



The American Antitrust Institute

AAI Working Paper No. 11-03

**CARTELS PORTRAYED: U.S. vs. EC:
Who's Winning the Prosecution Race?
A 21-Year Perspective, 1990 to 2010**

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Introduction

- The following charts illustrate the global size and economic impacts of the modern international cartel movement and the enforcement responses of the world's antitrust authorities and national courts.
- The sample encompasses 640 private hard-core cartels that were subject to government or private legal actions (*i.e.*, formal investigations, damages suits, fines, or consent decrees) between January 1990 and December 2010. Each cartel had participants with headquarters in two or more nations. The sample is believed to be a reasonably complete list of all *contemporary private international cartels* discovered by jurisdictions with an active press or informative antitrust-authority Web site.
- All monetary data are expressed in nominal U.S. dollars using exchange rates during the cartel's life or on the day a legal action was announced.
- A special effort is made to create charts that illustrate **trends** in cartel dimensions and antitrust decisions.

THE BIG TWO: COMPARING US AND EC PROSECUTION ACTIVITY

- Numbers of cartels and companies fined
- Amounts and trends in fines
- US allows private suits, EU generally does not
- Thus, important to look at all penalties
- DOJ imprisons, EU does not

CAUTION

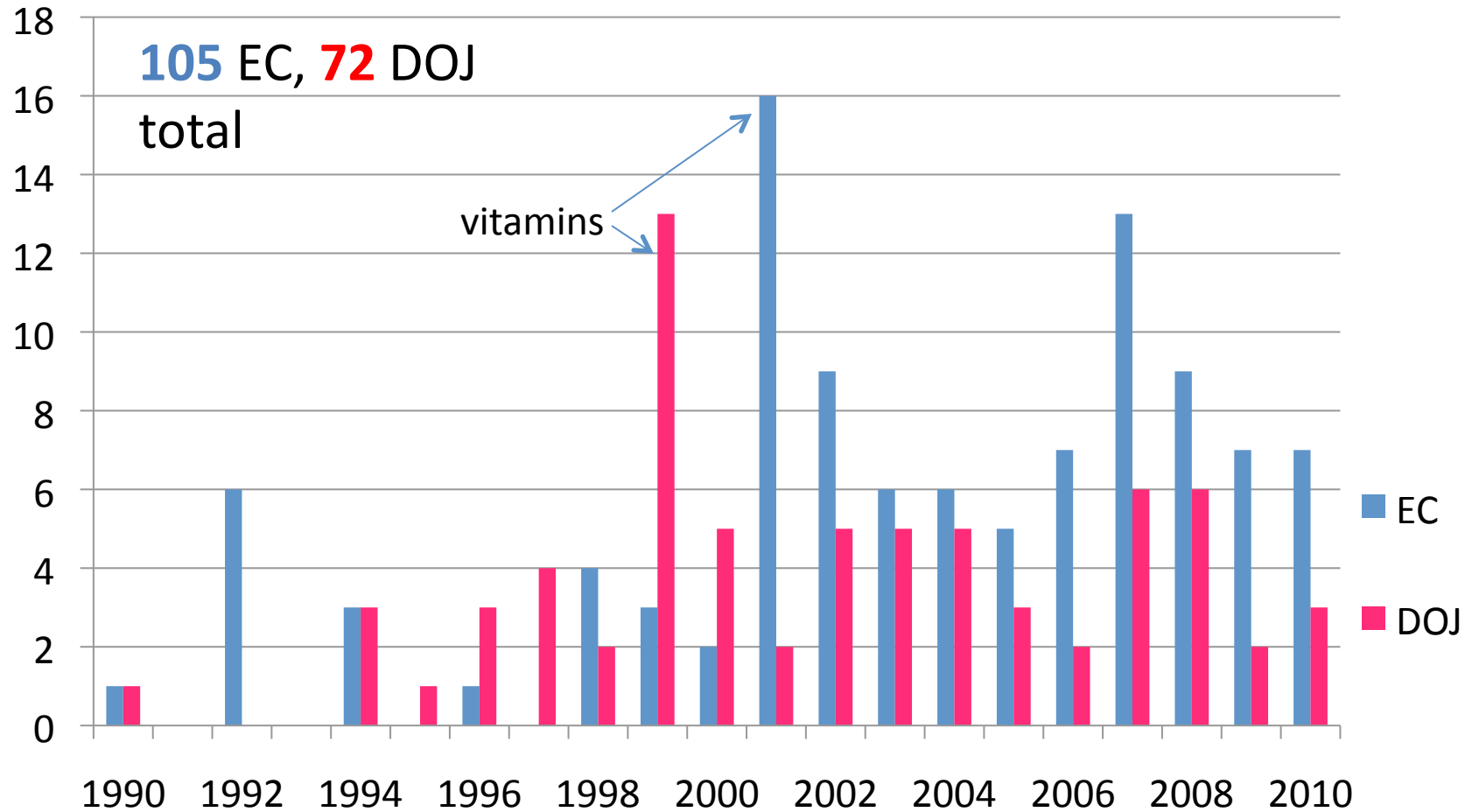
- Making comparisons is not easy.
- EC decides to fine allegedly “single continuous infringements,” i.e., whole cartels.
- DOJ negotiates “cases” (criminal guilty pleas from firms or individuals), not cartels; but immunized entities, “small” cases are ignored.
- Federal class-action settlements can be hard to evaluate properly; some exaggeration
- Hundreds of “opt-out” cases unreported

Narrative on Numbers

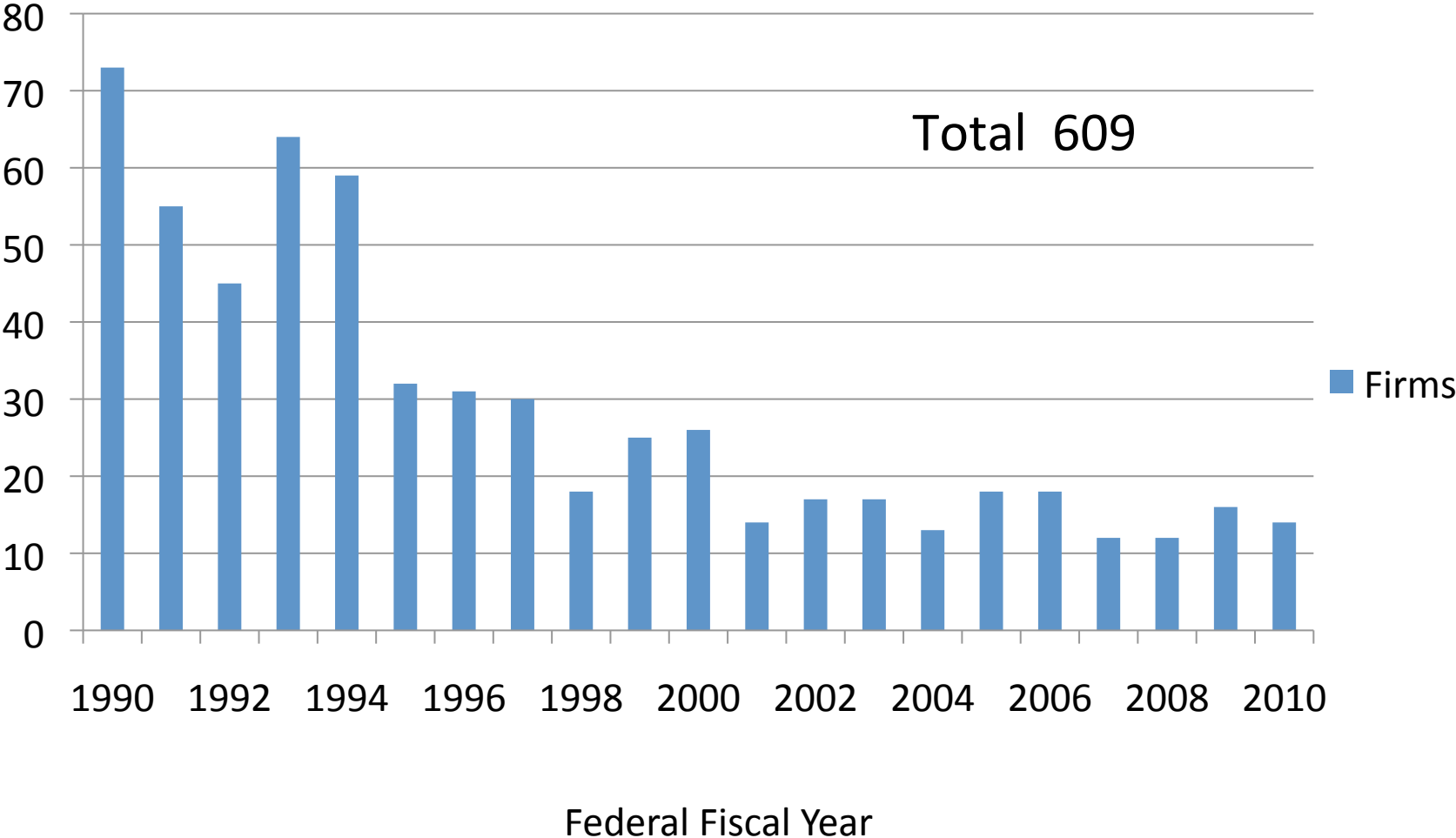
- For 1990-2010, the EC wins: 105 international cartels fined vs. 72 for DOJ (however, DOJ also prosecutes scores of local cartels*)
- EC fined slightly more companies than US (674 vs. 609), but US infinitely more executives convicted
- For international cartels only, EC/DOJ corporate convictions are 674/393

* DOJ Statistics count “cases” (indicted legal entities), not cartels

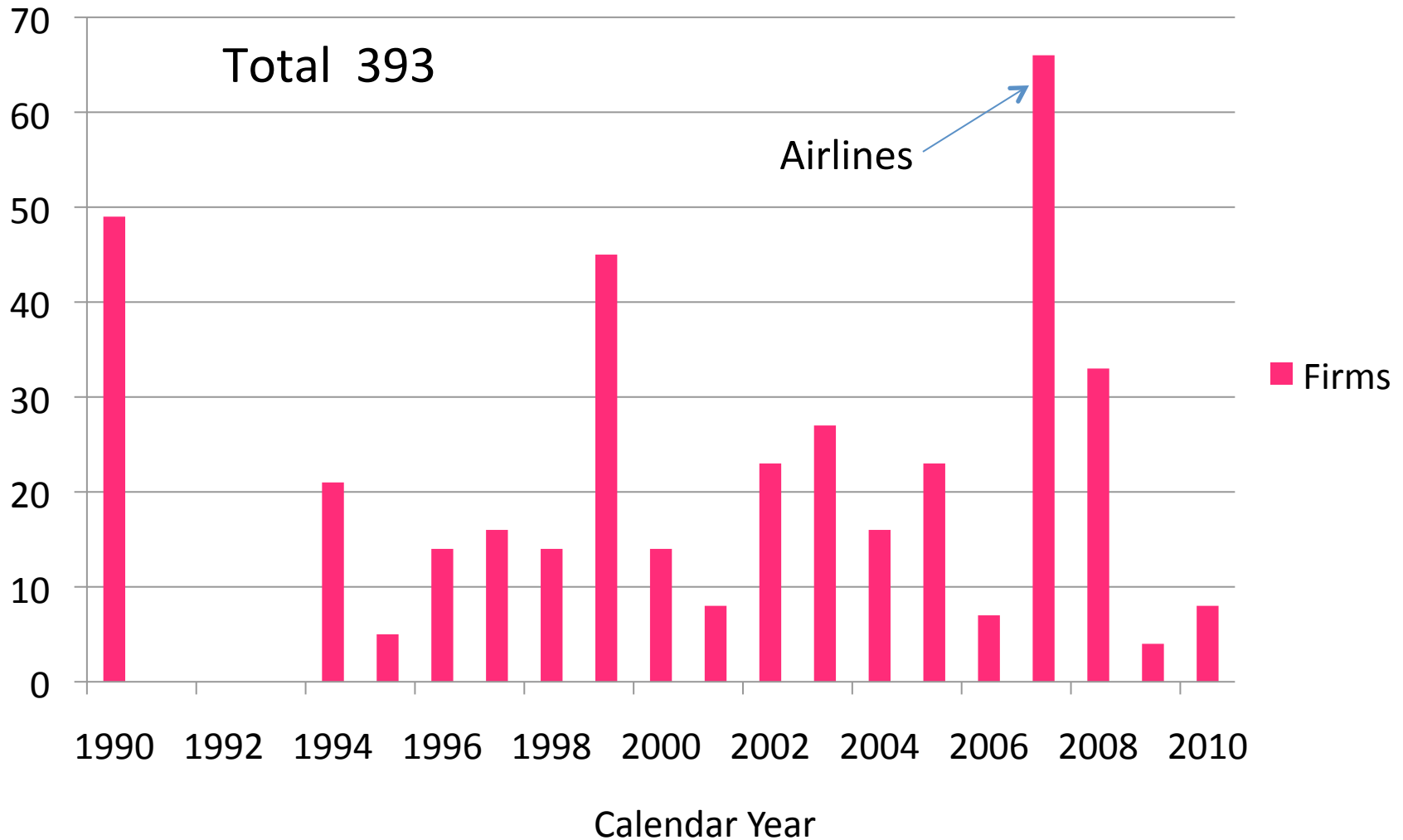
Number of Intl. Cartels Prosecuted, EC and DOJ, 1990-2010



