



ANTITRUST PRIVATE DAMAGES ACTIONS IN THE UNITED STATES, CANADA AND THE EUROPEAN UNION



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I. INTRODUCTION

Competition in the marketplace is widely perceived as politically, legally and economically desirable. As of 2014, over 120 countries had adopted antitrust laws aimed at providing protection against anti-competitive behaviors, up from just 38 countries in 1990.²

As competition is considered desirable, and because enforcement is unlikely to identify all instances of illegal violations, deterrence often includes penalty mechanisms that can exceed a disgorgement of profits. This may be achieved through trebling of damages or through multiple overlapping claims. Fines by government agencies may result in disgorgement by the antitrust violator of any benefit from the violation, but private enforcement may further enhance the deterrence effect of government agency enforcement. Specifically, private enforcement can provide a direct individual private compensation mechanism not achieved through public enforcement, as proceeds of fines imposed through

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² “Unveiling the World of Antitrust,” Columbia Law School website at www.law.columbia.edu/media_inquiries/news_events/2014/march2014/bradford-antitrust-project (accessed October 26, 2015).



public enforcement generally remain public.³ Enforcement of antitrust policies relies on two main sources of action: public and private. Public action is traditionally seen as focusing on deterrence, while private action serves not only as further deterrence but also as compensation for direct, and in some instances indirect, customers of the lawbreakers. Beyond these broad similarities, countries differ in their application of antitrust policies.

This article compares and contrasts the well-known and well-established system of private action that prevails in the United States to those established by (a) the recent trilogy of decisions by the Supreme Court of Canada that reshaped the Canadian landscape for antitrust private actions,⁴ and (b) the framework delineated by the recent European Directive on rules governing private actions for antitrust damages in member countries.⁵ The main contribution of this paper is to show, via illustrative examples using different elasticities of demand⁶ and different margins (levels of profit), that the ultimate approach to damages claims may be relatively similar across Europe, United States Federal Courts and Canada in as much as direct purchaser plaintiffs would likely ignore pass-on and claim harm exclusively from the overcharge, despite the European allowance for plaintiffs' claims to additional damages for lost profits on lost sales.⁷

II. WHY ANTITRUST ENFORCEMENT?

Competition is desirable because it results in an efficient, optimal allocation of resources. In other words, under competitive conditions, goods will be produced in quantities and sold at prices such that society's overall welfare is maximized, at least in a static sense.⁸

This can be illustrated using a simple example. Figure 1 represents the market for hotdogs sold by street vendors in a city. Demand for hotdogs on a given day is decreasing in price: the higher the price, the lower the demand.⁹ In this figure, on any given day, some

³ For instance, in 2011, the American Department of Justice ("DOJ") took in \$2 billion USD in judgments and settlements, of which only \$116 million went to restitution. The proceeds from fines and penalties went to the U.S. Treasury and those from forfeiture went to the DOJ Asset Forfeiture Fund or the Department of Treasury Forfeiture Fund. (<http://www.justice.gov/opa/pr/department-justice-secures-more-2-billion-judgments-and-settlements-result-enforcement>, accessed October 8, 2015)

⁴ *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 [*Sun-Rype*]; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 [*Microsoft*]; and *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59 [*Infineon Technologies*].

⁵ "Directive 2014/I04/EU of the European Parliament and of the Council, of November 26, 2014, on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union," available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0104&from=EN> (accessed October 8, 2015) [European Directive].

⁶ The elasticity of demand measures the magnitude of the reaction of demand to change in prices. For example, an elasticity of -1 means that when prices increase by one percent, quantity demanded decreases by 1 percent. An elasticity of -2 means that when prices increase by one percent, quantity demanded decreases by two percent.

⁷ In Canada, where direct and indirect purchasers are grouped into the same class, their joint damages claims are also likely to be only related to the overcharge, as explained further herein.

