



The American Antitrust Institute

AAI Working Paper No. 11-05

CARTELS PORTRAYED: DETECTION
A 21-Year Perspective, 1990 to 2010

Author: John M. Connor,
Purdue University
jconnor@purdue.edu

Introduction

- The following charts illustrate the global size and economic impacts of the modern international cartel movement and the enforcement responses of the world's antitrust authorities and national courts.
- The sample encompasses 640 private hard-core cartels that were subject to government or private legal actions (*i.e.*, formal investigations, damages suits, fines, or consent decrees) between January 1990 and December 2010. Each cartel had participants with headquarters in two or more nations. The sample is believed to be a reasonably complete list of all *contemporary private international cartels* discovered by jurisdictions with an active press or informative antitrust-authority Web site.
- All monetary data are expressed in nominal U.S. dollars using exchange rates during the cartel's life or on the day a legal action was announced.
- A special effort is made to create charts that illustrate **trends** in cartel dimensions and antitrust decisions.

DETECTION:

International Cartels Are Now Being Assaulted on All Fronts

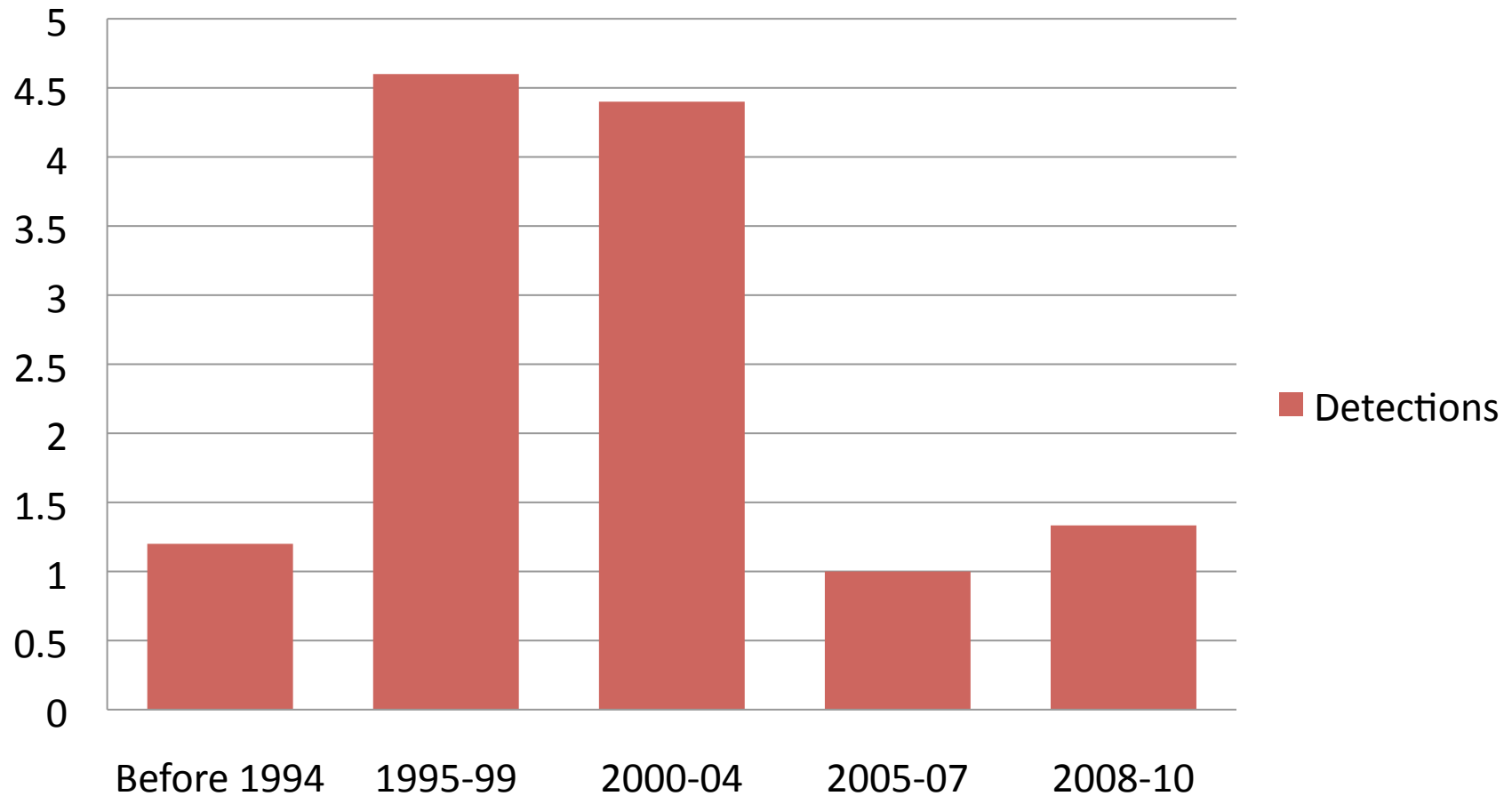
Narrative on Detection

- Indictments in the US and Canada seem to have peaked during 1995-2007, but are rising elsewhere.
- The EC's cases are rising and account for 1/6 of the total in the past six years. However, the EU's National Competition Authorities (NCAs) are now the biggest prosecutors, accounting for 1/2 of the total.
- Asia (mostly Korea) is becoming a cartel tiger.
- Of late, So. Africa and Brazil are active also.
- Although increased detection rates are probably due to more agencies and better policies, the total number of cartels (including hidden ones) could be rising or falling

