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The Classic Cartel - Hatchback Sentence?

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Ireland's national competition legislation, recently strengthened by the Competition Act 2002, provides that breaches of competition law constitute criminal offences and, in the case of cartels, managers and directors of offending firms may be imprisoned or fined if convicted for such behaviour. Ireland is the first Member State in Europe where the courts have interpreted the criminal sanctions provided for in competition legislation. However, the reluctance to imprison white-collar criminals appears to remain in the Irish courts. This article looks at the implementation of criminal sanctions in the *Connaught Oil* and *Manning* Cases. The authors question whether the sentence handed down in *Manning* was unduly lenient in proportion to the more stringent penalties provided for under competition legislation. Finally, we consider whether these cases will set a precedent for such leniency in future cases.

INTRODUCTION

The debate surrounding how white-collar crime[1] should be penalised and discouraged rages on unresolved. Although competition law is adopting a more punitive approach,[2] through the Irish Competition Act 2002[3] (the 2002 Act), reality demonstrates a preference for a compliance strategy over the sanctioning structure; as is evident in the recent case of *DPP v Manning,* heard on the 9th February 2007. This case is the first competition law case to be tried in the Central Criminal Court in Ireland, and relates to a breach of the price-fixing provisions of the most recent competition legislation. Denis Manning was sentenced by Mr Justice Liam McKechnie to a twelve month suspended sentence and ordered to pay a fine of €30,000. The question is whether the sentence handed down was too lenient in the light of the behaviour in question and in respect to the provisions of the 2002 Act. Is 'crime in the suites' still considered less criminal than

* The Authors are both currently undertaking an LLM at the University College Cork. We would like to express our gratitude to Mr Declan Walsh and Dr Shane Kilcommins, both members of the UCC Law Faculty, for their invaluable advice and guidance. We alone are responsible for any errors remaining.

1 A crime committed by a person of respectability and high social status in the course of his [or her] occupation. Braithwaite J, 'Challenging Just Deserts: Punishing White-Collar Criminals' (1982) 73(2) Journal of Criminal Law and Criminology 723 at p 724.

2 'There is evidence that the seeds of a new strand of punitive regulation are to be encountered across government enforcement policy, legislative developments and the enforcement stances being adopted by some regulators…the suggestion is of a change in regulatory style in which the use or threat of criminal or other potentially severe sanctions (e.g. disqualifications) plays a greater role', Baldwin, R, 'The New Punitive Regulation' (2004) 67(3) MLR 352. In relation to the emergence of new punitive approaches to regulatory offences in Ireland, see:, Maher, Imelda, 'The Rule of Law and Agency: The Case of Competition Policy', London School of Economics, International Economics Programme: IEP WP 06/01, March 2006, iep@chathamhouse.org,uk (09/03/2007)

3 Competition Act No 14 of 2002, available on http://www.irishstatutebook.ie/ZZA14Y2002S8.html (accessed 4 April 2007).

'crime in the streets',[4] or are the new legislative provisions enough to deter the operation of cartels?

FACTS OF THE CASE

The case against Denis Manning involved price fixing in the car industry. The facts of the case were briefly as follows. Mr Manning was appointed as secretary of the Irish Ford Dealers Association (IFDA) in 1994. The offending scheme was, however, in place before his appointment. Previous to this, Mr Manning was a director of Henry Ford & Sons (Ireland) Ltd (Ford). The job as secretary was taken as a part time position following his retirement. The purpose of the IFDA was to act as a representative of car dealers in the course of transactions or disputes with Ford. His former position as a director of Ford provided him with a unique knowledge of and insight into the functions of the IFDA. Another function of the IFDA was to aid dealers in obtaining a workable profit on the sale of their stock. It was this activity that eventually attracted the attention of the Irish Competition Authority (the Authority).

