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Limits to the private enforcement of antitrust law

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Following Regulation No. 1/2003 EC which permits the substitution of decentralised and private enforcement for centralised and public enforcement of Articles 81 and 82 EC, the European Commission in December 2005 presented a Green Paper on "damages actions for breach of the EC antitrust rules". The purpose of this initiative is to foster private tort suits by victims of anti-competitive behaviour. However, there are limits to the private enforcement of antitrust law through actions for damages, since the harm is typically shifted to a large number of final victims who are badly informed or face a rational disincentive to sue for damages.

Our paper focuses on a so far neglected aspect of loss diffusion which results from hardcore price cartels. Under reasonable conditions the owners of production factors are also affected by price cartels, whereas consumers are typically affected less than is commonly assumed.

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Abstract

Following Regulation No. 1/2003 EC which permits the substitution of decentralised and private enforcement for centralised and public enforcement of Articles 81 and 82 EC, the European Commission in December 2005 presented a Green Paper on "damages actions for breach of the EC antitrust rules". The purpose of this initiative is to foster private tort suits by victims of anti-competitive behaviour. However, there are limits to the private enforcement of antitrust law through actions for damages, since the harm is typically shifted to a large number of final victims who are badly informed or face a rational disincentive to sue for damages.

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I. Introduction

Up to the present, violations of Articles 81 (prohibition of cartels) and 82 EC (prohibition of abuse of dominant position) have been almost exclusively dealt with by public enforcement by the relevant competition authorities, i.e. the European Commission and (since 2004) the national competition authorities of the Member States. These competition authorities investigate – on their own initiative or responding to private complaints – suspicious business practices, in order to sanction past infringements of European competition rules and to deter future anti-competitive behaviour.

Already in 1974 the European Court of Justice (ECJ) ruled that Articles 81 and 82 EC produce direct effects in relationships between individuals, thereby creating rights directly in respect to the individuals concerned, which have to be safeguarded by the national courts.[1] However, it was only in the *Courage* judgement of 2001 that the ECJ held that Community law also provides for the possibility of actions for damages in antitrust cases: "The full effectiveness of Article …[81] of the Treaty and, in particular, the practical effect of the prohibition laid down in Article …[85](1) would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition."[2]

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[1] Case 127/73, *BRT v SABAM*, January 30, 1974.
[2] Case C-453/99, *Courage Ltd v Bernard Crehan, March 22, 2001, para. 26.*

Regulation 1/2003, which came into force on May 1, 2004, replaced Regulation 17/1962 and introduced a change of paradigm in the enforcement of European competition rules. The old centralised notification and authorisation system was replaced by a system of legal exception with increased importance of decentralised enforcement by national competition authorities and national courts[3]. Also, the role of national courts to protect the subjective rights under Community law, for example "by awarding damages to the victims of infringements" (recital 7), was explicitly mentioned. However, the determination of appropriate remedies and procedures for claiming damages still lies within the competence of each Member State. Therefore only the requirements of *equivalence* (the rules are not less favourable than those governing similar domestic actions) and *effectiveness* (the rules do not render practically impossible or excessively difficult the exercise of rights conferred by Community law) restrict Member States' discretion.[4]

Compared to the US, where about 90% of all antitrust cases are private actions (Wils 2003, pp. 476; Salop/White 1986, pp. 1001), private enforcement of European antitrust law by damages claims for infringement is still underdeveloped in the 25 Member States.[5] For this reason, the European Commission presented in December 2005 a Green Paper on "Damages actions for breach of the EC antitrust rules", in order to "identify the main obstacles to a more efficient system of damages claims and to set out different options for further reflections and possible action to improve damages actions" (p. 4).

In the following, we briefly present the main issues of the Green Paper (chapter II). Thereafter, we discuss some potential advantages and disadvantages of private and public enforcement of antitrust law (chapter III). In chapter IV we focus on the question of who are the typical victims of hardcore price cartels. Finally, we conclude our paper with a somewhat sceptical assessment of private enforcement of antitrust law.

II. The Green Paper on "Damages actions for breach of the EC antitrust rules"

In the Green Paper the European Commission presents several options to facilitate damages actions for the infringement of antitrust law in the European Member States. Removing the obstacles to these kinds of damages actions should serve a double purpose, "namely to *compensate* those who suffered a loss as a consequence of anti-competitive behaviour and to ensure the full effectiveness of the antitrust rules of the Treaty by discouraging anti-competitive behaviour, thus contributing significantly to the maintenance of effective competition in the Community […] (*deterrence*). By being able effectively to bring a damages claim, individual firms or consumers in Europe are brought closer to competition rules and will be more actively involved in enforcement of the rules" (p. 4).

