Subject index

ability to pay (fines) 136, 137, 230, 273
abuse of dominant position 2, 4, 77
administrative offences
   classification 260
   legal consequences 257–8
   procedure 258–9
   Germany 257–62
administrative sanctions
   fines 2
   The Netherlands 313–14
Amino Acids case, fining 234
Amnesty Plus policy
   Corporate Leniency Program, US 4, 88, 139, 140
   and ‘leniency plus’ 165
Amsterdam Competition Day 314
anti-cartel criminal program, US 50
Antitrust Division, US see Department of Justice, US (Antitrust Division)
antitrust enforcement see enforcement
antitrust injury plaintiffs, limitations on ability to recover 279–80
Articles 81 and 82 EC
   and modernization of competition law 5
   violations of 14
   Commission, limitations on competence 15
   EU institutions 66
   EU Member States 13, 70–74
   and imprisonment 85, 90
   Malta 71
   and national competition laws 71–4
   Regulation 1/2003 66, 67, 69–74
   see also Regulation 1/2003
   standard of proof 69
ASCAP cartel 220
Assistant Attorney Generals 120
Austria
   Articles 81 and 82 EC, criminal enforcement for violation 71
bid-rigging 297–8
decriminalization of antitrust enforcement 74–5, 295
Lombard club case 298–300
national competition authorities 300
(re)criminalization of antitrust law enforcement and criminalization 301
normative background 301–3
outlook 303
paper tiger 296–7
reform of year 2002 297
Bagatellunrecht 260
Belgium, leniency programmes 164
beyond reasonable doubt
cartel offence 250, 255–6
proof 62, 69
bid rigging
   Austria 297–8
   as fraud 262–3, 297, 298
   Criminal Code, Germany 262–6
cases 266
   material features 263–4
   practical issues 264–6
   procedural features 264
   reasons for introduction 263, 266
   United States 3, 222
BMI cartel 220
bounty, posting of 293
Bundeskartellamt 266
burden of proof
cartels, US policy 45–6, 49
see also standards of proof
Carbonless Paper, base fine 225
Cartel Directorate 14–15
Cartel Investigations Branch, 254
cartels
   anti-cartel criminal program, US 50
   burden of proof 45–6, 49
civil regime, UK 253–4
Subject index

colluding firms, internal organization 141–3
coordination 44–5
criminal enforcement norm 49–53, 54
criminal nature 178–9
criminalization of antitrust law, cost 134–5
price-fixing 133–4
cross-border 13
destabilization, consequences for 206–7
detection 43, 46–7
duration, average 79
enforcement of law
- class action 293
goals 291
incentives 291–2
institutional remedies 292–4
public enforcement 294
punitive damages 293
EU anti-cartel enforcement, characteristics 202–4
fines 89
as inadequate deterrent 2, 180–81
hard-core see hard-core cartels
international 241–5
cooperation 242
jurisdiction and restraint 242–3
research agenda 243–5
Ireland 271–2
liability, substantive rule of 45, 49
nature 11, 184, 290–91
Organisation for Economic Co-operation and Development 111–13, 151
Cartel Recommendation 1998 111, 182
Reports 112–13
prosecutions 43, 47–8
sanctions 48–9, 110–32
benefits 115–21, 143–4
costs 121–5, 143–4
secret nature of 184
self-discipline 145, 146
United Kingdom see United Kingdom, cartels in US remedy against 45–9, 239–47
case law 45
cooperation with foreign governments 47

