The Law of Damages and Competition Law: *Bien étonnés de se trouver ensemble?*

Willem H. van Boom

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Abstract:

The French expression 'bien étonnés de se trouver ensemble' is used to denote a situation in which unlikely companions much to their own surprise find themselves having the same intentions, goals, or interests. Are competition law and the law of damages such unlikely companions? In this contribution, I sketch the framework of the law of damages and then try to identify the touch points – if any – between the law of damages and European competition law.

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1 Introduction

One of the many French influences on Dutch society is the continued use in Dutch parlance of the expression 'Bien étonnés de se trouver ensemble'. This expression is used to denote a situation in which unlikely companions much to their own surprise find themselves having the same intentions, goals, or interests. Are competition law and the law of damages such unlikely companions? In this contribution, I sketch the framework of the law of damages and then try to identify the touch points – if any – between the law of damages and European competition law.

First, a brief introduction of the actors and issues involved in breach of competition law may help clarify some points of definition. In the following, I will concentrate on simple horizontal anti-competitive practices such as price fixing and exclusionary practices. In a simple horizontal price cartel, competitors agree to keep prices at a certain level. Direct and indirect purchasers may suffer overcharge harm: that is, a higher price than they would have had to pay if no cartel had existed. It is possible that end-users – consumers – suffer economic loss as well if the high prices are passed on through the chain. As far as exclusionary practices is concerned, existing competitors may be forced out of the market or seriously hindered in developing or sustaining their market share as a consequence of collusion to exclude. The excluded competitors may suffer pure economic loss (loss of market share, or even insolvency) as a result. This may in turn lead to a reduction in competition and therefore to higher prices and/or a reduction in choice or quality for direct and indirect downstream purchasers .

National tort law systems may first want to address the issue of whether any of the injured parties involved in these cases will find a court willing to hear their case. In some legal systems, this is dealt with according to procedural rules of *standing*, while in others the key question – in tort law rather than in procedure – is whether the statutory duty breached by the infringers is owed vis-à-vis the current claimant. In either case, the ECJ *Manfredi* decision (see further below, § 3) prescribes that a generous rule of standing has to be applied.

A particular issue in the law of damages is the *passing-on* defence. We will deal with this defence at a later stage; for the present, it will suffice to give a brief description of the problem. If a direct purchaser were to claim compensation for the overcharge caused by the cartel, the economic conditions may be such that the overcharge would in fact be passed on to indirect purchasers. If this is true, then the direct purchaser will not have suffered any damage. The passing-on defence complicates the individual position of both direct and indirect purchasers and end-users.

Thus far, the actors have been introduced and some of the definitions have been explained. Now it is time to address a few of the complications that arise as soon as the aforementioned 'unlikely companions' meet. The analysis that follows will be mostly abstract and isolated from real-life law. The reason for this is simply that the laws of damages in European legal systems differ extensively. By slightly ignoring this crucial point –

which obviously is by no means a detail to be overlooked – I can largely ignore the question of what we consider to be 'the' law of damages in European private law. As Rodger rightly notes, 'the most obvious practical dilemma is the appropriate ascertainment of damages'.[1] A comprehensive pan-European definition of what constitutes damage in competition cases and how it should be quantified is absent.[2] Admittedly, in some legal systems the law of damages is considered to be part of the general codified principles of private law, while in others there is no unified concept of damages and there are in fact several 'laws' of damages. These differences may be relevant when policymakers try to dovetail European competition law with national laws of damages. For instance, in those legal systems that operate a unitary concept of the law of damages, the functions and goals of damages may be more easily adjusted to the goals of compensation as set out by European law, while in others the breach of competition law may lead to the application of a specific set of rules on damages.

2 Taxonomy of remedies in private law

Before turning to damage caused by competition law infringements and the legal aspects of compensating such damage, it may be useful to distinguish between several remedies in private law and the functions these perform. In my opinion, remedies in the law of obligations can be subdivided into prospective remedies, retrospective remedies, and vindicatory remedies.[3] Any of these three remedies may well be operated in a given legal system by individuals or at an aggregate level by groups, a voluntary or compulsory representative, or even by some state-appointed representative (e.g. a public officer 'Ombudsman') for the benefit of multiple affected individuals and businesses.