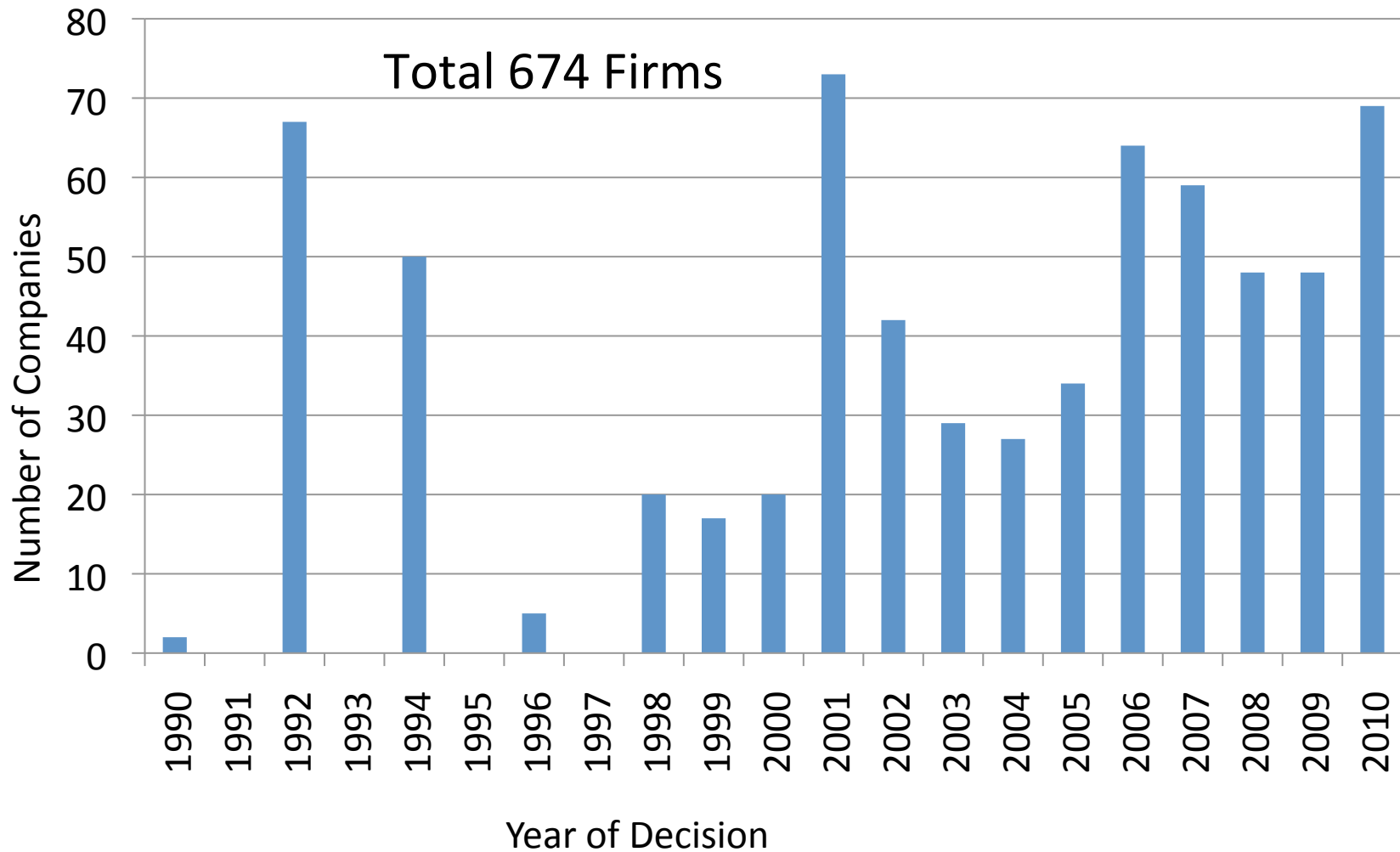
Number of Corporations Fined for Price Fixing, U.S. DOJ, 1990-2010



Number of Defendants, International Price Fixing, U.S. DOJ, 1990-2010



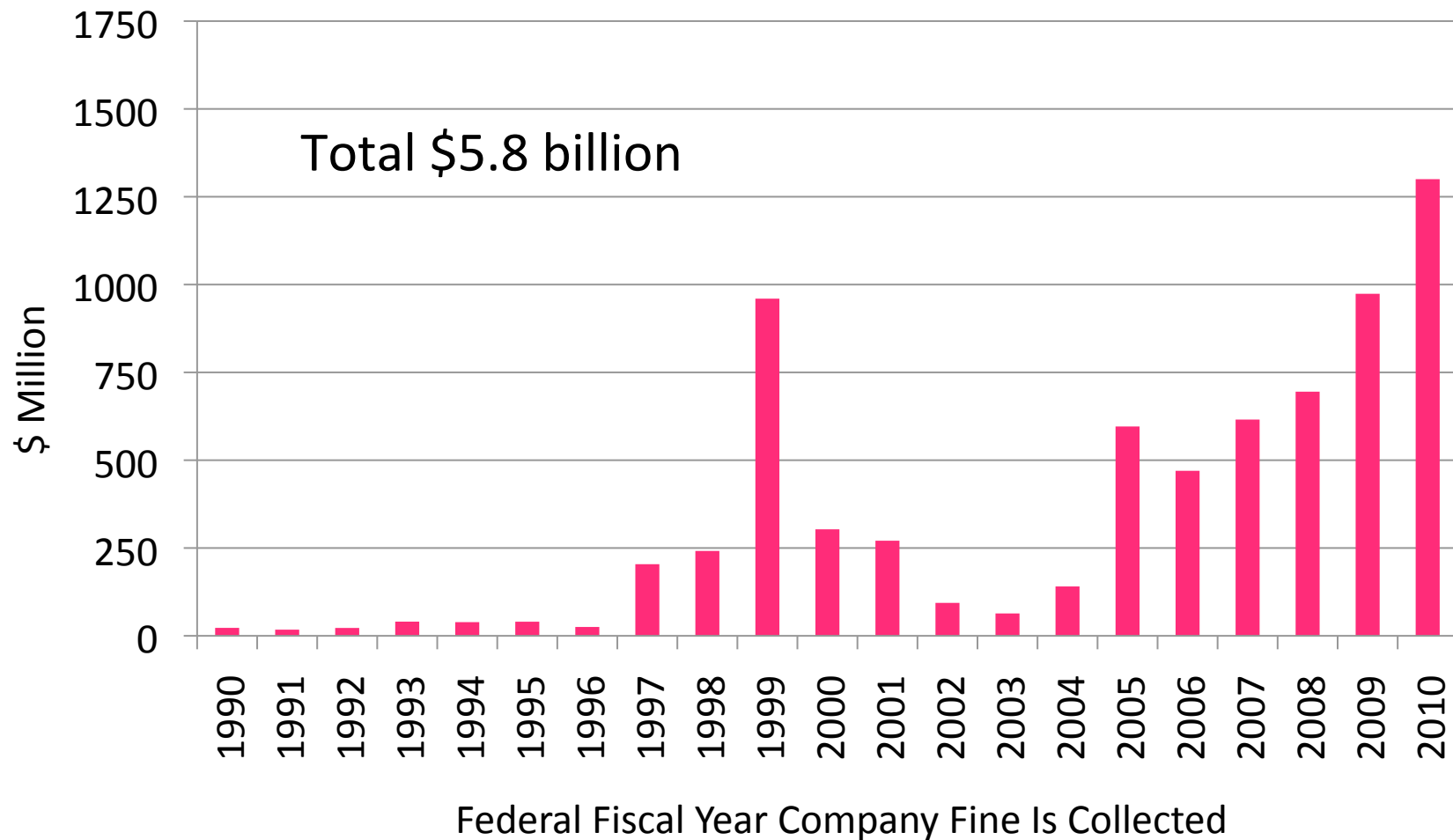
Number of Companies Found Guilty, European Commission Decisions



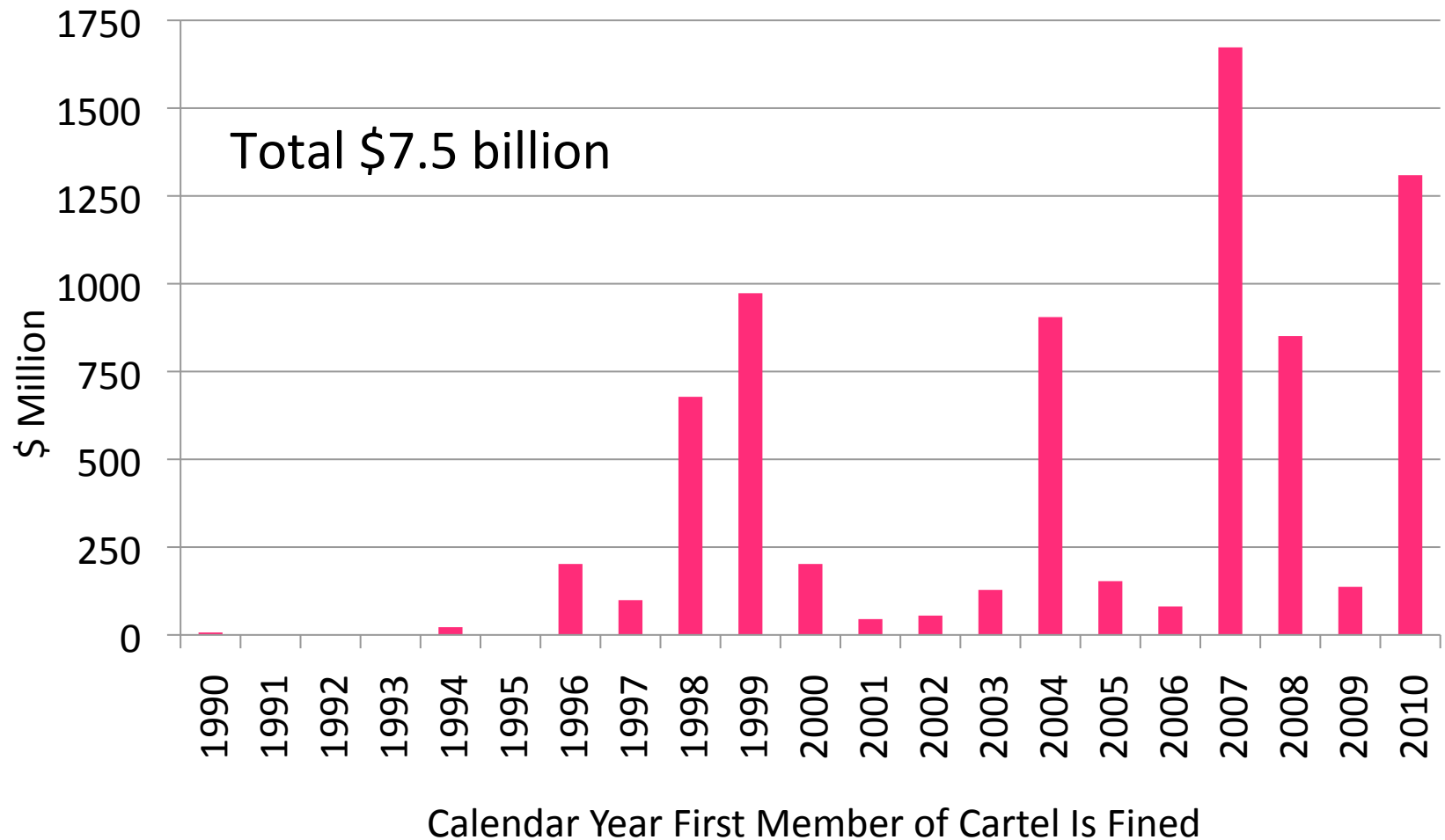
Narrative on Size of Cartel Fines

- Until 2000 the DOJ led the EC in amount fined.
- By 2010 EC fines accrued to triple the DOJ's.
- Why higher? 195% more infringers, and 45% higher median fines per firm.
- DOJ making greater use of installment pmts.
- EU NCAs' also now surpass DOJ's fines.
- US, EU cartel sales sizes are about equal.
- DOJ fines more foreign firms than does EC.

