

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) ‘C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution’, *Crime, Law and Social Change*. (Authors post-print version)

‘C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution

Jon Spencer, Nicholas Lord, Katie Benson and Elisa Bellotti
University of Manchester

Abstract: This article, utilizing the theoretical framework of Pearson and Hobbs (2004), defines the middle market in counterfeit alcohol distribution and its associated ‘enterprise’. Drugs markets have a resemblance to counterfeit alcohol markets in as much that they share the illicit nature of the product and the need to distribute the product at the ‘street’ level. Drawing on two case studies taken from a European regulator the article details the dynamics of the market, the enterprise actions of the actors and how law enforcement responses can, in certain circumstances, make the task of the distributors easier. The traditional notions of organized crime are challenged and organization of counterfeit alcohol markets is viewed as being reliant upon those who have legitimate access to the market and are able to develop networks of commercial collaborators who by their position in the legitimate market are able to conceal their illicit actions.

Keywords: counterfeit alcohol, organization of crime, organized crime, food crime, criminal enterprise, market enterprise.

20 Introduction

Utilising the theoretical framework of Pearson and Hobbs (2004), this article defines the middle market in counterfeit alcohol distribution and its associated ‘enterprise’. Pearson and Hobbs (2001, 2004) discuss the problems in defining the ‘middle market’ of criminal enterprise, arguing that it is fluid and dependent on the range of actors and types of networks. They also describe how actors can acquire different roles within different strata of the market. We draw upon these insights to analyse entrepreneurial activities in the middle market of counterfeit alcohol distribution. Additionally, Shen *et al* (2010) provide an analysis of the structure of the counterfeit tobacco market by identifying the ‘key actors’ in the production and distribution of counterfeit tobacco. This is an important detailing of the structure of the counterfeit tobacco market and has striking similarities with the counterfeit

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

alcohol market in terms of the role of actors. However, the utilisation of the Pearson and Hobbs analysis provides a good comparison because of the focus on dynamics of market structure and distribution.

There is a considerable literature on illicit markets and their organisation see for example: Pearson and Hobbs (2001), and Morselli and Roy (2008), which both address drug markets. Hornsby and Hobbs (2007) analyse the structure and market organisation of the smuggled cigarette market. Van Duyne (2006) develops the argument that business crime should be treated as an 'organised crime'. Recently the journal *Trends in Organised Crime* published a special edition on illegal markets in the UK and von Lampe and Antonopolous (2018) provide
40 a detailed overview of the contemporary research trajectories. The important work of Edwards and Gill on 'Crime as Enterprise' (2002) is used here to develop an analysis of the entrepreneurial approach to market structure. Edwards and Gill (2002) note that:

"A key challenge for developing our understanding of illicit enterprise is to pursue a more qualitative interpretation of the actual decision-making processes engaged in by illicit traders" (Edwards and Gill 2002:218).

This article engages with this challenge by analysing the market dynamics and locating the counterfeit alcohol markets within a broader context of serious crime and its organisation. The relative obscurity of counterfeit alcohol in the official discourse and within the academic research suggests that the everyday visibility of legitimate alcohol is the cloak behind which
50 counterfeit alcohol hides. Therefore, an understanding of market structures that aid distribution is one means of exposing counterfeit alcohol from its hiding place.

Why are we concerned with locating the middle market? A greater understanding of the market structure assists us in understanding the trading conditions and relationships (Edwards and Gill 2002). It also helps us to understand the dynamic between different

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) “C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution’, *Crime, Law and Social Change*. (Authors post-print version)

market elements, for example there is a production market in counterfeit alcohol and a distribution market and there is a different middle market in relation to each of these activities that will include a different range of actors, although some actors could be in both markets. However, these markets may be located in different countries and it is more likely that there is little crossover in actors between production and distribution. Understanding
60 the structure of the distribution market provides regulators with market based knowledge that can assist in targeting investigative resources and define and support an intelligence gathering strategy.

Counterfeit alcohol is alcohol that is sold as a branded product when it is not that product but an inferior one. Counterfeit alcohol is presented in counterfeit packaging to deceive the buyer into believing it to be the legitimate brand. Other types of *illicit* alcohol would include home distilled spirits and non-duty, or smuggled, alcohol; this paper is only concerned with counterfeit alcohol. The arguments presented here are based on an integrated script and social network analysis of the case files of a European regulator that concerned two cases of the cross-jurisdictional distribution of counterfeit alcohol.¹ The case files raise interesting
70 questions concerning the nature and structure of the ‘*illicit*’ market and the relationship between different actors involved in the distribution at the middle market level, that is, the ‘enterprise’ of counterfeit alcohol distribution and the underlying *commercial collaboration*.

An understanding of how the processes of distributing counterfeit alcohol are organised and the necessary substantial relations of connection would ideally be informed through intensive, qualitative interviews with those involved in the distribution market but the on-

¹ For further details on methods and data see Lord *et al.* (2017) and Bellotti et al. (forthcoming).

² It was agreed by the authors with the providers of the data that the jurisdictions and the identity of the

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

going, 'live' nature of the cases restricted this kind of access. Additionally, the financial and time constraints of the research permitted only an in-depth analysis of the full case files alongside interviews with the regulators.

To build on our earlier analysis of counterfeit alcohol distribution (Lord, et al., 2017; Bellotti, 80 et al., forthcoming), in this article we seek, in line with the model of middle markets developed by Pearson and Hobbs (2001), to construct an analysis of the market structure of counterfeit alcohol distribution and its associated entrepreneurial dynamics. In doing this, we integrate a market structure analysis (i.e. nature and functioning of the counterfeit alcohol market) with an understanding of micro-level actor dynamics (i.e. social/criminal networks and processes of crime commission). First, the paper addresses the issue of defining the middle market and then argues for the necessity of understanding illicit enterprise at this structural level. Second, we present two inter-linked case studies from the case files and a discussion of what these case studies tell us in relation to the distribution of counterfeit alcohol. Here, we consider the organised activities of those actors involved in 90 the processes of distribution and movement of the illicit product at the middle market level. The final section of the paper explores how an understanding of the dynamics between the middle market and law enforcement contributes to the problems of detecting counterfeit alcohol distribution.

