The U.S. statutory scheme also explicitly allows private parties to sue for and have injunctive relief against "threatened loss or damage" arising from a violation of section 7 of the Clayton Act.[49] "In the *Minorco* case, which was investigated at the national level by the U.K., U.S., EC and Australian authorities, each authority approved the deal, but a private suit in U.S. federal court stopped the tender offer in its tracks, on the basis of a product market definition and a concentration threshold which had been rejected by both the British and the American authorities."[50] In cases where the plaintiff prevails, he is awarded the cost of the suit.[51]

Section 4 of the Clayton Act also allows any person "injured in his business or property by reason of anything forbidden in the antitrust laws" to sue for treble damages. According to U.S. sources, perhaps only about 12 out of 226 private merger suits since 1953 have sought to recover treble damages and it is not believed that any have been collected (see table 3 in annex II).

In the 1980s, the DOJ filed *amicus curiae* briefs with the Courts encouraging them to increase the level of evidence that plaintiffs in civil cases must present to move beyond the summary judgement stage. These were generally successful leading to an increasing trend towards summary judgement and motions to dismiss.[52] As a consequence, there has been a decline in the number of private cases brought before the courts. In *Cargill, Inc v. Monfort of Colorado, Inc* (1986), however, the DOJ was not successful in persuading the court to adopt a blanket rule that competitors do not have standing to challenge proposed mergers on the basis of predatory pricing theory.[53] It appears that since that date competitors have become more adept at determining the appropriate grounds for launching a suit. A case to be heard by the U.S. Supreme Court within the next year will determine whether targets of mergers have the right to sue.

[49] There is no similar recourse to the courts for private parties in Canada.

[50] American Bar Association Section of Antitrust Law, Report of the Special Committee on International Antitrust, June 26, 1991, p.255.

[51] If the defendant prevails, however, his costs are not covered. This "preferential cost-award rule" gives substantial leverage to the plaintiff in out-of-court settlements.

[52] According to U.S. sources, perhaps 75 private merger cases have been heard in the last ten years. It should be borne in mind, however, that many civil anti-trust cases are settled before going to court such that they do not show up in the statistics. The statistics include cases brought by State Attorneys General.

[53] United States General Accounting Office, Justice Department: Changes in Antitrust Enforcement Policies and Activities, October 1990, p. 56