

Executive summary and overview of the national report for Cyprus

Section I – Summary of findings	
Please provide a summary which should not exceed one page of your findings.	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	YES: under s35(1) of the Protection of Competition Law, L207/89 (the “Law”), any person who suffers damage as a result of an infringement of competition law has the right to bring an action for damages in a District Court.
(ii) Is this statutory basis different from other actions for damages?	It is different in the sense that the right to damages is statutory but the standard of proof is the same
(iii) Is there a distinction between EC and national law in this regard?	The provision in the statute relates to national law. There is no express provision for EC law breach although the principles are the same.
B. Competent court	
(i) Which courts are competent?	The District Courts as courts of first instance with a right of appeal to the Supreme Court.
(ii) Are there specialised courts for private enforcement of competition rules?	At this time there are no such specialised Courts and there are currently no plans to create such Courts.
C. Standing	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	There is no limitation for standing on natural or legal persons from other jurisdictions.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	The Competition Commission is the only authority to decide that an infringement has taken place, however it is unlikely that the courts will interpret this provision so as to mean that for an action for damages to be admissible there must be a finding by the Commission that an infringement has taken place
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	YES
D. Procedural and substantive conditions	
(i) What forms of compensation are available?	Compensatory damages and/or an interim and/or final injunction order to stop the continuance of the infringement as according to s.35 of the Law.
(ii) What are the other forms of civil law liability (if any)?	The only other civil law liability is incurred by the powers conferred on the Competition Commission by the Law to order the termination of the actions that constitute the infringement, to order any temporary measures for a pending case before it to prohibit the continuance of a possible infringement, to fine the infringing person or business or company for a continuing infringement with an amount between CYP20 – CYP500 per day and to fine an infringing person or business or company of up to 10% of its turnover in the year that the infringement took place or in the immediately preceding year.

(iii) Does the infringement have to imply fault?	"Infringement" means contravention of ss4 and 6 of the Law i.e. participation in restrictive enterprise agreements or abuse of a dominant position. No fault is implied.
(iv) If so, is fault based on objective criteria?	NOT APPLICABLE
(v) Is bad faith (intent) required?	Bad faith is not required to be proven but it may have a bearing on the award of exemplary damages
(vi) Can negligence be taken into account?	Yes but the essential factor is breach of sections 4 and/or 6 of the Law.
E. Rules of evidence	
a. General	
(i) Burden of proof and identity of the party on which it rests?	On the issue of damages the Plaintiff must prove the assertions he makes in the writ of action and every amount claimed as damages must be strictly proven by the plaintiff.
(ii) Standard of proof	The standard of proof is that of the balance of probabilities as in all civil cases.
(iii) Limitations concerning form of evidence	Both oral and documentary evidence may be adduced. The production of evidence is no longer subject to the hearsay evidence rule.
(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Both parties may, pre-trial, apply to the court for an order for discovery and/or inspection of documents.
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	There is no provision for pre-trial discovery outside the court's jurisdiction but a party may subpoena a third party to produce documents at the trial.
(vi) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	Employees of the Competition authorities may be summoned to produce documents and/or oral evidence at the trial.
b. Proving the infringement	
(i) Is expert evidence admissible?	Expert evidence is admissible in both oral and written form.
(ii) To what extent, if any, is cross examination permissible?	Cross examination is permissible to a quite wide scope.
(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?	It has substantial evidential value since it is a body with exclusive jurisdiction to rule on breaches of Competition rules.
c. Proving damage	

(i)	Are there any specific rules for evidence of damage?	The general rules of evidence apply but the primary rule is that the burden is on the claimant to prove loss or damage.
d.	Proving causation	
(i)	Which level of causation must be proven: direct or indirect?	The chain of causation must be proven to directly result in the loss to the Plaintiff.
F. Grounds of justification		
(i)	Are there grounds of justification?	Only statutory justification in the form of exemptions to section 4.
(ii)	Is the 'passing on' defence taken into account?	In theory ,yes but there is no Cypriot authority on the point.
(iii)	Are 'indirect purchaser' issues taken into account?	In theory ,yes but there is no Cypriot authority on the point.
(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?	If the Plaintiff has benefited from the infringement the amount of damages he may be entitled to may be reduced by the amount of the benefit if this can be quantified.
G. Damages		
a. Calculation of damages		
(i)	What economic or other models are used by courts to calculate damage?	The test is the actual loss suffered by the Plaintiff and he must be put in the position as if the breach did not occur.
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	The damage suffered does not depend on the territory.
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	As a general principle in actions for damages either test may be used depending on the nature of the claim
(iv)	Are there maximum limits to damages?	There is no maximum limit.
(v)	Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	On the basis of injury suffered by the Plaintiff but loss of profit may also be recoverable if it is reasonably foreseeable.
(vi)	Are punitive or exemplary damages available?	Yes.
(vii)	Are fines imposed by competition authorities taken into account when settling damages?	No. The fine is imposed and collected by the commission.
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?	The interest will apply from the date of filing of the action in court.
(ii)	What are the criteria to determine the levels	The level of interest on judgements is fixed by law at 8%

	of interest?	but is currently under review.
(iii)	Is compound interest included?	No compound interest is allowed on judgement debts.
H. Timing		
(i)	What is the time limit in which to institute proceedings?	There is currently no time limit for the filing of an action but there will be a statutory time bar of six years from 1/1/2005.
(ii)	On average, how long do proceedings take?	When contested and goes to a full hearing, they may take 2-3 years.
(iii)	It is possible to accelerate proceedings?	No.
(iv)	How many judges sit in actions for damages cases?	One at the District Court and three on appeal. In the District Court the seniority of the judges depends on the size of the claim
(v)	How transparent is the procedure?	The procedure is totally transparent and open to the public.
I. Legal costs		
(i)	Are Court fees paid up front?	Only the costs of filing are paid up front in the form of stamps which are determined by the amount of damages claimed and in accordance with subsidiary legislation..
(ii)	Who bears the legal costs?	Usually the costs follow the decision in that the losing party bears the costs of the action.
(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?	See answer to part I.(ii). Once the Court renders its decision the successful party can apply for an assessment of its costs with the Court Registrar and following that recover from the losing party.
(vi)	What are the different types of litigation costs?	The litigation costs for court work are fixed by subsidiary legislation and depend on the scale of the claim. For out of court work the advocate may charge according to his fee policy and/or by agreement.
(vii)	Are there any national rules for taxation of costs?	No tax except VAT is imposed on costs.
(viii)	Is any form of legal aid insurance available?	Not for civil cases.
(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?	It is impossible to assess since they will depend on the scale of the claim.
J. General		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	No.

(ii)	If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	Not applicable.
(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.
(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?	None.
(vi)	Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	No.
(vii)	Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	There is currently no reported case of an action for damages for breach of competition law, so some of the issues have still not been tested in court.
(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	There have been no reported cases to date
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?	
(ii)	How could that be achieved?	
(iii)	Are alternative means of dispute resolution available?	Arbitration.
(iv)	If so, to what extent are they successful?	Arbitration is widely used in other forms of claim. No arbitration process for breach of competition rules has come to our attention.