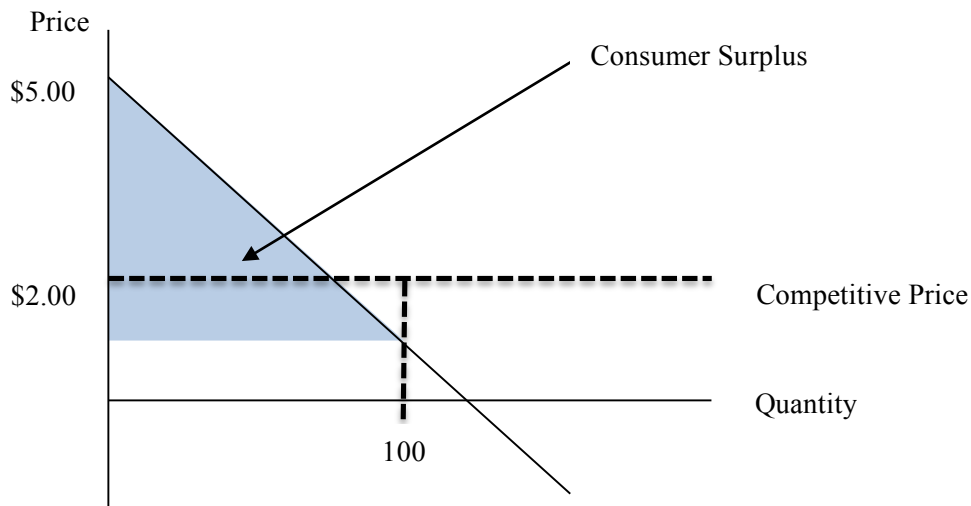
⁸ Although we will not discuss this here, imperfect competition and monopoly power may result in greater long-run dynamic efficiency and consumer surplus by encouraging innovation, for example, through patents.

⁹ The demand curve shown is the market demand curve and we assume that all sellers charge the same price.



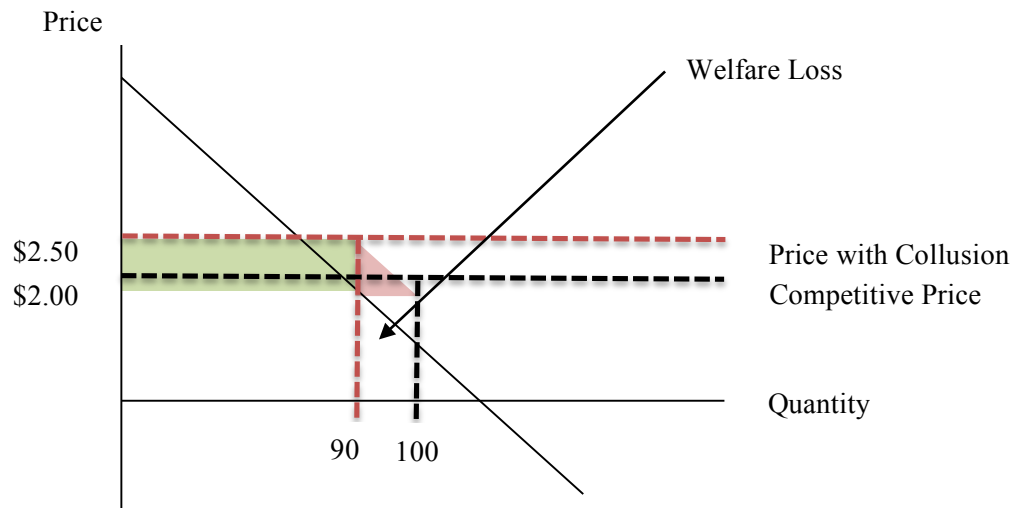
people are willing to pay up to \$5.00 for a hotdog, but most are not. As price decreases, demand increases. This individual willingness to pay for a hotdog is driven by many factors such as tastes, wealth and how people value their time.

Figure 1: Market for Hotdogs



In this example, we assume that the prevailing price for hotdogs would be \$2.00 and that vendors would sell 100 of them. Note, however, that every single buyer except for the last one would have been willing to pay more than \$2.00 to get their hotdog and is therefore better off after purchasing the hotdog (*i.e.* the value to the consumer of the item purchased is greater than its price). The difference between the price people are willing to pay and the price they actually pay is referred to by economists as consumer surplus and is represented in Figure 1 by the blue triangle.

