

Executive summary and overview of the national report for Poland

Section I – Summary of findings	
<p>The market requires effective competition to work well. Those who benefit from it should be able to seek for damages from those who distort it. Legal and business institutions, in particular antitrust authorities, courts and business organizations such as chambers of commerce should make efforts to make information on competition rules more widely available and to encourage individuals and undertakings to take action to protect their rights. An increase in actions for damages should strengthen competition presence on the market and prove that violating competition rules does not bring profits.</p> <p>Consumers, individual entrepreneurs, undertakings, anyone injured by anticompetitive behaviour of a retailer, wholesaler, producer, or service provider, can seek damages.</p> <p>There is no specific statutory regulation of the matter in the Polish legal system. The same general provisions of the Civil Code apply to claims for damages for breach of competition rules as to other claims for compensation for liability in contract, or in tort. It is in the nature of anticompetitive practices that they imply fault. The Civil Code provides a legal basis for both EC and national competition law cases brought before the Polish courts.</p> <p>A plaintiff in a claim for damages for breach of competition rules has to bring an action before a common court, because there are no specialized courts for such cases. The value of a claim determines whether the district or regional court has power to conduct the case.</p> <p>Every legal, and natural, person whose interests were violated by infringement of competition rules can seek damages in court. The only conditions applying to a plaintiff are those which apply to a plaintiff in any suit, i.e., full age for a natural person, and capacity to act in its own name for a legal person.</p> <p>UOKiK's decision which finds a breach of competition rules can serve as crucial evidence in damages actions. Judgments of the Antimonopoly Court confirming the decision or reversing it in favour of a plaintiff must be accepted by the court conducting damages actions. Final decisions and judgments may be relied upon as evidence by an injured party, even if that party did not participate in antimonopoly proceedings.</p> <p>The principle is full compensation for losses caused by infringement of competition rules. Justification may be presented to reduce the amount of compensation payable. Contributing towards damage of the injured party or proving that the plaintiff has passed the losses on are examples.</p> <p>There are no provisions of law which determine the way in which damages are calculated. Most often the court takes loss of profits into account in assessing the amount of damages. All injured parties could be awarded regardless of the fact whether it is a Polish or foreign individual or undertaking.</p> <p>Generally, a party which brings an action for damages has to pay court fees which depend on the value of the claim. At the plaintiff's request, costs reduction or exemption is available. In principle, court fees are borne by the losing party.</p> <p>The reasons for lack of interest in damages actions seem to be, on the one hand, the small number of judges qualified in this area well enough to examine competition based cases, and on the other the fact that individuals and undertakings are not aware of their rights in this area of law. Compensation which cannot exceed the amount of losses suffered, could discourage injured parties from bringing actions in the matter, as well.</p> <p>Direct application of articles 81 and 82 of EC Treaty by Polish courts; which is possible after Poland has joined the EU, should facilitate private damages actions. The courts have the power both to consider breach of competition regulations and to award compensation. Polish courts have not dealt yet with competition based claims for damages under EC or national competition law.</p> <p>Complete and effective activity of competition mechanisms needs to be enriched to improve the manner in which injured parties may seek damages.</p>	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	No
(ii) Is this statutory basis different from other actions for damages?	No

(iii)	Is there a distinction between EC and national law in this regard?	From May 1, 2004 a plaintiff has the right to institute a claim based on infringement of Article 81 and Article 82 of EC Treaty in the Polish common court.
B. Competent court		
(i)	Which courts are competent?	Civil courts
(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?	No
(ii)	What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	Domicile or official seat of defendant (perpetrator of anticompetitive practices); jurisdiction chosen by the parties to a contract.
(iii)	Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	Yes, except class action.
D. Procedural and substantive conditions		
(i)	What forms of compensation are available?	Restitutio in integrum and monetary (pecuniary) compensation are available.
(ii)	What are the other forms of civil law liability (if any)?	Other forms of civil liability are available under the Combating Unfair Competition Act: 1) cessation of the prohibited acts, 2) removal of the effects of the prohibited acts, 3) submission of one or more statements of appropriate content and in proper form (public statements recognising fault), 4) refund of unjust profits, on general principles, 5) an appropriate sum of money be awarded for a specific charitable purpose.
(iii)	Does the infringement have to imply fault?	Yes
(iv)	If so, is fault based on objective criteria?	Yes, fault is based also on objective criteria.
(v)	Is bad faith (intent) required?	No
(vi)	Can negligence be taken into account?	No
E. Rules of evidence		
a.	General	
(i)	Burden of proof and identity of the party on which it rests?	The burden of proof relating to a fact shall rest on the person who attributes the legal effects to that fact.
(ii)	Standard of proof	There is no definition of the standard of proof. Circumstances justifying the claim must be proven. The exception is injunctive relief, in respect of which the law requires that the probability of the circumstances justifying the motion be shown.

