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REVUE DES DROITS DE LA CONCURRENCE | COMPETITION LAW REVIEW

## Cartel damages actions in Europe: How courts have assessed cartel overcharges (2025 ed.)

Legal Practice | Concurrences N° 7-2025  
[www.concurrences.com](http://www.concurrences.com)

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## ABSTRACT

Pour sa sixième édition, cette étude montre que des jugements ont été rendus, par des juridictions nationales en Europe, dans le cadre d'au moins 444 actions en réparation consécutives à des ententes anticoncurrentielles.

Ces affaires ont été jugées dans 20 pays. Elles font suite à plus de 90 ententes. L'analyse des jugements fournit de nombreux enseignements sur les méthodes et les raisonnements employés par les tribunaux pour apprécier les éventuels surcoûts causés par les ententes.

*In its sixth edition, this study shows that courts in Europe have handed down judgments in at least 444 cartel damages actions. These cases come from 20 countries, and they relate to more than 90 cartels. In these judgments, courts have given many insights on how to assess cartel overcharges.*

**1.** The primary objective of this study is to analyse how national courts in Europe have assessed overcharges in cartel damages actions. In addition, this study provides figures on the development of cartel damages claims in Europe (how many cases were judged, in which countries, with which outcomes, etc.). It was completed with the help of national judges, lawyers and national competition authorities (NCAs) from 30 European countries. Judgments in cartel damages actions have been systematically identified, compiled, translated and analysed. This article presents the results of this research<sup>1</sup>.

**2.** Section I describes the methodology adopted. Section II provides general figures on the cases gathered. Section III analyses awards of damages by the courts. Finally, section IV focuses on how courts have assessed cartel overcharges.

## I. Research methodology

**3.** The research methodology for this edition is largely similar to that employed in previous editions.

**4. Scope.** In this study, the term “cartel” bears the meaning given by the European Commission: “a cartel is a group of similar, independent companies which join together to fix prices, to limit production or to share markets or customers between them.”<sup>2</sup> A “case” means an action for damages, with one or several plaintiffs alleging that a cartel caused an overcharge, and in which a court handed down at least one judgment on the merits. This study looks at three types of judgments: judgments

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<sup>2</sup> See <https://eur-lex.europa.eu/EN/legal-content/summary/guidelines-for-setting-fines.html>; cases mentioned in this document fall under this definition, with perhaps a small number of exceptions; infringements in which financial markets were manipulated fall outside this definition.

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<sup>1</sup> I am grateful for Léa Verkindre's assistance in completing this research.



Manuela Guia, Franz HOFFET, András Horváth, Sarah Houghton, Pavel Hristov, Vilhelmiina Ihamäki, Isabelle Innerhofer, Pavel Jacunskij, Toni Kalliokoski, Jiří Kindl, Máté Kiss, Daphne Koutsouki, Augustė Linauskaitė, Palle Bo Madsen, Martin Mäesalu, Richard Maliniak, Cristiana Manea, Mattia Melloni, Laura Mihalache, Annalies Muscat, Martin Nedelka, Robert Neruda, Veerle Neve, Jörg Nothdurft, Łucja Olszewska, Andreea Opreșan, Peter Oravec, Trine Osen Bergqvist, Raino Paron, Eduardo Pastor Martínez, Javier Pérez, Michael Pilz, Nataša Pipan Nahtigal, Petra Joanna Pipková, Polina Polycarpou, Roman Prekop, Alberto Saavedra, Erik Söderlind, Aleksander Stawicki, Dragomir Stefanov, Valeriu Stoica, Emil Szabó, Elo Tamm, Stefan Tzakov, Lumine van Uden, Raluca Vasilache, Alberto Venditti, Maaike Visser, Frank Wijckmans, Janja Zaplotnik, Rasa Žaščiurinskaitė and Uģis Zeltiņš.<sup>12</sup>

I am very thankful to the competition authorities that have reviewed lists of cases, including the Austrian Federal Competition Authority, the Commission on Protection of Competition of Bulgaria, the Croatian Competition Agency, the Commission for the Protection of Competition of the Republic of Cyprus, the Office for the Protection of Competition of the Czech Republic, the Danish Competition and Consumer Authority, the Estonian Competition Authority, the Finnish Competition and Consumer Authority, the French Autorité de la Concurrence, the German Bundeskartellamt, the Hungarian Competition Authority, the Irish Competition and Consumer Protection Commission, the Competition Council of Latvia, the Lithuanian Competition Council, the Maltese Office for Competition, the Dutch Authority for Consumers and Markets, the Norwegian Competition Authority, the Polish Office of Competition and Consumer Protection, the Romanian Competition Council, the Antimonopoly Office of the Slovak Republic, the Slovenian Competition Protection Agency, the Spanish National Commission on Markets and Competition and the Swedish Competition Authority.