The scheme was labelled a 'programme for profitability' and involved the distribution of guide prices to the fifty-three members of the Association. The breach of competition law occurred however when the Association operated a system of enforcement for these guidelines. The effect of this enforcement was to prevent a party to the scheme from breaching the agreement and undercutting the other dealers. In effect a glass floor was put in place to prevent more generous discounting while giving the illusion of competition. All members of the association lodged a bond of €1,250 (£1,000) with the Association as security for fines levied as a result of any breaches. Only Kelleher's of Macroom, Cork, did not participate in the cartel and were stated as the only firm to 'emerge with dignity from this sad affair'.[5] If the scheme was breached, a penalty of €635 (£500) per car was levied. Different charges were added to each car for delivery or, for example, metallic paint (which was already accounted for in the factory price). The I.F.D.A. then engaged mystery shoppers to ensure that the scheme was being complied with. Following the enactment of the 2002 Act, which was intended to give the existing competition legislation more bite, the IFDA engaged a competition consultant, Mr Myles O'Reilly, to report on the scheme. Mr O'Reilly was not informed of all the facts nor did the IFDA interact with him after he had provided the first draft of the report, which was expressly limited in effect for three months. This exercise demonstrates two things. The first, as noted by McKechnie J, was to give the illusion that the IFDA had acted on expert advice - an illusion of the believed legality of the scheme to match the illusion of competition. This can be construed as an exercise of window dressing to feign conformity with the compliance culture. This supposed advice seeking exercise was nurtured as one of a salvo of mitigating factors put forward by the defence. The second was that the IFDA accepted the possibility of the scheme falling foul of the new penalties. The preliminary advice given by Mr O'Reilly was that

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4 Braithwaite, J, 'What's Wrong with the Sociology of Punishment?' (2003) 7(1) *Theoretical Criminology* 5.

5 As per Justice McKechnie, *DPP v Manning*, 9th February 2007.

while issuing pricing guidelines was legal, their enforcement was not and that the bonds should be repaid. The bonds were repaid following this preliminary advice, but outstanding penalties were still deducted. These deductions could be viewed as further enforcement of the pricing guidelines, despite the 2002 Act having come into force. The defence that could be raised was that this is a contractual obligation of the agreement. This argument is disputable; however, as such contracts were in fact illegal since the Irish Competition Act 1991.[6] Despite repayment of the bonds, the agreement was still policed by the mystery shopper surveys.

THE ROLE OF DENIS MANNING

Denis Manning pleaded guilty to the charge of aiding and abetting a scheme to fix prices on the 26th January 2007. The main thrust of his defence was that he was a mere conduit for the Association and was following the orders of the executive. Even his Senior Counsel Mr Tom Creed noted the Nuremberg nature of his defence. However it is difficult to believe that Mr Manning was merely following orders. He had an intimate knowledge of the trade, enabling him to act as an 'honest broker'[7] between the members of the cartel. This point was alluded to by the defence's single witness Mr Myles O'Reilly who mentioned the need for an honest broker to enable agreements such as these to last without breaking up due to cheating by members. This was a strong indication of Mr Manning's pivotal role. Mr Manning, as secretary, was also a signatory on the Association's bank account and thus would have signed the cheques refunding the bonds, including those refunds with penalties deducted. Finally, he co-ordinated the discipline system by arranging the mystery shoppers, corresponding with those found to be in breach and collecting any penalties imposed. He retained meticulous records and ran the scheme very effectively. It was also suggested that the collective advertising fund was another method used to monitor the agreement.

When the scheme was eventually revealed, Mr Manning was initially cooperative, although this was said to be, "'reactive" cooperation, as every minutiae of the scheme had to be discovered by the Authority before Mr Manning aided the investigation'.[8] Mr Ray Leonard, former Divisional Manager of the Authority, was the prosecution's main witness. He stated that without the delaying tactics employed by Mr Manning, the investigation which lasted two and a half years, and required the majority of the Authority's resources, would have been shortened by approximately eighteen months.

THE SENTENCING HEARING

During the hearing, the prosecution's main witness, the leading investigator Mr Leonard, intimated his personal opinion that the car industry consists of a collection of

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6 Section 4, Competition Act No 24 of 1991 available on http://www.irishstatutebook.ie/ZZA24Y1991.html (accessed 4 April 2007).

7 Mr Myles O'Reilly, Competition Adviser, *DPP v Manning*, 9th February 2007.

8 Mr Ray Leonard, Competition Authority, *DPP v Manning*, 9th February 2007.

cartels competing against each other.[9] Although not fact, this opinion, which has a professional stance, serves to suggest that the car industry is not being sufficiently policed, that competition in the industry is significantly affected, and that only a small percentage are benefiting from such anti-competitive schemes. This opinion was followed by defence counsel, emphasising that Mr Manning had not personally benefited from the scheme. Figures presented by Mr Leonard asserted that Mr Manning earned a salary of up to €100,000 per annum including his pension. Only €9,000 of this figure was reputed to have been wages from the IFDA. Much time was spent labouring this point as the defence counsel argued that this proved Mr Manning had not gained extensively for his personal involvement in the cartel. This is not to say, however, that he had not been paid in kind for his commitment to the scheme. Besides there are some who argue that this lack of personal benefit should further strengthen the rationale for punishing the individual. Braithwaite states:

