

# Anti-cartel thrillers as a new film genre: How regulator-produced films portray and problematize cartels and communicate deterrence

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Judith van Erp

Utrecht School of Governance, Utrecht University, the Netherlands

## Abstract

This article directs the ‘visual turn’ in criminology to corporate crime, a topic that has been understudied by cultural criminologists. A recent trend of corporate crime movies suggests that film can compellingly critique economic crime and unethical business cultures. This article studies how law enforcement agencies, particularly competition authorities, have connected with this trend by using film in their communicative strategy. This article introduces the emerging genre of anti-cartel enforcement thrillers: regulator-produced realistic docudramas in which fictional cartels are exposed and punished. These films’ narratives about cartel enforcement are reconstructed by studying how the films portray cartels, perpetrators and their motives, and the regulator. An analysis of four films produced in four jurisdictions demonstrates that the films deter only to the extent that the local legal and political-economic context allows: the British film reflects that country’s neoliberal ‘pro-business’ climate, while the Swedish film depicts businesses as socially responsible and the Dutch film is pragmatic rather than moralistic. Only the Australian film is explicitly punitive in its narrative as well as its imaginary, and exemplifies the persuasive potential of film in enforcement.

## Keywords

Cartel enforcement, crime film, media representations of crime, white collar crime

## Introduction

Over the past few years, competition authorities in several countries have produced realistic ‘docu-dramas’ in which fictional business cartels are exposed and punished. These films inform business people about competition regulations, deter them by portraying the penalties and inform them of

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### Corresponding author:

Judith van Erp, Department of Law, Economics and Governance, Utrecht University, Bijlhouwerstraat 6, 3511 ZC Utrecht, the Netherlands.  
Email: [j.g.vanerp@uu.nl](mailto:j.g.vanerp@uu.nl)

the leniency provisions in cartel law, which provide immunity to the first offender to disclose the cartel to the authorities. The Netherlands Competition Authority (NMa)<sup>1</sup> pioneered this development with its film *Clementie in Kartelzaken*<sup>2</sup> (*Leniency in Cartel Cases*). After the NMa showed this film at an international conference, several other competition authorities made similar films. The first films are rather amateurish, but the latest film, *The Marker*, by the ACCC,<sup>3</sup> the Australian competition authority, is a mini-thriller that would not look out of place in the cinema.

Although a growing number of criminologists study representations of crime in film, these 'anti-cartel thrillers', produced by regulators, allow exploration of an aspect of media representations of crime that has received little attention in criminology but that is increasingly prominent: visual and online media content produced by regulators and law enforcement authorities, such as in enforcement campaigns or advocacy. Cultural criminologists have noted how the internet and the rise of new media challenge common criminological perspectives on the crime-media relationship, by blurring the distinction between consumption and production of content (Yar, 2012). The development of new media allows all parties involved (criminals, victims, the public, but also law enforcement authorities) to produce and broadcast images themselves without intermediaries, thus empowering them to frame the audiences' conceptions of crime and justice directly without depending on mass media institutions. This has sensitized criminologists to questions regarding the producer rather than the consumer of media content, and the producer's attempts at framing this content.

Thus far, criminological inquiry has been largely directed to the production of images of crime by the public and by deviant groups, although some authors have addressed images produced by police and criminal justice authorities, such as the shaming of individual offenders through mug shots and CCTV images (Finn, 2009; Lippert and Wilkinson, 2010). In general, however, the question of how actors of the state frame crime – criminals, punishment and justice – has received less attention, but will become more important now that law enforcement agencies, as all public agencies, are becoming more mediatized. Law enforcement authorities no longer just 'cope with' the media, but have adapted their operations to the media logic, for example by investing more resources in media communication, by professionalizing their media communication, or by using the media more frequently (Schillemans, 2016). The arrival of new media in particular has given regulators the opportunity to address their target group directly without any intervention from gatekeepers. 'Media is no longer just a place where you can find news about regulators, but a platform on which regulators are participating actively and achieving results', as a recent study on law enforcement and media described this development (Van Twist et al., 2013, p. 46). Mostly, the material presented is rational and cognitive information in newsletters, press releases and information brochures, but the dramatized anti-cartel films as produced by cartel enforcement authorities go a step further by actively attempting to play on the emotions of the business community.

As law enforcement agencies more often produce images of crime instrumentally, the criminological question changes from the representation of crime by the media, to the framing of crime and spinning of messages by crime control agencies to support their work (Ferrell, 1999; Hayward, 2010). Enforcement dramas, such as the cartel films in this article, in particular raise the question of how persuasive communication relates to the truthfulness and transparency that we expect from state authorities, and how law enforcement agencies interpret the boundary between providing information, influencing and manipulating. These questions have parallels

with well-known perspectives on a culture of control (Garland, 2001) and governing through crime (Simon, 2007), but innovate these analyses with a more important role for mediatized communication to convey messages of risk and responsibility (Brown, 2011).

In communicating about regulation and enforcement, market regulation authorities have a particularly complicated challenge in the sense that regulation of business activity is deeply contested and the legitimacy of regulatory agencies is 'precarious and uncertain' (Yeung, 2008). The ambiguous nature of corporate crime, in combination with limited political support for strict enforcement, prohibits regulatory authorities from communicating strong punitive messages and requires them to engage in advocacy to convince the regulated business community to comply voluntarily (Parker, 2006). Particularly for market regulatory agencies, presentational and communicative tools develop from being supportive to regulatory activities to becoming a central aspect of regulatory strategies to enhance the legitimacy and cost-effectiveness of regulation (Yeung, 2009).

