

# Les sanctions antitrust : une introduction

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**Chicago Unbound**

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Journal Articles

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1983

# Optimal Sanctions for Antitrust Violations

William M. Landes

Paolo Buccirossi and Giancarlo Spagnolo

**Optimal Fines in the Era of Whistleblowers. Should Price Fixers still  
Go to Prison?**

December 12, 2005

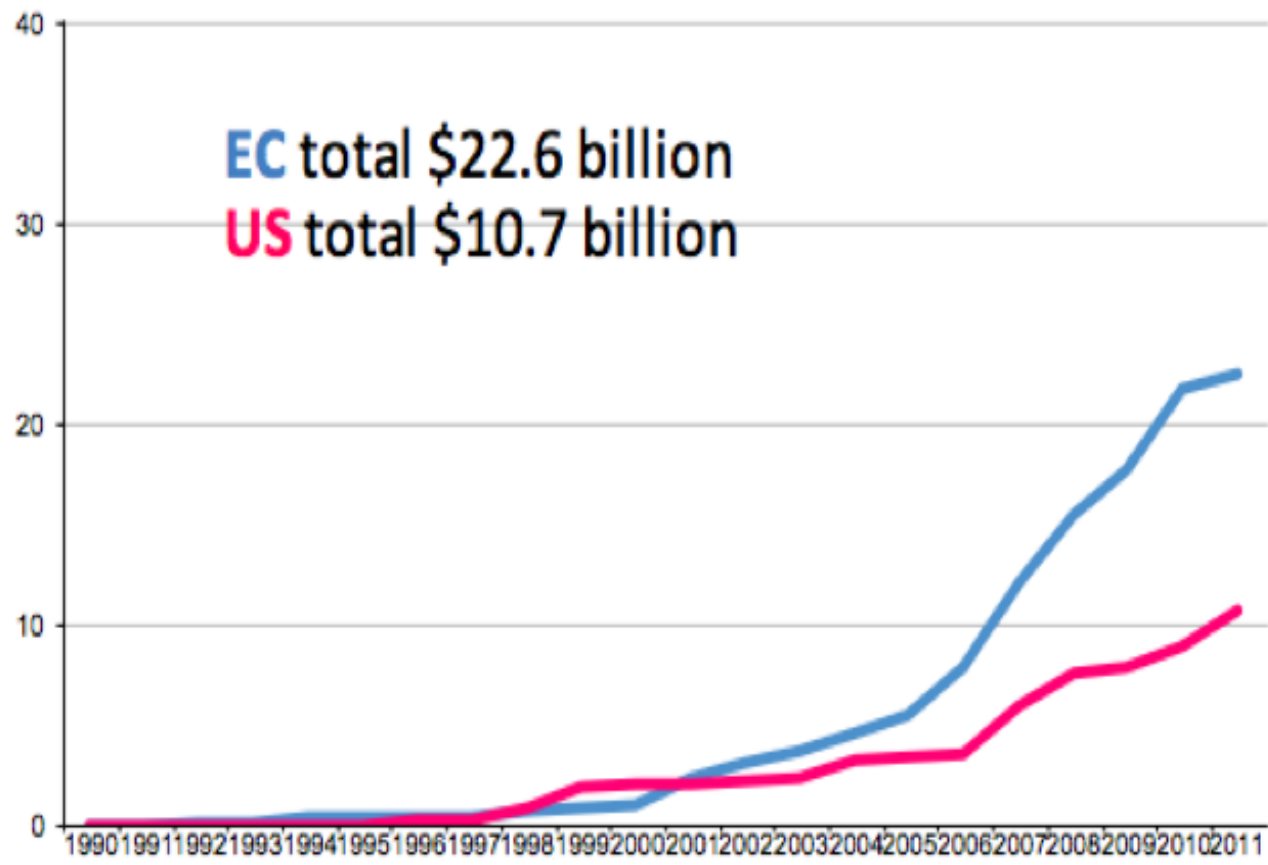
**CARTELS AS RATIONAL BUSINESS STRATEGY:  
CRIME PAYS**

