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Interview: Update on “Screens for Conspiracies and Their Multiple Applications”

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INTERVIEW: UPDATE ON “SCREENS FOR CONSPIRACIES AND THEIR MULTIPLE APPLICATIONS”



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As part of our Spring 2012 issue, CPI is presenting a retrospective of our best articles in the past and providing updates. One of our selections is “Screens for Conspiracies and their Multiple Applications,” originally appearing in the Fall 2010 issue of the Journal. Providing some of her insights into this article, as well as reasons why the ideas explored in it are still relevant today, is co-author Rosa Abrantes-Metz. Rosa is currently a principal at Global Economics Group and adjunct associate professor at NYU’s Stern School of Business, where she teaches industrial economics, monetary policy, and financial institutions. In the past, she has served as staff economist at the Federal Trade Commission and taught econometrics at the University of Chicago. Rosa is one of the leading developers of screens to detect conspiracies, manipulations, and fraud, and also uses these techniques on the other side to assist in defending against allegations of such behavior.

What were the most significant developments in screening since your article with co-author Patrick Bajari was published?

Lauren, thank you so much for this opportunity to talk to you about screens. Over the last couple of years since we published our article, there have been some pretty significant developments in the area of screening. The most important—to me personally, but also in terms of dimension and potential implications—is the alleged LIBOR conspiracy and manipulation with current investigations worldwide. The LIBOR is a benchmark rate to which, it is estimated, about \$350 trillion in contracts are benchmarked against, so it is a very important

number. Four years ago, following a couple of articles in the *Wall Street Journal* that first put into possibility a manipulation in these rates, I and co-authors Albert Metz, Mike Kraten, and Gim Seow, decided to take a look into this topic. We looked at the period flagged by the Wall Street Journal initially, and a variety of other periods as well, and put together a set of results in which we flagged situations that were unexpected—behavior that was unexpected by banks in a competitive setting, and that could potentially suggest the possibility not only of manipulation, but actually coordinated behavior by the banks implying the possibility of a conspiracy. Last year, we learned, that a few years after our paper came out, there were investigations by the SEC, CFTC, the DOJ, the European Commission, the OFT, and a variety of other regulatory and competition authorities into this matter. So I would say this is the most important development, in my view.

But over the last few years as well, competition authorities have started to increase their adoption of these methods. For example, the Mexican authority has flagged a bid-rigging cartel in pharmaceuticals. The Brazilians (CADE) have flagged gasoline cartels in a particular region. So these have also been significant developments in the area of detection.

And following this, in particular in the case of LIBOR, we are starting to see screens being applied in other areas as well, and for other purposes such as in complaints by plaintiffs. There are a variety of uses of screens in the LIBOR matters [by plaintiffs], and I expect they will also be used by defendants.¹

Aside from detections, how have screens increased their use for other purposes?

The first purpose of a screen is detection. If a screen, which is an econometric model based on the theory of cheating, cannot detect alleged behavior, then it is really not useful for other purposes. But given that we have already established the power of several screens [in cases], then they can be used in a variety of other settings, and the exact same results that can be used to flag a conspiracy and to assist in proving it (though it is never the final proof, but it assists in proving) the existence of conspiracy, manipulation, or any other type of fraud, can just as well be used to assist in defending against allegations of that type of behavior. If one does screen the market and does not find any strange patterns, then there are only two possible

¹ I have successfully developed new screening methodologies on behalf of defendants making use of only publicly available data. Their use should expand in the future.

reasons: that nothing illegal happened, or even if anything illegal happened, it had no material impact in the market. Then, through the use of other tools, one can try and separate between these two possibilities.

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But, screens can be used by defendants. I have certainly used them in this setting in the initial stages of investigations into manipulation and conspiracy cases, and even in other fraud cases, to assist in showing that there did not appear to be anything abnormal going on in the market. As for other places that have also successfully started to use screens—as I mentioned earlier, the LIBOR—it is possible that after *Twombly*, screens can be of additional help in the higher standards that are now required after it, to pass the initial stages of litigation.

Regulators and competition authorities worldwide have also started to use screens for detection. Another development that is starting to occur now and that is expected to become bigger over the next few years is the use of screens in antitrust compliance programs, given that regulators are using these methods and new regulations, for example in financial markets, that do require tighter compliance programs.² Several financial institutions and energy companies have started implementing some of these tools to try and flag potential illegal behavior internally.

What role should screens play when compared to leniency programs?

I see screens as a complement to leniency. Leniency programs have, of course, been very successful, but they do tend to flag cartels primarily in a particular set of industries. That does not necessarily mean that there aren't cartels in other industries, but leniency programs do not tend to flag these. At the same time, leniency is based on the idea of a whistleblower: there is somebody within the organization of the cartel who is not so happy with the way things are going and decides to complain. When cartels are very successful from their point of view, very profitable and raising prices significantly, it is less likely that a whistleblower will come through. So it is less likely that in those situations a leniency program will be able to detect a cartel, in which case a screen can come into play. See, for example, the case of the LIBOR. This is a case which, for me, is a standard example of how screens should complement leniency. We

² In fact, just a few days ago new guidelines for compliance were released in Chile in which the internal use of screens is recommended.

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[I and co-authors] applied screens to the market, some abnormal patterns came through, years later investigations did get started, and they got started before there were any leniency applications. Later on, several months after these investigations became public, one of the banks filed for leniency with

the Department of Justice. This is exactly how screens and leniency can and should interact. I'm not quite sure had screens not been applied to LIBOR that the alleged wrongdoings would have been detected through leniency.

Additionally, I believe that screens can have an important role in deterring this type of behavior from even getting started. If market players know that competition authorities and regulators are using these methods, and if they're not even quite sure how exactly these methods are being used, and what exactly is being flagged, but they do know their data is being analyzed, they might have second thoughts about engaging in this type of behavior. So, complementarity and deterrence are the two ways in which screens can contribute to detection.

Lastly, what do you see in the future for screens?

I see, even just in the last two, three, or even five years, that this is an area that has grown very significantly, not just in terms of research, but also in terms of adoption by competition authorities. And through the adoption of competition authorities, market players will believe that these screens are credible and will want to use them as well. I think that this is a trend that is going to continue.

Obviously, screens are based on data availability, and if there are no data, one cannot apply these types of screens. Maybe other screens can be done, but not empirical screens. But over time there will be better and more frequent data, and there are more economists capable of appropriately analyzing these data and developing new techniques fitted for the market at hand. So, I think that the use of screens can only increase over time.

Thank you very much, Romy. This has been a terrific discussion of how screens can be used to promote goals in antitrust and competition policy.

Thank you so much, Lauren. This was a good opportunity to talk a little bit about this area of research and its applications to litigation, which I feel is a really fascinating area.