Cartels are a particular form of corporate crime consisting of price-fixing or illegal trade agreements between businesses. Although the collective damage of unfair competition may be great, cartels are treated with ambivalence, as the damage to individual victims is limited. Cartels therefore do not usually lead to widespread public indignation (Sokol, 2012; Stephan, 2011), and media reporting on cartel infringements is usually mild and inconclusive in comparison to on other forms of organizational crime. Cartels are therefore often perceived by business people as harmless collaboration or even regarded positively, as bringing stability to markets, maintaining jobs and allowing small businesses to survive (Haines and Beaton-Wells, 2012; Parker, 2012). Entrepreneurs do not necessarily consider free market operation and competition as favourable: the benefits of cooperation are sometimes greater than the benefits of compliance with competition legislation. Taking tough action against cartels, especially those in sectors that are struggling economically, often leads to criticism of the regulating agency as being overzealous and doubts as to whether cartels actually do much harm (Parker, 2006; Stephan, 2011; Yeung, 2008). The question of how market regulators deal with this ambivalent context in their media communication is therefore an important topic for scholarly inquiry into the relation between crime, media and law enforcement.

The 'leniency thrillers' therefore provide a unique opportunity to explore how regulatory authorities in four different cultures use dramatic communication to raise awareness about cartels. This article studies the narrative that these films use about cartels. How do these films portray cartels, perpetrators and the regulator? With what objective are these films made, and what message do they convey? In particular, this article asks how these films portray and problematize cartels and cartelists in relation to existing cultural norms about appropriate behaviour in businesses and markets. Second, it studies how they communicate deterrence, as invoking fear of the law may raise tensions with regard to the acceptance and legitimacy of regulation and enforcement by businesses. Lastly, this article analyzes differences between the four films and relates these to differences in the legal and political economic contexts in which they were produced.

This article deals with these questions by discussing four 'leniency films': *Clementie in Kartelzaken* by the NMa,<sup>4</sup> the *Competition Compliance* film by the British Office of Fair Trading,<sup>5</sup> the Australian film *The Marker* by the ACCC<sup>6</sup> and the Swedish film *Be the First to Tell – A Film About Leniency*.<sup>7</sup> These films were selected because of their similarities and comparability. Although a few other cartel authorities have produced media content, they either address

consumers rather than businesses, or lack a dramatized setting and are purely instructive. Two other films have not been taken into consideration. A film produced by the European Commission<sup>8</sup> strongly resembles the OFT film, and a film produced by the competition authority of Mexico<sup>9</sup> seems an exact imitation of the Dutch film. Neither of these films add a new perspective. Although the storylines in all four films display similarities, when it comes to content each film conveys a different message. This article will compare the form and content of these films, whereby four different stories will be identified.

To answer the research questions, a content analysis was made of all four films and a literature study was made of social scientific research into infringements of competition law. Furthermore, interviews were held with the following people: Pablo Amador Sanchez, the NMA's leniency officer and the initiator of the NMA film; Elliot Ball, Media Relations Manager of the British Office of Fair Trading; and Marcus Bezzi, Executive General Manager of the Enforcement and Compliance Division of the ACCC, the Australian competition authority. We also spoke to Paul Lugard from the law firm Baker Botts in Brussels, who is also the Chair of the Competition Commission of the International Chamber of Commerce.<sup>10</sup> These conversations explored the motives for using film, the message in the various films and reactions to them.

This article continues with a short introduction to the genre of corporate crime films, to place the regulator-produced anti-cartel movies in the broader context of cinematographic representations of corporate crime. After that, the article will introduce the narratives of the four films, and proceed with an analysis of their objectives and differences, which will be related to the legal and political economic contexts in which they are produced.

## Corporate crime films

It becomes increasingly clear that corporate and white collar crimes are not singular incidents of misbehaviour of rogue traders or corporations, but deeply embedded in cultural, political and normative perceptions about acceptable risks in markets and corporations and the normal behaviour of business elites (Williams, 2008). As media are among the prime shapers of the discourses on what market and corporate activities are appropriate and what is defined and responded to as crime (Brown, 2011), it is not surprising that the relation between corporate crime and the media, including film, has been subject of growing attention in corporate crime scholarship. Whereas early studies focused on newspaper media and primarily drew attention to the *lack* of newspaper coverage of corporate crime in comparison to that of street crime (Williams, 2008), more recent research expands the analysis of newspaper coverage to the study of film, television series, documentaries and social media, and shifts focus from the amount to the *content* of media representations of corporate crime (Cavender and Mulcahy, 1998; Levi, 2006; Lynch et al., 2000; Machin and Mayr, 2013; Williams, 2008). With regard to news media, various scholars have found that typical media narratives reinforce the moral ambiguity of corporate crime rather than condemning it. For example, media coverage tends to narrate on the glamorous lifestyles of individual white collar criminals (Levi, 2006), or to present simplistic stories about the status degradation and falling from grace of successful business people, rather than analyzing the structural underlying causes of corporate crimes, such as market flaws and lack of regulation Cavender, Gray and Miller (2010). Also, media accounts reflect neoliberal, pro-business and anti-regulation views, by picturing regulators as overzealous (Almond, 2009), by 'cheerleading' business (Rosoff, 2007), by presenting

individual white collar criminals as 'bad apples' rather than the corporations as 'rotten barrels' (Almond, 2009; Leighton, 2010; Van Erp, 2013; Williams, 2008) and by framing corporate crimes as accidents or industrial disasters rather than purposive action (Lynch et al., 2000; Machin and Mayr, 2013).<sup>11</sup> Through their discursive construction of corporate crime as ambiguous, news media are seen as contributing to a societal climate in which corporate crime is accepted as a fact of life (Rosoff, 2007; Williams, 2008).