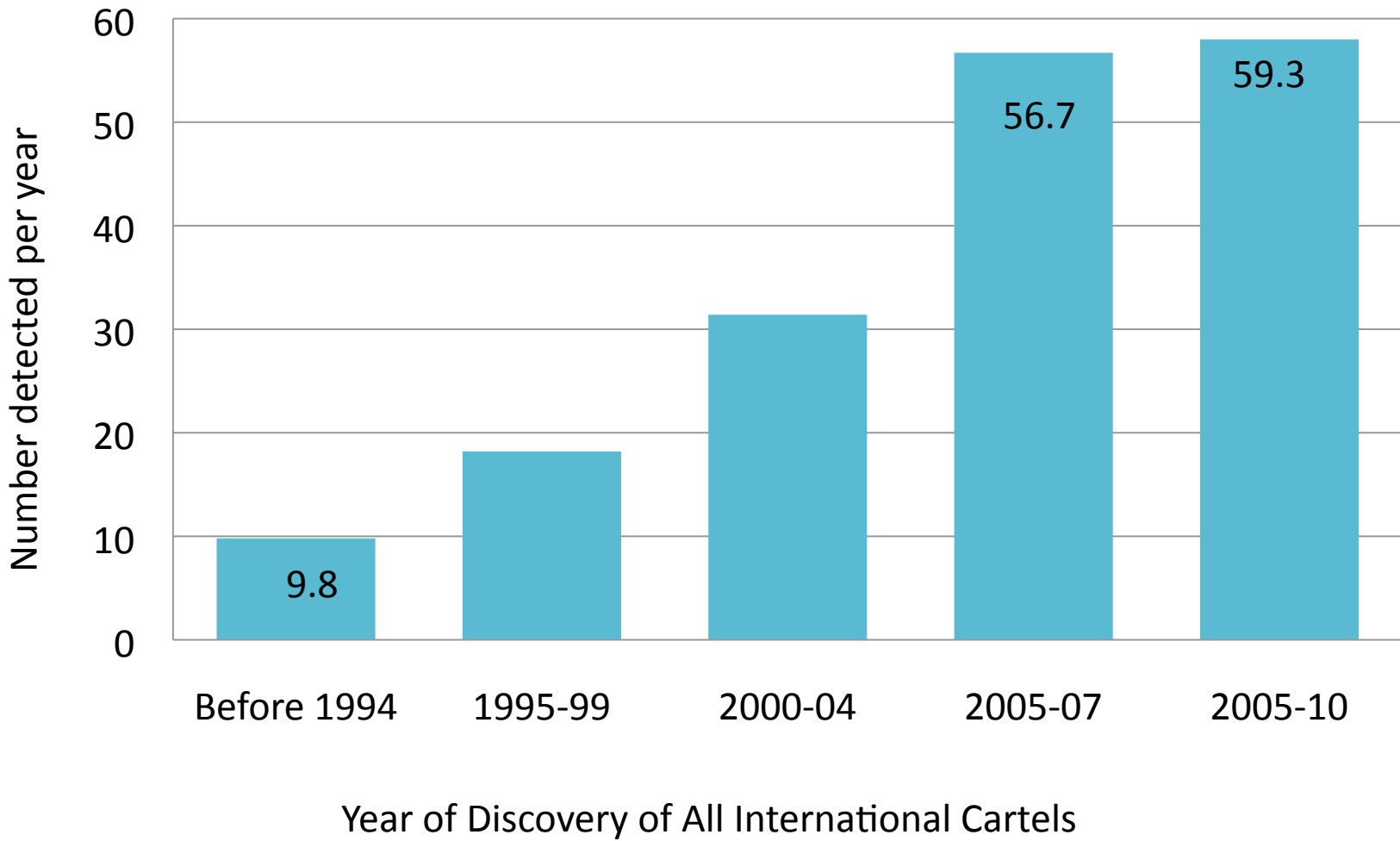
Annual Cartel Detections by the **US DOJ** Peaked in 2005-07



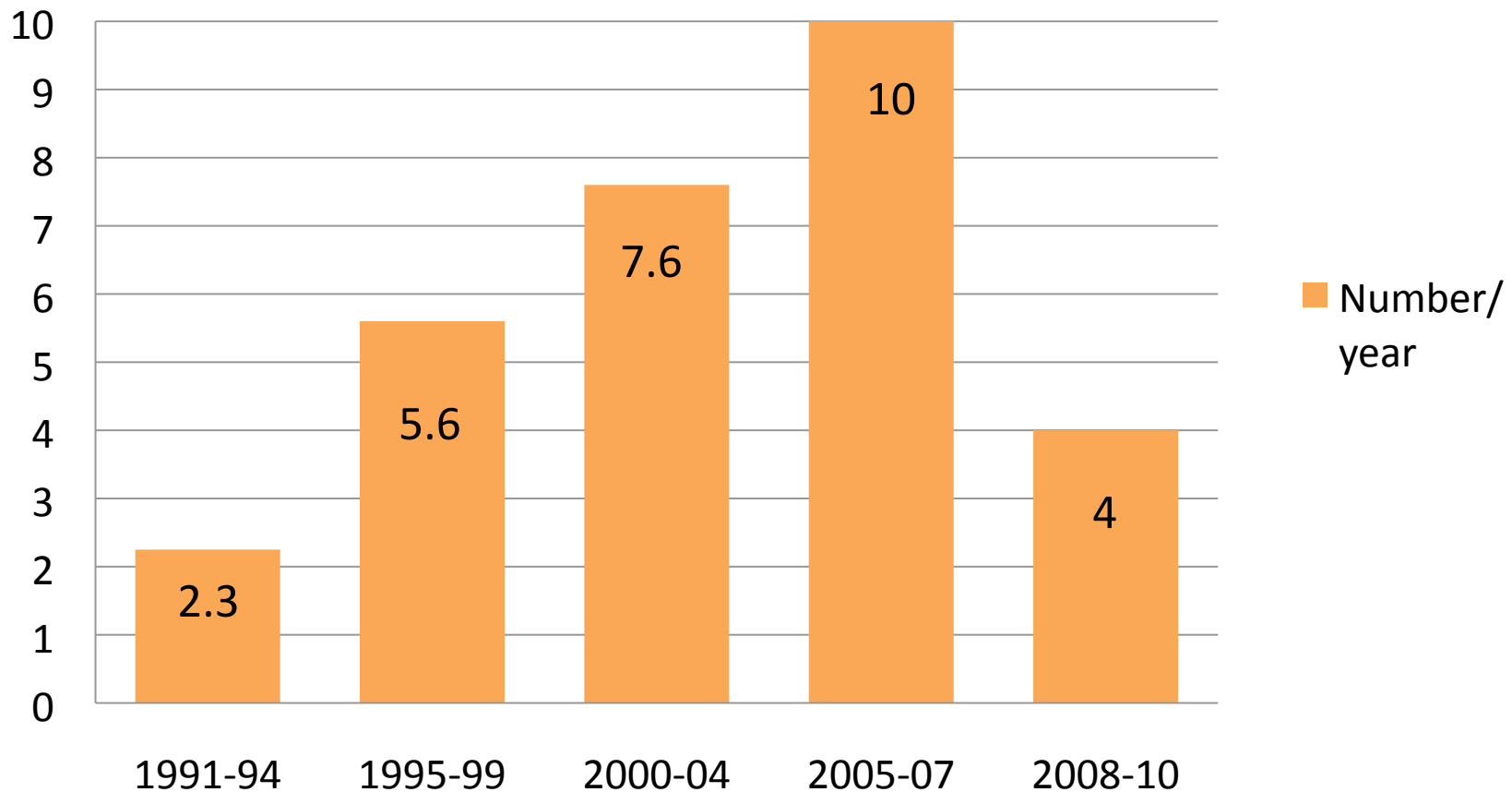
Cartel Detections per year by **Canada** Are Falling



