

European Commission Workshop on

**Quantification of harm in damages actions
for antitrust infringements**

Introductory remarks by

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Brussels, 26 January 2010



Antitrust Damages Claims are Coming to Europe

- Hardly a (visible) practice yet – fear for under-deterrence
- EC White Paper (April 2008) – compensation
- No punitive damages
- Full legal standing – *Courage* (2001), *Manfredi* (2006)
- Passing-on defense likely to be succesful
- Directive in the making
- Commission’s call for “simplified rules on estimation”



Observation 1

Damages are typically multi-dimensional

- Inflated unit prices
 - Non-linear pricing and pay-back schemes
 - Product quality effects
 - Unexploited scale economies
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- Consider net effective unit price increases
 - Beware of underestimation



Observation 2

Damages do potentially spread in all directions

- An overcharge on direct purchasers
 - Lost profits/DWL of direct purchasers/consumers
 - Both incurred by indirect purchasers – pass-on
 - Both incurred by (indirect) suppliers – pass-up, undercharge
 - ‘Umbrella effects’ – substitute inputs, partial cartels
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- Seek means to vertically aggregate claims – all-encompassing public report
 - Beware of related claims – risk of multiple liability



Observation 3

There is a direct purchaser overcharge presumption – 20%

- The direct purchaser overcharge equals the sum of all downstream pass-ons
 - Yet, it misses all lost-profit effects and consumer DWL
 - The overcharge method is more off, the closer the cartel is to end consumers
 - Upstream damages can be relatively large
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- Commission a qualified overcharge approximation – theoretical and empirical
 - Beware of simple correction factors of the overcharge to actual harm



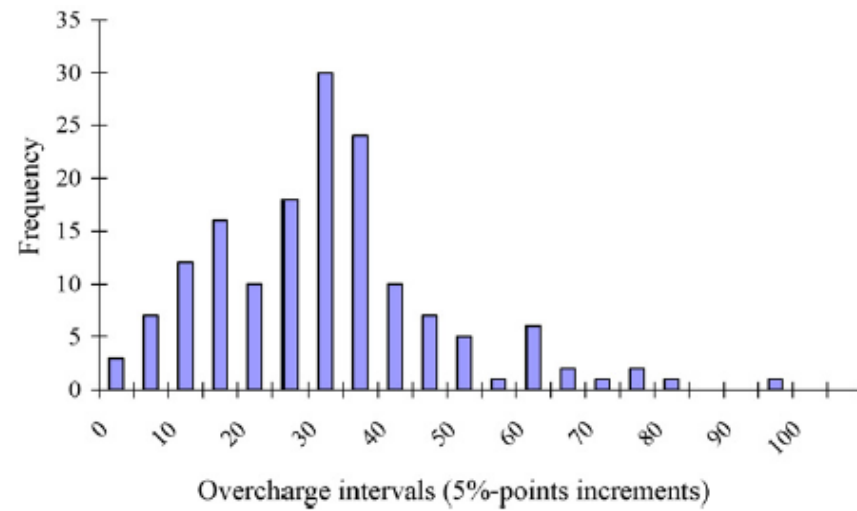


Fig. 2. Frequency distribution of cartel overcharges: modern international cartels.

Bolotova, Y., "Cartel Overcharges: An Empirical Analysis,"
Journal of Economic Behavior & Organization, 70(12), 2009, 321-341



Direct Purchaser Overcharge as Denominator

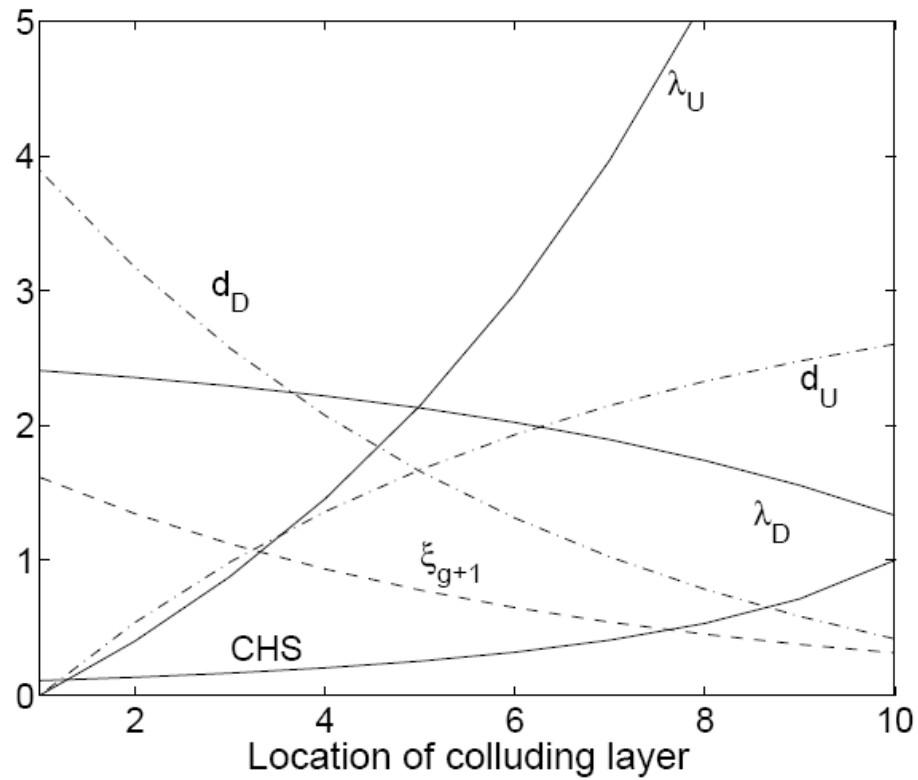
Aggregate downstream damages multiplier:

$$\lambda_D = \frac{d_D}{\xi_{g+1}} = \frac{\sum_{k=g+1}^K \Delta\pi_k + \Delta CS}{\xi_{g+1}} = \frac{\xi_{g+1} + \sum_{k=g+1}^K \sigma_k + \sigma_c}{\xi_{g+1}}.$$

Aggregate upstream damages multiplier:

$$\lambda_U = \frac{d_U}{\xi_{g+1}} = \frac{\sum_{k=1}^{g-1} \Delta\pi_k}{\xi_{g+1}} = \frac{-\omega_{g-1} + \sum_{k=1}^{g-1} \sigma_k}{\xi_{g+1}}.$$





Han, M.A., M.P. Schinkel and J. Tuinstra, "The Overcharge as a Measure for Antitrust Damages," *ACLE working paper No. 2008-8*, 2009



Observation 4

There appear to be mostly settlements for little or no money

- Emerging market for claims trade
- Undisclosed settlements – in smoke-filled rooms
- Indirect – fear of retaliation
- Indirect purchasers with imperfect information suffer

- Introduce a public record, or court approval
- Do not necessarily respect settlements



Observation 5

There is a risk of unintended consequences of (early) case law

- Case law puts constraints to later practice – safe-havens
 - *E.g.* start and end dates of infringement in Commission reports
 - No need to avoid using sophisticated econometrics
 - There is an optimum quality of data
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- Offer guidance on a sufficient standard of work – Daubert-style
 - Use court-appointed experts – right away



- Fisher, F.M., “Economic Analysis and Antitrust Damages,” *World Competition*, 29, 2006, 383-394
- Davis, P. and E. Garces, *Quantitative Techniques for Competition and Antitrust Analysis*, Princeton University Press, 2010, Chapter 7
- Bishop, S. and M. Walker, *The Economics of EC Competition Law*, Sweet & Maxwell, 2010, Chapter 17