		The court is unfettered in its obligation to make a decision on the basis of the evidence presented to it. The court will reach a decision after comprehensively weighing up the evidence with which it has been presented.
(iii)	Limitations concerning form of evidence	There are no limitations on and the hierarchy of the form or kinds of evidence that can be presented. Nevertheless, the court can exclude evidence submitted only for the purposes of delaying proceedings.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	There is no equivalent of discovery in Polish law. At the pre-trial stage parties to proceedings exchange pleadings specifying their claims and positions. This is informal and voluntary. There is an exception as regards commercial proceedings. In such proceedings the plaintiff is obliged to attach to his statement a copy of the following documents: letter before action; defendant's answer; information or documents verifying an attempt to settle the matter. The court can order (this usually happens upon a party's request) the submission by anybody (by the other party, by a third party and authority) of a particular document or class of documents.
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	Ditto
(vi)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	Ditto
b.	Proving the infringement	
(i)	Is expert evidence admissible?	Yes
(ii)	To what extent, if any, is cross examination permissible?	The principle of cross-examination does not exist in the same way as it often does in common law systems. Witnesses must give evidence objectively only on facts known to them. Every party to the proceedings, as well as the court has the right to question a witness. No one has the right to refuse to testify, except for related parties. The witness and the party to the proceedings have the right to refuse to answer the question posed, where the answer could expose him or those close to him to criminal liability, disgrace or severe and direct proprietary damage or if the testimony were linked with the abuse of a fundamental professional secret.
(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?	All administrative decisions and judgments can be used as documentary evidence in all proceedings. The court has discretion to decide on the evidential value of such decisions and judgments.

	<p>Final judgments and decisions are legally binding on all courts and administrative bodies in any kind of matters.</p> <p>The above means that decisions of UOKiK as well as court decisions issued during the course of the appeal proceedings will carry significant evidential value.</p> <p>Decisions and judgments issued in competition cases by bodies of other EU countries may formally constitute evidence before a Polish court. However, their evidential value is limited. Such decisions and judgments are not binding on a Polish court but can rather assist in interpreting notions of competition law. The exception is when such decision is to be executed within the territory of Poland.</p>
c. Proving damage	
(i) Are there any specific rules for evidence of damage?	No
d. Proving causation	
(i) Which level of causation must be proven: direct or indirect?	The prevailing view in doctrine and judgments is that proving an indirect causal link is sufficient.
F. Grounds of justification	
(i) Are there grounds of justification?	The term justification in the narrow sense, i.e. anything that wholly exculpates the defendant, despite the plaintiff having fulfilled all the conditions necessary for the action for damage, is not shown by any practical examples in competition-based actions for damages. Any examples of such justification (for example force majeure) are based on the general principles of the civil law.
(ii) Is the 'passing on' defence taken into account?	No
(iii) Are 'indirect purchaser' issues taken into account?	No
(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?	<p>(i) the amount of damages to be paid by the defendant is reduced where the plaintiff has contributed to the infringement; the damage is reduced in proportion to the contributory act of the plaintiff; the court has the right, but not the duty to reduce the amount of damages.;</p> <p>(ii) the amount of damages to be paid by the defendant is reduced where the plaintiff has benefited from the infringement;</p> <p>(iii) on the basis of Article 362 of the Civil Code, it may be stated by analogy that the plaintiff has an obligation to mitigate the loss; thus, if the obligation to mitigate the loss is broken, the amount of damage is to be reduced by the court.</p>
G. Damages	
a. Calculation of damages	
(i) What economic or other models are used by	There are no legal rules on calculating damages. Legal

courts to calculate damage?	<p>doctrine generally proposes two methods for calculating damages: (1) the objective method and (2) the differential method.</p> <p>The first method consists of determining the actual value of the damage suffered in relation to a specific interest.</p> <p>The latter method consists of comparing the actual financial state of the injured party with the hypothetical state, which would have existed if such damage had not occurred.</p> <p>In practice, calculation of damage is established by an expert and not by the court directly.</p> <p>There is no practice on how to calculate the damage in case of competition-based actions.</p>
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	There are no provisions limiting the territorial scope of the injury that can be compensated other than the fulfilment of the general conditions to obtain damages.
(iii) Are ex ante (time of injury) or ex post (time of trial) estimates used?	If the redress is to be in money, the amount is estimated on the date the damages are determined (i.e. on the date of the judgement), unless specific circumstances require the estimation to be made at a different date.
(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?	<p>The damage is assessed on the basis of injury suffered by the plaintiff. The principle of full damages exists in Polish law.</p> <p>Profit made by the entity adopting the monopolistic practice will not determine the amount of damages. In practice, such profit may be treated, directly or indirectly, as the measure of the amount of damages.</p>
(vi) Are punitive or exemplary damages available?	No
(vii) Are fines imposed by competition authorities taken into account when settling damages?	No
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?	<p>Under contract law, interest may be claimed from the date the claim became due.</p> <p>In tort interest may be claimed from the moment the damage was discovered which resulted in loss of profit.</p> <p>In actions for damages whose value is determined on the date of judgement, court judgments are not consistent as to when interest may be awarded from. The prevailing view is that interest is awarded from the date of judgment.</p>
(ii) What are the criteria to determine the levels of interest?	If the amount of interest is not specified in the contract, interest is calculated according to the statutory rate. This is currently 12.25% per annum.
(iii) Is compound interest included?	Compound interest may be claimed by the plaintiff from the date the suit was filed.