**10. European Commission and Association of European Competition Law Judges.** Finally, I am grateful to the European Commission for having expressed interest in this study and for our fruitful exchanges. I am further indebted to the Association of European Competition Law Judges (AECLJ) for its encouragement and its non-financial support.

**11. Limitations.** This research is subject to three main limitations. First, the list of cases identified is, despite best efforts, unlikely to be completely exhaustive. Many cartel damages actions in Europe receive limited or no attention. On several occasions, contributors discovered judgments that were not publicized, cannot be accessed online, and have so far remained unnoticed and unreported. Given the wide scope of this research, however, some cases may not have been identified. I would be grateful to anyone who can bring to my attention any case I may not be aware of.

**12.** Secondly, errors in interpreting the content of some judgments may have been made. The variety of languages in Europe constitutes, of course, a difficulty in conducting this research. Most judgments reviewed for this study are not in English or in French.<sup>13</sup> In order to grasp some of their substance, a number of sources were used, including machine translations, expert analysis from contributors and/or articles describing the content of some of the judgments. But as I could not read the original (untranslated) text of many judgments, I cannot exclude the possibility that I may have inadvertently misunderstood part of their content.

**13.** Third, the figures provided in this study should be considered as indicative only. The judgments analysed represent in total approximately 20,000 pages. Many criteria have been screened in each judgment. At times, I have probably failed to notice the presence of some criteria in some judgments.

**14. Previous editions of this research.** For some topics, observations reported in previous editions of this study are still valid. Such observations are not always repeated in this article. On other topics, changes have occurred. Several are highlighted in the following figures.

## II. General figures

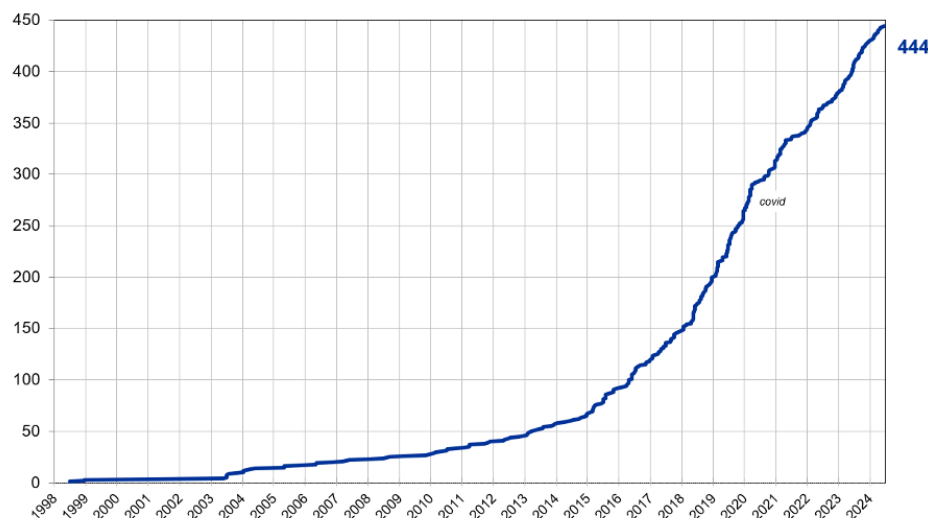
**15. Number of cases.** In the 30 European countries covered, 444 cartel damages actions were identified. They include 115 cases in which damages were awarded, 73 cases in which liability was established, and 215 cases that resulted in dismissals. Forty-one cases are also pending, often after a judgment was quashed and/or referred back to its original court.<sup>14</sup>

<sup>12</sup> A few national judges, individual contributors, and competition authorities have preferred not to be mentioned.

<sup>13</sup> The author's working languages.