Prospective remedies aim at preventing harm or further harm and may include mandatory and prohibitory injunctions in civil procedure.[4] As such, similar goals are served with public authority powers to order cessation and compliance ('command and control' orders) in the public interest. Naturally, prospective civil and public law remedies may differ principally as far as the interest underlying the respective remedies is concerned (private vs. public), but from the viewpoint of compliance with substantive law the differences may well be less accentuated. Fines and imprisonment of directors under criminal law or administrative law

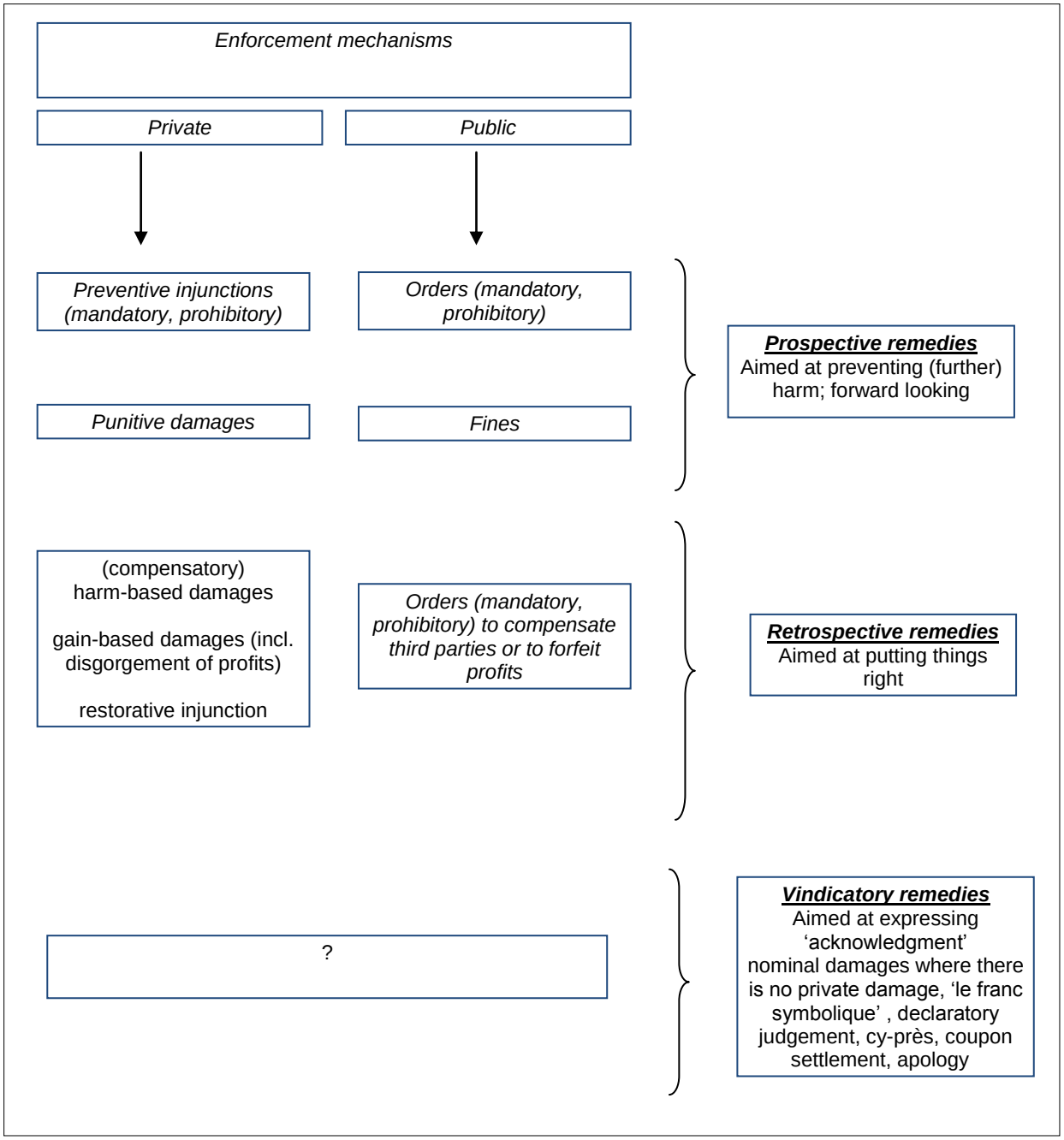
[1] *Rodger*, Private Enforcement and the Enterprise Act: An Exemplary System of Awarding Damages?, E.C.L.R. 2003, 112.
[2] Generally on the differences between the legal systems, see *Waelbroeck et al.*, Study on the conditions of claims for damages in case of infringement of EC competition rules - Comparative report, Brussels 2004.
[3] Note that the word 'remedy' is understood here to have a neutral meaning and not to denote the 'actionable at law vs. equitable remedy' dichotomy in the common law jurisdictions.
[4] For the sake of simplicity, I will not include the debate on whether injunctions are in fact part of the law of obligations or 'merely' a procedural tool belonging to the realm of civil procedure. On that debate, see for example *Van Boom*, Comparative notes on injunction and wrongful risk-taking, 17 Maastricht Journal of European and Comparative Law 2010, 10 ff.

