



Why good companies misbehave and (occasionally) break the competition rules

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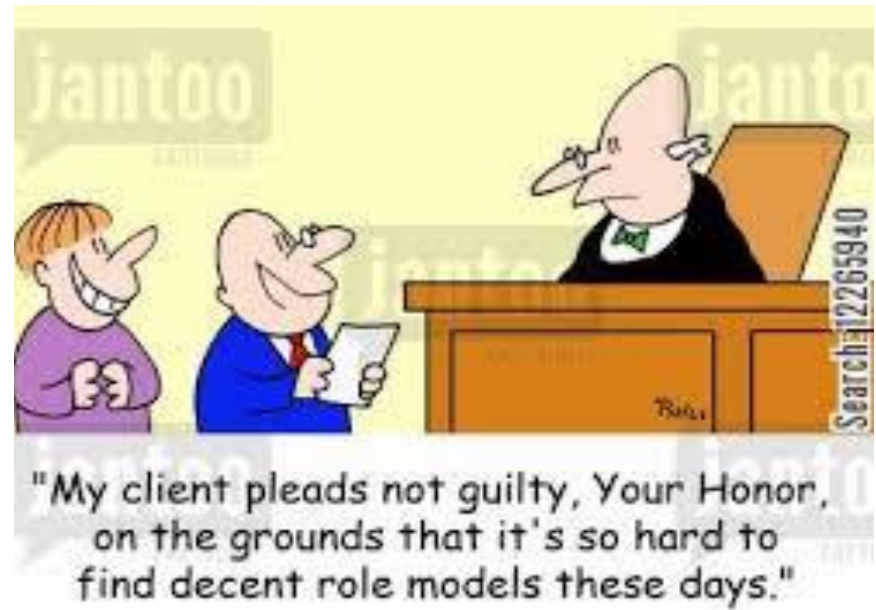


Why good companies misbehave and (occasionally) break the competition rules

23. september 2014



Why do companies break the law?



The answer emerging from enforcers and the public is that they gang up against the free market deliberately, consciously and with a malicious intent



Impact on compliance

- Most companies adopt a compliance approach centered on avoiding careless conversations, comments or participation in (secret) meetings with no legitimate or clear purpose



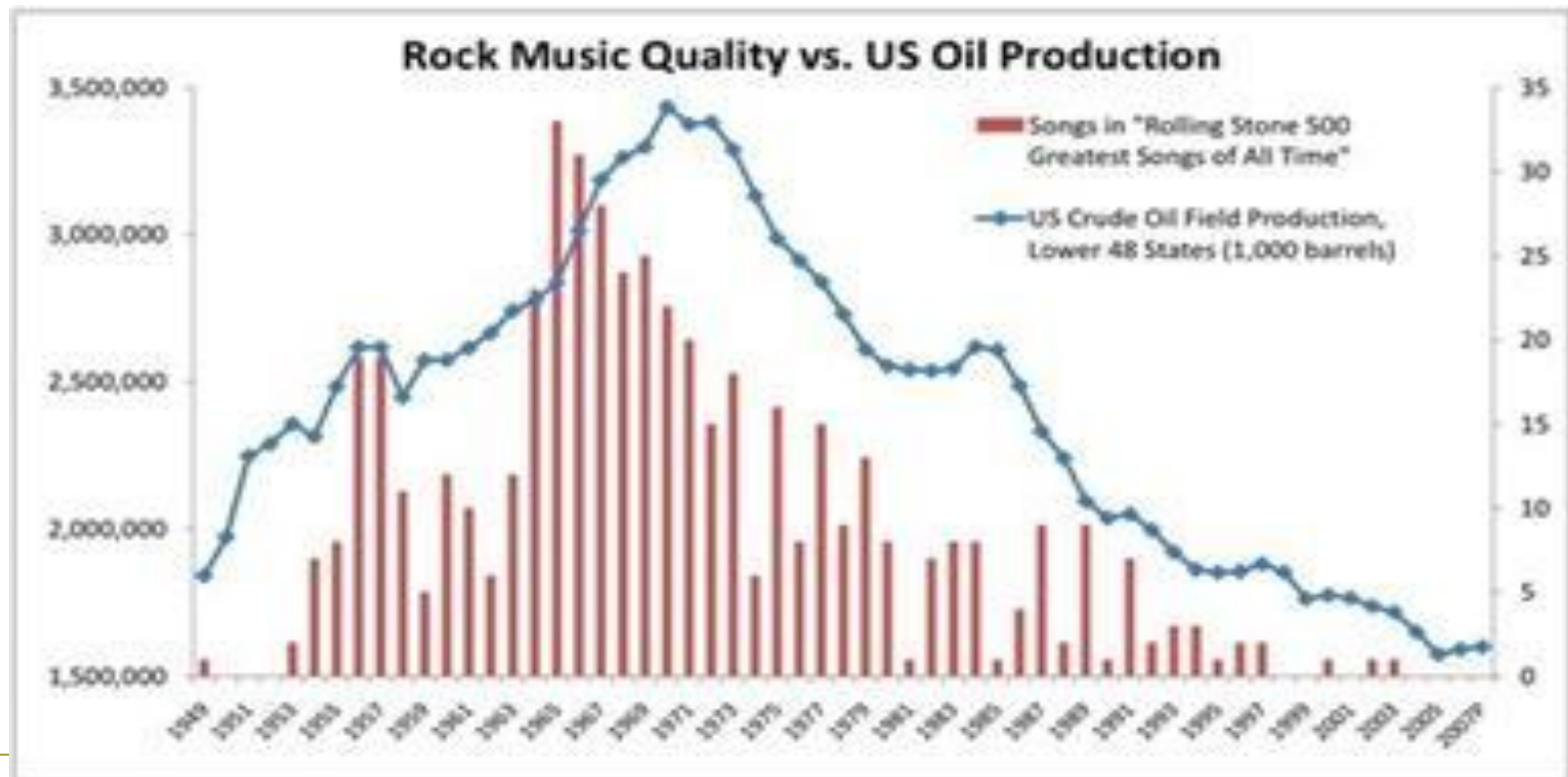
Impact on compliance

- Why you might have heard lawyers recommend a strong and clear reaction if confronted with any such attempts, e.g. suspicious invitations, in order to avoid misunderstandings, or that you should “NEVER EVER....”