Distributing Counterfeit Alcohols: The Case Studies

In this section we outline the nature of the phenomenon of the distribution of counterfeit alcohol. We present central themes from the script (Lord, et al., 2017) and network (Bellotti, et al., *forthcoming*) analysis to provide concrete insights into the structural aspects of the market, linking these conditions and relations to the actual commission of the distribution

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

100 by the identified network of collaborating actors. We first present a descriptive account of the cases before going on to connect enterprise and structure in the following section to provide insights into the functioning of the 'middle market'.

The Delivery Case²

The 'Delivery Case' spans two jurisdictions that are adjacent. The possibility of counterfeit vodka came to the attention of regulators in *Jurisdiction B* and a raid on a nightclub indicated that counterfeit vodka was for sale; the vodka was a common brand. Empty bottles, caps and packaging were found at the premises. Investigations into the origin of the vodka revealed that the product was sourced from *Jurisdiction A* and the relevant regulator was contacted. The case files of the regulator in *Jurisdiction A* reveal a network of distribution that relies on a number of actors each with their own skills, knowledge and
110 contacts.

David owns a small delivery and courier company, 'Delivery Ltd', located in *Jurisdiction A*. He has numerous legitimate delivery and logistic contracts and delivers across both jurisdictions. The files indicate that David receives or arranges for the collection/delivery of the counterfeit vodka to a storage premises that he either owns or has access to, however, the location of these premises and the origins of the counterfeit vodka prior to David receiving it are unknown. David receives the counterfeit vodka bottled and labelled, so ready for distribution. He arranges for the product to be transported from *Jurisdiction A* to *Jurisdiction B* using legitimate logistical systems, Parcel Network, Crossland, Freight Inc. and Bard Transport. The description of the counterfeit vodka is falsified and the consignment
120 wrapped in opaque plastic. David arranges for the delivery of the counterfeit vodka to the

² It was agreed by the authors with the providers of the data that the jurisdictions and the identity of the Regulatory Authority would be anonymised to ensure confidentiality and operational integrity.

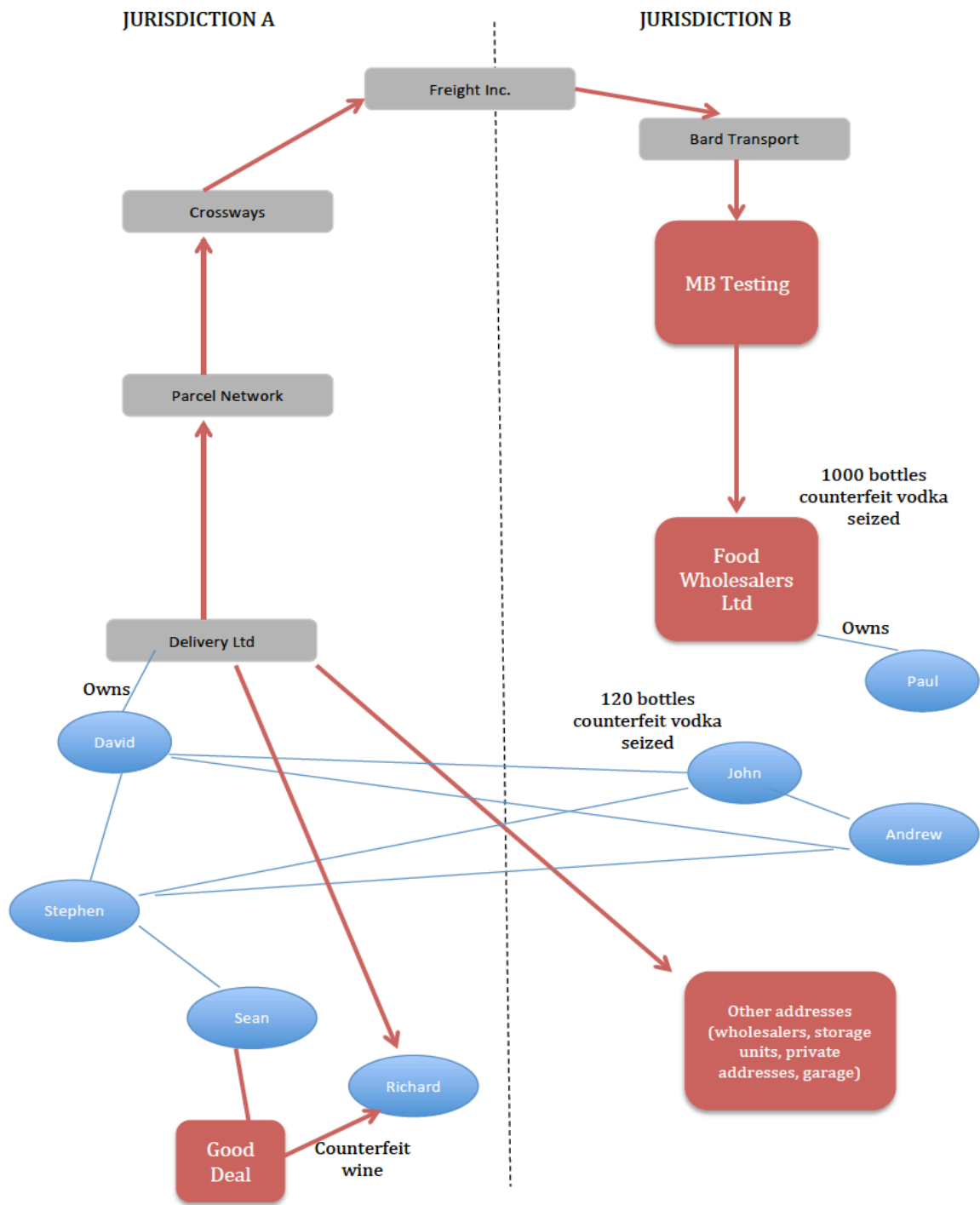
CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

logistics hub of Parcel Network, so the storage location that he collects it from remains undisclosed. David has previously arranged for consignments to the same region delivered to a range of premises. Once David has delivered the product to the logistics hub his role in the operation is over. As logistic companies have no responsibility to ensure the veracity of the consignment description the embedding of the counterfeit product into the legitimate logistic system is relatively easy and with a low risk of apprehension. David had a legitimate relationship with the logistic company as he has sent many *legitimate* consignments, so he was a *bona fide* customer.

