

Il danno antitrust: profili giuridici e economici

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Roma 12 febbraio 2010



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Outline

- Public interest in damage actions
 - 1) *Deterrence*
 - 2) *Restoring pre-infringement market conditions (if the compensation is a subsidy instead of a lump sum)*
- What a Competition Authority can do for facilitating private actions



Public interest: deterrence (1)

- Very low severity of sanctions relative to the degree of injury

type	US	Canada	EC	Other Gov.	Private suit US	TOT.
Global	43.8	73.9	43.6	0.5	124.2	42.3
N.Amer	12.5	75.5	-	-	49.3	40.9
Other	-	16.7	6.1	36.2	-	17.6
Bid Rigg.	141.2	111.8	-	28.8	60.0	45.1
All.	43.8	73.9	31.7	12.4	105.9	39.8

Connor,” Effectiveness of Antitrust Sanctions on Modern International CartelsJ”
J. Ind. Competition Trade (2006)



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Public interest: deterrence (2)

- *Prosperetti has a different opinion.*

Evidence?

- Average level of fines is not a good indicator
- Motta article (2008) is only based on a simulation
- *Why Competition Authorities do not increase the degree of severity instead of looking for private compensation?*
 - Public choice explanations
- *Private and public interests are not overlapping.*
 - 1) Price increase which is not passed on (high damag. Low social loss)
 - 2) Abusive conduct in a market which cannot be protected by lawful behaviour (Low damag.-high social loss: Telesystem)



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Restoring pre-infringement market conditions (1)

- For cartel cases I advance the following proposal (strictly personal point of view):

A cost subsidy, instead of a lump sum, should be used as a compensation for damages

- Motivation: a lump sum does not affect current prices as subsidy does
- Prices due to collusion don't generally revert to pre-collusive levels for a number of reasons
- A subsidy paid to damaged firms could be welfare enhancing, as it can pass on consumers
- Second best solution (when inefficient cartels are not deterred) : with optimal sanctions only welfare enhancing cartels survive and this proposal is harmful



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Restoring pre-infringement market conditions: the proposal in a nutshell

- 1) Calculation of the price increase (in %) of the input due to collusion
- 2) This percentage should be used as the discount rate to be applied to the “competitive” price of the input (for a time span which is the same of the cartel)
- 3) the discounted price of the input will be allowed to change according to variations of a reference price index



Restoring pre-violation market conditions (3)

- Advantages

- 1) No need to calculate the pass on
- 2) Final consumers can benefit without recurring to a class action

- Problems (rather intrusive weapon)

- 1) Risk of “boomerang” effect at the end of the period
- 2) It could be difficult to find a plausible price index for allowing future price increases (it must be subjected to the same economic forces but not easy to manipulate)
- 3) It could hinder product innovation



Can a Competition Authority facilitate damage estimations? (1)

- What a Competition Authority assesses:
 - 1) Infringement of the law (*always*)
 - 2) effect of the infringement on welfare (*sometimes: cartel cases*)
 - 3) Which portion of the social loss affected individual agents (*never*)



Can a Competition Authority facilitate damage estimations? (2)

- Assessment of the impact of anticompetitive behaviour:
 - 1) Sometimes effect evaluation is a preliminary stage for the quantification of fines
 - 2) It is a way to calculate the effectiveness of competition policy for accountability purposes (See De Economist, 2008/4; ICN, Seminar on Competition Agency Effectiveness, Bruxelles Jan. 2009)



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Can a Competition Authority facilitate damage estimations? (3)

- Firms do not generally anticipate the evaluation of damages before Competition Authorities
- If they did:
 - 1) Better decisions by Competition Authorities
 - 2) It could be simpler to obtain damage compensation at a later stage

