companies involved in the conduct were small businesses

Elaborate steps were taken to make sure the authorities did not find out about the conduct

The profits from the conduct were used to make products that are environmentally friendly

Comments (optional):

*D3=1 [Thinks agreement between competitors on production levels should be against the law] and [D1F not populated and D2F not populated] [i.e. do not ask D3F if already answered immunity question at D1F or D2F]

D3F. Imagine that one company decides to report the **agreement between competitors to reduce production levels** to the authorities in return for immunity from prosecution for the company. The other company is prosecuted. If the agreement had not been reported, the authorities would not have found out about it.

To what extent do you agree that it is acceptable to give the first company immunity?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

Section E: Crime seriousness

*ALL

PROGRAMMER CREATE DUMMY VARIABLE

CRIMOFF

1. D1A=1 OR D2A=1 OR D3A=1 (THINKS AT LEAST ONE OF SECTION D SCENARIOS IS CRIMINAL OFFENCE)
2. All others

*CRIMOFF=1

*PROGRAMMER NOTE

IF D1A=1 AND D2A=1 AND D3A = 1, ASK E1

IF D1A=1 AND D2A = 1, ASK E1

IF ID1A=1 AND D3A = 1, ASK E1

IF D2A=1 AND D3A = 1, randomly allocate respondent to be asked EITHER E2 OR E3.

IF ONLY D1A = 1, ASK E1

IF ONLY D2A = 1, ASK E2

IF ONLY D3A = 1, ASK E3

*CRIMOFF=1

CRIMOFF1 SHOW ALLOCATION ACROSS E1, E2 AND E3

- 1.ASK E1
- 2.ASK E2
- 3.ASK E3

*D1A=1 (AS DEFINED IN CRIMOFF1)

E1 Earlier in the survey you were asked to consider the following scenario:

There are two butchers in a town. In the past they have set their prices independently of each other. This has meant that if one butcher put up its prices, consumers could switch to the other butcher to find a lower price.

The butchers have now reached an agreement with each other to set the prices they charge for the most popular cuts. As a result, they can charge higher prices because if consumers are unhappy with the price at one butcher, they are unable to switch to the other butcher for a better price.

You thought that an agreement between competitors on prices should be a criminal offence.

In this section we would like you to rate how SERIOUS you think a range of other crimes are, when compared with competitors agreeing on prices.

		A lot less serious	A little less serious	Just as serious	A little more serious	A lot more serious	
A	A person stealing another person's property is...	1	2	3	4	5	than competitors agreeing on prices
B	An insurance company denying a valid claim to save money is...	1	2	3	4	5	
C	A company director using their position dishonestly to gain personal advantage is...	1	2	3	4	5	
D	A company misleading consumers about the safety of goods is...	1	2	3	4	5	
E	A company failing to ensure worker safety is...	1	2	3	4	5	
F	A person killing another person is...	1	2	3	4	5	
G	A person driving while drunk is...	1	2	3	4	5	
H	A company evading government income taxes is...	1	2	3	4	5	
I	A person using inside information in deciding to buy or sell shares is...	1	2	3	4	5	
J	A person sexually abusing another person is..	1	2	3	4	5	

*AS DEFINED IN CRIMOFF1

E2 Earlier in the survey you were asked to consider the following scenario:

There are two plumbing companies that compete against each other in providing plumbing services to a town. They are the only plumbing companies in the town. In the past, if one plumbing company put up its prices, customers could switch to the other plumbing company.

The plumbing companies have now reached an agreement to allocate customers between them. One company will only service buildings north of the river; the other will only service buildings south of the river. As a result, they can charge higher prices because customers can't switch between the plumbing companies when they are unhappy about the price they are being charged.

You thought that an agreement between competitors to allocate customers should be a criminal offence.

In this section, we would like you to rate how SERIOUS you think a range of other crimes are, when compared with competitors agreeing to allocate customers.

		A lot less serious	A little less serious	Just as serious	A little more serious	A lot more serious	
A	A person stealing another person's property is...	1	2	3	4	5	than competitors agreeing to allocate customers
B	An insurance company denying a valid claim to save money is...	1	2	3	4	5	
C	A company director using their position dishonestly to gain personal advantage is...	1	2	3	4	5	
D	A company misleading consumers about the safety of goods is...	1	2	3	4	5	
E	A company failing to ensure worker safety is...	1	2	3	4	5	
F	A person killing another person is...	1	2	3	4	5	
G	A person driving while drunk is...	1	2	3	4	5	
H	A company evading government income taxes is...	1	2	3	4	5	
I	A person using inside information in deciding to buy or sell shares is...	1	2	3	4	5	
J	A person sexually abusing another person is..	1	2	3	4	5	

*AS DEFINED IN CRIMOFF1

E3 Earlier in the survey you were asked to consider the following scenario:

There are two companies that compete against each other as producers of cheese. They are the only companies that produce cheese in a particular region. In the past they have decided what volume they would produce depending on how much consumers in the region wanted to buy.

However, the companies have now made an agreement with each other to reduce the amount of cheese they produce. As a result of the agreement, they are no longer producing enough cheese to satisfy everyone in the region and can therefore charge higher prices. This is because consumers want to buy more cheese than is available for sale and are therefore prepared to pay more to try and get as much as they want.

You thought that an agreement between competitors to reduce production levels should be a criminal offence.

In this section, we would like you to rate how **SERIOUS** you think a range of other crimes are when compared with competitors agreeing to reduce production levels.

		A lot less serious	A little less serious	Just as serious	A little more serious	A lot more serious	
A	A person stealing another person's property is...	1	2	3	4	5	than competitors agreeing to reduce production levels
B	An insurance company denying a valid claim to save money is...	1	2	3	4	5	
C	A company director using their position dishonestly to gain personal advantage is...	1	2	3	4	5	
D	A company misleading consumers about the safety of goods is...	1	2	3	4	5	
E	A company failing to ensure worker safety is...	1	2	3	4	5	
F	A person killing another person is...	1	2	3	4	5	
G	A person driving while drunk is...	1	2	3	4	5	
H	A company evading government income taxes is...	1	2	3	4	5	
I	A person using inside information in deciding to buy or sell shares is...	1	2	3	4	5	
J	A person sexually abusing another person is...	1	2	3	4	5	

Section F: Compliance and deterrence

*ALL

*PROGRAMMER CREATE DUMMY VARIABLE "ATRISK"

ATRISK

1. ATRISK (A9=1 OR 2 OR 3 OR 4 (owner, board member, senior / middle manager)) OR (A10 not 10 (role includes at least one of specified aspects))
2. All others

*ATRISK=1 [ATRISK]

F1aintro In this next section, we have a few more business scenarios that we'd like you to consider very carefully....

*ATRISK=1 [ATRISK]

F1a. Lee, a sales manager at Brick Company, considers whether to get together with representatives from companies that compete with Brick Company to agree on product prices for the next year. Brick Company is currently experiencing growing sales and revenues in an industry that is economically healthy. Lee's conduct would boost revenues further and therefore result in a very positive impression of Lee by top management.

Lee decides to meet with representatives from competitor brick companies to agree on the prices for the next year. As a result brick prices rise throughout the big city in which Brick Company and its competitors are based. This means that governments, companies and individuals all have to pay more for new buildings and houses and Brick Company makes millions of dollars in extra profits.

Please answer the next questions given what you think the law **ACTUALLY IS**, rather than what you think the law **SHOULD BE**.

Do you think that Lee has broken the law by agreeing on prices with competitors?

1. Yes
2. No
3. I'm not sure

Comments (optional):

*F1A=1 [Thinks the law has been broken]

F1b. Do you think that Lee has committed a criminal offence by agreeing on prices with competitors?

1. Yes
2. No
3. I'm not sure

Comments (optional):

*F1A=1 [Thinks the law has been broken]

*programmer note: options 7 and 8 are exclusive codes

F1c. As far as you know, what penalties are available under the law for someone like Lee who agrees on prices with competitors?

Please answer according to what you think the law **actually is**, rather than what you think the law should be. *Please mark all that apply*

1. Lee could be sent to jail
2. Lee could have to pay a fine
3. Lee could be banned from being a director or manager of any company for a number of years
4. Lee could be publicly named (e.g. on the TV news) as having been involved in the conduct
5. Lee could have to pay compensation to anyone who suffered loss or damage as a result of the conduct
6. Lee could be forced to take measures to ensure the conduct did not happen again (e.g. by taking part in a training program), or
7. No penalties would apply
8. I'm not sure

*ATRISK=1 [ATRISK]

*PROGRAMMER NOTE: All "ATRISK" respondents to be asked one of following question sets, so that there are equal numbers of at risk respondents in each rotation

COMPARE BY CIVIL / CRIMINAL WITHIN PRESSURE TYPE (2 PER RESPONDENT)

ROTATION 1: F2 (Civil actions, no pressure) and F5 (Criminal sanctions, no pressure)

ROTATION 2: F3 (Civil actions, economic pressure) and F6 (Criminal sanctions, economic pressure)

ROTATION 3: F4 (Civil actions, social pressure) and (F7 Criminal sanctions, social pressure)

*Before the first scenario in the selected rotation, display:

Fintro2 Now for a different scenario.....

*Before second scenario in the selected rotation, display:

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

*display existing F5 / F6 / F7 scenario as currently scripted, but bold and underline the words "This conduct is against the law and is a criminal offence"

***F2. Civil sanctions - no pressure**

*ATRISK=1 [ATRISK] ROTATION 1

F2a. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 1

F2b. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 1

F2c. 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

Comments (optional):

*ATRISK=1 [ATRISK] ROTATION 1

F2d. 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

Comments (optional):

F3. Civil sanctions - economic pressure

*ATRISK=1 [ATRISK] ROTATION 2

F3a. 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.

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.

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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very Very

Unlikely Likely

*ATRISK=1 [ATRISK] ROTATION 2

F3b. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very Very

Unlikely Likely

*ATRISK=1 [ATRISK] ROTATION 2

F3c. 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

Comments (optional):

*ATRISK=1 [ATRISK] ROTATION 2

F3d. 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

Comments (optional):

F4. Civil sanctions - social pressure

*ATRISK=1 [ATRISK] ROTATION 3

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 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. Such conduct is common within the firm.

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.

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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very Unlikely Very Likely

*ATRISK=1 [ATRISK] ROTATION 3

F4b. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very Unlikely Very Likely

*ATRISK=1 [ATRISK] ROTATION 3

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

Comments (optional):

*ATRISK=1 [ATRISK] ROTATION 3

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

Comments (optional):

F5. Criminal sanctions - no pressure

*ATRISK=1 [ATRISK] ROTATION 1

F5a. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 1

F5b. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very
Unlikely

Very
Likely

*ATRISK=1 [ATRISK] ROTATION 1

F5c. 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very
Unlikely

Very
Likely

*ATRISK=1 [ATRISK] ROTATION 1

F5e. 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

Comments (optional):

--

*ATRISK=1 [ATRISK] ROTATION 1

F5f. 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

Comments (optional):

F6. Criminal sanctions – economic pressure

*ATRISK=1 [ATRISK] ROTATION 2

F6a. 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.

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.

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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 2

F6b. If Ashley is found out by the authorities, how likely do you think it is that the authorities will take legal action against Ashley?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very Very
 Unlikely Likely

*ATRISK=1 [ATRISK] ROTATION 2

F6c. 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 to no longer try to win over each other's customers?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very Very
 Unlikely Likely

*ATRISK=1 [ATRISK] ROTATION 2

F6d. 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 to try to win over each other's customers?

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

Comments (optional):

*ATRISK=1 [ATRISK] ROTATION 2

F6e. 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

Comments (optional):

F7. Criminal sanctions - social pressure

*ATRISK=1 [ATRISK] ROTATION 3

F7a. Ashley, a manager at Express Freight Company, considers whether to get together with representatives from freight companies that compete with Express Freight Company 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. Such conduct is common within the firm.

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.

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

If Ashley goes ahead and agrees with representatives from 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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 3

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

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 3

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?

1	2	3	4	5	7	8	9	10
---	---	---	---	---	---	---	---	----

Very

Very

Unlikely

Likely

*ATRISK=1 [ATRISK] ROTATION 3

F7d. 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 to try to win over each other's customers?

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

Comments (optional):

--

*ATRISK=1 [ATRISK] ROTATION 3

F7f. 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

Comments (optional):

Section G: Prior knowledge and comments

*[ALL]

Programmer note: option 8 is an exclusive code

G1. Prior to completing this survey, had you heard or read about any of the following people, organisations or topics?

Please mark all that apply

- 10. The Australian Competition and Consumer Commission (ACCC)
- 11. Cartels or cartel conduct
- 12. Graeme Samuel
- 9. Allan Fels
- 4. Price fixing
- 5. A case involving Visy and Amcor for price fixing
- 6. Criminal penalties for cartel conduct
- 7. A case involving Richard Pratt and the Australian Competition and Consumer Commission
- 8. Haven't heard or read about any of these.

*[ALL]

G2. Finally, is there anything else you would like to tell us about the scenarios or issues in this survey?

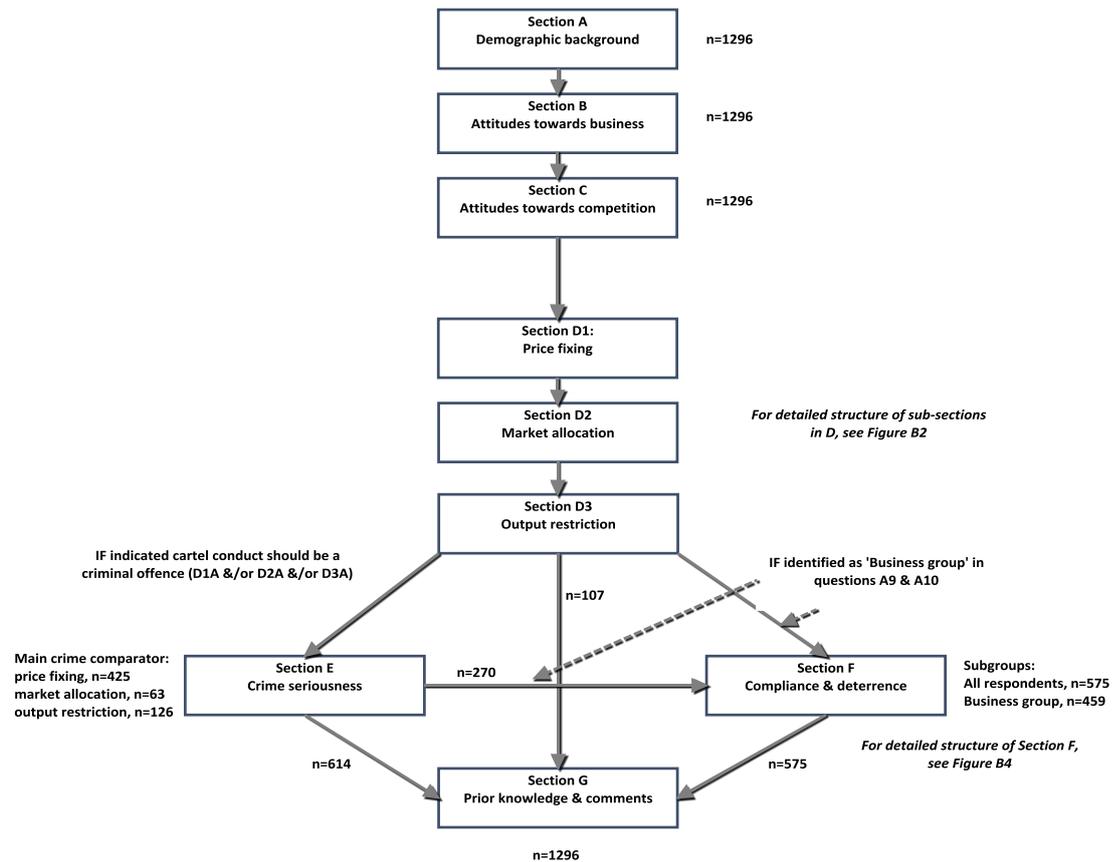
1. Yes

2. No

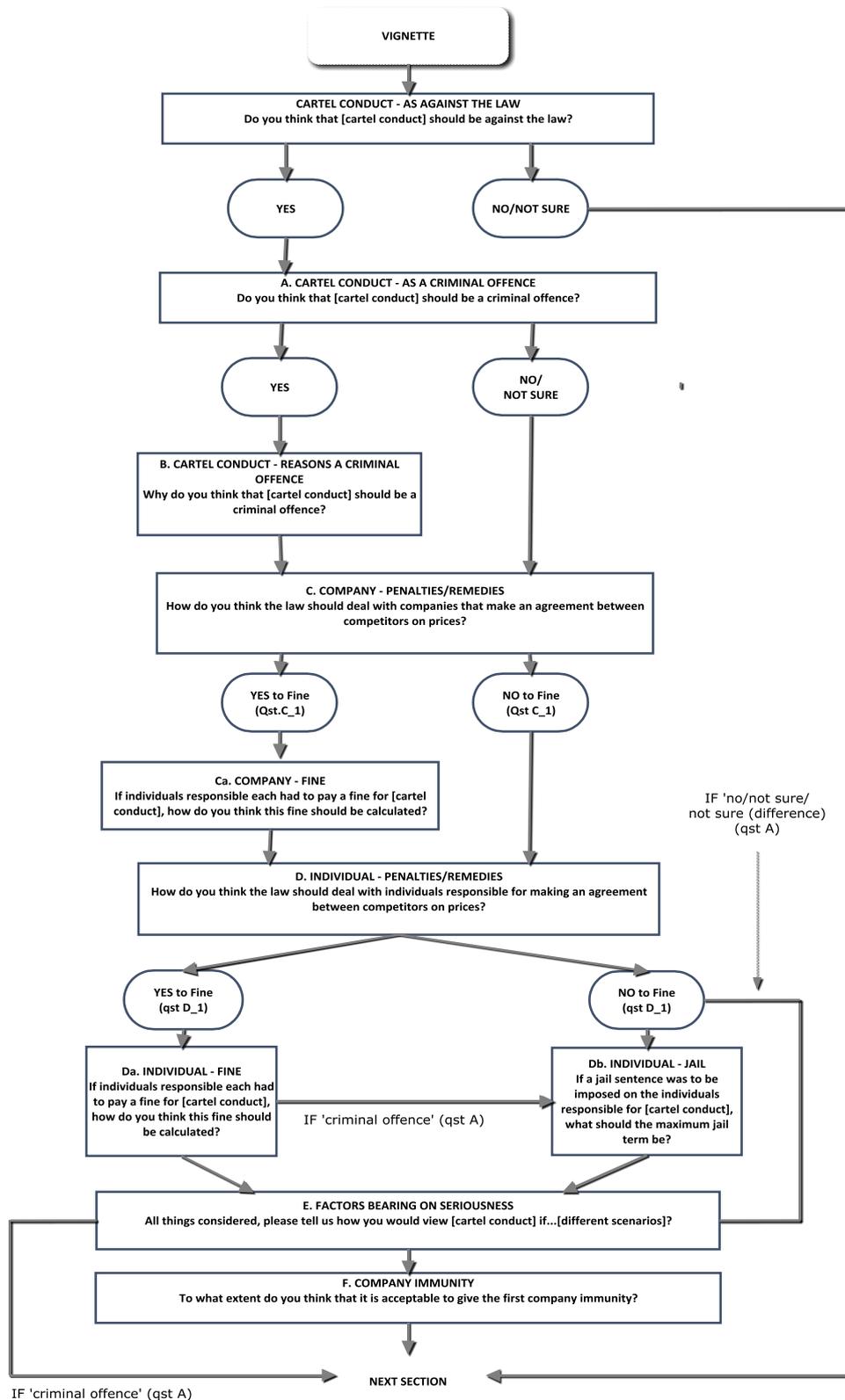
APPENDIX B: STRUCTURE OF SURVEY

B1. OVERVIEW OF MAJOR PATHWAYS

For all flow charts, unweighted numbers of respondents for sections and pathways are presented.