> Individuals acting on behalf of the corporation, in contrast, are not benefiting personally, and therefore are more deterrable. Hence in such instances the utilitarian analysis recommends the punishment of the individual rather than the corporation.[10]

During the cross-examination of Mr Leonard, the defence emphasised the fact that members of the cartel frequently attempted to breach the profitability programme, and also that Mr Manning had co-operated throughout the investigation. The object of this exercise was to obtain the mitigating effect of an early guilty plea and co-operation. In response to the former assertion, Mr Leonard mentioned that the investigation could have been short-circuited by up to eighteen months, thus saving the State a considerable amount of money and resources, if Mr Manning had been more candid. In effect, Manning had been caught red-handed and had no other option than to co-operate. Thus these *de facto* reactions should have no mitigating effect. In reply to the suggestion that the cartel was frequently infringed by the IFDA members, Mr Leonard confirmed that the agreement was, in fact, honoured more in the breach than in the application, but that this was in effect more lucrative for IFDA who would benefit from fines imposed on non-compliant dealers.

The second prosecution witness to take the podium offered valuable details of a previous cartel conviction concerning the *Connaught Oil* case[11] (Home Heating Oil case). This evidence would be significant in Mr Justice McKechnie's decision, due to the similarity of its facts to the *Manning* case. The accused in this case, Mr JP Lambe, was

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[9] Ibid.

[10] Braithwaite J, 'Challenging Just Deserts: Punishing White-Collar Criminals' (1982) 73(2) *The Journal of Criminal Law and Criminology* 723, at p 727.

[11] *DPP v Michael Flanagan, Con Muldoon, Muldoon Oil, James Kearney, All Star Oil, Kevin Hester, Corrib Oil, Mór Oil, Alan Kearney, Sweeney Oil, Gort Oil, Pat Hegarty, Cloonan Oil, Ruby Oil, Matt Geraghty, Declan Geraghty, Fenmac Oil & Transport, Michael McMahon, Tom Connolly, Eugene Dalton Snr., JP Lambe, Sean Hester, Hi-Way Oil, Kevin Cunniffe*. Available on The Competition Authority's website: http://www.tca.ie/EnforcingCompetitionLaw/CriminalCourtCases/HomeHeatingOil.aspx (11/02/2007)

charged and pleaded guilty to aiding and abetting a price-fixing cartel in the Home Heating Oil industry. He was sentenced to six months imprisonment, suspended for twelve months, and fined €15,000.[12] If the precedent set in *Connaught Oil* was what settled Mr Justice McKechnie's opinion, the *Manning* judgement appears just proportionately marginally more punitive than the *Connaught Oil* threshold, and yet could be considered more lenient, in light of the legislative guidelines of the 2002 Act which allows for 'fines up to €4 million and up to 5 years imprisonment' for breaches of its provisions.[13]

An important fact should be noted at this point. In *Connaught Oil* the charges related to the period between 1st January 2001 to 11th February 2002.[14] This means that the sentence was handed down in light of the penalties provided for under the 1991 Act as the 2002 Act is dated 10th April 2002.[15] It would seem therefore that perhaps McKechnie J erred in considering *Connaught Oil* as a sentencing precedent. To put the sentence in context, Lambe received a six month[16] suspended sentence out of a possible two years imprisonment (25%) while Manning received a twelve month suspended sentence out of a possible five years imprisonment (20%). Both men were of similar age and both were considered as the facilitator of the cartel. However despite Manning having a longer involvement in the operation of a cartel, he received a more lenient sentence. The same can more or less be said of the fines imposed, in Lambe's case €15,000 out of a possible €3,810,000 (£3,000,000) while Manning was fined €30,000 out of a possible €4,000,000. The sentence does not appear to reflect the increased teeth provided for in the 2002 Act.

During cross-examination, Mr Myles O'Reilly, the defence's single witness, gave an account of how he was instructed by the IFDA to prepare a report on the scheme and that no further correspondence was entered into with him once a draft report had been provided to the Association. One may surmise that this draft report was for the benefit of the Association's files. In the course of his evidence, Mr O'Reilly stated how cartels are liable to breaking up because members attempt to cheat on the agreement. He stated that the use of an 'honest broker'[17] helped to ensure the continuation of the scheme. He also asserted that larger cartels with more than eight members were hard to police and on the whole were unsuccessful. This assertion, however, was quickly dismissed by McKechnie J who highlighted the longevity of the scheme in question.[18]

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12 Gorecki, PK and McFadden, D, 'Criminal Cartels in Ireland' [2006] 11 ECLR 631 at p 638.

