

1. Introduction

Cartels ‘undermine and destroy a fundamental economic and political philosophy of Western democracies, ie free market capitalism’;¹ are ‘cancers on the open market economy’;² they are ‘the supreme evil of antitrust, overcharging consumers many billions of dollars each year’,³ and ‘serve only to rob consumers’.⁴ Such condemnation invites strong action; cartelists face, if caught, extremely high fines in the European Union (although the argument is made that these fines are insufficiently high – see Chapter 2, below), and high fines and imprisonment in the United States. Citing the experience of the US as a positive one, the UK⁵ introduced the Cartel Offence in 2002. The argument made in this book is that the decision to do so has, at the time of writing, resulted only in failure. When work began on this book I was not certain that I would reach this conclusion, but I *was* certain that the implementation of the law by the Office of Fair Trading (‘OFT’) had gone disastrously wrong, as evidenced in the collapse of the first prosecution to be taken ‘independently’. Earlier convictions secured in the *Marine Hose* cartel were, as will be discussed later in this book, in effect coerced on the back of United States’ enforcement activity – in the language of industrial economics and competition policy, the OFT was a

¹ Whelan, PM, ‘A Principled Argument for Personal Criminal Sanctions as Punishment under EC Cartel Law’ (2007) *Competition Law Review* 7 at 29.

² Monti, M, ‘Why Should We Be Concerned with Cartels and Collusive Behaviour?’, in Konkurrensverket (Swedish Competition Authority), *Fighting Cartels – Why and How?* (2001) Konkurrensverket at 14.

³ Connor, JM and Lande, RH, ‘Optimal Cartel Deterrence: An Empirical Comparison of Sanctions to Overcharges’ (2011) AAI Working Paper No 11-08, at 1. In the context of an attack on a particular line of economics and law analysis, we find an even more robust language employed: ‘efficient hard-core price-fixing is no more likely than efficient child molestation’ (Werden, GJ, and Simon, MJ, ‘Why Price Fixers Should Go to Prison’ (1987) 32 *Antitrust Bulletin* 917 at 932).

⁴ Werden, GJ, Hammond, SD, and Barnett, BA, ‘Deterrence and Detection of Cartels: Using All the Tools and Sanctions’ (2011) 56:2 *Antitrust Bulletin* 207 at 207.

⁵ This book deals with UK, US, Irish and EU law. Although the term ‘antitrust’ is finding increasing favour in the European Union and in the United Kingdom, I shall use it here only when discussing the antitrust law of the United States.

'free rider'.⁶ It is not possible to say whether the success in this case led to a sense of complacency that in part contributed to the collapse of the *British Airways* case, which is discussed very extensively in Chapter 4 below. As of 2012 the UK's Cartel Offence has been the dog that did *not* bark.

In reaching my somewhat robust conclusion I have considered four questions. (1) Is criminalisation of competition law ever a good idea? (2) Was the UK correct to criminalise certain (anti-)competitive behaviour, and to what extent would a consideration of the approach taken under EU competition law – at the 'centre', among the national competition authorities ('NCAs'), and in particular in the UK – impact on the answer to this question? (3) If the criminalisation of aspects of competition law could be an appropriate strategy in the UK, was the correct approach taken in the legislative detail? (4) If the correct approach was taken by the legislature, is it possible to identify specific failings in the enforcement of the law by, primarily, the OFT? In order to avoid unnecessary suspense, the answers to these questions, which flow through the rest of the book, although not perhaps as neatly as the systematisation above would suggest, are as follows: the arguments in favour of criminalisation are strong; the UK's attempt to create a criminal system that stands apart from, but must operate alongside, UK and EU civil law is a mistaken endeavour; the correct approach was not taken in the legislative detail (evidence of which can be found in the 2012 proposals for reform); and there have clearly been failings in enforcement, as has been acknowledged by the OFT. The answers to questions 1 and 4 were in my mind before I began writing this book, although I would have been prepared to follow the evidence had it pointed in a different direction. It matters that I was convinced that the criminalisation of competition law could, in an appropriate context, be a successful strategy. This is important to the scheme of this book in that I have accepted – as apparently did the Government at the time the Cartel Offence was being brought forward in Parliament (see Chapter 4, below) – that the US experience of criminalisation has been broadly successful. I have thus used the US experience as a reference point throughout this book, and Chapter 3, below, is an attempt to explain the genesis of this policy, shifts in the policy over the more than 120 years since it was introduced, and enough of the detail of the application of the law in practice