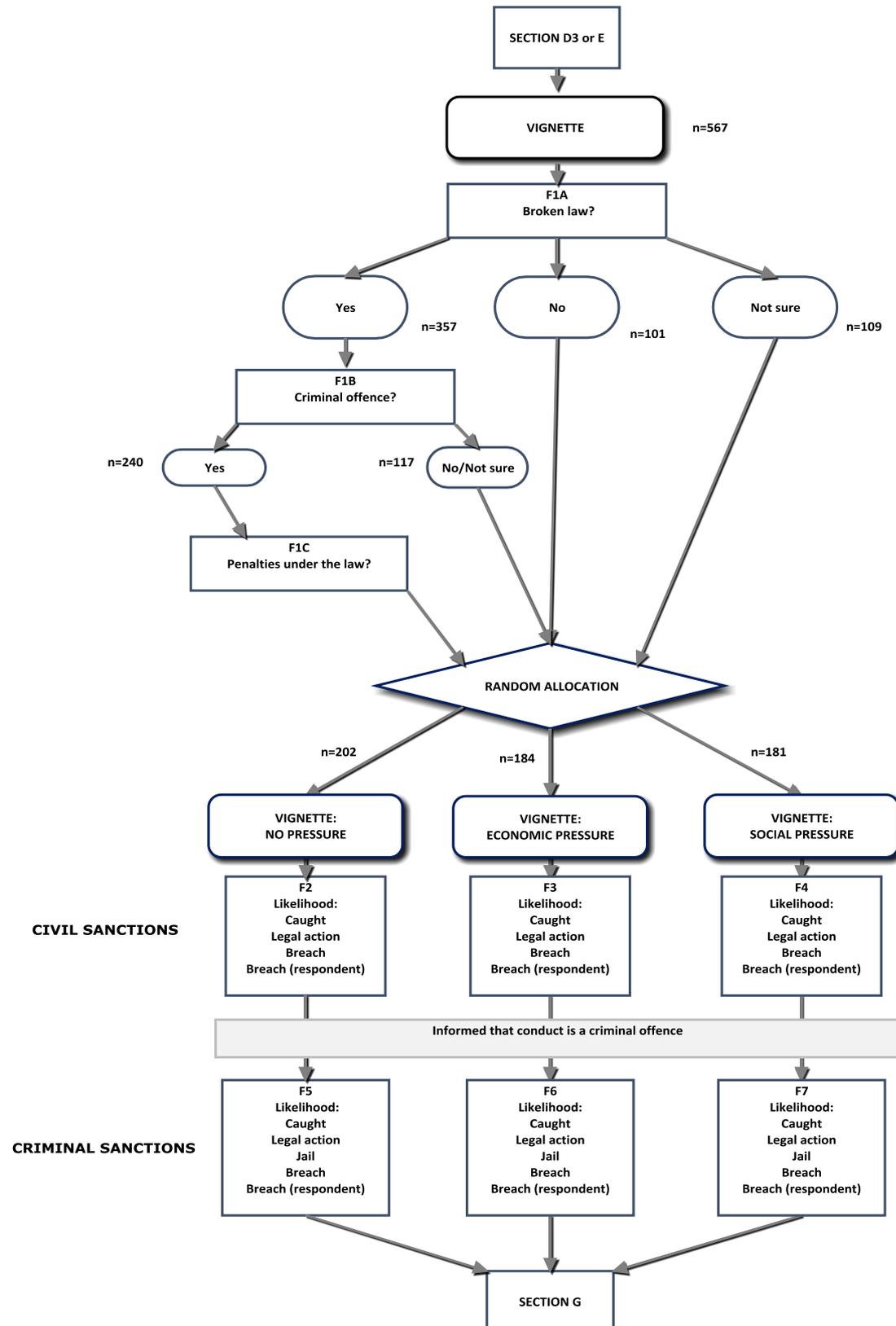


B2. STRUCTURE OF SECTION D



B4. STRUCTURE OF SECTION F

Unweighted numbers of respondents are for the overall Business Group (i.e. random and booster samples combined)



APPENDIX C: OPEN-ENDED RESPONSES TO SURVEY

C1. OPEN RESPONSES FOR SECTION D

Price fixing as against the law (Question D1, n=212)

COMMENTS OF THOSE WHO ANSWERED 'YES' – IT SHOULD BE AGAINST THE LAW
It could be seen as fixing over inflated prices
This is a jailable offence in the USA and Canada. Competition is paramount to giving consumers a fair go.
it would make prices ceaper if the was open priceses
No one gains from this scenario. People will just buy less to fit in with their budgets than pay more for what they usually get. This practice is not fair for the consumer.
It is against the law.
It takes competitiveness out of the market, and could get to the stage where prices are set unrealistically.
Competition is great but this is not fair competition
price fixing is not a fair way of doing business
This is a big problem with the retail industry
I think that's unfair for the consumer
Collusion to detriment of public.
This is price fixing and already apparently illegal in Austrlia but not really enforced, look at the petrol companies have been getting away with this for years
I thought price fixing was against the law but it is hard to prove in a law court
Any cartel is wrong. There is no harm in fair competition for the same quality. If competition means lower quality and restricted lines then people should choose with their feet. We all know they don't and business takes advantage.

price fixing kills competition and is unfair to consumer
I think this is called 'Price Fixing' which I believe is Illegal for at least Large Businesses and Corporations.
that kind of arrangement is not fair for consumers
UNCOMPETITIVE
Consumers have the right to be able to get a good deal on any purchase, no matter what type of business it is
It's price fixing and takes control away from the consumer as to the best way to spend their money.
this senario smacks of price fixing and should be against the law however I am sure this price fixing is open for abuse in most businesses
Fixed prices like this destroy competition and would always mean higher prices
It would relate to the creation of a monopoly
It is unfair to set prices in this way for the general public.
it stifles competetion
I thought it was already illegal - price collusion!
this is collusion and the customer suffers.Woolies and coles are experts at this
price fixing is WRONG
This is called price fixing or cartelling. Didn't Amcor and Visy go into damage control this particular matter?
Collusive pricing - illegal.
This is not competition if there is an agreement between traders
the prize fixing against the law
Woolworths is doing this against Fruit and Vegetable Shops lowering prices and forcing them out of business. At Taigum, Mal Malinga is fighting back. At Sandgate Woolworths charges the highest prices of

Goods as they have no competition. Lady in charge of staff told me it is not illegal.
but it happens
Price stacking or generated non competition base. Petrol Companies and Supermarkets have been doing it for years. All levels of government seem to be scared of pulling them into line.
I hate the idea of a monopoly whether by agreement of 2 companies as in scenario as it stops genuine competition,same with petrol companies squeezing out the small operators and the list goes on woolworths/coles for example.
this is price fixing and is illegal
thats called the screw you
I think colusion between business operators to get more money from the public should be unlawful
They should be able to set their own prices at any time
Price fixing is not good for customers.
unfair price range to the consumer
It's collusion
Totally unfair to the consumer. The consumer gets ripped off for a product that could otherwise be cheaper.
Not fair on the consumer.
This would allow no choice for consumers at all.
consumers have no choices
there always be competition
I think it is already illegal
The customer should be assured of a fair price providing quality is the same
It does not seem fair on consumers

<p>Agreements between competitors on prices is counter-productive to competition. Customers lose out on making their own choice on who to buy from, whether it is on price or quality.</p>
<p>anti competition laws already prevent this cardboard cartel and all that</p>
<p>Are you sure they are not petrol stations????</p>
<p>There is a need for competition between like businesses because then the prices of goods will not go too high.</p>
<p>it is price fixing</p>
<p>The lawyers will find a way around it but it ought be against the law or at least punishable by some way. I'm no lawyer so not sure if it comes under the umbrella of "price fixing" but ask the customer of said butchers what they think or more real world see how long it takes for said fixers windows to be repeatedly smashed or their new ars burned</p>
<p>There should be regulatory services ensuring the fair pricing of goods throughout the process, from supplier to consumer to reduce the disparity between what a farmer receives for his produce and what the consumer pays.</p>
<p>business shouldnt be able to collude with each other to set higher prices</p>
<p>Because we need the competition in the marketplace.</p>
<p>They should have to work independently of each other at all times.</p>
<p>Both businesses would be in breach of the Trade Practices Act because they are working together to gain a unlawful financial advantage over the customers.</p>
<p>I'm not sure if I follow this scenario, wording may not make sense</p>
<p>Healthy price competition should see consumers get value for their money</p>
<p>Any collusion over price or service delivery should be against the law</p>
<p>Customers need choices</p>
<p>coles woolies is a great example of how it should not be run</p>
<p>I think that would be daylight robbery for the consumers</p>

there would be no competition and the prices would go up
price fixing removes choices from consumers and only benefits the vendor
Don't know how an effective law could be framed.
obviously, collusion in pricing means we get ripped off
Fixed pricing stifles competition - consumers lose out.
The customer would get a better deal if there was genuine competition
If the prices are set then that is not competition.
This seems unethical to me
This is a restriction of choice
criminal
agreed prices removes competition
It is a micro cartel!
It must be stopped at all costs
It would be a case of pay up shut up!
That's price fixing
Happens in Tasmania between the two major supermarkets
This represents collusion and is anti competitive resulting in increased prices.
Yes, it is not fair for the consumer and it is against the law
it is to run off smaller competitors
A competitor should be exactly that a competitor, if both parties are colluding on prices that is not competition that is a monopoly.

Price fixing is illegal. Collusion is frowned up
I think this currently happens a lot more than people realise.
Definitely, they even should be charged and condemned
Competition is always healthy
Absolutely not good for the consumer
It is against the law, called collusion
Competition is healthy and this sort of agreement would cost the consumers a lot more and they could do nothing about it
I think that the price should be a fair one for both butcher and customer - not by both butchers trying to outdo the other. If they set prices high for the most popular cuts, this is not fair to the customer.
That is considered to be price fixing.
absolutely
Your example is the retail industry but the fuel companies are a good example of the public being treated poorly.
It is not fair to the consumer to not have choices.
unfair to consumers.
I think this is called 'price fixing' and is illegal. It's not fair to consumers.
such an agreement is an agreement to defraud by isolation of a product / s
this is price fixing
It's essentially just price fixing. Doesn't matter what sort of business does it, petrol companies or butcher, it is morally wrong.
Reaching the agreement is wrong - they could just as easily reach the same conclusion without the agreement

<p>It is certainly immoral...and should be against the law, if the law is designed to protect consumers and promote competition.</p>
<p>IT REFLECTS ON THE FAIR BUSINESS COMMUNITY. CUSTOMERS SHOULD NOT BE CHEATED LIKE THIS. ABOVE STATEMENT IS DEFINITELY TAKE IN TO TASK.</p>
<p>This to me is unfair trading</p>
<p>If this "agreement" or "arrangement" is allowed to occur between companies within the same industry that essentially defeats & omits true competition for the consumer</p>
<p>it would stop the big companies doing that and putting small business at of business</p>
<p>The agreement may allow the sellers to put up unreasonable margin on products to sell, therefore to harm consumers' benefit, also to harm the market balance.</p>
<p>IN THIS CASE THEY CAN CHARGE WHAT THEY LIKE AND THE CONSUMERS CANT HAVE A CHOICE.</p>
<p>Sure they can charge what they want. If there was no other alternative. eg supermarket then I think this type of pricing by these butchers is wrong. By the same token if they don't get any sales due to their tactics then that serves them right. Also by not getting customers will make them reduce their prices otherwise face closure . . .</p>
<p>Yes this is collusion and does not let consumers have freedom of choice</p>
<p>Competition is an integral part of business and the other option you give is a classic way of "ripping off" the consumer</p>
<p>But it is difficult to monitor so probably fairly pointless making it law!!</p>
<p>it is against the law</p>
<p>It is against the law I think</p>
<p>this is price fixing</p>
<p>consumers have the right of choice!</p>
<p>Think it is called price collusion - Excuse the spelling.</p>
<p>They are no longer competitors and should inform their customers that their prices are no longer</p>

competitive
there is too much price comparisons by major retail supermarkets
I thought it was already against the law, but few companies are ever charged.
its collusion to fleece customers
if there is an agreement then the consumer would not benefit
This is already against the law
Such agreements negate the benefits of competition which should in cases such as this be competition on quality and service
no
price fixing is illegal
Yes collusion should be against the law
Forcing prices up
Where producers are price takers rather than price makers there can be instances where a minimum threshold price could be beneficial to both producer and consumer eg milk
Collusion does not promote fairness in society
collusion - not good for the customer
Isn't this happening in respect to petrol stations--although it's never been proven by the ACCC
Price fixing manipulates the market. Market demand should determine the best price.
If both butchers will rise the prices then there will be no option for consumer. In return its harm of consumer ,on the other hand if both the butchers will lower the prices then there will be no competition ,it can affect quality of product also
Rather than one company/business having the monopoly of their market, it instead creates two businesses with the monopoly of the market
Although I believe price fixing can have a negative impact on the cost factor for consumers I also recognise

that price cutting is a tool used to eliminate competitors so as to become the sole supplier.
Trade Practices Act has been around since the early 1970's
I also believe that it is currently against the law.
Yes, for retailers not producers.
will always be competing for customers.
there is no competition.
Price fixing is illegal in Australia.
Price setting like this can see the business charge whatever they like as long as they are both charging the same - this means they can charge 100%, 200%, 500%, etc., over cost as they see fit. There is NO fairness involved.
that is a scary thought for the consumer.
COMMENTS OF THOSE WHO ANSWERED 'NO' – IT SHOULD NOT BE AGAINST THE LAW
least they are talking and not going behind the others back
That's their decision.
customers would then know that shopping around for cheaper prices, is a waste of time. Regarding prices, customers have NO control, over them, and large supermarkets like COLES and WOOLWORTHS control the prices between themselves.
Should not be against the law but there should be a governing body to oversee price fixing
It would promote a universally lower price flowing from bulk buying.
If it's a reasonable price then who cares
its not fair but they can charge what they like
unsure
It has been going on for years in regional Victoria and works extremely well and I might add from small to

large businesses.
but there should be guidelines to prevent big companies having a monopoly
They should be allowed to charge what they want but it may tell against one of them in the end.
While I think competition is a good thing, I also think that if a business pays for goods it should be able to attempt to make enough profit to cover its costs. Of course I would go to the cut price business (as long as the goods were of a quality I expect).
People can always go to another town and freeze their meat. It may also cause a third butcher to open in the town.
It'll be limited by the customers in the end. If they decide they really can't afford it, they won't buy it. Of course, if they're complete morons, they'll buy it anyway, but that's their own fault.
Opportunity perhaps for another business.
They're helping each other out I suppose to stay in business. We all have to survive somehow.
It's up to the butchers I would think it would be location that would make where I bought
I don't think it should be illegal, but I don't agree with the practise
While it is reprehensible on moral ground, such a law would be impossible to police
it should be discouraged, but there are too many petty laws like that
Competition is healthy
but its a free market, and if you dont like it, buy your own butcher shop and compete
price fixing can only go so far and buyers will go elsewhere so it's self regulating
but prices need to be set closer to the real market price not at supermarket prices
Price fixing already occurs in various businesses. Although one butcher may be cheaper it does not mean he has the best quality meat and most people are prepared to pay more for quality.
It still comes down to choice, The quality and customer service plays a large part in choosing a reliable store. If butcher A was a C*nt then I would go to butcher B if then they both turned out to be C*nts well I'd go further away.

it can be a huge problem. people tend to get ripped off without competition
This protects the benefits of the companies but what about the benefits of the customer? As a consumer, I could not agree with this act. However, I don't think it should be against the law.
However there should be a level to which this can occur.
as long as both parties are agreeable and the customer benefits
it creates competition for the consumer to choose where they shop
It opens room for new business who charge less
good clean competition is healthy and consumers like to shop around
COMMENTS OF THOSE WHO ANSWERED 'NOT SURE' – WHETHER IT SHOULD BE AGAINST THE LAW
Where there are standard retail prices for an item (eg canned food, electrical items) there is nothing wrong with different vendors offering the same price. Where there are differences in quality or natural fluctuations in price for items (eg fruit, meat, petrol), price fixing should be illegal.
There is no real reason why they can't do it even if we don't like it. Maybe only personal customer pressure could work
The butchers could set their prices at any high level. There should be some kind of a watchdog from the meat industry that looks at overpricing, while at the same time allowing a reasonable profit for the butcher. We have seen what harm this sort of thing can do where two or more have a monopoly on prices.
As long as it is set between a fair minimum & maximum for the product, also there has to be sales
it makes sense for the business owners but it opens up doors for unfair practice
In this scenario I don't think it's right, where 2 independent small businesses are colluding in order to artificially push up prices. There are some circumstances where I think it is necessary for some pricing standards eg in a Colesworth situation where you have a major company pricing their goods below cost to put pressure on small businesses to close. In that sort of circumstance, there should be restrictions on how much the big business can undercut small business competition, and agreement to a certain extent on what prices should be.
We are supposed to be living in a free market economy with free speech and a whole lot of other advantages. If businesses collude with each other and price fix, then they are manipulating the market which smacks of extortion and ransom. Should this be illegal? People do have a certain amount of power as consumers. In this example, they could collectively stop shopping at the butchers for a period of time, or go to a

competitor in a nearby town to get a message across. There is also the opportunity for a third butcher to set up shop and do things differently.
If it's an amicable agreement between the 2 butchers I think it's OK but I can't see this working
most small business is a free enterprise, in this instance, If both butchers made an agreement, maybe they could both offer different cuts of meat on a special, thus both receiving a market share of customers, and at the same time the customers have a better choice.
I do not think a law could be passed to deal with this scene but I think the consumer should voice protests regarding this fixing of prices to their detriment.
I don't think it should be against the law, I just feel it's immoral
I think competition is healthy Butchers do not need to charge at an exorbitant price just realistic You may like one butcher and not the other so therefore your business would go to him Most butchers look after their customers
I guess the bottom line is that somehow we need to keep prices down which competition will do but is that at the sake of quality? Not sure how to answer this. Legally there should be a maximum price on just about everything
Competition should be encouraged it is not only price but quality
I'm not sure it should be illegal, but I think personally that it is highly unethical.
shouldn't be against the law but the butchers should have a written law..
Not sure if making it against the law is too harsh but it certainly is very unfair on the consumer.
I do not believe that agreements between competitors should be made, however I do not believe it should be against the law.
it would depend on the growers and the honesty about the value and or quality of the meat
I would hope that for better cuts of meat you would receive better quality for a higher price. Market rentals/leases also charge higher rates in inner city suburbs such as Stonnington than say Springvale or Footscray.
Would social economics have a part to play in the decision making.
I think that if an agreement can be reached the businesses should have to keep their prices in line with the

industry as a whole.
I dont think is ethical, but I'm not sure it should be illegal.
depends on quality
I just think that each business should be allowed to have there own prices and a healthy competition. If the meat is better quality at the more expensive butcher shop more customers will keep going back there.
I agree with competition between businesses, but don't think they should collude.
If they were the only two options in a town, and therefore the consumers have no choice, such a practice should be declared unlawful.Otherwise consumers have a choice, but maybe not good meat.
If you think as a costuner, should be against law. But as an owner, not. Its hard to tell.
we still have freedom of choice meat is a lifestyle choice
Some sort of compromise needs to be made between the two butchers but shouldn't be at the expense of the customers.

Market allocation as against the law (Question D2, n=151):

COMMENTS OF THOSE WHO ANSWERED 'YES' – IT SHOULD BE AGAINST THE LAW
It doesn't allow the customers the ability to have a choose
Again it takes away freedom of choice for the customer. Also, unfair for the businesses to a degree as well as one may not be needed in their area much over a year and the other area could be flat out. The customers would also be at a disadvantage in this scenario as they wouldn't be able to call the other plumber if the one for their area is too busy to service them quickly or in an emergency.
It takes away peoples choice.
Unless distance or transport for the service provider is cost prohibitive, customers should be free to choose providers
It denies public freedom of choice !
because they then can charge what they like , and the customer has NO CHOICE
This behaviour would indicate they are branches of the same company and not competitors, thus they should trade as a single entity - this negates customer choice thus negating competition and creating virtual monopolies
Its probably legal but it would be untenable for customers. I think I struck this the other day with my air con where only one co was allowed to fix it
It is the same principle as fixing prices and should be dealt with in the same way.
price fixing is no different from fixing areas
customers need to have a choice of service provider
customers allocate competitors ... ever heard of a "competitive quotes" given to customers who themselves choose to participate with a specific competitor.
It takes away freedom of choice and forces people to comply with what amounts to price-fixing. This is wrong.
It takes away a customers right to select their own repairer/plumber.
Customers should be able to choose their supplier

I'm choosing yes in this situation because there isn't an alternative and i'm starting to feel a growing lack of power and control. If I was living in communist russia or a totalitarian state I would be feeling the same lack of power. Taking away people's choices erodes their personl power and take us from the brink of enlightenment to the dark ages....of not so long ago!

Any collusion should be illegal

because you are removing the freedom of choice for the customer

free enterprise is just that.

people should be able to shop where they like

I think that customers should have the option to choose

Removes competition.

Discrimitary trading. effectively giving a duopaly supply. Allows price fixing.

This is effectively a monopoly and wrong.

the normal householder can't afford the exorbitant prices that are charged that they can't have the job done, thus trying to do it themselves, which in some instances is illegal.

