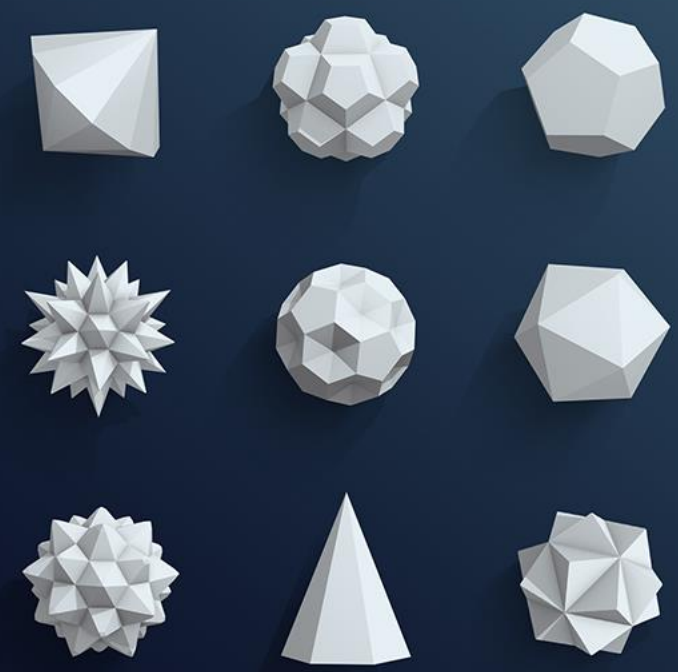
Price signaling

An economic perspective



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Overview

Coordination and information

- Economics of coordination
- Potential anticompetitive effects and efficiencies of information exchanges

Public announcements

- Invitation to collude and reaching a common collusive understanding
- Private versus public announcements

Container shipping case

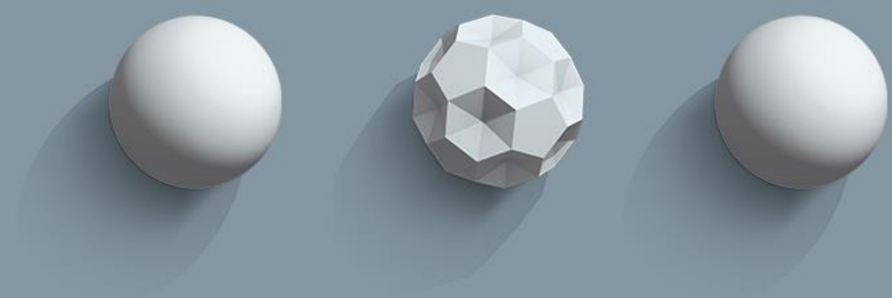
- The Commission's theory of harm

Assessing whether price signaling is used as a tool for coordination

- Some first order questions
- Testing the coordination hypothesis

Price signaling as a restriction by object?

1. Coordination and information



Economics of coordination

- Dynamic versus static framework
- Multiplicity of equilibria
- Reaching the focal point of coordination
- Enforcement mechanism
- Tacit versus explicit coordination

Type of information exchanges

Information exchanges may cover a wide variety of different data and information, such as prices, sales, costs, production, demand, investments plans...

These exchanges may vary across numerous factors such as:

- **Timing** dimension (old, recent, future)
- Level of **aggregation**
- Shared **directly or via industry aggregator**
- **Public/private information**
- **Intentions** versus **committed actions**
- **Private exchange** versus **public announcements**…

Anticompetitive effects

Information may lead to collusive outcomes through two mechanisms:

1) **Reaching a focal point** for coordination
2) **Monitoring** adherence to the terms of coordination

Beyond mere **possibility results**: how strong/likely is the effect?

- By definition, virtually any information exchange will increase market transparency, but is this enough to expect anticompetitive effects?
- Is the market prone to coordination?
- Will this information make coordination significantly more likely or sustainable?
- If not, intervention risks discouraging benign or efficient business practices.

Efficiencies

Information plays a crucial role in the performance of competitive markets, e.g.:

- **Benchmarking** to ensure efficient production processes.
- Improves **market predictions** (important for investment).
- **Speeds up responses** to new market developments.
- Improves **risk assessment** (e.g. customer data pooling for insurance)
- May **lower search cost** for customers (e.g. public announcements, quality signaling).