may have a prospective function as well. By fining or incarcerating the perpetrators after the event, the State aims at incentivising potential infringers into abstaining from competition law infringements (*ex ante*). This is not to say that criminal or administrative sanctions with a punitive element cannot be ascribed other functions as well; the functions of punitive sanctions are in fact manifold. Nevertheless, one of the functions of punishment through fining may be the prevention of the infringement in the first place. Thus, a prospective element can be discerned. The same is true of punitive damages (exemplary damages) in private law, but since the role of this type of damages is far from compensatory, it seems to be far removed from the European legal culture, at least at this moment.

Retrospective remedies aim at putting things right. In the law of damages, the compensation of losses suffered subject to the principle of 'full compensation' is prototypical of the retrospective remedies. In principle, compensatory damages are harm-based damages. Next to these, however, there are also gain-based damages that are subject to the paradigm of 'restitutio in integrum'. This latter category does not concentrate on the losses suffered by the injured party but on the gains (profits) accrued by the infringer(s). By allowing a private action for skimming-off (disgorgement of profits) instead of or even in addition to claims for harm-based damages, a legal system would operate a two-faced system of retrospective remedies. Restorative injunction is also a remedy with a retrospective focus: the defendant is ordered to undo what he did and to bring the claimant into the position he would have been but for the infringement. Retrospective remedies are found less frequently in public law than in private law.

Vindicatory remedies constitute a category of claims that seem at first glance to have little in common. Yet, what they share is the ambition to express acknowledgement by the legal system that harm has been done, that the legal order has been violated and amends must be made. Vindicatory remedies can be invoked concurrently or alternatively; they can help overcome evidentiary difficulties such as proof of damage or calculating losses. Nominal damages and symbolical amounts ('le franc symbolique') can have the function of vindicatory remedy, as can a declaratory judgement. Other than that, the category of vindicatory remedies is underdeveloped and undertheoretised.

When we put this into a graph, we see how the remedies in private and public law would add up (figure).


Enforcement mechanisms
Private
Public
Preventive injunctions (mandatory, prohibitory)
Orders (mandatory, prohibitory)
Punitive damages
Fines
Prospective remedies
Aimed at preventing (further) harm; forward looking
(compensatory) harm-based damages
gain-based damages (incl. disgorgement of profits)
restorative injunction
Orders (mandatory, prohibitory) to compensate third parties or to forfeit profits
Retrospective remedies
Aimed at putting things right
?
Vindicatory remedies
Aimed at expressing 'acknowledgment' nominal damages where there is no private damage, 'le franc symbolique' , declaratory judgement, cy-près, coupon settlement, apology

3 A short history of everything

The threefold division of remedies provides a useful tool to examine the interplay between competition law and damages. In European competition law, the 2006 ECJ *Manfredi* decision has made clear that domestic laws of damages should at least fulfil their classical function of retrospective remedy.[5] In *Manfredi*, the ECJ was called to decide on the private law aspects of European competition law. Manfredi was one of several Italian consumers who took their insurance company to court, claiming reimbursement of the overcharge on their insurance policy when the Italian competition authorities declared the underlying insurance cartel agreement unlawful. To what extent would the national court be obliged by articles 81 and 82 EC (= articles 101-102 TFEU) to acknowledge a claim in private law? The ECJ took a principled approach to the matter. Briefly described, the *Manfredi* ruling sets forth the following principles:

