Criminalising Cartels

Critical Studies of an International Regulatory Movement

Edited by
Caron Beaton-Wells
and
Ariel Ezrachi

HART PUBLISHING
OXFORD AND PORTLAND, OREGON
2011
CONTENTS

Foreword ........................................................................................................................................... v
Preface .................................................................................................................................................. ix
List of Contributors............................................................................................................................. xiii
List of Abbreviations .......................................................................................................................... xv

Part A Introduction .................................................................................................................................... 1

   Caron Beaton-Wells and Ariel Ezrachi

Part B The US Experience with Criminal Cartel Enforcement .................................................................... 25

2. Punishment for Cartel Participants in the US: A Special Model? ...................................................... 27
   Donald I Baker

3. Criminal Enforcement Norms in Competition Policy:
   Insights from US Experience ......................................................................................................... 45
   William E Kovacic

Part C Experiences Outside the US with Criminal Cartel Enforcement .................................................. 75

4. Redesigning a Criminal Cartel Regime: The Canadian Conversion .................................................. 77
   D Martin Low QC and Casey W Halladay

5. Competition Offences in Ireland: The Regime and its Results .......................................................... 105
   Patrick Massey and John D Cooke

6. DOA: Can the UK Cartel Offence be Resuscitated? ........................................................................ 129
   Julian Joshua

7. What if all Bid Riggers Went to Prison and Nobody Noticed?
   Criminal Antitrust Law Enforcement in Germany ......................................................................... 157
   Florian Wagner-von Papp

8. Cartel Criminalisation and the Australian Competition and
   Consumer Commission: Opportunities and Challenges .................................................................. 183
   Caron Beaton-Wells

Part D EU Perspectives on Cartel Criminalisation .................................................................................. 201

9. Criminalising Cartels in the EU: Is There a Case for Harmonisation? .............................................. 203
   Ingeborg Simonsson
Contents

10. Criminal Cartel Enforcement in the EU: Avoiding a Human Rights Trade-Off
Peter Whelan

Part E Testing Orthodox Assumptions Underpinning Cartel Criminalisation

Christine Parker

Maurice E Stucke

13. Cartels in the Criminal Law Landscape
Rebecca Williams

14. Cartel Offences and Non-Monetary Punishment: The Punitive Injunction as a Sanction against Corporations
Brent Fisse

Part F Exploring the Political Economy of Cartel Criminalisation

15. Cartel Criminalisation as Juridification: Political and Regulatory Dangers
Stephen Wilks

16. The Anti-Cartel Enforcement Industry: Criminological Perspectives on Cartel Criminalisation
Christopher Harding

17. ‘The Battle for Hearts and Minds’: The Role of the Media in Treating Cartels as Criminal
Andreas Stephan

Part G Future Challenges Facing Cartel Criminalisation on an International Scale

18. International Cartels, Concurrent Criminal Prosecutions and Extradition: Law, Practice and Policy
Michael O’Kane

19. Cartels as Criminal? The Long Road from Unilateral Enforcement to International Consensus
Ariel Ezrachi and Jiří Kindl

Index