130 The counterfeit vodka, whilst with the legitimate logistics company, is not in the control of the distributors; to regain control of the counterfeit product it is delivered to MB Testing, which is not the destination. When the load arrives at MB Testing an employee asks for it to be forwarded to premises around the corner: Food Wholesalers Ltd owned by Paul. This tactic disguises the actual delivery address as the delivery location is not the final delivery address, thus distancing the counterfeit load from the destination. Once at the destination the counterfeit consignment is broken down into smaller consignments and distributed, however, the case files contain only scant information on the lower or street level distribution. David does have some cross-jurisdictional contacts with John and Andrew (*Jurisdiction B*) that are concerned with delivery arrangements. In *Jurisdiction A* there is contact with Stephen and Sean who are brothers, and they have involvement in trading in
140 sub-standard wine which David has been involved in the delivering. There is thought to be a link between Paul, the owner of Food Wholesalers Ltd and John; this being the case there is a link across the jurisdictions to Stephen.

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C" is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution', *Crime, Law and Social Change*. (Authors post-print version)

Fig I – Delivery Case Network



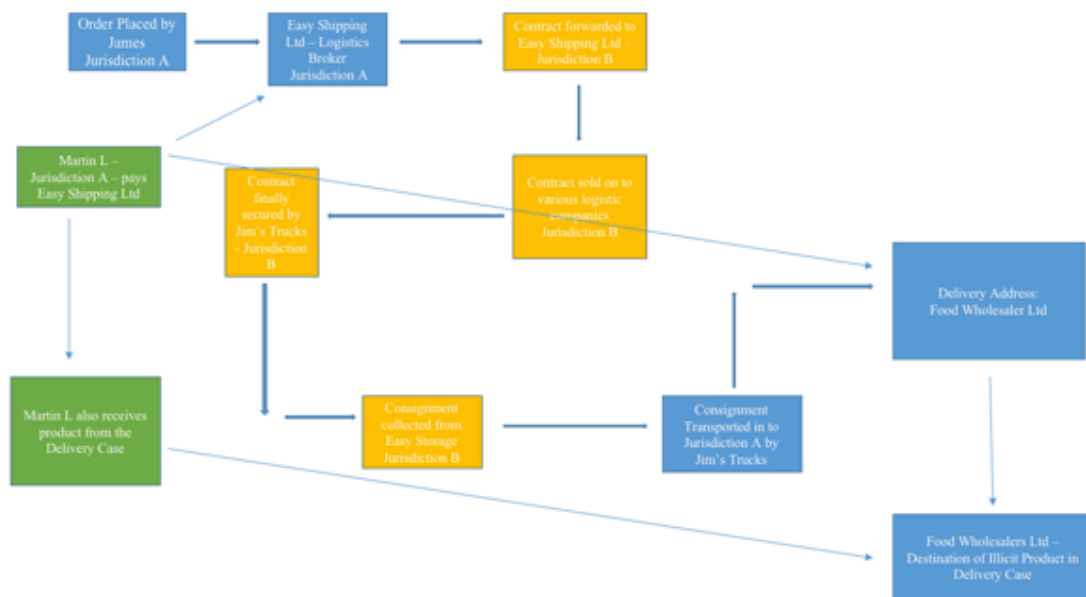
The North Case

150 The 'North Case' occurs prior to the 'Delivery Case' and is detected when a consignment of counterfeit vodka is seized by customs in *Jurisdiction B*. The destination of the counterfeit vodka is the same as in the 'Delivery Case'. However, David is not involved in the case. Once again legitimate logistic networks are used to move the counterfeit vodka across jurisdictional boundaries. In this case the arrangement is made by a third party, James, who instructs a logistics broker to move an assignment of bottled water. This shipping/logistics company sells the contract forward stripping out their profit as they go. This happens on three occasions before the contract is purchased by an individual haulier, Jim's Trucks, who collects the load and transports it. On crossing the border, the haulier is stopped and the load searched and over 17000 litres of counterfeit alcohol seized.

160 This was a relatively simple operation and the final delivery address was not concealed as in the 'Delivery Case' and the 'North Case' does not appear to require the same level of organisation. It appears that the seizure of the load in the 'North Case' resulted in the organisation of the movement of the counterfeit vodka as detailed in the 'Delivery Case' which is a more sophisticated approach to the movement of the counterfeit vodka. What is striking is the speed with which the second delivery process was initiated and established. This is reflected by the adaptability of the network to restructure itself to ensure the delivery of the counterfeit product. The speed of the organisation also suggests that the movement of counterfeit product is a repetitive action and not simply a one-off opportunistic crime.

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) “C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution’, *Crime, Law and Social Change*. (Authors post-print version)

Fig II – North Case Network



Understanding the Middle Market in Counterfeit Alcohol

What do these two cases tell us about the market in counterfeit alcohol? There is a lively market for the product. This is not surprising given the increase in seizures reported in Operation OPSON³ V where during the operation over 385,000 litres of counterfeit alcohol was seized (Europol 2016:13) and there are numerous press reports, especially in 2012 and 2013 claiming the dangers of counterfeit alcohol (see for example: BBC 2013 and Guardian 2014). However, sizing the market is problematic and McKee *et al.* (2012: 10) note that ‘the

180 scale and nature of illegal alcohol production and sale are impossible to ascertain with certainty, but the UK customs authorities believe the problem is increasing and, in association with the UK Border Agency, have recently updated their strategy to tackle it’. As

³ Operation OPSON is a Europol INTERPOL joint operation targeting fake and substandard food and beverages.

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

counterfeit alcohol imitates the product that it is faking, the counterfeit alcohol is not immediately obvious:

“Many are similar in composition to the products they imitate, and the major risk to health probably comes from excessive consumption of ethanol because of the cheap price. It is impossible to tell without testing, however, which of these products contain other potentially toxic contaminants.” (McKee *et al.* 2012: 10)

The key point is that there is an active market and to sustain and expand it will require a
190 consistent supply of the illicit product. In this way, the counterfeit alcohol market has some similarities with the illicit drug market (see Pearson and Hobbs, 2001). Ensuring supply is a critical entrepreneurial function if the profit is to be taken from the market. One problem for the counterfeit alcohol entrepreneur is that a considerable amount of counterfeit alcohol is transported between different jurisdictions and this has to be done, as illustrated in the case studies, by disguising the product as something else. The clandestine movement requires knowledge, resources and organisation, again similar to the movement of drugs that takes places in the middle market of the enterprise.

