

CARTEL DAMAGE CLAIMS

- CDC -

Legal and Economic Aspects of Bundling Damage Claims by Assignment

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Some statements

“The first advantage of private enforcement is direct justice, which allows the victims of illegal anticompetitive behaviour to be compensated for the loss they have suffered.”

EU-Commissioner for Competition Neelie Kroes (2005)

*“The powers for national courts are therefore in place. **But where are the cases?** [...] Why are there so few cases started in Europe alleging infringements of the competition rules? Sadly, I don't think it's because there are so few infringements around.”*

EU-Commissioner for Competition Neelie Kroes (2006)

But what are the real challenges?

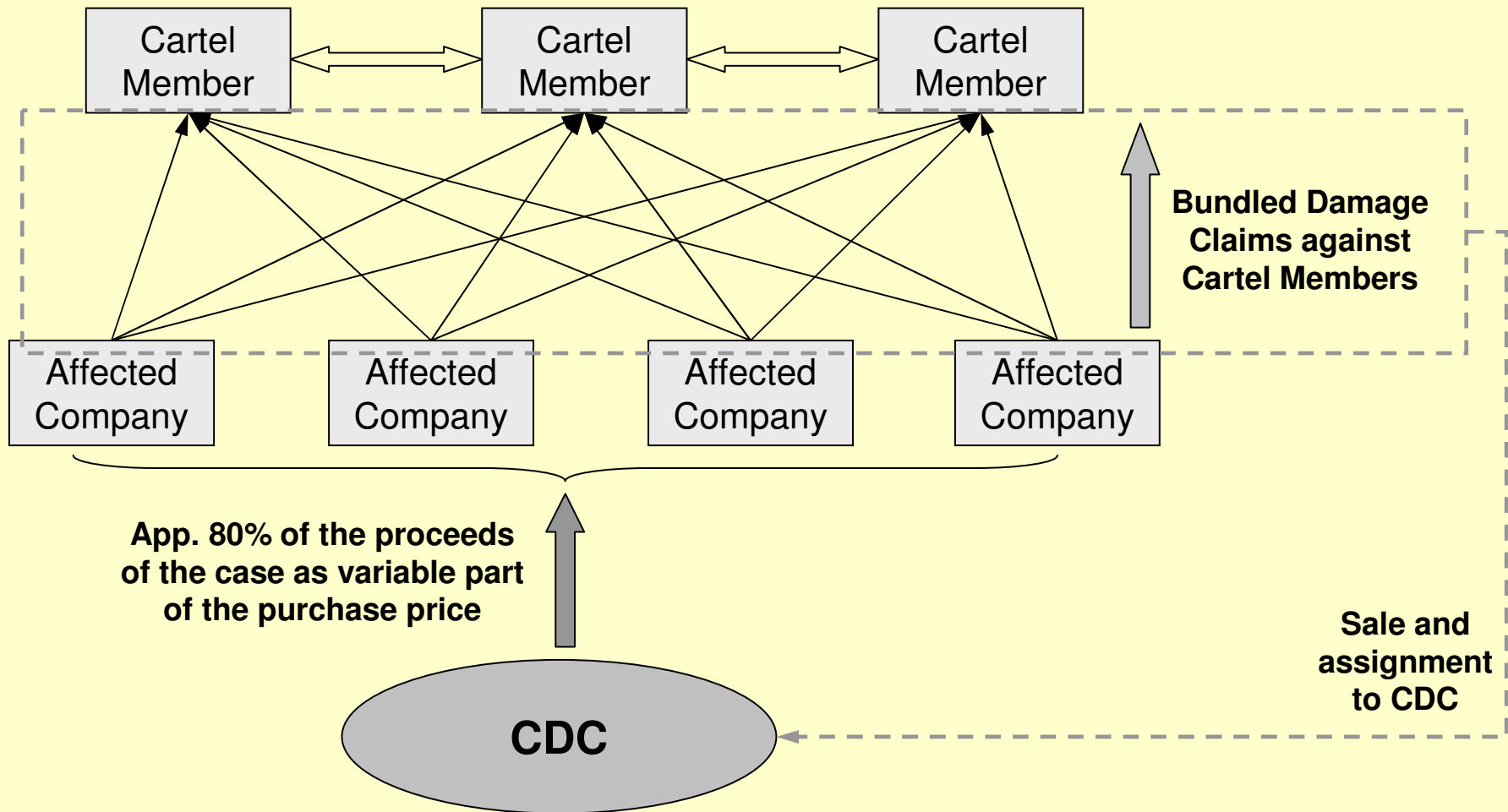
Practical challenges

- **Missing experience**
 - **Lack of economic incentives**
 - **Ongoing business relationships**
 - **Financial risks**
 - **Multi-national cases**
 - **Complexity of cases**
- **Missing market**

CDC-Approach to effective Claims Enforcement

- **Bundling and collective enforcement of damage claims of a multitude of damaged companies**
- **Centralised collection and analysis of company data and market data**
- **Highly differentiating data base (tradebaCCC)**
- **Well-founded conclusions with regard to the cartel-related overcharge price and the damages of each company**