Thereafter, the Green Paper identifies the main obstacles to private enforcement by damages claims and presents several options for improving the conditions for antitrust damages claims. In this context, the following main issues are discussed:

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[3] For details see Van den Bergh/Camesasca, 2006, pp. 333. In 2005, the German Law against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*) was amended accordingly; see Wurmnest 2005. See also Buxbaum (2005, 114 ff.).
[4] Case C-453/99, *Courage Ltd v Bernard Crehan, March* 22, 2001, para. 29, with reference to the *Palmisani* judgement from 1997.
[5] In private litigation, the EC antitrust rules have been almost exclusively invoked as a defence (or "shield"), especially in contract disputes. But Articles 81 and 82 EC have rarely been used proactively (as a "sword") to initiate private actions for damages or injunctive relief (Wils 2003, p. 473).

1. *Access to evidence*, i.e. whether there should be special rules on disclosure of documentary evidence and whether the claimant's burden of proof should be alleviated.
2. *Fault requirements*, i.e. whether or not fault should be presumed if an action is illegal under competition law.
3. *Damages*, i.e. how damages should be defined and which method should be used for calculating the amount of damages.
4. *The passing-on defence and indirect purchasers' standing*, i.e. whether or not the infringer should be allowed to raise a passing-on defence if the direct purchaser passes losses on to indirect purchasers further down the supply chain, and whether indirect purchasers should be allowed to claim damages.
5. *Defending consumer interests*, i.e. whether the interests of consumers and those of purchasers with small claims could be better protected by collective action.
6. *Costs of actions*, i.e. how cost rules can facilitate access to courts for civil claims.
7. *Coordination of public and private enforcement*, i.e. especially how to avoid that the operation of leniency programs is undermined by private damages actions.
8. *Jurisdiction and applicable law*, i.e. whether a clarifying special rule on applicable law in antitrust damages actions is necessary.
9. *Other issues*, i.e. whether experts should be used in courts, limitation periods should be suspended, and whether clarification of the legal requirement of causation is necessary.

III. Private versus public enforcement of antitrust law

1. From a general point of view, *private enforcement* is based on a decentralised use of information. Private parties reveal their information in order to receive compensation for the harm suffered (*private motive*). Their *social function* is to provide incentives for prevention by inducing potential injurers to internalise the harm they cause to others. For this reason, private enforcement has some appeal to economists, since civil court proceedings to some extent mimic the market mechanism. However, as Shavell (1982) put it, there is a systematic difference between social and private incentives to bring suit, this difference depending on the characteristics of the harm and on the procedural rules governing damages actions.

Public enforcement may be more efficient if mainly aggregate expert information is required and if the social harm is spread among a multitude of victims – provided that the public agents are motivated to increase social welfare and that they are not captured by the companies they have to regulate. However, public enforcement typically does not provide for the compensation of victims.

2. In antitrust cases there may be more arguments for public enforcement than in other areas.[6] On the one hand, there are good reasons to assume that private enforcement will work poorly in antitrust cases:

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[6] See e.g. Wils (2003), Diemer (2006), Van den Bergh/Camesasca (2006, pp. 324). However, see the harsh criticism of Wils by Jones (2004). The most comprehensive study on private enforcement in the US was provided by the Georgetown Private Antitrust Litigation Project. See e. g. Salop/White (1986) and Kauper/Snyder (1986). For the mixed experience with private enforcement in the US see Ginsburg (2005).

- If victims of antitrust law infringements are private consumers, harm and causation are typically not obvious to the victims.[7] That is especially true in the case of hardcore price cartels, as we will show in the following chapter. The detection of infringements requires investigation by experts, and public authorities are often better informed than the victims.

- In these cases, the typical damages claim will be a follow-on action, i.e. the civil action is brought after a competition authority has discovered an infringement. Consequently, the same deterrence effect could be achieved at lower administrative cost by increasing the fine for infringements of antitrust law.

- Because the total harm caused by infringements of competition law is often spread across many victims, even well-informed victims have little incentive to bring damages claims.

- If victims of antitrust law infringements are commercial parties they are typically better informed than the competition authorities. However, even in theses cases those victims who are parties to a contract with the infringer will often face weak incentives to bring action, because they are interested in continuing the business relationship in the future.

- Facilitating access to civil courts in antitrust cases increases the risk that private damages actions will be abused by competitors.[8]

On the other hand, there is little evidence that competition authorities are captured by the infringers of antitrust law. The risk of regulatory capture seems at least to be considerably lower for competition authorities than for the (branch-oriented) regulators of public utilities. Of course, there are three possible sources of prosecutorial biases (Wils 2004): *confirmation bias*, i.e. competition authorities may be inclined to look only for confirmation rather than for challenges; *hindsight bias*, i.e. competition authorities may want to justify past activities; and the *desire to progress in career*, i.e. having a record in detecting hardcore cartels may positively affect agents' future salaries and career paths. But for the reasons mentioned above, in order to counteract theses biases it is better to establish appropriate administrative proceedings, rather than to facilitate private damages claims.

In the following, we will exemplify some of the problems of private enforcement by investigating in some detail the harm produced by hardcore price cartels.

