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# State aid enforcement by national courts: an economist's perspective

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# Introduction and context

## The 2019 study on enforcement by national courts

Number of interesting takeaways for economists:

Enforcement of state aid by national courts



### Public enforcement

Although still “limited”, the number of public enforcement claims has been growing over last 10 years, with a majority (62%) where plaintiffs were beneficiaries



Though quantum is not necessarily at issue, in our experience, it can be a contentious point



### Private enforcement

Only 6 damages awards over last 10 years, with potential reasons:

- “not well-structured arguments”
- high burden of proof for claimants

The study explicitly points out usefulness of “further guidance” on economics of state aid damages

# Public enforcement (1/2)

## Calculating the aid quantum is not straightforward



Quantum calculations can potentially lead to disputes between beneficiaries and national authorities, or even the Commission:

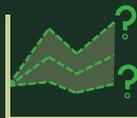
Some aspects of the **methodology or parameters** given in decisions can lead to difficulties in quantification



Reconciling the ex-ante nature of the notion of advantage with the need for ex-post adjustments



Difficulties around the notion of 'restoring the status quo ante' (i.e. forfeiting the advantage)



What precise point-estimate/scenario to choose when only a range was identified in the decision?



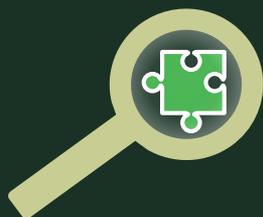
## Public enforcement (2/2)

### A need for a unified framework?



In light of the disputes around aid quantification and recovery, and to provide further clarity for beneficiaries, public authorities and state aid practitioners,

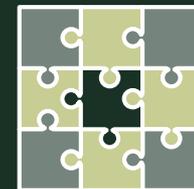
**it could be useful if a unified framework for aid quantification were to be developed**



From an economics perspective, there are ways to design quantum calculation principles in line with the spirit of state aid rules



Such a framework could contribute to making recovery of aid more effective, speedy and uncontroversial



# Private enforcement (1/2)

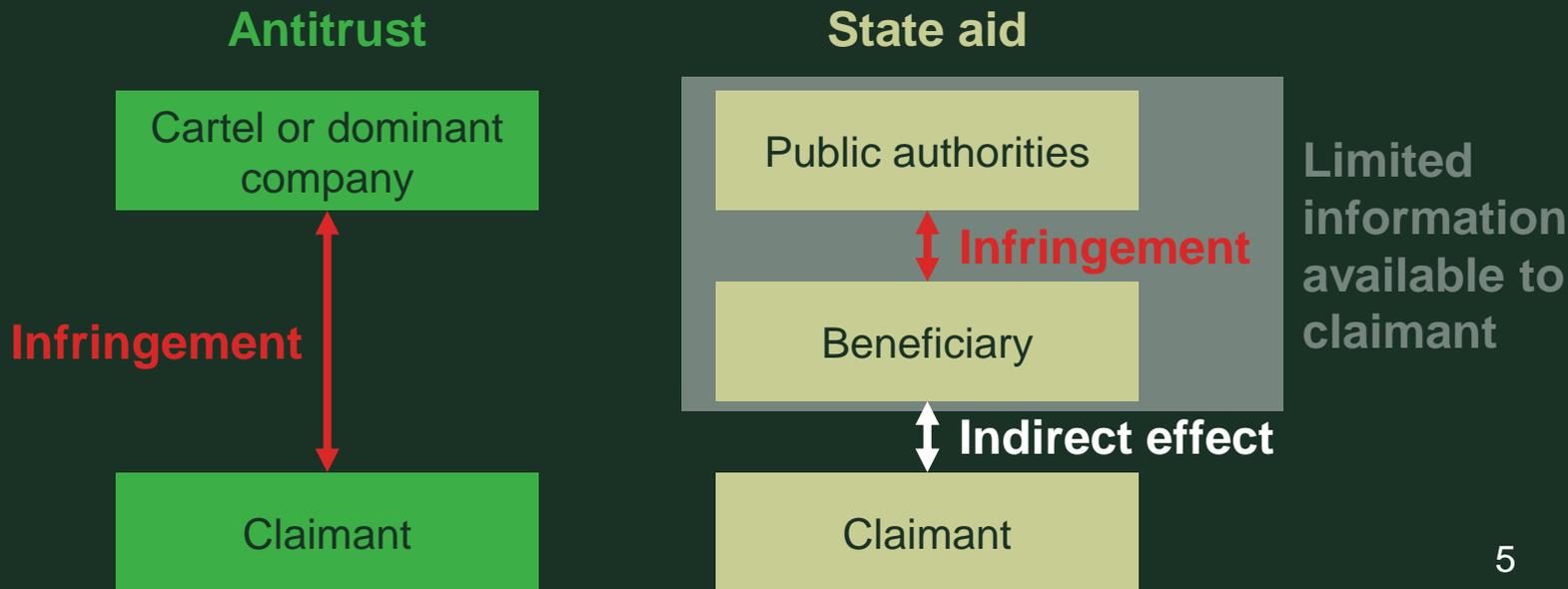
## Why are damages awards so rare?



According to the 2019 study, a number of procedural and substantial factors can play a role, among which:

**a high burden of proof on claimants**

In state aid, demonstrating a robust and evidenced theory of harm can sometimes be more difficult than in antitrust, despite similarities (to learn from)



## Private enforcement (2/2)

Robust economic evidence is a key to damages



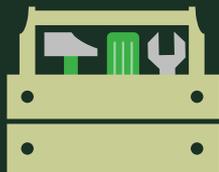
Economic analysis can be used to develop various building blocks of a compelling and “well-structured” case for damages, for example:

Building a credible **counterfactual scenario**, i.e. what the *beneficiary* would have done absent the advantage, with available data



Developing **theory of harm** to (causally) link the behaviour of the aid beneficiary to the impact on the claimant, and quantifying that impact

Initial calculation of aid **quantum** when it is not known



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