Claims bundling

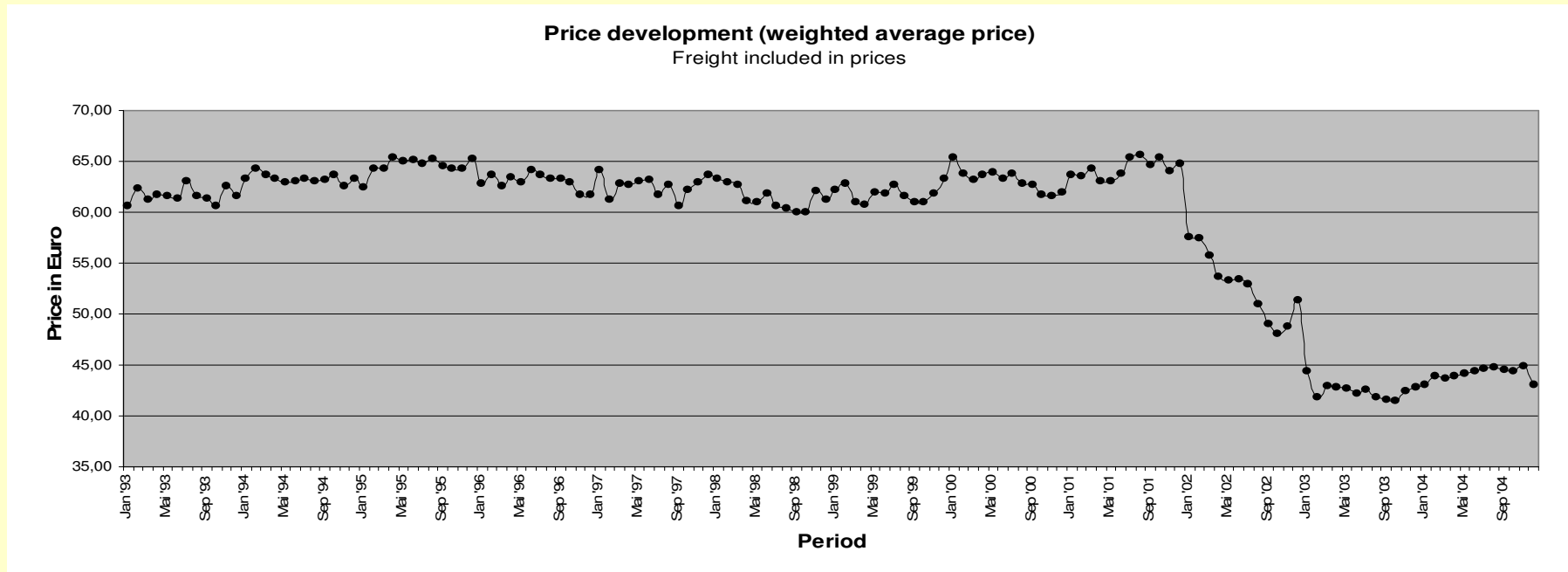


Contract Elements

- **Assignment of damage claims**
- **Purchase price: Fixed part and variable part (app. 80 % of the successfully enforced damage claims)**
- **Damaged company: Collection of purchase data (by invoices) with barcodes & scanners or by electronic data transfer**
- **CDC I: Substantiating damage claims and enforcing damage claims independently (out-of-Court or in Court)**
- **CDC II: Full risk and costs**
- **Confidentiality**

CDC Market Analysis Cement Cartel

- **Bundling of claims of 36 companies, total amount of damages exceeding € 170 million + interest**



Practical aspects I

- **Assignment of damage claims to independent legal entity and bundling of claims = fundamental trigger for private damage actions in Europe**
- **After experiences of cement case: Enhancing private enforcement by providing meaningful economic incentives for all players**
- **Solutions for effective enforcement of multi-national cases**

Practical aspects II

- **Success of Leniency Programme put at risk by civil exposure of Leniency Applicants? Reconciliation of Leniency Programmes and private damage claims?**
- **Possible answer:**
CDC's Leniency PLUS+ concept: creating advantages for up to two cartel members willing to cooperate with CDC
- **Due to bundled damage claims: opportunity for leniency applicant to leave the front row of joint and several liability**
- **Objective: providing the conditions for market solutions in the fields of damage claims enforcement**

Securitisation – possible approach I

- **Enhancing market performance through Securitisation:**
 - Securitising company's right to variable purchase price amounting to app. 80% of the successfully enforced damage claims, e.g. under Luxemburg Securitisation Law: Damage claims become marketable goods
 - By assigning these rights to a Securitisation SPV, affected companies can achieve compensation at a relatively early stage
 - Simultaneously: Opening up investments in specific cartel cases to third parties
 - CDC's Leniency PLUS+ concept: being exposed to considerable risks under the joint and several liability regime, cooperating cartel members might be interested to directly or indirectly invest in Securitisation SPV or Securities. Allocation of the investment to reserves for pending claims.

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