H. Timing	
(i) What is the time limit in which to institute proceedings?	Competition-based damages actions become statute-barred after three years from the date on which the injured party discovered the damage and the identity of the person obliged to redress it. In any event, a claim becomes statute-barred on the expiry of ten years from the date, when the event causing the damage occurred.
(ii) On average, how long do proceedings take?	Complex damages actions in Warsaw may take about 3 or even 5 years and in other places about 3 years.
(iii) It is possible to accelerate proceedings?	No
(iv) How many judges sit in actions for damages cases?	At first instance only one judge hears such matters. The court may order the case to be heard by three judges where cases are particularly complicated or set a precedent. At second and third instance such matters are heard as to the merits by a court comprising three judges.
(v) How transparent is the procedure?	Polish procedural rules are very detailed and complicated. No document involved in court procedure is made public. Only the court, the party to the proceedings and their attorneys as well as a court expert may review the court files.
I. Legal costs	
(i) Are Court fees paid up front?	Yes
(ii) Who bears the legal costs?	Until the final outcome of the case each party bears its own costs of the proceedings. The court decides who finally bears the costs of the proceedings in the final judgment. In principle, these costs are borne by the losing party.
(iii) Are contingency fees permissible?	Polish law does not provide for contingency fees. In addition, the rules of conduct of the Polish Bar Association do not permit contingency fees.
(iv) Are contingency fees generally available for private enforcement of EC competition law?	Not applicable.
(v) Can the plaintiff/defendant recover costs?	Costs may be recovered by the plaintiff/defendant. Costs are reimbursed at the request of a party. Such a request must be submitted before the end of the proceedings before a particular instance.
(vi) What are the different types of litigation costs?	The types of litigation costs are as follows: 1) Court fees which depend on the value of the claim, 2) Costs of representation in proceedings, i.e. remuneration of one advocate not exceeding the rate of charges specified in separate provisions and his expenses; 3) Operational costs of the party, e.g. travel costs to court and equivalent of loss of earnings for appearance at court.

(vii) Are there any national rules for taxation of costs?	If a party is dissatisfied as to costs awarded he may file a complaint to the second instance court.
(viii) Is any form of legal aid insurance available?	<p>Yes. It is possible to be exempted from court costs and the court may appoint an advocate or legal adviser ex officio.</p> <p>The following may claim exemption from costs and appointment of an advocate or legal adviser: (1) natural person, who states that it cannot afford the costs without it affecting his and his family's financial state (2) undertakings which prove that they do not have sufficient means to meet these costs. Courts are not usually willing to exempt undertakings from court costs.</p>
(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?	Given the complexity of competition-based damages actions and frequent necessity to obtain court experts' opinions average costs are difficult to assess.
J. General	
(i) Are some of the answers to the previous questions specific to the private enforcement of competition rules?	Competition-based damages actions in civil proceedings are subject to general principles of civil law and do not differ from the way in which other types of civil damages actions are pursued.
(ii) If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	Ditto
(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?	Antimonopoly law does not provide for public authorities to be charged with adopting anticompetitive practices.
(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 is no difference.
(vi) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	From the formal point of view there is no interaction between leniency programmes and actions for claims for damages under competition rules. However, starting from May 1, 2004 a new article 103A on leniency programme is introduced into the Polish Combating Unfair Competition Act, thus we do not have any practical experience in this matter.
(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	Leniency programme is being introduced to the Polish antimonopoly regulations. This should make it easier to investigate and prosecute a cartel's member and to sue them before 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	No data.

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?	Costs and timing of administrative and court proceedings; low level of knowledge among businesses.
(ii) How could that be achieved?	Amendments of relevant legislation, education.
(iii) Are alternative means of dispute resolution available?	Arbitration court, negotiation, mediation.
(iv) If so, to what extent are they successful?	We have little experience in this field and no grounds to answer.