2. Public announcements

Commission’s Guidelines on Horizontal Cooperation Agreements

Principle (para 63):

Where a company makes a unilateral announcement that is also genuinely public, for example through a newspaper, this generally does not constitute a concerted practice within the meaning of Article 101(1).

Exception 1: **invitation to collude**

Exception 2: **reaching a common understanding for coordination**

Invitation to collude

Illustration: during its second quarter 2004 earnings conference, the President and CEO of **Valassis Communications** opened the earnings conference call by detailing the company's new strategy for increasing prices, indicating that Valassis would:

- Seek to retain its current share but **not to encroach upon its competitor's position;**
- Submit **bids at a level substantially above current prices** for the competitor's existing customers with expiring contracts;
- **Monitor its competitor's response** to this overture and **resume a price war** if its competitor targeted its customers: "*We expect that concrete evidence of [Competitor]'s intentions will be available in the marketplace in short order. If [Competitor] continues to pursue our customers and market share then we will go back to our previous strategy*"

The FTC interpreted the announcements as an invitation to collude and challenged the conduct under Section 5. The case was settled with Valassis agreeing to refrain from such communications.

Exception 2: **reaching a common understanding for coordination**

> *[…] the possibility of finding a concerted practice cannot be excluded, for example in a situation where such an announcement was followed by public announcements by other competitors, not least because strategic responses of competitors to each other's public announcements (which, to take one instance, might involve readjustments of their own earlier announcements to announcements made by competitors) could prove to be a strategy for reaching a common understanding about the terms of coordination.*

Public versus private announcements

Private announcements

Private exchanges of future prices can help reach a common understanding for a collusive mechanism.

Public announcements

Increasing demand-side efficiency is in principle pro-competitive (even if there is some increase of supply-side transparency).

- But what if the announcements have no (or limited) commitment value? Are public announcement then equal to private announcement?
- This was essentially the Commission’s theory of harm in the container shipping case.

3. Container shipping case

(26) “Between 2009 and 2015, the Parties have **regularly announced their intended future price increases** for deep-sea container liner shipping services, at least on routes from Far East Asia to Northern Europe and the Mediterranean (westbound), on **their websites, via the press**, or in other ways. Those announcements indicate the amount of the intended increase in US-Dollars per transported container unit (twenty-foot equivalent unit, "TEU"), the affected trade route and the intended date of implementation. Such announcements are widely known in the industry as "**General Rate Increase Announcements**" or "GRI Announcements". They generally concern sizable rate increases of several hundred US-Dollars per TEU.”

(27) “GRI announcements are made in **"rounds" 3 to 5 weeks before the intended implementation date** of the price increase. The rounds typically begin with one Party announcing its intention to increase Prices on a given route by a certain amount, as of a certain date. In the following days and weeks, other Parties announce in turn intended price increases of a similar magnitude, for the same route and with a similar or identical implementation date. Announced **GRIs sometimes were postponed or modified** by some of the Parties, possibly aligning them with the GRIs announced by other Parties.”

Party	Announcement date	Implementation date	The Announced amount of the increase (in USD)
OOCL	26.9.2012	1.11.2012	525
UASC	26.9.2012	1.11.2012	505
CSCL	27.9.2012	1.11.2012	525
ZIM	27.9.2012	1.11.2012	500
Coscon	28.9.2012	1.11.2012	550
Hapag	28.9.2012	1.11.2012	500
MSC	29.9.2012	1.11.2012	500
NYK	1.10.2012	1.11.2012	550
Evergreen	2.10.2012	1.11.2012	525
HMM	2.10.2012	1.11.2012	500
Maersk	2.10.2012	1.11.2012	500
CMA CGM	10.10.2012	1.11.2012	500
Hanjin	12.10.2012	1.11.2012	500
MOL	25.10.2012	1.11.2012	500

Commission's theory of harm

(37) "In the Preliminary Assessment the Commission raised the concern that the Parties' practice **may allow them to explore whether other Parties also intend to increase Prices** and to coordinate their behaviour. The announcement of price increase intentions can give indications about the other Parties' likely conduct on the market. The Commission raised the preliminary concern that the practice **may enable the Parties to "test" whether they can reasonably implement a price increase without incurring the risk of losing customers**, thereby reducing strategic uncertainty for the Parties and diminishing incentives to compete."