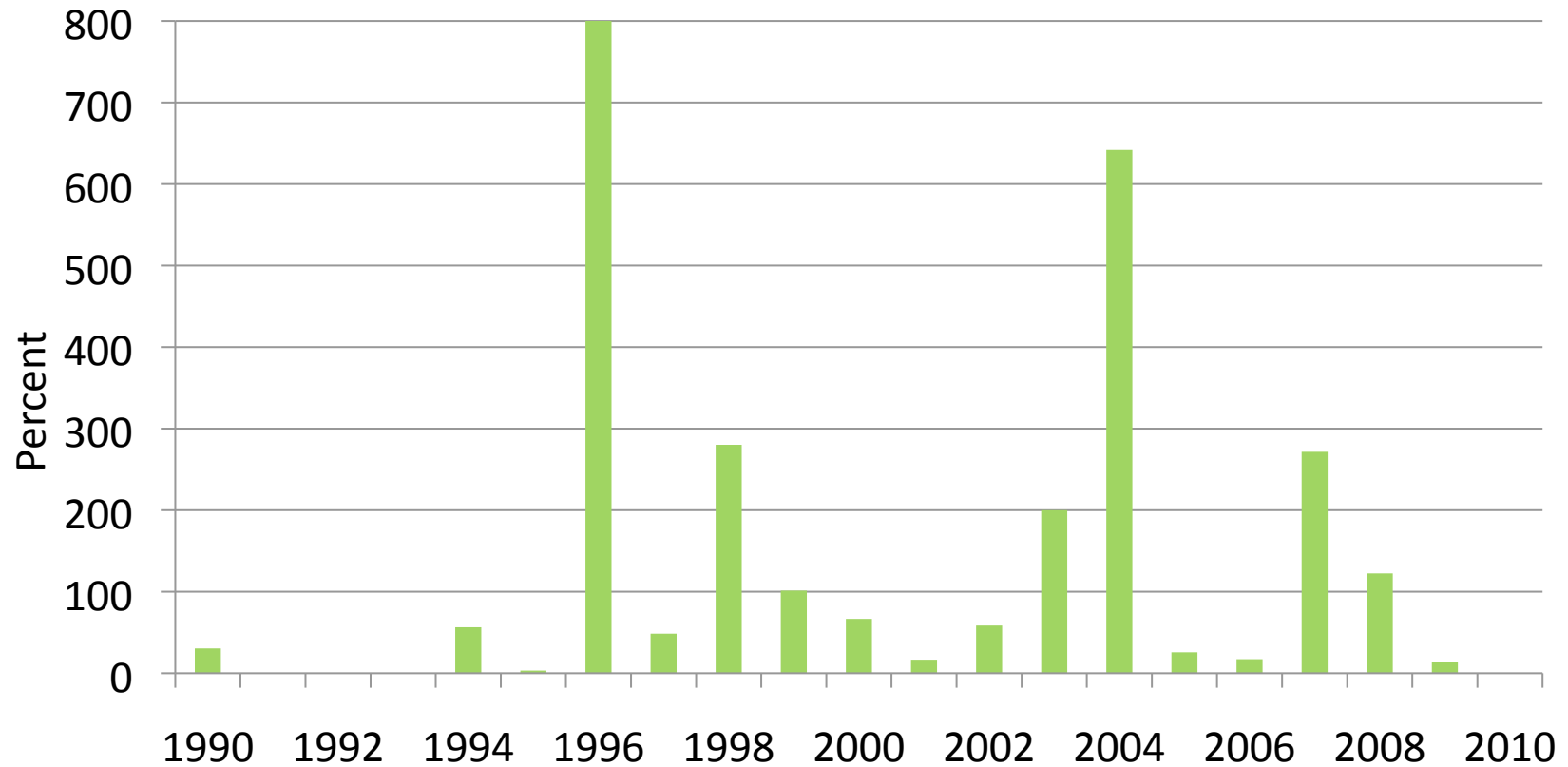
Total Criminal Cartel Fines Collected, **U.S. Government**, FY 1990-2009



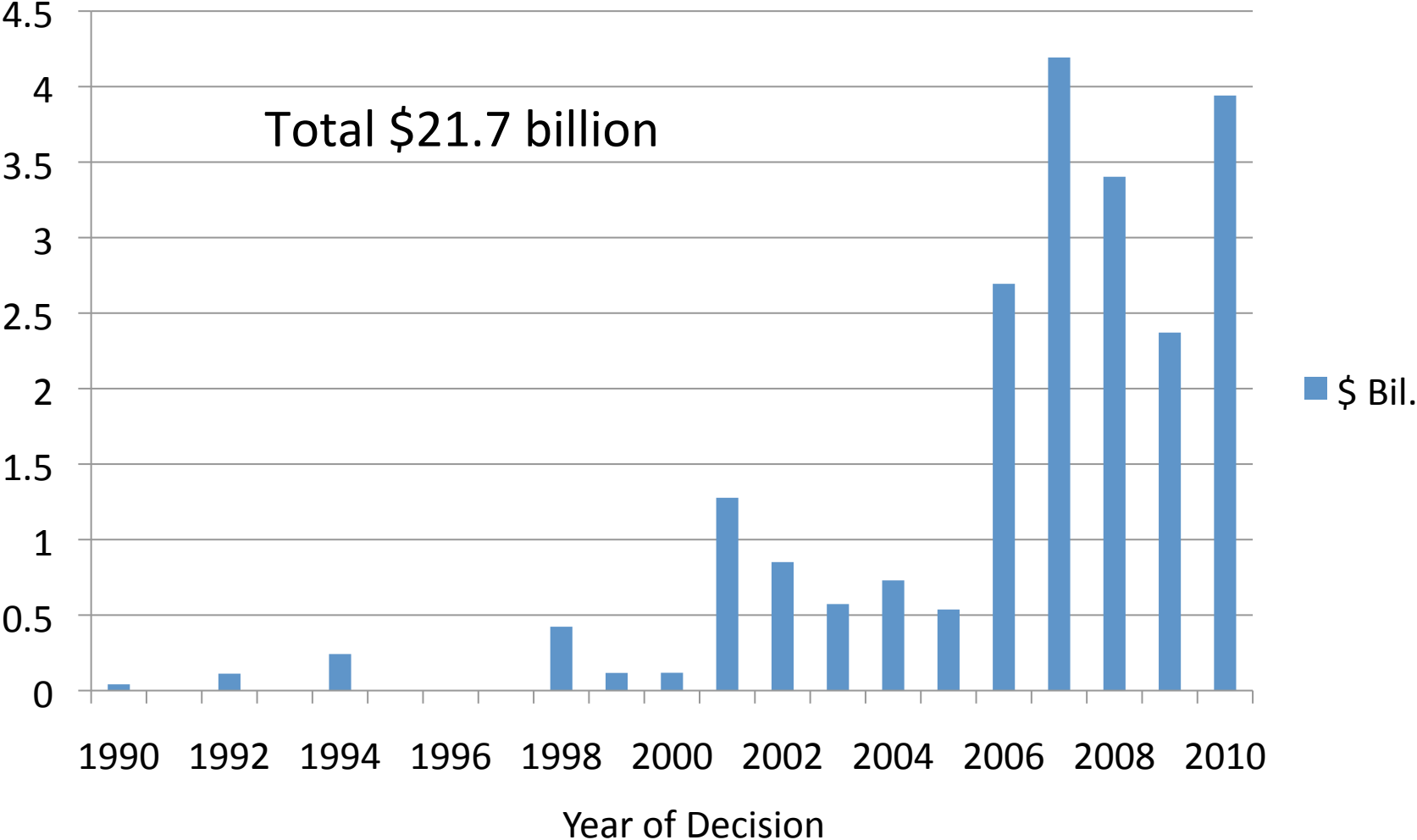
International Cartel Fines Announced, U.S. DOJ, 1990-2010



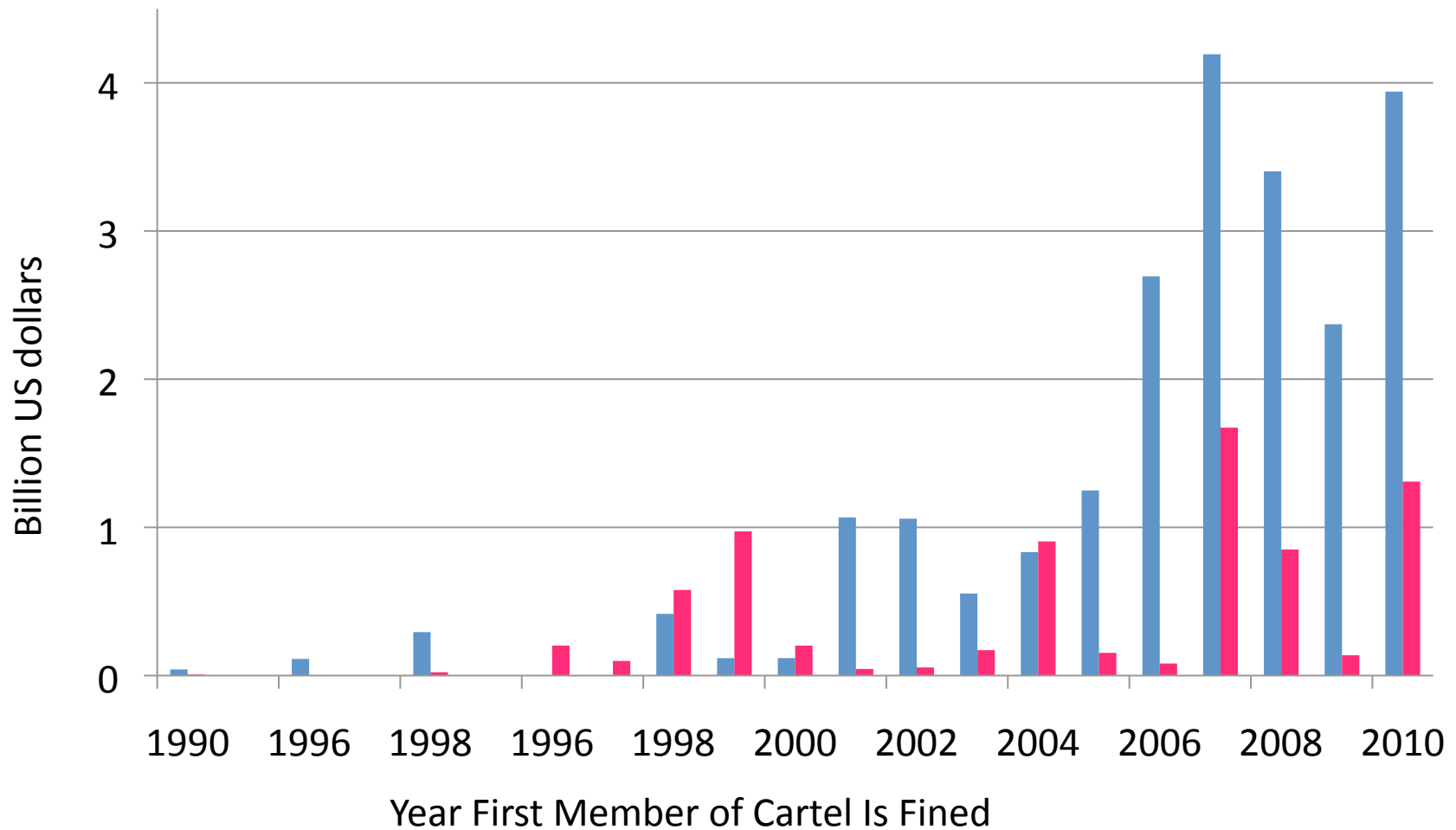
DOJ-Announced vs. DOJ-Collected Fines Are Hard to Match



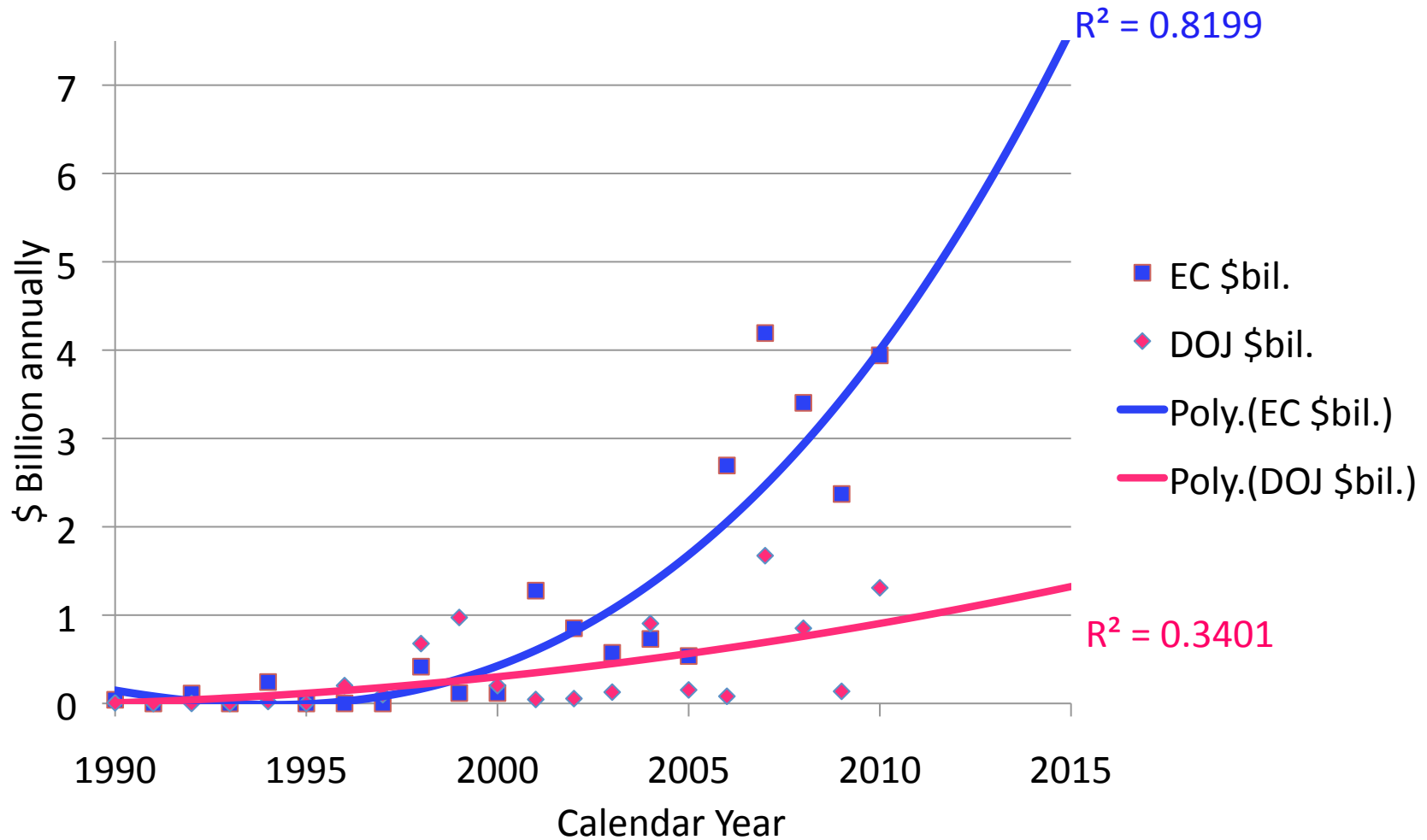
European Commission Fines Imposed, 1990-2010



