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Boom, bust, and collusion: Does it really matter?
January 22, 2019
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A recent working paper by Hashmat Khan and Matthew Strathearn attempts to empirically link anticompetitive collusion to the boom and bust cycles of the economy.

> The level of collusion is higher during a boom relative to a recession as collusion occurs more frequently when demand is increasing (entering into a collusive arrangement is more profitable and deviating from an existing cartel is less profitable). The model predicts that the number of discovered cartels and hence antitrust filings should be procyclical because the level of collusion is procyclical.

The first sentence—a hypothesis that collusion is more likely during a "boom" than in recession—seems reasonable. At the same time, a case can be made that collusion would be more likely during recession. For example, a reduced risk of entry from competitors would reduce the cost of collusion.

The second sentence, however, seems a stretch. Mainly because it doesn't recognize the time delay between the collusive activity, the date the collusion is discovered by authorities, and the date the case is filed.

Perhaps, more importantly, it doesn't acknowledge that many collusive arrangement span months, if not years. That span of time could include times of "boom" and times of recession. Thus, it can be argued that the date of the filing has little (or nothing) to do with the span over which the collusive activity occurred.

I did a very lazy man's test of my criticisms. I looked at six of the filings cited by Khan and Strathearn for the year 2011, a "boom" year with a high number of horizontal price fixing cases filed.

	Collusion						
Case	**Begin**	**End**	**Duration**	**Recession Months**	**Began in Recession**	**Case Open Date**	**Months Until Case Filed**
U.S. v. Young Keun Park	Nov-05	Sep-09	47	19	No	13-Dec-11	28
U.S. v. Eagle Eyes Traffic Industrial Co., Ltd, et al.	Jul-01	Sep-08	87	15	Yes	30-Nov-11	40
U.S. v. Sea Star Line, LLC	May-02	Apr-08	72	5	No	17-Nov-11	44
U.S. v. Danfoss Flensburg GmbH	Oct-04	Sep-07	36	0	No	4-Oct-11	50
U.S. v. Hitachi-LG Data Storage, Inc.	Jun-04	Sep-09	64	19	No	30-Sep-11	25
U.S. v. MOL Logistics (Japan) Co., Ltd.	Sep-02	Nov-07	63	0	No	30-Sep-11	48
Average			**62**	**10**			**39**

My first suspicion was correct. In these six cases, an average of more than three years passed from the date of the last collusive activity and the date the case was filed. Thus, whether the economy is a boom or bust when the case is filed provides no useful information regarding the state of the economy when the collusion occurred.

Nevertheless, my lazy man's small sample test provides some interesting—and I hope useful—information regarding Khan and Strathearn's conclusions.

1. From July 2001 through September 2009, 24 of the 99 months were in recession. In other words, during this period, there was a 24 percent chance the economy was in recession in any given month.
2. Five of the six collusive arrangements began when the economy was in recovery. Only one began during a recession. This may seem to support their conclusion that collusive activity is more likely during a recovery. However, even if the arrangements began randomly, there would be a 55 percent chance that that five or more began during a recovery. So, you can't read too much into the observation that most of the collusive agreements began during a "boom."
3. In two of the cases, the collusive activity occurred during a span of time that had no recession. The chances of this happening randomly is less than 1 in 20,000, supporting their conclusion regarding collusive activity and the business cycle.

Khan and Strathearn fall short in linking collusive *activity* to the business cycle but do a good job of linking antitrust *enforcement* activities to the business cycle. The information they use from the DOJ website is sufficient to determine when the collusive activity occurred—but it'll take more vigorous "scrubbing" (their word) of the site to get the relevant data.

The bigger question, however, is the relevance of this research. Naturally, one could argue this line of research indicates that competition authorities should be extra vigilant during a booming economy. Yet, Adam Smith famously noted, "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices." This suggests that collusive activity—or the temptation to engage in such activity—is always and everywhere present, regardless of the business cycle.

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