Nature and Dynamics of the Middle Market

The case studies suggest that the market may also be organised like a drug market. In both
200 investigations, there was no indication of how the counterfeit vodka was distributed at the street level. However, there existed a street form of distribution as the counterfeit product was discovered in night clubs and in a series of raids the fake vodka was found in other small retail outlets across a significant geographical area. The case files chart the movement of the counterfeit vodka from the post-production phase to the distribution phase, and the focus of the case files is at a middle level in the market. Once the counterfeit alcohol arrives at the destination it is then broken down into smaller consignments for distribution. A 20,000-litre consignment might be broken down into small 12 case lots (144 litres) for sale

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

in pubs, clubs and small retail outlets. It is these types of outlet where the fake vodka was found when such premises were raided. The case files also suggest a significant regional
210 market penetration and for this to be achieved it would be necessary to break the initial consignment down into smaller lots. Therefore, the analysis of the case files provides a window onto a middle market operation, there is no detail of how the counterfeit product is sold on or distributed at the 'street level'. What the case files illustrate is the movement of the counterfeit vodka from the producers or those in close contact with the producers to those who organise the distribution of the illicit product. These are two different networks with a 'bridging node' that is able to facilitate the purchase and movement of the fake vodka from one network to another.

The middle market distribution network is relatively small, enlarged out of necessity once the strategy for transportation in the North Case had been discovered. This enlargement of
220 the network to conceal the movement of the counterfeit vodka brings associated risks, simply by the need to increase the size of the network increases the risk of detection. However, the Delivery Case network remains relatively compact with Stephen acting as the bridging node between the networks. Stephen was connected to the brothers John and Andrew who, the case files indicate, are linked to Paul the owner of Food Wholesalers Ltd, the final point of delivery for the counterfeit vodka in both cases.

Structure and Enterprise in Middle Market Dynamics

The work of Pearson and Hobbs (2001, 2004) is concerned with drug markets where they define the typical form of criminal organisation concerning the middle market as involving criminal networks that are 'typically small, with a small number of suppliers and
230 customers...They are more usefully understood as networks or partnerships of independent

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) “C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution’, *Crime, Law and Social Change*. (Authors post-print version)

traders or brokers’ (Pearson and Hobbs 2001:vi). Thus, in terms of *structure*, they propose a four-tier level of classification; importers, wholesalers, middle market drug brokers and retail level dealers (Pearson and Hobbs 2001). This four-tier system does not imply

“...that there are always and only four links in the supply chain, since some individuals occupy dual roles (e.g. import and wholesale), while middle market drug brokers are sometimes known to collect and import drugs from wholesale storage systems in continental Europe. At other times, there are numerous linkages and intermediaries. However, the four-tier classification is a simple and usable definition of distinctive market roles and functions.” (Pearson and Hobbs 2001:vi)

240

The counterfeit alcohol case files indicate a potentially similar classification except that ‘producer’ could replace the ‘importer’ classification if the counterfeit alcohol is being produced (distilled in the case of spirits) in the same country or jurisdiction as the wholesale activity. The case files provide no clear indication of where the counterfeit product was produced but the regulator’s provisional analysis indicates that it was imported to the jurisdiction for bottling and onward transportation. In terms of the middle-market actors, there are clear similarities in the structural relations of the criminal networks. By ‘market structure’ then, we are referring to the structural actor relations in the context of illicit commercial collaboration and their substantial connections and interactions.

250

However, the counterfeit alcohol market is significantly different to a drug market in several ways. Most importantly, drugs are a proscribed product and so any market should be hidden and protected, where possible, from the actions of law enforcement. Counterfeit alcohol *must be* sold as being something that it is not – a branded product – when it is usually of an inferior quality and not produced by the brand owner. Counterfeit alcohol is placed within a legitimate market and so rather than existing in a clandestine market, counterfeit alcohol has to be placed for sale in an open and legitimate market. These market

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) “C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution’, *Crime, Law and Social Change*. (Authors post-print version)

dynamics imply a need for ‘enterprise’ by those involved. That is, the collaborating actors require an understanding of, and ability to react to, processes of supply, demand, regulation and competition for their activities to be financially rewarding (see Albanese, 2012).

260 Structure and enterprise are central to the middle market of counterfeit alcohol distribution.

The counterfeit alcohol in the cases we analysed was thought by the regulator to have been imported ‘industrial’ or imported distilled alcohol but labelled as ‘industrial alcohol’ as a means of duty evasion. At a makeshift bottling plant, the alcohol was bottled into counterfeit bottles, labels and cap closures applied along with fake boxes for the next part of the fraud, the placing of the counterfeit product in the market.

Collaborating for Commercial Gain in the Middle Market

In their analysis of drug markets and the involved actors, Pearson and Hobbs (2001: 2) note that ‘it is a mistake to see these organised crime networks as unified entities – monolithic and hierarchical’⁴. Instead, the approach is to ask questions on how the crime is organised, under which conditions, and how the illicit product is distributed into the market. Paoli (2002) details the argument against viewing organised crime as solely hierarchical and van Duyne (1997) argues that serious crimes are organised:

“...to keep the crime trade going there has to be a continuous process of organizing: identifiable crime-organizations may therefore well be considered the *outcome* of organizing one's forbidden trade and industry, an outcome which is often not even intended or which consists of a *post hoc* legal construction by the police or prosecutor.” (van Duyne 1997: 203 *emphasis in original*)

280 Understanding the organisation of crime moves us away from constructing organised crime as hierarchical trans-national crime groups. This framework for understanding the

⁴ For a typology of hierarchical organised crime see for example UNODC 2002

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

counterfeit alcohol market provides us with a structure that views the actors as being linked together in a loose network with some degree of adaptability and transience. Bright and Delaney (2013) in exploring drug markets notes the need for flexibility to avoid detection and ensure secrecy and that this militates against a hierarchical structure.