If street vendors were to collude and artificially raise hotdog prices to, say, \$2.50, what would happen? This is illustrated in Figure 2.

**Figure 2: Market for Hotdogs under Collusion**

The most immediate and obvious effect is that value is redistributed from the consumers to the hotdog vendors as prices and profits increase. In this example, buyers pay \$2.50, \$0.50 more than the competitive price of \$2.00. Nevertheless, every customer purchasing a hotdog is, by definition, better off after the purchase as they freely decided to purchase the hotdog despite the higher price. However, some former customers preferred to keep the \$2.50 rather than purchasing the hotdog, resulting, in our example, in sales of 90 hotdogs instead of 100.

Customers who valued the hotdog somewhere between \$2.00 and \$2.49 purchased the hotdog at the competitive price but are not willing to purchase the hotdog at the collusive price of \$2.50. They suffer a loss. In fact, the reduction in hotdogs sold results in a redistribution of value from the consumers to the vendors, as illustrated by the green rectangle, and a loss of welfare, as illustrated by the red triangle in Figure 2. This welfare loss (the red triangle) is a loss to the consumer that is not redistributed to the vendor. Because this welfare is lost for all, it is at the heart of economists' love affair with competition.

In this example, were buyers to be compensated for the overcharge (represented by the green rectangle), the redistributive effects of the collusion would be erased. However, the welfare loss would not be reversed. No direct mechanism can, through private action, compensate consumers who chose not to buy a hotdog because of the price elevation.

Consider a slightly more complex scenario where hotdog producers collude and raise the price of hotdogs to street vendors. Two situations can result, depending on whether the vendor passes this cost increase onto the final customer.

If the vendor fully absorbs the increase in cost that results from the collusion, the market for hotdogs will continue to look like Figure 1, despite the producers' collusion. The impact of the collusion will not reach the final consumer. There will be no resulting welfare loss from the collusion, but the street vendor will suffer a drop in profits equal to the overcharge it faced. Such lost profits, directly attributable to absorbing the overcharge, are not to be confused with lost profits arising from lost sales as sales were not reduced in this



situation. There will be redistribution from the vendor to the producer but the final consumer will remain unharmed and total welfare unchanged.

On the other hand, if the vendor passes the overcharge on to the final consumer (either partially or fully), the outcome of the producers' collusion will be similar to that described in Figure 2. The price to the final consumer will increase and the number of hotdogs sold will decrease. If the overcharge is fully passed-on, the burden of the overcharge will now reside with the consumer, who will experience harm. The vendor will not be harmed directly by the overcharge, but will lose profits on the units not sold as a result of the price increase to consumers. Here, as in the first situation, compensating the street vendor for its lost profits does not erase the consumer welfare loss, and leaves consumers who no longer purchased the hotdog harmed and difficult to identify.

A. *Key Elements Governing Antitrust Private Actions*

The short description above illustrates why tracking the source and victim(s) of harm from an antitrust violation can be so difficult. This explains why there exists a vast literature on the topic of assessing damages in price-fixing actions, and, in part, why countries differ in their approaches to private antitrust damages.

1. Punitive or Compensatory?

The first potential source of divergence among countries lies in the objective of private antitrust damages actions. Should antitrust law be designed to compensate parties for their losses, act as deterrents, or both? The American system, which provides for treble damages in antitrust private action damages, clearly envisions deterrence as part of its role. The recent Canadian Supreme Court decisions, on the other hand, emphasize the desire not to overcompensate private plaintiffs.¹⁰ Similarly, the recent European Directive states that full compensation should not lead to overcompensation.¹¹

2. Sources of Damages

The second potential divergence relates to the alternative sources of damages considered in private actions. North American practices, both American and Canadian, focus on the redistributive effect of the overcharge. Hence, damages are principally focused on undoing the transfer of welfare from buyers to sellers that results from an artificial price elevation.¹²

In contrast, the recent European Directive provides for compensation arising from the overcharge (the redistribution between buyers and sellers), but also explicitly from lost profits on lost sales for intermediaries. Returning to our prior example where hotdog producers collude to raise the price of hotdogs, the US and Canadian antitrust regimes capture the transfer of welfare from hotdog vendors to hotdog producers; the EU antitrust regime also

¹⁰ In *Microsoft*, the Supreme Court of Canada ruled that the risk of double or multiple recovery “cannot be lightly dismissed” and that the expectation is that courts would manage the risk (*e.g.* for suits filed in multiple jurisdictions, a judge “may deny the claim or modify the damages award in accordance with an award sought or granted in the other jurisdiction in order to prevent overlapping recovery”).

