

Part 3 – Harm from increased prices

A few remarks



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Workshop on the Quantification of Harm in
Antitrust Damages Actions

Brussels, 27 September 2011

Overarching Remarks

- Very commendable initiative
- It would be useful to include scorecards and checklists
- The tradeoffs between the various techniques should be clarified further
- A “hierarchy of evidence” should be offered

“Hierarchy of Evidence”

The Draft Guidance Paper should identify the methodologies which are more likely to result in precise estimates of the overcharge (when correctly applied)

Simpler

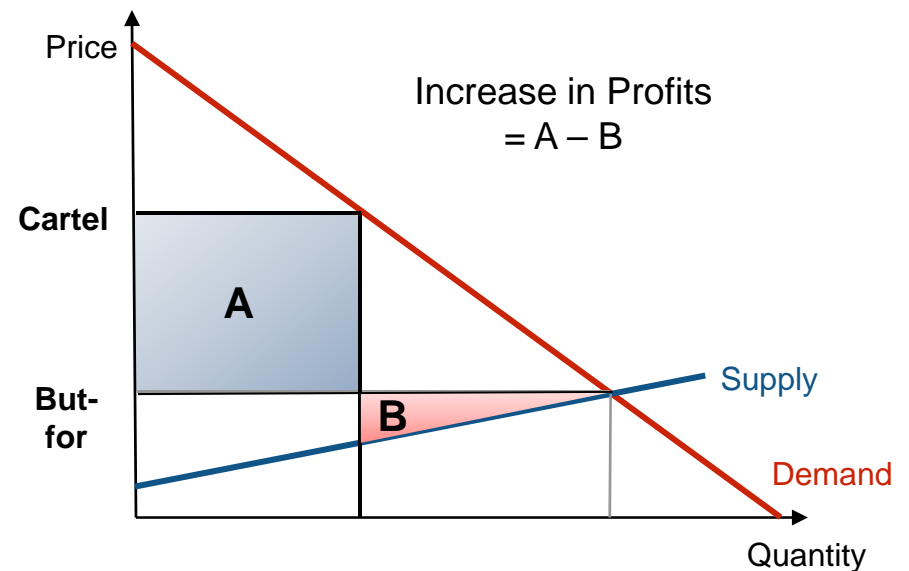


- Internal documents
(imprecise estimates, no data required, simple)
- Simulations /extrapolations
(approximate estimates, little data required, varying degree of complexity)
- Basic before-after or yardstick price analysis
(relatively precise estimates, moderate data requirements, simple)
- Econometric before-after or yardstick price analysis
(more precise estimates, significant data requirements, relatively complex)

More
Precise

The Overcharge

- Literature review: the “20% effect” may become a presumption
 - Presumptions are not necessarily useful
 - Any presumption should be easily rebuttable
- Estimating the overcharge: well-trodden ground
 - Efficiency effects of cartels should be discussed, as they may be included in certain estimates
 - Internal documents: Illicit profit \neq overcharge (see figure)



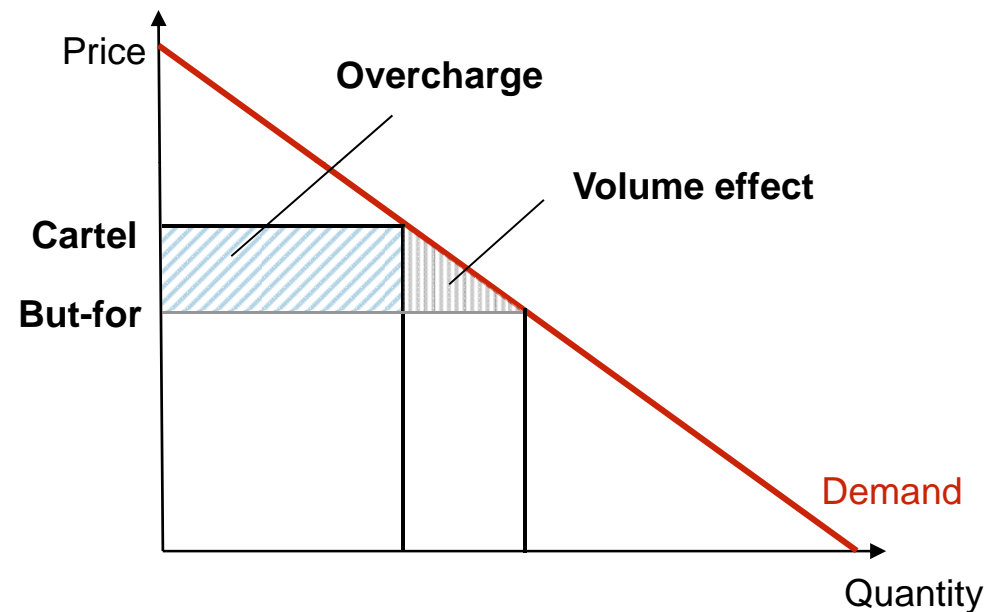
Internal documents would identify the illicit profits as (A-B), which underestimates the overcharge (A)

Pass-on

- The Draft Guidance Paper makes a good job at simplifying a complicated field
- A few possible improvements
 - Clarify the tension between volume effects and pass-on defence: if there is no pass-on there can be no volume effects (see ¶144)
 - State that method B (direct estimate of pass-on) is simpler than A (subsequent pass-on estimates) and thus preferable (see ¶147)
 - Some pass-on is possible even when the overcharge is not common across buyers (see ¶149)

The Volume Effect

- Correct in principle, but fairly unusual (not typically estimated in damages cases)
- Damages for purchases that did not take place
 - Who was harmed?
 - By how much?
- The Draft Guidance Paper may need to clarify this area further



Conclusions and Recommendations

- Very useful document
- Could be made even more useful with checklists and scorecards
- Should include a “hierarchy of evidence” to guide courts’ assessment
- Could be clarified or qualified in a few places (what is and is not included in the estimated overcharge, volume effects, pass-on)

Thank you

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