



# The Criminalization of European Cartel Enforcement: Theoretical, Legal, and Practical Challenges (Oxford Studies in European Law)

By Peter Whelan

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**The Criminalization of European Cartel Enforcement: Theoretical, Legal, and Practical Challenges (Oxford Studies in European Law)** By Peter Whelan

Cartel activity is prohibited under EU law by virtue of Article 101(1) of the Treaty on the Functioning of the European Union. Firms that violate this provision face severe punishment from those entities responsible for enforcing EU competition law: the European Commission, the national competition authorities, and the national courts. Stiff fines are regularly imposed on firms by these entities; such firm-focused punishment is an established feature of the antitrust enforcement landscape within the EU. In recent years, however, focus has also been placed on the individuals within the firms responsible for the cartel activity. It is increasingly recognized that punishment for cartel activity should be individual-focused as well as firm-focused. Accordingly, a growing tendency to criminalize cartel activity can be observed in the EU Member States.

The existence of such criminal sanctions within the EU presents a number of crucial challenges that need to be met if the underlying enforcement objectives are to be achieved in practice without violating prevailing legal norms. For a start, given the severe consequences of a custodial sentence, the employment of criminal antitrust punishment must be justifiable in principle: one must have a robust normative framework rationalizing the existence of criminal cartel sanctions. Second, for it to be legitimate, antitrust criminalization should only occur in a manner that respects the mandatory legalities applicable to the European jurisdiction in question. These include the due process rights of the accused and the principle of legal certainty. Finally, the correct practical measures (such as a criminal leniency policy and a correctly defined criminal cartel offence) need to be in place in order to ensure that the employment of criminal antitrust punishment actually achieves its aims while maintaining its legitimacy.

These three particular challenges can be conceptualized respectively as the theoretical, legal, and practical challenges of European antitrust criminalization.

This book analyses these three crucial challenges so that the complexity of the process of European antitrust criminalization can be understood more accurately. In doing so, this book acknowledges that the three challenges should not be considered in isolation. In fact there is a dynamic relationship between the theoretical, legal, and practical challenges of European antitrust criminalization and an effective antitrust criminalization policy is one which recognizes and respects this complex interaction.

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## **The Criminalization of European Cartel Enforcement: Theoretical, Legal, and Practical Challenges (Oxford Studies in European Law) By Peter Whelan Bibliography**

- Sales Rank: #4416667 in Books
- Published on: 2014-10-07
- Original language: English
- Number of items: 1
- Dimensions: 6.10" h x 1.20" w x 9.20" l, .0 pounds

- Binding: Hardcover
- 365 pages

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### Editorial Review

#### Review

Peter Whelan's book is meticulously researched and exceptionally well written. In addition to its main academic contribution, it acts as a very useful and comprehensive review of the existing literature on cartel criminalisation and is a treasure trove of useful references from start to finish. It is a worthwhile purchase, whether you are a competition lawyer or someone with an interest in white-collar crime. Andreas Stephan, Professor of Competition Law, University of East Anglia (European Competition Law Review, 2016) Dr. Peter Whelan...has published a comprehensive road map for the successful introduction and enforcement of criminal cartel law for an EU member state. He discusses in detail the many theoretical, legal, and practical challenges member states face in adding criminal enforcement to the administrative enforcement already existing at the EU and member state levels...This is a deeply researched and carefully argued book that will teach US readers the complexities of the EU and member state competition systems as they inch toward a system of criminal cartel enforcement that the US largely takes for granted. For EU readers, this monograph highlights the many issues that remain to be resolved as the debate on criminal enforcement continues within member states and in other jurisdictions dealing with these issues for the first time. Professor Spencer Weber Waller, Loyola University Chicago, (World Competition Law and Economic Review) The existing and potential sanctions within the EU designed to deter, or punish those who set up cartels form the basis of this rigorous and analytical study by Dr Peter Whelan published by the Oxford University Press...Whelan has therefore set himself the formidable task of addressing and examining what he refers to as the theoretical, legal and practical challenges of European antitrust criminalization, which he, stresses should be examined and analysed not separately, but as a dynamic whole. ...Whelan has certainly shed much light on a complex, often awkward and continually evolving subject, which is also fraught with implications for corporate responsibility in general. Lawyers as well as academics and policy makers will welcome the important contribution made by this book to the ongoing debate on cartels within the EU. Phillip Taylor MBE and Elizabeth Taylor, Richmond Green Chambers

#### About the Author

Peter Whelan, *Associate Professor in Law, School of Law, University of Leeds*

Dr Peter Whelan is an Associate Professor in Law at the School of Law, University of Leeds, where he is the Deputy Director of the Centre for Criminal Justice Studies. He has degrees in law from Trinity College Dublin and a PhD in Law from St John's College, University of Cambridge. A qualified US Attorney-at-Law, Peter is an expert in competition law and sits on the Editorial Boards of *World Competition* and the *Journal of Antitrust Enforcement*. Peter has published widely in specialist competition law journals, as well as in generalist law journals (including *Oxford Journal of Legal Studies*, *Cambridge Law Journal* and *Modern Law Review*). He has provided oral evidence on cartel criminalization to the New Zealand Parliament and was recently appointed as an International Expert by the Finnish Competition and Consumer Authority to advise it on the desirability of introducing criminal cartel sanctions in Finland. Peter is also the Managing Editor of *Oxford Competition Law*.

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