When Woolworths made agreements with Shopping Centre Owners to be the only Supermarket there was nothing done by authorities for many years. Public knew about it, but it was like the whistleblowers in the companies, we know how they were treated with authorities condoning it. State Premiers are telling whopping lies so companies, businesses are doing what they do to survive. Qld Rail is the latest example of this. Jack Green closed down as a result of Government policies. If Electric Companies did not give money to Governments they could put lines in footpaths and save people from death as a result when lines comes down in storms.

Now I am destroying my previous argument! Unfortunately I see too many variables in this scenario. There is no way such an agreement could be made fair to all parties.

People deserve a choice of companies to carry out the job

This type of behaviour is alive n well at present try getting quotes from certain plumbing co's now YES?

this is similar to price fixing and just as serious is it limits competition

Because they can still put there prices up to what ever they like.

Customers should be able to choose to which business they wish to give their custom
no freedom of choice for consumer, one may be rotten plumbers
Why shouldn't we have a choice on what the prices are charged to decide on the company we want and if they are prepared to come where ever.
Customers aren't able to make their own choice based on quality of service, prices.
What happens If you dont personally like the plumber in your area .He will out of spite charge you the earth any way That is not fair as one end of town might be a large area and the other only small
I think it should be illegal as customers should have the right to choose which business they would have to do the work.
on moral princable, however you've mentioned geographic division and that muddies the waters somewhat. we've seen just that happen in Victoria with elecricity companies
The customer has no choice definitely disagree
Customer should have a choice between who they choose
I think its fairer for customers to have a choice.
Consumers should have a right to choose who they think the best plumbing company is.
Because the customer is still unable to seek cheaper services from across the river.
This is a highly manipulative situation, I don't think businesses should be allowed to control their customers in this manner. If a situation like this were to apply, consumers would suffer dreadfully.
In this case again it would be the consumers who would be affected. There is nothing wrong with a bit of competition between companies. I have found in my experiences that if a consumer is happy, trusts and respects the person they have chosen to use then if they have to pay a little more than the competitor they would still use the original one to have peace of mind
Its the same as setting the price
These two have basically set monopolies, as the customers can not seek an alternative company.
This limits freedom of choice

I would want to employ whichever suited me.
I feel this is what utility companies tried to do and I don't agree with it.
In the real world that's called gouging, theft unfair play. Only in Australia are customers treated with contempt.
It is a restrictive trade practice and the consumers are the worse off.
Acting like one company, they should amalgamate
It restricts price and non price competition. One plumbers work may be of a higher standard and this is denied the consumer forced to use the other firm.
As a customer I should not be prevented from using a firm that I wish to. If the service differs between the firms I should be able to choose the level and the company that I wish.
I think the ombudsman is the answer to this one, it is definately unfair trading. I forces people in that community to pay higher prices.
Not giving the customer a choice when they should have one
Customers should get a choice in the services they choose
any business should be able to service anywhere
become a plumber and compete
If this is the only way to stop this type of thing. Yes
The same applies - companies still must endeavour to be fair to their customers. Charging a higher price for services rendered is still "ripping-off" the customer.
Customers should be free to use whichever service they feel will give them what they need, afterall, they are the ones paying for the service and it is their money that is keeping the plumbers in business. This scenario does not give the reputable plumber a chance to grow his business.
It seems to go against the human right of choice.
customers should have freedom of choice, after all they are the ones keeping the plumbers in business.
I'd like to be able to choose between services especially if one offered a better service, more efficient,

did a better job.
This is unfair and does not give consumers a choice. It doesn't follow that both plumbers provide the same level of service nor does it mean that the work is equally split between the north and south of the river.
If the intention is so that they can charge higher prices, then this is wrong.
price fixing is a crime already.
Customer should be able to use any company they choose
It is serious to allow them to remove competitiveness.
wrong is wrong
YOU NEED THEM BOTH TO BE IN THE SAME PART OF TOWN SO CUSTOMERS CAN CHOSE WHO THEY WANT AND THE PRICES ARE KEPT DOWN.
I think the consumer should be entitled to choose who they want. It is up to the marketing skills of each plumbing firm to 'win' the customer over. . It puts the ball back in their court. If they can't cope or deliver then go out of business....
In this situation, the customer is deprived from any other options, therefore i think in this situation it should be against the law.
this would deny freedom of choice to the customer and one company may not give the quality of service that the other does. This must be taken in to consideration in fairness to the consumer
businesses should not dictate who someone can/can not use
I think this is all about businesses being happy and not thinking about the customers.
unless they are a franchise of the same parent company and have alocated territoyrs
It's anti-competitive and can be classified as a monopoly.
same situation
The consumer may end up with poor service. Plumbers are an essential service.
Tradesmen's skills and quality of work is an issue also consumer's choice is denied

its the same thing just dressed in different clothing
no
The punishment should depend upon the ability of the businesses to control the market
If you do not have freedom of competition in most cases you will pay more for the product.
I do not see any difference either we ban colusion or we dont Currently we do and we should penalise those who do
In general customers have the right to chose a plumbing company for their needs. They shouldn't be forced to have only one service provider. In this case it is based on where they reside.
This is much the same as price fixing. It can also seem much worse if one business is cheaper than the other and people are FORCED to pay the higher price because the cheaper dealer will not come 50metres down the road into the other person's territory. I may not be the best person to answer this as I have been in this situation where the service did not extend to THE OTHER SIDE OF THE ROAD!! In that case it cost me \$30 more for the same service my friend across the road got because of boundries!!
prices for services should be at a fixed rate Hourly rate plus parts and being able to charge higher rates just because they are the only companies in town is wrong
Plumber should charge travel if someone from the other side of town wants them specifically.
Customers have the right to shop around and have choices.
COMMENTS OF THOSE WHO ANSWERED 'NO' – IT SHOULD NOT BE AGAINST THE LAW
Customers must be made aware about the sweetheart deals.
Laws are in place for our good
I think this actualy sounds quite reasonable
They maintain their own areas and if they are the only ones then they must do a good job or they will encourage others to start up in competition with them. That is fair and that will contain prices.

opens for third
uhuhu
they have customers over a barrel,not fair
unsure
it should be the business' prerogative about where they have their catchment area
They should be allowed to charge what they want even though it may inconvenience some.
what a good arrangement
It is again Price fixing between the two parties and is illegal
I think it depends on how ethical the two are ,if they both do the right thing by their customers it could be a good thing for both
I feel there is so much control by government, council and multiple other organisations that sometimes I wonder if I am living in a communist country. If the businesses have made some sort of deal then you either pay or find an out of town plumber.
However, it should be against the law to fix prices.
In this case I think that the customers could make it obvious that they do not agree
This one is a bit trickier than the butchers one because sometimes a plumber is needed for emergencies, whereas you don't really need "emergency steak", but ultimately, if someone offers a job to the plumber for the wrong side of the river because they offer a better price, the plumber will probably take it. It's just business.
but unless truly necessary, prices shouldn't have to go up
Have you spoken to the State Premiers?
It's ridiculous to suggest that a company could be enforced borders in which it can and cannot service.
Same as butcher. Of course, as long as their prices aren't too high. With the internet & fast deliveries now a days, they'll run themselves out of business if they want to rip their valued customers off too much, won't they?

It would be too much interference with the rights of the businesses
this example is restrictive, as another could start in either/both areas, but in theory the idea of splitting areas is sensible if done correctly
While this should not be against the law, as collusion could be hard to prove as the companies are not competing in the same area, morally there should be some degree of culpability from the companies and some sort of fine levied against them.
Still can't see how it could be deemed against the law however very, very unfair to customers
if I couldn't get the plumber of choice then I would do it myself or start my own business against them both
IN SUCH CASES GOVT CANT DO ANYTHING. BUT THIS CAN BE STOP ONLY IF THE PLUMBING COMPANYS AS ABOVE WILL NOT REGISTERED THEIR PLAN WITH THE REGISTER COMPANYS ACT IN THOSE AREAS THAN THIS ACT OF UNDERSTANDING BUSINESS CAN BE RULED OUT.
Do it myself or give the pair a bad report so they both get no work :)
but i still dont agree with the senario
sounds fair. good to have boundries to survive
WE HAVE A BUSINESS WHERE WE CAN ONLY WORK IN A SET AREA. IT IS THE BEST WAY TO MANAGE THIS TYPE OF DISTRIBUTION.
If there is only two companies a third needs to be introduced.
Where you decide to conduct your business should be up to you
already occurs in remote areas
Sounds quite fair to me, the consumers after all make the choice
COMMENTS OF THOSE WHO ANSWERED 'NOT SURE' – WHETHER IT SHOULD BE AGAINST THE LAW
I don't think you can legitimately penalize a company or individual for deciding who they will or will not serve. It probably wouldn't last long, because both companies will receive very unfavourable reactions if viewed as picking and choosing who they'll serve.
A company can decide to only service a particular area, and that is their right. In this scenario, I would

think it would open the door for a new plumbing business, offering reasonable prices, maybe on both sides of the river. Competition reigns....
I believe this is the sort of deal that Foxtel & Austar were able to organise with the consumer competition body
Precedent would include Royal Monopolies. It would depend on how much influence the parties concerned were able to exercise. It is shown that the costs would be reduced because of reduced travelling time and wage charges, then it could be a logical set up.
Customers should have the right to go wherever they want to get a good price
again it makes sense for the business owners to act fairly in their business not stealing customers etc but opens up doors for unfair practises with in the areas they are assigned
What happens if the plumber on the south side had work booked for 6 months straight and his customers could be getting the plumber from the north side cause is isn't as busy.....think about the customer
If it was made law then we would all be stuck, I am sure that in time the business north of the river/south of the river would somehow through consumers have to agree on some standard of pricing
this would increase competition as it would open the door for other plumbers if people aren't satisfied.
they do not have to accept jobs from any clients although this would be collusion!
With the costs of everything going up, there are other factors at work here in determining the the pricing and the decision to service only a designated area. It would be very hard to police instances like this as the agreement can be made purely to cut operating costs.
If one of the companies has more upmarket clientel you would expect them to charge more.
Again not sure. What would happen if an emergency occurred in the north but the guy was not available - say a burst pipe...so its not always about money
Same issue as the butcher ...good workmanship should be rewarded
I think it's morally despicable, but illegal? Unsure.
at first a man tries to fix it himself, if theres an emergency after that then it doesn't really matter because the problem is fixed not the price.
Lots of businesses have to work in regions but again, like the butchers, there should still be some

regulations over their pricing

Companies will only say "no" to customers for so long...

Population variations north and south of the river could also affect the outcome.

Given that an individual can choose what patch they intend to work in it is difficult in a free country to make a law preventing this arrangement. Presumably there are some places where there is only one company that performs a service and no competition exists anyway.

I am reluctant to agree that yet more laws as such should be introduced.

This would depend on the locations of the companies. If one company was south of the river and one was north it would make sense to travel less for the work.

Output restriction as against the law (Question D3, n=120)

COMMENTS OF THOSE WHO ANSWERED 'YES' – IT SHOULD BE AGAINST THE LAW
I think such an agreement should be against the law unless there has been full and open consultation with all parties, including consumers, concerned, and valid reasons other than greed, given for such a decision.
this scenario is disgusting! It is pure greed and shows the companies don't really care about customers, just the bottom line!
It's ludicrous that they'd do this anyway. Bad business.
With cheeses there is always plenty of competition from outside region. But collusion is wrong. Survival of the fittest.
Purposely fixing the supply end of a supply demand chain to basically price gauge for no reason other than to maximise profit
It may appear more subtle to some people but it is the same sort of crime as price fixing. If you limit the production of a product you make it rarer and can then charge higher prices. It is creating an artificial rarity.
This is tantamount to bullying tactics
we must increase production for exports to balance our trade.
this is still collusion and that should be against the law
Provided they are deliberately operating well below capacity
There should be no agreements between companies.
It constitutes manipulation of the market and therefore should be illegal.
companies should cater for there customers and produce (where they are able) enough products. company a might have a better product than company b.
It is a deliberate attempt to raise prices
Restricting the market allows price increases by artificially restricting the supply to consumers.

This is causing an artificial level of less commodity just to gain extra profit.
It should be an criminal offence as they have no conscience
If they have the basis to provide they are morally and ethically required to do so. They are setting a false market base and this corrupt.
Yes because they are manipulating the market out of greed and stealth and need to be brought to Justice if proven guilty.
same as price fixing
But what prevents the customers purchasing outside the region?
It is still deception by profit.
because both companies in the past have been able to support the demand.
that is really mean....besides, think of the milk producers (dairy farmers) whose income would be lowered if the companies did not buy all their milk
Messing with the supply, has an indirect effect on price, and is equivalent to price fixing...also the collusive element of this scenario is quite evident.
where any action leads to price increase due to supply and demand it should be outlawed. (eg oil production and pricing)
if the companies have decreased the amount for profits and not because they aren't able to produce the same amount.
This is a case of greedy companies and makes consumers go else where
Again it is manipulation of market forces and should be against the law.
These companies are just showing greed and not thinking of the consumers.
It should be against the law with huge penalties
This seems like an unlikely scenario- This or anything like it
I think this one is worse than the previous two scenarios

Reminds me of oil companies
if business is going to do that, they are NOT a business
It is not fair practice, even if governments sometimes place stupid limits on what can be or not be produced. It is a restrictive trade practice and the fact that there are only two producers at that time is not relevant
volume of the production reduce. there aren't enough produce for all consumer affect the price of product increase
In this case I think it should be against the law as not only are the companies colluding on price but are also artificially setting production quotas therefore artificially setting prices.
As a person who has lived in small communities for most of my life, I think this type of action should be against the law, it is similar to the situation we often found ourselves in, whereby if goods needed to be flown in because of extended road closures, eg eggs \$10 a dozen, potatoes \$6/kg. all bad profiteering practices, one can compare the kilo price of transport and add the usual goods price, it does not add up.
ANY collusion is bad hence should be against the law!
By agreeing to limit the production of their product, then raising prices, they are forcing people to pay inflated prices for their product.
Yes, it forces prices up when they do not need to be
I don't think consumers would be prepared to pay more, they would just go without.
The agreement is unfair to consumers
I think this is a worse scenario.
If the factories can't supply the people in that region then they are not serving the community very well. I would source another supplier & stop buying from them
I would change the type of cheese I bought
no
This time they are reducing the number of cheeses needed in the community and therefore this is not fair to anyone

<p>This is a blatant agreement to extort the customer.</p>
<p>The scenario is no different from the earlier ones Collusion is collusion no matter how you try to dress it up</p>
<p>COMMENTS OF THOSE WHO ANSWERED 'NO' – IT SHOULD NOT BE AGAINST THE LAW</p>
<p>Surely this just opens the door for someone to bring in cheese (or whatever) from elsewhere at possibly a better price and put the pressure back on the local companies. So no, I don't think it should be against the law , I think the marketplace would work its own way out.</p>
<p>It depends what they can afford to produce</p>
<p>its undesirable but I dont see how it can be illegal publicity and maybe a third party bringing something in might work</p>
<p>Although I answered no, I think this scenario probably lacks information that might alter the opinion. It would seem there must be a logical reason for reducing the amount of cheese produced and that would affect my opinion.</p>
<p>i would no longer buy their cheese till they reinstate fair competition</p>
<p>Even though the companies are the only producers, by doing so their conduct could make it viable for another competitor from another region to come in and sell their products.</p>
<p>How much of a product you produce is your own decision. It may be morally wrong, but I can't see how it can be illegal.</p>
<p>unsure</p>
<p>But it should be regulated (e.g. like OPEC) since this is controlling the supply and demand of a product that may or may not be a necessity for human consumption.</p>
<p>Isn't this what petrol producers do? If they can get away with it, then these cheese people should be able to do the same. Cheese is quite fattening too so it may actually be doing the region a service.</p>
<p>Like with the butchers, if the price gets above what consumers are willing to pay, demand will go down, and prices with it. If consumers still want to buy cheese at ridiculously inflated prices, that's their own decision.</p>
<p>Once again there may be other factors influencing the decision</p>

It will eventually hurt the company
In the long term they will be cutting their own throats. Customers will only pay so much and then the whole market will suffer.
This doesn't make sense to me because if there is not enough supply for the demand then another company could come in and take a percentage of both the companies profits as well as fill the gap that they left. This would be a bad business decision and they would possibly lose their entire business.
Seems very silly as you would think and hope that customers will decide not to buy the product at all if becomes too expensive
I'm sure they wouldn't want to produce a lesser quantity if they were able to sell more no matter the price they charge
The two cheese factories leave themselves wide open to outside competition.
They can agree between themselves but if there is an opening for another supplier to come in and produce the product to meet up the shortfall, and do it at a lower price, then good luck to them.
IT IS NOT AGAINST THE LAW BUT IT IS A SORT OF INDIRECTLY CHEATING THE BUYERS. IN SUCH CASES PUBLIC SHOULD BE WISE AND MAKE THEM UNDERSTAND THAT THEIR STARTARGY WILL NOT OWRK OU FOR A LONG TIME.
Stop eating cheese.
Once again, there should be a limit to this, however in some situations business'may need to increase profits to survive for various reasons.
But the goal of the business should be to serve the public with a fair volume of cheese.
COMMENTS OF THOSE WHO ANSWERED 'NOT SURE' – WHETHER IT SHOULD BE AGAINST THE LAW
I guess that supply and demand for food products can be controlled to a degree in some cases.
This is how oil sales works is it not...the oil consortinum establishes the No of barrels that are for sale to keep profits where it is necessary...so it cant be illegal can it?????(unless you are a small business????)
It is their balance sheets that will suffer and their stakeholders would have something to say and someone will decide to invade the market from outside the area with a similar product at an economical price. The companies can not then cry 'foul!'

I think this is an unreal situation. Surplus milk goes into cheese. If less cheese is produced then the farmers would not be able to sell the milk. This sort of situation could happen only if there is an outlet for milk not used for cheese production, otherwise there would be occasion for a farming revolt and farmers tipping milk down the drain in protest, as has happened. It is just that I have been involved in Dairy production and Cheese making, that I know a bit about it.

Would this push the price up anyway

I find this one quite difficult

Again, in this scenario I can see the potential for a third company being created out of someone's frustration and desire for an increase in the market. Besides, cheese isn't necessarily a must have in everyone's life.

this is a dodgy situation..... once again the customer loses..... by having to pay more for the same quality

Sorry but my imagination doesn't stretch that far, in regional Victoria there would be no way that any business would reduce production there would be too many consequences and human nature would prevail. If I had 10 dozen eggs to sell, I would not sell 5 dozen!

Again I am torn here. I'm not sure if this could be legislated against the law. Loss of jobs with lower production could influence public opinion. Then again, price fixing is illegal and this would be a form of price fixing.

it seems silly to reduce production people will go further afield for cheese or not buy as much and the company's would be hurting themselves and the consumers financially

this happens with oil, which changes petrol prices, so its hard to say it should be banned when its been such a common process for so long

Their motivation is pretty greedy, but it also means that they are unable to sell as much product and perhaps won't make as much profit. It does, however, also mean that some people might lose jobs for no good reason - the demand is still there and they could be working to meet that demand. I don't know that the "agreement" makes all that much difference here - a company would otherwise be free to produce as little or as much as possible, and if people knew and liked their brand then producing a lower supply for a high demand would still enable them to up their prices.

but it is clearly unfair and should be regulated

It seems to be OK in the diamond industry, I am not sure across the broad range of industries.

forcing price increases by deliberate manipulation like this example is just plain wrong, and should be stopped. HOWEVER, I would say yes- it should be against the law, but I doubt such a law could be

enforced, or the agreement proved.

perishable items are just that, one can only assume the rate at which it will be consumed, honesty and a fair scale are mandatory sanctions when considering any business, we could do with less cheese in our diets anyway because health is dear.

It depends on the reason behind the reduction in production - if it is due to lack of availability of required products/livestock etc then it is unavoidable. If it is purely profit driven then yes, it should be an offence.

Again, this opens the door for outside companies to cash in

they shouldn't work this way. they should be there to serve the customer.

Difficult to make a law re production of products. Customers still have choice and can determine to do without if a product is too high in cost.

