



**European Commission
Directorate-General for Competition**

**Quantification of harm in damages actions for antitrust infringements
Workshop of Economic Experts**

Chaired by: Carles Esteva Mosso, Competition DG/A, Acting Director and
Damien Neven, Competition DG, Chief Economist

26 January 2010

Venue: Borschette Centre – rue Froissartstraat 36, 1040 Brussels, meeting room 3B

AGENDA

9.00 – 9.30 REGISTRATION and coffee

9.30 – 9.45 WELCOME by the Chairs

9.45 – 10.00 INTRODUCTION

The Commission's project to provide pragmatic guidance to judges and parties in damages actions.

10.00 – 11.45 SESSION I: HARM FROM PRICE OVERCHARGES

Presentation: What forms can damages from exploitative competition law infringements take? What do we know about price overcharges? Empirical findings, insights from theory and application in damages cases.

Discussion to consider, *inter alia*, the following issues:

- Is it possible to define certain conditions which make it more likely that a cartel is not able to affect markets and therefore does not lead to any overcharge?
- What economic insights exist that would assist in a first estimation of the harm resulting from overcharges (e.g. for the initial pleading of the claimant)?
- Can a list of conditions be established under which cartels produce particularly high overcharges (e.g. in highly concentrated markets; international vs. domestic cartels; emerging vs. consolidated markets; consumer vs. intermediate markets; homogeneous vs. heterogeneous products; particular price-cost margin of cartel participants or other features or types of a market)?
- What insights exist on overcharge levels in infringements other than cartels.
- What can be said about the link between the overcharge and the reduction in sales by the direct customers; what is the relationship between pass-on rates and the reduction in sales by the direct customer

- Under which conditions is pass-on rather likely or rather not likely to occur? What is the importance of factors such as intensity of competition between the on-passer and his competitors, elasticity of demand, price elasticity of supply, duration of the infringement, degree of capacity constraints?
- What approaches exist to quantify harm on several levels of the distribution chain?

Concluding remarks

11.45 – 12.45 SESSION II: HARM FROM EXCLUSIONARY PRACTICES, 1st part

Presentation: Typical types of harm suffered by foreclosed competitors and overview of approaches used to quantify them. Particular strengths, limitations and data requirements of the respective approaches.

Discussion to consider, *inter alia*, the following issues:

Harm of competitors

- Which types of harm are likely to be relevant in practice (loss of profits, sunk costs, ...)?
- Which (straightforward) methods/approaches exist to determine the counterfactual and to estimate the harm of the foreclosed competitor in the case of:
 - *prevented market entry*;
 - *forced market exit*;
 - foreclosure leading to a competitor *losing market shares*?
- How can the difficulties in identifying alternative causes for a decrease of the foreclosed competitors profits / volume of sales be dealt with?
- What can be said about the approach to estimate the aggregate loss of profits on the basis of the loss of profits in one or few individual frustrated transactions ('representative transaction approach')? What makes a transaction representative?
- What practical experiences exist regarding the estimation and proof of future harm (i.e. future foregone profits of foreclosed competitors)?

Harm of customers

- What can be said about the harm suffered by purchasers (in particular: end consumers) both (i) of a firm foreclosing competitors and (ii) of these foreclosed competitor? In particular:
 - Under which conditions does an exclusionary behaviour negatively affect purchasers (e.g. what must happen /how much time must elapse before a foreclosure leads to an overcharge?)
 - By how much must the competitive pressure lessen for there to be an effect on customers/consumers?
 - Are there good examples from practice and literature in which damages have been awarded/calculated in such a case?
 - What economic insights exist that would allow for a first estimation of the harm suffered by customers of a firm foreclosing competitors (e.g. for the initial pleading of the claimant)?
- Does the issue of passing-on occur in a similar (the same?) way as in overcharge cases?

Concluding remarks

12.45 – 14.15 Lunch

14.15 – 15.30 SESSION II, 2nd part (see above)

15.30 – 16.00 COFFEE

**16.00 – 17.45 SESSION III: METHODS, MODELS, TECHNIQUES TO
QUANTIFY ANTITRUST HARM**

Presentation: Overview of the various methods, models and techniques to quantify antitrust harm. Particular strengths, limitations and data requirements of the respective methods.

Discussion to consider, *inter alia*, the following issues:

- Which straightforward (simple to apply, low data requirements) methods exist to obtain first insights or a rough estimation (e.g. for initial pleading of claimant) regarding the quantum of harm suffered through antitrust infringements?
- When are other markets, time periods or firms sufficiently “comparable” to serve for building a counterfactual in a comparator-based model? Which corrections to observed data can be made to achieve “comparability” of the markets in question?
- Is there a possibility to ascertain whether particular models/methods are appropriate for certain types of harm/infringement?
- Are there scenarios (e.g. auction/bidding markets) in which IO models are particularly suitable for the purposes of damages actions? Are there any practical examples where this approach was pursued? What are typical data requirements of IO models for damages estimation?
- What role can finance-based models play in quantifying harm in damages actions? Are there scenarios in which they are particularly suitable?
- How can economics help to overcome data unavailability, especially regarding data from the defendant and third parties (e.g.: insights from economics as to likelihood of outcomes, data proxies, use of less data intensive methods ...)?
- In case several models and methods are applied in a given case: can "pooling" of methods be correct and useful and, if so, under which conditions?

Concluding remarks

17.45 CLOSE OF WORKSHOP