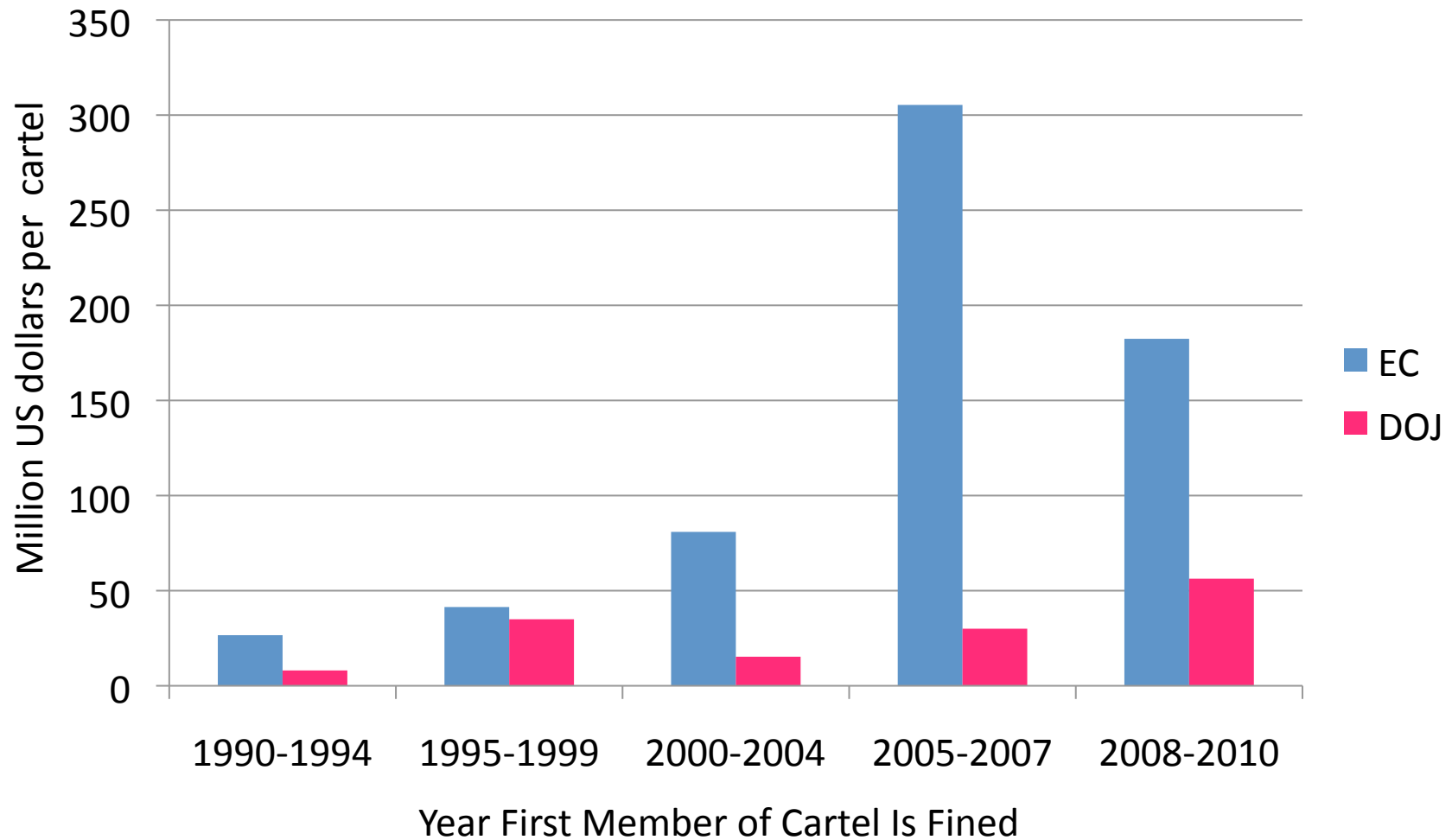
EC's Cartel Fines Imposed Are Larger than DOJ's in 10 of 11 Last Years



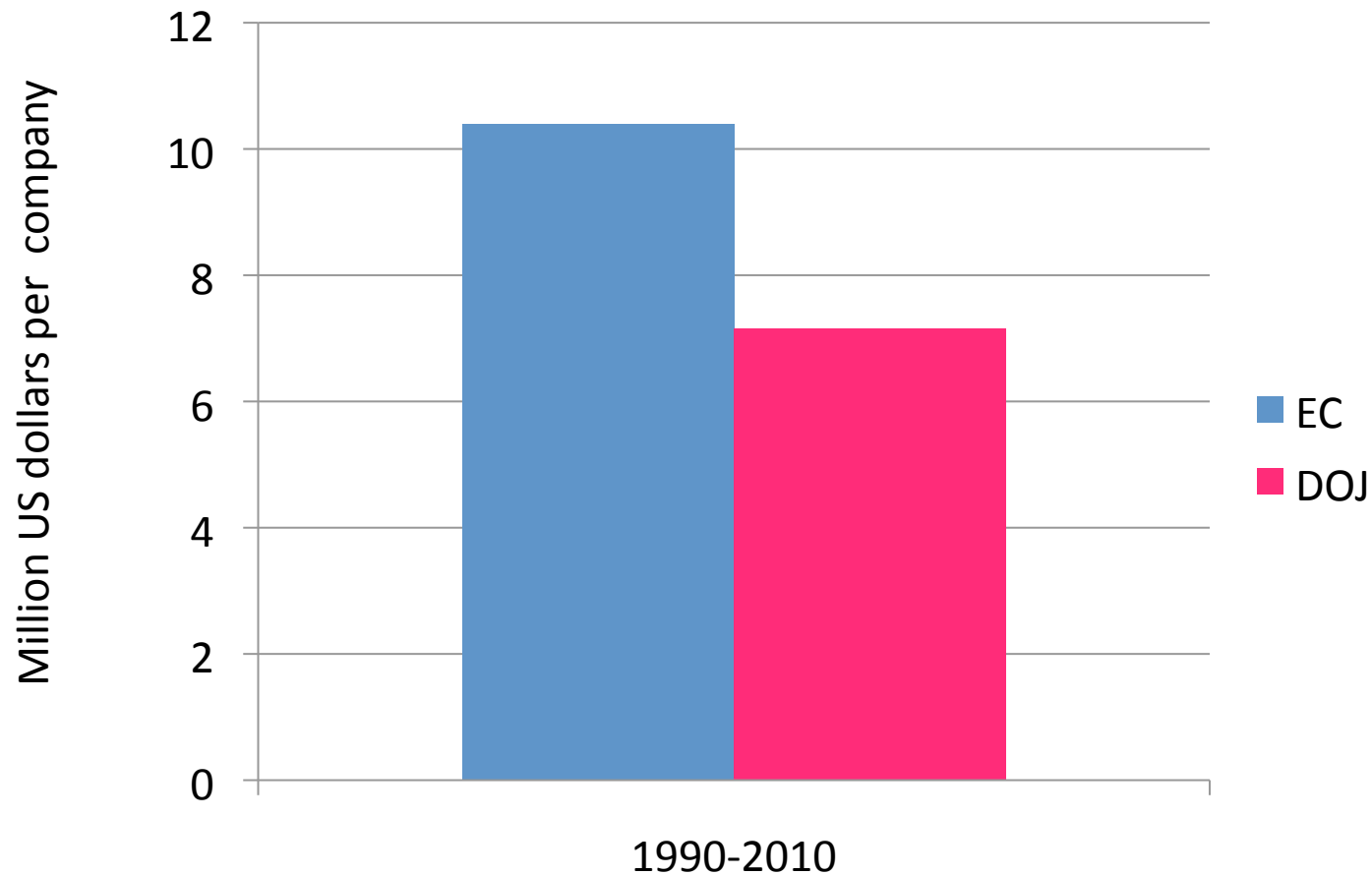
International Cartel Fines Imposed, EC and DOJ Trends, Annual 1990-2015



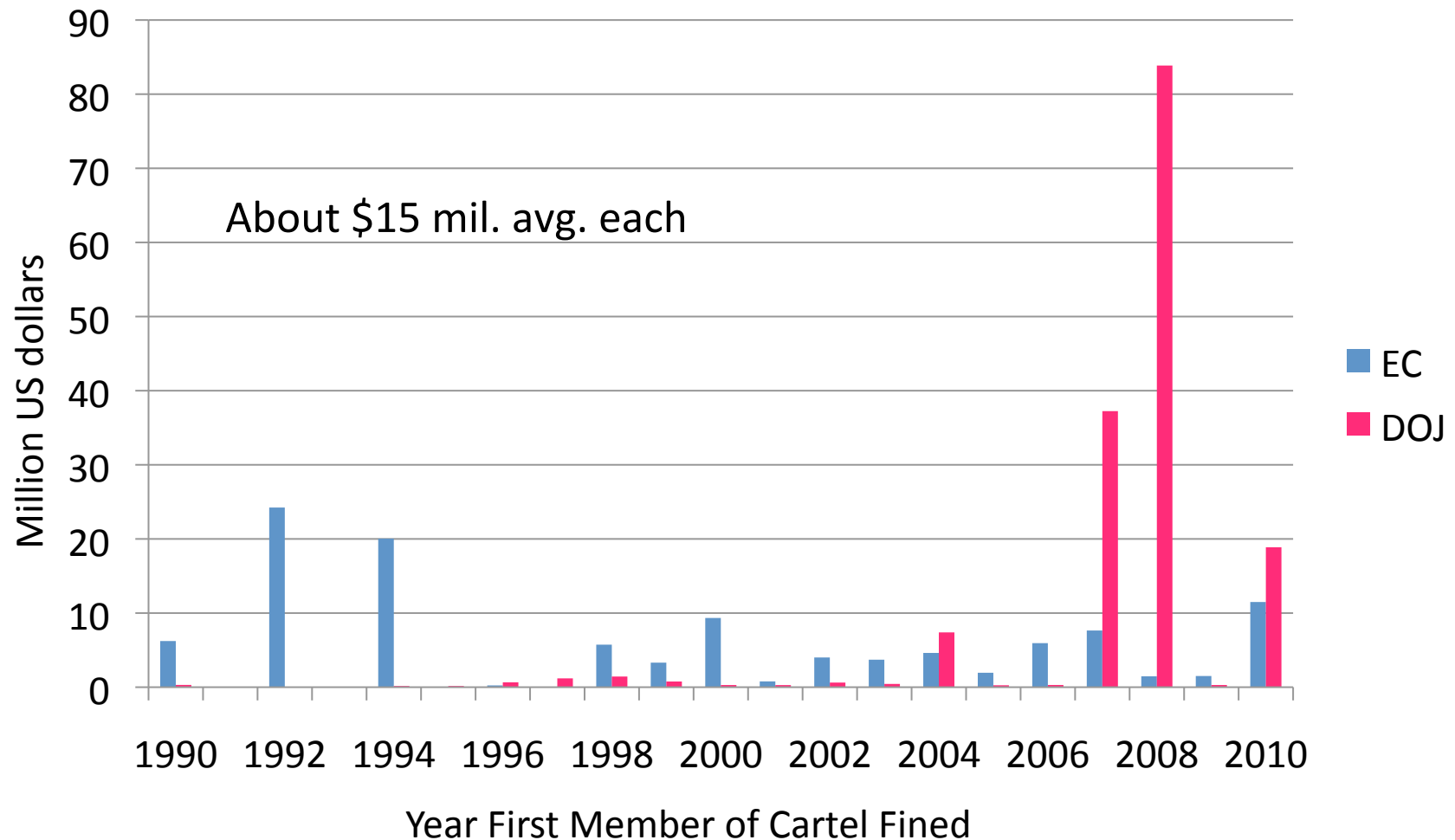
Median Fines per Cartel Higher in EC than DOJ, 1990-2010