<sup>14</sup> Claims awarding a token sum of one euro are considered dismissed. The total number of cases is possibly understated. For example, there are indications of nine additional German cases for which copies of judgments could not be obtained; perhaps also in Hungary.

**Figure 1. Cumulative number of cases  
By date of first judgment**



**16. Number of judgments.** The 444 cases represent, in total, 729 relevant judgments.

These judgments were given by courts of first instance (465 judgments), courts of appeal (197), and supreme courts (67). Some supreme courts went relatively far in framing rules for assessing cartel overcharges (in particular the Bundesgerichtshof, the Tribunal Supremo, and to some extent the Oberste Gerichtshof).

As part of this study, 719 judgments have been collected, translated if necessary, and analysed.<sup>15</sup> Having read this relatively recent body of judicial knowledge, the author would like to state very strongly that it is incredibly rich. Some judgments analyse recurring issues in exceptional depth.<sup>16</sup> Other judgments tackle uncommon and sometimes unexpected questions.<sup>17</sup> On various topics, analyses in thoughtful judgments conflict with analyses in other thoughtful judgments, thus opening up highly interesting debates.

As a benchmark, when in December 2009, the study prepared for the European Commission<sup>18</sup> was published, the cumulative number of judgments given by all national courts in Europe was 46 (about 6% of the current number).

<sup>15</sup> In addition, many judgments in the Spanish *Trucks* cases were also gathered.

<sup>16</sup> For example, German judgments on how to assess the likelihood and the extent of umbrella effects.

<sup>17</sup> For example, a Danish and a French judgment on how to deal with a temporary negative overcharge (a situation in which a cartel apparently caused a temporary decrease in prices).

<sup>18</sup> Oxera et al., Quantifying antitrust damages – Towards non-binding guidance for courts, Study prepared for the European Commission, December 2009.

**17. Countries.** The cases come from 20 countries: Germany (237 cases), France (67 cases), Spain (35 cases), Italy (16 cases), Latvia (13 cases), Portugal (12 cases), the Netherlands (11 cases), Hungary (10 cases), Austria and Greece (7 cases each), Belgium (6 cases), Finland, Malta and the United Kingdom (4 cases each), Denmark and Poland (3 cases each), Lithuania (2 cases), Luxembourg, Norway and Romania (1 case each).

Back in January 2021, the number of countries with at least one case was only 14.

The development of cartel damages actions in Latvia is perhaps a highlight of this edition. Within less than two years, the number of cases there grew from zero to 13. Latvian practitioners attribute this rapid development to a reason that

is not uncommon (multiple infringement decisions of the Latvian Competition Council), but also to other reasons that are less conventional (for example, support provided by the Competition Council to the development of damages actions brought by public bodies,<sup>19</sup> efforts of the General Prosecutor's Office, and rebuttable presumption of a 10% overcharge).

**18. The Netherlands and the United Kingdom.** In the Netherlands, cartel damages actions often involve a series of interim judgments. Claims are also frequently bundled.<sup>20</sup> As a result, the limited number of judgments on the merits (20 judgments) minimizes the real richness of Dutch cartel damages cases. In the same fashion, the small number of cases from the UK does not reveal the true importance of London as a competition litigation forum. Most cartel damages actions brought before the Competition Appeal Tribunal or the High Court of Justice of England and Wales are or were settled before any judgment on the merits.

**19. Infringement decisions.** Of the 444 cases, 51% followed an infringement decision made by an NCA, 46% followed an infringement decision from the European Commission, and only 2% were stand-alone actions. There is one case that followed, in one Member State, an infringement decision from another Member State. There is also one case that uncommonly followed two related infringement decisions: one from a regional competition authority and another from the NCA.

<sup>19</sup> Konkurences padome, <https://www.kp.gov.lv/lv/jaunums/stajusies-speka-grozijumi-konkurences-likuma-par-metodiska-atbalsta-sniegsanu-publikajam-pasutitajam-konkurences-parkapumu-rezultata-radito-zaudejumu-apzinasanai>; <https://www.kp.gov.lv/media/12375/download?attachment>.

<sup>20</sup> See M. Dudok van Heel, Bundling of follow-on damages claims – an efficient way to litigate in the Netherlands?, *Mass Claims*, 2024, No. 1.