Rates of Discovery of All Cartels Are Rising over Time



Rates of Discovery of **Global** Cartels Peaked in 2005-2007

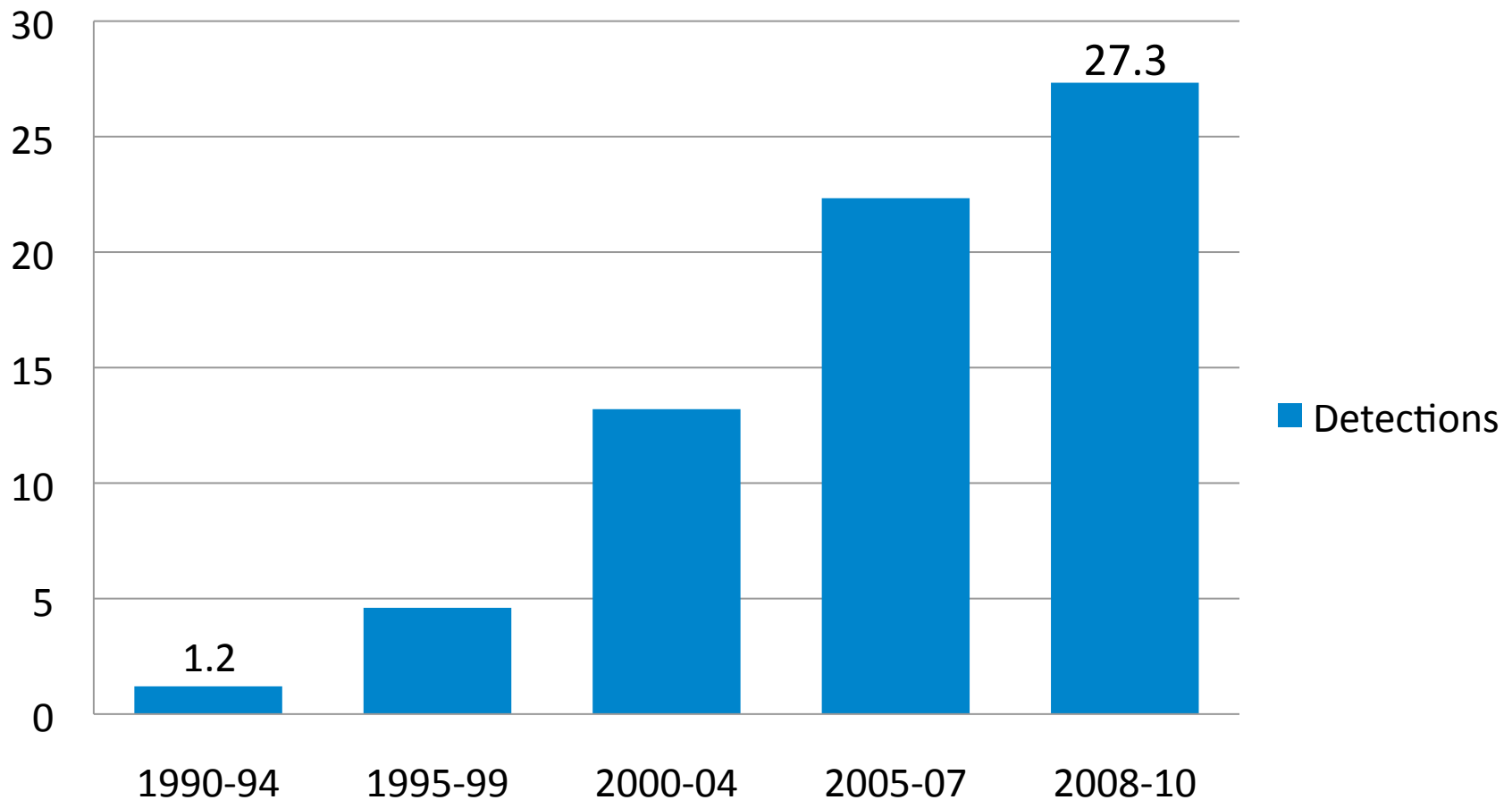


