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Punishing competition law offences is considered to be difficult for two reasons: first, apprehension probabilities are low; and secondly, it is thought that punishment results in zero or low general deterrence. In the case of corporations this may well be the case, however in the case of persons, where imprisonment as well as fines can be imposed, general deterrence is likely. In Australia, this latter scenario now applies to proscribed cartel arrangements. When courts impose penalties, with the primary objective of deterrence, these can be decomposed into a utilitarian and proportional component. These are not in conflict with each other, as is commonly believed. The utilitarian portion of the sentence measures the contribution of the court to social welfare, and this varies inversely with the deterrence elasticity. Consequently, focusing only on the likely value of deterrence can be misleading. A simple empirical example is used to illustrate this proposition.

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The debate over the compatibility of EU competition enforcement with art.6 ECHR is far from over. Whilst there have been a great—some would say excessive—deal of papers on due process issues, less, or even no attention has been paid to the rules and remedies that govern conflicts of interests amongst lawyers, civil servants, legal secretaries and Members of the Court. This short paper seeks to open the discussion on this issue.

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