IV. Harm produced by hardcore price cartels: some critical remarks on the recent discussion

1. Harm in antitrust cases

To facilitate private enforcement of antitrust law anybody who is affected by infringements of antitrust rules should be entitled to sue for damages. This implies that the existing limitations on standing for bringing such an action must be removed (Ashurst 2004, pp. 9, 38). Let us look at the German example of private actions in antitrust cases (Wurmnest 2005, 1179 ff.). Prior to the reform of the GWB in 2005, German law restricted standing for bringing an action for damages in cases of infringements of European or German antitrust law to those

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[7] See also the interesting contribution by Hellwig (2006).

[8] Competitors should be induced by law to sue for the right reason – "that is, because a practice is harmful to competition, not simply because it harms the competitor" (Ginsburg 2005, p. 430).

claimants who fell within the scope of *protection* of the infringed antitrust rule (the so-called *Schutzgesetzprinzip* or protective purpose requirement). According to the new GWB any *affected party* may sue for damages in cases where the infringer acted intentionally or negligently. Thus, in order to bring German antitrust law in line with EC Regulation 1/2003 the German lawmaker shifted the entitlement to bring damages actions from protected to affected parties. But who is really affected by infringements of antitrust law?

According to the *difference method* harm is defined as the difference between the situation after the occurrence of the harmful event and the hypothetical situation which would have existed without it. Consequently, in antitrust damages cases the measure of harm "is taken to be the difference between […] the plaintiff's actual position […] and […] the plaintiff's position in the hypothetical scenario where the illegal act has not occurred but conditions are otherwise similar" (Ashurst 2004, p. 10). This measure of harm raises a number of questions: Since competition can be characterised as a "process of creative destruction" (Schumpeter), all competitive or anticompetitive acts cause losses to some rivals or to some consumers/suppliers. Many of these losses are necessary in order to foster competition, others result from anticompetitive acts. Often it is difficult to clearly distinguish between the two types of losses and to determine whether a reduction in rivals' profits or a loss of consumer surplus caused by some business practice should be considered a harm which has to be compensated.

In the following, we will focus on a comparatively simple case where it is perfectly clear that the business practice is anticompetitive and illegal – the case of a hardcore price cartel. But even in this simple case the determination of harm poses some problems. We will show by means of a simple numerical example that the recent discussion on harm caused by price cartels systematically neglects some important feedback effects and produces a flawed assessment of the harm suffered by different types of victims. We assume that the hypothetical situation without a cartel is characterised by oligopolistic competition of the Bertrand type, so that the equilibrium price equals marginal cost.

2. Consumers as the only victims of price cartels: the traditional point of view

Let us consider a price cartel. In the following we discuss our case by means of a concrete example, in order to be able to compare the quantitative effects directly. We assume a production function with constant returns to scale,

$$x = 2v_1^{\frac{1}{4}} v_2^{\frac{3}{4}},$$

where x denotes output and v_1 and v_2 denote inputs or factors of production. The price cartel buys factors of production in a competitive market, so that factor prices are perceived as independent of the quantity of factors each member of the price cartel employs. The prices of v_1 and v_2 are $r_1 = 4$ and $r_2 = 12$. Minimising costs yields the cost function

$$C = 8x.$$

The market demand function is

$$p = -\frac{1}{2}x + 12.$$

The marginal revenue function is then

$$MR = -x + 12.$$

Equating marginal revenue and marginal cost, MC = 8, we obtain the cartel price $p^m = 10$ (with $x^m = 4$). Total revenue is 40, total costs are 32, and profit amounts to G = 8.

In a competitive market firms equate marginal cost and price. Here the price of output is $p^c = 8$ and the corresponding quantity amounts to $x^c = 8$. Total revenue, as well as total costs, equal 64, so that profits are zero.

Contrasting the price cartel with a competitive market we see that in the price cartel the quantity of output is lower and the price is higher, thus consumers are worse off. The harm to consumers is equivalent to the lost consumer surplus, which corresponds to the sum of the cartel's profit and the dead weight loss. The profit results from a distribution effect between demand and supply side, and the deadweight loss is the social cost of the inefficiency of the price cartel. In our example profit amounts to G = 8 and deadweight loss to L = 4, so that the loss of consumer surplus adds to G + L = 12.