Our analysis of the two sets of case files demonstrated some links between the two cases (i.e. the cases do not represent discrete, independent criminal enterprise). Thus, those operating in the middle market are essentially partnerships and transactions between independent 'traders' and 'brokers'. In line with empirical research into 'organised crime' (Paoli, 2002; Edwards and Levi, 2008; Hobbs, 2013), this moves us away from attempting to understand the organisation of the counterfeit alcohol market as being the outcome of a highly structured, monolithic trans-national organised crime group

There was no evidence in the case files that the 'distribution' actors were located close to the production site or were involved in the transportation of the alcohol into the jurisdiction within which they were operating. Thus, a more sophisticated analysis leads us to recognise the fluid and dynamic collaborative activities of multiple actors and networks variously structured throughout the middle market, connected through their shared goals of profit generation. These actors are concerned with their immediate activities, rather than within the functioning of the whole enterprise. However, the case file data indicate that a small number of 'hidden' actors that financed the distribution did connect either side of the middle-market – i.e. post-production and pre-sale. These actors are central nodes in the collaboration (Bellotti et al., forthcoming).

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

To better understand the inherent illicit enterprise, we must seek to empirically validate the 'actual decision-making processes engaged by illicit traders' (Edwards and Gill, 2002: 218) and how such decisions are influenced by market structures. More specifically, '...an understanding of different market structures is a necessary precursor to explaining how different traders apprehend the constraints and opportunities provided in these markets and thus why certain markets contract whilst others expand' (Edwards and Gill 2002: 219).

Our case file analysis gives us insight into the market location of the offenders and the qualitative differences between drug markets and counterfeit alcohol markets, and we are
310 able to gain some, albeit limited, understanding of the entrepreneurial decisions made by the 'illicit traders'. Therefore, understanding where the middle point of a market is located can be critical to understanding the activities of key actors within the market for counterfeit alcohol and the structure of the market for the illicit product.

There is no doubt that the placing of counterfeit alcohol in the market is highly organised; it has to be in order to be successful. It is achieved not by the traditionally constructed hierarchical organised crime groups but by a network of actors collaborating to achieve the aim of distributing the counterfeit product. A crime scripts analysis of this case (see Lord *et al.*, 2017) details the actions and resources required to organise the middle market distribution of the counterfeit vodka. The offending is detailed by scenes that detail the
320 behaviours in each scene. The scripts analysis also identifies the key actors and how they are connected across the criminal enterprise. This approach is reinforced by the use of a social network analysis that identifies the integral actors to each of the scenes in the script analysis. This linking of actors within a network and within scenes provides a detailed analysis of the actions and relations between actors and between scenes and actors and

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C" is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution', *Crime, Law and Social Change*. (Authors post-print version)

between actors, scenes and product to provide a multi-layered analysis. This analysis raises critical questions in relation to the organisation of food frauds and food crimes. It is to this that we now turn.

The Organization of Food and Drink Frauds: Theoretical and Practical Implications of Middle Market Dynamics

330

Flexibility and Adaptation in Criminal Networks

'The most useful way to characterise serious crime networks operating within middle market drug distribution is as small, constantly mutating, flexible systems' (Hobbs, 1997: 67)

The notion of the hierarchical organised crime group, whilst undoubtedly existing in certain locations, is not ubiquitous and much serious crime is organised in more fluid and flexible formats. The case studies presented here support Hobbs' argument as there is a change of approach once the 'North Case' distribution route is discovered that demonstrates flexibility and adaptation. The networks in both 'operations' are relatively small and so might be characterised as a serious crime network. The crime group does not need the rigidity of the hierarchy with chains of command and the organisational problems that accompany a 'command structure'. The network is comprised of actors who have specific roles in the commission of the offence to ensure the success of the operation. In the Delivery Case, for example, David has to organise the logistics of moving the counterfeit alcohol from one jurisdiction to another, that is his function, and once achieved he has nothing to do with the lower level distribution in *Jurisdiction B*. David is recruited, or given a more prominent role in the network once the North route has been discovered. This is a flexible and adaptive network. There is no evidence of hierarchy and no evidence of longevity in the network. David owns a logistics company and is a legitimate actor within the logistics market; his

340

350 knowledge of the structure of logistics and his legitimacy in the marketplace makes him a valuable asset.

We might anticipate that the distribution of counterfeit alcohol, as its illicit it is similar to drugs, will be undertaken by organised crime constructed in a traditional form as it is a profitable illicit product. If we do not find traditionally constructed organised crime groups in drug and counterfeit alcohol markets why is there anticipation that they are active in other areas of food industry?

In the UK the Horsemeat incident of 2013⁵ resulted in the Elliott Review (2013 and 2014) and the final report stated:

360 "...the serious end of food fraud is organised crime, and the profits can be substantial. The recommendations in this report will not stop food crime, but are intended to make it much more difficult for criminals to operate in the UK." (Elliott, 2014:12)

It is unclear where the 'serious end of food fraud' is located and in which sectors the 'criminals' are operating. Perhaps the horsemeat incident of 2013 is considered the 'serious end' and certain journalists suggested that it was the responsibility of organised crime:

"Experts within the horse slaughter industry have told the *Observer* there is evidence that both Polish and Italian mafia gangs are running multimillion-pound scams to substitute horsemeat for beef during food production." (Observer 2013)

370 Yet these 'gangs' have never been identified and the processing of the prosecutions for the horsemeat episode in British food in 2013 suggests that it was a series of actions that occurred internally to the European meat trade. The inference in the Elliott Review (2014) is that there are organised criminals focused on food fraud yet the report has no detailed knowledge of how such crime groups operate, are structured or where their activities are

⁵ The Horsemeat Incident 2013 occurred when horsemeat was found in a number of processed meat products, for example beef burgers. These products were sold as containing 100% beef.

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

focused. However, the Report allocates a considerable discussion as to how food fraud can be accommodated within the overall strategic response to serious and organised crime by the National Crime Agency (Elliot, 2014). One of the key recommendations in the Review was the setting up of a National Food Crime Unit (NFCU) to be located within the Food Standards Agency (FSA). The NFCU was established in 2015 and has no operational or prosecutorial powers and essentially acts as an 'intelligence hub' in addressing issues of
380 food crime and fraud. The aim of the NFCU is to 'identify serious criminal threats to UK food and drink, focusing our resources in the right places and working with the right partners to get the best results' (FSA 2016:3). The NFCU's document that encourages the food industry to collaborate to tackle food crime notes that:

'Threats exist at a number of levels: from random acts of dishonesty by individual 'rogues' to organised fraudulent activity by groups who knowingly set out to deceive consumers or expose them to harm.' (FSA, 2016:7)

The main focus is on the activities of certain actors who are either 'rogues' or are more focused in organising frauds, but these actors are not constructed as organised criminals.