¹¹ European Directive, Article 3.3.

¹² Although we are not aware of any Canadian cases where lost profits on lost sales for intermediate buyers were claimed by plaintiffs, it is not clear that the state of the law in Canada would preclude such claims.



captures harm associated with the lost sales hotdog vendors suffer as a result of an overcharge.¹³ In doing so, the European Directive emphasizes its objective to provide full compensation for losses suffered by the parties along the supply chain.¹⁴ However, as our previous example shows, lost profits on lost sales by intermediate buyers will occur only if some of the original overcharge reaches the final consumer and therefore reduces the total volume transacted.¹⁵

3. Indirect Purchasers and Pass-on Defense

Finally, the attitude of the courts with respect to the standing of indirect purchasers and to the admissibility of a pass-on defense can shape the nature of private antitrust damages actions. In a system that emphasizes the compensatory aspect of private action damages, excluding indirect purchasers, who ultimately might suffer from the overcharge, may be suboptimal. Nevertheless, courts in Canada, for example, have struggled to establish a rationale for the legal standing of indirect purchasers in such private actions, an issue only recently resolved by the Supreme Court of Canada, as described in more detail below.

Table 1 summarizes the key elements that shape private antitrust damages actions in the United States, Canada and in the European Directive.

Table 1: Summary of Key Factors Governing Private Antitrust Damages

	United States	Canada	European Union
Philosophy of Damages	Compensatory AND Deterrent	Compensatory	Compensatory
Source of Damages	Overcharge	Overcharge	Overcharge AND Lost Profits
Pass-On Defense	NO	NO	YES
Indirect Purchasers	Federal-NO States-YES	YES	YES
Consequences	Since Damages are trebled and no pass-on defense, Defendants at risk of paying multiples of the damages incurred. Structure to avoid this not fully set.	To avoid overcompensation, Direct and Indirect part of the same class.	If pass-on is found, must be accounted for when setting damages for other Plaintiffs along chain of distribution.

¹³ European Directive, Article 3.2.

¹⁴ European Directive, Article 3.

¹⁵ To be clear, there are three possible scenarios: (1) profits on existing sales for the intermediate buyers (*e.g.* retailers) decrease by the full amount of the overcharge if they absorb the full overcharge from producers; (2) profits on lost sales are foregone if intermediaries pass-on the full extent of the overcharge; and (3) profits on existing sales decrease and profits on lost sales are foregone if there is partial pass-on because of partial absorption of the overcharge and loss of sales resulting from the increased price to consumers.



Only in the United States do private antitrust damages actions serve an explicit punitive purpose illustrated by the trebling of damages. The punitive nature of private actions is further enhanced by the existing dynamics that take place between Federal and State Courts. Pivotal decisions by the U.S. Supreme Court have long established that indirect purchasers may not recover damages in Federal Court, while direct purchasers may recover 100 percent of damages associated with overcharges resulting from antitrust violations, regardless of whether they passed-on these overcharges to the next level of the distribution chain (the no pass-on defense principle).¹⁶ However, 27 American States, as well as the District of Columbia and Puerto Rico, have enabled *Illinois Brick* repealer statutes allowing for State-level suits brought by indirect purchasers in parallel with Federal direct purchaser actions.¹⁷ This hybrid set-up allows total damages to reach many times the original value of the overcharge.¹⁸ In 2007, the American Antitrust Modernization Commission recommended that Congress “overrule the Supreme Court’s decisions in *Illinois Brick* and *Hanover Shoe* to the extent necessary to allow both direct and indirect purchasers to recover for their injuries.”¹⁹