In addition to the news media, the film industry has increasingly embraced corporate and white collar crime as a popular topic, and a genre of white collar and corporate crime movies and TV series has now begun to emerge (Szott Moohr, 2014).<sup>12</sup> Similar to newspaper coverage of corporate scandals, earlier narratives contained simplistic representations of individual white collar criminals as greedy, with Gordon Gekko as the archetype. Recently, however, more critical films have been produced addressing more complex and structural wrongs rather than individual crimes, such as *The Big Short* and *The Insider*, as well as documentaries such as Michael Moore's *Capitalism: A Love Story*.

Film and TV series contribute to our understanding of crime and shape our thinking about harms, wrongs and justice (Rafter, 2007), perhaps even more so than news media, since they can often provide dramatic accounts of complex stories in a more emotionally engaging way than newspaper accounts can (Pautz, 2015; Szott Moohr, 2015; Werner, 2016). Movies can express, challenge, change, reinforce and question values; they can invite moral judgement and encourage discussion about the actual responsibility of individual employees in firms (Szott Moohr, 2015), and can change perceptions about government and the law (McClanahan, 2014; Pautz, 2015, 2016). More critical films can therefore compellingly critique and educate the public about economic wrongdoing (Cavender and Jurik, 2016), environmental crimes and harms (Brisman and South, 2014) and international crimes (Werner, 2016), and thus could contribute to more public engagement against these more complex forms of crime. A potential effect is that film could generate more societal support for regulation and enforcement (Pautz, 2016; Werner, 2016), but also implicitly question whether the public and activists can have a role in addressing those harms or whether this is best left to regulators (McClanahan, 2014).

Despite the potential impact of corporate crime films on perceptions of corporate crime and enforcement, movies and documentaries about corporate crimes have received little attention in criminological scholarship. This is surprising, because corporate crime films seem a particularly fitting example of the 'power of spectacle' that Carrabine (2012: 463) argues criminologists should engage with. Corporate crime is a thoroughly contested notion, and visual expressions play an important role in our imagining of ethical and unethical business behaviour (Lippens, 2003). Huge ambivalence exists with regard to societal expectations of business; the demarcation between behaviour that can be accepted as creative and cunning entrepreneurship and behaviour that is regarded as crime; and how intensely business should be regulated, by whom and at what cost. Corporate crimes such as tax evasion, creative accounting fraud or bribery are deeply embedded in normal economic life and are subject to much less condemnation than street crime (Cullen et al., 2009; Nelken, 2012). These discourses are thoroughly influenced by how media represent business behaviour, and therefore deserve analysis from a cultural criminological perspective. This article contributes to this analysis by studying how law enforcement agencies attempt to influence the discourse on cartels as criminal and risky business behaviour, by not relying on independent media but by acting as film producers themselves.

## A brief description of the four films

### Netherlands Competition Authority: *Leniency in Cartel Cases* (9.45 minutes)

The NMa film is set in a typical villa, where we see four men making price-fixing agreements. They are drinking cognac and smoking cigars. The conversation soon turns to the competition authority: 'the NMa is not daft'. One of the four, who is younger and more sophisticated than the other cartel members (one of whom has clearly been cast as 'the bad guy') distances himself from the group. Later we see this leading character listening to a news item about the high fines imposed by the NMa on his car radio. At his office, he receives his lawyer, who informs him that the agreement he is party to is a cartel. When the lawyer tells him that he may receive a private fine of up to €450,000 he is visibly shocked. The lawyer then explains the leniency programme and procedure: 'If you are the first, you *may get off without any fine at all*' is said emphatically. We are then shown the procedure that follows the request for leniency that the main character has submitted after a struggle with his conscience. The formal aspects of the case and the rights and obligations of the person reporting the cartel are clearly explained. Later on, we see the informant in talks at the NMa office, where he is treated respectfully.

The other cartel members are then subjected to a raid by the NMa. In this section, the film seems to want to suggest the power of the NMa by showing a briefing of the kind that we have seen in police series, with simultaneous raids on the offices and homes of the members. We are shown images of offices and homes being searched and of devastated spouses, accompanied by suspense-filled music and no text. While the other cartel members disappointedly realise that they have been caught, a text appears saying 'Only the first can escape without a fine. How much longer will you wait?'. The final shot, in slow motion, shows the person who reported the cartel leaving the NMa's office looking relieved.

### Office of Fair Trading: *Competition Compliance* film (14.14 minutes)

The OFT film starts from the perspective of two cartel investigators sitting in their car who explain that they are going to carry out a raid on an electronic goods importer suspected of fixing prices with three other companies: 'If this turns out to be true, that means customers are paying inflated prices'. Once more we see serious, well-behaved officials and a dejected businessman named Nigel. The officials explain to Nigel that they are conducting a criminal investigation into price-fixing agreements and that they are seizing his papers, telephone and laptop. At the same time, a raid is being carried out at the home of one of the sales managers involved, who has been arrested by the police. A striking difference with the NMa film is that we are not shown these events; instead they are described by OFT officials looking back on the raid.