Figure 1
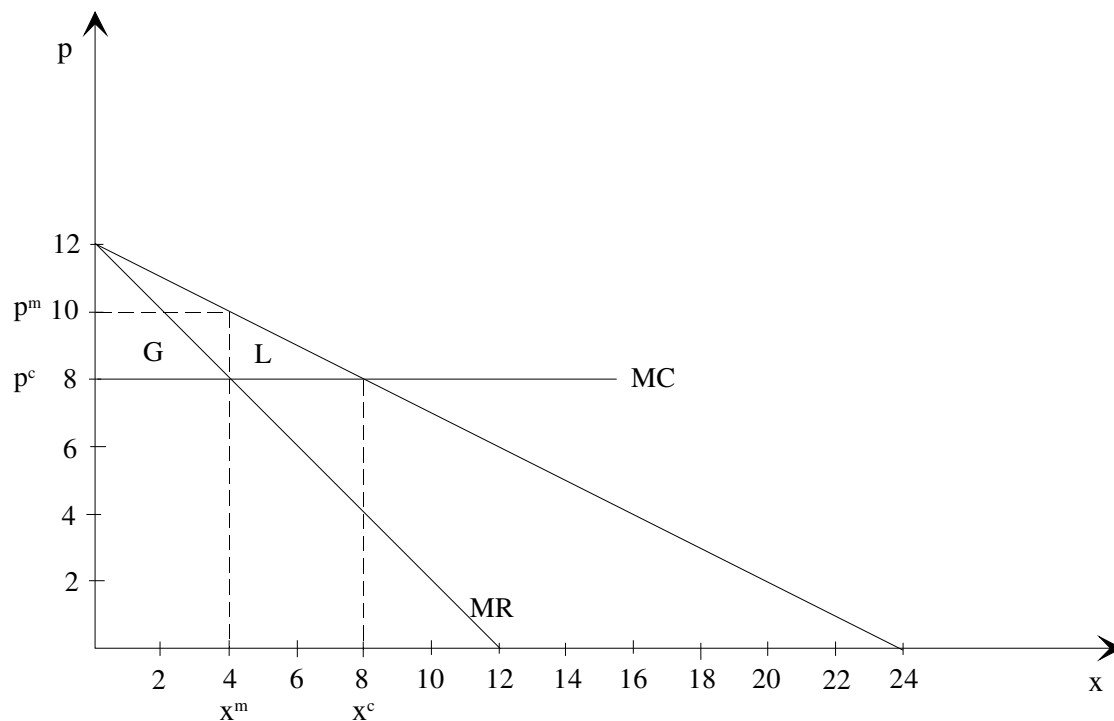
In this case, the negative effects of the price cartel are born solely by consumers. This is the traditional standpoint. To raise some critical points against this accepted view let us direct our attention to the consequences of price cartels for the owners of the production factors.

3. Victims of price cartels in case of competitive factor markets

The price cartel, producing only 4 units of output, employs $v_1 = 2$ and $v_2 = 2$ units of the inputs, whereas the competitive market employs $v_1 = v_2 = 4$ units to produce 8 units of output. The factors of production that are not used in the cartel situation either remain unemployed or, if employed, exert downward pressure on the factor prices.

If the factors of production remain unemployed, their income drops from 64 ($v_1 = v_2 = 4$ multiplied with $r_1 = 4$ and $r_2 = 12$) to 32 ($v_1 = v_2 = 2$ multiplied with $r_1 = 4$ and $r_2 = 12$). Thus, in addition to the lost consumer surplus, the harm produced by the cartel is the lost factor income which amounts to 32.

But in flexible factor markets dismissed production factors tend to exert downward pressure on the factor prices. If all the factors are fully employed at lower factor prices, the additional harm generated by the cartel amounts to the reduced income of all factor owners.

To analyse which effect the reduction of the factor prices (generated by the price cartel) has on the harm incurred by the consumers and owners of production factors, let us look at a special case (fig. 2). Let us suppose that the prices of the factors of production drop from $r_1 = 4$ to $r_1 = 3$ and from $r_2 = 12$ to $r_2 = 9$. This yields the cost function $C = 6x$.[9] The quantity of output in the cartelised market amounts to $x^{mn} = 6$ and is offered at the price of $p^{mn} = 9$.

Total revenue is 54, the income of the factors of production is 36. The price cartel employs $v_1 = 3$ and $v_2 = 3$ factors of production; $v_1 = 1$ and $v_2 = 1$ are not employed in the cartel, but are employed in other firms outside the cartel. The profit of the price cartel is equal to $G = 18$. It is composed of the profit $G_i = 12$ (due to the lowering of the prices of the factors of production) and of the profit $G_o = 6$ (due to the higher price of the output). The deadweight loss amounts to 1; the lost consumer surplus is 7.

Without lowering the prices of the factors of production, profit amounted to 8 and deadweight loss to 4. The lost consumer surplus was therefore 12. Consequently the lower factor prices lead to higher profit and to lower deadweight loss and lower reduction of consumer surplus.

But the harm to the owners of the factors of production, which corresponds to the additional profit due to the lowering of the factor prices, has to be added. This harm amounts to 12.[10] Consequently the total harm is 19. This harm is higher than the lost consumer surplus in the case where factor prices are not affected (12). We see that the fall in factor prices reduces the harm incurred by consumers and causes additional harm to the owners of production factors.

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[9] We assume that the cartel members perceive factor prices as parameters generated by the factor markets. They are not aware that the factor prices would be higher in the hypothetical competitive situation. Consequently, the producers face a specific horizontal marginal cost curve in case of competition, and another (lower) horizontal marginal cost curve in case of cartelisation. The case where the cartel exerts monopsony power in the factor market and therefore faces an upward sloping marginal cost curve is discussed below (fig. 4 and 5).

[10] This is, of course, the result of the partial analysis which focuses only on factors employed by the cartel members. To calculate total harm caused by the price cartel to the owners of production factors we had to take two additional effects into account: (1) The reduction of employment by the cartel members tends to also reduce the prices of production factors employed elsewhere. (2) Since some consumers will redirect their demand to suppliers of close substitutes the latter will increase their demand for production factors and thereby tend to increase factor prices.

