

## Executive summary and overview of the national report for Lithuania

<b>Section I – Summary of findings</b>	
<p>As a matter of law, the existing legal basis is sufficient for private enforcement of competition rules. Any person, whose interests have been violated by the breach of competition rules, may apply to ordinary civil courts for compensation of direct and indirect damages. However, up to now the case law on this matter has been rather scarce. Such lack of interest can be attributed to a number of factors that include the immense complexity of cases, difficulties in calculating damages and proving causation, limited practical possibilities to bring collective actions and, arguably, non-litigious nature of Lithuanian business society (especially if compared with the private enforcement level in the US). Some of these weaknesses could be cured by ensuring better education of judiciary, introduction of statutory damages or expanding rights of public bodies protecting collective interests. Undoubtedly, accession to the EU would give an additional impetus for private enforcement. Still, it would be too optimistic to expect any dramatic positive changes in private enforcement in the nearest future as Lithuanian competition rules, judging by European and the US, standards, are very young, whereas the “competition culture” is only at the early stages of development.</p>	
<b>Section II – status quo and forthcoming reforms – action for damages</b>	
<b>A. Legal Basis</b>	
(i) Is there an explicit statutory basis?	Article 46(1) of the 1999 Law on Competition plus general rules on civil liability.
(ii) Is this statutory basis different from other actions for damages?	No, as far as general rules on civil liability are concerned.
(iii) Is there a distinction between EC and national law in this regard?	No.
<b>B. Competent court</b>	
(i) Which courts are competent?	Ordinary civil courts: the Vilnius district court (first instance); the Court of Appeal (appellate instance) and the Supreme Court (cassation)
(ii) Are there specialised courts for private enforcement of competition rules?	No.
<b>C. Standing</b>	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	Any person, whose interests have been violated.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	Registered office of the defendant situated in Lithuania (general rule). Besides, the defendant can be sued if it has any property in Lithuania or if the dispute concerns obligations that have arisen or must be performed in Lithuania.
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	No class actions but joint actions, actions brought by a prosecutor in defence of public interest, and actions from either Consumer Protection Institution or public consumer organizations are possible.
<b>D. Procedural and substantive conditions</b>	
(i) What forms of compensation are available?	Direct and indirect damages.
(ii) What are the other forms of civil law liability (if any)?	None.
(iii) Does the infringement have to imply fault?	Yes, except that no fault is required in case of contractual liability of undertakings
(iv) If so, is fault based on objective criteria?	Yes.

(v) Is bad faith (intent) required?	No.
(vi) Can negligence be taken into account?	Yes.
<b>E. Rules of evidence</b>	
a. General	
(i) Burden of proof and identity of the party on which it rests?	The claimant has to prove an infringement, damages and the causal link. Fault of the defendant is presumed.
(ii) Standard of proof	Beyond reasonable doubt.
(iii) Limitations concerning form of evidence	Documents issued by state institutions and having prima facie evidential value cannot be contested by using witnesses' testimonies.
(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	No rules on discovery, except for the possibility to 'secure' evidence.
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	No rules on discovery, except for the possibility to 'secure' evidence.
(vi) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	No rules on discovery, except for the possibility to 'secure' evidence.
b. Proving the infringement	
(i) Is expert evidence admissible?	Yes.
(ii) To what extent, if any, is cross examination permissible?	No.
(iii) Under which conditions does a statement and/or decision by a national competition authority, a national court, an authority from another EU Member State have evidential value?	Documents issued by state authorities, either national or foreign, must be adopted within the limits of their competence and in compliance with procedural requirements.
c. Proving damage	
(i) Are there any specific rules for evidence of damage?	The existence and extent of damage should be proven in the same way as other elements of the damages claim, except that in certain situations, where the specific amount of damages might be difficult to prove, the profit made by the defendant can be used as a measure of damage.
d. Proving causation	
(i) Which level of causation must be proven: direct or indirect?	According to the "flexible causation doctrine" the causation must be adequate (sufficient). This covers both direct and indirect causation.
<b>F. Grounds of justification</b>	
	Force majeure, actions of the State, actions of the third

