

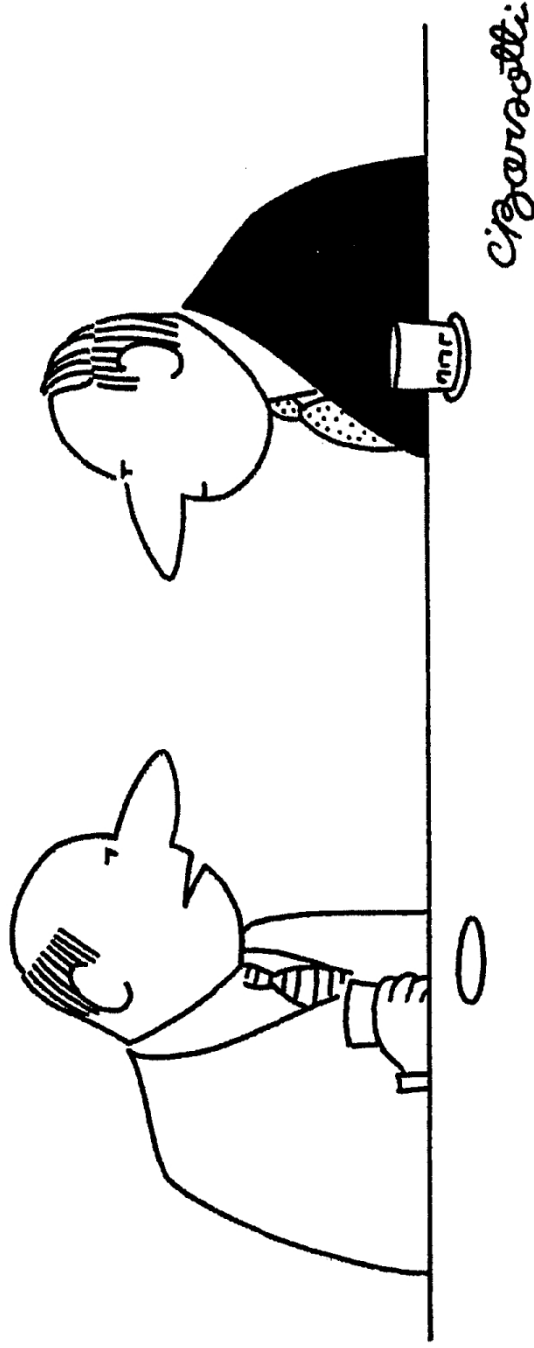
Competition advocacy and private damages actions



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pioneer



"I consider myself a passionate man, but, of course, a lawyer first."

Introduction

- * The *Empagran* opportunity to develop national systems outside the USA
- * Dynamic relationship between competition advocacy and private damages actions
 - Private actions advance as competition advocacy advances
 - Awareness growing in (non-US) private sector
 - Harmed parties already finding ways in absence of effective remedial systems
- * Designing systems – procedures are key for plaintiffs and defendants
 - Achieving balance, fairness, buy-in and settlement environment

The global picture

- * Plaintiffs and defendants face a wide range of regimes, features and track records globally:
 - Developed regimes
 - Recent/developing regimes
 - Regimes where private actions are available but little used for competition law claims
 - Regimes without private actions:
 - But considering introducing
 - No current intention to introduce

Public/private interface

- * Agency actions/decisions – private actions/settlements facilitator
 - Awareness of law, enforcement record and violation itself
 - Evidence and proof – published decisions/binding on courts
 - Case example – private detection and settlement
- * Stand-alone actions
 - Additional enforcement/complement
 - Could ignite agency interest
 - Indicator function
- * Evidence
 - Leniency program risk and opportunity
- * Agency *Amicus* in court
- * Remedies/settlements
 - Public enforcement tools
 - Procedure is key
- * Policies/procedures advanced by agencies
 - Damages – calculation, level, passing-on
 - Class/representative actions
 - Deterrence and compensation policy

Case study (I)

- * Based on a recent actual case
- * Client call – major suppliers fined by the European Commission
 - Great - competition law awareness
- * Client's initial interest...
 - Commission decision – evidence
 - Commission policy encouraging development of private actions
 - We have the incentive and position as substantial buyers in the market (downstream value minimal)
 - Send a message to suppliers for future
 - Settlement is goal – lawsuit if we have to

Case study (II)

- * Issues for the client
 - Damage calculation costs
 - Passing-on
 - Discovery/disclosure
 - Level of damages
 - When - decision publication and appeal delays
 - Where - wide variety of rules in different jurisdictions
 - Paying the lawyers
- * Bottom line:
 - Too many procedural obstacles, not enough incentives for the client to take the case forward with defendants
 - Result in this case: no one threatens or sues, no redress to harmed parties

Competition advocacy issues

- * Awareness - competition law and redress mechanisms
 - Substantive and procedural rights for plaintiffs
 - Liability exposure and defences for defendants
 - Deterrence and compensation
- * Complementing public enforcement with successful private system
 - Building with stakeholders a fair and confidence-inspiring system with incentives for plaintiffs and defendants
 - Plaintiffs - key role of direct purchasers and collective actions
 - Defendants – leniency and system efficiency
- * Using public enforcement policies to achieve efficient private results
 - Published decisions/*Amicus* role
 - Immunity/leniency conditions - assist plaintiffs
 - Enforcement settlement conditions - compensation
 - Fine reduction - compensation
- * Encouraging settlements through good administrative and pre-trial procedures

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