Figure 2
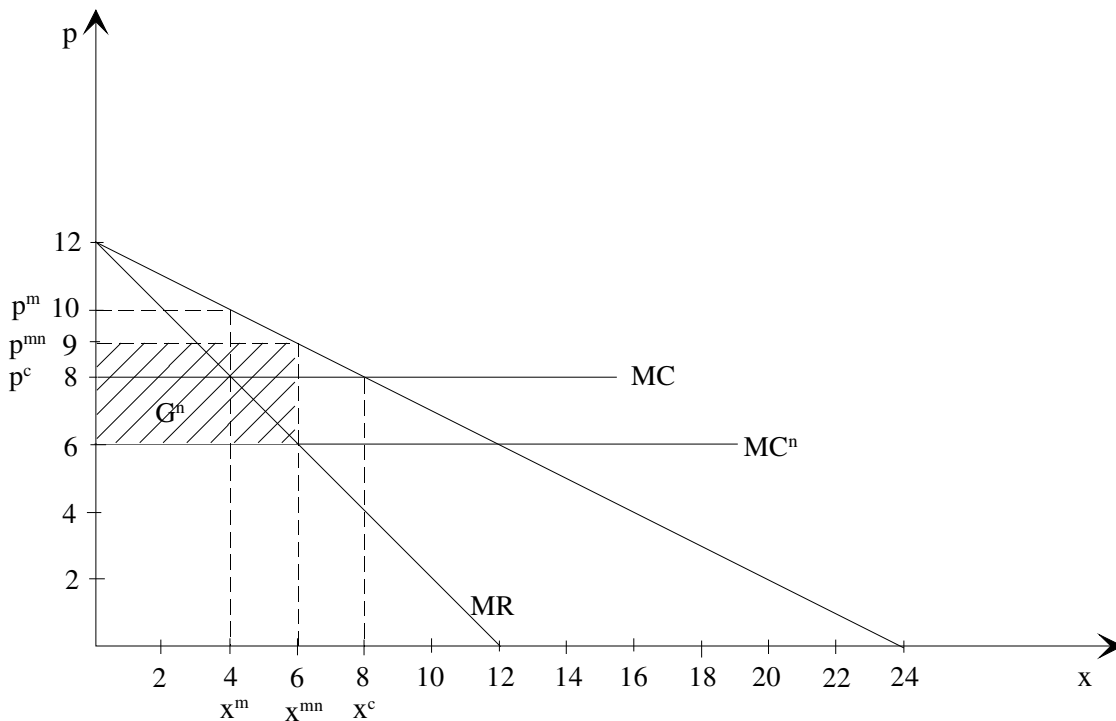
In the extreme case factor prices drop until all factors are re-employed by the cartel (fig. 3). In our example prices fall from $r_1 = 4$ to $r_1 = 2$ and from $r_2 = 12$ to $r_2 = 6$. The cost function changes to $C^F = 4x$ (from $C = 8x$). The output price of the cartel is now $p^m = 8$ and it equals exactly the former price in the competitive market, $p^c = 8$. The quantity of output equals $x^m = x^c = 8$. Total revenue is 64. The price cartel obtains a profit of 32. The income of the owners of the production factors adds up to 32. As opposed to the former cases, the lost consumer surplus and the deadweight loss are zero.

The victims of the price cartel are no longer the consumers; rather the owners of the factors of production suffer harm. The cartel just causes a redistribution of 32 units from the factor owners to the cartel members.

This extreme case can only occur in a competitive factor market when price cartels or dominant firms with the same degree of monopoly power exist in all branches of the economy (Lerner 1934, p. 172). This is, of course, not realistic. But it is even more unrealistic to assume that a price cartel exists in only one industry. The actual numbers of price cartels (or dominant firms respectively) lies in between these two extremes. The downward pressure on the factor prices caused by price cartels is accordingly a considerable effect.