“Global” cartels affected prices in two or more continents

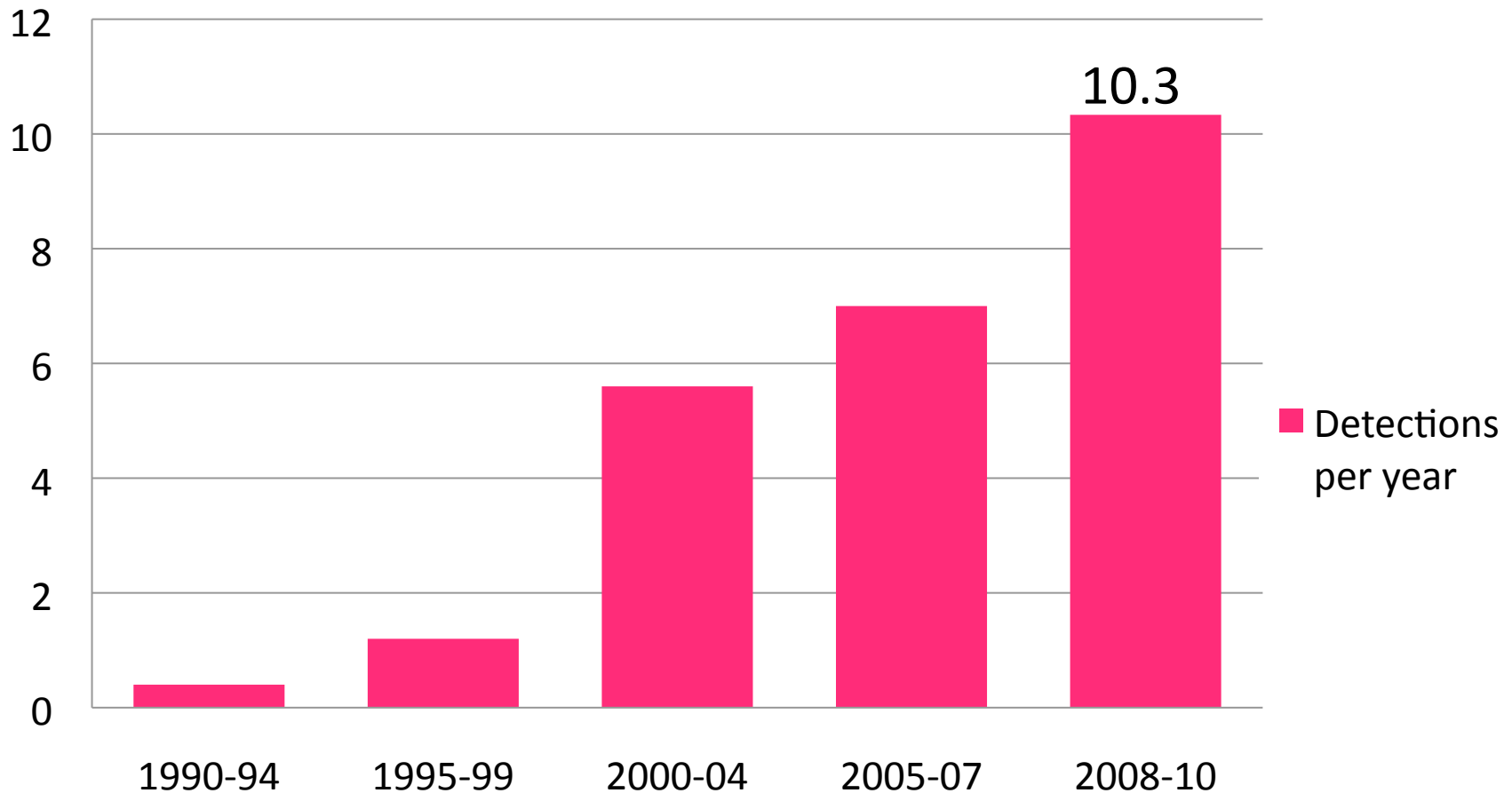
Rates of Discovery by the European Commission Are Rising