13 Section 8(b)(ii), op cit, n 3.

14 See Gorecki & McFadden, op cit, n 12.

15 2002 Act, op cit, n 3.

16 A possible error should be noted in *DPP v Lambe*, as while a six month prison sentence was handed down, it was subsequently suspended for twelve months. This is in conflict with the principle of suspending sentences which holds that a suspended sentence should be no greater than a term of imprisonment which would have been initially handed down. See below, n 37.

17 Mr Myles O'Reilly, Competition Consultant, *DPP v Manning*, 9th February 2007.

18 As per Justice McKechnie, *DPP v Manning*, 9th February 2007.

This is where Manning's role was crucial in the management and maintenance of the cartel.

Counsel for the defence concluded the case by listing an inventory of the mitigating factors on behalf of his client, seeking the court's leniency due to these factors. These included Mr Manning's co-operation with the Authority's investigation; the fact that he had pleaded guilty and saved the state the financial burden of a trial; Mr Manning's previously unblemished record; his old age of sixty-eight;[19] his recent 'ill-health'; and, his intention to resign from his position as secretary of the IFDA. It was also mentioned that his family were fully grown, with some living outside the jurisdiction, and that if he received a criminal conviction, he would be unable to visit them, mainly those in the United States. The stress that the investigation and conviction had placed on Mr Manning was also underlined. Finally, great emphasis was put on the fact that courts often make examples of those who aid and abet a cartel, while the main players escape without consequence. In this respect, counsel for the defence sought the court's mercy. As Howe so succinctly notes:

> Every man who gets whipped for a sin claims that other men have done more, and been whipped less.[20]

Throughout his judgement McKechnie J firmly rejected the assertion that Mr Manning was merely a 'conduit' following orders from the executive of the Association. He remarked on the shocking sophistication of the scheme. It was a crime against consumers, he noted. He also commented on how a person of unblemished character would suffer from a criminal conviction but said that this did not apply presently. He accounted for his guilty plea, but also noted his mere reactive co-operation with the investigation resulting in a delay in the process. McKechnie J then went on to state that he did not consider Mr Manning's health problems to be of grave concern and, in any case, he was over them at the present time. He concluded by stating that he had good grounds for imposing a custodial sentence of twelve months. However, 'with great reservation',[21] due to the defendant's age and 'ill-health', McKechnie J concluded that he would fine Mr Manning €30,000 and suspend the entirety of the 12 month sentence. Mr Manning then took the stand and swore to enter into a bond for five years.

COMMENT

Initially it should be noted that agreements to fix prices and thus distort competition are expressly prohibited under section 4 of the 1991 Act,[22] therefore, there can be no assertion that competition law is in its 'infancy', as was claimed by an industry spokesperson.[23] This agreement was illegal for the entirety of its operation under Mr

[19] It should be noted that it was the defence counsel who emphasised the elderly status of the defendant.

[20] Howe, EW, (1853 – 1937) *Country Town Sayings*, Croom Helm, London, 1911, p 54.

[21] As per Justice McKechnie, *DPP v Manning*, 9th February 2007.

[22] 1991 Act, op cit, n 6.

[23] Flannery, P, from Pragmatica, The Matt Cooper Show, 12th February 2007 at 5.30pm.

Manning's stewardship. The 2002 Act merely added teeth to the enforcement of competition law. Price fixing is also specifically provided for under section four of the 1991 Act with more or less identical wording. Yet, it was this Act that prompted IFDA to seek an independent review of their practices; albeit half heartedly. Could it possibly have been a protective measure in light of the fact that the penalties were increased to a maximum of four million Euros or five years imprisonment or both? Employing a consultant to draft an opinion and then neglecting to curb its anti-competitive behaviour was labelled 'obnoxious' and a 'false front' by McKechnie J who seemed incredulous at the IFDA's hypocrisy and under-handedness. The whole point of giving the provisions teeth was so that they could act as a more effective deterrent. Will the sentence handed down to Mr Manning set a good precedence for deterrence? Massey notes that there is a difficulty in solely fining individuals engaged in anti-competitive behaviour because, 'the employer may reimburse them, thus negating the deterrent effect'.[24] It is for this reason that harsher sanctioning of white-collar criminals is becoming more favourable as a deterrent and combative tool, since, 'an individual cannot pass the sentence onto their company'.[25] He also notes that passing fines back to the company is sometimes seen as the 'cost of doing business'.[26]