*John M. Connor & Robert H. Lande<sup>†</sup>*

*CARDOZO LAW REVIEW*

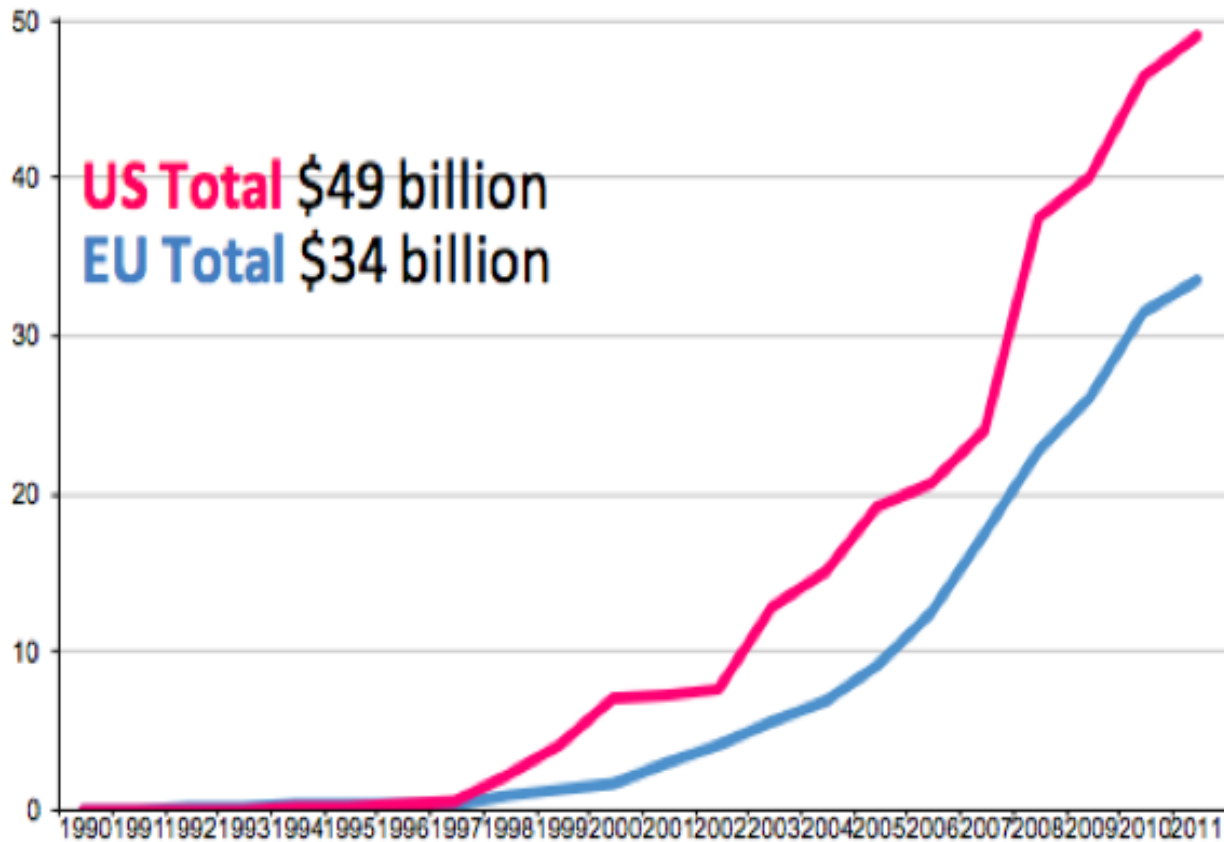
Le quantum de la sanction importe  
plus que les modalités  
de sa mise en oeuvre

# Figure 9 Evolution des sanctions antitrust aux Etats-Unis et en Europe



Source : Connor (2012) conférence *Concurrences* « Antitrust fines : what is the right amount ? »

# Evolution du montant des sanctions antitrust et des réparations aux Etats-Unis et en Europe



Source : Connor (2012) conférence *Concurrences* « Antitrust fines : what is the right amount ? »

<b>INCARCERATION</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Number of Individuals Sentenced	27	28	39	31	44	37	39	55	39	35
Number of Individuals Sentenced to Incarceration Time	18	19	34	19	35	29	21	45	28	21
Average Number of Days of Incarceration <sup>20</sup>	731	283	923	754	726	898	502	747	750	787