In some countries, cases mainly follow NCA infringement decisions (for example, Latvia, France, and Hungary). In other countries, cases mostly follow European Commission infringement decisions (for example, the Netherlands, Portugal, and the UK).

National courts in Europe have handed down judgments on cartel damages actions that followed at least 90 infringement decisions (of which 19 European Commission decisions).<sup>21</sup>

**20. Claimants: direct and indirect purchasers.** About 87% of the actions were brought by direct purchasers.<sup>22</sup> The proportion of cases brought by indirect purchasers is only 7%.<sup>23</sup> This is a small figure, presumably reflecting a perception that proving upstream pass-on can be a challenge.<sup>24</sup>

These figures do not include claims brought after the infringement decision in case AT.39824 *Trucks*. Due to the structure of distribution in this particular sector, many claimants in these cases completed acquisitions from independent dealers or through leasing companies.

**21. Claimants: nature.** Privately owned companies initiated 54% of the claims. Many other claimants come from a broadly defined public sector. Publicly-owned companies (16% of the cases), local authorities (15%), and central governments (3%) started a total of 34% of the claims. Claims brought by end consumers are seldom (14 cases).<sup>25</sup>

The share of public-sector claimants has decreased. Members of the public sector constituted 57% of claimants in the 2018 edition of this study and 42% in the 2021 edition.

**22. Courts.** Cartel damages actions have been judged on the merits by at least 283 national courts in Europe.<sup>26</sup>

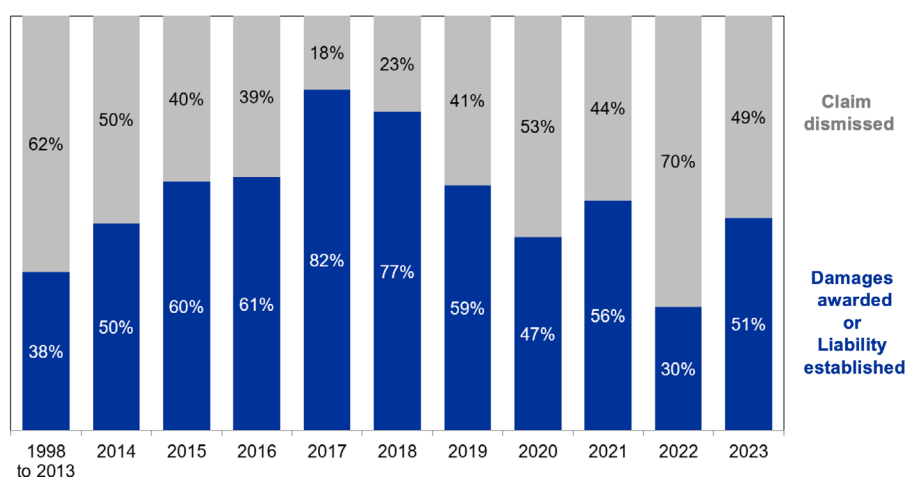
## III. Damages awards and reasons for dismissals

**23. Damages awards.** Damages have been awarded in 115 cartel damages cases.<sup>27</sup> Such awards were made by courts in France (34 cases), Spain (23 cases), Germany (19 cases), Portugal (7 cases), Latvia (6 cases), Greece (5 cases), Austria, Denmark, Italy, the Netherlands and the UK (3 cases each), Belgium and Lithuania (2 cases each), Finland and Romania (1 case each).

In the past, German courts often gave interlocutory or declaratory judgments in which they affirmed the liability of defendants without quantifying damages. The number of damages awards was thus relatively low (only 10 German cases in January 2021). With 19 cases now, the proportion of German judgments awarding damages has grown significantly.

**24. Rate of success.** The rate of success in judgments has evolved greatly in recent years. For this analysis, a judgment is considered successful if damages were awarded or liability was established—in other words, from the perspective of the claimants.<sup>28</sup> As shown in Figure 2, from 2013 to 2018, the proportion of successful judgments has increased. Since 2019, the rate of success has decreased and stabilized at around 50%.<sup>29</sup>

**Figure 2. Outcomes of the judgments**  
**By year of judgment**



<sup>21</sup> Sometimes, one infringement decision sanctioned several cartels. As a result, the number of cartels resulting in at least one case is slightly higher.