On the one hand the agreement could be in order if it saved overproduction and waste. I doubt a producer would knowingly reduce potential income

Reasons why it should be a criminal offence – price fixing (Question D1B, n=64):

<p>As an age pensioner, I need to follow prices, e.g. food prices, carefully and I am fed up with the major supermarkets ripping off the consumers. It is fortunate that we have an Aldi supermarket in our suburb, as Aldi has the effect of making the 'big 2' lower their prices. If price fixing became a criminal offence, it should increase competition and the consumer would benefit. It would help to make big business a bit honest and somewhat less greedy.</p>
<p>If sale i ticket higher than you payfor to a footie game its a criminal offence and so it should be the same when we pay more than the market value for food or any other goods,</p>
<p>It's unfair for the consumer and it takes their right of choice away from them.</p>
<p>This country is against graft, if there was a war on you would be executed.</p>
<p>deception of customers is disgraceful and will only lead to greater dishonest practice.</p>
<p>It is indicative of the supposed free market at work which in reality creates artificial prices not based on a fair and reasonable profit margin but rather on profiteering.</p>
<p>Price fixing is a form of extortion which is a criminal offence. It harms those who are least able to protect themselves, as in the poor and lower income earners and it can be used to force others out of business. It is not just setting high prices but low prices. Any company can do this to keep others out of the market. If they set prices that were too low they can force a company out of business to remove the competition and then put them back up again.</p>
<p>The Deterrent Effect is only as good as the Policing of the Regulations and the Detection Rate. Take for example the two companies involved in fixing recycling for production of paperboard (whose names I forget)</p>
<p>price fixing is a very anti-competitive measure that businesses can use to influence their market place for their own profit and should be discouraged in the stongest possible means to encourage competition.</p>
<p>Competition is healthy, but when businesses agree to price fix it is dishonest. People are not aware of what is happening.</p>
<p>There is too much price fixing right now, e.g. Petrol prices</p>
<p>cartels distort the market and are dishonest</p>
<p>It is stealing as for example, Woolworths is the dearest Supermarket in the world. So there is agreement between managers of Woolworths not to have prices the same at every shopping centre.</p>

It is a fraudulent and dishonest practice.
Non needed this well covered it is a fom of theft
price fixing or collusion should be outlawed as the outcomes only benefit the businesses that are directly involved,
Because in the long run it is the consumer who pays for there dishonesty and greed.
The conduct involves deceiving customers.
It is crimal and should be punished so, as it has the potential to adversely impact on the nation and its economy, not just individuals
It is price fixing which is a criminal offence already
If a consumer decived the competitors by short changing them, or giving them false goods, the consumer would be arrested and charged. The sellers do not have free reign to shaft people.
What we should aim for is fairness - and that fairness applies to the consumer in his dealings with the provider.
There should be a free market and making a price agreement should be a criminal offence and deter people in the future.
It is a rip of for the consumers
Its not fair trade
Being a low income earner each fortnight I work off a shopping list and go to 4 different supermarkets to get the specials. If competitors worked together to price fix items, then it will reduce the amount of food that I can put on my family table.
You can not get half a speeding fine can you.
collusive price fixing is, in my opinion, nothing more than theft by another name
The conduct is the same as theft, and is a conspiracy to defraud consumers. If it is only against the law and incurs a fine, then it seems likely that businesses would consider the fine an affordable risk. However, criminal charges may be more of a deterrent.
Business owners need to be more accountable for these type of acts and this can be achieved by making

it a criminal offence.
Most people want value for money and fixed prices between competitors does not provide value to consumers. Most products probably will be roughly the same in a free market as the costs f inputs usually are similar. By not being able to fix the end prices, it will encourage companies to be more involved in R @ D to get a competitive edge.
Greed is the underlying motive for conduct of this type.
Where a company has shareholders any fines should be directed to the C.E.O. &/or board individually. They should NOT be allowed to hide behind the company.
Honesty must always be in any business activity!
If it became a strong law then the authorites in charge of investigating this problem should have the power necessary to prosicute these powerfull companies
It is morally wrong, regardless of what the law says
It's the deception and dishonesty which I find most offensive.
Such practices as collusion amongst industry to set prices is ultimately damaging to the economy and undemocratic
This is especially so in regional and rural areas where there is limited choices to begin with.
For essential items, such as foods, where they are an essential part of daily life, if people have no option of finding an alternative supply, such behaviour should be criminalised.
If it is known to the consumer, it is OK
Reason most important to me is "Because the conduct involves deceiving customers"
If the agreement is so that the businesses can charge more, it is unfair to consumers - having to pay more, and also harms competition.
to conive / or deceive the public in politics or in business is reprehensible
It would be nice for tht to happen but big business such as safeway and coles, will pay the small fines coz they can aford them and small businesses will hve to close down IT WOULD NEED TO BE MADE FAIR WITH PROFIT OF BUSINESS rather then one for all
I think its called collusion? not sure, but it does rip off the customer, very bad for any similar business in

the area, and does stop competition.
I believe this behaviour is defrauding customers by removing honest competition.
too many bigger companies try this sort of thing and its not fair for the consumers
this practice will create a monopoly and force smaller business out of business due to unfair competition
Hoe can it be a fair market if there is no competition
I feel that all traders should set their own mark up % on all goods that they sell. Not be governed by other business that try to have all competition squashed.
If we are to have a true enterprise system then these rules should be enforced to enable true competition.
Competition should be on a level playing field where entrepreneural skills have value and quality of product becomes the aim of the vendor
I think its called price fixing, the same as the petrol companies do
no
Most particularly the deception of consumers makes it wrong, being in that these companies profit higher by deceiving consumers.
Defies Fair Trade
It seems to me that the most important part of the equation is protecting consumers
1.The conduct deceives consumers. 2.Because consumers may have to pay more. 3.Because the conduct is dishonest. 4.The conduct is theft when prices are artificially raised. 5.The conduct may harm or be unfair to other competitors. 6.Making it a criminal offence means that companies and/or people engaging in this sort of conduct can be prosecuted.
We have too much already of lack of competition New methodsd can be held back by monopolistiic undertakings Price is noy always the best solution Quality does count
If a private citizen obtains financial gain through deception it is a criminal offence. Why should a business be able to get away with it?
Two major groups selling fuel could undercut minor players, until the smaller companies go bust, then

raise prices as they would have no competition. See Darwin fuel prices for more details.

If all of a given business in an area were to do this, there would effectively mean there is no competition on their products - a pseudo-monopoly for want of a better term. The businesses can maximise profits well and above reasonable prices and the consumers have little or no say in it. Not much point in driving well out of your area when transport costs are taken from the savings and shopping that locally only encourages the business to continue their dirty dealing.

agreements between competitors to fix prices would eliminate a healthy competition and prices can be fixed to any rate that the stores agree to and in a small community where there isnt much competition is unfair to consumers

Reasons why it should be a criminal offence – market allocation (Question D2B, n=34):

I see the scenario referred to as businesses acting like God, telling consumers which company they can or cannot use...this should be entirely up to the consumer, not the company/ies.

Answers 3 and 6 are irrelevant here, as these is no other competition.

Because it takes freedom of choice from customers!

Single choice monopolies are wrong.

The conduct is taking away the customer's freedom of choice. Experienced this situation with yard maintenance franchise

Essentially it is preventing freedom of choice because there is an agreement to provide no choice.

As I said before it is deception and if not illegal will lead to other fraud.

Allowing companies in the western world to join forces and control the market in the 21st century, is a heinous thought in my world because of the possible - and probable - flow on; A couple of companies here, a couple of companies there and before we know it, they have us by the short and curlies...extortion time. Making it a criminal offense would deter the wouldbe and wannabe corporate mafia.

It is just not right for the consumer, e.g. pensioners and low income people getting 'ripped off' just to make the fat cats richer

it is blackmail to consumers. plus, better skills are not rewarded or available. 1. Theft is a high reason. 2. unfair to other competitors is a high reason.

I find this conduct so poor perhaps due to the fact that a customer then has no choice about products, and it encourages the product standard to be poor.
It is a criminal offence so why does not the law recognize it as such??????
Discrimination based on locality
It is still deceiving costumers and makeing them pay more.
as a customer i dont like being deceived.
The conduct is the same as theft and conspiracy to defraud.
Freedom of choice must be a right for everyone
They are monopolizing
This scenario is as bad as fixing prices as it inhibits competition
I believe the consumer should have the choice of who they wish to employ as they are the ones paying for the service.
The activity is removing choice and there is also a chance of sub-standard services as there is no reason to do more than is required.
comments 3 and 6 are irrelevant due to the fact there are only 2 plumbing firms
This also makes it extremely difficult for new companies to get into the market, especially small companies. It means that large companies can charge what they like regardless of providing good service to the customer. The customer has no say in the matter which is the biggest fault with this scenario.
consumer has lost the right of choice
Its basically the same as price fixing, the companies can charge what they like for their own set of customers.
Deceit is one of my pet hates. so no 2. would be a reason important to me.
price collusion and this kind of think result in theft from consumers

no
Consumers shouldn't be forced into a monopoly for their business, this is a competitive liberal market we live in.
Customers should be free to choose where they want to go and buy from.
again we are the market and service is determined between parties i.e. you may get a quote but you can still negotiate
Freedom of choice is taken away from the consumers.
1. Customers may have to pay more if there is no other competitor in the area. 2. Because the conduct may be unfair or harm other competitors. 3. Making the conduct a criminal offence means that people or companies can be prosecuted.
Same as previous example

Reasons why it should be a criminal offence – output restriction (Question D3B, n=30):

Answers 3 and 6 are irrelevant because there is no other competition.
This conduct is pure greed and deception!
Competition should be open & not only do the right but be seen to be the right thing.
Limiting supply in order to profit is tantamount to extortion.
I see it the same as the last 2 cases. By creating artificial rarity they are forcing prices up.
Theft is stealing and a crime - just because it isn't with a gun it should be treated as stealing.
Disgraceful situation, potentially leading to food shortages, if other like-minded companies followed suit.
1. dishonest 2. theft
Same comment
reducing the amount made will require less workers or workers working less time, so not only are the

companies making on the price hike but also on the overheads too.
Because it is still a form of profit by deception
The primary producers of the raw product are the ones who suffer most from reduced income. The most important reason is dishonesty. If all business was honest, just think how much better the world would be.
the same as theft.
this activity would short supply the market causing shortages and driving prices up
This conduct should be against the law as both companies decided to have a total control of a product to the exclusion of anybody else and in keeping other competitors out of the market are virtually running a closed market.
This type of practice, particularly in isolated communities is common and unfair, Woolworths and IGA as the only stores in a community is very dangerous for the community, managers compare prices daily and keep prices as high as possible in small communities the managers live next door (almost) to each other, so they are only interested in feathering their own nests, they get rewarded with extra leave and airfares, they are particularly hard on aboriginals (I am not one) and try to cheat them of their pensions (mostly their only income source)
Restricting trade in order to increase prices is a dishonest act and should suffer severe punishment. The artificial inflating of prices by limiting supply by the diamond cartels is a good example. Ultimate result of this is the purchaser pays a high price but the value of the product is nothing like the original purchase price on resale
This is artificially creating increased prices at the expense of the people. If they are dishonest in this way what other ways are they being dishonest e.g. quality of ingredients, source of ingredients, hygiene.
DISHONERTY
it would drop employment and make more money thts not fair and they are not giving to the community
I think this is worse than price fixing, as it can make people pay exorbitant prices for particular cheeses.
To me it is an offence for any company who produce any product to make it almost possible for people to get what they need
No. 2 deceit

because the price will be set and customers will end up paying more in the long run
Deceiving the public for profit when in collusion with your competitor must be a criminal offence because it is deception.
no
1. Consumers may have to pay more. 2. The conduct may deceive consumers. 3. The conduct may be dishonest. 4. Making it a criminal offence may deter companies or people from engaging in this sort of conduct for personal gain.
Deception takes away a basic right of personal choice!
Nothing more than artificial inflation!
by agreeing to reduce production purely to make a profit is the same as fixing the market to suit the companies profit margin

Companies – price fixing – penalties/remedies – other (Question D1C, n=1)

“They should be banned from ever being involved in such companies”

Companies – fine – price fixing (Question D1Ca, n=73)

Ten per cent of the company's annual turnover
for the first offence then increase
It needs to be enough to deter them from doing it. Not just an amount they can brush off and do it again in the hope that they wont get caught
The larger the company, the larger the percentage fine I believe
By fining the company 10%, that would have to come out of its profit margin. Companies works on Statistics and heads would roll if profits dropped 10% due to dodgy dealings.
Taken from last years tax return
Ten per cent of turnover is most effective. In the case of the Banks they have made just over \$14Billion in half yearly profits as at June 2010. \$10 Million to the average person is a great deal of month but it represents less than .1% of income. Based on AWOTE this would be like a fine of \$60 to the average wage earner.The penalties should be at the discretion of a court up to 10% of turnover.
They would only do it once - set \$ amount not fair on smaller businesses, while too hard to calculate (too easy to fudge) profits from this conduct
the penalty needs to be substantial to deter offenders
no
difficult choice
I believe this is a major issue but yiu would need to take into consideration of the past history of these offences in respect of the Business and increase penalties based on past history
An amount that is three times the profits that the company made from the conduct
This makes it a calculable risk for those thinking about price fixing i.e. if I am caught, it will cost me 3 times what I am likely to gain. But it may be very difficult to work this amount out anyway.
The penalty has to hurt
It should be a very hefty fine but not enough to put someone out of business. It should also increase for repeat offenders.

Anything to stop cartels happening.
Hitting them in the pocket will be an effective deterrent.
you have to have a reasonable fine as a deterrent against this behaviour
The third option offers restitution only. There should be a penalty in addition but whether three times is the right ratio is debatable.
EGalitarianism needs to be considered, and if in the case that it will detrimentally affect employees/obligations to suppliers/other companies overall as a result of a very few peoples actions this may not be appropriate and the people themselves be made criminally responsible instead.
there should be a significant deterrent for this
would not like to see a small company being put out of business.
There must be a discouragement of this type of action and this allows a measured penalty in accordance with the scope of the actions.
i think they should feel the pinch in their profits.
Penalty should deter but not ruin
And then audited and watched every six months for three years. I caught again the fine is doubled
I think the penalty should be more than the amount of profits made from the conduct - two or three times the amount.
I'm not sure about the fine, but 3 times the profit earned by deceit seems like a good deterrent as long as the amount is substantial, or if not substantial then a set figure of turnover should be imposed.
Working out the profit made could be problematic
Publicity plus a fine that would result in a loss of more than the profits should help deter companies from doing this and a second offence should result in even heftier penalties
The amount fined needs to be enough to seriously damage the company as a means of justice.
But why not 10 times the profit What if they carried out such activities and made nonprofit for some reason Let a judge decide thier fate based upon the circumstances and the harm they have caused

Whilst I believe i fixed penalties not hand slaps the circumstances of the case should set the penalty
I do not have a strong opinion on this one however, the fine should increase for repeated incidents.
Multiple of value of profit provides flexibility and punishes each differently on the basis of value - i.e. those colluding with small values punished to lesser degree than those worth millions
An amount that is equal to profits that the company made from the conduct
Something that would make the companies aware of their responsibilities but not to the detriment of their employees (who may be layed off as a result of a large fine eg made scapegoats)
Should really be some penalty beyond profits that might have been made. But I'm not sure how that should be determined.
huhuhu
the company wouldn't be punished unduly so that the employees don't suffer as a result, but it shouldn't be allowed to be stronger as a result of dishonest practices. those who made the decisions should be punished!
there is no point in the fine unless it amounts to the profit otherwise they will just say we still made money just move on
If the fine is hefty enough the fist time then maybe is will deter that company and others in the future.
and some type of watchdog system in place for a matter of years (2-3) to make sure they comply with the regulations. If the fines were too extreme it may put them out of business which is bad for the economy
Agreements can be tacit ie petrol prices at many stations are the same and collusion would be impossible to prove.
The objective should be to deter future behaviour, not to put the firm out of business also having a mind to not penalising innocent parties e.g. employees not involved in policy
plus a prison term
Up to \$10 million
should be based on turnover

The business licence should be cancelled and not transferable to any family member
Hit them in the back pocket and they will think very seriously about doing it again
If you don't have a decent deterrent then it's all a waste of time
The higher the fine ,the less likely companiea will try to profit from deception.
this practice needs to be stopped so a heavy fine might be the answer
It needs to be a set fine but would be difficult to manage due ot het different sizes of companies that cold be involved
the harder the fine may make companies look at what they have done and change their ways
dependent on company turnover - huge companies can pay more
The penalty should be relative to the particular offence, yet sufficient to be a deterrent. A large company could easily absorb a fine that is calculated on the profits made from the conduct.
Up to \$1 million
All these years nothing has stopped them doing it again and again
I think the penalty has to be harsh enough to deter other companies from doing it
Don't know
companies do this at times to survive anhd would depend if the prices agreed to definatly inconvenienced or cost customers
The fine would have to depend on the size of the company and the extent of the damage done by their behaviour
It may depend on what the companies are selling, or manufacturing, or the area they are in.
I think 10% is too much for a first offence; but repeated offences could attract higher penalties
depends on size of company

depends on size of company, extend of collusion and period of collusion.
I would have to consider this at greater length
I couldn't say what a fair price could possibly be for something like this; how does one calculate how much loss people have suffered, when there are so many little factors? How can anyone say what a fair price is?
The fine should be sufficient to discourage the conduct, but not so much as to put the companies out of business. How this is worked out I don't know - a percentage system wold seem obvious, but I don't know enough about company accounting to suggest a % of what. Also, most large co's will have 'clever' lawyers and accountants who will work out ways of minimising the penalty, which is why co's indulging in practice such as this must be publicly named and shamed.
not sure depends on what they did.
To complex for this forun
Other (please specify)
It all depends on what was involved if it was human life or national security, anywhere from a maximum of life ie 20 years to smack on the wrist if it was about something inconsequential.
The Old Testament principle was full refund plus 5 times the amount to the injured party. Might be hard to work out for corporations. If the penalty is set too high then the company could cry foul and get the amount judicially lessened. Take the Exxon Valdese affair. Punitive damages were awarded then revoked. Take Bhopal and Union Exide. If you have enough money to take it through the courts, you will most likely win.
the total profit made plus 50% of the annual turnover
When I was a stallholder in markets anyone caught shoplifting were offered a choice of paying twice the tagged price on the goods or an interview by the police. Once my policy became known, shoplifting was almost non existent.
There is no point applying a slap on the wrist...companies know it is against the law...If they breach the law the penalty should be harsh and unambiguous.
Suspending the company from trading would be the most effective deterrent but also include that the staff, including casuals , must still be paid in full.
Have a variance dependant upon the company and the size (as the company size may quite possible indicate the size of the publics loss in such a scam.

The fine should be set dependent on the size of the company and it's annual turnover/profit's - not sure if it should be a % or a substantial \$ fine, however it should be enough to deter further possible behaviour.
Other
A sliding scale between 10% and 30% depending on the size of the company involved

Companies – fine – market allocation (Question D2Ca, n=43)

Ten per cent of the company's annual turnover
again some discretion should be granted to the courts. As per previous example it should include up to ten percent of turnover. This amount will vary according to size and nature of enterprise.
depends how financial the company is,dont want to send it bust
for the first offence
Gross figures to be used.
I think the fine should be enough to deter them from doing it again and maybe a register of complaints set up by the government that people can check
no
Penalty should be preportionate to crime.
the fine shouldn't be too high, or they could put the firm out of business
An amount that is three times the profits that the company made from the conduct
A large amount from their profits might make them think twice before doing the same thing again.
again the fine has to act as a deterrent
deterence must have motivating factor
I think it should be treated the same as fixing prices as I see it as the same sort of crime.

<p>If the fine is too high it may force the company into receivership which would only leave one plumbing company and they will be able to charge whatever they want as there is no competition,</p>
<p>If you restrict it to what they could make they could take a huge loss for the next year and have very little to pay</p>
<p>It is important that both individual and companies pay for the agreement. Individuals should not be able to hide behind an inanimate company structure.</p>
<p>The actual fine should be based on the size of the company and large enough to discourage the practice being repeated.</p>
<p>the fine again should be substantial, so if 3 times the profit is not much, it should be 10% of turnover.</p>
<p>There should be some penalty in addition to the restitution of profits made under the agreement. Three times is debatable.</p>
<p>Three times the amount is probably too much and impractical, where twice the amount would be severe but more likely to be achievable.</p>
<p>When companies are hit in the 'pocket' it would, I feel, deter them from using these unlawful methods.</p>
<p>An amount that is equal to profits that the company made from the conduct</p>
<p>Again it's hard to determine a penalty as this would depend on the size and turnover of the relevant companies.</p>
<p>Plumbers are small business men. They do not have the same capacity to make mass profits and cheat customers. I see this as being the lower end of the scale.</p>
<p>plus a system in place to check them over a period of years to ensure it doesn't happen again</p>
<p>The amount of the fine should not be at the expense of the employees</p>
<p>While we would like to do something we dont want to destroy a company and then end up with a worse situation</p>
<p>Up to \$10 million</p>
<p>I would like to say 3X the profits but books can be cooked</p>

If you don't have a law with possible harsh penalties then the deterrent factor will have no effect
make it a maximum fine to deter companies from doing such a crime.
price and customer fixing is NOT in my view health for competition and only makes it worse for consumers so should be stopped at all cost
Up to \$1 million
An amount that is equal to profits that the company made from the conduct Up to \$1 million. In addition a 10% levy on savings is paid.
It depends on the size of the company.
Same as previous example
When Governments do not lead by example what else can you expect? More People are suffering from their lies than people are suffering from actions of Companies and Businesses.
Don't know
Definitely be fined and brought to the attention of the public but uncertain as to how much the fine should be. I suppose this would also be dependent on the size of the company.
Depends on extent of the collusion and on whether or not they were charging exorbitant prices
Depends on numerous factors.
I don't think the amount could be generalized or some companies would be crippled financially. They have done the wrong thing, but they don't deserve to have their company destroyed, that will not only hurt the offenders, but also the consumers of the service provided.
It would depend on the situation. Some instances could be worse than others
not too sure depends on how serious it is.
Penalties when on paper sound good , however when they are named and shamed the penalty should be enough. if they continue then financial penalties should then apply
Other

both/all companies involved should be charged
Fine has to serve as a disincentive to law breakers
Their fine should be a % of the profit made depending on the size of the companies involved. Obviously country plumbers would have to pay less than a big city firm.