⁶ For the Office of Fair Trading the *Marine Hose* prosecutions continue to be held up as an example of success. Thus, for example, the OFT has argued that 'it is essential that the . . . UK retains the ability to pursue criminal investigations into individuals . . . as the OFT did successfully in the Marine hose case' (OFT, *A Competition Regime for Growth: A Consultation on Options for Reform. The OFT's Response to the Government's Consultation* (OFT 1335, June 2011) at 5.3.

to serve as a useful guide to this area. In respect of question 4 my conclusion sadly lacks originality; one would be hard-pressed to find any UK competition law expert outside the OFT who did not take the view that serious mistakes had been made by the OFT, and indeed this much was acknowledged by the OFT in its public breast-beating after the trial of a number of persons with links to British Airways collapsed. It is very likely that this latter case will be the last to have been brought within the framework originally established in 2002. Shortly after work began on this book the Government announced a reform of aspects of the UK competition law system, and included discussion of the future of the Cartel Offence in the relevant materials. This reform process is discussed in some detail in Chapter 4. That this book is in part a work of legal history will not, I hope, deter the reader anxious for solutions to practical problems at the time of reading; the policy issues raised here will remain relevant.

I recognise in writing this book that I am swimming in dangerous waters. The bibliography of the criminal law of competition is, on both sides of the Atlantic, small when compared to the amount of discussion given over to analyses of substantive conduct and broader policy. The US antitrust lawyer may choose to focus on precisely that substance and policy, leaving civil and criminal procedure to specialists in these areas of law. In the UK, at least until the collapse of *R v Burns and others*, there was very little literature relating to the Cartel Offence.⁷ I have in these pages plunged into the murky depths of certain aspects of criminal law and procedure in the UK, the US and Ireland, and hope that specialists will forgive me for doing so.

Prior to 2002, when the Enterprise Act introduced the Cartel Offence ('the Offence') into the law of the United Kingdom, the UK had not for a long time maintained a criminal law of competition.⁸ Post-war, the UK competition law regime, introduced in an Act of 1948,⁹ and modified heavily in the Fair Trading Act of 1973, was largely supervisory in nature, with little provision made for punishment, whether in the form of civil or criminal sanctions. There was the possibility, in exceptional circumstances,

⁷ References to almost all of this are provided in the bibliography, although this does not include shorter pieces not published in reference or reviewed journals.

⁸ It was noted, shortly after the enactment of the Offence, 'that only five years ago, the UK still had one of the feeblest anticartel regimes in the developed world, where cartels could be registered and penalties (for contempt of court) only applied if a company had broken a solemn undertaking to sin no more' (Joshua, JM, 'The UK's New Cartel Offence and Its Implications for EC Competition Law: A Tangled Web' (2003) *European Law Review* 620 at 620).

⁹ Monopolies and Restrictive Practices (Inquiry and Control) Act 1948.

of some criminal enforcement, but this rarely happened.¹⁰ The decision to introduce competition law into the UK in 1948 was a tentative one, and it was not until membership of the European Economic Community, now the European Union ('EU'), took effect in 1973 that anti-competitive conduct in the UK could give rise in the first instance to substantial financial penalties and remedial orders. The 1948 legislation was the first competition law in the UK since 1844. By that year the high tide of economic laissez faire had ensured that a raft of earlier legislation had, over time, been repealed in its entirety. This earlier legislation, which can be dated back to the reigns of the Saxon kings, and which was reinforced after the Norman conquest, did include criminal penalties, including ones we would now regard as 'cruel and unusual'. Thus, for example, in respect of one offence the punishment on a third conviction was that the offender would have his right ear cut off, and would forever after 'be known as a man infamous'. It is not known what impact this enforcement mechanism had on compliance with the law, nor how often the punishment was imposed.