- EU competition law necessitates member states to respect the right of individuals to seek compensation;
- Any individual suffering harm as a consequence of breach of art. 81 EC can claim compensation for that harm;
- It is for the domestic legal system to prescribe the detailed rules on damages, procedure, and limitation periods, and to designate the appropriate courts, provided that the principles of equivalence and effectiveness are observed;
- Individuals seeking compensation should be allowed to claim both actual loss and loss for profit, plus interest;
- National courts are allowed to ensure that individuals are not unjustly enriched by their actions.

Note that frictions between the EU principle of effectiveness and compensatory damages are foreseeable: effectiveness does not necessarily sit well with the traditional compensatory retrospective goals of the law of damages. The principle of effectiveness alludes to prospective goals underlying a substantive rule of EU law. EU law calls upon the court to judge the national remedy at stake according to this principle (as one of the yardsticks). If the prospective effect that EU law is pursuing is the eradication of anti-competitive behaviour while the national retrospective remedy merely aims to compensate, it fails in terms of prospective ambitions.[6]

A development that ran parallel to the judicially created 'access to justice' for individuals and businesses injured by competition law infringement was the Commission's 2005 inventory of the potential of private damages actions as a tool within the overall system of enforcement. First, there was the impetuous 2005 Green Paper by Commissioner Kroes highlighting the

[5] ECJ Judgment, 13 July 2006 in the case Vincenzo Manfredi and Others v Lloyd Adriatico Assicurazioni SpA and Others, joint cases C-295/04 to C-298/04 [2006] ECR I-6619. Cf. Case C-453/99, Courage Ltd. v. Bernard Crehan [2001] ECR I–6297.

[6] Perhaps this conundrum can be solved by interpreting the effectiveness principle in such a way that it alludes to something less than a prospective remedy and more than a retrospective remedy.

private enforcement paradigm, stressing deterrence as a private law value, and suggesting trebling damages as an incentive against anti-competitive behaviour. Undeniably, the Commission was contemplating conversion of the traditionally retrospectively oriented remedy of compensatory damages into a prospective tool.[7] The predominantly prospective approach of the Green Paper evoked considerable criticism, to which the 2008 White Paper responded well. In essence, the White Paper centred on truly accomplishing the retrospective ambitions of the law of damages in the competition law context. The paper postulated that indirect purchasers are to have standing in court, the fault requirement in tort law needs to be relaxed, national courts need to be given guidance to facilitate assessing quantum through simplified and rough modelling of economic damage, claimants need to have access to documentary evidence, and decisions by national competition authorities (e.g. the decision on the facts and the breach of competition law) need to have binding authority in the event of follow-on actions in civil courts. Furthermore, the Paper focused on access to justice for end-users by stressing that there is a clear need for aggregation of low-value claims by means of representative action and opt-in collective action. All in all, the 2008 White Paper emphasised the necessary interplay between public law enforcement as a source of prospective remedying and private law damages actions as a source of retrospective remedying.

A 2009 Draft Directive addressing most of these issues was shelved for political reasons. However, the basic idea of improving access to compensatory damages was not. In a speech in 2010, Joaquín Almunia, the new Vice President of the European Commission responsible for competition policy, expressed the Commission's intentions as follows:

'It is basic justice that customers harmed by cartel behaviour should obtain redress for the harm caused to them. I believe the current situation does not allow companies, often SMEs, and consumers to enforce this right. Certainly this is not possible throughout the EU. This is why the Commission is committed to proposing legislation on the matter'. [8]

The new 2010 Commission seems to have decided to give priority to supporting the aggregation of claims, both in competition law cases and consumer law cases generally. In a recent 'joint information note' by the European Commission representatives – Reding, Dalli and Almunia – five principles were put forward.[9] Future action by the EC needs to:

- promote effective compensation for every individual who has suffered damage;
- avoid abusive litigation;
- stimulate settlement and ADR;
- ensure cross-border enforcement;

[7] For further examples of how this conversion attempt would work, see *Centre for European Policy Studies/Erasmus University Rotterdam/LUISS Guido Carli*, Making Antitrust Damages Actions More Effective in the EU: Welfare Impact and Potential Scenarios, Brussels 2007.
[8] Speech Nov. 2010 on the occasion of the air cargo Cartel press conference.
[9] Renforcer la cohérence de l´approche Européenne an matière de recours collectif: prochaines étapes - Note d'information de Mme Reding, M. Almunia et M. Dalli , SEC(2010) 1192.