The mitigating factors accepted by Mr Justice McKechnie are also cause for concern. The judge noted how he did not consider Mr Manning's ill-health to be serious enough to take on board, and yet recognised it as a reason not to imprison him. He also rejected the defence that Mr Manning was only following orders, and accepted evidence that he played a crucial role in the cartel's organisation and operation. He did, however, note his age. In relation to white-collar crime cases, almost all of the accused are, 'of previous good character and unblemished record'. Once caught, they will generally not re-offend. Therefore, should previous good character be disregarded in such cases? If most perpetrators have unblemished records, the fact that this may be regarded as a mitigating factor can only further perpetuate the running of cartels and work against deterrence.

Perhaps this sentence was only lenient as the charge was that of aiding and abetting, and perhaps the trials of other members of the IFDA cartel will result in harsher penalties for those involved.

White-Collar Crime and its Victims

Vigorous competition on an open internal market provides the best guarantee that companies will increase their productivity and innovative potential. Competition law enforcement is therefore key in maintaining a healthy and lucrative economy while ensuring abundant choice for the consumer. Yet, despite the governance of EU[27] and

[24] Massey, P, 'Criminal Sanctions for Competition Law: A Review of Irish Experience' (2004) 1(1) CompLRev 23, 31.

[25] Ibid.

[26] Ibid.

[27] Articles 81 and 82 EC Treaty; Regulation 1/2003/EC; Regulation 2790/1999/EC, etc.

national legislation[28] in the area, there is still much concern that 'white collar crime'[29] is not being sufficiently targeted and penalised.

The operation of a cartel is an extremely serious crime as it can significantly and adversely affect those most vulnerable - the consumer and the competitor - since, without legislative provisions for civil action/private enforcement[30] on a national or European level, such parties have little recourse to the law. This is because individuals hold no investigatory powers (such as those held by the European Commission or the national competition authorities) and thus, attaining evidence to prove they were defrauded by the defendant is a major obstacle. It is for this reason that the general public rely on the work of the national competition authorities to take action against the supposed perpetrator of the cartel, and for this reason also that calls for tougher sanctions for white-collar crime have become more regular - from all sections of the community.

In the Dáil[31] Debates on the 2002 Act in February of that year, Mr Rabbitte (Labour Party) noted the appropriateness of tougher penalties on 'hard core cases', such as, 'blatant cartels, which involve price-fixing - including agreements on margins, price increases or maximum discounts, bid rigging, market sharing'. He continued that:

> the assessment of such practices is clear and unambiguous. There is no evidence that they have any beneficial effects, in fact, quite the opposite - they reduce efficiency and clearly harm consumers because, effectively, they are a rip-off.[32]

Mr Perry (Fine Gael), in the same Debate, called for sanctions:

> ensuring [that] consumers get the best value, best choice and are empowered to make decisions about the choice of goods and services they wish to use. If consumers do not have a competitive choice, there is greater possibility that they will suffer poor service, pay higher prices and obtain inferior goods.[33]

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[28] Section 4 and 5 of the Competition Act 1991 are mirrored in Articles 81 and 82 of the EC Treaty; Competition Act 2002; Competition Amendment Act 2006.

[29] White-collar crime is often seen as less dangerous and less criminal than traditional crime, because there is no victim. This is a fallacy, however, as the 'victim' may in fact be society at large. Not targeting white-collar crime indicates an imbalance in the criminal justice system which tends to focus its resources on crime related to social deprivation. Note: in 2002, 35,000 Irish individuals were found to have been holding bogus non-resident accounts, enabling them to evade normal tax rates. This operation defrauded the State of enormous sums of money. The victim? The ordinary taxpayer. Kilcommins, S, O'Donnell, I, O'Sullivan, E, Vaughan, B, *Crime, Punishment and the Search for Order in Ireland*, 2004, Institute of Public Administration, p 131. Also note: Timmer, DA and Eitzen, DS, 'Crime in the Streets and Crime in the Suites: Perspectives on Crime and Criminal Justice' (1990) 18(2) Teaching Sociology 252-253.

[30] For details of the European Commission Green Paper on Private Enforcement, see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0672:EN:NOT (22/07/07).

[31] The Dáil is the Irish Parliament.

[32] Dáil Debates Official Report, 28/02/2002, available on http://www.gov.ie/debates-02/28feb/sect3.htm, pp 1-9 (accessed 4 April 2007).

[33] Ibid, pp 10-17.

