



The role of CDC in the context of private antitrust litigation

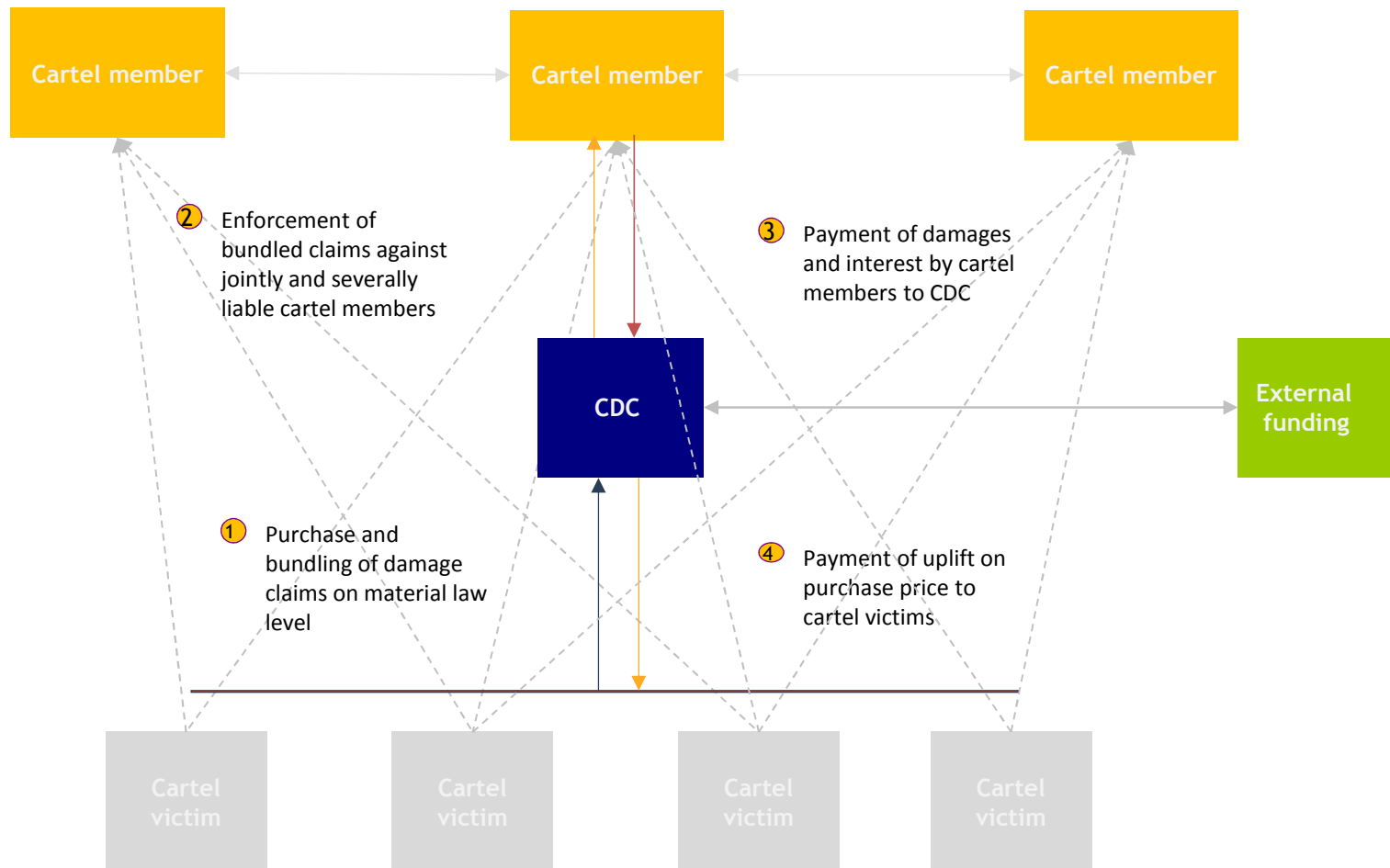
Vereniging voor Mededingingsrecht
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The role of CDC in the context of private antitrust litigation

Overview

- Multidisciplinary approach: Economic, legal and IT
- CDC actively pursues cases pending in Germany, the Netherlands and Finland
- Various sectors, including chemicals, building materials and oil-based products
- New cases in the pipeline
- Focus on antitrust “follow-on” actions: infringement established by a competition authority
- Careful economic and legal *ex-ante* assessment of cases: only meritorious claims are pursued
- In currently pending cases: acquisition of damage claims from a multitude of corporate cartel victims
 - Effective outsourcing of claims enforcement by affected companies
 - Access to justice: single cartel victims often not in a position to enforce claims
- Enforcement of multitude of claims in one proceeding results in synergies and economies of scale with regard to cost-intensive case preparation and litigation – also for defendants
- Successful bookbuilding enhances chances of settlement with jointly & severally liable infringers, possibility to effectively limit the risk exposure of cartel members (‘one-stop shop’)
 - Settlements achieved with various defendants in several multijurisdictional damage cases

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Legal

- Grouping on a material law level allows for significant synergies
- Enforcement of bundled damage claims in- and out-of-court in one single proceeding
- Actions in own name and at own risk

Economic

- Incentive for victims to pursue legitimate damage claims which otherwise would be foregone
- Ongoing business relationships not affected by litigation
- Outsourcing of claims-enforcement and clearing of balance-sheets
- Effective payout to victims which suffered the damage

Practical

- Effective management of complex antitrust cases by experienced CDC-staff, including preparation of case and bookbuilding
 - Collection and analysis of market-wide data across multitude of victims (i.e. representative data) allows for court-proof substantiation of damages
 - Development of specific IT tools and software for data gathering and economic analysis
- Damage claims turn from risky burden into valuable assets

The role of CDC in the litigation funding context

Funding
and claims
purchase

- Purchase of damage claims = distressed debt management
- Legal certainty: concept of claims purchase recognized and applied across jurisdictions in EU
 - Follow-on actions imply the existence of a proven infringement
- Bookbuilding ensures interesting investment opportunity for funders/financial investors
 - Antitrust damage claims often high value claims (long-lasting infringements, market wide effects across the EU, interest and yield)
 - Build-up of cases which are large enough to merit complex litigation
- Growing number of investment funds with focus on litigation across the EU
 - Great interest in follow-on antitrust actions
 - Purchase of claims at an early stage against substantial purchase price as effective alternative to financing of court-cases
 - Need for specialized case-management and expertise

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