- address the issue of adequate financing possibilities.

A new consultation round is now due.

4 Relaying with the law of damages

In European civil law systems, the traditional role of the law of damages is mainly compensatory. Hence, if European law assigns the task of deterrence, punishment, or generally prevention to the law of damages in private law, the goals and function of that part of private law need recalibration. For instance, as previously mentioned, the principle of effectiveness does not sit well with the classical concept of compensatory damages and would therefore need some sort of adjustment.

The more recent European policy documents seem to communicate the message that in the domain of competition law, the law of damages 'merely' needs to fulfil a function of a retrospective remedy. However, this does not clarify exactly what it is that damages need to 'put right'. In other words, what is the damage that needs redress? This question is pertinent because in this respect, competition law and policy and private law may not share the same concept of damage. Competition law aims at guaranteeing an adequate operation of the market economy in the abstract. Hence, it aims at preventing and redressing *losses to society* caused by anti-competitive behaviour. By contrast, however, little agreement exists as to the precise aims of private law, more in particular tort law and the law of damages. If one considers private law to be interested in offering remedies to protect or vindicate *private interests*, there can be several dogmatic gaps between competition law and the private law of damages. Here, I briefly address two of these 'gaps': namely the 'law/rights' and the 'social/private loss' divide.

5 Enforcement of what? Law or rights?

In tort law, there is a continuous debate on whether tort law merely protects legally acknowledged interests such as life, health, and property against infringements, or whether it purports to offer compensation for wrongs of a broader kind, including wrongful acts leading to pure economic loss. The various legal systems have different positions in this debate, and some are more forthcoming than others in offering retrospective remedies against infliction of pure economic loss.[10] Breach of competition law by definition results in pure economic loss. If a given tort system automatically imputes such acts as tortious breach of statutory duties vis-à-vis competitors, direct and indirect purchasers, and end-users, then the relay from competition law to tort law is straightforward. Not all legal systems are so simple, however.

[10] Generally, *Van Dam*, European Tort Law, Oxford 2006, 141 ff.

Naturally, this does not imply that the European legislature is not allowed to nudge member states into adapting their tort law systems. Nevertheless, it does mean that European policymakers may not always appreciate the subtle difference between 'law' and 'rights' in private law. I mention here just one example. The Commission announced the forthcoming 2011 consultation on collective action as setting out 'to ensure that rights are a reality for all' because 'the effective rights of European citizens cannot vary depending on where they live in the EU'. Moreover, the 2010 Joint Information Note states: 'Rights which cannot be enforced in practice are worthless. Where substantive EU rights are infringed, citizens and businesses must be able to enforce the rights granted to them by EU legislation' and 'EU citizens and businesses should be able to take action when harmed by a breach of any EU legislation creating substantive rights'. [11]

These quotes raise a serious point of transposition from competition law to private law. The question for the law of tort and the law of damages would be whether competition law indeed creates substantive rights and, if so, what do these entail? Enforcement of competition law in a public law setting is seen merely as the enforcement of law. In a private law setting, suddenly the shift is made towards private *rights* and their enforcement. This begs the question of whether and to what extent the European Commission envisages that competition law rules that protect general interest – the proper functioning of markets – can automatically convert into tort law rules protecting individual rights. Are these truly actionable substantive rights under private law rather than pure economic interests 'protected' by the retrospective remedy of compensation?

6 Social loss and private loss

Apart from the 'law/rights' divide, there is the 'social/private loss' divide. Not all losses to society also constitute private losses and vice versa. Overcharge is a private loss suffered by businesses and/or individuals. Calculating the overcharge harm may be difficult, as may be the identification of who actually suffered it. The anti-competitive behaviour may also cause an additional loss, a deadweight loss to society. In the figure depicting 'private and social loss', this latter is the area denoted as 'B'.