criminal antitrust law 240–41
electrical equipment cases 50–51
modern history 48
prosecution 47–8
sanctions 48–9
Christie’s/Sotheby’s case 191, 249
class actions
cartel law enforcement 293
detection 140
opt-out 5
corruption, leniency 164
collusion
cartel policy 42–3
effect on consumer and producer surplus 220
internal organization of firms 141–3
and modernization 5
and price-fixing 183
prosecutions, US 51
social cost 133, 134
welfare effects 221
Commission see European Commission
compensation, objective of 270, 276–80
competence
limitations on, violations of Articles 81 and 82 EC 15
national competition authorities 202, 203
for prosecutions, Germany 258–9, 264
competition authorities
condemnation of harmless behaviour 219
enforcement instruments available 3
Ireland 189
multiple involvement, and leniency programmes 167
see also national competition authorities
Competition Disqualification Orders see disqualification orders
competition law
decentralization of enforcement (Regulation 1/2003) 14
modernization 13
nature, and criminalization of enforcement 10
Competition Law Annual, EUI, Florence 6, 30–35, 78
competition policy, and cartels 41–59
‘equilibrating tendencies’ 42
framework applied 42–4
law, decision to obey 42–5
liability, substantive rule of 45, 49
sanctions 41
US 48–9, 51
sources of insight 41
US strategy 45–9
burden of proof 45–6, 49
criminal program, building 50
development of criminal enforcement 50–53
concerted action, burden of proof 45–6, 49
consumer surpluses 220, 271
contingency fees 5
collusion agreements 242
Corporate Leniency Policy, US 4, 66, 88, 139, 140

cost-benefit analysis
cartel sanctions see costs of criminal sanctions (cartels)
criminalization of competition law 7–12
leniency applications 203
management 10
social costs 133, 134, 135
costs of criminal sanctions (cartels) direct 121–3
indirect 123–5
Member-State-first scenario 126
Cournot-Nash equilibrium 183
Court of First Instance 153
and Commission cartel decisions 122
and human rights 64
Court of Justice see European Court of Justice
Criminal Code, Germany 257
criminal intent 62
criminal law
case law, human rights 63–4
defence, criminal rights of 62
distinguishing characteristics 61–3
links 63
EC/EU law, no definition of ‘criminal’ 60–61
European Convention 63–4
imprisonment 61
investigation, criminal powers of 62
moral condemnation 62
penalty and harm, less strict relationship between 62
criminal offenses classification 260
Germany 257–62
legal consequences 257–8
procedure 258–9
Criminal Procedure Code, Germany 258, 259, 264

criminal sanctions in cartel cases 110–32
characteristics of criminal law 61
implementation of provisions 204–6
implications of introducing 201–2
Ireland 185
and leniency programmes 20, 162–3
see also sanctions
criminalization advantages 135
alternatives possible, cartels 135–41
cartels antitrust law, cost 134–5
colluding firms, internal organization 141–3
cost of antitrust enforcement 134–5
price-fixing 133–4
and competition law, nature 10
costs and benefits 7–12
definitions 19, 60–4, 177–8
drawbacks 135–6, 143
EU level
Constitutional Treaty 96–8
EC Treaty 94–6
legal possibility of criminalization 94–8
and leniency 176–95
programmes 172
Member States see Member States national level, EU level distinguished 31–2
see also criminal law
culpability score, base fines 223
custodial sanctions see imprisonment; leniency
Cyprus, Articles 81 and 82 EC
criminal enforcement for violation 71
Subject index

damages
  exemplary, and prejudgment interest 280
  private claims 3, 4, 87
  punitive 293
  threat of, and oral statements 166
dawn raids 14, 36
deadweight-loss triangle, fines 220
decriminalization
  Austria 74–5, 295
  Germany 260
  Member States 74–6
defence, criminal rights of 62
defence bar, United States 274–5
Denmark, Articles 81 and 82 EC, violations 61, 71
detection
cartels 43, 46–7
class action suits 140
escaping 9–10
  and imprisonment 79–80
probabilities 2, 229
deterrence
  combination of instruments, desirability 17
effective, enforcement conditions for 87
fines, inadequacy of 2, 81, 272–3
general and specific 281, 292
imprisonment, benefits of 20, 83–4, 200, 274
individual 291, 292
Ireland 271–6
objective of 270
optimal 220, 272
DG Competition 2, 14, 161
directors
  disqualification of 86–7
  see also disqualification orders
dishonesty, ‘Ghosh test’ 250
disqualification orders
civil regime, UK 253–4
  corporate actors punished through 200
deterrent effect 8
  see also directors: disqualification of distribution channels, and cartels 277, 278
Department of Justice, US (Antitrust Division)
  actions brought by 3, 184
association meetings, attending 165
on criminal sanctions 120, 125
electronic surveillance 47
leniency programs 4, 47, 52, 66, 177
Lysine cartel or Tapes 7, 11, 181, 191
National Criminal Enforcement Section 87
omnibus question 88
recovery by 49
sanctions 48, 51
wire-tapping 47
drug companies, price fixing among 255
dual criminality, and extradition proceedings 252
EC Treaty
  Article 83 16, 34
  Articles 81 and 82 see Articles 81 and 82 EC
  Commission, lack of competence 15
criminalization of antitrust enforcement, institution-level 94, 96
effects doctrine, US 241
electronic surveillance 47
employees, corporation liability for illegal acts of 8
enforcement
  anti-cartel, characteristics, EU 202–4
  assessment of effectiveness/efficiency 2
  combination of methods, US example 17
cost issues 134–5
criminalization
  Member States 76–7
  see also criminalization of competition law
decriminalization, Member States 74–6, 260
desirability 60, 78–90
Estonia 21, 307–11
Articles 81 and 82 EC, criminal enforcement for violation 71
Code of Criminal Procedure 308, 309
Competition Board 307–8, 309, 310
investigations 309–10
and Modernization Regulation 310
Penal Code 307, 308
Subject index

