



# International Cooperation in Cartel Investigation

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Supervision

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## I. Characteristics of International Cartel

- ▶ International cartel is subordinate to cartel, but differs from traditional cartel in that its constitutive elements of crime involve multiple countries or regions. The most notable difference is that it's with international characteristics.
- ▶ First, in terms of the impact scope, international cartel can affect more than two countries.
- ▶ Second, in terms of the illegal subjects' nationalities, the enterprises in international cartel has nationalities of more than two countries;
- ▶ Third, in terms of the region where this phenomenon occurs, international cartel occurs in more than two countries.



# I. Characteristics of International Cartel

## High Stealthiness

The forms of conspiracy are becoming more insidious and the methods of evasion more diverse. It is difficult for law enforcement agencies to detect clues of unlawful acts and gather critical evidence during the investigation.

## Increased Complexity

The forms of conspiracy have become more diverse (price fixing, market segmentation, quantity limits, restrictions on the development of new technologies, delays in the use of new technologies, etc.) and the mechanisms of conspiracy have become more complex (profit sharing, market segmentation, bid rigging, bid rotation, etc.). Senior executives conspire to make it difficult for law enforcement agencies to argue the necessary link between their behavior and that of the firm.

## Wide Reach and Powerful Market Control

It can be detrimental to the competitive order in a particular industry or even in the world. The members of one international cartel are operators with a dominant market position in an area, so their strong control capacity ensures the effectiveness and stability of the international cartel and also causes greater harm to competitive order.



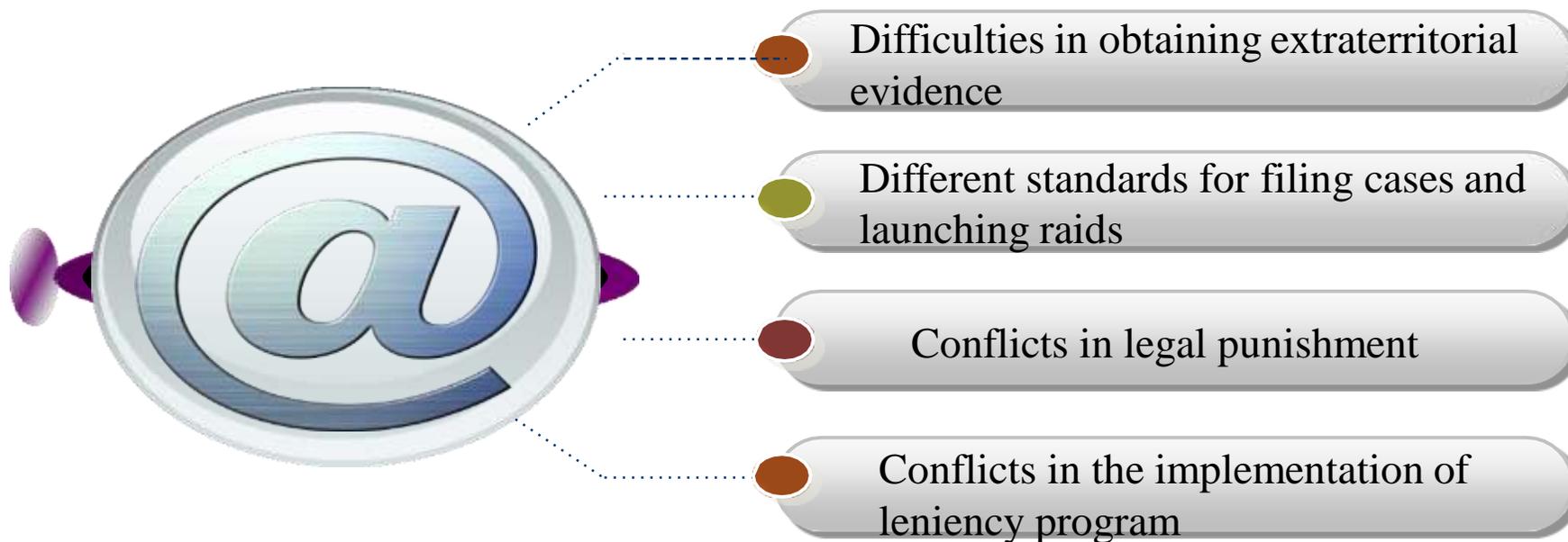
## II. Legal Basis of China's Jurisdiction over International Cartel