Median Fines per Cartelist Higher in EC than DOJ

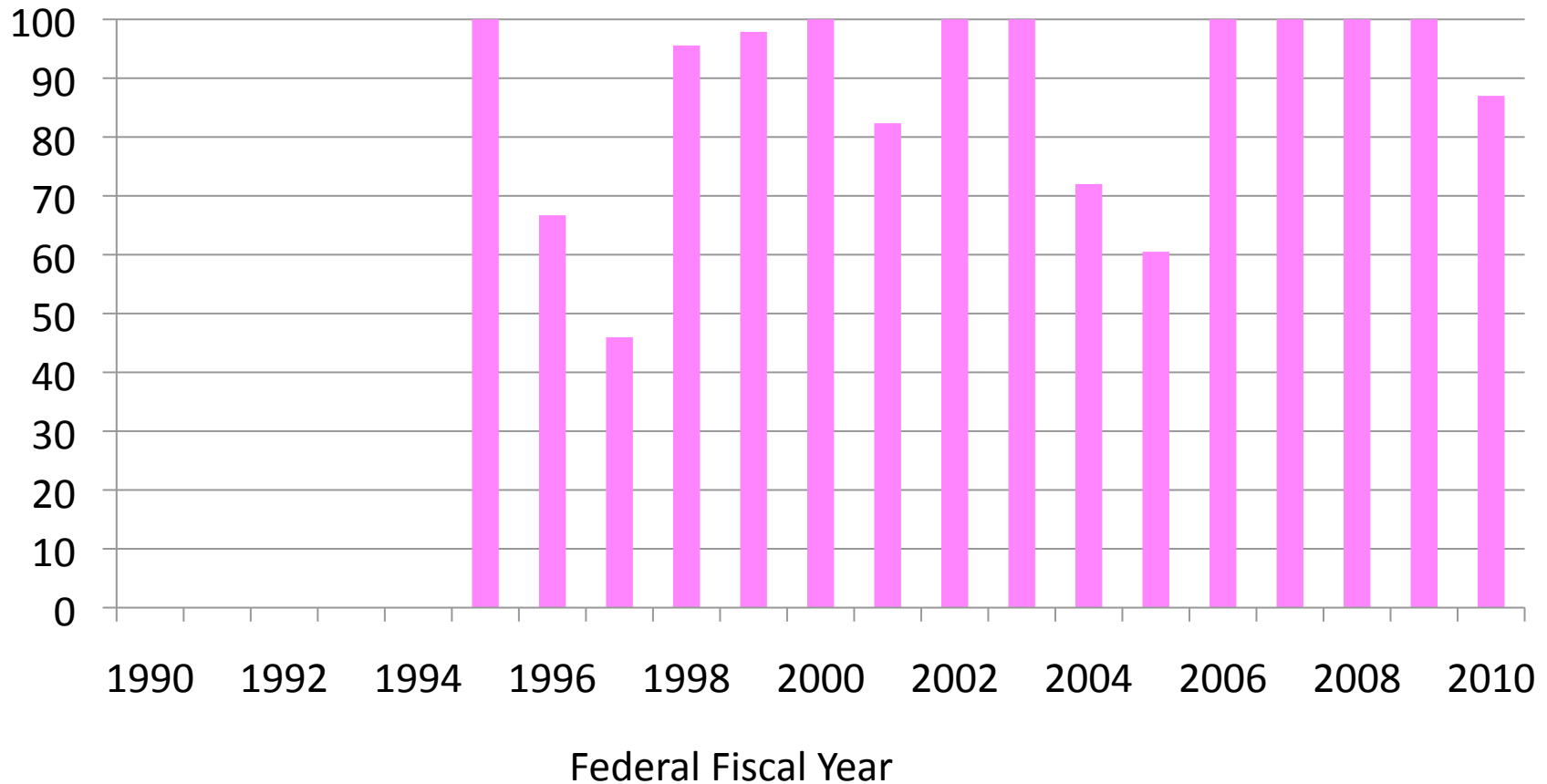


Affected Sales per Cartelist Fined, EC and DOJ Compared, 1990-2010



Proportion of Large DOJ Corporate Fines that Are **Non-U.S.**, 1990-2010

% Non-US among \$10-million-plus fines

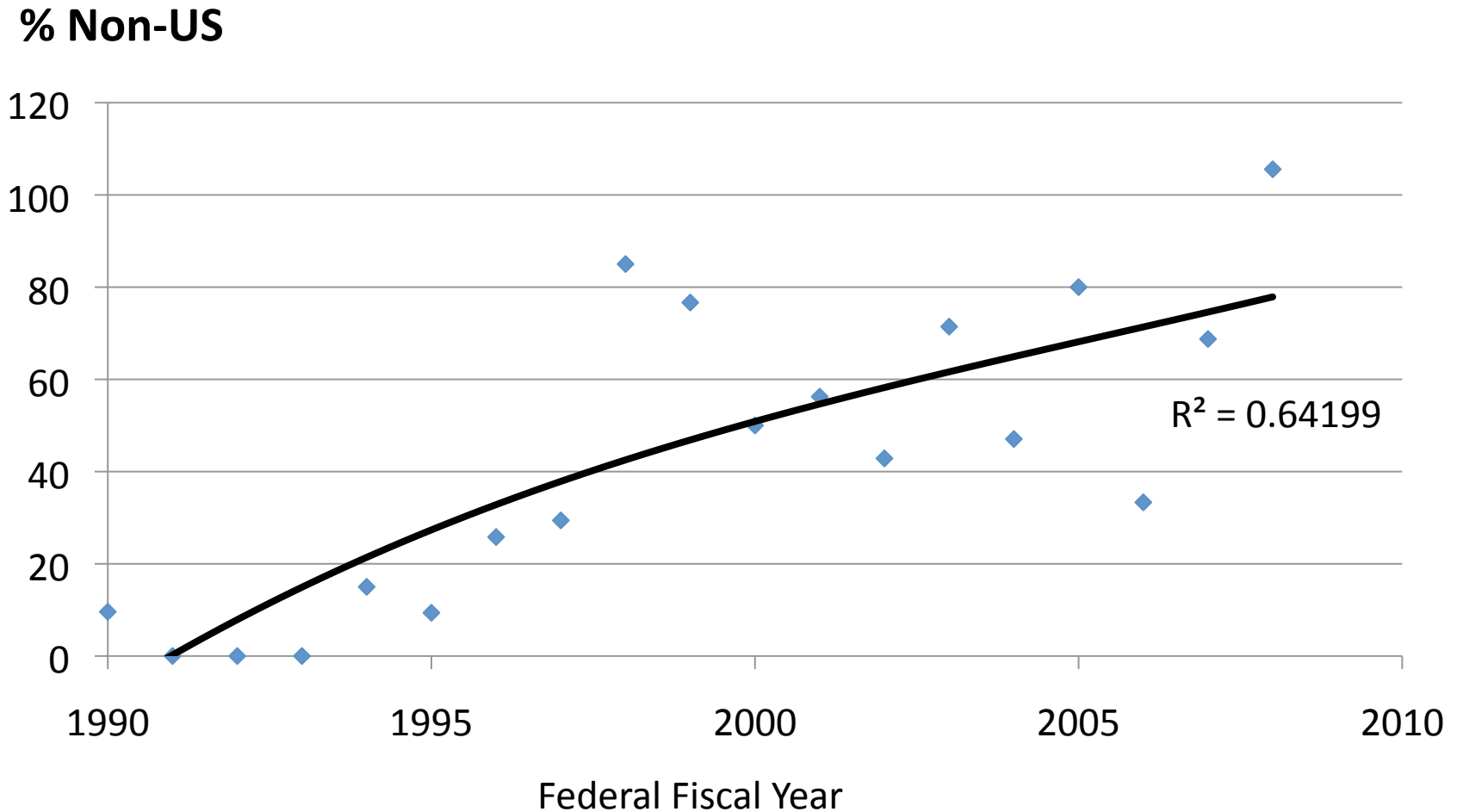


Proportion of DOJ Fines from **Non-U.S. Corporations**, 1990-2010

% Non-US among All Intl. Cartel fines

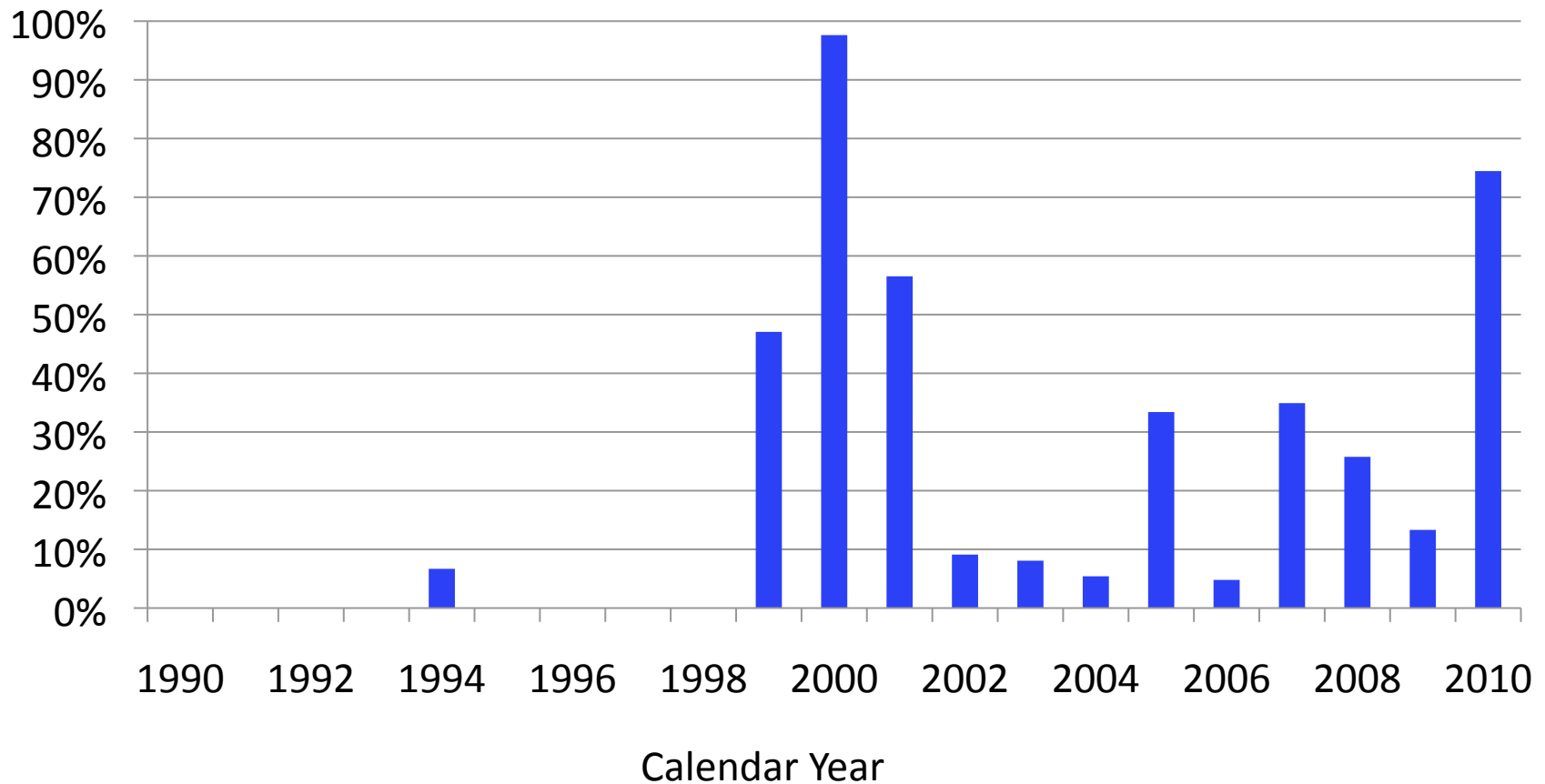