Companies – fine – output restriction (Question D3Ca, n=43)

Ten per cent of the company's annual turnover
Based on gross annual figures.
Dependant on circumstances. Let the Judge decide.
Determination of a fine depends upon the size of the company - a large company might factor any penalties into its running costs if the fine was not significant compared to its profits.
enough to discourage them not to repeat this conduct
for the first offence
ITS A VERY STRONG DETERENT THAT WOULD MAKE COMPANIES THINK TWICE
My response is the same as previous examples.
no
Unfortunately it is the Mums and Dads who once again will suffer here, they are the small shareholders, not sure how you can protect against that. Perhaps the fine should be taken by the tax department after dividends have been declared on profits so the shareholders are fairly treated.
An amount that is three times the profits that the company made from the conduct
3 times might discourage them from trying it in the first place.
Again, I state that not only the company should be named, but individuals in positions of power within that company such as CEO, and members of the Board of Directors who would have made the decision re supply and demand price manipulation.

Either 3 times the profits or option number one.
enough to be a deterrent
It should be more than they made because they are not losing enough - maybe three times is too much - depending maybe on the size of the Company.
Like taking something that does not belong to you they are still stealing from the consumers and this is a criminal offence no matter how one looks at it.
make them scared of doing it
The amount has to be greater than the potential profit because otherwise there's no downside to chancing it. IT's so hard to catch any sort of collusion that when it is caught it must be punished the the nth degree.
they do need to be hit in the hip pocket enough to make them realise what they have done is wrong
To prevent repeat behaviour
An amount that is equal to profits that the company made from the conduct
Hard to call on that one. should more then likely be more then what they made in profit to teach them a lesson
I think the fine should be maximised - but maybe split into installments. The company should be independently audited over a five year period to ensure the business is managed effectively and that employees not involved in the conduct are unharmed and then the fine deducted. meant to say this on some of the other questions too!
If serious more fines!
It should relate to the size and turnover of the companies involved.
plus a system to monitor them over a period of years to ensure it doesn't happen again
THEY GET NO BENEFIT
This amount would be fair as any profits would have been obtained illegally, any thing over this would also punish the stock holders of the company as well.

Up to \$10 million
If you hit them hard enough it might make other companies think twice before doing the same thing
The fine should be on a scale as to how much money they made out of the sales.
The harsher the penalty if enforced that is the best deterrent
the higher the fine the bigger the deterrent
The seriousness is commensurate with the value of the product as a vital ingredient to the community's health, e.g. milk.
This is difficult. What would the market have been without the collusion of the producers?
Why 10 million why not more or again let the judge decide
with a minimum of \$5,000,000
Up to \$1 million
But then wouldn't we end up being the payers anyway?
depends on size of company bigger fine for bigger company
Hit them in the back pocket a calculation of profit percentage should be made to deter such practices.
It's pure greed and deception and not what business is all about.... Business should be about taking care of customers which are the lifeblood of the business. If the customers refused to buy in protest, there'd be no need to produce any product!
The fine should be very large and the companies made to stop trading for 3-6 months or donate all profits in that period to charity.
Don't know
High enough to make the risk not worth it.
I think a percentage of the annual turnover would be fine but then it depends how long the practice had been going during the financial year.

it should be an amount that deters the company but would not put them in financial hardship
Other
they still manipulated the market for gain

Individual – fine – price fixing (Question D1Da, n=144)

Up to \$10,000
a percentage of some sort
bas eit on turnover
but would depend on how much they gained from the practice personally
Dependant on circumstances & degree !
dependant on the profit made by this price fixing
Dependent upoon the size of the company
depending on how much colusion ocured and the value of the product
Depending on the size of the company
depends on the agreement that was done
difficult because this depends if it is a large or small company. A large company should pay more.
Fine should be persuant to the profit made. a percentage ie 10>20%
fixed penalty of \$10,000
However this would depend on the size of the company making the agreement. Larger chains should pay more as they have more stores
I believe the individuals involved should be punished, however they should be punished non-monetarily, rather punitively, and the company should be made to bear the cost.

I have nominated this amount, but basically feel that it should be on a pro rata basis such as three times or ten times the amount that they have defrauded the public.
I indicated no fine in previous question. Therefore it is redundant
I think as an individual it should be low (no more than \$10000) for the first offence. If it continues, then fine gets higher.
I think it would depend on the size and turnover of the business involved.
I think this is a bit high but some sort of fine should exist to make them think twice about doing it again
it all depends on the complexity & scope of the individuals wrong doing. it should be calculated to make them hurt but not put them on the streets.
It depends on the profits made/lost by the participants/competitors
Or depending on the persons wage. Higher if a high wage ie percentage
penalty should be set on an individual case
relationship to the profit made This question does not have a sensible response available
The amount should really act as a deterrent and remind the individual/s won't forget, and be appropriate for the period of the price fixing.
The amount should reflect the level of \$s collusion involved
the fine should be calculated in accordance with the scale of the "crime"
the fine should be made on profit u wanna hit there back pocket, like i said early cole and woolies should pay more due to profit and pay an amount tht hurt, because it would end small business
This would apply to a small company i.e. the butcher example. However, if it was a much larger firm than a bigger fine should be imposed.
This would depend on the profit made from this agreement, if it was small make it up to \$10,000 if it was large, then the fine would be greater
this would depend on the size and wealth of the company

Up to \$50,000
Although I have named a price the actual fine should be calculated according to the wealth of the individual because small fines can mean nothing to a very wealthy person
Although I put \$50,000 I do think this may vary depending upon the actual amount of profit and also whether it is a first or subsequent event.
Depends on their position and how involved they are in the decision making process
Fine should be calculated based on annual income, and should represent a significant financial burden to the individual
FINE SHOULD DEPEND ON SIZE OF COMPANY
it would depend on the turn overs of the companies
It would depend on the money made as a result of this deceit
Really depends on income and if bonuses were paid for these actions
really depends on the circumstances - how much money involved etc
Should be proportional to the magnitude of the collusion
The fine could depend on the size of the company and / or the extent the collusion affected the public.
the fine should depend on the size of the companies
The penalty needs to be appropriate to the level of wrongdoing by the individual.
This should be dependant on the length of time the practice has taken place and the gain made from the practice
This should depend on the size of the businesses involved.
Would depend on the size of the business eg local butchers or directors of BHP Billiton
Up to \$100,000
100,000 would be an average yearly income for a manager in large company so it will hurt them greatly

by having to hand over a years salary.
Although, it would depend on the size of the business, and the profit made.
Dependant on how much money was involved.
depends on amount of money made
depends on nature of offence
Depends on the amount involved in the offence.
depends on the scale of price fixing
It really depends on the amount OF PROFIT MADE.
Should be based on a % of their wage
SHould be based on the illegal benefit derived from the agreement, multiplied by 3
The amount payable should be determined on the individual's yearly income and should be no less than 20% of that income
the fine would have to be based on the profit the individual made for himself
This entirely depends on the size of the company concerned - It should be a sliding scale related to profit or turnover
This should be measured as to the scope of the actions.
this should depend on the extra profit made by the person/company increased by a percentage
This should depend on the size of the business. A small independant business could not afford to even remotely meet a \$50,000 fine, but larger businesses such as supermarkets should pay more than that.
This should probably be in proportion with either the profits made or the individual's remuneration package.
This would depend on how profitable their business was
This would depend on the nature and magnitude of the offence, and the individual's capacity to pay.

would depend on extent of price fixing/size of companies
Up to \$250,000
Dependent on the annual income
Depends on the size of the business and profit and on how calculated and planned by the individual the deception was
Depends on the value of the price fixing. If set way up above average cost should be high if a little bit, should be lower - for first offences. 2nd or more offences - set it high.
dont know-depends on the severity of the issue
Fine rate should depend on circumstances
Hit them in the back pocket, its the only way they'll take notice
It should depend on who the person is. If the person is the business owner or operator then the fine should be significant based on the size of the business and its turnover.
The fine should depend on the amount of profit and scale of such agreements. A couple of butchers price fixing should not be fined the same amount as oil company executives who engage in price fixing.
Up to \$500,000
10% of wage and stripped of any share entitlements
3 x profit earned by activities
A "minimum" amount is more appropriate than an "up to" figure, thereby allowing someone who may earn millions as a CEO to be fined enough to actually feel it! This would be more of a deterrent than knowing they can only be fined "up to" a certain figure and then deciding on whether it is worth the risk... I have known people do this before!
Again dicretion of the court. In the case of the butchers in a previous example say \$10000. Professionals may be \$500000. It should take into account value of the gain,net assets and net income.
All depends on product and profits
Amounts Depends on the consequences they caused.

And forfeiture of assets if necessary to cover costs
As a percentage of the company fine
comesurate with their earnings/ wealth
Company directors and board members usually have a company set up so that they as individuals protect their own assets, or they have them registered in family members names. As an individual they hold very few assets in their own names. If there was a change in the law that allowed assets held in family members names to be included in the paying of or assessing the financial states of an individual then there may be more attention to not breaching fair trading laws
dependent on what they stood to gain and if the company had any knowledge of it or encouraged it.
depending on the magnitude of the specific case
Depending on the severity of the situation
DEPENDING ON THE SIZE OF THE COMPANY AND THE LENGTH OF TIME THEY HAVE BEEN CARRYING OUT THAT PRACTICE
Depending on the size of the company, and the scope of the offence.
depends on severity of price fixing
depends on size of company and extent of the crime
Depends on size of company and money involved
Depends on the profits involved and the income of the individual
Depends on the size of the business. BP Oil should pay such a fine as nearly puts them out of business because of what they have done in the Gulf of Mexico. The butchers in your example in a small town may find a fine of up to \$10k unpayable.
Depends on the size of the companies and a whole lot of other things, eg the butchers previously mentioned would be punished by a far smaller fine than oil companies indulging in cartel behaviour.
Depends on what the outcome of the agreement is and who ultimately pays the fine.
even more depending on the amount

fine should be 30% of the individuals net worth
FINE SHOULD BE CALCULATED DEPENDING ON HOW THE PRICE WAS FIXED
Fine should be dependant on profits from the collusion, advantage received - pro rata to income received from scam
First offenders should be treated with maximum fine with everyone else.
For a first offence, perhaps 10% of their salary, increasing for subsequent offences.
Hit them hard and that will make them think again!!!
I actually do not know.
I believe the amount should be two or three times the amount by which the individual personally profited.
I have stated previously that there has to be a huge deterrent and enforced to the extreme otherwise why bother.
i think it would be totally relevant to the size of the company and the circumstances of the agreement. I don't think there could be a one size fits all. You may be talking about two quite small businesses or two multi million dollar companies.
I would suggest all fees paid be doubled then they should have to pay that amount. Show that the system is serious.
It all depends on the size of the company and the wealth of the individual.
It depends upon the severity of the situation. If 2 butchers in a small town did this, it is unrealistic to fine them \$500,000, but a big company such as a Coles, McDonalds, Ford etc should be made to pay big time.
It needs to hurt them financially
It really should be weighted to a proportion of their wage/bonuses/fees.
It should be a percentage of their income
It should be based on the impact of the breach of law, cost to consumers and the community, how

much it benefited the individuals responsible
It should be greater than any personal advantage gained from their actions. i.e bonuses received
it would have to be a percentage based on the profit made by this agreement
Just the same as the corporation and be stripped of any benefits they gained
make the maximum high and let the courts decide
Needs to be relative to the individuals income, e.g., 25% of annual income
No limit, it should be based on the individual benefit made by the perpetrator.
not upto, no less than is more appropriate let them know what its like to be touched up
Or higher depending on the amount of gross turn over not just the profit they made, all fines should be a minimum of \$10,000 & then 10% of the gross turn over.
or higher if they have made more. should be a percentage added on to whatever they made dishonestly.
Pretty small fines. Up to \$500,000? Companies that do this would consider that not worth picking up if they dropped it in the street.
Proportional to the ammount of money involved
Quite possibly even a higher amount.
Relate this to say 2 x salary.
Relative to the size of the decite , ie a multiple of the decite enough to make companies think twice about doing this
Same as for companies; 3 times profits made on products and/or services.
see previous comment. when greed is involved mere monetry penalties are insufficient
Should be decided by the court
should be proportional to the size of the company and the amount of profit made

<p>The fine has to be harsh enough to penalise law breakers....Provided it doesn't allow them to cry bankrupt and escape penalty all together</p>
<p>The fine should depend on the value of the crime.</p>
<p>the fines should be proportial to their gain of wealth for that period.</p>
<p>the higher the fine the less likely to offend</p>
<p>there should also be a minimum amount ie \$250,000 as the minimum and \$500,00 as the maximum</p>
<p>There should be no limit. The fine depends upon the severity of the crime. Many individuals are the dictators of their companies.</p>
<p>This should depend on the scale of the deception. A couple of butchers colluding should pay less than the management of a giant packaging company who's price fixing results in price distortion across the economy</p>
<p>This would depend on the length of time this agreement between competitors existed and to what extent it was harming the market and the consumer.</p>
<p>worked out on the profit they made</p>
<p>Yet again the punishment should fit the crime, it needs to be enough to punish the individual for their participation.</p>
<p>You give no basis for what the dollar amounts equate to in terms of monies illegally made so how can anyone make an informed reply? Any response is irrelevant due to the poorly-worded question. Pity you did not use the Clear Speaking Department vet your survey.</p>

Individual – fine – market allocation, D2Da (n=82):

Up to \$10,000
Variable dependant on circumstances.
but will depend on the extent of the crime
based on turnover ?
dont know
again it depends on the size of those companies involved.You want the fine to hurt but you don't want to close the business and cause people to lose their jobs.
and they should sign an agreement when they are employed or with some appropriate agency
I really have no idea of worth
up to \$10000 for first offense, then higher for more offenses.
I prefer to be a penalty of three times (or whatever) of the amount they defrauded their customers.
Not too high a fine as it may send the person bankrupt.
fixed penalty of \$10,000
depends how serious it is
it would depend on the scope of the company - bigger company = bigger fine
As before a fine to make them think twice about doing it again
depends on the earnings of the individual
Again the fine should be an appropriate deterrent.
it depends on the income they have made
Depends on the size and turnover of the companies involved.

I believe the act should be changed to take into account the income of the offender and a percentage of income e.g.10% be the fine option applied.

Up to \$50,000

Again this needs to be dependant on the company's turnover.

I am unsure?

enough to make a real impact and to deter it from happening again

should be case by case

this should be dependant on the extent of the activity, how long and the amount of extra gain

the fine should be based on much the individual got from the co.

It would depend on the type of business and the turnover, but individuals make the decisions, so it is their responsibility, a heavy penalty may make others think twice before profiteering.

depends on its turnover

Depends on the size of the company. Sliding scale for smaller businesses. No. of employees etc

I'm not sure on this answer.

would need to depend on how big the company is

This too should take the wealth of the individual into consideration. To a rich man some fines would be considered "peanuts" and have little or no effect

Depends on income and if bonuses were paid they should be stripped from the individual

Depends on many factors

Up to \$100,000

depends on size of market

Though it should depend on the profits of the business

This seems to be a good amount for the individual.
Once again this would depend on how profitable that company was
Commensurate with their turnover, based on last tax return.
Depends on the circumstances.
For a first offence. But consideration against the impact of the illegal agreement on customers
Up to \$250,000
I think the fine should be set at a level appropriate to the crime so it depends on how much money was involved and should vary from person to person.
Tiered fines depending on severity of crime. Similar to OHS and environmental breaches.
should be variable according to size of business
the above is a guess- my response would be dependent on how many \$\$ were involved in the agreement
high enough to deter further agreements
depend on annual income
It has to hurt them so that they do not do it again
Up to \$500,000
3 times the profits made from the goods and/or services provided.
same as previous scenario, it is dependant on the amount of damage done and being realistic about the size of the company
It should be at least equivalent to their personal gain. ie. bonuses received
It would depend on the situation
Depends on size and turnover.

Proportional to the wealth gained during the period.
The amount should be calculated according to the benefit derived.
Maximum should be applied.
Harsher the fine ,then less likely this type of behaviour will take place.
this should be proportional to the size of the corporation and profits made
the maxium to deture any one from trying to do the offence
Needs to be relative to income, e.g., 25% of annual income
The fine should be related to the size of the crime.
30% of net worth
Penalty should be 3x the profit collected
more, take everything they have, then see how much "misconduct" goes on
punishment to suit the crime
Minimum of \$10,000 then 10% of gross annual turn over.
higher the fine the more likely people won't be prepared to take the risk in an established business
Depends on size of company \$500000 may not be enough in some cases. Visy Amcor???
depending on size of company
I'm not sure how to calculate
I am uncertain of the amount and obviously it would have to be high to act as enough of a preventative to this happening. No fine would be no incentive so I suppose the higher the fine the better although there would also need to be some action taken as to auditing companies regularly to know whether it is actually happening or not. Sometimes penalties are not enough of a deterrent because the chance of getting caught is just so small.

based on income assessment
dependant upon profit made from agreement
This depends on the amount the individual profited from the agreement.
3 times the amount of profit should be taken from the surviving business (if it survives in any form) and after compensating stake holders, the remaining funds dispensed to charities who deal with the disadvantaged
Depending on severity
Again, as a multiple, up to say 2 x annual salary.
with a minimum of \$250,000
No limit...depends upon the circumstances
Allocated on how much money has been made and how many people had been deceived.
Depends on the profits made and the income of the individual
Same as previous
Or more...

Individual – fine – output restriction (Question D3Da, n=56):

Up to \$10,000
No fixed amount but dependant on circumstances.
penalties should apply depending on the companies ability to pay. by putting them both out of business consumers would suffer.this comes to the penalties above all else first time ?
It would really depend on how much extra profit they had made.
more if the loss experienced by the consumer is greater than this amount it should all be relevant
See previous about pro rata amount.
as long as they do realise that as a first offence this is all they will get, but if they do it again the largest amount possible..
Start with \$10,000 & then 10% of the gross annual turn over figures.
fixed penalty of \$10,000
Depends how serious it is
again depends on the size of the individuals capacity to pay, take their cars, houses, stocks etc off them
DEPENDS ON HOW MUCH THE INDIVIDUAL DID IT FOR PERSONALLY AND HOW LONG
As before to deter them from doing it again
Depending on the income of the individual
Depends on the size of the company and the companies turnover.
Up to \$50,000
Once again this would again depend on the size of the company.
should also depend on the size of the company/how much was made off the misconduct
fine dependant on whether large scale deceit or a one off transaction
Up to \$100,000
Dependent on their individual income.
Depending on the profits though.
This proceder is called cheating so it should be hard hit
The individuals need to realise that they are there for consumers and a hefty fine might help them to do so.
Depends on the circumstances.
pro rata depending on the size of the business
Up to \$250,000
The amount should be fixed in proportion to the wealth of the person as small fines are meaningless to rich people and they laugh at them.