- ▶ Article 2 of *Anti-Monopoly Law* of the People's Republic of China stipulates that "this Law shall be applicable to monopolistic conducts in economic activities within the People's Republic of China; This Law shall apply to the conducts outside the territory of the People's Republic of China if they eliminate or have restrictive effect on competition on the domestic market of the PRC."
- ▶ If the restrictive competition behaviors planned or implemented in foreign countries have an adverse impact on China's market, the application scope of *Anti-Monopoly Law* of the People's Republic of China can be extended to those enterprises whose domiciles or business premises are abroad.
- ▶ The extraterritorial application of *Anti-Monopoly Law* of the People's Republic of China is based on "Effects Doctrine". Regardless of the nationality and domicile of the actor and the origin of the restrictive competition.



### III. Difficulties in Enforcement of International Cartel Cases

The characteristics of international cartels make it several times more difficult to investigate than ordinary cartel cases. Moreover, due to the differences in the legislative level and enforcement experience of countries in the field of Anti-Monopoly Law, especially the extraterritorial application of domestic laws, it is likely that the differences will lead to institutional conflicts among countries.





### III. Difficulties in Enforcement of International Cartel Cases

#### (I) Difficulties in obtaining extraterritorial evidence.

- ▶ The broad scope of investigation and evidence collection may require the coordination and cooperation of many countries.
- ▶ For the different rules of obtaining evidence in different countries, it is uneasy to obtain extraterritorial evidence, and it is even more difficult to meet the requirements of obtaining evidence in cartel cases.
- ▶ Even for cases of voluntarily surrender of enterprises, critical evidence shortage is frequent if the on-site inspection cannot be carried out.
- ▶ Extraterritorial evidence collection may also involve specific issues such as the regulation of state secrets and trade secrets.



### III. Difficulties in Enforcement of International Cartel Cases

#### (II) Different standards for filing cases and launching raids.

- ▶ Due to the differences in economic development level and openness of different countries and regions, the emphasis and enforcement priorities in different jurisdictions to the same international cartel case are different.
- ▶ Even under the same conditions of evidence, due to the differences in the standards for filing cases and launching raids in different countries, some countries may take the lead in launching operations without coordination among countries, which may affect or even destroy the investigation and evidence collection work in other countries.



## III. Difficulties in Enforcement of International Cartel Cases

### (III) Conflicts in legal punishment.

- ▶ Different countries have different standards for the fine base and the calculation of fine amount.
- ▶ Article 46 of *Anti-Monopoly Law of the People's Republic of China* stipulates that "if an operator violates the provisions of this Law and reaches and implements a monopoly agreement, the anti-monopoly law enforcement agency shall order him to stop the illegal act, confiscate the illegal income and impose a fine of more than 1% and less than 10% of the sales of the previous year; if the monopoly agreement reached has not been implemented, a fine of not more than 500,000 yuan may be imposed. "
- ▶ The difference of fine base in different jurisdictions may also lead enterprises to adopt completely different attitudes towards different jurisdictions.