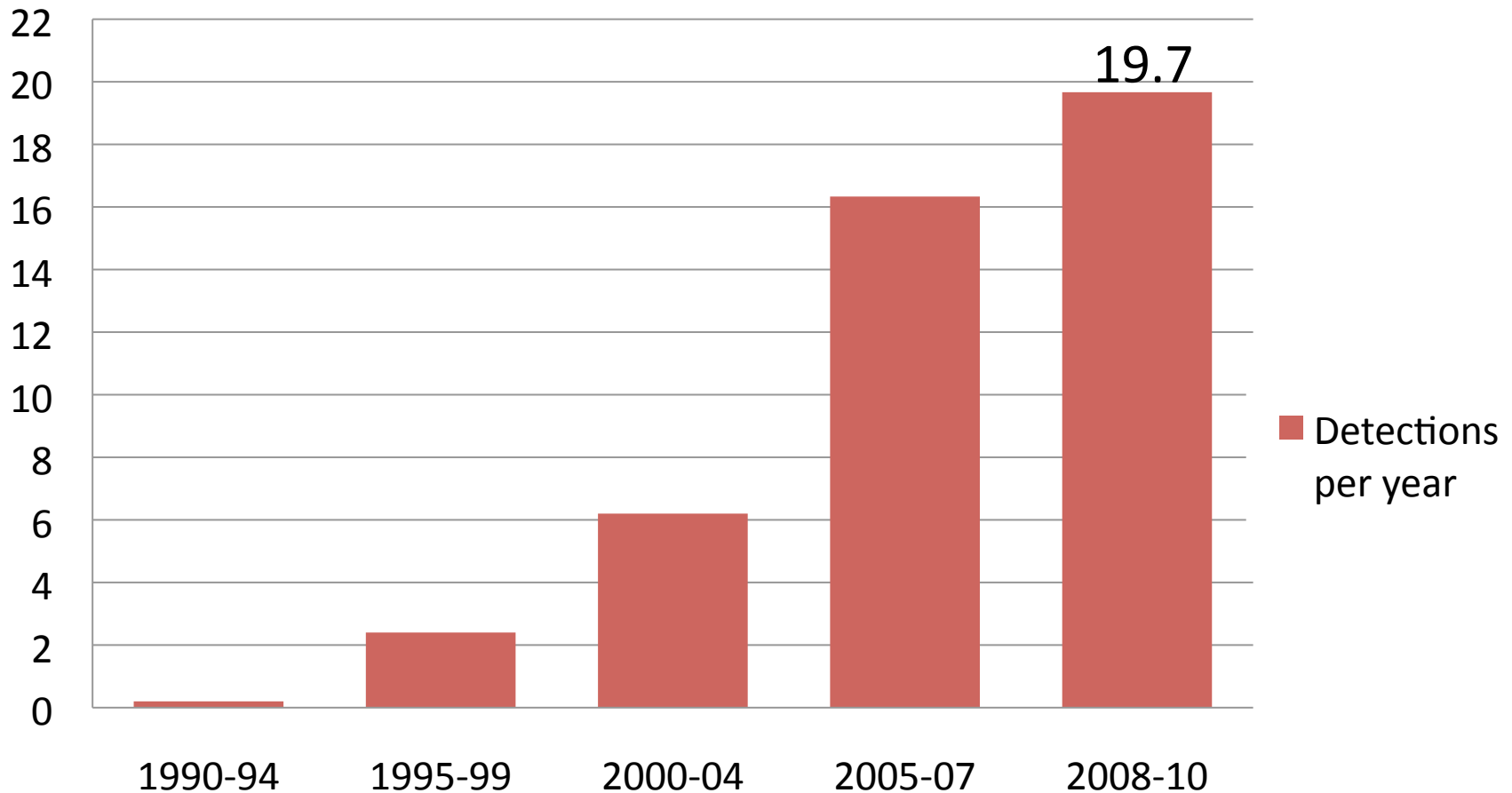
Detection Rates by the EU's NCAs Surpass All Others since 2000



Asian Anti-Cartel Enforcement (Especially Korea) Is Accelerating



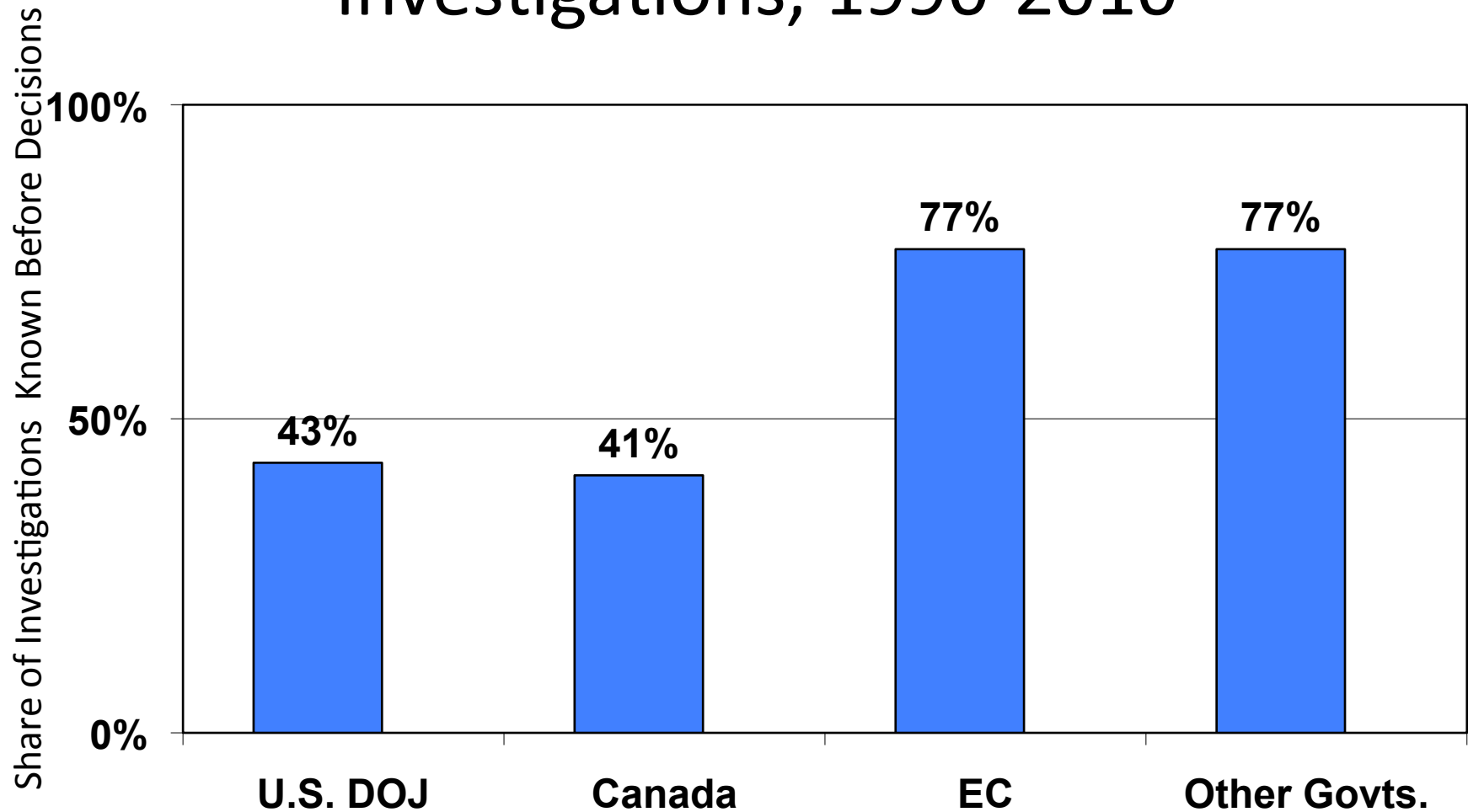
Cartel Detections in **Africa and Latin America** Are Now Above US Levels