Figure 3
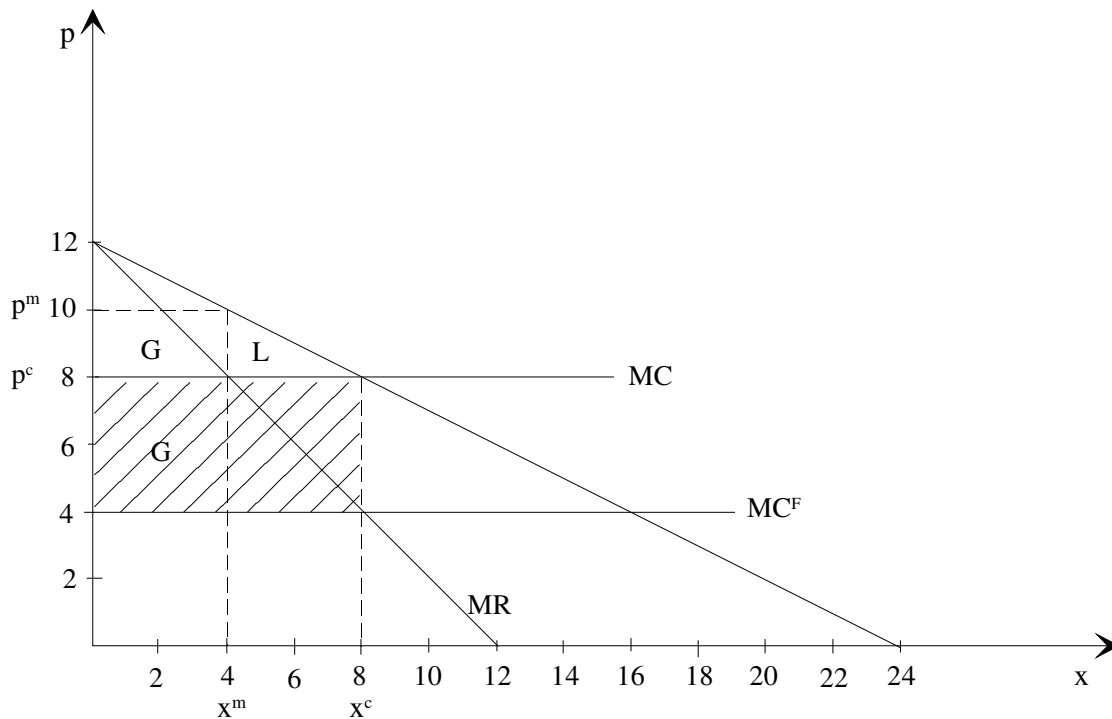
4. Victims of price cartels that exert monopsony power

Let us drop the assumption of competitive factor markets. In reality factor markets are differentiated with regard to qualities and regions. We assume, therefore, that the price cartel exerts monopsony power in the factor markets. In a competitive market, factor price equals marginal revenue product. In a monopsony market, however, factors are paid less than their marginal revenue product. The monopsonist purchases up to the point where marginal expenditure equals marginal revenue product, which exceeds the factor price. If supply is very elastic, monopsony power is small, so that marginal expenditure and average expenditure do not differ by much. The factor prices are close to what they would be in a competitive market. If supply is very inelastic, monopsony power is high, so that marginal expenditure and average expenditure differ considerably. Therefore factor prices differ significantly from what they would be in a competitive market.

Let us assume a cartel that exerts monopoly power in the product market and monopsony power in the factor markets. To maximise its profit the cartel has to solve the problem

$$\max G = p(x(v_1, v_2)) \cdot x(v_1,v_2) - r_1(v_1) \cdot v_1 - r_2(v_2) \cdot v_2.$$

The functions $r_i(v_i)$ are the factor supply curves $(i = 1,2)$ faced by the cartel. How many factors are employed by the cartel at which factor price depends on the elasticity of the factor supply curves. First, consider comparatively inelastic supply functions, such as

$$r_1 = v_1 \text{ and } r_2 = 3v_2.$$

How many factors does the monopsony employ? The profit function to be maximised now becomes

$$\max G = \left(-\frac{1}{2} 2v_1^{\frac{1}{4}} v_2^{\frac{3}{4}} + 12 \right) 2v_1^{\frac{1}{4}} v_2^{\frac{3}{4}} - v_1^2 - 3v_2^2.$$

Since the cost-minimising combination of inputs requires $v_1 = v_2$ we get

$$v_1 = 2 \text{ and } v_2 = 2.$$

Factor prices are

$$r_1 = 2 \text{ and } r_2 = 6.$$
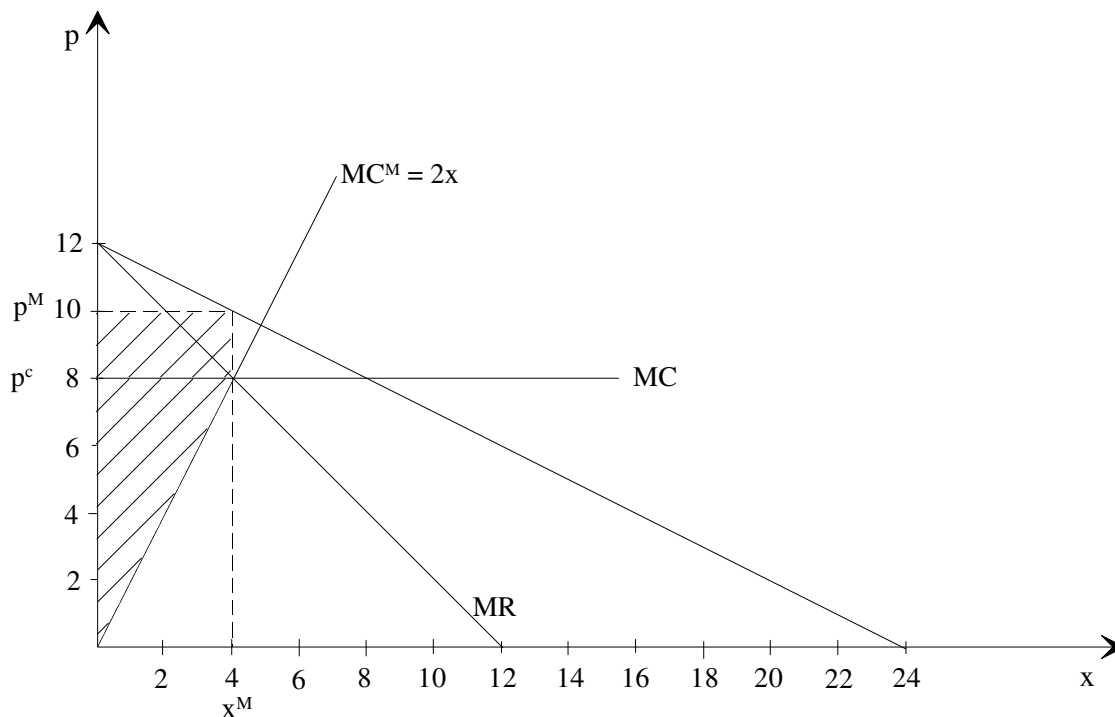
The cost function turns out to be