The recent Canadian dynamics have been different. First, the long influence of Civil Code principles has made Canadian courts reluctant to allow any overcompensation.²⁰ Second, and despite that long established principle, the Supreme Court of Canada had held, in a different context, that the pass-on defense should not be available to defendants.²¹ Taken together, these two principles may result in overcompensation to direct plaintiffs in private damages actions while excluding indirect plaintiffs who carried the burden of the overcharge from any form of compensation. The Supreme Court of Canada resolved that conundrum by ruling that both direct and indirect purchasers could sue for damages, but that their claims should be combined into a single action. In deciding so, it rendered the issue of pass-on defense moot,²² but opened the door to issues of allocation of harm and conflicts within the class.²³

Perhaps because it started from a blank slate, the European Directive has opted for an approach that allows for compensation arising both from the overcharge and lost profits

¹⁶ *Hanover Shoe Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968) [*Hannover Shoe*] and *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) [*Illinois Brick*].

¹⁷ In addition, four other states have repealed *Illinois Brick* through case law. Practising Law Institute, *Antitrust Law Answer Book 2015*, Chapter 1, p. 23.

¹⁸ For example, if an indirect purchaser can establish that the overcharge was passed-onto him by the direct purchaser, defendant could ultimately be liable for six times the original overcharge.

¹⁹ U.S. Antitrust Modernization Commission, Report and Recommendations (April 2007), available online at http://govinfo.library.unt.edu/amc/report_recommendation/toc.htm (accessed October 18, 2015).

²⁰ See, e.g. Stroud, Patrick, “Civil and Common Law: A Historical Analysis of Colonial and Postcolonial Canada,” *Butler Journal of Undergraduate Research*, Vol. 1, Issue 8, April 2015.

²¹ *Kingstreet Investments Ltd. v. New Brunswick (Department of Finance)*, 2007 SCC 2.

²² In *Microsoft*, the Supreme Court of Canada ruled that “[i]t is not generally open to a wrongdoer to dispute the existence of a loss on the basis it has been ‘passed on’ by the plaintiff” because this would burden the courts with “the endlessness and futility of the effort to follow every transaction to its ultimate result.”

²³ Ginn, Marissa and Marc Van Audenrode, “An Economic Perspective on the Recent Indirect Purchaser Rulings by the Supreme Court of Canada,” *Canadian Competition Law Review*, Vol. 27, No. 1, 2014.



due to pass-on of the overcharge.²⁴ It permits actions by both direct and indirect purchasers as well as a pass-on defense.²⁵ To avoid overcompensation and to ensure that each party will be correctly compensated, it requires that actions taken at every level of the distribution chain be consistent with rulings and decisions from other levels.²⁶

B. *Dynamics of Private Damages Actions in the United States, Canada and the European Union*

Cross-country differences in principles underlying private antitrust damages actions can lead to very different damages outcomes.

In the United States, the higher the overcharge, the higher the damages in Federal Court. Because no pass-on defense is available to defendants, pass-on of the overcharge down the distribution chain is irrelevant. In State Courts, higher overcharges still result in higher damages to indirect purchasers but the upstream and downstream pass-on at each level of the distribution chain will also affect damages.

The dynamics are not as straightforward in the Canadian set-up. Private antitrust actions may include both direct and indirect purchasers joined together as plaintiffs in a class. Plaintiffs and defendants will likely disagree in their measurement of the magnitude of the overcharge. How damages will be affected by pass-on is still unclear as the first private antitrust lawsuits since the Supreme Court's landmark decisions involving both direct and indirect purchasers have yet, to our knowledge, reached the damages phase.²⁷ Pass-on is unlikely to affect total damages except insofar as it illustrates the conflicts inherent in any certified class comprising both direct and indirect purchasers. However, pass-on will affect which plaintiffs were injured and by how much. Direct purchasers will be injured by the overcharge if they did not pass-on the entire alleged overcharge to their downstream purchasers, while indirect purchasers will be injured if direct purchasers passed-on any of the overcharge that indirect purchasers then absorbed.