For the next nearly six minutes, a presenter and a number of experts explain the aim of competition regulations, and the importance of fair competition and low prices for consumers. John Fingleton, CEO of the OFT, explains that infringements may lead to prison sentences and heavy fines. Professor Richard Whish defines the different types of infringements: price-fixing, bid-rigging and abuse of an economically dominant position. This explanation is supported by cartoon drawings. We then return to Nigel, whose company has received a heavy fine. Customers are also claiming compensation and he has nearly been disqualified from practicing his profession. He

explains that the agreements were made by his sales manager, who regularly met up with his competitors at trade fairs. 'If I had known then what I know now, I'd have been on the phone to the OFT like a shot', says the businessman, and explains that his company could have received leniency and avoided the fine if they had been the first to report the cartel.

In the last four minutes, we see how cartel infringements can be prevented by the use of the OFT's four-step plan for creating an effective compliance culture. A voice-over tells how this comprises risk identification, risk assessment, internal training programmes and a code of conduct. The CEO of the OFT emphasizes management's responsibility for their employees' conduct. The film ends with a list of OFT telephone numbers that people can call if they wish to report a cartel.

### **Australian Competition and Consumer Commission: *The Marker* (16.13 minutes)**

The Australian Competition Authority was inspired by the NMa film, but took the genre a step further with professional acting, more convincing characters, evocative music and more emotion and tension. *The Marker* also has a much more modern atmosphere. With its young professional actors and metropolitan setting, it reminds one of a corporate thriller in the Grisham genre.

The opening scene is a busy bar where Martin, who has just started a new job, is confused by the cordial relationship between his boss, Fiona, and the competitor, Gordon. In the ensuing scenes, it becomes clear that Martin's company is engaged in price-fixing agreements with its competitors and that they are dividing up tenders between them. Private life is also featured more prominently in this film. In one scene we see Martin's wife telling him that she is pregnant, and during a barbecue Martin confides to a friend that he feels somewhat guilty about a large bonus that he is about to receive. Martin's problems really start when the cartel partners do not cooperate and Gordon puts him under pressure. Martin's relationship with his wife deteriorates because he is too distracted to show interest in the pregnancy. Various scenes show meetings with Gordon, in which he tries to convince Martin that price-fixing is not wrong. By this time, Martin has a guilty conscience, has become alienated from his wife and is being reprimanded by his manager for not making enough price-fixing agreements. The message about the threat of sanctions is not communicated until the final minutes of the film, through a news item about cartel sanctions on the car radio. Martin is trapped in this situation: his inner conflict, frustration and emotions are depicted dramatically in scenes where he is shown screaming and hitting a wall, and his wife is shown threatening to leave him.

In one of the final scenes, Martin confesses his situation to a friend. 'It sounds like you're running a cartel. You gotta get out mate. You need help', says his friend. Shortly after this, we are shown ACCC officials telling Martin that he will receive leniency – noticeably, this conversation also takes place in a bar. The film ends with a relieved Martin hugging his wife (who now has a pram) on the courtroom steps, while behind him Gordon is being led away in handcuffs. A text appears telling us that Martin's company has received a \$1 million fine and is also being sued by its cheated customers. Gordon has received a prison sentence, whilst Fiona has been barred from practising her profession and a \$400,000 fine has forced her to sell her home. The film ends by reiterating the sanctions that may be imposed.

## The Swedish Konkurrensverket: *Be the First to Tell* (5.39 minutes)

At just over five minutes, the Swedish film is the shortest. It also includes cartel discussions with a tint of local colour (this time it's rain, jumpers and beards), and features a businessperson, Stefan, who is caught in a moral dilemma that is leading to tensions at home. Stefan discusses his worries with his CEO: 'It's not right. It's illegal, and morally wrong'. He is also worried about the legal costs, the fines and – the only one of the four films to mention this – the media. Stefan suggests applying for leniency in order to avoid a fine, saying 'Then our conscience is clean, and we won't be labelled as crooks'. While we see consultations between Stefan, the CEO and the competition authority, a voiceover states the possible penalties for cartels. The message is: 'A company has everything to gain from being the first to tell'. We see the cartel members in court, after which Stefan is the only person to leave court looking relieved. In the final shot, Stefan is given a pat on the shoulder from his manager, while reading a newspaper whose front-page headline is: 'One company not fined'.

## Objectives of the films

Although these films share several visual and narrative similarities, their objectives are remarkably different. Both the British and Dutch films aim to inform the target groups about current regulations and the leniency programme as part of their advocacy task. Information on the usefulness of market operation and competition, and explanations of competition law and its enforcement may help to raise awareness among both consumers and entrepreneurs, contribute to preventing infringements and promote better functioning markets without any need for enforcement (ICN, 2002). However, the films each emphasize different aspects. According to the NMA's leniency officer, the main objective of the Dutch film is to make business people aware of the leniency programme and present it as an attractive way out of a cartel. This objective reflects the importance of the leniency programme as an investigative means in contemporary cartel supervision (Taladay, 2012). Due to the intense social control within cartels, external monitoring and control is not seen as a particularly effective strategy for increasing the detection rate. It is much more effective to undermine cartels from the inside out, by encouraging insiders to break the silence and disclose the cartel (Van de Bunt, 2010). The first member of a cartel who admits to it and provides the regulator with information about the other members can receive full immunity. The next members may receive reduced sanctions. The leniency programme aims to undermine mutual trust between members of cartels and creates uncertainty, thereby changing the cost-benefit ratio regarding infringements: in some cases it makes it more attractive to refuse to join a cartel or to end one's participation in it (Leslie, 2004).