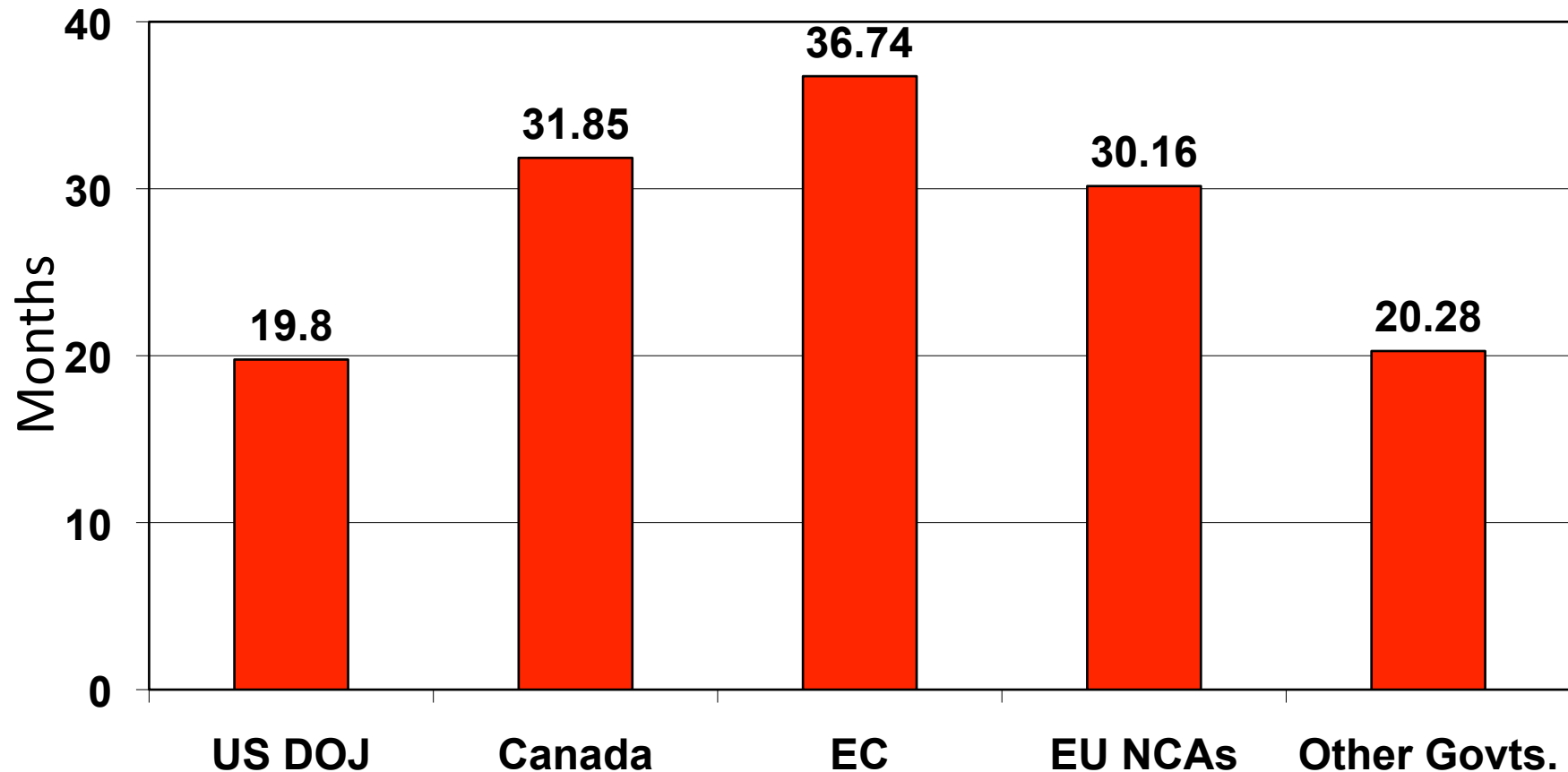
Narrative on Investigations

- Most government cartel investigations are kept secret in North America, but in ROW raids are usually announced well before decisions.
- Private actions are the most publicized.
- Investigations on average take 3 years in Europe and half that time elsewhere.
- Global cartel probes take longer to resolve