The same document goes onto suggest that:

390 '[t]he barriers to gaining a foothold in the food economy make food a challenging choice for career criminals, but the threat from more organised crime is a real one.' (NFCU. 2016:7).

Indicating that they do not view the food industry as a target for organised crime due to the problems with gaining an accepted role within the food economy. In certain sectors of the academic literature the problem of food fraud is seen to be worldwide and those responsible are 'fraudsters' (see for example Ellis *et al* 2015:9403).

These fraudsters are not identified and are presented as having as their main aim the adulteration of food and that they are globally connected. There is evidence of cross-

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

jurisdictional collaboration but it occurs *only* where it contributes to the execution of the
400 offence, in other words where it 'fits' the script analysis of the case. There are "mutating
and flexible" networks that can be accommodated easily in a crime script analysis (Lord *et al.*, 2017). A recent case where cannabis resin was packed into orange juice cartons was
headlined as being the use of the international food supply chain to smuggle drugs. A
reading of the media reports on the case suggest that the resin was concealed into the
orange juice shipment as a form of concealment and a logistical requirement to move the
resin from the north of Ireland to the UK (BBC 2016). The BBC headline suggests that this is
'an organised crime gang' (BBC 2016). The moving of the resin is organised but probably
much more to the Hobbs' description than that of a traditional 'mafia style' structured gang.
There is nothing remarkable about the food distribution chain being used, it is available and
410 an easy means of concealing illicit product amongst legitimate product, such concealment
could easily occur in other distribution chains.

Importantly it is apparent that the organisation of frauds in the food and drink industry are
more commonly located within the industry networks rather than being the activity of
externally located criminals who decide to exploit the opportunities for fraud within the
food and drink industry. Within the food and drink industry networks of business,
processing, production and distribution exist and this provides the opportunity for
fraudulent activity including adulteration and distribution (Lord *et al* 2016). Once we move
away from the worn clichés of organised crime and the notion of international networks co-
ordinating food and drink frauds to an understanding based on a script and network analysis
420 the regulatory and policy responses become much less opaque.

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

Entrepreneurial Fraud: Criminal Action in Food and Drink Markets

There are significant differences between many of the food fraud incidents and the distribution of counterfeit vodka. First, counterfeit vodka is very much a fake product that is produced and distributed in a clandestine manner. Many incidents of food adulteration are perpetrated within the manufacturing process and are not so clandestine as the distribution of counterfeit alcohol. This means that the organisation of the two activities is different, however, the analysis of the case files suggests that counterfeit vodka is organised by co-operating small networks. Research on food fraud suggests a similar structure but the difference being that the networks are located in the production process, so they are

430 internal to the food industry. The networks in the production and distribution of counterfeit alcohol are located externally to the mainstream production of alcohol. Second, counterfeit alcohol relies much more on the organisation of clandestine activities within legitimate business practices used as a cover for criminal action.

Work by Dorn and South (1990: 178) exploring the structure of drug markets identified seven different types of market and the one that is most relevant to the discussion here is that of a *Business Sideliners*. They define these operators as being:

440 '...licit economic units which get involved in drug distribution on the side. Examples include doctors who combine generous prescribing with collection of a fee for services; import-export agencies which provide a cover for shipment of drugs; and businesses with social and economic ties to areas of illicit drug production. As can be seen from this description, Sideliners can operate near the upper reaches of the distribution system, and/or in the middle: their common feature is their basis in a licit business enterprise. This has advantages in terms of the managers' experience of entrepreneurial activity, access to capital, ability to funnel cash through otherwise legitimate channels, public respectability, lack of police record, etc.' (Dorn and South 1990:178)

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

In the case studies presented here we see evidence of business sideliners. The logistics company run by David is a legitimate company providing a 'cover for the shipment' of the counterfeit vodka. Food Wholesalers Ltd was the destination for the counterfeit vodka but was a legitimate food wholesalers company. The company had a legitimate means of onward distribution, or access to onward distributors willing to pay for the counterfeit product as part of their own business enterprise. As Dorn and South (1990) note there is a legitimate access to capital and experience of entrepreneurial activity within the relevant field of entrepreneurial activity. This would seem to securely locate both Food Wholesalers Ltd and David at the middle market point, or at least within the 'upper reaches of the distribution system' (Dorn and South 1990).

An important element in understanding market structures is to recognise that not all markets in counterfeit vodka will be structured in the same way, and that markets in other counterfeit alcohols may well be different. So, for example the market structure of counterfeit alcohol will be a different niche to say wine that is of a lesser standard than it claims on the bottle. The process of sourcing inferior wine, obtaining the bottles, bottling and distribution we can expect to be different to counterfeit vodka for a number of reasons. One primary reason is that counterfeit vodka and wine are most likely sourced in different geographic locations. However, there appears to be a merging of the products into distribution networks once we investigate the middle market in counterfeit and sub-standard alcohol. We can also anticipate that the structure at each level of the market will be different and operated by different actors:

'Recent studies of illicit drug markets reveal that a range of network structures exist small flexible groups operating at the mid-level of local and regional trade, and freelancing individuals hired for courier activity at the retail level' (Malm and Bichler

2011:273)

The structure of the higher levels of counterfeit vodka markets are unknown but our case studies suggest that what we are analyzing is the mid-level with small flexible groups. The distribution at the lower level is very possibly undertaken by the freelancing couriers. The middle market entrepreneurs in these two case studies are legitimate actors utilizing their resources - financial, human and knowledge - to organize the movement and distribution of the counterfeit product. These actors are far removed from the mafia style organized crime groups of popular legend and media construction. It may be within the network described in the case study that Stephen is the bridging node between the next higher level of market and the middle market as managed by the owners of Food Wholesalers Ltd. Critically, the research reported here indicates that the organization of the trade in counterfeit vodka is structured through market interactions rather than organized by hierarchical organized crime groups. The market interactions occur between legitimate market actors; Morselli and Giguere (2006) argue that understanding the role of legitimate actors in criminal networks is challenging. In the data presented here the roles of both David and Stephen are pivotal to the distribution enterprise.