Despite the importance of leniency as a detection strategy, cartel authorities receive few complaints and warnings, and this makes detection all the more difficult (Sokol, 2012); hence the importance of increasing business people's awareness of the leniency programme. The Dutch film therefore shows business people what awaits them, and counterbalances the stigma of 'grassing' that clings to leniency. The film uses various visual and communicative strategies to convey its message. For example, in reality very few cartels match the standard picture of people actively discussing price-fixing around a boardroom table. 'The situation is often somewhat different: participants are not always sure whether what they are doing is illegal', said competition law lawyer Lugard. Although secret meetings where price-fixing agreements are made verbally may



be more attractive from the cinematic perspective, they are not the most realistic portrayals of price-fixing: in reality, less obvious means of communication, such as an intermediary, are often used (Leslie, 2004).

Other subtle visual signals also support the NMa's message: the informant is presented as a modern businessman through the choice of a younger, more attractive actor operating out of a modern office space, whereas the other cartelists seem more old fashioned, for example by typing with two fingers on an outdated computer. One of the most striking communicative elements in order to detach the leniency arrangement from the idea of cheating is the NMa's message to the informant that 'the A-status is available' for him, meaning that he is the first to disclose the cartel and can therefore successfully avoid a fine. Also, the conversations between the informant and the NMa look more like a business meeting than an interrogation, sending a reassuring message about the procedure. 'Leniency, a business deal', is the message that the NMa wants to convey, according to its leniency officer.

The OFT film takes a very different approach: not leniency, but compliance is the main focus. 'The purpose of the material in general, and the film is to teach businesses how they could implement the compliance programme and give a practical guide for compliance', says Elliott Ball, the OFT's media spokesperson. The film was made after a study conducted among business people revealed that many were insufficiently aware of competition regulations. This study gave the OFT an additional argument for choosing an educational rather than a dissuasive approach. As stated by Ball:

We would not unnecessarily push a hard line unless there is a need for it. Small businesses are less aware of cartel rules, they do not always have access to counsel. It is not right to assume they commit offenses on purpose. Hard core conspiracy cartels are more the exception than the rule. Usually, people offend because they are ignorant.

Instruction therefore forms the bulk of the relatively long OFT film. The dramatized section plays an auxiliary role, to make the film more attractive. The visual information is there to support the technical story, according to Ball.

In comparison to the NMa's business-like and procedure-oriented message and the OFT's prevention-focused film, the Australian *The Marker* takes a much more punitive and dramatic approach. In addition to the personal anguish, the film lingers on the sanctions, and even includes shots of handcuffs. This is in contrast to the NMa and OFT films, which mention sanctions but do not depict them. The dramatic train of events that the Australian main character undergoes and highly visible sanctions give this film a primarily threatening, and much less informative nature. Scant attention is paid to the competition authority and leniency programme. In addition to the actual content of the message, music and images that have no informative value, and only serve to heighten dramatic impact, help to convey the message forcefully so as to guide the viewer's interpretation of the behaviour being portrayed. Rather than providing visual images to support a technical message, or rational information about fines, inspections or legal provisions, the Australian film attempts to play on the emotions of the target group by showing, in the words of the ACCC, the 'devastating effect that cartel conduct has on individuals and businesses'. Marcus Bezzi, the ACCC's Head of Enforcement said, 'A government film is usually very earnest and boring, the last thing that anyone wants to watch. We wanted to grab people's attention'.

*The Marker's* main objective is to serve as a deterrent: it is intended to promote the immunity program but is also, and perhaps primarily, intended to explain the potential consequences of engaging in cartel conduct. 'In explaining this we hope that people will be deterred. If it is too late for them to be deterred we hope they understand that they can disclose the cartel to us, cooperate with an investigation and seek immunity'. Bezzi relates this message to the fact that cartels are regarded as one of the most serious forms of organizational crime in Australia, on a par with insider trading. He considers that this strong message of deterrence fits with the reprehensible nature of cartels within the Australian cultural context, in which messages related to fair play are always favourably received. The ACCC slogan 'Businesses compete; cartels just cheat' also appeals to this sentiment.

The Swedish film is the only film in which cartel behaviour is explicitly censured. Cartels are presented as being morally wrong, and cartel members are called crooks. Sweden's strong focus on the importance of the collective may provide an explanation for this normative message. This moral message seems to fit within the 'Scandinavian model' which is characterized by equal employment relationships, more emphasis on corporate social responsibility and a greater acceptance of legislation and regulations than is the case in more neoliberal economies. A Norwegian study, for example, showed that whistle blowing is accepted to a much higher degree in Norway than in other countries; this may also apply to Sweden (Skivenes and Trygstad, 2010). Within this framework, it makes sense that in the Swedish film Stefan finds immediate support for his moral objections from his boss, while the work relationships in the British and Australian films are represented as being more hierarchical and antagonistic.

Although the objectives of the films could be identified, it is not possible to assess the effectiveness of the films, as evaluation studies are unavailable. The most direct indication of their effectiveness is that they are used by competition authorities in presentations and workshops, to enlighten and start a conversation. Also, competition lawyers incidentally recommend them to clients who consider applying for leniency, to inform them about the leniency procedure in an accessible way. The representatives of competition authorities interviewed for this study did not expect business people to change their attitude towards cartels overnight after seeing the films, but report that they are useful in addition to other forms of information about leniency arrangements. Table 1 summarizes the main differences between the four films.

## Analysis of the differences between the films

The previous analysis of the content and objectives of the four films reveals that each film contains a different message as well as different dramatic elements: the Dutch film focuses on explaining the leniency procedure, the British film stresses prevention, the Australian film focuses on deterrence and the Swedish film is more normative. In this section, it will become clear that this message cannot be seen separately from the legal, political and socio-cultural contexts within which the regulators operate.