The dynamics created by the new European Directive are also still uncertain. Larger overcharges will result in higher damages, *ceteris paribus*, regardless of whether plaintiffs are direct purchasers, indirect purchasers, or both. The European Directive entitles plaintiffs to damages from lost profits on lost sales, which can only arise from pass-on. If the overcharge is not passed on beyond the direct purchaser, sales are not reduced and no damages from lost profits on lost sales ensue down the distribution chain. This, combined with the European Directive's requirement for consistency across the different levels of the distribution chain, implies that no pass-on results in no lost profits beyond direct purchasers (from the overcharge) and, therefore, lower damages.

If defendants in the European Union are found to have conspired to raise the price of their products by, say, €1 to direct purchasers and plaintiffs did not pass-on that overcharge

²⁴ European Directive, Article 12.3.

²⁵ European Directive, Articles 12.1 and 13.

²⁶ European Directive, Article 12.

²⁷ We note that there do appear to have been settlements of certain cases, but it is not clear to us how, if at all, pass-on may have affected these settlements.



down the distribution chain, defendants can fully compensate direct purchasers by a damages award calculated as €1 times the volume of commerce at issue. Furthermore, consistency along the distribution chain means that indirect purchasers, who suffered no damages, lack any basis to bring any action on their own.

If instead the court had found that direct purchasers had passed-on €0.50 to the lower levels of the distribution chain (*i.e.* a pass-on rate of 50 percent), direct purchaser plaintiffs will be compensated for the overcharge by a damages award of €0.50 times the volume of commerce at issue. Given the European Directive's requirement for consistency across the different levels of the distribution chain, indirect purchasers will be compensated for the overcharge by a damages award of €0.50 times the volume of commerce at issue. Moreover, as a portion of the overcharge is passed-on, full compensation will require payment for harm resulting from lost profits on lost sales to intermediate purchasers. Hence, in the framework set-up by the European Directive, if the overcharge is passed-on along the distribution chain, lost profits on lost sales will result.

Unlike in the United States and Canada, under the new European Directive, even a plaintiff found to have passed-on the overcharge may have suffered damages because of lost profits from lost sales. The next section analyzes this problem in detail.

C. The Trade-off between Overcharge Damages and Lost Profits on Lost Sales for Plaintiffs

This section presents a few simple numerical examples to illustrate the impact of the European Directive on damages. We assume a set-up similar to the hotdog vendor example described in section 2 where producers collude to artificially raise the price of a product sold to retailers who in turn sell to final consumers.

Table 2 analyzes the situation where retailers before the conspiracy were earning relatively high margins on their sales. The numerical example shows a situation where retailers enjoy high margins, and analyzes two cases, one in which retailers face a relatively low demand elasticity (-0.5), and another in which they face a relatively high elasticity (-2.5).²⁸

We then suppose that the conspiracy raises price to retailers (direct purchasers) by €1, raising the unit cost from €5 to €6 in this example. We also suppose that, at the same time, prices charged by retailers to the final consumers also increased by €1, from €10 to €11, when the cost increase is fully passed-on.²⁹

²⁸ As noted above, the elasticity of demand measures the magnitude of the reaction of demand to change in prices. For example, an elasticity of -1 means that when prices increase by one percent, quantity demanded decreases by 1 percent. An elasticity of -2 means that when prices increase by one percent, quantity demanded decreases by two percent.

²⁹ For illustrative purposes, we assume that the price increase does not depend on the elasticity. However, in general, a price increase will be smaller when the elasticity of demand is greater.



Table 2: High Margin Case

Elasticity of Demand	-0.5	-2.5
Before Conspiracy		
Quantity Sold	100	
Price	€10	
Unit Cost	€5	
Margin	€5	
During Conspiracy		
Increase in Cost	€1	
Full Pass-on		
Price	€11	
Quantity Sold	95	75
Damages to Consumers	$95 * €1 = €95$	$75 * €1 = €75$
Damages to Direct Purchasers	$5 * €5 = €25$	$25 * €5 = €125$
No Pass-on		
Price	€10	
Quantity Sold	100	100
Damages to Consumers	€0	€0
Damages to Direct Purchasers	$100 * €1 = €100$	$100 * €1 = €100$

As Table 2 shows, full pass-on results in greater damages overall than if no pass-on to final consumers occurred. Moreover, when the elasticity of demand is high, direct purchasers lose many sales because of pass-on, and damages resulting from those lost profits may be higher than damages from the overcharge in the case of no pass-on (in this example, €125 versus €100, respectively).