<sup>22</sup> Direct buyers purchase directly from cartel members (or other suppliers of similar goods); other buyers are called indirect; mixed buyers purchase from both channels.

<sup>23</sup> Including cases in which the claimants' purchases were partly direct and partly indirect.

<sup>24</sup> See Eur. Comm., Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser, OJ C 267, 9.8.2019, p. 4.

<sup>25</sup> Numerous Italian *Automotive Insurance* judgments are counted as only one case, and Spanish *Fabricantes automóviles* judgments as only one other.

<sup>26</sup> Including an estimated number of 143 courts for Spain.

<sup>27</sup> This number does not include cases in which a court awarded damages, and a higher court then quashed the judgment. Leaving aside two Dutch cases in which damages were awarded by a lower court and experts were appointed by a court of appeal.

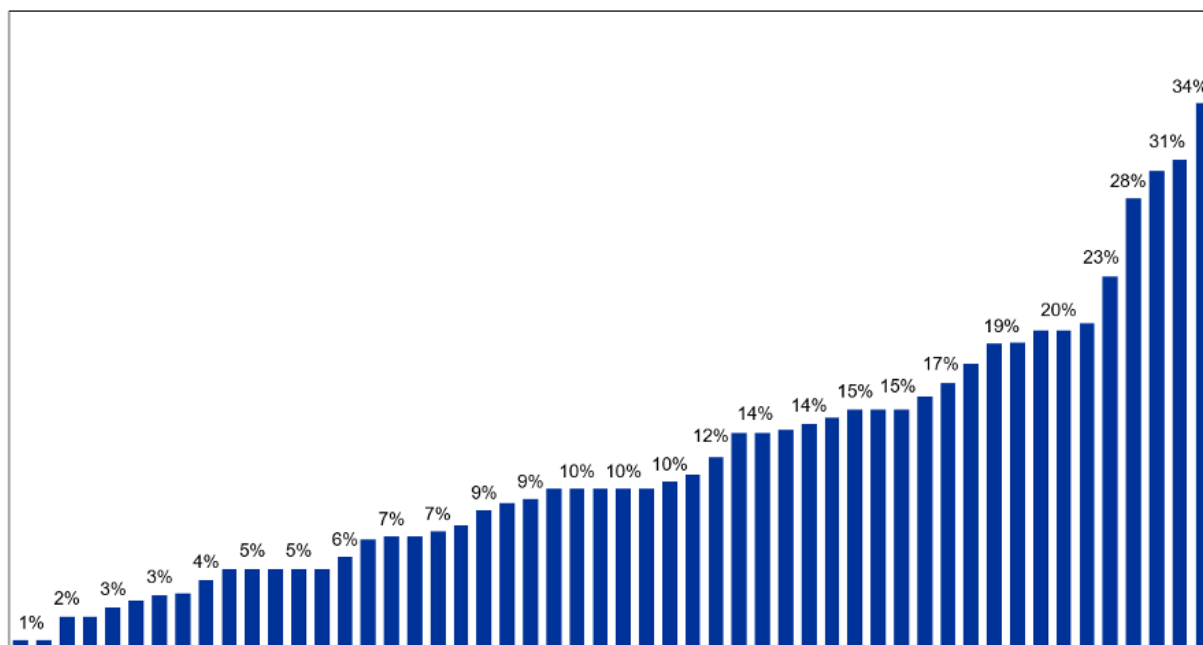
<sup>28</sup> It is considered unsuccessful when the claim was dismissed. For this analysis, only judgments in which the outcome is success or dismissal are included. All judgments given in a particular year are taken into account, including judgments that were revised later on.

<sup>29</sup> The drop in 2022 should not be over-interpreted: it results partly from one set of judgments handed down by one court.

Changes in the rate of success appear to be determined, at least partially, by the nature of the cases judged. Between 2015 and 2018, there were, for example, two large waves of judgments: one following the *Road signs* cartel in France and the other following the *Rail* cartel in Germany. Judgments belonging to these two waves have often been successful.

**25. Figures on overcharges.**<sup>30</sup> A rate of overcharge could be calculated or estimated for 110 awards of damages.<sup>31</sup> In Figure 3, this study indicates the average rate of overcharge found in each country for each cartel.<sup>32</sup> In accordance with the study prepared for the European Commission, all rates of overcharges are presented as a percentage of affected prices.<sup>33</sup> The lowest rate observed is less than 1%, and the highest reaches 34%. Both extremes are unchanged since the 2019 edition of this study.