Tiered depending on severity of offence.
as before, my response really depends on the \$\$ value involved in the agreement & the profit to the companies
same as businesses, just take what profit they earned from the exercise, maybe an additional 10%, but for all questions, if malicious intent can be proven, then maybe the penalty should be worse, but if it was done because the business would otherwise crumble, especially small business, maybe some help and re-education is better than punishment
depend on annual income
Whatever they profitted by this action
Up to \$500,000
The fine should be severe enough to discourage other individuals in other companies considering making such decisions in the future.
3 times the profits made from the dishonest conduct
preferably more
saqme
If the company is a large company the ammount of \$500000 is not enough
the higher the greater deterrent
proportial to the wealth gained during that period.
Dependent on the gain derived.
Maximum applied
or more for the huge companies (such as oil industry)
The harsher the penalty the less likely for this behaviour to take place.
again a fatuous question
The maxium the deterrent to stop the offence
The fine should reflect the value of the crime.
3x profit made by actions
A minimum figure that is set and then a loading figure dependant on the extent of the profit of the individuals side and also the other side of anyone elses loss/detriment.
depends on size of company
No idea.
high enough to act as a definite preventative
dependant upon profit made from agreement
pay fine to there wages say 4 insince 60% of yr wages scare the hell out of them not to do it
Multiple of annual salary, say up to 2 times.

with a minimum of \$250,000
monetary values will differ depending on type of company involved and damage caused
again this needs to reflect the amount of money made due to the collusion.
could be higher
And possibly more...

Individual – jail – price fixing (Question D1Db, n=22)

Up to 1 year
Any sort of jail term should be enough to make people think twice but in this day and age that doesn't seem to be the case. Therefore if the jail term was a substantial one ie up to a year, without any parole, then maybe that would make them think twice
Up to 5 years
Jail is a deterrent not method of getting even. At the Judge's discretion up to 5 years should make anyone contemplating this crime think twice. If imposed it should be an example to others. However if the responsible individuals were to make reparation in other ways (massive financial distribution, or placing their experience in training and employing people in need - opening training places, opening businesses where the employees are drawn from disadvantaged areas and the profit going entirely to benefit such employees and their families, this could be traded for jail time.
No point for up to a year. Court time, custody, appeals, a year would be gone.
Sentence should be determined by how serious it was. The hypothetical butchers shouldn't be Jailed. The late Pratt should have been
Individuals must take responsibility for their actions.
with no parole, truth in sentencing should be applied
Incremental should they not learn - next penalty should be up to 7 years, then up to 10 years after that. If the individual is charged and gaoled (I'm an Aussie) and their replacement continues the practice of collusion, then that person should face the next higher penalty from the start!
Up to 7 years
Depends on the severity of the offence.

it would depend upon the magnitude of the deception and its community impact. Certainly "fat cats" are seen as untouchable and above the law personally. If the decision can be "pinned on them" it should mean goal of 1 year for each million with a minimum of 1 year and max of 15 without parole. They destroy lives and hurt the innocent and glib with impunity. They need to feel the full weight of disapproval of the community.

Up to 10 years

1 year for 1st offence; up to 2-5 for 2nd offence; up to 10 years for 3rd offence.

Again depends on the consequences that have been caused.

The bigger the companies involved and the higher the profit the longer the jail time should be

Again depends on the size of the business. Your butchers should have a suspended sentence and a warning. The big end of town should get the maximum levied against them and prohibition from EVER holding Board appointments again. Otherwise they will change their business name and play the same game again.

Maximum jail term be given to everyone. Problem is people are let out on parole so lesser sentences has no impact. No parole should be given to all criminal offences.

Again the penalty depends on the amount that they profited from their dishonesty.

see previous comments

DEPENDING ON THE TRAUMA IT HAS CAUSED

I don't see why there should be a maximum term, there should be a minimum non parole period of 5 years then go up from there.

anything less they will play the odds

again depends on seriousness. 10 yrs is maximum

Depends upon the length of time the crime encompassed and the cost to the public.

Again let a judge decide based upon the case

Individual – jail – market allocation (Question D3Da, n=10):

Up to 1 year
Again dependant upon circumstances.
Up to 5 years
No
And more for further breaches.
Up to 7 years
1st offence up to 1 yr; 2nd offence, 2-5 years, 3 rd offence up to 10 years
No parole
what a fatuous question! Length of sentence compared with what other type of offence?
the maxium is the best deturant
No maximum, start with 5 years non parole & go up from there.
No limit....depends upon circumstances
Same as previous

Individual – jail – output restriction (Question D3Db, n=10):

Up to 1 year
In this real world & with smart well paid layers it will not happen.
They probably will have families that rely on their support so by incarcerating them for up to a year is not too long but long enough to deter them from doing it again.
I think a minimum of 3 months if the crime was ongoing for a while, or as I said before a stoppage of the companies trading for 3-6 months.
no
Up to 5 years
And possible more...
Up to 10 years
1st offence, up to 1 year; 2nd offence, 2-5 years; 3rd offence, up to 10 years
depending on company size and profit, the more made the higher the punishment should be
No Parole
as for the previous question
No maximum term. Start with 5 years non parole period & go up from there.

Factors bearing on seriousness – price fixing (Question D1E, n=66):

<p>The size of the company does not affect the severity of an offence, but can affect the size of any monetary penalties.</p>
<p>I fail to see how putting prices UP could possibly prevent factories from closing and save jobs; more likely the opposite would occur. Using the environment as an "excuse" is not an option.</p>
<p>Regardless of the size of the business or what they use the profits for, it should not happen. Even if the prices don't go up as a result of the conduct immediately, they will creep up over time and there will be nothing the consumer can do about it.</p>
<p>Premeditation is no excuse and should not elicit leniency.</p>
<p>Once you set the precedent (within a company) of this sort of behavior, then I think you open the door to that being abused. I think therefore as a safeguard of future - maybe unseen - behavior, it should be illegal, regardless of the possibly best intentions in the first place; but in saying that, maybe there could be some other structure in place to allow some sort of collusion between businesses if it meant saving jobs and keeping prices down.</p>
<p>If factories were involved then the price increase would be universal</p>
<p>If there is any out on such a law, companies would collude on price and set it up to fall under the loop hole left</p>
<p>While I am sympathetic in the cases of factories in danger, jobs at risk and environment friendly products, it does not excuse the action. A crime committed for a good cause is still a crime and there should be other ways to solve the problem.</p>
<p>If prices do not go up who proves a cartel? A fair price for a product is a fair price whether it saves jobs or not. Are prices 'fixed' or are they not? If they are then it is a cartel and it is or should be illegal and heavy penalties applied.</p>
<p>I don't believe the end justifies the means. The people from Greenpeace say it's for the environment when in fact they engage in terrorist behaviour</p>
<p>Anything that unjustifiably increases costs for the purchaser is a crime. But then in the Real World that is a simplistic viewpoint. It is all about what the market will bear.</p>
<p>any price fixing should be against the law. it does not matter the outcome</p>
<p>A law cannot be this flexible otherwise it would be the chance for people to come up with excuses for their dishonest actions.</p>

<p>It would also depend on who was benefiting from the conduct.</p>
<p>if something is wrong it is wrong no matter how you dress it up</p>
<p>workplaces closing are a result of capitalist. money has two sides.</p>
<p>Collusion of any form should be banned. Any attempt to conceal collusion should be punished further.</p>
<p>When factories close down and jobs lost Governments should be held accountable. For Example RBA does not speak out against Governments when their policies drive up interest rates. So Governments are doing the same causing pain and misery with no accountability whatsoever. It is the children who are suffering when their parents lose their homes because of soaring Taxes, Bills, Interest rates ETC CETERA.</p>
<p>the points were i have answered less serious i would like to add that i believe that to be the case only if there was full public disclosure of the agreement.</p>
<p>To me you either have a law that is enforced or it will be exploited by those who use creative accounting practices and manipulate by coercion with other like businesses.</p>
<p>primarily price fixing is only done by large corporations, these have a far more significant impact to everyone and should be considered more serious</p>
<p>The last 'additional fact' is a red-herring - obviously designed by defence counsel!</p>
<p>they should all be punished, it does not matter how you profit it is still illegal</p>
<p>a crime is a crime regardless of why...there are always reasons</p>
<p>Shouldn't profits from companies go towards making profits that are environmentally friendly at all times.</p>
<p>there can be no excuse for price collusion whatsoever</p>
<p>If it meant that it would prevent factories closing, then other strategies need to be implemented to assist the failing company, so the agreement would only be enforced for a period of time. When the failing company is financially stable, then the agreement would be cancelled.</p>
<p>Although you state that it could save jobs or benefit the environment, perhaps if the prices had not been manipulated the consequences for the consumer might have enabled him to manage his finances better. You cannot justify wrong doing in the manner stated above. Wrong is wrong.</p>

<p>There should not be any agreements made; there should always be healthy competition.</p>
<p>If all of the above facts are to be combined it becomes confusing as there is no reason to not make the actions public, except for the bullying and the cover up. If prices are to be fixed at the current rate by all competitors they should be able to make an agreement public without breaching the law.</p>
<p>I would only agree with small businesses doing it if they need to do it to stay afloat.</p>
<p>I cannot see anything wrong with an agreement if prices did NOT go up as the consumer is not being cheated. It is a different story though if prices are inflated as a result of an agreement between competitors.</p>
<p>where the conduct was to prevent loss jobs, and the activity was transparent, that is the consumer was given information enough to make a decision, then i would rate as less serious</p>
<p>I think there should be something so that this does not happen at all regardless of the situations</p>
<p>If the conduct was to prevent factories from closing, then there needs to be an independent investigative body that validates the action and publicises the decision, and it should be for a stated period of time.</p>
<p>The last point is just another excuse for ingorning the law and is just as anti competitive as price fixing</p>
<p>If there are conditions that appear to make it less of a crime then someone will work a way around the law.</p>
<p>Price fixing is a serious offence against fair trade. Unfortunately the Australian Government is Participating in price fixing schemes, therefor cannot take a firm stance against the practice. (ex. Medicare rebates)</p>
<p>each case would need to be assessed on merit and if the conduct prevented job losses to employees then the actions to be taken should have been canvassed with the authorities instead of breaking the law.</p>
<p>Large or small the matter is still serious. There is no excuse!</p>
<p>None of these excusses makes it less reprehensible</p>
<p>Many small businesses grow into larger entrities. If this behaviour is allowed it would encourgae it in larger businesses affecting more people</p>
<p>Line three would have to be proven in tribunal or court case and if proven not to be the case this would</p>

be Just as serious.
The "crime" is still the same - we seem to have lost the art of being fair to everyone.
I have chosen "just as serious" for the jobs scenario and the environmental scenario as I cannot conceive of a situation where a large business would act in this way for these reasons.
If the intention is not to increase prices, then the conduct is not as serious.
tommyrot! environementally friendly is a term coined to sugar goverment and business plans not to provide for the vulnerable person or locale be that locale a cuddly koala or a small homeless child. physically/mentally/aged handicapped people & animals are ignored at the nations cost and are a community shame
No excuses
ALL COMPANIES WILL HAVE THEIR OWN PRINCIPALES. MOST OF THE PRINCIPALES WILL NOT MATCH WITH EACH OTHER. IN SUCH CASES ONLY ALL THIS NEGATIVE UNDERSTANDINGS WILL TAKE PLACE.
there should be no excuse for this practice
I can see how saving jobs would be an honorable way to deal and also, if the prices were not over calculated market value then it is perhaps ok to use such an agreement
collusion is collusion. if prices did not go up why were they doing it?
Sometimes the means do not justify the end result
I do not feel that any of the above would actually change my mind
The law must be followed regardless of the circumstances
one rule for all, no matter the reason, price fixing is price fixing
no
Small businesses do not have the capacity to control markets to the extent of large business.Using your example, in most cases if a town has 2 butchers it will not be too difficult to get to the supermarket which also sells meat
The individual business can make a decision to invest a percentage of their profits to make products that are environmentally friendly without having to fix prices.They can let their competitors know what they are doing and encourage them to do invest a percentage of their profits as well without having to

price fix.
This is saying the ends justify the means I do not agree wholeheartedly with that premise
The law is the law...I observe it ...I expect everyone else should.
Prices did not go up as a result of the conduct does not mean that prices WON'T go up as a result of the conduct. I had imagined that statement from the beginning of this part of the survey as a group of businessmen fixing prices in order to keep them low, but then I imagined 10+ years down the track with new leaders in the driving seat saying, "Hey! We could really maximise profits if we all just hicked the prices up!" - Just as serious, we are still at someone's mercy.
cheating is cheating

Factors bearing on seriousness – market allocation (Question F2E, n=38):

The practice is dishonest, no matter what the reason, and should not be permitted to happen.
environment is no excuse.
It was wrong & business is survival of the fittest who act lawfully !
a way of organising a better service system can be good and more efficient
I see this in the same light as price fixing and my comments are the same.
reasons can allways be found for breaking law in the name of the enviroment. reasons are frogs nuuee
A crime is a crime - they are stealing from people who are uninformed about their collusion
It is about choice. Why should a customer only have the choice of the supplier in their area. If the customer wants to pay more (if that may happen) to get someone from another area to do the job, then so be it. What happens if the supplier has a bad reputation or so, just because a consumer lives in a certain area, should they not have the option of choosing someone else to do the job for a cheaper or higher price, if that is what they agree on?
There are other scenarios here which describe to me a less intimidating picture then the potential hell I was envisaging in previous scenarios. I'm also thinking of the small business scenario and imagining two massage companies getting together and price fixing at a reasonable amount and seeing no problem, unless they become the only companies and increase prices to an inflated level. I'm realising that things aren't always black and white.

the possible lowering of standards due to decreased competition makes this so serious.
Same Comment. Governments should be held accountable
It is tempting to "forgive" behavior that has a positive outcome, but the principle behind the conduct must be considered and censored if morally wrong.
as for your previous 'grrenie' red-herring
It is still breaking the law no matter how they try to hide what they were doing
wrong is wrong even if done for the right reasons
the company that is in financial hardship needs assistance during the period of the agreement, then when the company is stable, then the agreement is cancelled.
customers still have the right to choose
I see this as the first step towards manipulating prices. It creates an unnatural competitive environment.
Whatever the reason for the agreement it is still a serious matter and must be dealt with by authorities.
People should always be able to choose which contractors they pay to do a particular service.
I don't know that making environmentally friendly products is justification for unethical behaviour.
If the conduct wereto prevent factories from closing, then there should be an independent authority which validates these facts and makes it public. The conduct should be for a stated period of time which is also made public.
They should use environmentally friendly products anyway
Only okay if the companies made this clear from the start
The potential for exploiting the consumer exists whenever there is a secret agreement
One cannot choose who should make an illegal profit, the law should equally apply, it is the consumer we are concerned about.
In the 3rd & 5th line my response being Less Serious,....ONLY IF IT CAN BE PROVEN.

<p>this has taken away the consumers right of choice of supplier for goods/services</p>
<p>It would be better if the money from the fines went towards making products environmentally friendlier, rather than the underhanded conduct itself.</p>
<p>I did not understand the last statement</p>
<p>Trying to save the environment is not an excuse for price fixing.</p>
<p>Saving jobs and keeping prices reasonable are valid reasons for the agreement</p>
<p>There can be no excuse for this type of behaviour. We know it goes on in many industries but steps should be taken to eradicate it. We step on bugs so why should human ones be any different.</p>
<p>no</p>
<p>Individual companies can make decisions to invest a percentage of their profits in environmentally friendly products and can legally let their competitors know what they are doing. We certainly don't want laws which hinder communication.</p>
<p>Same as previous</p>
<p>Wrong is wrong...</p>
<p>dictating who consumers can purchase goods or services from is unfair and we should have the right to purchase these from whoever we choose regardless of what suburb or town we live in</p>

Factors bearing on seriousness – output restriction (Question F3E, n=27):

Public disclosure of the company problems and their intent to reduce production to save jobs would allow the public to make an informed decision whether to continue to buy the cheese if the prices became inflated rather than it appear as if the company was price gouging.
same comment as before; 3 and 6 are unacceptable excuses
It's an unethical practice and there is no excuse for it at all.
No excuse !
On saving jobs, this is a matter for governments not companies or individuals.
I do not see how option 3 could apply in this case. I would sympathise with a company in this stituation but I think there have to be other ways of dealing with it.
enviromental issues should not enter the equation
I think bullying another company or being deliberately devious knowing it was wrong should be dealt with mmore seriously.
only less serious if the details of the agreement were with full public disclosure.
THEy are still guilty of an offence.
those greenies again!
The profits are only an excuse
You cannot justify wrong doing.
No excuse for that type of trading as it is dishonest.
If the conduct was to prevent factories from closing, then an independent authority should assess the situation and validate the conduct for a specified period of time. All of these decisions should be made public.
Cheese is environmentally safe Bullying is never warrented
My reason is as before.
Prices did not go up as a result of the conduct is "just as serious" because maybe if they don't collude prices MAY infact go down! (apply to the other scenarios)
the only reason production was reduced was to make money not save jobs.The fact that it did not happen is no excuse
It is a hard decision to judge when it is actually preventing people from losing their jobs but obviously, still not ethical.
I do not understand the context of the last question
only if you prove by merging was the only way to stop from closing
two points: what i would deem fogivable (saving jobs and keeping prices as low) would be irrelevant because neither could possibly occur as a result of this action
no

You are creating catch 22 situations lol

Individuals can make an independent decision to invest in environmentally friendly products.

Environment friendly is just talk best described as crap To save jobs is some thing else but are they really saving jobs what happens next year

C2. BUSINESS GROUP – SECTION F

Do you think that Lee has broken the law by agreeing on prices with competitors? (Question F1A, n=34)

COMMENTS OF THOSE WHO ANSWERED 'YES'
Reference to own knowledge of law
I believe it's called 'price fixing' and companies have been prosecuted for it in Australia
I think there are such laws or regulations, but they are difficult to police.
Price fixing is already illegal as far as I know, though almost impossible to prosecute because it is all done under the table
I would believe this would break current laws in Australia. However the brick company is not the only one to benefit...govt extra GST
Pricing fixing is currently not legal
Yes, it think collusion with competitors to set prices is against the law currently.
This is collusion and is outlawed under the Trade Practices Act.
I'm pretty sure this type of behaviour is illegal
I understand that colluding on prices is illegal, for petrol stations anyway
I would assume this is covered under the laws on price-fixing
Reference to moral character of the conduct
It's dishonest.
Yes absolutely Lee's decision was based on a personal gain and manipulation and not in the interest of fair competition.
Price fixing
It is just another way of being dishonest for profit
We the public pay more, not really fair!
Yes because it defeats the purpose of having private industry if there is no competition and if collaborating to fix prices means that prices across the board go up and consumers have no option but to pay higher prices
Identifying conduct as "price-fixing"
I believe this is called 'price fixing'
There should be NO price fixing
Price fixing to prevent competitive market place
Collusion on price fixing
Price fixing?
I think that is 'price fixing'
Is that price fixing?