Estonian Competition Board 307–8, 309, 310
EU Constitution 96–8
European Coal and Steel Community (ECSC Treaty) 75, 77, 218, 226
European Commission
anti-cartel enforcement 121–2
corporate culture of 33
Guidelines on fines 2, 68, 224–6
investigation powers 68, 69
Leniency Notices (1996 and 2002) 33, 34, 161
leniency programme 4, 13, 14, 168–9
modernization package 5, 13–14
and NCAs 16
oral corporate leniency statements 166
on sanctioning 2, 197–8
see also European Union
European Commission of Human Rights 63
European Competition Network establishment 14
Notice 167
work allocation within, and leniency programmes 169–70
European Convention of Human Rights 63–4, 177
European Court of Human Rights 63–4
European Union
characteristics and history of anti-cartel enforcement 202–5
‘criminal’, no definition in law of 60–61
damages, private claims 3
DG Competition 2
enforcement
at institution level 66–9, 94–8
in US 4, 5, 65–6, 77
fining Guidelines 2, 68, 218, 224–6
harmonization of criminalization see harmonization
institution level, enforcement at 66–9
EC Treaty 94–6
legal possibility of 94–8
new Constitutional Treaty 96–8
leniency, requests for 161–75
leniency programmes 188
Member State level, enforcement at 69–74
Articles 81 and 82 EC see Articles 81 and 82 EC
national competition laws only 71–4
Regulation No. 1/2003 69, 90–92
see also Member States
modernization package 5, 13–14
see also European Commission;
(Treaty on European Union)
European University Institute Competition Law and Policy
Workshop, Florence (2001) 6, 30–35, 78
evidence
burden of proof see burden of proof
criminal and civil investigations contrasted 252–3
criminal sanctions, deterrent effects 116
gathering of 1
leniency programmes 165
‘marker’ systems 165
‘smoking gun’ 10
standard of proof see standard of proof
ex ante assessment and licensing,
merger control 1
extradition, cartel offence, UK 252
Federal Central Register of Crimes, Germany 258
Federal Trade Commission, US 3
establishment 47
FTC Act, sanctions 48
and imprisonment 90
fines
ability to pay 136, 137, 230, 273
actual 2
administrative 2, 177
base 223, 224
calculation 138, 181, 225
cartels 2, 89, 180–81
constraining 230–31
corporate 2, 3, 10, 87, 138, 273
employees, monitoring of 8
exemplary 219
Guidelines, EC 2, 68, 224–6
high level of, and imprisonment benefits 78–81
as inadequate deterrent 2
on individuals 85–6
infringements, major and minor 225
and marginal costs 220, 221, 222
maxima, institutional 230–31
Netherlands 316–18
optimal
breaches of competition law 219–22, 230–31
calculation 138, 181
EC fining Guidelines 224–6
fixed enforcement costs excluded 226
US Sentencing Guidelines 222–4
personal 5, 8
public 5
revenue, annual 217, 218
United States 3
vitamin cases 2, 52–3
Finland
Articles 81 and 82 EC, violations of 62
leniency programmes 76, 163
‘first in the door’ principle, leniency programmes 164
Framework Directive on environmental offences 15
France
Articles 81 and 82 EC, criminal enforcement for violation 71
decriminalization of antitrust enforcement 74
leniency programmes 76
fraud, bid rigging as 262–3, 297, 298
Germany 20–21
abuse of a dominant position, prohibition 77
administrative offences classification 260
criminal contrasted 257–9
infringements as 260–62
Articles 81 and 82 EC, criminal enforcement for violation 61, 71
bid rigging
as fraud 262–3
Criminal Code 257, 263–6
Constitutional Court 260
criminal and administrative offences classification 260
differences between 257–9
legal consequences 257–8
procedure 258–9
Criminal Procedure Code 258, 259, 264
decriminalization 260
Federal Central Register of Crimes 258
governing principles, and leniency programmes 259
Guidelines for Criminal and Administrative Offence Procedures 264
investigations 259
leniency programme 76, 162, 163, 259
Ordinance against the Abuse of Economic Power 77
prosecutions, competence for 258–9, 264
‘get tough’ movement, United States 120
Greece, Articles 81 and 82 EC, criminal enforcement for violation 71
guarantees, The Netherlands 315–16
Guidelines
Criminal and Administrative Offence Procedures, Germany 264
European Union 2, 68, 224–6
harm of infringement, assessing 228
Method of Setting Fines 218
Sentencing, US 78, 222–4
Federal Sentencing Guidelines Manual 222
limits on fines 231
mark-ups 228
habilitation procedure 36
Harberger triangle, social cost of collusion 133, 134
hard-core cartels
activities 143
description 176
imprisonment and fines 89
OECD Reports 79, 112
price-fixing, illegal 249
as theft 270
UK 74, 250
US 53
violation of prohibition against 33
Subject index 351