**Figure 3. Overcharge in damages awards**



The average rate of overcharge per cartel and per country is 12%, and the median is 10%.<sup>34</sup>

On 1 July 2024, courts had estimated overcharges in 197 judgments<sup>35</sup> (taking into account that one case can, of course, include a series of judgments).

## IV. Assessments of overcharges

**26. Practical Guide.** In June 2013, the European Commission published the Practical Guide on Quantifying Harm in Actions for Damages. This document describes methods considered by the Commission to be potentially suitable for assessing damages caused by competition law infringements.<sup>36</sup>

**27. Methods accepted by courts.** Courts have been submitted all major types of methods outlined in the

Practical Guide. In the 115 damages awards referred to above, damages were quantified using the following methods:<sup>37</sup>

- Comparison over time (also called “before-and-after”): 29 cases
- Comparison with an unaffected market (also called “yardstick”): 6 cases
- Cost-based and financial methods: 10 cases

<sup>30</sup> Five cases refer to a cartel of buyers; the “overcharge” in these cases is, strictly speaking, an “undercharge.” Leaving aside one case judged by a French administrative court in which, as a result of nullity, the claimant obtained a refund not only of the overcharge but also of the infringer’s margin on variable costs.

<sup>31</sup> The data was usually taken directly or indirectly from judgments; sometimes, relevant information was found from other sources. Three percentages were determined by reference to a contractual clause.

<sup>32</sup> If, in a particular country, a particular cartel was followed by two actions in which overcharges were estimated (for example, 8% and 12%), this study reports the unweighted average of these two rates (in our example, 10%). If one cartel resulted in damages awards in several countries, the average rate of overcharge for this cartel is reported separately for each country.

<sup>33</sup> Other studies sometimes express overcharges as a percentage of the unaffected price. See in particular J. M. Connor, *Price-Fixing Overcharges*: Revised 4th Edition, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4906907](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4906907).

<sup>34</sup> The average rate of overcharge per case is 14%, and the median is also 14%; cases in which a court found an overcharge equal to 0% or sometimes negative are not included.

<sup>35</sup> Statistics provided in the study prepared for the European Commission were based on a sample of 114 selected observations (exclusively “estimates obtained from peer-reviewed academic articles and chapters in published books”). Oxera et al., p. 90.

<sup>36</sup> Commission Staff Working Document, *Practical Guide on Quantifying Harm in Actions for Damages Based on Breaches of Article 101 or 102 TFEU*, SWD(2013) 205, 11 June 2013.

<sup>37</sup> For a detailed description of the various methods, see J-F Laborde, *Cartel damages claims in Europe: How courts have assessed overcharges*, *Concurrences* No. 1-2017, art. No. 83418, pp. 36–42. The total is greater than 115 because courts have employed, in some cases, a combination of methods.

- Regression analysis (also called “econometrics”): 18 cases
- Simulation model: 0 cases
- Other methods: 60 cases

**28. Comparison over time.** Historically, the quantification method most frequently accepted by courts consisted of comparing prices over time. With seven new cases since January 2021, this method continues to be utilized, but not as frequently as it used to be.

**29. Comparisons with unaffected markets.** Comparisons with unaffected markets are not often accepted in cartel damages actions. Courts have in particular almost systematically rejected comparisons of prices in different countries.<sup>38</sup> In practice, when courts have accepted comparisons with unaffected markets, such comparisons have generally stayed within national boundaries, often comparing changes in prices in different regions (some affected by a cartel and others not).

**30. Regression analysis.** In the 2019 edition of this research, no court-accepted valuation of cartel overcharges was based on regression analysis.<sup>39</sup> As stated, for example, by the Corte di Cassazione,<sup>40</sup> judges appeared to prefer regular comparative approaches perceived as “*more objectively verifiable*.” In the 2021 edition, this number increased to four cases. In this edition, it is now up to 18 cases.<sup>41</sup>

**31. Simulation model.** Not one judgment awarded damages on the basis of a simulation model. Judgments mentioning such models are scarce.<sup>42</sup>

**32. Other methods.** In 34 cases, courts have estimated a rate or an amount of overcharge.<sup>43</sup> These cases come from Belgium, Italy, France, Germany, Greece, Portugal and Spain. Multiple approaches have been employed by courts for reaching estimates. For instance, some have framed a perception of the effectiveness of a cartel, and then used statistics on overcharges to convert their perception into a figure.<sup>44</sup> Others have started by observing the results of multiple methods employed in parallel.<sup>45</sup>

A rebuttable presumption on the level of overcharges was employed in six cases. Perhaps tellingly, in countries where such a presumption was introduced, damages claimed<sup>46</sup> were in the vast majority of cases determined by reference to it.

