

Guess what? Gordon has done something right

For all Brown's woes, he is spot on about anti-competitive sharp practice in business, says **Irwin Stelzer**. Now he needs to import that spirit to the public sector

Share a moment for a story in which Gordon Brown is the good guy. Not as exciting as tales of the money trail from David Abrahams to the Labour party's coffers; nor as bloodcurdling as tales of crimes committed by untold numbers of illegal immigrants; nor as nervous-making as the possibility of identity theft from tens of millions of lost HM Revenue and Customs files; nor as economically immediate as tales of a busted bank. But of more enduring consequence for Britain's economy and its social structure.

Soon, very soon if City rumours are correct, some top executives will face criminal charges — not from overzealous American cops, but from Britain's very own cartel busters. This will be the first time that businessmen who conspire to fix prices and overcharge consumers face more than a slap on the wrist. For this protection from extortion, consumers can thank Gordon Brown. The then-Chancellor faced down opposition from several of his colleagues, and the massive apathy of others, to create a new competition regime in Britain, one in which participants in price-fixing cartels would actually go to jail.

Brown might consort with businessmen for political reasons, but he is deeply suspicious, as well he should be, of their devotion to a competitive enterprise system. He believes that fellow-Kircaldian Adam Smith had it right when he wrote, 'People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.' Such conspiracies, he believes, are bad news for the British economy and for its society.

He is convinced that competition, at least in the private sector, performs an important function: by giving consumers a choice of suppliers, it forces producers to compete for their custom by offering higher quality goods and lower prices. This creates pressures to increase the efficiency of operations, raising the rate of growth the UK economy can achieve without triggering inflation, and is essential if British industry is to compete in an increasingly globalised world. As he put it at the time, he hoped to 'achieve what I believe is now the prize within our grasp — US levels of productivity and thus long-term prosperity for all'.

Brown also is fully signed up to the proposition that if Britain is to prosper, it must encourage the sort of innovation culture that

he has seen in action in the United States. So he wants to eliminate conspiracies by incumbent companies to prevent the emergence of new firms with new technologies and new ideas about how to do business.

Even more important to Brown than the economic consequences of a vigorously competitive regime are its social consequences. In an economy in which incumbent firms cannot create artificial barriers to entry, either by deploying their own market power or by colluding with others, fledgling entrepreneurs are likely to flourish. This is important not only to maintain a high rate of invention and innovation, but to increase social mobility, and ease the upward path of fledgling entrepreneurs.

For all of these reasons, Brown-as-Chancellor championed a new, vigorous competition regime. He became persuaded that fines, often paid by companies with shareholders' funds, are an inadequate deterrent to anti-competitive behaviour. So he agreed to the criminalisation of cartel behaviour. It is one thing to pay a fine for agreeing with your competitors to take unfair advantage of consumers; it is a deterrent of an entirely different order to face time as a guest of Her Majesty.

But now the Prime Minister has to decide whether to take his pro-competition campaign further. The resources of the enforcement agency, the Office of Fair Trading, are so limited that it can bring only about 20 important cases in any year. So it is relying on businesses and consumers injured by cartels to bring their own actions to recover from the cartelists their ill-gotten gains. Some of these private actions would follow on to cases already brought by the regulators; others would be new cases, overlooked by the regulators or beyond those agencies' means.

But the cost of these actions, and the way the law is stacked against potential litigants, deters such suits for redress. Although 45 of the 202 companies surveyed by the OFT thought they had been harmed by anti-competitive actions, only five felt able to bring an action. Even more important, UK consumers have never recovered damages from the numerous cartels operating at the retail level. So it was good news when the Treasury's 2006 Pre-Budget Report declared the government's intention to eliminate barriers to redress for parties injured by anti-competitive behaviour.

There the matter stands. More precisely,

there it sits — on the desks of Chancellor Alistair Darling, Secretary of State for Business John Hutton, and Baroness Ashton, Leader of the House of Lords. And in the Prime Minister's in-box. There are, of course, valid reasons for hesitation — to make certain that the proper balance is drawn between making life more unpleasant for cartelists and overburdening the court system. But such issues cannot be resolved by inaction, which favours only the law-breakers.

Given the right tweaking of the law, increased private resources will more readily be available to supplement the rather limited budgets of the enforcement agencies. Third-party investors are willing to cover the costs of litigation in return for a portion of the damages awarded to successful plaintiffs. MKM Longboat, a London-based hedge fund that manages \$2.3 billion in assets, has hired a former litigator to seek out \$100 million of investments in British and European legal disputes. Smith & Williamson, a financial services group, and the giant German insurer Allianz are also looking for opportunities to fund litigation. Sonya Leydecker, the head of dispute resolution at Herbert Smith, one of the most prominent law firms in Britain, told the *Times*, 'Third-party litigation funding is now an established factor in the UK market.... Large firms cannot simply ignore this change in the market.' So she has been assigned the task of determining the impact of this new funding mechanism on law firm operations.

It would be a boon to what the OFT in its latest report calls 'effective redress for consumers and business' if the Prime Minister would facilitate the investment of these available resources by throwing his weight behind the legislation that the OFT has requested in its latest report. And it would be a boon for the UK economy if he would decide that what he knows to be sauce for the private sector goose is also sauce for the public sector gander. The same competition that forces manufacturers and shops to offer high-quality goods and services at reasonable prices could have the same effect if unloosed on the health care and education markets. But Brown holds to the view that consumers are too ignorant to decide which schools are best for their children, the hospitals from which they are likely to emerge alive, and the doctors most responsive to their needs.

He also seems to feel that competition alone can produce the rapid rate of innovation that Britain needs in order to compete in the world. It cannot. What Brown the pro-competition politician giveth, Brown the tax master taketh away. A bit of joined-up policy-making would be useful here.

Too much to ask, perhaps. But he might at least unleash the private sector to come to the aid of the overstretched public sector in turning up the heat on cartelists and other businessmen who subvert the competitive process.

Irwin Stelzer is director of economic policy studies at the Hudson Institute and a columnist for the Sunday Times.