[11] Renforcer la cohérence de l´approche Européenne an matière de recours collectif: prochaines étapes - Note d'information de Mme Reding, M. Almunia et M. Dalli, SEC(2010) 1192, p. 3-4.

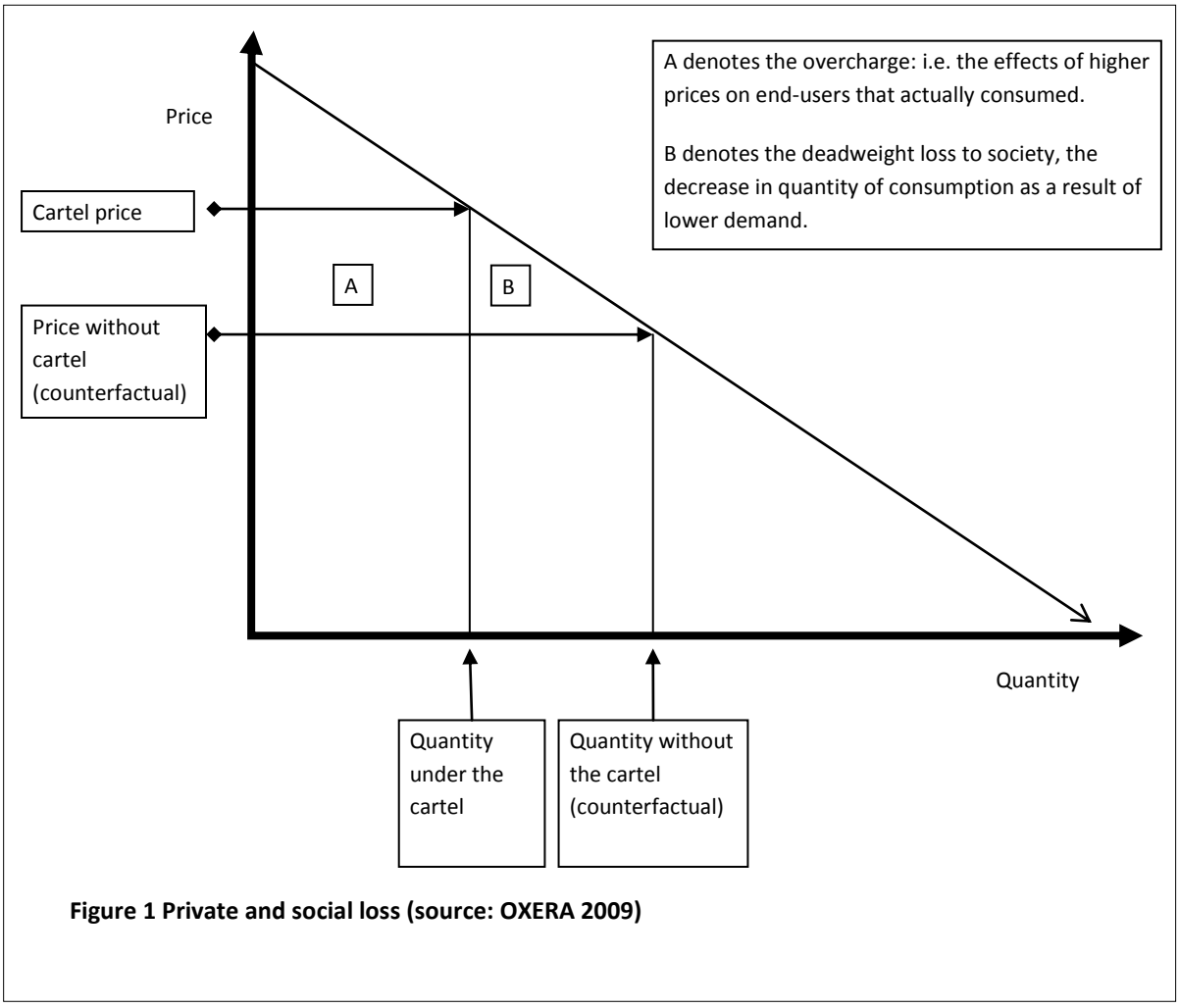


Figure 1 Private and social loss (source: OXERA 2009)

Though in theory it may be possible to design economic models for the calculation of social losses, it seems unlikely that law can effectively bring the amount home to the injured individuals. These individuals do not exist, since the economic model merely approximates the deadweight loss to society rather than the economic losses inflicted on individuals. Having lost out on welfare in the sense of 'experiencing' reductions in welfare does not cause harm to identifiable persons. Therefore, deadweight loss to society probably does not constitute actionable economic loss in private law.