The only way that consumers are protected from such harm, however, is to target the root of the problem: greed and the opportunity to satisfy it by cleverly evading the law. Massey advocates that, 'the people behind cartels are not petty crooks'[34] and he notes O'Dea TD (Fianna Fáil) stating that:

> most people are appalled at the notion of somebody being robbed on the street and will support custodial sentences for criminals who steal just a few pounds in this direct physical manner. However, pulling a stroke and stealing millions by shuffling bits of papers and crunching numbers is regarded as, somehow, not quite criminal.[35]

CONCLUSION

According to Gorecki and McFadden, the first successful criminal cartel trial in the EU before both a judge and jury took place in Ireland in February and March 2006. This was the *Home Heating Oil* case already mentioned, and it resulted in the convictions of 15 people with only one (JP Lambe) being given a six month suspended prison sentence.[36] This was the first step, hence, in Europe towards a more punitive sanctioning of white-collar crime. Being the first case, of a similar nature, to be tried after the *Home Heating Oil* case; as well as being the first case tried under the Irish Competition Act 2002; *DPP v Manning* warrants close analysis, and it gives us the opportunity to consider the perception of white-collar crime in contemporary society.

Corporate offences, until recently, were thought to be exempt from the criminal law because 'a corporation', it was said, 'did not have a will of its own and could not therefore form the *mens rea* required for an offence'.[37] It is now accepted, however, that since individuals manage corporations, they can form the *mens rea* to commit an offence, and thus be accountable for criminal behaviour. Little concrete action has followed this belief in Ireland, however, and even though corporate criminal responsibility is widely accepted today, hesitation to convict and imprison corporate offenders still exists (unlike in the US where the perpetrators of anticompetitive behaviour from ENRON and Sotheby's were imprisoned). This is reflected in the fact that although criminal penalties have existed since 1996 in Ireland, there have only been a small number of summary prosecutions, i.e. prosecutions in the District Court where the penalties are relatively low.[38] No competition cases taken to the Irish courts have led to indictment. This is an indication of the compliance strategy.[39] What is meant by this is that courts tend historically to fine or give suspended sentences as sanction for

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[34] Massey, P, 'Criminal Sanctions for Competition Law: A Review of Irish Experience' (2004) 1(1) CompLRev 23, 32.

[35] O'Dea TD, 'White Collar Criminals Are Getting Clean Away', *Sunday Independent*, 12 April 1998.

[36] See Gorecki & McFadden, op cit, n 12, p 632.

[37] O'Malley, T, *Sentencing Law and Practice*, Dublin, Round Hall Sweet & Maxwell, 2006, p 411.

[38] See Massey, op cit, n 24, p 27.

[39] In relation to this, note: Gray, GC 'The Regulation of Corporate Violations: Punishment, Compliance, and the Blurring of Responsibility' (2006) 46 Brit J Criminol 875-892.

white-collar crime. The *Connaught Oil* case is evidence of this, since only one of 15 received a suspended prison sentence. Similarly, the Competition Authority has adopted an Immunity Programme to encourage compliance from organisations engaged in potentially concerted practices. These immunity and leniency programmes,[40] developed initially by the European Commission, serve to indicate that compliance and cooperation are more favoured than imprisonment.

A moral dilemma exists, however, in the case of corporate offenders - should they be imprisoned, and if not, why? One argument not to imprison an individual such as Mr Manning is that the considerable cost of imprisonment is shouldered by the ordinary tax-payer (and hence, the victim of the IFDA cartel), and the other argument is that imprisoning an individual negates the opportunity for society to benefit. Imprisoning a white-collar criminal, however, can set an example for persons holding corporate managerial positions, and thus deter further similar offences being committed. This supports the Massey view that corporations will not be able to do the prison sentence for the individual, although it can pay its fine. This argument suggests that incarceration is more effective for deterrence.

Arguments in relation to the sanctioning of white-collar criminals, such as that by Massey, suggest that the best route to deterrence is through punitive sanctions. The reality is, however, that white-collar criminals do not face the same punishment as the traditional criminal. The question remaining is, in the aftermath of *DPP v Manning*, and *Connaught Oil*, will subsequent competition trials follow a more punitive or compliance strategy? The results of such trials are likely to indicate whether or not we are in fact taking a more punitive approach to white-collar crime. The legislation exists which could allow for such an approach. If this approach is taken in Ireland, will other European member states follow suit? Will this spell the end of impunity for white-collar criminals? We wait in anticipation.

[40] See Gorecki & McFadden, op cit, n 12, p 635.