## Legal framework

Significant differences in enforcement in different jurisdictions influence the deterrent tone of the message a regulator can allow itself. In the US, Great Britain and Australia, making a price-fixing

**Table 1.** Differences between anti-cartel films in the Netherlands, UK, Sweden and Australia.

Competition authority	Dutch	British	Swedish	Australian
<b>Objective</b>	Increase awareness and acceptance of leniency arrangement	Educate about compliance arrangements preventing cartels	Moralize that cartels are wrong and deter business people from entering cartels	Deter business people from entering cartels
<b>Main message</b>	Educate about leniency procedure to stimulate leniency applications	Stimulate adoption of compliance programmes	Communicate social norm that cartels are wrong; educate about leniency procedure	Deter through fear of punishment
<b>Narrative components</b>	Leniency procedure & raid	Compliance & raid	Leniency; cartel operation; implications for private life; enforcement	Cartel operation; implications for private life; enforcement
<b>Dramatic elements</b>	Suspense music; fear of being caught in main character	Some background music	Fear of negative consequences for business	Forceful music; dramatic acting; suspense; strong emotions

agreement is a criminal offence. In these countries, individual cartel members may receive a custodial sentence. Prison sentences are often given in the US and Australia; in Great Britain, however, this has only happened in one case since the introduction of criminal punishment in, 2008.<sup>13</sup> In the Netherlands and Sweden, cartel violations are punished by means of administrative sanctions: in the Netherlands this means a maximum fine of 10% of a company's turnover and personal fines of up to €450,000. Amador Sanchez, the Dutch leniency officer, considers that communicating the threat of punishment is more appropriate in countries where price-fixing is punishable by a prison sentence. The British OFT official has more a fundamental objection to the punitive tone of *The Marker*:

Showing a punitive message involving a prison sentence depicts the absolute worst case for an offender. But prison sentences are rare. When you present extreme cases as an example, as in *The Marker*, your message is not representative. It is not appropriate to make prison the central theme when it's rare. A raid is more realistic as to what will happen; it is not fair to show a prison sentence. Maybe that is the case for multinationals, but not for small businesses who are ignorant.

In addition to the available sanctions, the position of the regulatory authority also varies: the Australian ACCC is primarily an investigative body that submits cases to the courts, while Dutch and British regulators have independent powers to impose sanctions that are tested afterwards in court (Yeung, 2008). These institutional differences have consequences for the leverage of regulatory bodies to present themselves in the media. The OFT's authority to establish infringements independently means that it must present itself as a neutral and independent expert that is

equipped to give a professional judgement in complex situations and to impose proportional sanctions. The more limited enforcement role of the ACCC, whereby the courts establish whether or not an offence has been committed, gives the ACCC more scope to present itself as a guard dog protecting consumers. The ACCC can therefore permit itself a more aggressive style of communication (Yeung, 2008). As a result, the Australian ACCC focuses on deterrence, while the OFT concentrates more on 'positive persuasion'. For example, the British OFT is more careful with 'naming and shaming' companies before the case has appeared in court, partly because it concerns relatively new legislation that has not yet fully taken shape, while the ACCC imposes fewer restrictions on itself in that regard (Yeung, 2008).

A comparative analysis by Schillemans (2016) of how Dutch and Australian agencies cope with the media comes to a similar conclusion: Australian agencies are found to be more accommodating to the more intense and demanding media environment (they 'fight and feed the beast') whereas Dutch agencies are more defensive and hesitant (they 'fumble the beast'). Australian public agencies generally have a more proactive media strategy, with targets about the number of stories they wish to realize in the media, and see it as a battle to 'get into the media'. Schillemans also relates these differences to the more antagonistic political culture of Australia, related to its two-party system, as compared with the consensus-oriented Dutch political culture that reflects upon the operation of the government agencies and leads to a more politicized civil service and agencies. Similarly, Yeung (2008) notes that while the British attach greater value to diplomacy and less to seeking confrontation, in Australian culture the story of the underdog is a popular narrative. This may explain the objections of the British OFT representative against the dramatic and suggestive message in the Australian film, that he seems to find at odds with the factual and objective communication that is expected from a governmental agency. Dramatic scenarios, especially when they are heightened by evocative music, may draw criticism that they are exerting an inappropriate level of influence and are at odds with values of truthfulness and transparency. On this issue, the ACCC's head of enforcement agrees that an overly dramatic approach may undermine the message: 'There is no clear boundary as to what is appropriate, but the form should not be trivializing the issue. It should not become melodrama. No soap opera. *Neighbours*, the Australian soap opera, would be counterproductive'.

## Political economy and neoliberal values

In addition to differences in the legal framework and position of regulatory authorities, the differences in communication style can be explained by differences in the political economy in the various countries: the relations between states and markets. Although all competition regulation represents the neoliberal idea that fair competition leads to greater freedom of choice, lower prices, higher quality and more innovation, regulation of markets and enforcement against business receive varied support in the four countries. The British film reflects the anti-regulation climate in Great Britain, within which 'the overall philosophy of the OFT is that they are pro businesses and want to help businesses to grow, in a fair way', according to Elliot Ball from the OFT. A pronouncedly censorial message is not appropriate within this context. Perhaps there is a reason why the fictional company in the OFT film is presented as being the victim of one of its employees, rather than a deliberate offender. In the Dutch cultural context, where price-fixing and territorial agreements have been commonplace for a long time, and many cartels were approved of by the

Ministry of Economic Affairs, there is a lack of social condemnation of cartel behaviour. This is why the 'business deal' in the NMa film fits much better within the Dutch context than a strongly normative message.