In the 1990s, with the introduction of the Competition Act 1998 ('CA98'), the UK began a process of what has been termed 'Europeanisation' of its competition law.¹¹ The Fair Trading Act 1973, the Restrictive Trade Practices Act 1976, the Resale Prices Act 1976, and the Competition Act 1980 were largely swept aside (although the distinctive

¹⁰ Although see *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 AC 456. Here the respondents were engaged in the supply of ready-mixed concrete. They were subject to an injunction restraining them from giving effect to certain unlawful agreements under the Restrictive Trade Practices Act 1976, s 35(1). It was established that, without the knowledge of the respondents, and against their express instructions, certain local managers had continued the unlawful arrangements. The respondent companies were found to be in contempt of court. In this case it was only the companies who could be held responsible for the contempt of court, and the House of Lords 'dealt with the case as one of vicarious liability' (The Law Commission, *Criminal Liability in Regulatory Contexts: A Consultation Paper* (2010), Consultation Paper No 195 at 100). Lord Templeman stated:

[a]n employee who acts for the company within the scope of his employment is the company. Directors may give instructions, top management may exhort, middle management may question and workers may listen attentively. But if a worker makes a defective product or a lower manager accepts or rejects an order, he is the company (at 465).

¹¹ See, for example, Rodger, BJ, 'The Competition Act and the Enterprise Act Reforms: Sanctions and Deterrence in UK Competition Law', in *Competition Law Sanctioning in the European Union: The EU-Law Influence on the National Law System of Sanctions in the European Area* No 46, pp. 101–32 (2004).

UK approach to merger control and market investigations was retained), and were replaced by an *ex ante* prohibition system based on arts 101 and 102 TFEU. The OFT was forced to change its culture and to become an enforcer of law, with the power to impose penalties on undertakings in breach of the Chapter I and Chapter II Prohibitions of the CA98, as well as in respect of breaches of arts 101 and 102 TFEU.

The late 1990s was a vital period in the development of the approach to cartels in general and international cartels in particular. In July 1999 the US for the first time sentenced to imprisonment a foreign national following a breach of s 1 of the Sherman Act. The fact that it was able to do so reflected wider growing consensus as to the vigour with which cartels should be pursued:

[t]he Antitrust Division has been able to secure prison sentences for culpable non-US citizens because the leniency program and improved cooperation with competition and law enforcement agencies in other countries substantially enhanced the Division's ability to access evidence outside the US and secure jurisdiction over culpable individuals abroad. Our foreign counterparts began to cooperate and conduct parallel investigations resulting in sanctions. Changing attitudes toward cartels by authorities in other countries occurred gradually, but 1998 was a watershed year for Europe. The OECD for the first time formally supported aggressive cartel enforcement, the European Commission's Directorate General for Competition created a special unit to investigate cartels and decided its first cartel cases under its new leniency program, and the Commission issued its first fines guidelines.¹²

The apparent success of the US regime is seductive, but in few seductions is the entire truth revealed, and as Baker has made clear, 'the United States did not arrive at the point it has – with potential criminal liability and jail time as serious deterrents – quickly or easily';¹³ elsewhere Baker has referred to the 'long slow road' travelled by US antitrust law.¹⁴ Having embarked on a Europeanisation of its domestic competition law in 1998, the UK quickly followed on with a partial Americanisation in 2002.

The decision in 2002 to reintroduce a criminal offence extending to

¹² Werden, GJ, Hammond, SD, and Barnett, BA, 'Recidivism Eliminated: Cartel Enforcement in the United States since 1999' (2011) Georgetown Global Antitrust Enforcement Symposium, September 22, 2011 at 5, internal footnotes omitted.

¹³ Baker, DI, 'The Use of Criminal Law Remedies to Deter and Punish Cartels and Bid-Rigging' (2000–2001) 69 *George Washington Law Review* 693 at 694.

¹⁴ Baker, DI, 'Punishment for Cartel Participants in the US: A Special Model?', in Beaton-Wells, C, and Ezrachi, A (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement* (2011) Hart Publishing at 29.

certain classes of anti-competitive conduct ‘dishonestly’ entered into must be taken as evidence of a view held by the Government, with presumably the support of the Office of Fair Trading (‘OFT’), that the introduction of the Offence would increase the efficiency of the UK’s competition law regime. Indeed there is clear evidence in the preparatory materials – the consultation documents, responses, and in the debates in Parliament – that this belief was held. The Government in particular cited the experience of criminal enforcement in the US in support of its position. The US has maintained criminal sanctions in respect of antitrust violations since the introduction of the Sherman Act in 1890. Both sections 1 and 2 of that Act state that their breach may constitute a ‘felony’, although there has been no criminal enforcement in respect of s2 of the Act, which condemns monopolisation. The Organisation for Economic Co-operation and Development (‘OECD’) presses the case for strong enforcement action to be taken in respect of certain forms of anti-competitive conduct (so-called ‘hard core cartels’), but does not privilege in its recommendation any particular approach.¹⁵ The European Union, whose competition law has arguably been more effective than that of UK law since the former took effect, does not encompass criminal sanctions within its regime, although as will be discussed in Chapter 4, it does allow member states the leeway to maintain national criminal sanctions, but if these are ‘the means whereby competition rules applying to undertakings are enforced’ enforcement of this law must be fully compliant with Regulation 1/2003.¹⁶ Other EU member states, but not a majority, include some form of criminal law within their competition law systems. The Irish system is discussed in Chapter 5, below.