Trend in Proportion of DOJ-Fined Cartelists that Are Non-U.S. Rising

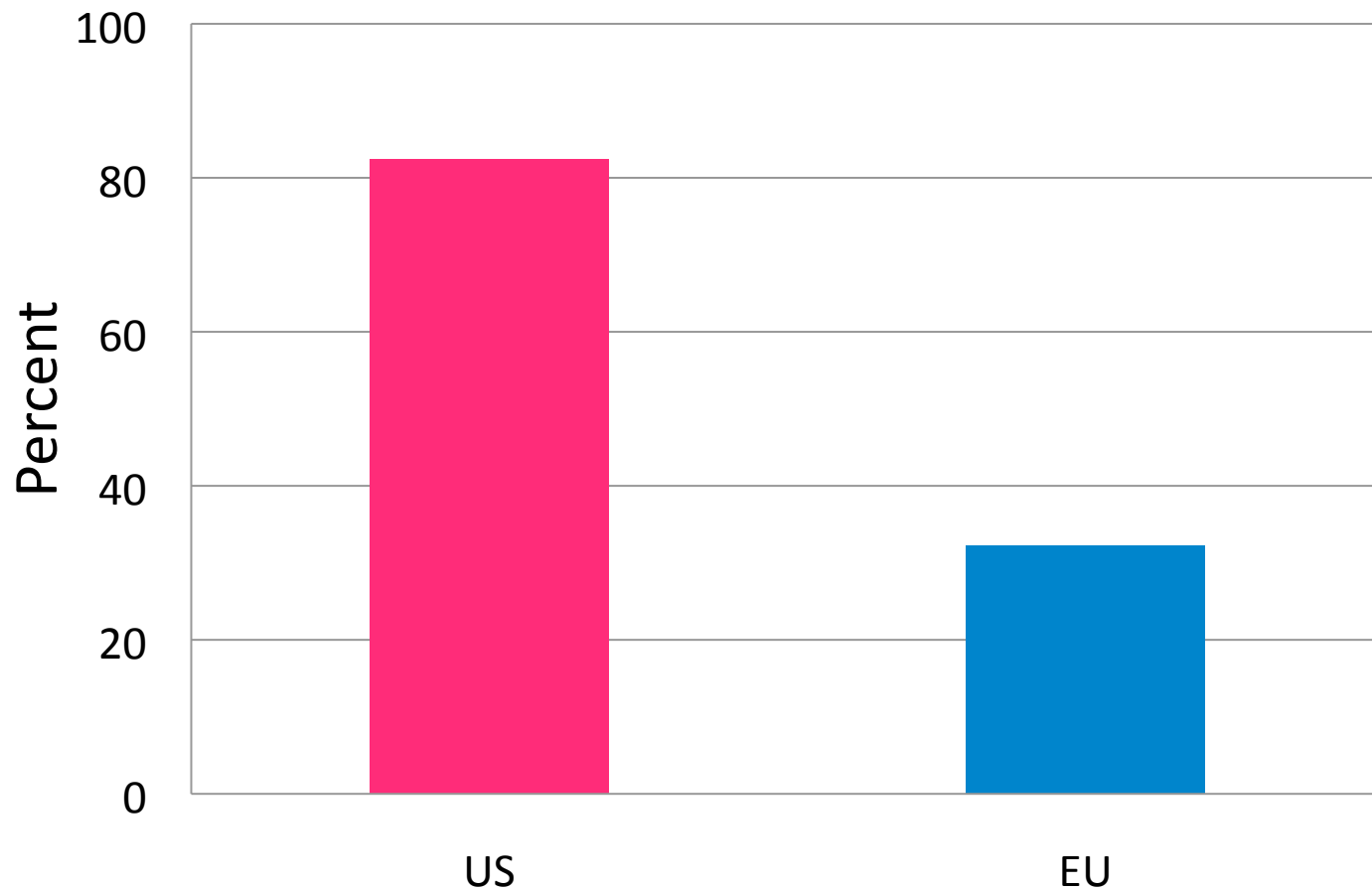


Proportion of All EC Fines on **Non-EU Companies**, 1990-2010

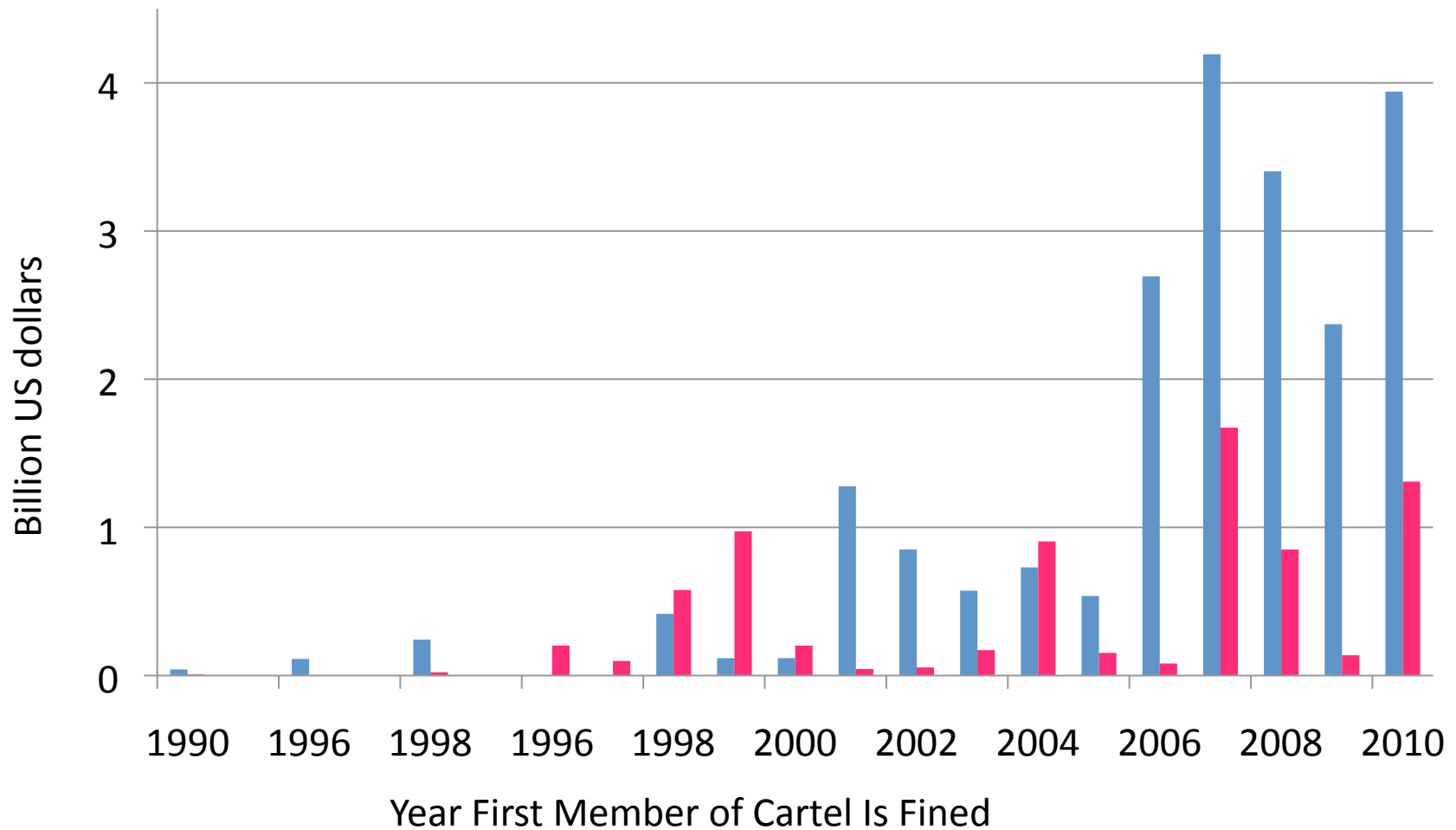
% Non-EU-company fines



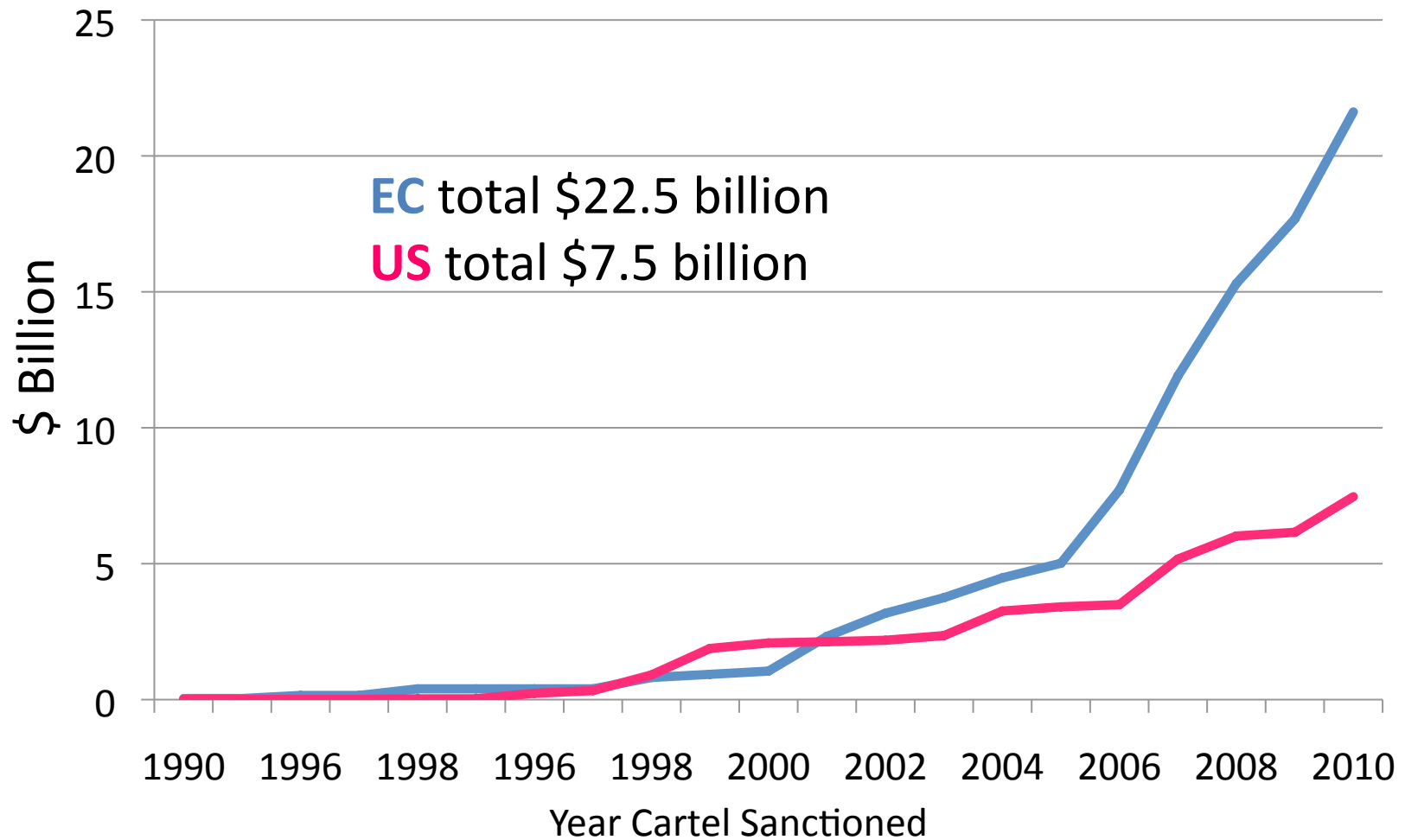
1990-2010 Fines Paid by Cartelists Headquartered Outside **US** or **EU**



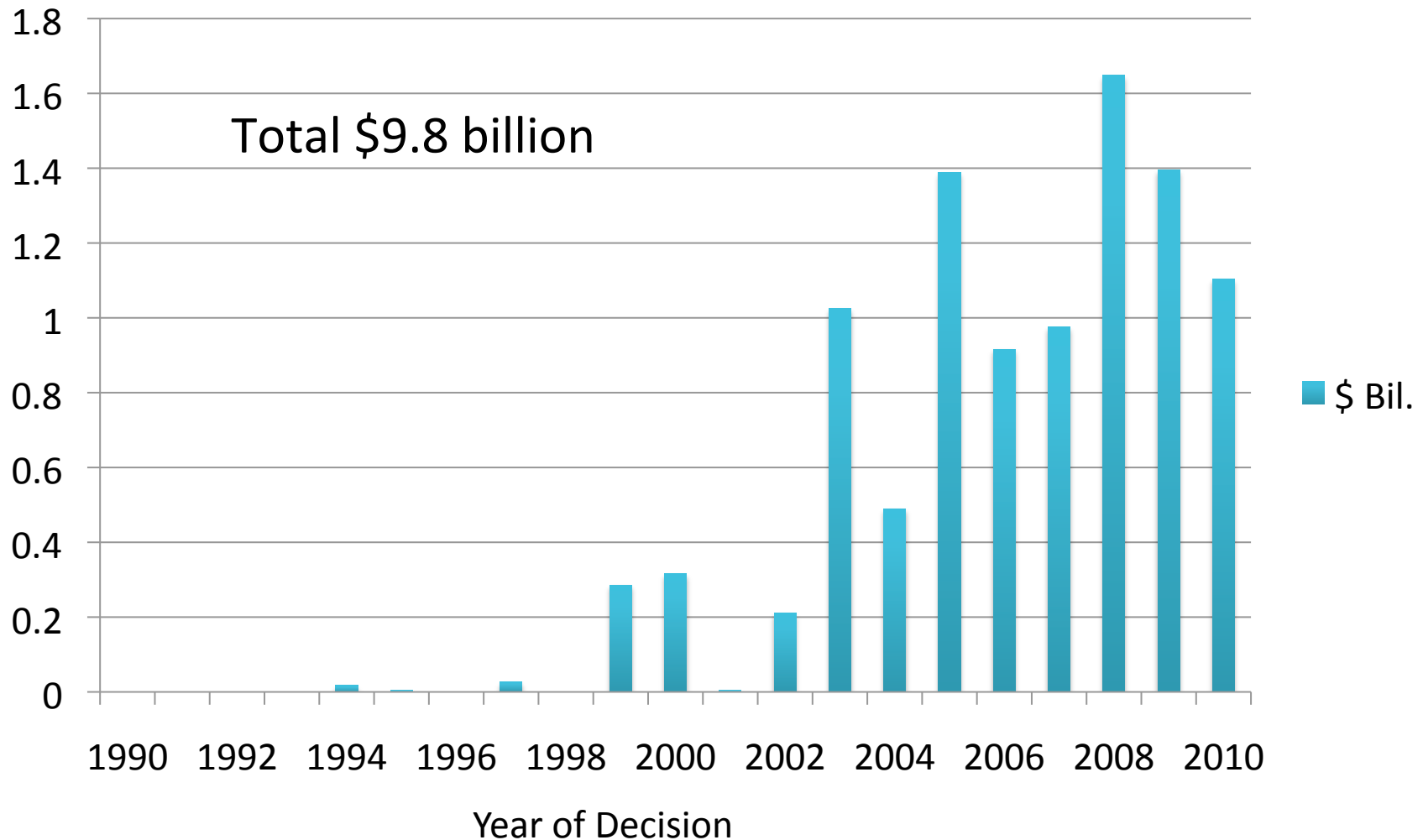
EC's Cartel Fines Imposed Larger than DOJ's in 9 of 10 Last Years