harm
- costly estimation of 227–9
  and penalty size 62
harmonization
- compulsory 202
- of criminalization 15–16, 92–4
  legal possibility 94–8
  of national laws already in existence 16–17
- spontaneous 202
- voluntary, leniency programmes 170
Hoffman La Roche, fine imposed on 217
horizontal agreements, and
imprisonment alternatives 90
horizontal restraints, rule of reason standard 42–3
immunity, and leniency programmes 163, 178
imprisonment
- alternatives to 85–90
  arguments for 8, 78–84
- criminal law 61
- duration of custodial sentences 282
  as effective deterrent 20, 83–4, 200, 274
  at EU level 34
  and fines, drawbacks 78–81
  and leniency 196–213
- moral message 84
- objections to custodial sentences 275–6
- of price-fixers 180–83
- prosecution, separation from custodial sanctions 206
- types of violations desirable for 84–5
  and violence 144
- incentive constraint 146
- incentives
  cartels, enforcement of law 291–2
  conflicting 198–9
  revenge 154
Individual Leniency Policy 66, 88
individuals
- criminal enforcement versus civil enforcement 61
- fines on 81, 85–6
- roundtable on sanctions against 113
- institutionalized representative, and class action 293
intention, and criminal law 62
interest, prejudgment, and exemplary damages 280
international cartels 241–5
- cooperation 242
- jurisdiction and restraint 242–3
- research agenda 243–5
investigations
- cartel offence, UK 252–3
- Commission powers 68, 69
- criminal powers 62
- dedicated investigator, need for 87–8
- Estonia 309–10
- Germany 259
- parallel criminal/civil 252–3
- powers, adequate 88–9
- terminating tariffs, The Netherlands 314–15
‘white-collar’, UK 254–5
Ireland 270–89
- and administrative fines 177
- Articles 81 and 82 EC, criminal enforcement for violation 71
cartels 271
- compensatory objective 276–80
- and Competition Act 2002 76, 270, 271
- Competition Authority 189
- cost of enforcement issues 134–5
- criminal sanctions 185
- criminalization of antitrust enforcement 76
custodial sentences 274
- objections to 275–6
- deterrence 271–6
- fines/monetary payments, insufficient deterrence 272–3
- leniency programme 163
- plaintiffs, limitations on ability to recover, exemplary damages, and prejudgment interest 280
see also United Kingdom
juries 4, 120, 250
leniency
- cartel offence, UK 251
- coercion test 164
- conditions for 253
- and criminalization 176–95
- and custodial sanctions 196–213
Subject index

