

# Competition Law and Policy Reform: Lessons from U.S. Experience

William E. Kovacic  
U.S. Federal Trade Commission  
ANZSOG Annual Conference  
Melbourne, 11 August 2010

## Overview

- Recurring Phenomena
- Reform from Inside the Antitrust System
  - Focal point: criminal enforcement against cartels
- Reform in Fuller Context: Competition Policy
- Reform Implications
- Caveat: Personal Views

## Recurring Phenomena

- Policy Archipelago: Interdependencies
  - Across disciplines
  - Across jurisdictional boundaries: Home/abroad
- Dynamic Adaptation by Regulated Entities
- Value of economic and historical “precedents”

## Global Adoption of Anti-Cartel Norm: US Experience

- 1890: \$5000 (Misdemeanor)
- 1955: \$50,000 (Misdemeanor)
- 1974: \$1 Million (Felony: 3 years)
- 1987: Double the Loss, Double the Gain
- 1990: \$10 Million, 2X Loss or Gain
- 2004: \$100 Million , 2X Loss or Gain (Felony: 10 Years)

## Equilibrating Tendencies

- As Sanctions Increase:
  - Courts/Juries may not convict defendants
  - Firms adapt to use other techniques

## Strategy for Augmenting Sanctions and Implementation: Developing Norms

- Focus Prosecution on Clear Violations: Cartels
  - Academic Consensus
- Initial Emphasis on Socially Harmful Behavior
  - Procurement first

## Diagnosis of Collateral Policies: Seeking Root Causes

- Domestic Content Requirements
- Abuse of Anti-Dumping Processes
- Procurement Procedures
- Geographic Evasion

## Business Adaptation: Seeking Substitutes for Private Cartels

- Seek National or State Legislation
  - Example: E-commerce and wine
- Misuse Existing Regulatory Apparatus
  - Example: Land use controls

## Reform Implications

- Foresee Dynamic Adjustment by Firms
- Examine Experience: Ex Post Evaluation
- Participation in Larger Policy Development
  - Advocacy before collateral public institutions
  - Links to public agencies with shared interests
    - Example: State governments as coast watchers
    - Example: Procurement authorities and stimulus