(44) "The Commission took the preliminary view that **GRI announcements may have little value to customers** since they may not enable them to plan ahead or compare Prices between Parties."

4. Assessing whether price signaling is used as a tool for coordination

Price signaling as a tool for coordination?

Before embarking in detailed economic analysis, there are some first-order level questions that should be addressed, such as:

- Do the price announcements provide **plausible mechanism** to reach a common understanding on the terms of coordination (considering alternatives and costs)?
- Do the announcements provide a **focal point** for coordination?
- Are there **other reasons** for the announcements (potentially pro-competitive), unrelated to a potential coordination mechanism?
- Are the announcements **likely to lead to coordination** (or to make coordination more sustainable) in the specific industry?

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Testing the coordination hypothesis further

- **How noisy is the price signal**, i.e. how closely are the announced price increases applied in practices?
- Does the data support **“dialogue” hypothesis** (i.e. adjustments of announcements to reach the focal point of coordination)?
- **Cheap talk versus commitment**: how much in advance do customers book ?
- Do announcements have **pro-competitive effects/benefit customers?**
- How do announcements with **long lead times compare** to announcements with shorter lead times?
- Are the **observed market outcomes** consistent with both competitive interactions and coordination, or with only one of the two hypotheses?

5. Price signaling as a restriction by object?

- **Restrictions by object** make it easier to prosecute infringement **clearly known to be anticompetitive** (e.g. private exchanges between competitors of their individualised intentions regarding future prices or quantities).
- This is efficient as it **deters anticompetitive conduct and frees up scarce enforcement resources**, with little risk of deterred efficiencies.
- Restrictions by object are however **not socially optimal for practices that are not clearly anticompetitive** (e.g. if the competitive impact will be highly dependent on specific market conditions). Indeed, such rules risk deterring perfectly benign or pro-competitive conduct and leading to avoidance costs, with little or no benefit in the form of deterred anticompetitive conduct.
- Safe for explicit invitations to collude, there is in my view no good reason to **consider price signaling as a restriction by object**, given that there is no clear indication that such conduct would generally be expected to lead to anticompetitive effects (even though such effects are in theory possible if price signaling allows companies to reach a focal point for coordination in very specific circumstances).

A firm communicating about its own future prices to the market likely has value to customers, even if firms can revise such announcements.

There are perfectly good reasons for such communications that have nothing to do with coordination.

Treating such communication as a private exchange between firms about their future prices is in my view not justified.

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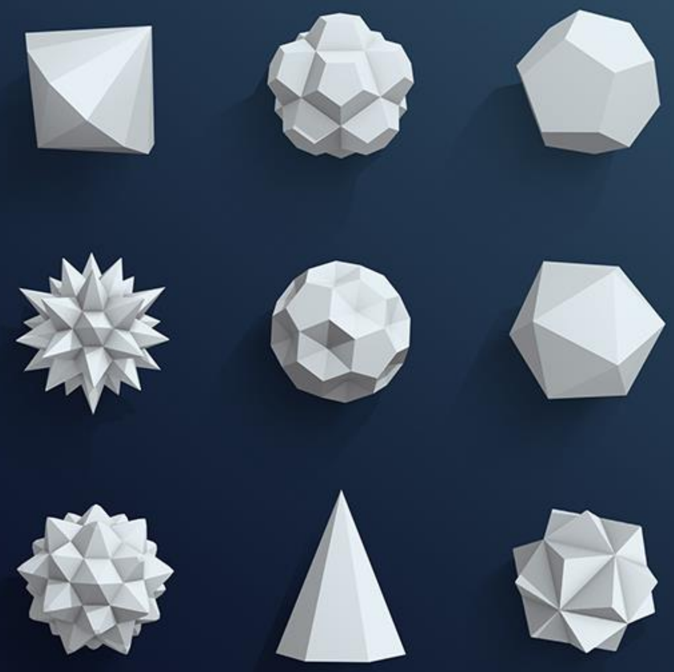

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