$$C^M = x^2, \text{ and}$$

marginal cost is

$$MC^M = 2x.$$

Equating marginal cost and marginal revenue the cartel produces $x = 4$ and sells at a price of $p = 10$. This is the same quantity and the same price as in the former case of competitive factor markets (see figure 4).

Figure 4

Yet, profit and factor incomes differ. Total revenue is 40, total costs are 16. Profit amounts to 24 instead of 8, and incomes of the factors of production drop from 32 to 16. The monopsony purchases less at a lower price. The cartel employs two units of both factors less compared to a competitive product market.

To attain the same employment as in the case of a competitive product market ($v_1 = 4$, $v_2 = 4$) factor prices have to fall even further. The supply curves of the factors of production have to be more elastic in order to increase employment, such as

$$r_1 = \frac{1}{4} v_1 \text{ and } r_2 = \frac{3}{4} v_2.$$

Profit maximisation yields the cost function

$$C^F = \frac{1}{4} x^2,$$

so that marginal cost is

$$MC^F = \frac{1}{2} x.$$

Equating marginal cost and marginal revenue yields $x = 8$ and $p = 8$. Prices of the factors of production are $r_1 = 1$ and $r_2 = 3$. Profit amounts to $G = 48$ instead of $G = 32$, factor income amounts to 16 instead of 32 (see figure 5). We see that if the cartel additionally exerts monopsony power in the factor markets, the harm caused to the owners of production factors increases even more.

Figure 5
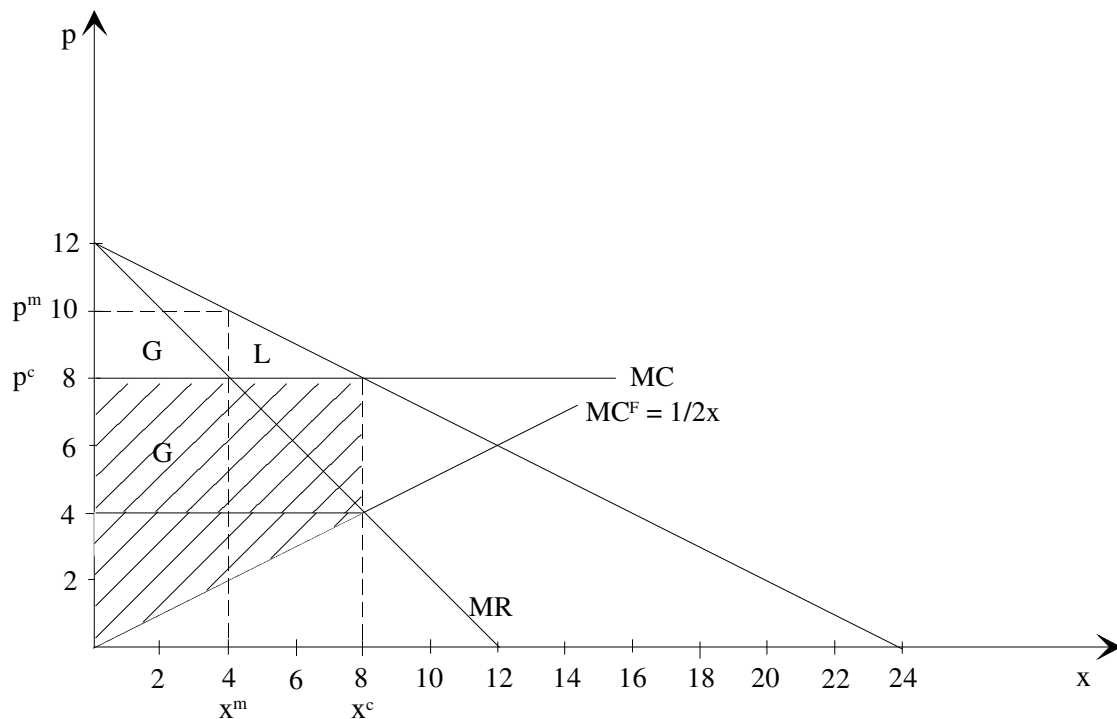
In this extreme case, the burden of the price cartel falls solely on the owners of the factors of production. There is no loss of consumer surplus or deadweight loss.

