

Injunctive Relief and Private Antitrust Enforcement

BACKGROUND

- An injunction is a court order which requests the defendant either to undertake or to refrain from a certain action in order to protect the plaintiff's rights, prevent wrongful acts or undo a wrong.
- Injunctive relief provides a potential antitrust remedy but one that is often overlooked and is broadly underrated.

METHODOLOGY

- The role of injunctive relief for breaches of competition law is compared for two jurisdictions: England & Wales and Germany.
- The analysis draws on available antitrust litigation data for the period 2004 to 2009.

KEY FINDINGS

- Comparison of antitrust injunctions in Germany and England & Wales reveals a considerable diversity of legal rules between the two jurisdictions.
- There would appear to be different attitudes towards antitrust injunctive relief which may be traced back to general differences between the common law system prevailing in England & Wales and the civil law system prevailing in Germany.
- There is widespread use of injunctive relief in German antitrust proceedings. This comprises both permanent and preliminary remedies which are made available to victims of anticompetitive conduct.
- In comparison, very few plaintiffs seek injunctions in England & Wales.

POLICY ISSUES

- The question is raised of whether the European Commission is right in only focusing on damages actions in the attempt to create similar conditions for private antitrust claims in Member States.
- An injunction may be a particularly valuable remedy in cases involving the abuse of dominance or vertical restraints but less valuable in cases of violations of cartel prohibition.
- German experience suggests that injunctive relief can be a favourable remedy because it does not require either proof of causation or proof of the amount of damages.
- The English High Court has pointed out with reference to Article 102 that there are cases where injunction orders are the only form of relief of any real value to the plaintiff.
- Injunctions can be an attractive remedy from an efficiency point of view because the courts do not need to calculate damages.

May 2011

Injunctive
Relief and
Private
Antitrust
Enforcement

CCP Policy Briefings

May 2011

Injunctive
Relief and
Private
Antitrust
Enforcement

CCP Policy Briefings

THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper (11-7) and more information about CCP and its research is available from our website: www.uea.ac.uk/ccp

ABOUT THE AUTHORS

- Sebastian Peyer is a Post-doctoral Research Fellow at the Centre for Competition Policy.