Other
price collusion
Is this "collusive behaviour"?
Unsure
Conspirousy
COMMENTS OF THOSE WHO ANSWERED 'NO'
This sounds like what happens already
I suppose it will stop people from trying to run around to get the cheapest price. As long as the prices were still overseen by someone else to make sure it doesn't get out of hand
But isn't all this sort of thing a good reason for someone to start a rival company and just undercut them. That is what I have done in my business and now have almost more business than I can handle. Granted I may end up working more but I also make more so I think the greedier my competition is the better!
COMMENTS OF THOSE WHO ANSWERED 'I'M NOT SURE'
I'm pretty sure that price fixing is against the law. Even if not, this is an example of business manipulating the market and screwing the consumer
That could go in the favor of smaller business if they go higher, if they go lower that will kill the small business's and lose jobs
I am not aware what the law is in regards to this matter.
It depends if there is currently a law to prevent this 'monopoly'

Do you think that Lee has committed a criminal offence by agreeing on prices with competitors? (Question F1B, n=17)

COMMENTS OF THOSE WHO ANSWERED 'YES'
Reference to moral character of the conduct
Yes in this case as he would have been aware he was breaking the law for his and companies gain ,not to mention all the other company cohorts as well.
He is still deceiving other people and government for profit
If he is caught.
It's price fixing.
Trade practices act
I think that the company may be fined and Lee may be fined.
COMMENTS OF THOSE WHO ANSWERED 'NO'
I don't think their is a law in place for this, but there should be.
If I was his competitor I would use this to my advantage, I would agree with him then drop my prices and he would then loose all his customers to me and I would be better off then him. Price fixing is self regulating when competition steps in.
It's probably a civil offence rather than criminal
Unsure
COMMENTS OF THOSE WHO ANSWERED 'I'M NOT SURE'
He is being greedy !
He has broken the law
I'm not sure of the current laws but i thought price fixing was illegal
I know that this has something to do with price fixing laws, but I don't know if they are an actual criminal offence or not
Criminal offence or breaking the law?
Should have but am not sure how far the current law goes.
I believe there are laws against price-fixing, but do not know if the individual or company is "at fault"

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? (Questions F2-F7)

Response	Comments
F2C – SCENARIO WITH CIVIL SANCTIONS/NO PRESSURE (n=15)	
Very unlikely	Surely someone in Ashley's position should be trying to win over the competitors customers through better service/better deals for the customer than trying to come to some sort of agreement with the 'opposition'. Penalties aside, I do not think he would make an agreement.
Unlikely	A hard one to comment on, it is not actually price fixing but I guess it is a form, sorry but a hard one
Unlikely	He would not want to risk his job
Unlikely	Most people are honest. If Ashley is one that is borderline, it will depend on the difference between the reward and penalty. If the reward was \$100,000 to him personally, then I think a borderline person would be very likely to take the risk.
Likely	The fine is anywhere near the maximum, so it's not really deterring them.
Likely	Fine not enough deterrent
Likely	It appears to me that there are always individuals in the community who believe that they will never get caught for breaking the law.
Likely	It all depends on how much they expect to make. If they don't expect they'll get caught, or they don't perceive fines to be high, they'll probably be happy to risk it in order to make heaps of profit
Likely	It all depends on the profits, most fines for companies are so small as to be meaningless to large corporations where 500K is petty cash
Likely	The difference lies in the law and its enforcement. A few show trials as happens now convinces smaller fish they can take the risk of getting away with it
Likely	It's the Australian way, and hardly anyone seems to be caught or punished - particularly from a big business.
Likely	I think a lot of people in business are willing to run the risk just to make a profit and get ahead. they don't really believe they will get caught. I think they feel like they can get away with anything.
Likely	Most people believe they will get away with such action, and only "careless others" get caught
Likely	I'm sure this sort of thing goes on all the time regardless of penalties involved.
Likely	I'm sure Ashley is not that much of a gambler!!!
F3C – SCENARIO WITH CIVIL SANCTIONS AND ECONOMIC PRESSURE (n=12)	
Very unlikely	Not much to lose, but an awful lot to gain.
Unlikely	I certainly wasn't aware that such penalties existed! You would have to be desperate to try and get away with such a thing when the punishment would

	make you extremely worse off.
Unlikely	Too much at risk for him
Unlikely	Depends on what is driving him, if losing his job means losing his home, etc and not being able to support his family. He might be pushed in to a position where he sees it as his only out!!!
Unlikely	Unsure
Likely	It is worth it if the penalty is so low
Likely	The average fine is a lot less than Ashley's potential gain.
Likely	Money speaks louder than following the law.
Likely	This is difficult to prove. The risk of Ashley being caught is outweighed by potential benefits.
Likely	He can make more money than the fine will cost and he's not a director anyway...he's a manager...so the other penalty won't affect him at all
Likely	If someone really needs to do this to save their job, the chances are they will take the risk.
Likely	It is silly that the law would impose convictions on a base where a struggling company is able to save jobs and the industry.
F4C – SCENARIO WITH CIVIL SANCTIONS AND SOCIAL PRESSURE (n=14)	
Very unlikely	If ashley is fined 40,000 and earns 300,000 a yr tht pocket change go against there tax and hit them hard with hold there homes and cars and credit card make them really hurt while law suit it going through and fine to tax income, and put money in the small business to bust them up make it fair
Very unlikely	Depends on who asked him to do it . if his directors suggest this then they are at fault. he does it to save his job principle against feeding your family are all very good but?
Unlikely	Ashley would have to have deep pockets to flout the law knowing if caught what penalty he faces.
Unlikely	I hope he would be honest
Very likely	Penalties for such conduct is not harsh enough hence no real deterrent to doing so
Very likely	Because what are the chances she will get caught?
Very likely	Given the chances of being caught, vs the reward of bonuses and pay increases, 40k is a small deterrent.
Likely	Let's be realistic - isn't this why you are running this survey. As well, businesses have been doing "shonky" things for years and getting away with it. It is about time there was transparency, and apprehension so that ordinary people can feel protected by the law. Wistful thinking...

Likely	\$40,000 is likely to be small compared to possible salary rewards /bonuses available from his company over several years.
Likely	Depends how moral or ambitious Ashley is. average fine doesn't seem that large considering profits to be made. Again, comes down to morality of individual
Likely	Greed is a powerful motivator, what's \$40000 if you've just got a massive pay increase and who knows what other kick backs?
Likely	It would seem very difficult to prove
Likely	Low risk of getting caught outweighs high penalties.
Likely	THERE ARE OTHER LOOPHOLES IN THE LAW
F5E – SCENARIO WITH CRIMINAL SANCTIONS AND NO PRESSURE (n=15)	
Very unlikely	The amount of punishment would be a deterrent for Ashly
Very unlikely	Jail time is a good deterrent
Unlikely	Wow, 10 years for being a practical business man and 5 years for killing someone! Wow what a country
Unlikely	He would have to be naive, therefore the full force of the law should be imposed
Unlikely	Most people are honest. If dishonest, a person will minimise evidence making it difficult for authorities to prosecute beyond reasonable doubt.
Unlikely	Its a lot to risk, and after all, it's just a job.
Unlikely	I think although he still thinks he'll get away with it he may start to think twice.
Likely	As long as the penalty is actually being imposed if this crime is committed, then it should be a good deterrent.
Likely	Depending on the stakes as to weather that ashley is willing to take that risk.
Likely	Lees likely than no jail -but the fear of jail is a significant deterrent factor but Ashley may still weigh this up against the improbable possibility of being discovered - or informed on
Likely	He'll run the risk if the profit is high enough
Likely	I have never heard of a jail term being imposed on a business leader for such behaviour at most they get a simple fine and are told naughty boy don't do it again
Likely	It sounds like Ashley has tendencies to be deceitful so i would think he will do this regardless of the consequences
Likely	Depends on how corrupt he is
Likely	See earlier
F6D – SCENARIO WITH CRIMINAL SANCTIONS AND ECONOMIC PRESSURE (n=8)	
Very unlikely	I don't think he would get a jail sentence but I think the chance of it would be a good deterrent
Unlikely	Not worth it if could go to jail, he would lose everything

Unlikely	He'd be silly to try it but if he thought he would get away with it then he probably would try. People never seem to get very severe sentences even for serious crimes so he might think it's worth the risk.
Unlikely	Lots of business people find ways to avoid scrutiny
Unlikely	As I mentioned before, and I don't think we should be jamming up our jails with this type (or any type of corporate law) surely there are cheaper ways to deal with this type of crime, and saving tax payers money.
Unlikely	Unsure
Likely	Unlikely to be penalised that harshly for being a first time conviction
Very likely	Balance of probability to commit the offence - profit versus getting caught - profit versus penalty - very unlikely to get caught without public complaint - very unlikely to get a gaol sentence owing to overcrowded gaols - cost of imprisonment - likelihood of rehabilitation minimal
F7D - SCENARIO WITH CRIMINAL SANCTIONS AND SOCIAL PRESSURE (n=7)	
Very unlikely	Why would you risk it?
Unlikely	A jail sentence will deter most misconduct from "honest" business people.
Unlikely	Risk of jail is and criminal conviction is more life changing than fine
Unlikely	Freeze account hit them where it hurts hard
Unlikely	Please remember against the law is a funny thing. its against the law to speed, have you ever?
Likely	I think what also needs to be considered is whether Ashley has been "told" to do this by his management, and that he was acting on orders. Right through history, subordinates have used this defence.
Very likely	Sadly greed overrules people's better judgement far too often

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? (Questions F2-F7)

F2D – SCENARIO WITH CIVIL SANCTIONS/NO PRESSURE (n=14)	
Very unlikely	Its unethical
Very unlikely	I think that I am more honest than most and would not even consider doing this.
Very unlikely	To get to that position to make such an agreement in the first place requires attributes that I probably don't have. I have a cynical regard for the system of ethics which seem to operate behind many a business (or religious) facade
Very unlikely	I don't think that any one is above the law and we should all be punished for doing the wrong thing.
Very unlikely	I am in a very competitive business now, it's how we treat our customers that make or break us. They are the base of any business and therefore should be the first things considered not the bottom line in any business decision like this.
Very unlikely	High fines would be a deterrent
Very unlikely	It is not worth the risk!
Very unlikely	Chicken!!!
Very unlikely	I may look for options where we can work together to improve efficiencies eg bulk purchasing
Very unlikely	Just the opposite, I would be trying to figure out the best way to lure their customers to my business with better offers, just as they should be doing ; that is what healthy competition is all about...and the winner out of all this is.....the customer.
Unlikely	better service wins customers, not always prices
Unlikely	I believe there should be more ethics than profits in business.
Very likely	I think that this is the Australian way. In other words ' a gentlemens agreement'
Very likely	It is against the law.
F3D – SCENARIO WITH CIVIL SANCTIONS AND ECONOMIC PRESSURE (n=10)	
Very unlikely	I don't like to tarnish my reputation
Very unlikely	Business ethics is an important part of my job, and my self-perceptions
Very unlikely	I've had the experience of being an honest employee surrounded by other people's misconduct a number of times, plus I also care a lot about my rights as a consumer. It the principle that would deter me, and not the amount of the fine, or any other legal consequences.
Very unlikely	I'm not in business ... more honest!
Very unlikely	Far better to try and improve the quality of service and offer incentives to retain and increase your customer base.
Unlikely	Not worth the risk
Unlikely	It's not worth taking the risk to end up in jail, having to pay huge fines and it's unethical

Unlikely	I would like to think I wouldn't, but jobs are not easy to find, especially as I am getting older, and pressures may sway me.
Unlikely	The honesty in me says that I would try and win over the customers because when the deterrent is so small, it's well worth the risk.
Likely	Unsure
F4D – SCENARIO WITH CIVIL SANCTIONS AND SOCIAL PRESSURE (n=10)	
Very unlikely	Why put yourself and company at risk of harsh penalty and lose face publicly by breaking the law all for profit
Very unlikely	As a small business owner having to deal with shonky people I go out of my way to be as honest as i can
Very unlikely	I consider myself to have strong business ethics.
Very unlikely	If I found myself in such a position I would resign rather than do wrong
Very unlikely	I'm a little confused here. Most of the previous scenarios were about price fixing and winning over customers and how it should be at the very least, illegal. And now you are telling us that it is illegal to get together with competitors and not price fix and not win over each others customers. What just happened here?
Very unlikely	Customer are your bread & butter. You need to go above & beyond to satisfy them. Whether it's better deals or just better customer service.
Unlikely	In business you have to be competitive pricewise and quality wise therefore you have to win more work to stay in front
Unlikely	But it is hard to say, as I have never been in the situation. If the situation were to occur, who knows what I would do
Likely	Well if the company was in on it I'm sure I agreed to a pay out if I got caught so it wouldn't bother me if I got a nice pay out from them
Very likely	I actually had to when I worked in transport, it was not a choice, it was a requirement - I would suggest Ashley did not really have a choice
F5F – SCENARIO WITH CRIMINAL SANCTIONS AND NO PRESSURE (n=12)	
Very unlikely	Not only the wrong thing ethically, but the extra threat of jail seems far too great a risk
Very unlikely	It's unethical. I don't do it now, and I would never consider it.
Very unlikely	Never
Very unlikely	I would not do it as stated before on ethical grounds - the existence of a jail penalty would not influence me - although it may deter others. There are many industries where severe penalties exist but only few examples exist of those who break the rules are fully prosecuted and punished. (Example effect)
Very unlikely	I wouldn't break the law
Very unlikely	Still chicken!!!
Very unlikely	Jail is more of a fear to me

Very unlikely	I would rather go the other way and do my best at enticing their customers to my business through better deals and better customer service
Unlikely	I am not a risk taker
Unlikely	It not fair on the consumer but if I was desperate for money I might consider it
Likely	As I said earlier it happens all the time and has been going on for years usually 'over a beer' at the local. Fortunately people in the country are very different to city people and help each other, if they did not our towns would not survive
Likely	Against the law.
F6F – SCENARIO WITH CRIMINAL SANCTIONS AND ECONOMIC PRESSURE (n=8)	
Very unlikely	Same as previously
Very unlikely	I'm not one to take risks, the thought of a fine would be enough of a deterrent, let alone a jail sentence.
Very unlikely	Not worth going to jail for and it would be against my ethics and the way I was brought up by my parents.
Very unlikely	No way !! Not the dishonest type
Very unlikely	Matter of scruples
Likely	More likely as a criminal offence would not bode well on my resume.
Very likely	Wouldn't happen
Very likely	Unsure
F7F - SCENARIO WITH CRIMINAL SANCTIONS AND SOCIAL PRESSURE (n=4)	
Very unlikely	I do not fancy losing my house etc just to make a boss happy. I can always find another job
Very unlikely	I would resign and probably "whistle blow" rather than be involved
Very unlikely	Even without the penalties I wouldn't be willing to agree
Unlikely	Again, hard to say without prior experience

APPENDIX C3. OPEN-ENDED RESPONSES AT END OF THE SURVEY

Finally, is there anything else you would like to tell us about the scenarios or issues in this survey? (Question G2, n=187)

Only that it is about time all businesses (and their shareholders) became less greedy, more transparent and honest in all their dealings. Businesses, especially big businesses, are ruining this country. They should also butt out of politics.
I believe there is quite a bit of this type of conduct in medium to large companys that we dont hear about
very interesting survey, I like to know these sort of things, thanks
Human life and associated misery should be avoided
Very interesting
this issue affects small towns - woolworths fuel in particular - fuel here is normally 10c a litre more than 120km away even though the other town draws fuel from here. Woolworths prices are apparently based on checking the other fuel retailers (who are small businesses) and taking 2c off to set their price.
A little more flexibility with answers.
There are many laws in Australia that are never enforced. The ACCC is likely to tell an individual to go to their State's small claims court, this is wrong, it is as bad as a policeman who looks the other way.
I have no faith at all in our justice system, the ACCC is a 'toothless tiger' in my opinion
It was very mind-skilling.
Fairer Pricing for all
This is almost impossible to to police . Widespread publicity leading to consumer action would work well in most cases. Legal action only benefits already rich lawyers
It is difficult to compare the seriousness of a commercial crime against a crime such as murder or sexual abuse. I believe that any crime against another person to be very serious especially when the crime inflicts harm on people either physically or financially.
You will have already said 'This respondent is naive.' Probably true because what should happen will never happen because everything, including forgiveness, can be bought at somebody else's expense.
Colusion is against the law and criminal charges may be brought against the directors of the companies. The company that informs on the colusion is granted immunity against prosecution.
hopefully the government will implement similar measures to tackle the issues of price fixing and the possibility of a jail sentence could be enough deterrent those involved
surely the events of the last few years show that white collar crime has more serious ramafercations than taking a gun and holding up a service station with a gun
people get greedy, and new parties enter the market if prices get too high...let the market decide.

It all gets back to Policing and application of the Law and Penalties involved. It is like driving faster than the speed limit. If you think there is a good chance you will be detected you slow down and vice versa. I think this used to be called Situation Ethics and is Subjective. Not an uncommon situation. There was no king in Israel and every man did that which was right in his own eyes. If you know the verse.

HAPPY TO DO MORE SURVEYS

I feel strongly on all of the issues that were mentioned.

good scenarios

Perhaps there should be rewards for white blowers

These scenarios are happening everyday and because big business has the money nothing is done about it.

Why not say exactly who it is aimed at ie oil companies.

All scenarios should be made an offence regardless of the initial reasons given by the companies/individuals as get away with one, will try again

Some of my responses may not be what I was really meaning to say. They may have come out wrong or so. I was not sure at times of how to put what I was thinking into words.

Make sure the directors and associates pay the penalty within the the law as we are to weak in Australia.

Business needs to be able to survive as Govt charge what they can getaway with.

I think it is bad to let a few big companies control things like food and other necessities (oil)as it squeezes out the small operators

please more open questions

unsure

The big supermarket chains should be investigated much more thoroughly and the ACCC should have the 'guts' to stop them in the way they conduct their business and make the manufacturers pay such high percentages of overall sales and advertising

business appear to be above the law. Just because they make money/profits.

it does happen a lot.its always reported on the news

Any collusion between competitors which increase consumer prices should be dealt with severely by law.

I do not see a problem with price fixing, it is none of the Govts. business what people do with their Companies, price fixing helps keep prices even and it is up to the business owner to give good service and let the public choose who they go to

great to see a survey on this significant issue

Have heard of price fixing and cartels being fined in European Union involving suppliers to my company.

I feel competition in business is a good thing but not if people suffer

I was not aware of these laws, I dont think they need to change but awareness needs to be raised.

I think fines are more appropriate especially if they gain nothing. Putting people in Jail for economic crimes seems unwarranted where violent thugs get away with community work.
It is just as serious when big businesses undercut small to force them out
All conduct affecting other people should be treated as criminal. For Example many have been affected by Con Artists. There are thousands of them with their offending being regarded as being less serious than other types of Fraud. Knowing the amount of money being collected as fines people can be allocated to hunt them out so these offenders with no conscience can be put in jail.
Maybe I am not a good candidate for questioning, I try to see both sides of an argument. I believe conduct which would prejudice jobs or is morally wrong must be censured but I am unsure whether that can actually be legislated against.
Unless Judges give the max they can it will keep happening
I believe there has to be harsher penalties than at present otherwise you find people flouting the law beyond imagination, because it's all about making profit above good business practices in some cases amongst our big n small business. I am all for stricter laws. Thank You
I do not smoke but think the government steals from smokers and drinkers
The behaviours of not only the late Mr Pratt but also Visy and Amcor were reprehensible in the extreme and the 'sanctification' of Richard Pratt was sickening.
If the companies are doing it but it makes sense to do so, ie north of the city and south of a city and it saves the consumers money as there is less transport costs involved etc then that would be OK.
In regional Australia the behaviours mentioned are standard
if this is what is making cheese so expensive it should be illegal.
I believe that price fixing infiltrates all major industries in Australia, and that it is the norm, rather than the exception, despite the legal and/or criminal implications of these actions
If one type of business is allowed to fix its prices (I can only think of the petrol prices at the moment) then how can we judge other businesses. I do try and save on expenditure, just like everyone else, but cannot understand how one business is allowed to charge as much as they like and another has limits or caps.
Steps urgently need to be taken to protect consumers who are the ones that suffer especially those on a low income.
Unfortunately the authorities only seem to take action against small business and neglect to take action against large corporations for obvious breaches.
I have friends in their own businesses. They find ways to avoid paying tax, they receive assistance from the government and are the ones who have money that needs to be disposed of by taking overseas trips, buying new cars and putting in swimming pools. Fed up.
It was a very different kind of a survey and I enjoyed it.. Thanks,
I believe that Coles and Woolworths are the number 1 guilty parties with regard to the scenarios listed.
The survey highlights several cases where fraud has been committed any offenders should be jailed or fined or both
Although this is a criminal offence and against the law, I still believe business's do price fix.