Calculating damage 'A' may be difficult enough. Especially challenging is the passing-on issue: Who in fact has suffered damage A? Is it the direct purchaser or was the overcharge passed on to someone else in the chain? In the context of competition law enforcement, the passing-on defence may result in one of two problematic conditions: either every injury suffered by the remote end-user is too small and/or remote to constitute a sufficiently large claim worth pursuing (wide dispersion of loss towards the bottom of the chain causes dispersion of injury) or the pursuit of individual claims causes an uncoordinated stream of a multitude of claims that the legal system will have difficulty in processing efficiently. Hence, there is a danger of either having too few claims going to court or too many. Barring the passing-on defence fits a system that ascribes deterrence functions rather than compensation functions to damages actions. One could argue that if private damages actions are merely to punish and deter – the prospective function – then the claims should be in the hands of those who are best equipped to initiate them. By restricting anti-trust actions to direct purchasers and by disallowing the passing-on defence, the claim is then effectively concentrated. This, however, does not fit the European Commission's approach to damages action as a retrospective remedy. The Commission has stated that, in line with the compensation principle, the passing-on defence should be permitted, but the onus lies on the defendant.

7 Guidance in assessing damages

The only guidance given by the ECJ in *Manfredi* as concerns quantum is that injured persons must be able to seek compensation not only for actual loss (damnum emergens) but also for loss of profit (lucrum cessans) plus interest. However, calculating actual losses and lost profits in the case of anti-competitive behaviour is excruciatingly difficult and notoriously error-prone. The use of economic models may facilitate the calculations. In the context of anti-competition infringements, economic modelling seeks to identify statistically significant relationships while controlling for other plausible explanations, thus roughly isolating the causative element of a particular economic loss. The admission of such a quantitative approach to the calculation of damage may help to overcome a major obstacle in damage calculation: namely, picturing the 'counterfactual'. In other words, how would the relevant

market have developed, what prices, quality, choice, and conditions for competitors would have existed if the infringement had not occurred?

However, the use of economic models comes at a cost: the myth of exactness. At best, these models are as good as the data that are used as input. The weaker the assumptions, the higher the error risk; the fewer parameters the model employs, the easier the model is to use. Nevertheless, the final outcome may not at all approximate the real damage. Usually, there is no way of predicting the future that never was. As a rule of thumb concerning the calculation of damages, one can say that the more accurately one wants to emulate the holy grail of 'full compensation', the more costly the process is and the more likely it may be that the distribution – through rules of evidence – of the risk of uncertainty of the actual damage ends up with the wrong party. Thus, there is no ideal solution in the law of damages for calculating pure economic loss. Therefore, legal systems may want to take a pragmatic approach by granting courts a high degree of discretion in awarding damages and by stimulating the use of economic models as guidelines.[12]

8 Mass damages issues

The Commission's attention seems focused currently on facilitating mass damages claims, not merely concerning competition law enforcement but in a broader perspective. There is much to be said for prioritising this area. In competition law infringement, chances are that end-consumers suffer small overcharge losses individually: The smaller the individual claim, the higher the likelihood that the individual claimant would rather wait for someone else to initiate the anti-trust procedure and the damages action. For this reason – among many others – a public authority is indispensable in initiating infringement proceedings, collecting the evidence, and having the perpetrators condemned by a court. But perhaps some form of public funding, facilitation, or support of the follow-on damages procedure is needed in any case to overcome the 'free rider dilemma' and the collective goods problem.[13]

The Commission's 2011 consultation will have to be clearer on the exact goals the Commission would like to achieve in this area. If private overcharge losses are individually small, what good is a form of collective action , whether by means of an opt-in or opt-out procedure? Redeem rates of 'coupon settlements' in the USA are deplorably low.