Table 3 shows a similar example where the retailer margins are smaller than in Table 2. When margins are smaller, damages to plaintiffs from lost profits on lost sales are lower.



Table 3: Low Margin Case

Elasticity of Demand	-0.5	-2.5
Before Conspiracy		
Quantity Sold	100	
Price	€10	
Unit Cost	€8	
Margin	€2	
During Conspiracy		
Increase in Cost	€1	
Full Pass-on		
Price	€11	
Quantity Sold	95	75
Damages to Consumers	95 * €1 = €95	75 * €1 = €75
Damages to Direct Purchasers	5 * €2 = €10	25 * €2 = €50
No Pass-on		
Price	€10	
Quantity Sold	100	100
Damages to Consumers	€0	€0
Damages to Direct Purchasers	100 * €1 = €100	100 * €1 = €100

To contrast these two cases of high and low margins, we focus on the damages to direct purchasers in the presence of full pass-on, as the other damages amounts do not change.³⁰ What these examples show is that direct purchasers' loss in profits from lost sales could exceed their damages from fully absorbing the overcharge. Indeed, when margins are high and the elasticity of demand is high, damages compensation may be greater for direct purchasers when the overcharge is passed-on compared to when the overcharge is not passed-on. However, such a situation is highly unlikely as high elasticity of demand is usually associated with low margins while low elasticity of demand is usually associated with high margins.

We have focused on either full pass-on or no pass-on above, for simplicity, but pass-on is most often incomplete.³¹ Incomplete pass-on entails additional complexities in how the

³⁰ The examples provided assume a simple case of two levels along the distribution chain: direct purchasers and end consumers. However, the results for direct purchasers apply to other intermediate purchasers along the distribution chain as well.

³¹ Incomplete pass-on is pass-on that ranges from just over 0 percent to just under 100 percent. Pass-on may also be above 100 percent in certain instances.



damages from the overcharge and lost profits on lost sales would be calculated and distributed among the plaintiffs. When pass-on is incomplete, total damages will be lower than in the case of full pass-on, but damages for indirect purchasers may be relatively higher, depending on the demand elasticity and the margin.³²

III. CONCLUSIONS

When only direct purchasers can sue for damages, as in United States Federal Courts, then the overcharge directly impacts damages for these plaintiffs. In jurisdictions where actions can be brought by direct and indirect purchasers, both the overcharge and pass-on can have implications for the plaintiffs' damages compensation. In situations where the overcharge is not passed on by direct purchasers, the outcome is identical in Canada, Europe and the United States Federal Courts. However, the private enforcement mechanism in the United States may lead to hold-up which, in State courts, may result in settlements despite a lack of pass-on and, as a result, duplicative recovery. In the presence of pass-on of the overcharge, there will be duplicative recovery in the United States (full recovery by direct plaintiffs in Federal Court and recovery proportional to pass-on by indirect purchasers in State Courts), there should be full recovery in Canada allocated to direct and indirect purchasers proportionately to the pass-on as should occur in Europe with an additional explicit focus on damages for lost profits on lost sales for all purchasers other than final customers.

Furthermore, under the new European Directive on antitrust private damages actions, direct purchaser plaintiffs will suffer greater damages when the overcharge is not passed-on, unless they face a highly elastic demand and earn high margins on their products, a highly unlikely combination. Hence, plaintiffs' claims to damages for lost profits on lost sales in European antitrust private damages actions, while economically consistent with full compensation, may nevertheless result in an outcome similar to that of United States Federal Courts whereby direct purchaser plaintiffs ignore pass-on and claim harm exclusively from the overcharge.

³² Specifically, damages for indirect plaintiffs will be higher relative to the case of full pass-on when both the elasticity of demand and the pass-on rate are lower.