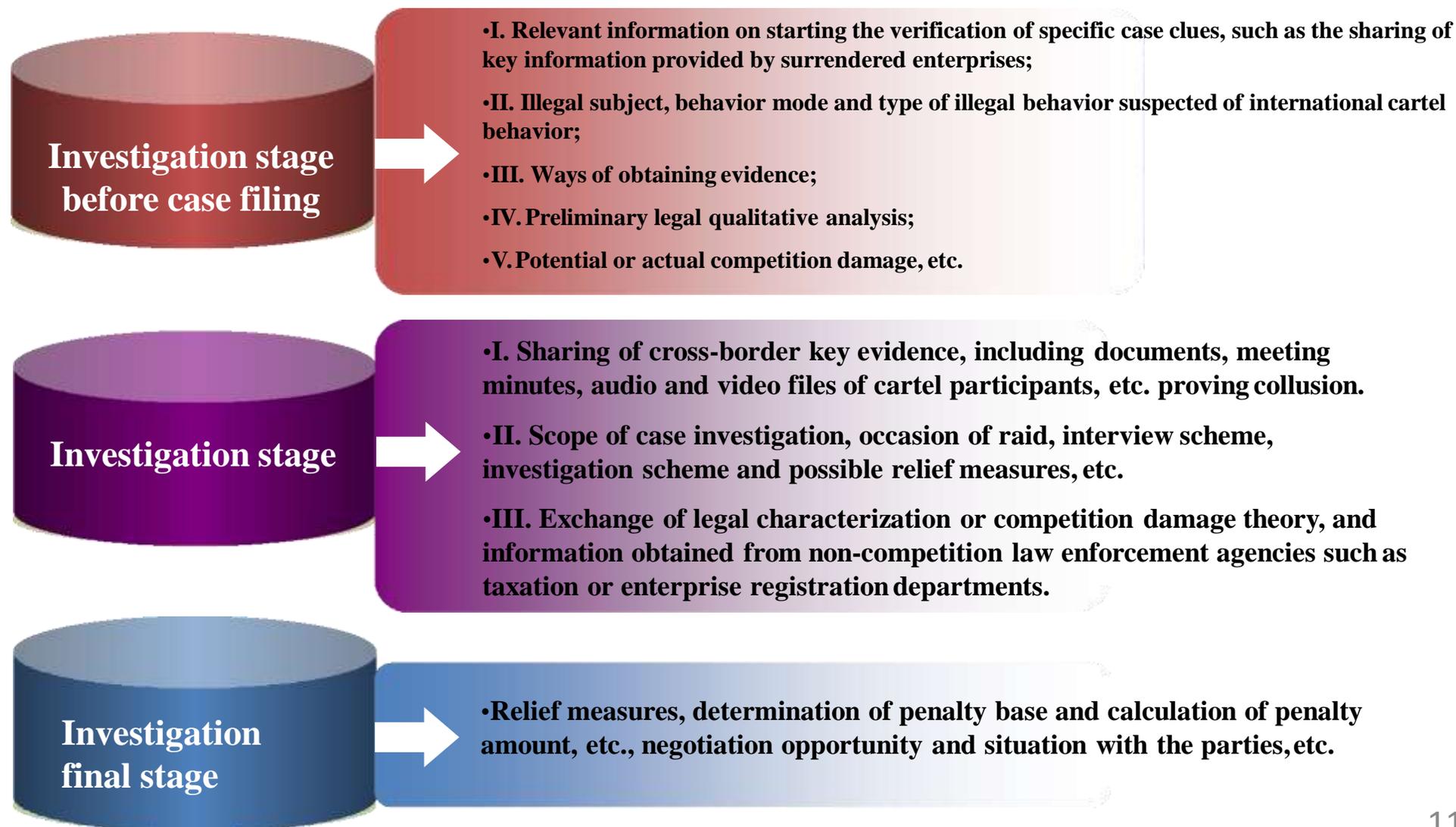
### III. Difficulties in Enforcement of International Cartel Cases

(IV) Conflicts in the implementation of leniency program.

- ▶ The differences in leniency policies make law enforcement agencies have different opportunities to obtain key evidence. Due to the lack of a unified sharing mechanism, other countries may not be able to share important information provided by surrendered cartel members, which is not conducive to regulating international cartels appearing in other countries in the world.



## IV. Strengthening International Cooperation





# Thank you for listening!

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