

Executive summary and overview of the national report for the Grand-Duchy of Luxembourg

Section I – Summary of findings	
<p>Luxembourg case law regarding compensation claims for breach of competition amongst parties is to our knowledge inexistent.</p> <p>Current Luxembourg law does not provide for any specific statutory basis for actions for damages for breach of competition law, except for summary proceedings as provided for by the law of 30th July 2002 in order to stop unfair competition practices prohibited by such law. But the summary judges are not empowered to allocate any compensation for the damages caused by the defendant to the plaintiff. Such proceedings would be governed by common law and more specifically by the common legal basis for contractual liability and liability in tort as well as by the common procedural provisions.</p> <p>Furthermore, the absence of an independent competition authority empowered to enforce EC competition law, until recently (the law of 17th May, 2004 has created an independent competition authority) and the poor enforcement of national competition law by the Minister for Economic Affairs under the former law has created a "vacuum" of an effective "competition policy". The consequent default of competition law guidelines upon which parties may rely or refer to in introducing a court action for damages for breach of competition law is certainly an explanation that economic actors are reluctant to introduce such actions.</p>	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	<ul style="list-style-type: none"> - no explicit statutory basis provided for by competition law, - common statutory basis: articles 1134, 1382 and 1383 of the Civil Code and the provisions of the Code of Civil procedure.
(ii) Is this statutory basis different from other actions for damages?	refer to (A) (i)
(iii) Is there a distinction between EC and national law in this regard?	no
B. Competent court	
(i) Which courts are competent?	<ul style="list-style-type: none"> - lower courts ("tribunaux de justice de paix") - district courts - court of appeal
(ii) Are there specialised courts for private enforcement of competition rules?	no
C. Standing	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	- direct, certain and personal interest
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	- refer to (C) (i)
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	<ul style="list-style-type: none"> - no collective claims, no class actions, no public interest litigation, - representative action: article 23 of the law of 30th July, 2002: constitution of "partie civile" by professional group or representative consumer associations, - joint action: yes

D. Procedural and substantive conditions	
(i) What forms of compensation are available?	- material compensation - moral compensation
(ii) What are the other forms of civil law liability (if any)?	- withdrawal of the authorisation of doing business
(iii) Does the infringement have to imply fault?	no: fault, negligence, act, imprudence, but infringement of law constitutes fault
(iv) If so, is fault based on objective criteria?	- concept of any normally diligent, prudent and wisely person - external circumstances
(v) Is bad faith (intent) required?	No, but it may have a consequence on the scope of the condemnation.
(vi) Can negligence be taken into account?	yes: any negligence, act, imprudence
E. Rules of evidence	
a. General	
(i) Burden of proof and identity of the party on which it rests?	The party who invokes a legal or factual point must validate his claim or defence.
(ii) Standard of proof	the winning of the entire conviction of the court
(iii) Limitations concerning form of evidence	- specific categories of persons cannot be admitted as witness - principle: documentary evidence; secondarily: witness
(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	- " <i>référé préventif</i> ": any party having an interest of the conservation or the establishment of evidence
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	voluntary intervention of the parties
(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 prevent a national or a foreign authority from being involved in court proceedings.
b. Proving the infringement	
(i) Is expert evidence admissible?	yes
(ii) To what extent, if any, is cross examination permissible?	- The judge has discretionary power to decide on the cross-examination. - cross examination is not common in civil or commercial proceedings
(iii) Under which conditions does a statement and/or decision by a national competition authority, a national court, an authority from	- It must comply with the Luxembourg rules of evidence.

another EU Member State have evidential value?	
c. Proving damage	
(i) Are there any specific rules for evidence of damage?	The damage must be personal, certain and direct.
d. Proving causation	
(i) Which level of causation must be proven: direct or indirect?	direct causation
F. Grounds of justification	
(i) Are there grounds of justification?	exemption as provided for by competition law
(ii) Is the 'passing on' defence taken into account?	Nothing would prevent a court to take the "passing on" defence into account.
(iii) Are 'indirect purchaser' issues taken into account?	Every plaintiff, whether direct or indirect purchaser, who can prove a fault/act/negligence, a damage and a direct link between the fault/act/negligence and his damage, can claim for compensation.
(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?	It might be relevant for the evaluation of the compensation.
G. Damages	
a. Calculation of damages	
(i) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	The damages will be assessed on the basis of injury suffered by the plaintiff.
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	It depends on the relevant market.
(iii) What economic or other models are used by courts to calculate damage?	- no case law in respect of competition law - if difficult to assess the quantum of the damage, then assessment of the damage " <i>ex aequo et bono</i> " - assessment of the loss of the victim
(iv) Are ex ante (time of injury) or ex post (time of trial) estimates used?	ex post estimates
(v) Are there maximum limits to damages?	no
(vi) Are punitive or exemplary damages available?	no
(vii) Are fines imposed by competition authorities taken into account when settling damages?	The fines imposed by competition authorities may exercise an influence on the determination of the damages by the judge.

b. Interest	
(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?	Commonly courts award interest from the date of the application to the court or from the date of the judgment.
(ii) What are the criteria to determine the levels of interest?	The rate is fixed by law: current rate: 4.75%.
(iii) Is compound interest included?	- principle: no - exception: article 1154 of the Civil Code
H. Timing	
(i) What is the time limit in which to institute proceedings?	common prescription period: 30 years
(ii) On average, how long do proceedings take?	between 10 months and 1 ½ year
(iii) It is possible to accelerate proceedings?	yes
(iv) How many judges sit in actions for damages cases?	- tribunals of peace: 1 judge - district courts: 3 judges - Court of appeal: 3 judges - Supreme Court: 5 judges
(v) How transparent is the procedure?	- Each invoked document must be notified to the other party and to the court. - The hearings are in principle public
I. Legal costs	
(i) Are Court fees paid up front?	no
(ii) Who bears the legal costs?	- In principle, the party which has lost the case. - The judge may decide to split the costs between the parties.
(iii) Are contingency fees permissible?	no
(iv) Are contingency fees generally available for private enforcement of EC competition law?	no
(v) Can the plaintiff/defendant recover costs?	via the indemnity for proceedings as provided for by article 240 of the Code of Civil procedure
(vi) What are the different types of litigation costs?	- "émoluments" - lawyer's fees - disbursements / legal costs
(vii) Are there any national rules for taxation of costs?	please refer to point (I) (v)
(viii) Is any form of legal aid insurance available?	yes
(ix) What are the likely average costs in an action	The costs will depend on the complexity of the case.

brought by a third party in respect of a hard-core violation of competition law?	
J. General	
(i) Are some of the answers to the previous questions specific to the private enforcement of competition rules?	- from a procedural perspective: no - from a substantial perspective: assessment of the relevant market
(ii) If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	please refer to point (J) (i)
(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?	- for claims for damages: no. - a grouping without legal personality: passive capacity
(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?	no differences
(vi) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	Leniency programmes do not exist under Luxembourg law.
(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	Competition law matters are complex and request a high work load implying high costs.
(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	not available
Section III: Means to facilitate private enforcement of Articles 81 and 82 EC	
(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?	We consider that the above elements of claim for damages might be sufficient for the private enforcement of Articles 81 and 82. However competition law matters are complex and request a high work load implying high costs.
(ii) How could that be achieved?	issuance of competition policy guidelines by the future independent counsel for competition matters
(iii) Are alternative means of dispute resolution available?	- arbitration - mediation
(iv) If so, to what extent are they successful?	- designation of the arbitrator by the parties - the disputes may be settled faster and on a more friendly basis