Transparency of International Cartel Investigations, 1990-2010



MEDIAN LENGTH of Investigations of All International Cartels, 1990-2010

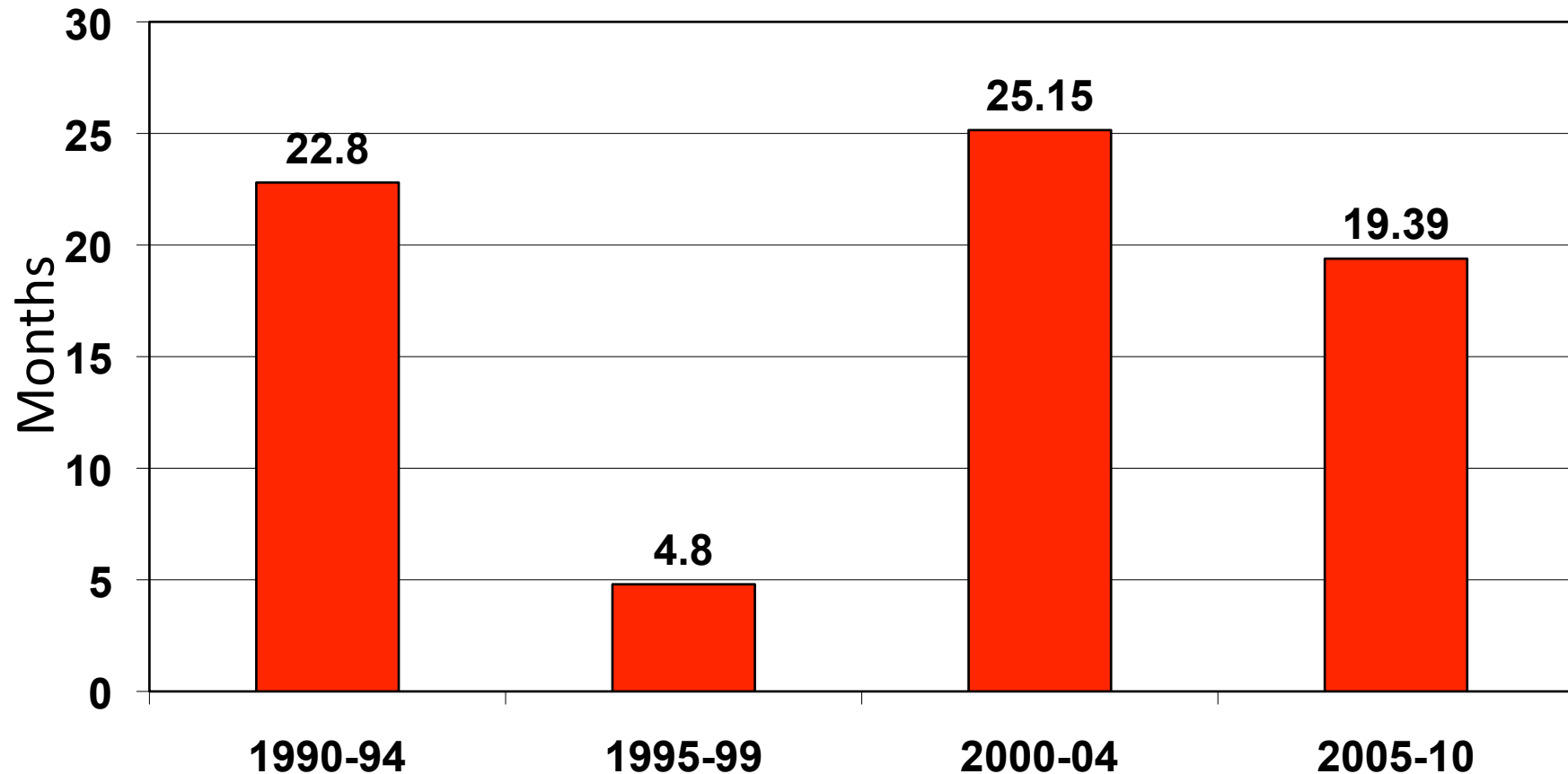


Excludes secret investigations

MEDIAN LENGTH of All Investigations of Global Cartels Is Relatively High



TREND in LENGTH of Median Investigation, US DOJ, 1990-2010

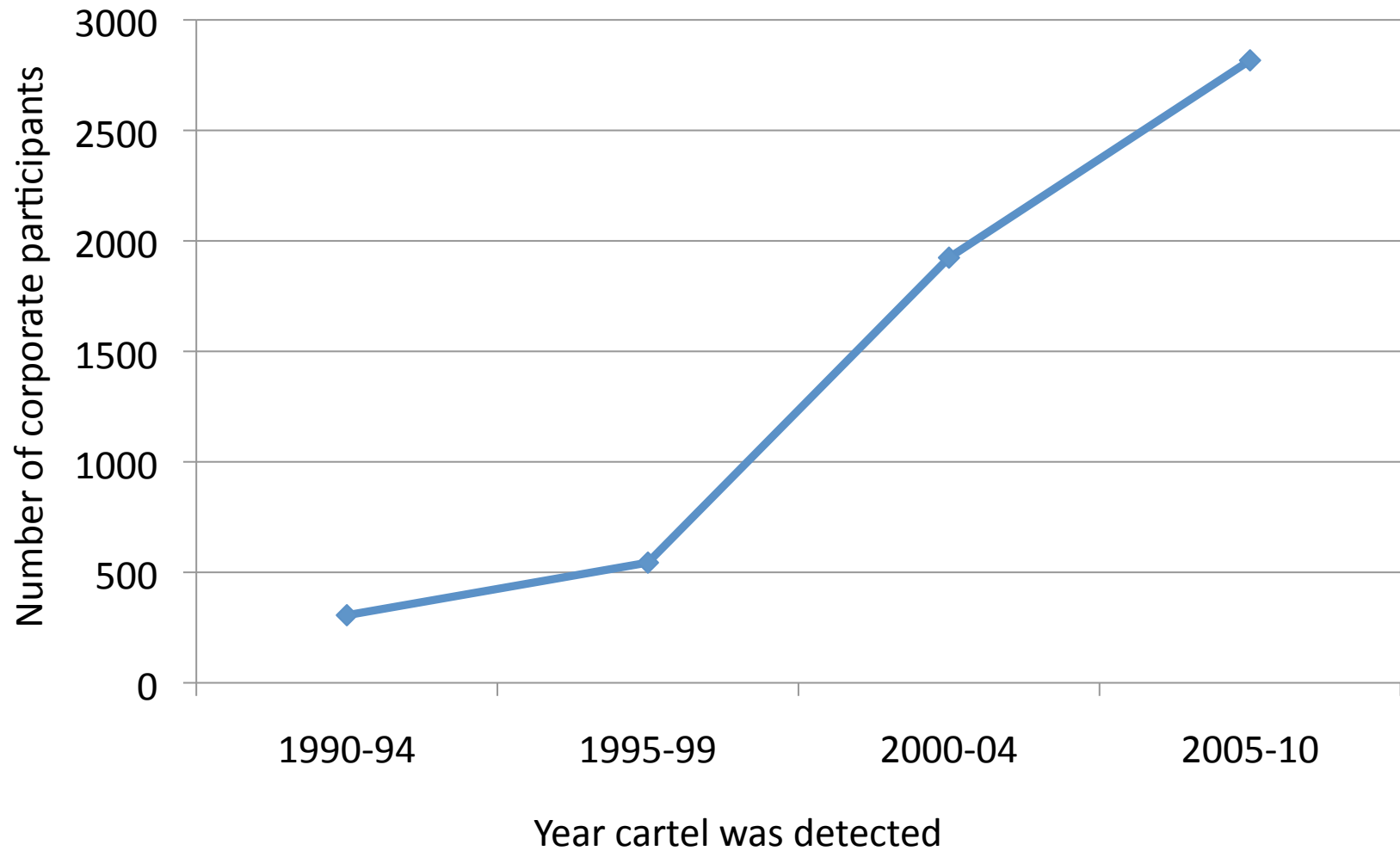


Understates length because termination is year the first cartel was fined

Despite Heavier International Cartel Penalties, More Companies Are Becoming Cartelists

More than 7800 instances of corporate cartel participation have been identified. At least 2600 have been fined during 1990-2010.

Number of Corporate Cartelists Detected Is Rising



Sources

- John M. Connor. *Private International Cartels: Full Data*. [The PICs spreadsheet, first created about 1998, is continuously updated. As of March 2011, the full data file was 11MB and consisted of 640 observations of suspected or convicted cartels and 8500 cartelists (companies and individual participants) with 2.8 million cells of data. There are also 13 back-up spreadsheets.]
- John M. Connor. *DOJ Cartel Enforcement 1990-2010*. [A spreadsheet created late 2007 that contains annual budgets, activities, and criminal enforcement actions of the U.S. DOJ with respect to hard-core cartels.]
- John M. Connor and Gustav Helmers. *Statistics on Modern Private International Cartels: Working Paper 07-01*. Washington, DC: American Antitrust Institute (January 2007). [<http://www.antitrustinstitute.org/recent2/567.pdf>]
- John M. Connor. *Cartel Amnesties Granted: Worldwide Whistleblowers* (October 2008, updated). [at SSRN: <http://ssrn.com/abstract=1285469>]

Notes

- Slide 5: Counts all cartels indicted, sued, raided, or formally investigated by a grand jury, the DOJ, or sued by private plaintiffs. Year is the earliest of these events reported in the press. There are 126 cartels in this slide.
- Slide 6: Counts all cartels indicted, sued, raided, or formally investigated by the Competition Bureau or sued by private plaintiffs. Year is the earliest of these events reported in the press. There are 49 cartels in this slide.
- Slide 7: Counts all 645 cartels indicted, sued, raided, or formally investigated by a court, commission, or private plaintiff (excluding suspected but cleared cartels). Year is the earliest of these events reported in the press. There is no double counting of cartel discoveries in this slide. *Glass Containers* is the first cartel, investigated in 1983 with a bench trial ending 1990.
- Slide 8: Counts all 117 global cartels indicted, sued, raided, or formally investigated by a court, commission, or private plaintiff. Excludes suspected but cleared cartels. Year is the first of these episodes reported in the press.
- Slide 9: Year is first public notice of a raid or other knowledge of an investigation by the Commission. Counts all 159 cartels formally investigated by the EC. Almost all involved multiple Member States of the EU; some were global cartels, and EC prosecutions may be double counted with those of other jurisdictions in other slides. Year is the earliest of these events reported in the press and ranges from 1984 to 2010. Rates for 2008-10 probably understated.