(i)	Are there grounds of justification?	party, culpable conduct of the claimant, necessity, necessary defence, self defence.
(ii)	Is the 'passing on' defence taken into account?	No case law, but theoretically possible.
(iii)	Are 'indirect purchaser' issues taken into account?	No case law, but theoretically possible.
(iv)	Is it relevant that plaintiff is (partly) responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement?	Yes.
<b>G. Damages</b>		
<b>a. Calculation of damages</b>		
(i)	What economic or other models are used by courts to calculate damage?	Combination of subjective and objective calculation methods.
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	As long as they are proven, damages must be compensated in full.
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	As a general rule – ex post, but ex ante estimates can be made in exceptional situations.
(iv)	Are there maximum limits to damages?	No.
(v)	Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	As a general rule, damages are assessed on the basis of injury, but profit made by the defendant can also be used as a measure for calculation of damages.
(vi)	Are punitive or exemplary damages available?	No.
(vii)	Are fines imposed by competition authorities taken into account when settling damages?	No case law, but theoretically possible.
<b>b. Interest</b>		
(i)	Is interest awarded from the date the infringement occurred the date of the judgment or the date of a decision by a competition authority?	From the date when court proceeding were instituted.
(ii)	What are the criteria to determine the levels of interest?	Statutory interest amounting to either 5 or 6 percent.
(iii)	Is compound interest included?	No.
<b>H. Timing</b>		
(i)	What is the time limit in which to institute proceedings?	3 years.
(ii)	On average, how long do proceedings take?	11-14 months.

(iii) It is possible to accelerate proceedings?	Very limited.
(iv) How many judges sit in actions for damages cases?	From 1 (first instance) to 12 (plenary session of the Supreme Court in complex cases)
(v) How transparent is the procedure?	Sufficiently.
<b>I. Legal costs</b>	
(i) Are Court fees paid up front?	Yes, as a general rule.
(ii) Who bears the legal costs?	Loosing party.
(iii) Are contingency fees permissible?	Yes.
(iv) Are contingency fees generally available for private enforcement of EC competition law?	Yes.
(v) Can the plaintiff/defendant recover costs?	Yes, but attorney fees can be recovered only to a limited extent.
(vi) What are the different types of litigation costs?	Stamp duty and other costs related to supporting or contesting the claim.
(vii) Are there any national rules for taxation of costs?	Yes.
(viii) Is any form of legal aid insurance available?	Yes, but not applied in practice.
(ix) What are the likely average costs in an action brought by a third party in respect of a hard-core violation of competition law?	Due to the lack of practice, average costs are difficult to determine.
<b>J. General</b>	
(i) Are some of the answers to the previous questions specific to the private enforcement of competition rules?	Yes.
(ii) If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	According to the New Amendments, there is one court of first instance having exclusive competence to hear civil disputes concerning violation of national and EC competition rules. Interpretation and application of Articles 81 and 82 of the Treaty by national courts not in accordance with practice of the EC Commission shall be the statutory basis to renew the proceedings.
(iii) EC competition rules are regarded as being of public policy. Does that influence any answers given?	No.
(iv) Are there any differences according to whether defendant is public authority or natural or legal person?	No, as long as a public authority falls under the definition of undertaking.
(v) What are the key differences, if any, from region to region <u>within</u> the Member State as regards damages actions for breach of national or EC competition rules?	There are no such differences.

(vi) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	Dominant undertakings under prosecution for abuse of dominant position may be granted immunity from fines by national competition authority in case of voluntary compensation of damage caused in result of infringement of competition rules. On the other hand, non-application of sanctions for whistle-blowers in cartel cases does not release the latter from civil liability.
(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	No such issues.
(viii) Please provide statistics about the number of cases based upon the violation of EC competition rules in which the issue of damages was decided upon	2 cases on damages for the violations of national competition rules, both still pending in the courts of first instance.
<b>Section III: Means to facilitate private enforcement of Articles 81 and 82 EC</b>	
(i) Which of the above elements of claims for damages as applied in each Member State and accession country provide scope for facilitating the private enforcement of Articles 81 and 82 EC?	Proving of damages and causation. Complex and expensive litigation.
(ii) How could that be achieved?	Better education of judiciary and businesses. Concentrating of cases for damages in a single court. Issuing guidelines explaining application of various economic models for calculation of damages. Introduction of statutory damages. Giving more rights to bodies protecting collective interests of consumers.
(iii) Are alternative means of dispute resolution available?	Arbitration is not available, although mediation is possible.
(iv) If so, to what extent are they successful?	To the best of our knowledge, mediation has never been applied in practice.