The inclusion of the provisions establishing the Cartel Offence in the Enterprise Act 2002 (‘EA02’) was somewhat surprising. The UK’s competition regime had been substantially overhauled only recently with the passing of the CA98, which took effect on March 1, 2000. The UK national competition authority, the OFT, was struggling with a changed enforcement role, and the new system had not yet had time to bed-in. The introduction of the Offence is discussed in more detail in Chapter 4. A preparatory report had provided a loose estimate, which has turned out to be wildly optimistic, of the number of prosecutions that might be brought forward each year, and had suggested that the number was ‘likely

¹⁵ OECD, *Recommendation of the Council Concerning Effective Action against Hard Core Cartels*, March 25, 1998 [C/M(98)7/PROV].

¹⁶ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102] of the Treaty (2003) OJ L1/1, recital (8).

to be near the bottom' of a range with six as a lower bound.¹⁷ As of April 2012, with the Offence having been in force since June 20, 2003,¹⁸ only *one* case has given rise to convictions, and that case, which flowed from cartel activity in relation to marine hose was atypical in that the US authorities were heavily involved in its investigation, and in that guilty pleas lodged by three defendants in the UK were part of a plea agreement negotiated in the US. In March 2011 the coalition UK Government published a consultation document, *A Competition Regime for Growth: A Consultation on Options for Reform*,¹⁹ which included at Chapter 6, proposals to amend the Cartel Offence. Clearly, in the view of the Department for Business, Innovation and Skills, ('BIS') something had gone wrong with the Offence or with its operation.²⁰ It may be that the ten-year period since the Offence was first enacted has provided sufficient evidence of deficiencies in the original wording of the Offence, but the case experience on which such a conclusion is drawn is severely limited. One thing that clearly did go wrong, although it is not clear if the blame for this can be attributed to the wording of the Offence itself, was the abandonment by the OFT, on May 10, 2010, of what would have been its highest profile prosecution of the Offence at that time. The case of *R v Burns and others*, which flowed from an alleged price-fixing arrangement operated by Virgin Atlantic and British Airways, was abandoned when previously undisclosed evidence came to light just as the main trial, after various preliminary appeals had been settled, was underway. The OFT subsequently stated that this development led to 'adverse reputational impacts for the OFT and

¹⁷ Office of Fair Trading, *The Proposed Criminalisation of Cartels in the UK – A Report Prepared for the Office of Fair Trading by Sir Anthony Hammond QC and Roy Penrose OBE QPM* (OFT 365, November 2001) [2002] UKCLR 97, at Para 3.7. In the course of the enactment of the EA02 the Under-Secretary of State did not commit herself to any specific number of cases, stating instead that '[t]he point is not about how many people we send to prison. . . . We would rather that people did not end up operating cartels, but it is important if they do so that we send a message, both to the individual and to society, that that is unacceptable and a serious offence' (*Hansard*, HC, Standing Committee B (April 23, 2002), col 169.

¹⁸ Enterprise Act 2002 (Commencement No 3, Transitional and Transitory Provisions and Savings) Order 2003, SI 2003/1397, art 2.

¹⁹ Department for Business, Innovation and Skills, *Competition for Growth: Consultation on Options for Reform* (March 2011). See further Chapter 4, below.