<b>OTHER CONFINEMENT<sup>21</sup></b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Individuals Sentenced to Other Confinement	6	13	5	11	9	6	12	4	5	7
Average Number of Days of Other Confinement <sup>22</sup>	212	212	217	186	244	216	173	135	162	181

Source : DOJ Antitrust division [2015]

The optimal penalty should be compared to the actual U.S. sanctions that were imposed on the Lysine cartel. When expressed in terms of millions of 2010 dollars they were:

\$114 Fines (converting \$98.55 million in fines in 1996–2010 dollars)

+ 99 Private Suits (converting \$82.5 million in recoveries in 1996–2010 dollars)<sup>232</sup>

+ 50 Prison-Equivalent for ninety-nine months of U.S. prison time at \$500,000 per month<sup>233</sup>

\$263 Total Sanctions

Thus, even though the lysine cartel was heavily sanctioned in the United States in three ways (by fines, prison for top executives, and by private litigation), the combination of the sanctions that were imposed is only 37% to 51%<sup>234</sup> as large as the overall amount of sanctions that should have been imposed from the perspective of optimal deterrence.



# Cartels et comportements des managers : analyse et implications pour les politiques publiques

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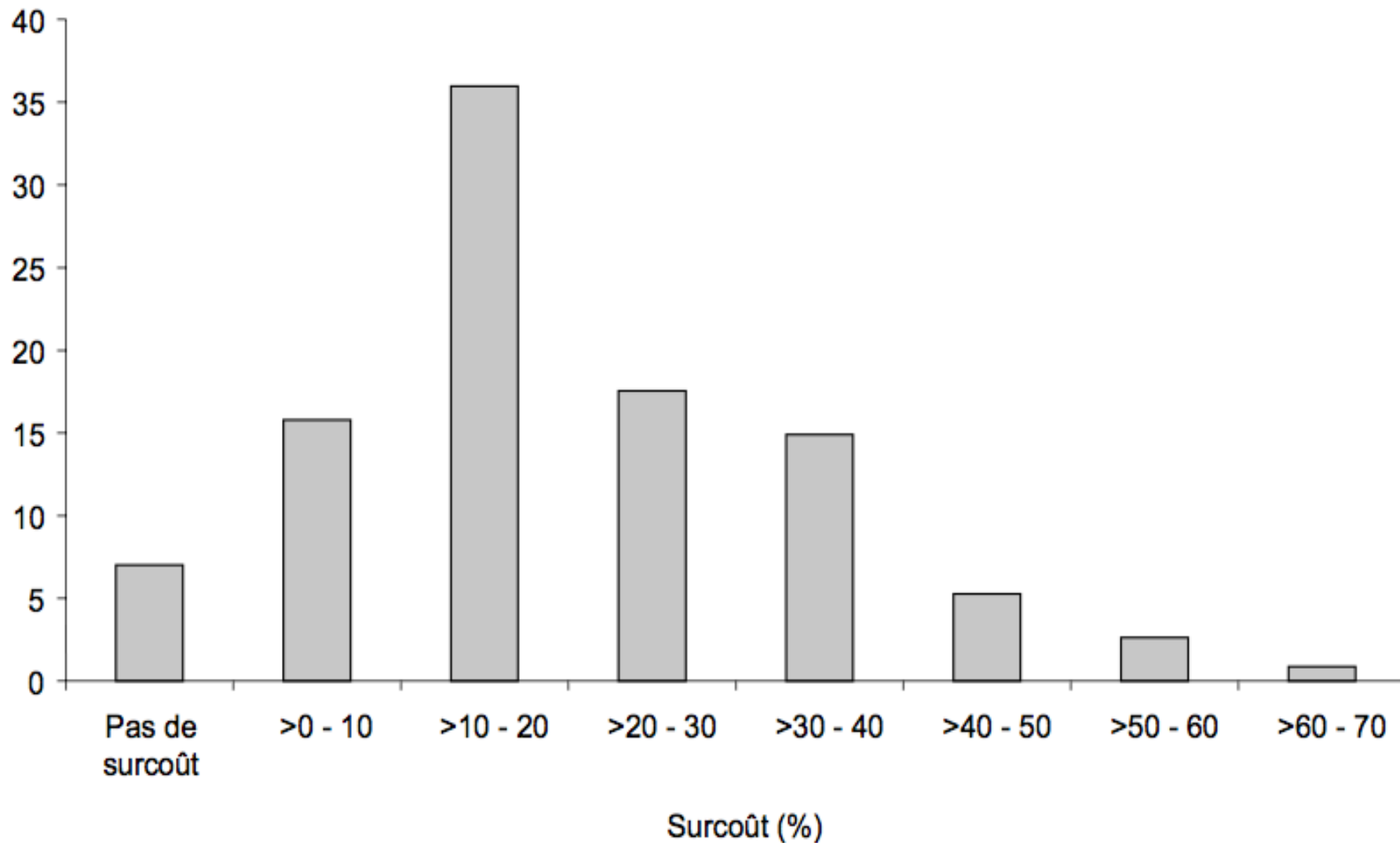
Emmanuel Combe\*