definitions 177–8
and imprisonment 196–213
multiple authority involvement
   167–8
Netherlands, The 316–18
prevention of applications 166–7
programmes see leniency
programmes
qualification for 203
requests for 161–75
ringleader test 164
US 4
Leniency Notices (1996 and 2002),
   European Commission 33, 34, 161
   and immunity from fines 199
   instigators, treatment of 163
   leniency applications, prevention 167
   and national law 168
   termination of infringement 164
   United Kingdom 164
   voluntary harmonization of leniency
   programmes 170
‘leniency plus’ 165
leniency programmes
   association meetings, attending 165
   Corporate Leniency Policy, US 4, 66, 88, 139, 140
   and criminal sanctions 20, 162–3
   Department of Justice 4, 47, 52, 66, 177
description 177–8
differences between 162–6
ECN, work allocation within 169–70
effectiveness 81–3, 135, 146, 188, 189
European Commission 4, 13, 14, 168–9
European Union 188
evidence to be provided 165
Finland 76, 163
‘first in the door’ principle 164
France 76
Germany 76, 162, 163, 259
and immunity 163, 178
impact 187–90
   overstatement 190–91
incentive power 139
Individual Leniency Policy, US 66, 88
instigators/ringleaders, treatment of
   163–4
Ireland 163
Member States 76
multiple schemes 196
Netherlands, The 76
and one-stop-shop principle 167, 171
and oral statements 166
personal sanctions, combining with
   9
sanctions, credibility, need for 185–7
solutions possible 169–71
Sweden 163
termination of infringement, timing
   164
UK 163
US 47, 52
   Corporate Leniency Policy 4, 66, 88, 139, 140
   vertical restraints 163
   voluntary harmonization 170
liability
   corporate 9, 12
   illegal acts of employees 8
   personal 12
   substantive rule of, cartels 45, 49
   licenses, blanket 219
   liquidation, and ability to pay 273
   Luxembourg, decriminalization of
   antitrust enforcement 74, 75
Mafia 143, 144, 145
Malta, Articles 81 and 82 EC, criminal
   enforcement for violation 71
   marginal costs, and fines 220, 221, 222
   market allocation agreements, and
   fines 222
   market sharing, US 3
Member States
   antitrust enforcement 69–74, 90–93
   Articles 81 and 82 EC, violation
   13, 70–74
   see also Articles 81 and 82 EC
   criminalization 76–7, 90–92
decriminalization 74–6, 260
   national competition laws only
   71–4
   sanctions imposition 2, 15
   criminalization of antitrust
   enforcement 76–7
   harmonization 92–4
   and Regulation No. 1/2003 69, 90–92

Katalin J. Cseres, Maarten Pieter Schinkel and Floris O.W. Vogelaar - 9781847202901
Downloaded from Elgar Online at 08/18/2019 02:14:58PM
via free access
Subject index

leniency programmes 76
personal liability of directors 12
merger control, ex ante assessment and licensing 1
Microsoft, fine levels 2, 217
modernization, EU 5
Modernization Regulation, and Estonia 310
moral condemnation, criminal law 62
Mutual Legal Assistance Treaties 242

‘naming and shaming’ policy 9
national competition laws, limitation on enforcement 71–4
national competition authorities
  Austria 300
cartels, pursuit of 196
  and Commission 16
  competence 202, 203
  and oral corporate leniency statements 166
Regulation 1/2003, amending 171
US style penalties, installing in Europe 5
see also competition authorities, European