In four cases, figures allowing the quantification of the overcharge were drawn from the infringement decision.

In some other instances, courts have referred to a predefined percentage stipulated in a contractual clause, to the profit made by the infringer, to the amount paid by the winner of a rigged bid to another participant in the tender, to a witness statement, or to a figure drawn from a parallel case.

**33. Court-appointed experts.** Out of the 444 cases, courts have appointed experts in 61 cases. They come from thirteen countries.<sup>47</sup>

How should courts weigh the probative value of two conflicting expert reports, one from a party-appointed expert and the other from a court-appointed expert? Confronted with this frequent issue, the Court of Appeal of Lithuania cited case law from the Supreme Court of Lithuania, according to which a court-appointed expert report is generally a more reliable source of evidence.<sup>48</sup>

On whether an expert may or may not be appointed on a case, there appear to be two sets of practices. Some courts considered that an expert could not be appointed unless the existence of harm has been previously demonstrated. Other judges indicated that “*in most cases, the counterfactual scenario allows both making explicit the existence of damages and quantifying their amount*.”<sup>49</sup>

**34.** To conclude, I would like to thank once again each and every person and each and every institution that offered their time and insights to this research. ■

38 They have also rejected comparisons of changes in prices.

39 S. Droukopoulos, B. Veronese and S. Witte, Here to stay: regression analysis in follow-on cartel damages, *Competition Law Journal*, Vol. 19, Issue 3, 2020, pp. 136–142.

40 Corte di Cassazione, Comments on the guidance paper on damages for breach of antitrust law, 2011 (retrieved several years ago from DG COMP’s website).

41 Judges and economists are still debating whether and how to employ regression analysis in cartel damages actions. See G. Klumpe and J. Paha, Cartel damage assessment and econometric reports: Both sides of the story, January 2025, *Concurrences* No. 1-2025, art. No. 122703. See also Oslo District Court, 28 February 2023, TOSL-2017-115740-3.

42 See the 2016 and 2021 editions of this research.

43 See P. Martorell Zulueta, A note on the judicial estimation of the damage in actions for infringement of the rules of Competition Law when the quantification by experts attempted by the injured parties fails, 6 September 2021, <https://www.judicialcompetitiontraining.eu/a-note-on-the-judicial-estimation-of-the-damage-in-actions-for-infringement-of-the-rules-of-competition-law-when-the-quantification-by-experts-attempted-by-the-injured-parties-fails/>.

44 In particular statistics provided by the study prepared for the European Commission.

45 Or sometimes observed the result of one method that they have significantly modified.

46 But not necessarily awarded.

47 From France in 31 cases.

48 “Kasacinio teismo praktikoje pripažįstama, kad Ekspertizės akte esantys duomenys pagal jų objektyvumą dėl tiriamojų pobūdžio prigimties ir gavimo aplinkybių paprastai yra patikimesni už kituose įrodymų šaltiniuose esančius duomenis (Lietuvos Aukščiausiojo Teismo 2021 m. vasario 3 d. nutartis civilinėje byloje Nr. e3K-3-9-421/2021)”. Court of Appeal of Lithuania, 14 December 2023, civil case No. e2A-653-934/2023.

49 “[L]e plus souvent, les scénarios contrefactuels nous permettent à la fois d’expliciter l’existence du préjudice, tout en l’évaluant en même temps.” S. Depelley, Classification of damages due to anticompetitive practices, Webinar, *Concurrences*, 22 January 2022, <https://www.concurrences.com/en/events/classification-of-damages-due-to-anticompetitive-practices>. See also AJDA, L’évaluation des préjudices causés par les ententes anticoncurrentielles, N° 13/2023 p. 646.