Constance Monnier-Schlumberger\*\*

Source : Revue Economique 2016

Le quantum de la sanction pourrait  
être apprécié sur la base  
de régularités statistiques

## → Distribution des surpris (cas de cartels)



Bias-corrected mean and median overcharge estimates (OE)  
The prop.% are fractions of the total Connor sample (1120 cartels)

		All Cartels	OE > 0%	0% < OE < 50%	OE ≥ 50%	Cartels Before 1973	Cartels After 1973
All locations	Mean	17,52	18,89	13,62	35,28	17,87	17,39
	Median	14,05	14,35	13,63	34,23	13,45	14,22
	prop.%	100,00	92,77	70,18	22,59	28,50	71,50
US	Mean	16,45	18,13	13,73	34,70	17,92	15,76
	Median	14,01	14,27	13,75	32,52	13,94	14,14
	prop.%	30,00	27,23	21,52	5,71	9,64	20,36
EU	Mean	17,75	18,97	13,08	34,16	17,70	17,79
	Median	13,78	13,90	13,32	32,55	13,40	14,03
	prop.%	33,48	31,34	22,59	8,75	13,39	20,09
Domestic	Mean	15,29	16,80	13,26	37,00	16,86	14,59
	Median	13,40	13,55	13,32	35,80	13,40	13,39
	prop.%	46,79	42,59	36,25	6,34	14,46	32,32
International	Mean	19,49	20,67	13,99	34,61	18,90	19,70
	Median	15,44	15,64	14,03	33,91	13,67	15,52
	prop.%	53,21	50,18	33,93	16,25	14,02	39,20

Source : Boyer & Kotchoni (2012)

## → Estimations de la probabilité de détection

R.M. Feinberg <sup>290</sup>	Less than 0.50	An anonymous confidential survey of antitrust lawyers working in Brussels and observing the EC; the mean response was 4.4, where 5=strongly agree and 3=neither agree nor disagree.
United States Sentencing Commission <sup>291</sup>	0.10	Contains the transcript of 1987 testimony of DAAG for Antitrust, Ginsburg; probably refers to domestic cartels of 1970s and 1980s.
Gregory J. Werden & Marilyn J. Simon <sup>292</sup>	Less than 0.10	Appears to be a general, subjective opinion of Antitrust Division professional prosecutors.
Mark A. Cohen & David T. Scheffman <sup>293</sup>	0.33	No hint as to the source, but may have been influenced by Landes (1983).
Jean-Claude Bosch & E. Woodrow Eckard Jr. <sup>294</sup>	0.13–0.17	A quantitative estimate derived from an event study of U.S.-prosecuted cartels 1961–1988.
Mitchell A. Polinsky & Steven Shavell <sup>295</sup>	0.138–0.165	Refers to U.S. arrest rates for some of the most common felonious property crimes (burglary, auto theft, and arson); may be overstated if victims of such crimes fail to report some occurrences.