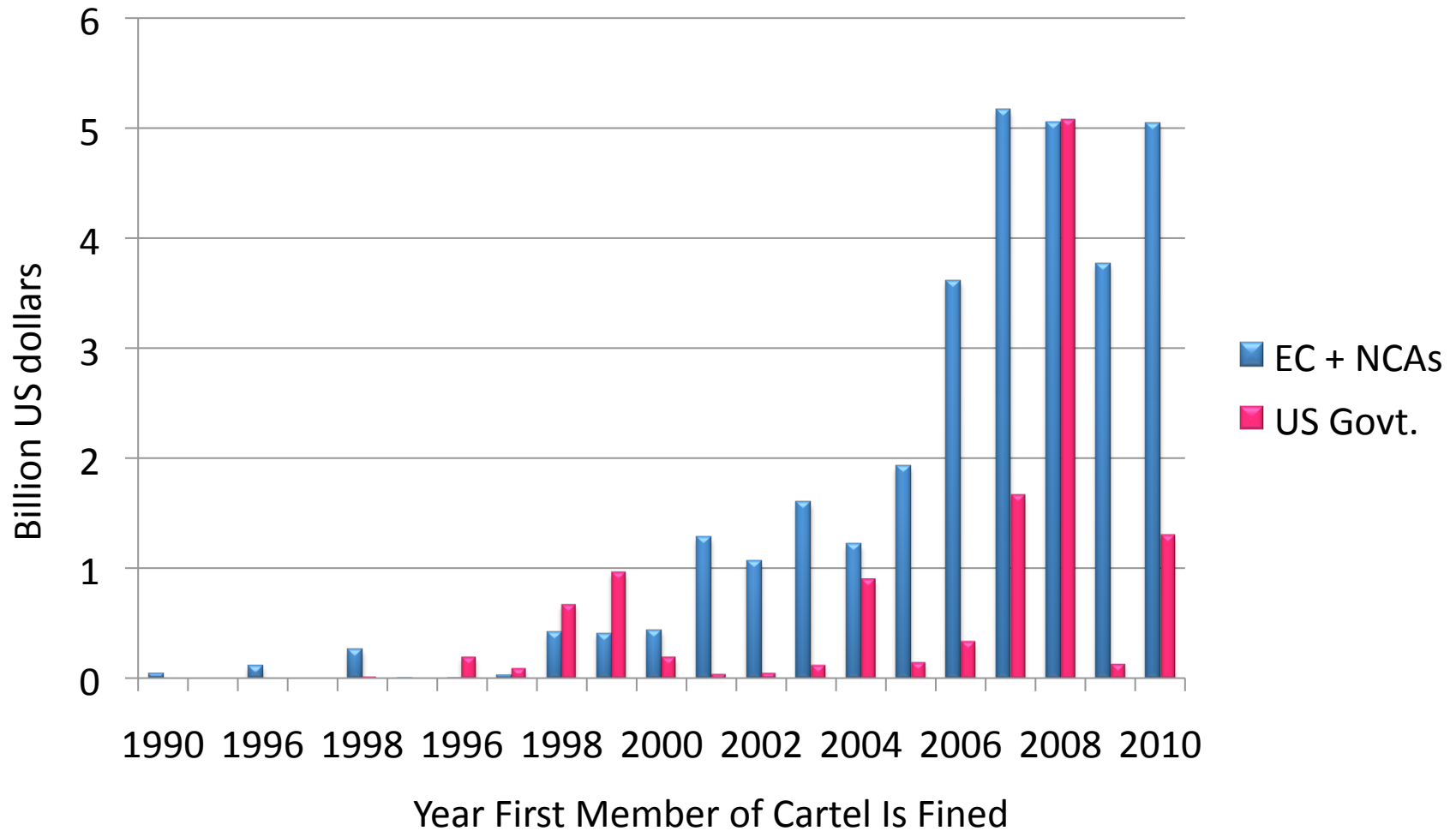
Cumulative Cartel Penalties Imposed: After 2001, **EC** Pulls Ahead of **DOJ**



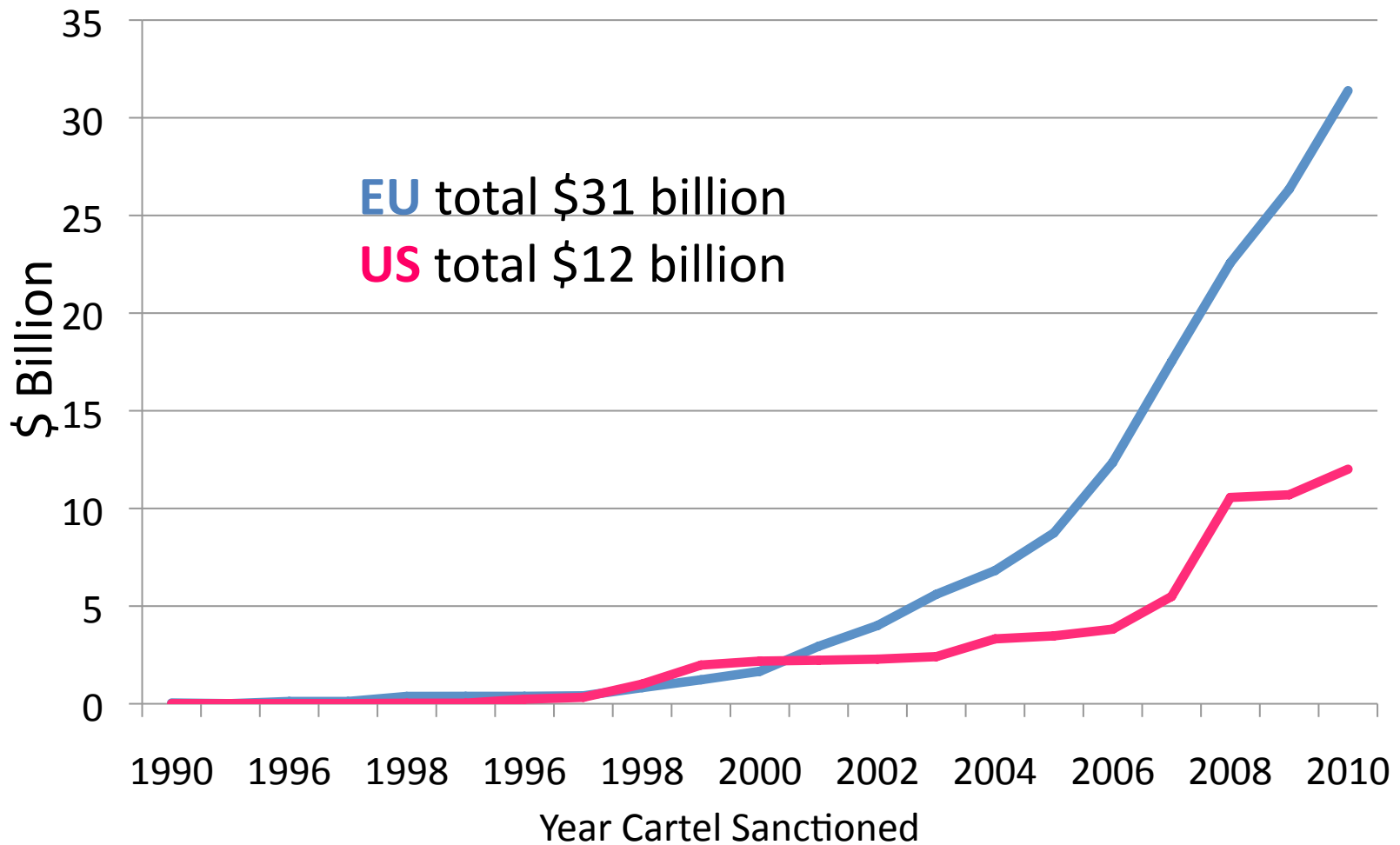
Intl. Cartel Fines Imposed by **NCA**s (EU's National Authorities) 1990-2010



All EU (EC+NCA) Cartel Fines Surpassed All US Govts. (DOJ+States) after 1999



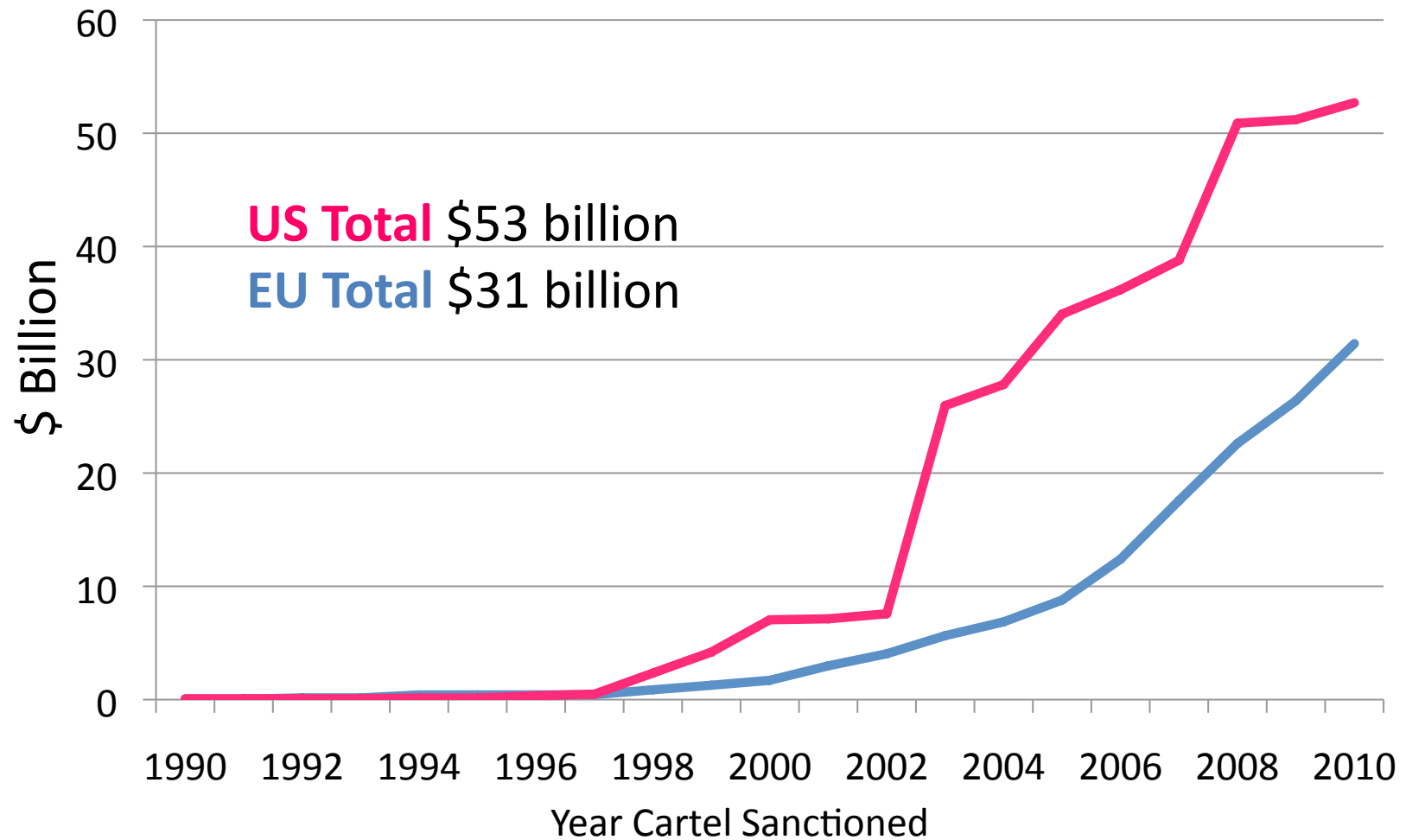
Cumulative Government Penalties Imposed: after 2000, **EU** Pulls ahead of **US**