What the films share in common is that the harmful nature of cartels is highlighted by emphasizing the moral values of good entrepreneurship rather than the negative economic consequences of cartels. Only the British film refers briefly to the economic consequences, by stating that 'consumers may be paying inflated prices'. The Swedish film most explicitly mentions the moral dimension when portraying cartel members as 'crooks', but here also the emphasis is on cheating rather than economic harm. In that sense, communication about cartel regulation is more a 'battle for hearts and minds' (Stephan, 2011) than the dissemination of neoliberal ideas about how the market should function (Haines and Beaton-Wells, 2012). The films portray cartels as incorrect behaviour, without making explicit why they are wrong or discussing the values behind competition regulation. By realistically portraying cartels as they operate and presenting leniency as a neutral way out, it could even be argued that the films present cartels as a 'fact of life' and actually contribute to the normalization of cartels rather than condemning it. The Dutch leniency official explains the absence of a substantive argument by the fact that the damage that cartels do is a complicated, nuanced story that is too complex for such a film.

*The Marker* chooses a more intricate way of communicating the neoliberal message that competition is good for the economy. Various justifications and neutralizations of price-fixing are expressed by one of the characters (Gordon). We hear him saying, 'The last thing we want is a price war', 'The workers keep their jobs; the clients think they get a fair deal, and we keep our budgets' and 'You can take the money and run out of the company. Or you can stay where you are and run an industry. Caring about people's jobs. Making a difference. We care for each other'. These rationalizations can be assumed to be convincing, as they are based on empirical research into reasons for violating competition regulations that was conducted by criminologists on the request of the ACCC before producing the film (Parker, 2012). This research revealed that the most important reason for businesses to engage in cartels conduct is not short-term financial gain, but predictability and reduction of economic uncertainty. It is not unusual for cartels to be formed in times of economic crisis to delay falling prices on the market and to prevent bankruptcies. Smaller and medium-sized businesses in particular prioritize dividing available work fairly and maintaining employment within their sector above free competition. Another reason for forming a cartel is to break through power relationships in markets, whereby companies work together in order to counteract powerful buyers and blocks of competitors or enter into a cartel because it is the only way they can find work. In smaller businesses, price-fixing is part of a culture and tradition of cooperation. Even if entrepreneurs realize that price-fixing is an offence, they still do not see it as being wrong: they justify it by pointing to the importance of stability in their sector, employment opportunities and the need to survive (Parker, 2012).

One could argue that *The Marker's* filmmakers have taken a risk in representing these arguments in the film, as the audience could adopt Gordon's view of the situation. According to the ACCC, the fact that the cartel comes to a bad end, however, should make it clear that Gordon's rationalizations are invalid. Marcus Bezzi of the ACCC confirms: 'The neutralisations are also meant to provide a realistic picture of cartels in reality. To generate discussion about why it is not true. It is competition that is likely to bring jobs, not collusion'. The threat of punishment that is communicated in *The Marker*, however, seems to focus primarily on large companies that can

relate to the image of 'homo economicus' in a competitive commercial environment (Beaton Wells and Parker, 2012). In companies like this, cartel membership is a calculated risk, and the threat of punishment is taken into consideration when drawing up the risk-benefit analysis. The metropolitan setting of *The Marker*, and the fact that the film was sent to the top 300 Australian companies, suggests that this film is targeted at large companies, and this has been confirmed by the ACCC's Director of Enforcement. Although actual research into the audiences' interpretation of the film and their reactions to it is not available, it seems likely that for entrepreneurs in small and medium-sized businesses, the economic rationale of competition legislation is an overly simplified representation of the complex package of moral, social and economic reasons for collaboration and competition that they must deal with in practice (Parker, 2012).

## Final remarks

This article has introduced the 'anti-cartel thriller' as a new film genre to criminologists. These dramatized films aim to inform and educate business people about cartel enforcement and to communicate a deterrent message. This article contributes to various topics well-known to cultural criminologists: crime films; constructions of crime as entertainment; and the rise of new media content directly produced by participants in criminal events, rather than by traditional media intermediaries. Whereas cultural criminologists have frequently addressed the production of images of street crime by the public or by deviant persons, this article innovates by investigating media content produced by law enforcement agencies. Although it is widely acknowledged that media play an important role in constructing the definition of and responses to crime (Brown, 2011; Williams, 2008), the increasingly active role of law enforcement agencies in this construction has been somewhat neglected. However, as law enforcement agencies realize that justice must not only be done but also 'be seen to be done' (cf. Garland, 2001) and that law enforcement must be increasingly not only carried out but 'performed', law enforcement becomes more mediatized. As this article demonstrates, this not only takes the shape of symbiotic *collaboration* between media and crime control institutions (Ferrell, 1999), but also crime control agencies produce their own content to educate and deter regulated communities. As cultural criminologists, among other things, 'attempt to unravel the politics of crime as played out through mediated anti-crime campaigns' (Ferrell, 1999: 398), regulator-produced anti-cartel films seem at the heart of this scholarly enterprise.

In addition, as this article demonstrates, media and communication strategies employed by law enforcement agencies not only involve cognitive and factual information, but also dramatized 'infotainment'. These more persuasive forms of government communication are well-known and accepted in health and safety communication, for example in commercials educating the public about the risks of driving under the influence or of smoking cigarettes, and in campaigns to taxpayers, but are a novelty in market regulatory enforcement. Film or documentary images enhance written information on regulations and compliance in a variety of ways. First of all, purely cognitive, rational information is not considered sufficiently persuasive to change attitudes regarding compliance. Film can better evoke emotions and affective reasoning patterns that are necessary in order to change attitudes. Film also provides the opportunity to communicate about enforcement from the perspective of the entrepreneur, and therefore engages people more directly than

'dry' written material. Information about the size of fines or the existence and working of the leniency programme can be brought to people's attention in a more accessible and attractive way, making it more likely that this information will actually be absorbed and processed. A last advantage of film is that it can show diverse perspectives on a subject by introducing different characters. This makes film a good way to provoke a discussion, which is a necessary starting point for changing attitudes about crime.