Office of Fair Trading <sup>296</sup>	0.30	An anonymous survey of U.S. antitrust lawyers in private practice (with a “low response rate”) asked about the increase in cartel activity “if the Division stopped enforcing Section 1 of the Sherman Act.” Results were originally summarized in the FY2001 DOJ report to Congress.
Richard A. Posner <sup>297</sup>	0.25	An illustration of an optimal deterrence calculation by a leading antitrust jurist.
Organisation of Economic Co-Operation and Development <sup>298</sup>	0.13–0.17	OECD accepts Bosch and Eckard (1991).
Emmanuel Combe et al. <sup>299</sup>	0.129–0.133	Replicate Bosch and Eckard’s (1991) method using data from EU-prosecuted cartels from 1969 to 2002.
Bush et al. <sup>300</sup>	0.10–0.33	A summary of most of the sources in this table above.
Alla Golub et al. <sup>301</sup>	0.13–0.17	This paper replicates the Bosch and Eckard (1991) model using U.S. cartels from a later period and finds few differences in deterrence.
Terry Calvani <sup>302</sup>	0.13–0.17	In an Article on cartel enforcement an experienced antitrust official cites Bosch and Eckard (1991) with approval.

- The net harms to U.S. direct purchasers were \$80 million, expressed in 1993–1995 dollars.<sup>227</sup> To apply the “net harm” or investment-opportunity-cost adjustment, we use Federal Reserve Bank prime rates of interest for the years 1995 and 1996, plus 1%, or 12.22%. Thus, the damages were \$80 million,<sup>228</sup> which is the sum that the victims ought to have received when the cartel operated, and is equivalent to \$119.8 million in 2010 dollars.
- These overcharge figures should be multiplied by 1.03 to 1.20 to account for the additional allocative inefficiency harms (deadweight loss) of market power.<sup>229</sup>
- The average probability of cartel detection, the evidence shows, is 25% to 30%.<sup>230</sup>
- The average probability the enforcers will be able to prove that the cartel violated the law has been estimated to be 80%.<sup>231</sup>

Therefore, for the Lysine cartel, the optimal U.S. penalty (in millions of 2010 dollars) was:

$$(\$119.8 \times 1.03) \div (0.30 \times 0.80) \text{ (low estimate)}$$

or

$$(\$119.8 \times 1.20) \div (0.25 \times 0.80) \text{ (high estimate)}$$

$$= \$514\text{--}719$$

THE ANTITRUST BULLETIN: Vol. 56, No. 2/Summer 2011 : 235

*Fines against hard core cartels in  
Europe: The myth of overenforcement*

BY EMMANUEL COMBE\* AND CONSTANCE MONNIER\*\*



# Sanctions antitrust : Quel est le juste montant ?

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## QUELLE EST L'AMPLEUR DE LA SOUS-DISSUASION DES CARTELS EN EUROPE ? COMPLÉMENTS SUR NOS RÉSULTATS

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Les sanctions en pratique :  
peut-on se contenter de régularités  
statistiques ?

# US Sentencing Guidelines (2011)

It is estimated that the average gain from price-fixing is 10 percent of the selling price. The loss from price-fixing exceeds the gain because, among other things, injury is inflicted upon consumers who are unable or for other reasons do not buy the product at the higher prices. Because the loss from price-fixing exceeds the gain, subsection (d)(1) provides that 20 percent of the volume of affected commerce is to be used in lieu of the pecuniary loss under § 8C2.4(a)(3). The purpose for specifying a percent of the volume of commerce is to avoid the time and expense that would be required for the court to determine the actual gain or loss. In cases in which the actual monopoly overcharge appears to be either substantially more or substantially less than 10 percent, this factor should be considered in setting the fine within the Guideline fine range.

Source : DOJ Antitrust division

<b>entreprises</b>	<b>sanction avant</b>	<b>sanction après</b>	<b>réduction</b>
<b>Ciblex</b>	4,4 millions	250 000	-94 %
<b>Lambert Valette</b>	6,7 millions	500 000	-92 %
<b>XP</b>	11,8 millions	900 000	-92 %
<b>Heppner</b>	34,1 millions	3 millions	-91 %
<b>Ducros</b>	4,3 millions	300 000	-93 %
<b>Ziegler</b>	8,3 Millions	10 000	-99,9 %