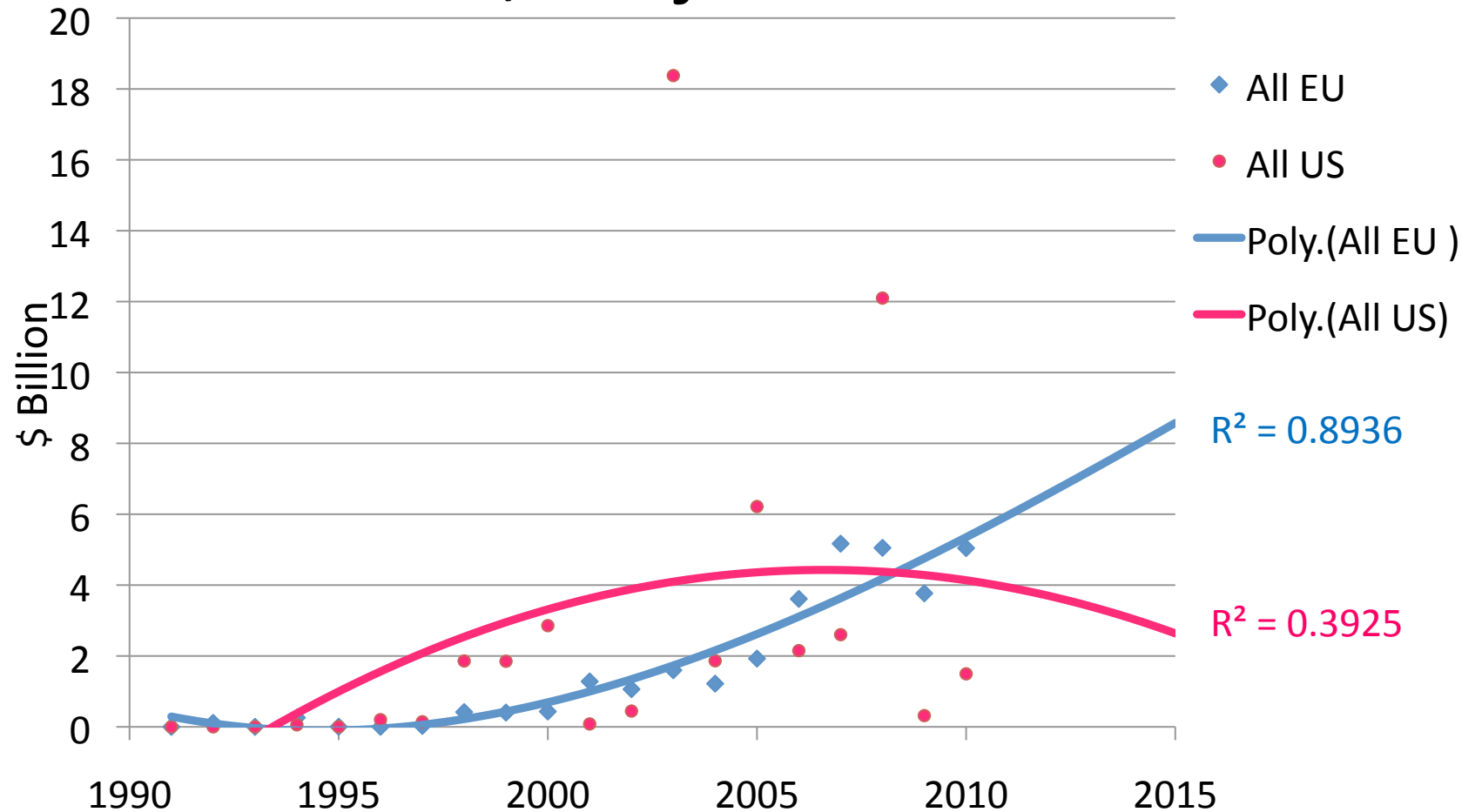
Narrative on Total Penalties

- Total penalties include private settlements, which are rare in Europe, common in US.
- Total penalties are now \$53 billion in US, 70% higher than the EU's total.
- US clearly surpassed EU after 1997, but future cumulative amounts are very close.
- If present trends continue, by 2015 total penalties will reach \$75 billion in US & EU.

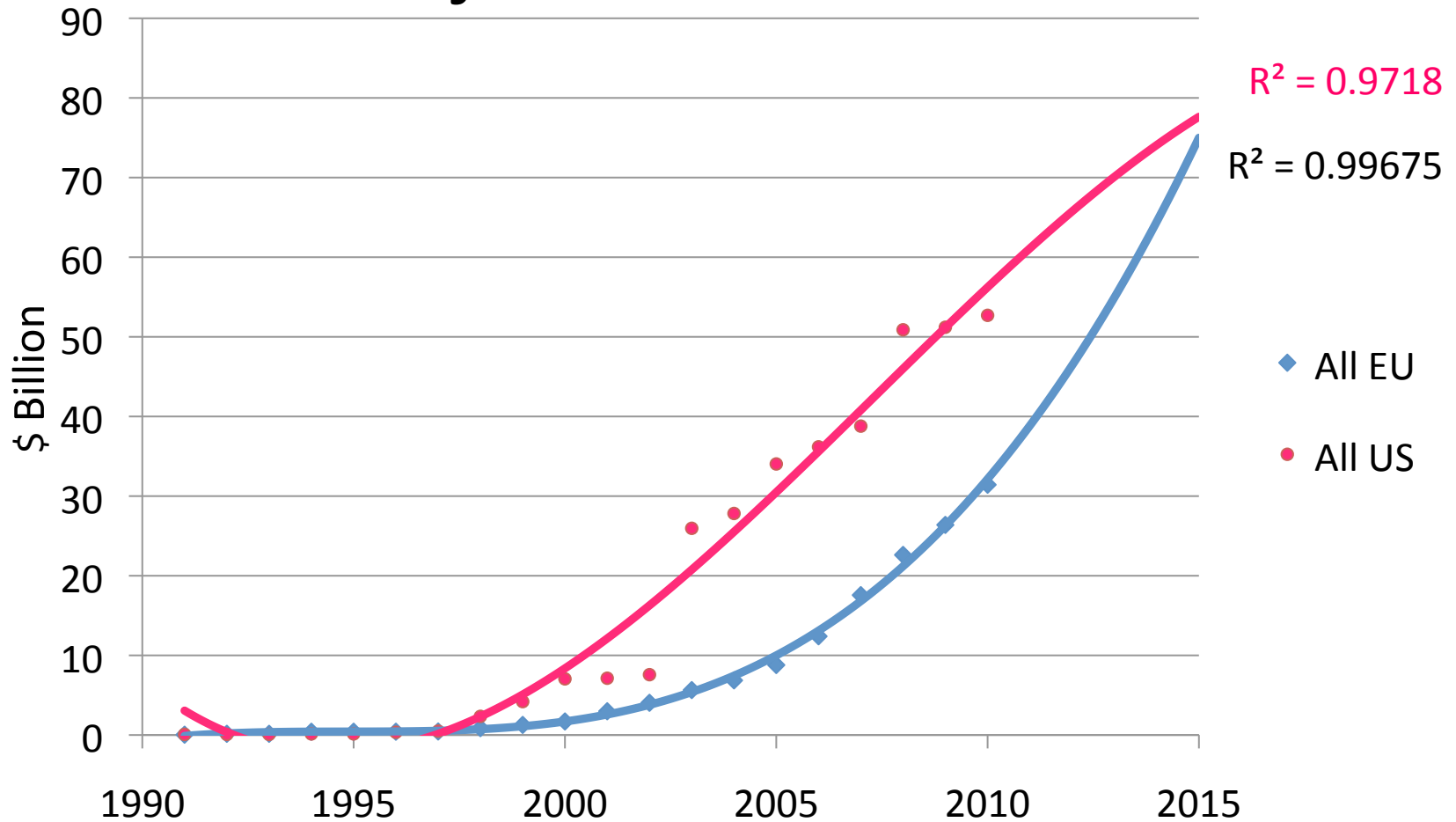
Counting Private Settlements, After 1997 **US** Sanctions Exceed **EU's**



EU and U.S. Total Annual Cartel Penalties, Projection to 2015



EU and U.S. Cumulative Penalties, Projections to 2015



Sources

- John M. Connor. *Private International Cartels: Full Data*. [The PICs spreadsheet, first created about 1998, is continuously updated. As of March 2011, the full data file was 11MB and consisted of 640 observations of suspected or convicted cartels and 8500 cartelists (companies and individual participants) with 2.8 million cells of data. There are also 13 back-up spreadsheets.]
- John M. Connor. *DOJ Cartel Enforcement 1990-2010*. [A spreadsheet created late 2007 that contains annual budgets, activities, and criminal enforcement actions of the U.S. DOJ with respect to hard-core cartels.]
- John M. Connor and Gustav Helmers. *Statistics on Modern Private International Cartels: Working Paper 07-01*. Washington, DC: American Antitrust Institute (January 2007). [<http://www.antitrustinstitute.org/recent2/567.pdf>]
- John M. Connor. *Cartel Amnesties Granted: Worldwide Whistleblowers* (October 2008, updated). [at SSRN: <http://ssrn.com/abstract=1285469>]

Notes

- Slide 6: The EC and US data are comparable except for year. This chart counts cartels, a number not provided by DOJ statistics. US criminal price-fixing decisions are normally for “cases,” that is, *corporate* guilty pleas or *individual* indictments or findings of guilt. In this figure, US convictions are categorized by year the *first* member (company or individual) of a given cartel was convicted. For example, the *Air Cargo* case is counted as a 2008 US case, even though more fines will be levied in 2009 than in 2008. All EC decisions are international, but this chart does not include numerous DOJ domestic cartel decisions. In both jurisdictions, the years in which the vast vitamins cartels were fined (1999, 2001) are record years. The EC has surpassed the DOJ in every year since 2001.
- Slide 7: From official DOJ Statistics for domestic and international cartels. Numbers of companies fined for criminal price fixing, not including amnestied. Organized by federal fiscal years. 2010 final data from DOJ not yet available.
- Slide 8: Numbers of companies indicted by the DOJ for international price fixing, including acquitted (very rare) and amnestied firms. Year is year FIRST member of the cartel is convicted. *Intl organized by calendar years*. In 2007, convictions began in the *Air Cargo* and *Air Passengers* cases. 2009-2010 data may be incomplete.
- Slide 9: Counts only EC horizontal price-fixing decisions with fines. Counts the number of ultimate parent firms that were subjects of the decision, i.e., fined as members of EC-convicted cartels or granted full amnesty. Excludes those cartels found guilty but not fined because of a technicality such as the five-year rule of limitations.
- Slide 11: Federal Fiscal Year in the year of judicial consent that a member of a cartel fined. May exclude future installment payments promised but not yet received by the Treasury. 2009 final data; FY 2010 estimated.

Notes Cont.

- Slide 12: “Announced” means in a press release or posted plea agreement; some fines will be collected in the future in installments (cf. previous slide). Year is calendar year of the date first member of cartel fined. Includes 1 FTC fine of \$100 million in 1998. 2010 final data. With \$1.25 billion in fines in 2010, these data are consistent with the previous slide on collected fines.
- Slide 13: Ratio should not greatly exceed 100%, so see next slide. “Announced” means in a press release or posted plea agreement. Some announced fines are collected up to five years in the future in installments with added interest.
- Slide 14: All EC cartel decisions are categorized as international. As some fines are paid in installments and the European courts often reduce fines on appeal (averages about 10%), amount collected may be smaller. 2010 final data.
- Slide 15: In EU all cartel members are fined simultaneously. In the US a year or two may separate the first and last to plead guilty, but normally it is closer.
- Slide 16: Both show large increases in fines, increasing at an increasing rate since late 1990s. EC fines clearly surpass US fines after 2000. Indeed, EC fines exceed \$2 billion in past 4 years, whereas DOJ’s have never reached \$2 billion. Best fitting trends are quadratic polynomials.
- Slide 17: In EU all cartel members are fined simultaneously. In the US a year or two may separate the first and last to plead guilty, but normally it is closer. EC decisions in global cartels tend to lag US decisions by 3 years. There are 105 EC “decisions with fines” and 71 US cartels averaged in this figure.
- Slide 18: There are 647 companies that paid EC fines and 219 US cartelists averaged in this figure.
- Slide 19: There are 611 companies fined by EC and 211 by US DOJ. For entire period, averages are about \$15 million in both jurisdictions. Estimates of cartel affected sales are missing for 6 US companies, but those sales are very small. In EU all cartel members are fined simultaneously. In the US a year or two may separate the first and last to plead guilty, but normally it is closer.

Notes Cont.

- Slide 20: DOJ does not report fines of all foreign firms fined for criminal violations. However, the “\$10 Million Club” is listed in detail, and these firms comprise a very high share of total cartel fines. 2011 is 1st quarter only. Fine-weighted average for 1990-2010 is 90.0%. Source: <http://www.justice.gov/atr/public/criminal/sherman10.html>
- Slide 21: Note that annual pattern here is similar to slide above. Fine-weighted average for 1990-2010 is 82.4%. Excludes fines, disgorgement, and mandatory restitutions by the FTC, attorneys general, etc.
- Slide 22: International cartelist firms are based on publicly reported numbers of companies in the cartel, which may be larger than the number charged in the US.
- Slide 23: EU is defined as the current 27 nations. Major non-EU nations are the US, Switzerland, Japan, Korea and Taiwan. Fine-weighted average for non-EU firms during 1990-2010 is 32.2%.
- Slide 25: In EU all cartel members are fined simultaneously. In the US a year or two may separate the first and last to plead guilty, but normally it is closer.
- Slide 27: Counts decisions with fines by EU-27 National Competition Authorities. 2010 final
- Slide 28: “EU” is fines imposed by the EC and its NCAs added together. “US Govt.” is the DOJ (criminal fines) plus civil suits by the State Attorneys General.
- Slide 29: “EU” is fines imposed by the EC and its NCAs added together. “US Govt.” is the DOJ (criminal fines) plus civil suits by the State Attorneys General.
- Slide 32: Both polynomials are quadratics. Goodness of fit is higher (89%) for EU than for US (39%) because of high variability in private settlements; also, US trend very strongly affected by two large settlements in 2003 and 2008. Thus, the projection for the US is less reliable than for the EU.
- Slide 33: Fit of cumulative trends is much better. Projections are somewhat sensitive to functional form. Both polynomials are cubic; quadratics yield higher a US projection and lower EU projection. Goodness of fit is high for both trend curves.