nemotenetur principle, The Netherlands 316
Netherlands, The 21, 312–18
administrative sanctioning 313–14
decriminalization of antitrust enforcement 74
fines and leniency 316–18
guarantees 315–16
history of Dutch competition law enforcement 313
leniency programmes 76
Netherlands Competition Authority 312, 316, 318
  toolkit 314–15, 317
New Zealand
  gain-based fines 232
  individuals, penalties faced by 182
  review of criminal enforcement system 124
‘no action letters’ 173, 253
Norway
  criminal sanctions 119
  gain-based fines 232
Office of Fair Trading, UK
cartel investigations 251, 323
  Cartel Investigations Branch 254
director disqualification 86, 253, 254
evidence of cartel activity 165
  ‘Ghosh test’ for dishonesty 250
  investigation powers 252, 255
  ‘no action letters’ 173
  surveillance powers 76, 252, 255
see also United Kingdom
Oireachtas, proscribing of cartel behaviour in Ireland 280
omnibus question, Department of Justice 88
one-stop-shop principle 167, 171, 208
opportunity costs, criminal sanctions regimes 121
optimal pecuniary sanctions 2, 20, 217–38
circumstances, aggravating/ attenuating 229–30
determination 226–32
fines 219–22, 230–31
  ability to pay 230
  constraining of 230–31
EC guidelines 2, 68, 224–6
harm, costly estimation of 227–9
proportionality/fairness considerations 231–2
theory, optimal fining 219–22, 231, 232
oral statements, and leniency programmes 166
Organic Peroxides, fining of 229
Organisation for Economic Co-operation and Development
cartel sanctions 111–13, 151
  Cartel Recommendation 1998 111, 182
costs and benefits 114–15
  individuals, roundtable discussions 113
  lessons 113–25
  Reports 79, 112–13, 114
Competition Committee 110, 111, 112
  on legality of activities 183
  on penalties 189
  Reports 79, 112–13
Subject index

**Fighting Hard Core Cartels Report**
(2002) 32
New Zealand 147
Second Cartel Report 110, 112, 113, 114

participation constraints 146
penalties
  corporate 7–8
  criminal 61
  excessive 219
  size of, and harm 62
  UK cartel offence 250–53
  in US 51
  US style, installing in Europe 5
  see also fines; sanctions
Penalty Plus policy, Corporate Leniency Programme, US 4
personal sanctions
  argument for 198–9
  combining with leniency and compliance programmes 9
  effectiveness 182, 199–201
  and fines 5
  see also imprisonment
plaintiffs, limitations on ability to recover, ‘antitrust injury’ 279–80
plasterboards, fine levels 2
plea bargaining systems 4, 118, 119
Poland, leniency programme 163
Posner rectangle, and price-fixing 133
predatory pricing, and deterrence 272
predominant prohibition principle, Austria 295
prejudgment interest, and exemplary damages 280
price-fixing
  cost 133–4
  imprisonment of price fixers, case for 180–83, 274
  market for 145–6
  as theft 270
  UK 255
  US 3, 222
  see also cartels; hard-core cartels
prices, ‘supra-competitive’ 1
prisoners’ dilemma game 187
Privatbeteiligtenanschluss (civil damages, criminal court) 296, 297
proof see burden of proof; standards of proof
prosecutions
  agents, prosecutors as 297, 301
  cartels 43, 47–8
  UK 251
CEOs, individual 9
competence for, Germany 258–9
effective prosecutor, need for 87–8
separation from custodial sanctions 206
punishments
detective work/evidence gathering
  combined with 1
  escaping 9–10
  harsher, within cartel 11
potential, threat of 4
  see also fines; imprisonment;
  penalties; sanctions
Qui Tam provisions 140
Regulation 1/2003
  adoption of 14
  amendment, and leniency 171
  Articles 81 and 82 EC, violations of 66, 67, 69–74
  see also Articles 81 and 82 EC
Commission, investigation powers 69
  and criminal law 60–61
  ‘criminal’, notion of, and human rights 64
  and criminalization of antitrust enforcement 76
  and decriminalization of antitrust enforcement 75
  Member States, and antitrust enforcement 69–74, 90–93
  reform of competition policy 176
  sanctions added to 34
  see also Member States
remedies
  design 18–19, 41–59
  ex post 1
  institutional 292–4
  see also fines; imprisonment;
  penalties; sanctions
resources, misallocation (unidentifiable victim) 277
restraints of trade 4, 11
revenge incentive 154
ringleader test, leniency 164
rule of reason standard, horizontal restraints 42–3