- Slide 10: NCAs are the 27 current members of the EU, no matter when they joined, plus the countries (now 4) that are members of EFTA and included in enforcing EU competition law. Counts all cartels indicted, sued, raided, or formally investigated by a court, commission, or private plaintiff. Year is the earliest of these events reported in the press. There are 243 cartels that were investigated by the EU's NCAs.

Notes Cont.

- Slide 11: Counts all 88 cartels indicted, sued, raided, or formally investigated by a court, commission, or private plaintiff in Asia. Excludes Australia and New Zealand, which have a pattern similar to Asia. Year is the earliest of these events reported in the press.
- Slide 12: Counts all 152 cartels indicted, sued, raided, or formally investigated by a court, commission, or private plaintiff in Africa, Asia, or Oceania. By far the main protagonists are South Africa (40), Korea (35), Japan (13), and Brazil (16). Year is the earliest of these events reported in the press.
- Slide 14: Percentage of cartel cases that resulted in fines and where the dates of the investigations (“raids” or grand juries empanelled) are first reported in the English-language press or on an antitrust authority’s Web site less than one month before a decision is announced. The difference between 100% and the percentages shown above may be called secrecy or confidentiality.
- Slide 15: A lag is the time between the time an investigation (raid, statement of objections, issuance of subpoenas, private damages suit, or grand jury) is first made public and the time the first penalty is announced. There are 253 cartels (88 US, co Canada, 101 EC, 81 NCAs, 88 other) with one or more kinds of completed legal actions for which the dates are known; the median “total lag” from the first date in any jurisdiction to the last date in any jurisdiction (including generally lengthy private litigation) is 36 months. Secret investigations are those where the decision to convict one or more cartel participants was the first time any public information became available about the existence of an investigation.
- Slide 16: A lag is the time between the time an investigation (raid, statement of objections, issuance of subpoenas, private damages suit, or grand jury) is first made public and the time the first penalty is announced. There are a total of 69 global cartels in the sample. The median “total lag” (the earliest date in any jurisdiction to the last date a decision is made) for the 69 is 53.7 months.

Notes Cont.

- Slide 17: A lag is the time between the time an investigation (raid, statement of objections, issuance of subpoenas, private damages suit, or grand jury) is first made public and the time the first penalty is announced. There are a total of 88 cartel prosecutions in the sample.
- Slide 19: Total is about 7800 ultimate parents or “companies,” which double counts unique companies that participated in two cartels. Excludes alleged cartels that received no sanctions after their cases were concluded.