A striking similarity of the four films is that they portray cartels from the perspective of the offender, with a secondary role for law enforcement. The anti-cartel movies discussed in this article not only aim to deter, but also to stimulate desistance from crime by 'escaping' from a cartel conspiracy. Similarly, films from the perspective of participants in criminal networks might also be useful in stimulating desistance from other forms of socially embedded crime, such as human trafficking or drug networks. This article has, however, not studied how the films are received by the intended audience, in this case business people engaged in cartels, nor have they been evaluated by the regulatory authorities who produced them. Empirical research would be required to establish whether entrepreneurs actually change their attitudes towards competition regulations directly after seeing such films, i.e. if they are moved to apply for leniency or are deterred from participating in a cartel. Research by Pautz (2016) has demonstrated that films about complex enforcement situations, in this case *Argo* and *Zero Dark Thirty*, had a very positive effect on the attitudes of the audience towards military interventions (Pautz, 2016).

The article also contributes to the literature on media representations of corporate crime. In contrast with authors who point to media representations of corporate crime as contributing to a climate in which corporate crime is neutralized, tolerated or Taken for granted, this article has drawn attention to attempts by regulatory enforcement authorities to frame corporate behaviour as harmful and to deter businesses from offending. This raises questions about how persuasive communication in enforcement drama relates to the truthfulness and objectivity that we expect from government agencies. In particular, market regulators in neoliberal economies are required to balance enforcement with maintaining a good relation with business, and face criticism when reigning in the market too much. Anti-cartel films are an expression of the relationship between the market and the regulator, as envisioned by the regulator. But, as this article has demonstrated, enforcement agencies are not entirely free in their portrayal of the business world in which cartel agreements are made and their deterrent message cannot be too strong. The four different narratives used by the regulatory authorities in the four jurisdictions in this article demonstrate that their communication is a reflection of the local legal and cultural contexts. Although the films may share some cinematic similarities, each has a different message and atmosphere. The British film reflects that country's neoliberal 'pro-business' climate, while the Swedish film fits in a value complex in which businesses are socially aware. An emphatically punitive thriller like *The Marker* would probably be considered 'over the top' in the Dutch regulatory culture, which displays a pragmatic, rather than moralistic attitude towards business. These different approaches reflect the differing political, economic and legal contexts that the competition regulators operate within, and the divergent opinions regarding the harmfulness of cartel conduct in diverse cultures. Rather than questioning business behaviour and moralities, the films therefore reproduce and confirm beliefs about the relations between markets and governments. The films therefore do not only tell a story about cartels, but also one about the relationship between markets and government.

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## Notes

1. The Netherlands Competition Authority was recently incorporated into the Netherlands Authority for Consumers and Markets. Because the leniency film was made when it was still the Netherlands Competition Authority, this article refers to the agency as the NMA (Nederlandse Mededingings Autoriteit).
2. <http://www.youtube.com/watch?v=6ksOVTCkmSg>.
3. <http://www.youtube.com/watch?v=louVP9VvFlg>.
4. <http://www.youtube.com/watch?v=6ksOVTCkmSg> (accessed 13 September 2016).
5. <https://www.youtube.com/watch?v=ACA9vdINqek> (accessed 13 September 2016).
6. <http://www.konkurrensverket.se/en/Competition/Aboutthecompetitionrules/Prohibitionagainstanti-competitivecooperation/LeniencyImmunityandReductionofFines/be-the-first-to-tell—a-film-about-leni-ency/> (accessed 13 September 2016).
8. The European Commission has also made a leniency film: <http://ec.europa.eu/competition/cartels/leniency/leniency.html#video>. With regard to structure, it strongly resembles the film by the OFT, but at 72 minutes it is over five times as long as the OFT film. The EC film will not be taken into consideration here as it does not add any new perspective.
9. <https://www.youtube.com/watch?v=nDjZ5kZTkSI> (accessed 8 November 2016).
10. All respondents agreed to waive anonymity.
11. Dunn (2016) makes a similar argument for films about environmental and natural disasters, which simplify tornadoes to a singular event while disconnecting them from climate change and its underlying causal factors.
12. A similar development can be witnessed with regard to international crimes, with several documentaries having been made about international criminal trials (Werner, 2016). These documentaries serve educative and moralizing purposes by recording history, deligitimizing political ideologies, validating community norms and reminding the public that international crimes do not go unpunished. Although they are not produced by law enforcement authorities, these documentaries advocate for international criminal law and in particular the ICC. Strikingly, three out of four recent documentaries use prosecutor Moreno Ocampo as a persona to convey the message of the importance of struggle to end injustice and the power of the ICC to do so.
13. This involves the 'Marine Hose' case in which three business people were given prison sentences ranging from 20 months to two and a half years.

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## Author biography

**Judith van Erp** is a Professor of Public Institutions at Utrecht University, the Netherlands. Her research addresses corporate compliance and corporate crime. She has published on various public and private modes of regulation and governance of corporate behaviour, and in particular on the role of the media and 'naming and shaming' in governing corporate crime.