I just think fines should be appropriate for the size of the company as well.
I find any price fixing and collusion of any manner abhorrent and should be policed to the full extent of the law with no wishy washy slap on the wrist action as happens from time to time
price fixing takes choice away from customers, so quality will decrease.
interesting survey, made me think.
It is actually a very interesting survey and makes one think
Good luck.
I found it a little difficult to compare the seriousness of different scenarios.
Hard to choose as there possibly could be more issues involved. Overall it should not happen
There is not enough accountability for financial misconduct. Make some harsh terms, and impose them, and see if people's behaviour changes
companies and individuals should trade fairly and live up to Australian principles of a fair go for all
It's a tough survey as we do want fair trade and competition but we also want people to prosper as well.
It seems to me that it's the consumer that always seems to be out of pocket in the end.
Thank you for an interesting survey!
These are important issues, that always have wider implications. Therefore judgement should not be made by one person but by a panel of experienced individuals.
competition is healthy and one would pay more for quality
The deterrent for crime in this country is all but non-existent.
Nothing is ever as "black & white" as such scenarios portray
I do not like the way big businesses can lower their prices with a result of forcing smaller businesses out of the market
I believe fines should be set as a MINIMUM figure and then determined on a case by case scenario to be more of a deterrent. These people make bad decisions to gain money so hit them where it hurts... money!
giving names and occupations made it easier to understand
I think anything to do with price fixing in any shape or form is another way of theft and is not ethical. If the penalties are high it may seem harsh in the beginning but may also have a deterrent value in the long run. If those people could not sit on company boards etc it could make it difficult for some of them. We can only hope.
The scenarios seem very real and if applied to oil companies would lead to many law suits !
the best example of price fixing is the Oil; Companies. It can't be coincidence that ALL petrol stations have the SAME prices regardless of oil prices. Are immune from prosecution ??
only that I wouldn't be surprised by it as I am certain it is happening with grocery shopping etc now....thankyou

I think there are too many laws governing business today. I did not like the collaboration between the businesses - this should be handled in another way otherthan making it a law.
VERY INTERESTING AND APPEALING
The survey itself was very professionally prepared. Thank you!
Whilst state and federal Governments are the biggest Prixe fixers, I have not heard that anyone has been taken to court over it. Fed Gov Medicare Rebate structure is Price fixing, State Gove Taxi Tarifs are price fixing. Who is taking action?
theft is theft no matter how you dress it up. In the world of consumers lots of people, people with families get hurt big time.
It appears that there is quite a lot going on in business that we aren't aware off
Far to many so called directors walk away scott free with large payouts, whilst others suffer.
Smart lawyers can usually find ways out of these scenarios for those with enough power or money. Smaller fish are going to be exemplified from time to time however
Thanks for the oppportunity to express my opinion on a very important topic that I feel needs much more attention and justice brought to it :) All the best with your research
This is a serious crime and the penalties should be very strong to deter this policy
We need to forever protect consumers from rip off merchants,especially in these hard times.
In the scenarios just listed BOTH visy AND amcor should have been punished
Something should be done to STOP the big companies from outpricing the "corner shop" and also stop trying to sell inferior products at a max price. Thank you
The scenarios used are happening in the real world from large corporations eg: petrol companies to retail giants and probably a lot in between and yet the government through its corporate watchdogs seem to be ignoring the problem
Would still like to believe that there are honest businesses out there and that competition is good for the economy and customers.
I think there needs to be more of an effort made to make the public aware of the laws and penalties for these things, and that when people/companies are found guilty that it should be publicised to a greater extent.
i think the way you want to go imto business and deal with your business should be up to u if it sinks or swims its totally up to yourself. If u want to go to the same company and make a deal i reakon it should be ok if u both agree and stick too
I feel that price fixing is harmful to the Australian economy and therefore the public.
It is a very interesting survy
Trust is a very important issue for every individual or business.I am very trustworthy and expect the same from others.I also don't like being manipulated by others. Freedom of choice is important in a democracy, without it it is no longer a democracy.
There is so much to be told about these scenarios that there should be a live talk to be able to express ourselves
Good survey

I consider that where a customer/client has lost monies through a fraudulent act (deception, price fixing or selective processes) then that customer should be recompensed and the perpetrator fined and/or jailed dependent upon the criminal law. Expressly planned acts of deception/fraud should be publicly reported and executive/board members jailed and banned from further board involvement.
I believe that our civilization is based on the principles for good living found in the bible, I trust that people will consider honesty and fairness to further their business opportunities.
The Visy Pratt court case was in my opinion a witch hunt by Samuals against Richard Pratt,
too many times the companies go down owing employees super, holiday money etc & the high flyers/ directors walk away with their pockets (or their families pockets) full & ready to start another business. Maybe bankruptcy is too easy to fall back on if you are declared bankrupt you shouldn't be able to just walk away if you start another business (regardless of whose name is on the paperwork) you should have to pay the money back to the people who were owed from the previous business .
each company is trying to survive, they are just doing it the wrong way
just watched the film "The Informant!" very topical
They were realistic and happen commonly but nothing is done about it. This is raising awareness on the matter
IT, or similar, probably happens all the time and will continue to happen
Should be an open market where these agreements can not exist. ACCC is benign and needs an overall, more powers to administer fines etc
The same scenario seems to be repeated several times, just using different trades
You never hear about price fixing or competitor agreements, but everyday you hear of bankrupts still owning and managing businesses and running companies. The govt has no control over these people how will they ever control something involving mainly verbal agreements.
when there are only two companies involved in the scenarios some of the statements become redundant ie competition
I hope none of the scenarios described happen!
all scenarios in this survey have extrem penalties attached to short term financial gain
The overwhelming issue about all of these issues, is the one of being fair to all concerned.
There are some similarities in the scenarios to exactly what happened in some parts of Europe prior to WW2 when for instance 2 or 3 Bakers in a small town would agree on prices for their wares and then keep on increasing their prices so that the towns folk could no longer afford to purchase bread etc at all.
Our "Justice" system in Australia is a joke.
very interesting. learnt lots
It disgusts me when a supermarket sends an employee to check on the prices of bananas etc at a small business that has set up nearby as competition and then sets their prices down a few cents until they have put that small business out of business
Strong efficient federal government business laws would alleviate illegal practices.
i think the scenarios could be quite real

<p>It always surprises me that people can lay down straight when they behave so cooked and plead innocent when caught red handed with their complicit hands in the till. they defraud themselves, their companies, their customers, the public image, their failies and communities with impunity. I remember the chap anset - and bond - they went to jail but this is not common. Money pays high priced clever lawyers to aid their slippery way out of thier true deserts.</p>
<p>I found this survey very interesting.</p>
<p>In reality I would imagine this to be very hard to identify and prosecute & can only be made worth policing if the fines are very very high</p>
<p>All parties involved should share culpability for partaking, in the first place.</p>
<p>SINCE I WAS RETD MANAGER FOR PERONNEL AND ADMINISTRATION COMPANIES. I KNOW ABOUT THIS TOPIC. GOOD AND SENSIBLE SURVEY.</p>
<p>I diagree with any price fising because it seems the consumer always ends up losing out</p>
<p>i think these issue should be told and not covered up it seems they get covered up alot u see big companies evryday bullyinh smaller business IT ABOUT TIME small business get protected and get justice and recieve payment from the bullys</p>
<p>people will one day figure out whats going on and then they will stop doing buisness with these people and the country could grind to a hult</p>
<p>I would like it if companies would try and serve their customers instead of trying to get every last cent out of them.</p>
<p>crime is crime no matter what shape or form it comes in.</p>
<p>They were a very good and easy survey to follow thank you</p>
<p>I dont think that jail sentences are appropriate in most of these scenarios...impose heavy fines I say</p>
<p>I would really like to think that their is no dishonesty in business but there is and I think everything should be done to deter this</p>
<p>I think there is a perception that the authorities will not find out about price fixing</p>
<p>EACH TYPE OF BUSINESS NEEDS TO BE LOOKED AT INDIVIDUALLY AS ONE LAW/SYSTEM DOES NOT FIT ALL</p>
<p>i feel the only way evidence to provide a guilty verdict would be, if an alternate company had inside information. All tenders & contracts are open usually for an alternative agreement. Big business can change its mind in any case at any time when it see fit. Provided the pay the residual of the contract, it is not an issue usually. The door can be opened for a mis interpretation of current circumstances however. I have seen this & viewed the flow on effects & this is a current trait within the Oil & Gas industry.</p>
<p>WE NEED WATCHDOG BODIES.</p>
<p>The main problems re this issue is identifying collusion in the first place and then proving it has happened. Petrol prices are an example. The companies can always dream up good reasons for the price rising over weekends!!</p>
<p>if this is happening and price fixing is know about the something should be done NOW not in six months time</p>
<p>I think there should always be a healthy competition between businesses. By the end it's up to the</p>

customers to stay with the business that they usually shop at or go elsewhere. Sometimes businesses think they might be doing the right thing until they start losing customers
It is the collusion I find reprehensible not the reducing production or confining activities to an area.
corrupt business dealings should be shown and explained to the public.
Competition in business makes for better business practice and offers the best quality of service and product to the consumer. Any "fixing" has the potential to lower the standards whilst increasing pricing and a general lack of good service.
very interesting survey
The elimination of competition by the two large Australian retail chains has already gone so far, that most smaller operators have been eliminated
The scenarios could represent either big or small business-but both types of business are collaborating without public knowledge. If it was direct competition things would be different. Take the effect that Aldi has caused to the two majors- their game has had to have lifted considerably. Richard Pratt and his mates could do it because they were also politically attached-that always makes a difference.
Agreements entered into by companies to fix prices create situations which should be considered no better than theft.
the law is the law and it shouldn't depend if the offender is a small business or big or an individual
I strongly feel that price fixing should be a criminal offence. You can already see it in the oil industry
It's about finding what is as fair as possible to a consumer and to a business,so both can survive.
I would like to think we have free competition.
only the varied price fixing of petrol
In reality, most directors don't think that they'd be caught and even if they are they'll only get a slap on the wrist.
We have oil cartels and nothing is done.
The ACCC is a toothless Tiger and needs more power to prevent these activities proliferating in Australia.
These deceptions are wrong & illegal not a fair the book should be thrown at the company fat cat liars for this. not on
what if the competitors are the only companies in that industry (monopoly) and rule that then the consumers are ripped off..consumers need to have choice which in turn will increase competition and effect the prices
I believe it is more important to educate those not partake in illegal dealings rather than make money out of their crimes or punish ourselves by imprisoning them and bearing the cost of their incarceration
its good to get people response, we need to know whats going on with companies
you went to long and were way to repetitive
no
ACCC is a toothless tiger - considering the number of prosecutions vs the size of Aust. business

the 1-7 scale was confusing.
very difficult to be objective given the different scenarios. When Big money is involved it should mean big fines or jail
Ethics in business are sadly lacking. Profit is the point of business but profit at any cost is in my opinion unethical. It is almost expected that companies will be unethical and many people don't know or care what ethics are. All they care about is the cheapest price. IT'S AN ATTITUDE THAT'S RAMPANT IN OUR SOCIETY. I'd like to see the issue talked about more. We need a Mythbuster style program to raise the profile of this issue--or more films like Save the Tiger.
Very repetitive
spreading the work or product between suppliers should be allowed much like tow trucks or taxis
The scenarios put forward are not unusual in this day and age. The other side of the coin is that of LARGER companies playing off against each other thereby placing smaller business in jeopardy. I find it hard to believe the scenarios put forward would eventuate whilst the big boys are around fighting it out between each other.
If any agreement should be made, they should be made public to authorities which should judge if the agreement would benefit the society overall. Otherwise, they should be banned.
I do agree that more control has to be introduced on any business to make sure it is fair and square
Whilst what is portrayed here is not good, there's far worse things going on in society requiring a higher priority I think
Your questions were unrealistic A crime is a crime a judge decides the penalties that are prescribed by law Corporations are run by individuals at the top they are the ones responsible for criminal activity
Yes, I once attended a work sponsored seminar about trade practices
no
Good, interesting questions
this needs to end
the last scenarios with ashley was difficult to decide as ashly is not a real person and each of us react differently in certain situations i would only be able to be sure of my responses if i knew the actual person
Maybe crimes against individuals in some ways are more serious than crimes against the state. A community/society have more means to voice their opinion and be heard, than individuals with limited resources.
Anti-competitive behaviour should be discouraged in all circumstances and fines should be issued to companies and individuals involved in price-fixing or the like.

APPENDIX D: DEMOGRAPHIC PROFILE OF RANDOM SAMPLE REPRESENTATIVE OF AUSTRALIAN PUBLIC

Background		n	%
			<i>*(sub-group %, where applicable)</i>
Age	18-24	143	11.0
	25-34	192	14.8
	35-44	240	18.5
	45-54	249	19.2
	55-64	234	18.1
	65+	238	18.4
Gender	Female	647	49.9
	Male	649	50.1
Household income	Less than \$50,000	487	31.9
	Between \$50,000 & \$149,999	627	48.4
	Between \$150,000 & \$249,999	77	5.9
	Between \$250,000 & over	9	0.7
	Don't know	96	7.4
Education level	Year 8 or below	15	1.2
	Year 9 or 10	198	15.3
	Year 11 or 12	248	19.1
	Certificate, Diploma or Trade	451	34.8

	Bachelor degree	251	19.4
	Postgraduate degree	133	10.3
Formal education in law	Qualification	19	1.5 (4.9)
	No qualification	365	28.2 (95.1)
Formal education in economics, commerce or business	Qualification	94	7.3 (24.5)
	No qualification	290	22.4 (75.5)
Paid work status	Work previous week	755	58.3
	Not work previous week	541	41.7
Non-work status	Voluntary work	39	3.0 (7.2)
	Unemployed & looking for work	34	2.6 (6.3)
	Home duties	186	14.4 (34.4)
	Studying	38	2.9 (7.0)
	Retired	205	15.8 (37.9)
	Other	27	2.1 (5.0)
	Other (not working)	12	0.9 (2.2)
Main position	Employee	452	34.9 (59.9)
	Middle manager	156	12 (20.7)
	Senior manager	47	3.6 (6.2)
	Member Board of Directors	4	0.3 (0.5)
	Owner	96	7.4 (12.7)

Workplace size (employees)	0-19 (micro)	317	24.5 (42.0)
	20-199 (SME)	227	17.5 (30.1)
	200 or more (large)	211	16.3 (27.9)
State/Territory	ACT	26	2.0
	NSW	377	29.1
	Vic	336	25.9
	Qld	255	19.7
	SA	131	10.1
	WA	131	10.1
	NT	22	1.7
	Tas	18	1.4
Voting preference	Liberal	414	31.9
	Labor	523	40.4
	National	33	2.5
	Australia Democrats	20	1.5
	Green	105	8.1
	One Nation	13	1.0
	Family First	30	2.3
	No party	104	8.0
	Other	2	0.2
	Independent candidates/other	42	3.2

minority parties

Refused 2 0.2

Don't know 8 0.6

APPENDIX E: INVITATION TO PARTICIPATE AND PLAIN LANGUAGE STATEMENT

E.1 INVITATION TO PARTICIPATE

Reward offered for new survey - 619906115 - Windows Internet Explorer provided by Research Now

http://intranet/ProjectSubEMailPreview.aspx?SubProjectID=429050

File Edit View Favorites Tools Help

Reward offered for new survey - 619906115

Valued Opinions



Hi Tomoyo,

We have a new survey available for you to take. If you qualify and complete the survey you will receive 3.00.

Please click here to start the survey

If you have problems accessing our survey please copy and paste the link at the bottom of this email into your browser.

HOTMAIL USERS: Please copy and paste the URL into a new browser window.

PLEASE NOTE, if you need to copy and paste the link please do not forget to copy the entire link including the z=XXX. If the link is on more than one line, please make sure you reform it into one complete line when you paste it into your browser.

Thanks for your help.

Kind regards

Alex
The Valued Opinions Team

Survey topic:
Social Research

Reward for qualification and completion:
\$3.00

Survey length:
16 - 20 minutes

Available until:
Friday 9th July or until we reach our target number of completed interviews.

Useful tips:
Found this survey in your junk folder? Don't miss out on receiving your surveys. Add the Valued Opinions ADDRESS to your address book.

PLEASE DO NOT REPLY TO THIS EMAIL ADDRESS AS THIS IS AN AUTOMATED EMAIL. You have received this email as you are a member of Valued Opinions, where we reward you for taking part in research. Recommend our service to a friend by clicking [here](#). If you have a query or require immediate help, please see our detailed FAQ section [here](#). If you require assistance from our Panel Support team, please click [here](#). If you wish to unsubscribe from receiving emails from Valued Opinions please click [here](#).

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<http://www.valuedopinions.com.au/survey/VOP28061007254381ASJ/enter.asp?z=AG2E4CAF561AEF3584CF9B9195188E77635502A838654C54790694AC67D395FAB1>

Done Local intranet 105%

E2. OPENING SURVEY PAGE



istart



Business Conduct: Public Opinion Survey

This survey is designed to find out what the Australian public thinks about competition and business behaviour. We want to know your opinion about whether certain behaviour should be treated as criminal and what penalties should apply. This survey is being conducted by researchers at the Melbourne Law School, University of Melbourne and is funded by an Australian Research Council Discovery Project research grant.

The researchers will receive only an anonymous version of your survey, without your name or any other identifying information. If you would like to read more details about what you will be asked to do in this survey, how your confidentiality will be protected or how you can contact the researchers involved in this Project please [click here](#) .

You have been invited to participate in this survey because the researchers believe it is important to find out the views and opinions of ordinary Australians on these issues. Participating in this survey is entirely up to you. You may change your mind about participating up until the point that you submit your response.

We appreciate your time and effort in completing the survey and value your opinions. Participating in this survey will involve you answering some background questions about you (e.g. your age group, your education, your occupation and your income), reading some short stories about business conduct and then indicating your views about that conduct. Some of the questions may take time to read and consider before you answer and we appreciate your time and care in answering them. We expect that it will take approximately 15-20 minutes to complete the survey. Some people may take longer however, especially if they want to take the opportunity to explain their views or add extra comments.

I HAVE READ AND UNDERSTAND THIS INFORMATION

istart2

If you have any questions or concerns about this research, you can contact the research team by email by [clicking here](#). The lead researcher is Associate Professor Caron Beaton-Wells. The research has been approved by the University under HEAG Application no. 1033170.1. If you still have concerns about the Project you may contact the Executive Officer, Human Research Ethics, The University of Melbourne ph: 03 8344 2073, fax: 03 9347 6739.

We recommend you review and print our contact information. Please [click here](#) to print.



Who is conducting this Project?

This Project is being conducted by Associate Professors Caron Beaton-Wells and Christine Parker of Melbourne Law School, the University of Melbourne; Associate Professor Fiona Haines of the School of Social and Political Sciences, Faculty of Arts, the University of Melbourne; and Professor David Round, Centre for Regulation and Market Analysis, School of Commerce, the University of South Australia. The research assistant is Janette Nankivell. The Project is funded by the Australian Research Council.

What is involved in agreeing to participate?

Participating in this survey will involve you answering some background questions about you (e.g. your age group, your education, your occupation and your income), reading some short stories about business conduct and then indicating your views about that conduct. In some questions we will give you some alternatives to choose from. In some questions we will also give you the opportunity to explain your views to us and say anything else you think we should know about.

Some of the questions may take time to read and consider before you answer and we appreciate your time and care in answering them. We expect that it will take approximately 15-20 minutes to complete the survey. Some people may take longer however, especially if they want to take the opportunity to explain their views or add extra comments.

Your anonymity

We will not be told your name or other details. The survey company will keep your name and other details separate from your response to the survey. The survey company will keep your name and other details confidential as set out in the agreement between you and the survey company, in accordance with privacy laws.

If you agree, can you change your mind later?

Participating in this survey is entirely up to you. You do not have to complete the survey if you start it. You may change your mind about completing the survey any time up until you click the button to submit your response at the end of the survey. Your survey will not have your name or other details to identify it and so it will not be able to withdraw your survey after you submit it.

What will happen to the answers you give in the survey?

We will receive and keep the data set from the survey. This consists of the number and pattern of answers that all of the people who participated in the survey gave to each question. This will allow us to analyse what the views across the general public are on each question.

How will information from the survey be made available to the public? Over the course of the Project, the results will be disseminated through articles, books and online publications.

Contacting the Project team?

If you have any questions, you are welcome to contact any of the research team to talk about the Project and ask any questions. You can contact us as set out below.

What if you have concerns about the Project?

We are happy to talk about any queries or concerns that you may have. You may contact the researchers as below.

You may also contact the Executive Officer, Human Research Ethics, The University of Melbourne ph: 03 8344 2073, fax: 03 9347 6739.

What if you would like more information about the Project?

There will be a link to take you to further information about this research project provided at the end of this survey.

The researchers involved in this Project are:

- Associate Professor Caron Beaton-Wells, Melbourne Law School, The University of Melbourne 03 8344 1004 c.beaton-wells@unimelb.edu.au
- Associate Professor Fiona Haines, School of Social and Political Sciences, Faculty of Arts, The University of Melbourne 03 8344 9448 f.haines@unimelb.edu.au
- Associate Professor Christine Parker, Melbourne Law School, The University of Melbourne 03 8344 1093, c.parker@unimelb.edu.au
- Professor David Round, Centre for Regulation and Market Analysis, School of Commerce, The University of South Australia 08 8302 0760 David.Round@unisa.edu.au
- Janette Nankivell, Melbourne Law School, The University of Melbourne 03 8344 1023 janetten@unimelb.edu.au

We recommend you print this page in case you need to contact us later.

Yours sincerely

Associate Professor Caron Beaton-Wells
Associate Professor Christine Parker



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Thank you for completing this survey. We value your opinions.

This project is about new laws in Australia that have made cartel conduct (price fixing, market sharing, bid rigging and output restriction) a criminal offence. The responses in this survey will be used to determine what the Australian public thinks about the seriousness of cartel conduct, what the appropriate penalties are and what effect the new laws are likely to have on deterrence of such conduct. The responses will also help the researchers formulate recommendations about the implementation of the new laws and related policies. The research outcomes will be published in journals and other related sources and may be used in submissions to government about cartel conduct.

Your survey will have all of your identifying information removed by Valued Opinions who will then provide the researchers with only the answers you gave to the survey questions and not with your personal details.

If you are interested in finding out more about this research project you can visit the website at <http://www.cartel.law.unimelb.edu.au/>. A report of the results of this survey will be published on this website later in 2010.

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When you wish to submit your survey click here.