sanctions
  administrative 313–14
  Austria see Austria, semi-penal sanctions in
  benefits of criminal regime 115–21
deterrent effects 115–18
  institutional set-up/procedural rules 118–19
cartels 48–9, 110–32
  benefits of sanctions 115–21, 143–4
costs of sanctions 121–5, 143–4
  OECD work 111–13, 114, 151
  UK 254–5
Commission's policy 2, 197–8
costs
  direct 121–3
  indirect 123–5
credibility, need for 185–7
criminal see criminal sanctions
custodial
  and leniency 196–213
  see also imprisonment
  ex post 1
  France 74
  Germany 257–69
and leniency programmes 162–3
  Member States, imposition by 2, 15
  non-monetary 8–9
  OECD work, cartels 111–13, 114, 151
optimal pecuniary see optimal pecuniary sanctions
personal
  argument for 198–9
  combining with leniency/compliance programmes 9
effectiveness 182, 199–201
  price-fixers 136
social and institutional support for 119–21
  UK 254–5
  US 3, 48–9, 51, 120
  see also penalties
self-incrimination, privilege against, US Constitution 89
Sentencing Commission, US 229
  Recidivism Research Series 235
Sentencing Guidelines, US 78, 222–4
  Federal Sentencing Guidelines Manual 222
  limits on fines 231
  mark-ups 228
  OFT, Memorandum of Understanding with 255
shareholders, as owners of companies 198
Slovak Republic, Articles 81 and 82
  EC, criminal enforcement for violation 71
social costs 133, 134, 135
  standards of proof 5, 10–11
  Articles 81 and 82, violation 69
  cartel policy 43
criminalization drawbacks 135
defence, criminal rights of 62
  see also burden of proof
state of mind, criminal 62
support, political and public 89
surveillance, by OFT 252
Sweden
  on criminal sanctions 124
  leniency programme 163
Taiwan, criminal sanctions provision 119
terminating tariffs, investigations into 314–15
Tetra judgment, mergers 153
turbine generators, prosecutions against producers 50
UCAR, fining of 227
undertaking
  fines on persons ‘identified’ with 197, 198
terminology problems 66
unilateralism 243
United Kingdom
  Articles 81 and 82 EC, criminal enforcement for violation 71
cartels in 20, 248–56
  changes in law 248–9
civil regime 253–4
  extradition 252
<table>
<thead>
<tr>
<th>Subject index</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>hard-core</strong> 74, 250</td>
</tr>
<tr>
<td><strong>investigations</strong> 252–3</td>
</tr>
<tr>
<td><strong>leniency</strong> 251</td>
</tr>
<tr>
<td><strong>offence</strong> 250–53</td>
</tr>
<tr>
<td><strong>penalty and prosecution</strong> 251</td>
</tr>
<tr>
<td><strong>procedural framework</strong> 118</td>
</tr>
<tr>
<td><strong>sanctions taken</strong> 254–5</td>
</tr>
<tr>
<td><strong>coercion test, leniency</strong> 164</td>
</tr>
<tr>
<td><strong>cost of enforcement issues</strong> 134–5</td>
</tr>
<tr>
<td><strong>fines</strong> 182</td>
</tr>
<tr>
<td><strong>Leniency Notices (1996 and 2002)</strong> 164</td>
</tr>
<tr>
<td><strong>leniency programmes</strong> 163</td>
</tr>
<tr>
<td><strong>United States of America</strong> anti-cartel enforcement, monopolization of 242</td>
</tr>
<tr>
<td><strong>bid rigging</strong> 3, 222</td>
</tr>
<tr>
<td><strong>cartels, strategy against</strong> 45–9</td>
</tr>
<tr>
<td><strong>burden of proof</strong> 45–6, 49</td>
</tr>
<tr>
<td><strong>case law</strong> 45, 242–3, 244</td>
</tr>
<tr>
<td><strong>cooperation with foreign governments</strong> 47</td>
</tr>
<tr>