The form of market organization is interesting and tells us something about the activities of the criminal network. The second case study reported here demonstrated open and relatively simple middle market actions in moving counterfeit vodka. The logistics of moving the counterfeit vodka between jurisdictions was unsophisticated and continued until a load was intercepted. As noted earlier there was a certain rapidity in how the network 'mutated' in order to facilitate the movement of the vodka more clandestinely by increasing the level of sophistication. This 'mutation' of the network has an impact on the structure of the

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

market and also is indicative of the interaction between law enforcement activity and criminal enterprise.

Making Life Difficult for Law Enforcement

As Dorn and South (1990) argue, the activities of law enforcement have an influence the
500 structure of the market.

'New emphases in law enforcement, such as covert operations and surveillance of cashflow, tend to structure the market into a series of smaller and flexible (e.g. multicommodity) enterprises' (Dorn and South, 1990:176)

In a form of 'spinning' the information to fit with the legends of organized crime we encounter news reports that reinforce the stereotypes of serious criminals as structured gangs.

510 "An undercover investigation by Channel 5 infiltrated the crime gangs behind the trade and found one factory in east London producing 7,000 fake bottles of Smirnoff vodka a day.' (Daily Mail 10.07.2014)

But as Dorn and South (1990: 176) note,

'[m]odern law enforcement may, in combination with the mass media, promulgate the myth of the monopolistic drug distribution enterprise, but it actually discourages such a market structure' (Dorn and South 1990:176) .

The idea of a crime gang organizing the complete distribution chain of counterfeit alcohol, from production to street distribution, is not supported by the research and analysis of the data reported here. The data suggests that the organisation of the distribution is fractured, or split into a number of discrete tasks. The completion of a task by actors allows for the next task to be undertaken and at the same time the actors responsible for the completion
520 of the task in many instances are different. In the case study David organizes the logistical pathways and has no other role in the operation.

The structure of the counterfeit alcohol market is relatively simple. The product is produced

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

in one jurisdiction in large quantities. It is possible that the production of the base alcohol is legitimate, for example alcohol produced for industrial processes. The purchasing of the industrial alcohol in the production jurisdiction may also be legitimate. It is the movement of the alcohol and its diversion into the legitimate alcohol market as a branded product that is the fraud. The producers need to move the product into the legitimate market, or the purchasers are buying the alcohol with the intent to use it fraudulently. The alcohol once acquired need to be sold onto higher-level distributors who can 'broker' the product into
530 the middle market.

The entry to the middle market allows for large quantities to be sold onto those who can bottle and package the alcohol as a branded product, and so the industrial alcohol now becomes 'counterfeit'. Once at this level the product is moved to distribution points where it can be sold on to lower market actors with networks that enable them to sell the product easily and in a covert way. This model of distribution, from production to lower level distribution, accounts for the spread of the fake product across a significant number of geographical locations. This market structure also appears to be relatively efficient; it allows for market distribution and penetration, anonymity of purchasers and sellers at the lower level, and is adaptive to shocks, for example the seizure of a consignment.

540 Understanding the more fractured structure of the counterfeit market and its different levels provides a window onto how the counterfeit operations can remain hidden. A number of transactions in the supply chain, even though conducted with criminal knowledge and intent, are legitimate transactions and therefore not of interest to law enforcement. For example the production of industrial alcohol is a legitimate process, the sale of such alcohol is also legitimate and so of no interest. These legitimate transactions

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) “C’ is for Commercial Collaboration: Enterprise and Structure in the ‘Middle Market’ of Counterfeit Alcohol Distribution”, *Crime, Law and Social Change*. (Authors post-print version)

may be the foundation of the counterfeit operation. Once the consignment is split and diverted into a number of different locations, and with an organisation of actors that are task orientated, many having legitimate roles, makes the job of law enforcement extremely challenging. In order to meet this challenge, it may be, as Dorn and South (1990) argue, it is the operational activities of law enforcement that result in the structure and illicit activities adapting to remain out of their sight.

Conclusion

There is a phenomenon of counterfeit alcohol. The figures from Operation Opson V suggest increased seizures. The case study of Greece reported in the Operation Opson Report describes a counterfeit vodka operation as follows:

“... Police dismantled two illicit production sites of famous brands of alcohol (mainly whisky and vodka). ... The fake bottles were sold in night clubs and bars in the Attica region. ... Substandard alcohol was produced in clandestine laboratories. Genuine empty bottles were smuggled from Bulgaria. Police also discovered a *second organised criminal network* led by the deputy director of a chain of liquor stores. Both criminal groups developed a business partnership to sell the illicit bottles.” (Interpol 2016:21*emphasis added*)

This report suggests that the actors, or some of the actors, were legitimate operators within the alcoholic drink sector, that the distribution network was across a region and possibly utilising networks developed from the ‘chain of liquor stores’. There is also a development of the criminal enterprise between the two levels of operation. The seizures were made after an informant provided information to law enforcement. This suggests that there is a difficulty in discovering these cases other than by intelligence or by good fortune.

These networks appear too efficient and successful and not easily detected. The difficulties in detecting such networks might be due to the market structures. The markets encourage fragmentation and at the same time co-operation between networks. It may also be that

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

the 'middle market' is a critical point of distribution and discovering its location provides a way into revealing the associated distribution networks.

The research presented here, and the subsequent discussion, reiterate the theoretical discussions by Paoli (2002). Paoli argues that the supply of illegal commodities takes place in a 'disorganised way due to the constraints of product illegality' (Paoli, 2002: 52) and if we combine this with Dorn and South's (1990) analysis of how the interventions of law enforcement shape market conditions it becomes visible that the counterfeit vodka market is disorganised, adaptive and flexible to changing trading conditions and law enforcement activity. One speculative finding from the research reported here is that the dynamic between law enforcement and the market, which takes place to apprehend criminals, may significantly contribute to the difficulties they experience in being able to effectively close down distribution chains of counterfeit vodka.