²⁰ At Para 6.5 of the Consultation Document, it is stated that:

[t]he deterrent effect of the cartel offence is weaker than was intended because there have been so few completed cases to date: only two cases so far have reached trial stage and only one of them resulted in convictions.

the competition regime'.²¹ A more acerbic commentator referred to the Offence as 'a dead man walking'.²²

In this book I aim to examine some of the issues surrounding the criminalisation of competition law in the UK. It would be almost impossible to do this effectively without frequent reference to the US experience, which has clearly formed a strong reference point for the international competition law community. There are however things which clearly differentiate the US and UK situations; one such factor may simply be that of the socio-legal culture, although assessing this is problematic. A more fundamental difference lies in the way in which the relevant competition laws are framed within the legal systems. The federal law of the US does not have to jostle for position with a competition law of general application which is supreme over it, whereas UK competition law does. In the US the federal authorities can make a choice early on between *either* a civil action *or* a criminal prosecution. In the UK, as EU law makes clear, and as is restated in Regulation 1/2003, EU competition law takes supremacy over domestic competition law in the event that the two should conflict, or in the event that both apply to the same set of facts. In particular the UK authorities may not be able to view civil and criminal enforcement as an *either/or* situation, and instead the same set of factual circumstances may give rise to two different actions – one on the basis of a violation of the CA98 or the TFEU, the other on the basis of a violation of the Cartel Offence. US law allows for criminal prosecution of *both* the sinful corporation *and* the individual wrongdoer – UK law does not. Only where action is taken in the context of an unlawful agreement which does not affect trade between member states of the EU (within the terms of the relevant Commission notice and EU case law) would there not need to be any consideration of the impact of EU obligations. This means that in the UK the link between civil and criminal leniency is more complicated, and the practitioner community would probably say *too* complicated, than is the case in the US or, following recent changes to its system, Canada.²³

Another feature of the UK regime is that there has been a deliberate

²¹ OFT, *Project Condor Review Board* (2010) Annex, p 9.

²² Joshua, JM, 'Shooting the Messenger: Does the UK Criminal Cartel Offense Have a Future?' (2010) *theantitrustsource*, August (www.antitrustsource.com).

²³ A new cartel provision came into force in Canada in March 2010. This differs from the previous position in that, as with the position in the UK, it does not require any showing of effect on competition in respect of competitor agreements that fix prices, allocate markets, or limit output. The first conviction occurred in January 2012, when two firms pleaded guilty to price-fixing in the market for polyurethane foam, and were fined C\$12.5 million.

attempt to remove complex issues of economics from the framing of the Offence. Thus s188 of the EA02 sets out a number of arrangements which, if entered into dishonestly, constitute the core of the Offence. As stated in the 2011 Consultation Document, this was intended to 'decrease the likelihood of defendants seeking to rely on complex economic evidence that juries will find difficult to understand'.²⁴ That the Government might take the view that the introduction of economic evidence into a jury proceeding would be potentially detrimental to conviction rates is perhaps reasonable. In the United States, however, where section 1 cases are fairly regularly brought before juries and grand juries, there has been no differentiation between the terms of the civil infringement and of the criminal offence. Both types of cases are brought on precisely the same wording of s1 of the Sherman Act. It may be that the differentiation of categories of conduct by use of the *per se* and rule of reason approaches developed by the courts since the early 1900s, and still continuing into the 21st century, mitigates against defendants seeking to bamboozle juries with complicated economic analyses.

I also probe here, in Chapter 2 in particular, the economic arguments underpinning the case for the adoption of a criminal law. If the primary purpose of competition law is to facilitate economic efficiency, or at least to mitigate against the harms arising from economic inefficiency, it is surely reasonable to evaluate and critique laws aimed at ensuring that end against an efficiency standard. Chapter 2 is therefore heavily reliant on the literature of others, and my hope is that this chapter will serve, in effect, as a literature review of the area as of mid-2012. This includes literature relating to the economics of law, and the economics of the enforcement of criminal competition law in particular.

It is a truism that the direct rewards of cartel participation do not

²⁴ Chapter 6, introduction. This argument is acknowledged in the 2011 Consultation Document, where it is stated, at Para 6.9 that the dishonesty element:

was included to reduce the likelihood that conviction would depend on judgments taken on detailed economic evidence. The requirement to prove 'dishonesty' would largely exclude potentially beneficial arrangements from the offence and there would usually be no need for juries to consider the economic effects of agreements. There was a concern that juries would find it difficult to understand such evidence and this would make the offence very difficult to prosecute (internal footnote omitted).

