



LEAR
**COMPETITION
FESTIVAL 2024**
ROME, 24-27 SEPTEMBER



LEAR
**COMPETITION
FESTIVAL 2024**
ROME, 24-27 SEPTEMBER



PARALLEL SESSION

Cartel damages quantification: how do European Courts assess overcharges?



**BEN H.
BORNEMANN**

Cartel Damage
Claims



**THOMAS
FUNKE**

Osborne Clarke



**SUSANNE
THORWARTH**

Düsseldorf Competition
Economics



**VALERIA
VENEZIANO**

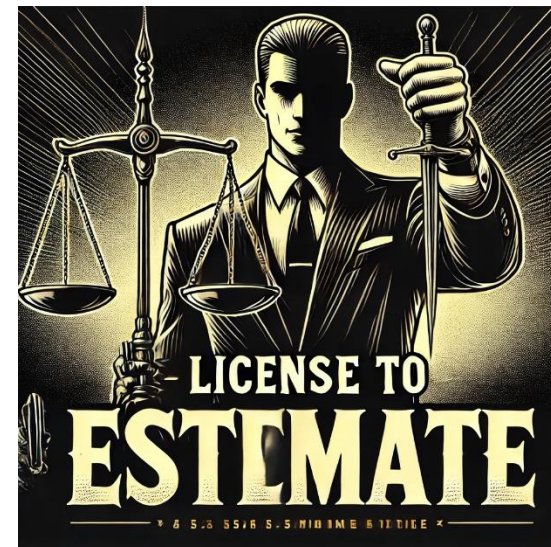
Osborne Clarke

NL and ES: Practically no court appointed expert

- In NL appointment of an independent court expert is rare.
 - In ES even more so: Practically never done.
- In principle, the parties choose the method(s).
- More so in Spain bc quantification needs to be submitted upon filing suit.

NL and ES: Practically no court appointed expert

- In NL appointment of an independent court expert is rare.
 - In ES even more so: Practically never done.
- In principle, the parties choose the method(s).
- More so in Spain bc quantification needs to be submitted upon filing suit.
 - BUT, at least since trucks litigation: Spanish courts know that they have “license to estimate”



Three main approaches to quantification



Three main approaches to quantification

- Cost plus
- Simulation models
- Comparator based
 - Temporal
 - Geographical
 - Other (adjacent product etc)

Other “strategies”

- Connor & Lande dataset
- Judicial estimation

Three main approaches to quantification



Three main approaches to quantification

- Cost plus
- Simulation models
- **Comparator based**
 - Temporal
 - Geographical
 - Other (adjacent product etc)

Other “strategies”

- Connor & Lande dataset
- Judicial estimation

Three main approaches to quantification



Three main approaches to quantification

- Cost plus
- Simulation models
- Comparator based
 - Temporal
 - Geographical
 - Other (adjacent product etc)

Other “strategies”

- Connor & Lande dataset
- Judicial estimation

Comparator based methods

Comparator based methods

- Simple or
- taking different costs, product characteristics, demand, supply etc. into account
 - multiple regression analysis

The Spanish floor of 5% : Some nuance

The “Spanish floor” of 5% : Some nuance

IF neither side’s quantification / economic reasoning is convincing AND the fact that the claimant’s quantification is not convincing is not due to complete passivity of the claimant (reasonableness of effort, access to evidence)

THEN the court can award a “conservative damage” that reflects the characteristics of the infringement

Given the characteristics of the trucks case, the court found it unlikely that the effect of the infringement was lower than 5%.



Contacts



Belgium

Avenue Louise 475
1050 Brussels
Tel.: +32 (0)2.213.49.20

France

Rue du Faubourg Saint-Honoré 72
75008 Paris
Tel.: +33 (0)1.42.93.32.60

Germany

Woogstrasse 4
67659 Kaiserslautern
Tel.: +49 (0)631.303.790

Luxembourg

Rue du Fort Wallis 2
2714 Luxembourg
Tel.: +352 26.95.30.87

E-mail: mail@carteldamageclaims.com

Website: www.carteldamageclaims.com