5. Victims and harm

We conclude that the deadweight loss is the social cost of the inefficiency of the price cartel. When factor prices drop the deadweight loss shrinks. In the case of full employment the deadweight loss is zero. Additional harm is incurred by the redistribution of income from owners of the factors of production to price cartels in the form of profit. We have shown that the more the economy is cartelised and the higher the degree of monopsony power of the cartel, the smaller is the harm done to consumers and the greater is the harm done to owners of the factors of production. This has some important implications:

1. Taking into account only the harm caused to consumers underestimates the actual harm to society.

2. In addition to the lost consumer surplus the harm caused to the owners of the factors of production has to be taken into account.

3. Fostering private tort suits of victims of anti-competitive behaviour and identifying only consumers as victims is far from efficient.

4. Since the harm caused by price cartels falls on consumers as well as on the owners of the factors of production, there is a large number of final victims with diverse interests, so that the substitution of decentralised and private enforcement for centralised and public enforcement of Article 81 seems to be highly problematic.

5. A better way of enforcing antitrust law is via public enforcement, supported by a private and decentralised use of information.

6. Fines for infringements of antitrust law should be based on the extra profits of price cartels.

7. The fines have to be considered as revenues of the government and could, for example, be used to reduce indirect taxes and thereby to compensate victims indirectly.

V. Conclusions

We have shown that the recent discussion on private enforcement of antitrust law systematically neglects one important effect of price cartels – the harm caused to the owners of production factors. When discussing the concept of harm the proponents of facilitating private damages actions focus on the passing-on defence, the standing of indirect purchasers and similar issues. However, the inclusion of harm to the owners of production factors changes the results dramatically. At least in the case of hardcore price cartels, strengthening the importance of private enforcement will neither be an appropriate instrument for improving *deterrence* – this can be achieved at lower cost by increasing the fines for infringements of antitrust law – nor is it appropriate to achieve *corrective justice*, since damages will be only loosely related to the harm actually suffered by the true victims of antitrust infringements.

References

Ashurst (2004), Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules. Analysis of Economic Models for the Calculation of Damages, prepared by E. Clark, M. Hughes and D. Wirth, Brussels.

Buxbaum, H.L. (2005), German Legal Culture and the Globalization of Competition Law: A Historical Perspective on the Expansion of Private Antitrust Enforcement, in: Berkley Journal of International Law, Vol. 23: 2, pp. 101-122.

Commission of the European Communities (2005), Green Paper on damages actions for breach of EC antitrust rules, Brussels, 19-12-2005.

Diemer, Ch. (2006), The Green Paper on Damages Actions for Breach of the EC Antitrust Rules, in: European Competition Law Review, pp. 309 – 316.

Ginsburg, D. H. (2005), Comparing Antitrust Enforcement in the U.S. and Europe, in: Journal of Competition Law and Economics, 1, pp. 427 - 436.

Hellwig, M. (2006), Private Damage Claims and the Passing-On Defense in Horizontal Price-Fixing Cases: An Economist's Perspective. Reprints of the Max Planck Institute for Research on Collective Goods, Bonn 2006/22.

Jones, C. A. (2004), Private Antitrust Enforcement in Europe: A Policy Analysis and Reality Check, in: World Competition, 27, pp. 13 - 24.

Kauper, Th. E./Snyder, E. A. (1986), An Inquiry into the Efficiency of Private Antitrust Enforcement: Follow-on and Independently Initiated Cases Compared, in: Georgetown Law Journal, 74, pp. 1163 - 1191.

Lerner, A.P. (1937), The Concept of Monopoly and the Measurement of Monopoly Power, in: The Review of Economic Studies, 1, pp. 157 - 175.

Salop. S. C./White, L. J. (1986), Economic Analysis of Private Antitrust Litigation, in: Georgetown Law Journal, 74, pp. 1001 - 1064.

Shavell, S. (1982), The Social versus the Private Incentive to Bring Suit in a Costly Legal System, in: Journal of Legal Studies, 11, pp. 333 - 339.

Van den Bergh, R./Camesasca, P. (2006), European Competition Law and Economics: A Comparative Perspective, 2nd ed., London.

Wils, W. P. J. (2004), The Combination of the Investigative and Prosecutorial Function and the Adjudicative Function in EC Antitrust Enforcement: A Legal and Economic Analysis, in: World Competition, 27 (2), pp. 201 - 224.

Wils, W. P. J. (2003), Should Private Antitrust Enforcement be Encouraged in Europe?, in: World Competition, 26 (3), pp. 473 - 488.

Wurmnest, W. (2005), A New Era for Private Antitrust Litigation in Germany? A Critical Appraisal of the Modernized Law against Restraints of Competition, in: German Law Journal, 6, pp. 1173 - 1189.