Therefore, even the most sophisticated opt-out collective damages action would fail to bring competition law 'to the people'. The question is whether we need coupon settlements in Europe, given that these will not serve prospective but merely retrospective purposes and that they are prone to fail. Collecting a large amount of money without any real prospect of actually handing out the money to the persons injured by the competition law violation

[12] *Oxera et al.*, Quantifying antitrust damages - Towards non-binding guidance for courts (Study prepared for the European Commission), Luxembourg 2009, p. 21.
[13] *Rüggeberg/Schinkel*, Consolidating Antitrust Damages in Europe: A Proposal for Standing in Line with Efficient Private Enforcement, 29 World Competition 2006, 413.

requires an underpinning different from a merely retrospective compensatory function. Perhaps collective damages actions in competition law should be defined in terms of a vindicatory remedy rather than a retrospective one. If a sophisticated system of cy-près were in place, collective damages action could serve a number of vindicatory functions. These would need to be accentuated. The key question then is whether Europe is able to design a collective procedure that serves to redress social losses rather than simply private losses.

Moreover, if collective damages actions serve a compensatory goal, some form of aggregation of small claims is needed, but not necessarily through private law and not necessarily for all cases. As previously mentioned, aggregation will not guarantee full compensation of individuals in cases involving small-value claims, and the interests of the business community will only be served if aggregation leads to effective and swift 'closure' at acceptable costs. Therefore, perhaps a more creative solution to this issue should be considered by departing here from the ideal of retrospective remedy and turning instead to the concept of 'vindicatory remedy'. Perhaps civil courts are traditionally less well equipped to do so, but competition authorities may feel more at ease with ordering some sort of 'cy-près' compensation for social loss. Again, this area is in need of further theoretical development.

9 Closing remarks

Antitrust damages claims are coming to Europe – that much is clear. The European Commission has moved from the initial idea of private enforcement of competition law to a more attenuated role for damages. By stressing the need to preserve strong public enforcement, the recent European Commission's communications seem better in tune with the European culture of the division of labour between private and public law. Hence, it seems probable that in the forthcoming policy proposal there will be no role for punitive or multiplied damages, but only for compensatory damages. This means that the full compensation principle will probably govern the assessment of damages in the years to come. What this actually means is unclear.

Take for instance interest on damages claims. There is no uniform approach in Europe as to the question of whether the claimant has a right to interest ancillary to the claim for damages. Given the lapse of time between violation and judgment, the claimant would prefer to have pre-judgment interest. There is, however, no consistency across Europe in rules relating to pre-judgement interest, either with regard to timing, percentage, or compound/singular composition.[14] Would this be a good point for the EU to harmonise?

[14] *Waelbroeck et al.*, Study on the conditions of claims for damages in case of infringement of EC competition rules - Comparative report, Brussels 2004, 84 ff.

Another area of uncertainty concerns the role – if any – of the retrospective remedy of disgorgement of profits. European legal systems are dissimilar on this point, as they struggle with two colliding principles of the retrospective remedy: the tortfeasor is not to profit from his wrongdoing, while the claimant is not to be made better off than he was prior to the wrong. Disgorgement may also prompt the need for a definition of what in fact constitutes a loss. Though deadweight losses will probably not be compensated through these retrospective remedies, there may still be some symbolic redress. As already mentioned, by stimulating collective damages actions and some form of cy-près, the European legislature may actually promote the development of 'vindicatory remedies' in private law. Whether this also means that the concept of what exactly constitute private losses will be clarified is doubtful.

If it proves ultimately to be unattainable for the EU to formally align the law of damages of Member States in the context of competition law, perhaps the EU could resort to soft law. Introducing non-binding guidelines as a tool, and then consistently propagating the use and spread of this tool and fine-tuning it through informal procedures, might be good way to overcome the impossibility of reaching consensus at a political level. This seems to be exactly the means chosen by the Commission with the publication in 2009 of an informal tool drawn up by economic experts and termed 'non-binding guidance'.[15] Perhaps a similar approach can be helpful in slowly aligning the law of damages concerning group actions and cy-près.

[15] *Oxera et al.*, Quantifying antitrust damages - Towards non-binding guidance for courts (Study prepared for the European Commission), Luxembourg 2009.