One could counter this concern with a hope, perhaps naïve, that an over-worked competition authority and the Serious Fraud Office would not contemplate launching prosecutions in cases where an argument as to countervailing benefits would be viable, although of course this would not preclude a defendant from running with such an argument.

typically flow to an individual, but to the corporation joining the cartel.²⁵ At the same time there *must be* a reason for individuals to commission the acts which lead to the corporations they are employed by, or which they own, entering into cartels. These might include promotion and bonuses if their company, or their part of the company, improves its position as a result; and perhaps importantly the reward might simply be one of an easier life. It is often argued in the economic literature, and the evidence for this is strong, that uncertainty is damaging to businesses, and certainly participation in a cartel can be expected to reduce uncertainty as the number of pressures on the company is correspondingly reduced by the elimination of direct sources of competitive pressures. The most commonly made argument for the existence of a criminal offence directed towards individuals is that this recognises the split personality of the corporate world, and attributes blame and condemnation directly to the responsible actors, presumably thereby reducing the incentives for them to enter into such arrangements. Thus, for example, Hughes LJ stated in *R v B*²⁶ that

the Offence created by s 188 is one arrow in the UK legislative quiver designed to prevent anti-competitive practices . . . There is no doubt whatever that it was created because it was thought to provide a stronger deterrent to such practices to threaten executives with imprisonment than was achieved by threatening undertakings with civil financial penalties, heavy as the latter may often be.

Similarly, in the 2011 consultation document, the Government states that the ‘possibility that business people will face imprisonment if found guilty of the Offence should radically alter the incentives to engage in cartels’.

In Chapters 3 and 4 I set out the relevant legal framework of the operation of criminal competition law in the US and in the UK, alongside discussion of the experience of enforcement. These chapters should serve as a useful guide to the state of the criminal law of competition in each regime as of April 2012. In Chapter 5 I consider the experience of Ireland, which operates a regime which is wholly criminal in nature. Chapter 6 presents three case studies of the operation of cartels, and the application of enforcement efforts against them. Chapter 7 presents some conclusions.

My fundamental starting point in writing this book has been a suspicion that the Cartel Offence is failing in the UK, at least at the time of writing,

²⁵ This point was made in the UK case of *R v Whittle* [2008] EWCA Crim 2560 [2009] UKCLR 247 where the Appeal Court noted that the profits generated by participation in the cartel ‘did not, of course, go directly into the pockets of any of the applicants’ (at [21]).

²⁶ [2009] EWCA Crim 2575 [2010] UKCLR 1, at [22].

and that the *perception* is that the criminal policy applied in the US is broadly effective. This is not to suggest that the application of criminal law to cartelists in the US is without its problems, although these are more clearly demonstrated in relation to international cartels, in respect of which jurisdictional and procedural difficulties in securing convictions mount.²⁷ Clearly the lack of case law in the UK is diminishing any impact the Offence may have been intended to have. In the preparatory White Paper²⁸ it was noted at Para 7.33 that the new Offence would have to 'be actively applied so that its deterrent effect is genuinely felt'. It is however surprisingly difficult to ascertain whether a law has failed or succeeded, particularly when the law is a new one. If there are no, or only a handful of, cases, this might suggest that the law is being complied with such that enforcement action is unnecessary. It might also suggest that there was in fact never a problem, and that the law was unnecessary (and hence inefficient). One could also argue that the law was necessary, but that avoidance is rife, and detection efforts weak. Similarly, a substantial body of case law and a number of successful prosecutions might imply that the law was necessary, that breaches were rife, and that detection is strong (and hence, perhaps, that the law is efficient). What we would not know in either circumstance are the answers to two important questions: (1) what effect has the law had in reducing the number of instances of the commission of the relevant offence by virtue of its very existence? (ie, have firms that would have entered into illegal cartels taken compliance efforts to ensure that they did not do so following the introduction of the law?); and (2) how many instances of continuing violations of the law are going undetected? The questions I seek to answer are those of whether the law in the UK has actually failed so far, and, if it has, why this might be the case, and whether the law in the US is actually succeeding, and again, if it is, why this might be the case. In short, are there lessons to be learnt from the experience of the US, and perhaps from other states, that could be applied in the UK to improve the efficiency of competition law enforcement via the application of personal criminal sanctions?

²⁷ See, for example, Connor, JM, 'Problems with Prison in International Cartel Cases' (2011) 56:2 *Antitrust Bulletin* 311.

²⁸ Department of Trade and Industry, *Productivity and Enterprise: A World Class Competition Regime* (Cm 2533, July 2001).