Impact on compliance

- A prudent approach. A meeting followed by parallel behavior does look suspicious



"Veterinary cartel"

Summary of meeting between veterinarians held on 6 May 2008

Byggestru Dyrbohospital - Referat af møde for dyrlæger
Åbnet: den 6. maj 2008

Discussioner:

Arbejdsresultater pr. år

"Shoppingpriser"

- Det skal ikke være værd at køre efter disse ydelser
- Sættes som laveste takst
- Er ydelserne ens?
- Ekstra ydelser skal takseres ekstra
- Opdeling honorar/medicin/materialer

Medicinske vs. faglige problemer, hvordan opnar vi betaling for den tid vi bruger på at løse
bøvedet?

- ✓ Medicinske værktøjer, bl.a. antibiotika i klinikpakninger
- ✓ Pristilsking generelt, lønregulering og inflation
- ✓ Lønsregulering, lønregulering starter vagter fra kl. 17.00 og eftermiddag pr. 1. juli.

Afslutning:

Priser pr. 1. juli 2008: kr. 198,-

Kastration og sterilisation følger point med hidtilige satser:

Kat:	
Kastration	4,32
Sterilisation	6,5
Hund:	
Kastration	7,5
Sterilisation	14,28

Priserne for kat er fortsat inkl. omærkning men eos, evt. registrering

Reguleringer (udlås) med virkning indtil 1. juli 2009.

Referent: Helle Jørgensen

"Shoppingpriser"

- Det skal ikke være værd at køre efter disse ydelser
- Sættes som laveste takst
- Er ydelserne ens?
- Ekstra ydelser skal takseres ekstra
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However, reality differs

- The “management cartel” established and operated by senior management (that other accidentally could join) is rare and predominantly observable in books, presentations and films



However, reality differs

- Out of 1111 Danish cases decided (and published) by the Danish Competition and Consumer Authority (1998-2014), 159 could be labeled as cartels (an agreement between competitors restricting competition)
- However, 65 cases were closed by exceptions, commitments or informal adjustments reducing the number of “serious” cartels to 94



However, reality differs

- Further, in 46 of these cases, the parties could provide a reasonable explanation mitigating the decision:
 - a) The association of veterinarians had restricted customer shopping following sickness or death of a colleague (2014)
 - b) The Danish Association of Undertakers had adopted a ban on TV advertisements (2010)
 - c) Association of Retailers had adopted a 13 point agenda to reduce the sale of enriched candy (2007)
- Hence, this is an infringement, but not an evil conspiracy, against the free market



However, reality differs

- Remaining is therefore 48 hardcore cartels (of which 36 predate 2000) where no mitigating or clear indications that the parties were pursuing legitimate (or somewhat legitimate) interests could be found



Hence, no one intended the infringement

- The perception is that cartelists willingly enter into cartels
- In reality, most parties never intended any infringement as the (real) hardcore cartels account for less 1/3 of the observable cartels (1998-2014)



Hence, no one intended the infringement

- Rather than focusing on the intended cartels, it is the unintended cartels nobody intended to establish that should worry compliance officers



Many ways to Golgata

- Many ways to end up in a cartel infringement:
 - a) Restrictive contract clauses infringing competition law. Best addressed by legal department or external attorney review of contract prior to conclusions



Many ways to Golgata

- Many ways to end up in a cartel infringement:
 - b) Group associated companies (subsidiaries) enter into a cartel (intentionally or unintentionally). Look for plus factors, e.g. exchange of employee, sudden increase of profitability or an (bad) incentive scheme



Many ways to Golgata

- Many ways to end up in a cartel infringement:
 - a) Careless comments that could be misunderstood and indicate unwanted interests and opinions



Hollywoodwise

FROM THE DIRECTOR OF OCEAN'S 11, 12 AND 13

MATT DAMON



BASED ON A TATTLE-TALE

THE ONLY MOVIE TO BE
BASED ON THE LIFE OF A
LAW ENFORCEMENT OFFICER
BEFORE HE WAS
THE ONLY MOVIE TO BE
BASED ON THE LIFE OF A
LAW ENFORCEMENT OFFICER
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LAW ENFORCEMENT OFFICER
BEFORE HE WAS



SEPTEMBER

Dias 16



Valuable understanding of cartels anatomy can be obtained through movies as cartels become unstable without regular meetings



Exchange of information

- Exchange of (internal) and sensitive information can establish a cartel rendering it sustainable. Attention has therefore rightfully been allotted to trade organizations and their exchange of information:
 - Trade organizations were involved in 38 out of 94 observed cartels (40%) and 8 out of 48 hardcore cartels (16%)
 - From a practical point, trade organizations and sharing sensitive information appear to be a precondition for the long-term sustainability of cartels



Exchange of information

- However, it should not preclude (general) conversation within trade organizations or fellow tradesmen. Members can of course meet and engage in conversation relating to their business and concerns



Exchange of information

Just exercise caution so that you do not share sensitive and internal information or express endorsement of things your company has no real interest in



Questions