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

References

- Albanese, J. (2012) Deciphering the linkages between organised crime and transnational crime. *Journal of International Affairs*. Vol. 66, No. 1, Transnational Organized Crime (FALL/WINTER 2012), pp. 1-16
- 590 BBC (2013) Fake Vodka can kill you warning to Christmas shoppers
<http://www.bbc.com/news/business-25455992> accessed 23.11.16
- BBC (2016) *Gang Jailed for Smuggling Cannabis in orange juice cartons*.
<http://www.bbc.com/news/uk-northern-ireland-37927304> accessed 01.12.2016i2016a
- Bellotti, E. Lord, N., Spencer, J. and Benson, K. (2017) Legitimate and Illegitimate networks in Counterfeit Alcohol Distribution: a Criminological Script Network Analysis (*forthcoming European Journal of Criminology*)
- Bright, D.A. and Delaney, J.J. (2013) Evolution of a drug trafficking network: Mapping changes in network structure and function across time, *Global Crime*, 14:2-3:238-260
- 600 Daily Mail (2014) "Flooding our shops, the fake vodka full of lethal toxins: Investigation finds counterfeits contain chemicals including chloroform and methylated spirits"
(<http://www.dailymail.co.uk/news/article-2686696/Flooding-shops-fake-vodka-lethal-toxins-Investigation-finds-counterfeits-contain-chemicals-including-chloroform-methylated-spirits.html>) Accessed 25.01.2017
- Dorn, N. and South, N. (1990) Drug Markets and Law enforcement. *British Journal of Criminology* Vol 30 No2: 171-188
- Edwards, A. and Gill, P. (2002) Crime as enterprise? The case of "transnational organised crime" *Crime, Law and Social Change* **37**: 203–223
- Edwards, A. and Levi, M. (2008) Researching the Organisation of Serious Crimes. *Criminology and Criminal Justice*. Vol4: 363-388
- 610 Elliot, C. (2013) *Elliott Review into the Integrity and Assurance of the Food Supply Networks – Interim Report December 2013*. London. Government Publications
- Elliot, C. (2014) *Elliott Review into the Integrity and Assurance of the Food Supply Networks – Final Report. A National Food Crime Prevention Framework – July 2014*. London. Government Publications
- Ellis, D., Muhamadali, H., Haughey, S, Elliott, C. and Goodacre, R. (2015) Point-and-shoot: rapid quantitative detection methods for on-site food fraud analysis – moving out of the laboratory and into the food supply chain. *Analytical Methods*, 7:9401
- 620 Europol (2016) Operation OPSON V 2015. *Targeting Counterfeit and Substandard Foodstuff and Beverages*. Europol/Interpol. Brussels
- Food Standards Agency (2016) *Working together to tackle the threat from food crime*. London. Food Standards Agency

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution", *Crime, Law and Social Change*. (Authors post-print version)

Hobbs, D. (2013) *Lush Life: Constructing Organised crime in the UK*. Oxford University Press. Oxford UK.

Hornsby, R. and Hobbs, D. (2007) A Zone of Ambiguity: The Political Economy of Cigarette Bootlegging *The British Journal of Criminology*, Volume 47, Issue 4, 1 July 2007, Pages 551–571.

630 Interpol (2016) *Report Operation Opson V* Interpol. Dan Haag

Lord, N., Spencer, J., Benson, K., and Bellotti, E. (2017). A Script Analysis of the Distribution of Counterfeit Alcohol Across Two European Jurisdictions in *Trends in Organised Crime*

Lord, N., Spencer, J. and Flores-Elizondo, C. (2016) The Dynamics of Food Fraud: the interactions between criminal opportunity and market (dys)functionality in legitimate business. *Criminology and Criminal Justice*

McKee, M., Adany, R. and Leon, D. (2012) A Illegally produced alcohol Is increasingly available in the UK and will add to alcohol 's already great threat to public health. *British Medical Journal*, 344 e1146

640 Malm, A. and Bichler, G. (2011) Networks of Collaborating Criminals: Assessing the Structural Vulnerability of Drug Markets. *Journal of Research in Crime and Delinquency* 48(2) 271-297

Morselli, C. and Giguere, C. (2006) Legitimate Strengths in Criminal Networks *Crime, Law & Social Change* (2006) 45: 185–200

NFCU (2016)

Observer (2013) "Horsemeat Scandal Blamed on International Fraud by Mafia Gangs. Observer 10th February 2013

(<http://www.theguardian.com/business/2013/feb/09/horsemeat-scandal-international-fraud>) Accessed 17.10.2013

Paoli, L. (2002) The Paradoxes of Organised Crime. *Crime, Law and Social Change* 37:51-97

650 Pearson, G. and Hobbs, D. (2001) *Middle Market Drug Distribution*. Home Office Research Study 227. Home Office Research and Statistics Directorate. London

Pearson, G. and Hobbs, D. (2004) 'E' is for enterprise: Middle level drug markets in ecstasy and stimulants, *Addiction Research & Theory*, 12:6, 565-576

Shen, A., Antonopoulos, G. A. and von Lampe, K. (2010) 'The dragon breathes smoke': cigarette counterfeiting in the People's Republic of China', *British Journal of Criminology*, 50 (2), pp.239-258.

UNODC (2002) Results of a Pilot Study of Forty Selected Organised Criminal Groups in Sixteen Countries. United Nations Office on Drugs and Crime. Vienna 2002

660

Van Duyne, P. (1997) Organized crime, corruption and power. *Crime, Law and Social Change* 26:201-238

CITATION: Spencer, J., Lord, N., Benson, K. and Bellotti, E. (2018) "C' is for Commercial Collaboration: Enterprise and Structure in the 'Middle Market' of Counterfeit Alcohol Distribution', *Crime, Law and Social Change*. (Authors post-print version)

Van Duyne, P. (2006). The Organization of Business Crime. In P. C. Van Duyne, A. Maljevic, M. van Dijck, K. Von Lampe, & J. Newel (Eds.), *The organization of crime for profit: Conduct, law and measurement* (pp. 69–98). Wolf Legal Publishers

Von Lampe, K. and Antonopolous, G. (2018) An introduction to the special issue on 'Organised crime and illegal markets in the UK and Ireland' *Trend in Organised Crime*: 1-5 <https://link.springer.com/article/10.1007/s12117-018-9343-x> accessed 08.05.2018

670