<td><strong>criminal antitrust law</strong> 240–41</td>
</tr>
<tr>
<td><strong>detection</strong> 46–7</td>
</tr>
<tr>
<td><strong>electrical equipment cases</strong> 50–51</td>
</tr>
<tr>
<td><strong>liability, substantive rule of</strong> 45, 49</td>
</tr>
<tr>
<td><strong>modern history</strong> 48</td>
</tr>
<tr>
<td><strong>prosecution</strong> 47–8</td>
</tr>
<tr>
<td><strong>sanctions</strong> 3, 48–9, 51, 120</td>
</tr>
<tr>
<td><strong>cooperation agreements</strong> 242</td>
</tr>
<tr>
<td><strong>Corporate Leniency Policy</strong> 4, 66, 88, 139, 140</td>
</tr>
<tr>
<td><strong>defence bar</strong> 274–5</td>
</tr>
<tr>
<td><strong>Department of Justice</strong> see (Department of Justice, US) (Antitrust Division)</td>
</tr>
<tr>
<td><strong>‘effects doctrine’</strong> 241</td>
</tr>
<tr>
<td><strong>enforcement</strong> combination of policy instruments 17</td>
</tr>
<tr>
<td><strong>criminal norm, gaining acceptance for</strong> 49–53</td>
</tr>
<tr>
<td><strong>and EU enforcement</strong> 4, 5, 65–6, 77</td>
</tr>
<tr>
<td><strong>incremental development</strong> 50–53</td>
</tr>
<tr>
<td><strong>methods</strong> 3</td>
</tr>
<tr>
<td><strong>Federal Trade Commission</strong> 3</td>
</tr>
<tr>
<td><strong>felonies, description of</strong> 3</td>
</tr>
<tr>
<td><strong>‘get tough’ movement</strong> 120</td>
</tr>
<tr>
<td><strong>grand jury system</strong> 4</td>
</tr>
<tr>
<td><strong>leniency policy</strong> 4</td>
</tr>
<tr>
<td><strong>lenience programmes</strong> 47, 52</td>
</tr>
<tr>
<td><strong>market-sharing</strong> 3</td>
</tr>
<tr>
<td><strong>Mutual Assistance Treaty with UK</strong> 252</td>
</tr>
<tr>
<td><strong>plea bargaining system</strong> 4</td>
</tr>
<tr>
<td><strong>price-fixing</strong> 3, 222</td>
</tr>
<tr>
<td><strong>prison sentences in</strong> 120</td>
</tr>
<tr>
<td><strong>sanctions</strong> 3, 48–9, 51, 120</td>
</tr>
<tr>
<td><strong>self-incrimination, privilege against</strong> 89</td>
</tr>
<tr>
<td><strong>Sentencing Commission</strong> 229</td>
</tr>
<tr>
<td><strong>Sentencing Guidelines</strong> 78, 222–4</td>
</tr>
<tr>
<td><strong>Federal Sentencing Guidelines Manual</strong> 222</td>
</tr>
<tr>
<td><strong>whistle-blowing programmes</strong> 4</td>
</tr>
<tr>
<td><strong>utility theories</strong> 7</td>
</tr>
<tr>
<td><strong>vertical restraints</strong> as imprisonment alternative 90</td>
</tr>
<tr>
<td><strong>leniency programmes</strong> 163</td>
</tr>
<tr>
<td><strong>Verwaltungsunehorsam (infringements of technical nature), Germany</strong> 260</td>
</tr>
<tr>
<td><strong>victims</strong> primary 277</td>
</tr>
<tr>
<td><strong>secondary</strong> 277–9</td>
</tr>
<tr>
<td><strong>single</strong> 291, 292</td>
</tr>
<tr>
<td><strong>tertiary</strong> 279</td>
</tr>
<tr>
<td><strong>unidentifiable</strong> 277</td>
</tr>
<tr>
<td><strong>vitamin cases</strong> 2, 52–3</td>
</tr>
<tr>
<td><strong>whistle-blowing programmes</strong> increased effectiveness 81–3</td>
</tr>
<tr>
<td><strong>rewards</strong> 142</td>
</tr>
<tr>
<td><strong>United States</strong> 4</td>
</tr>
<tr>
<td><strong>White Paper (1999), modernization of</strong> EC competition law 13–14</td>
</tr>
<tr>
<td><strong>willingness to convict, need for</strong> 89</td>
</tr>
<tr>
<td><strong>wire tapping</strong> 47</td>
</tr>
<tr>
<td><strong>X – inefficiency</strong> 134</td>
</tr>
</tbody>
</table>