

## Executive summary and overview of the national report for the Czech Republic

<b>Section I – Summary of findings</b>	
Please provide a summary which should not exceed one page of your findings.	
<b>Section II – status quo and forthcoming reforms – action for damages</b>	
<b>A. Legal Basis</b>	
(i) Is there an explicit statutory basis?	No.
(ii) Is this statutory basis different from other actions for damages?	N/A
(iii) Is there a distinction between EC and national law in this regard?	No.
<b>B. Competent court</b>	
(i) Which courts are competent?	Regional courts.
(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?	No essential limitation.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	<ul style="list-style-type: none"> <li>- Defendant having its place of residence, place of business or seat in the Czech Republic;</li> <li>- Defendant having property in the Czech Republic;</li> <li>- Defendant, which is a foreign entity, having a business or a business branch in the Czech Republic;</li> <li>- Event triggering the claim for damages occurred in the Czech Republic</li> </ul>
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	No.
<b>D. Procedural and substantive conditions</b>	
(i) What forms of compensation are available?	Pecuniary compensation.
(ii) What are the other forms of civil law liability (if any)?	Liability for damage. Guarantee to creditors (subject to strict conditions).
(iii) Does the infringement have to imply fault?	No.
(iv) If so, is fault based on objective criteria?	N/A
(v) Is bad faith (intent) required?	N/A

(vi) Can negligence be taken into account?	N/A
<b>E. Rules of evidence</b>	
a. General	
(i) Burden of proof and identity of the party on which it rests?	Plaintiff shall prove the breach of a duty by the defendant, occurrence of damage and the causal link between the former two. Defendant shall prove existence of reasons for liberation (justification), if exist.
(ii) Standard of proof	Principle of free evaluation of evidence by court.
(iii) Limitations concerning form of evidence	None.
(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Evidence may be secured both in pre-trial and trial stage if there is concern it would no longer be available later.
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	The court has the right during the proceedings to request any natural or legal person to submit information/document that is important for the proceedings.
(vi) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	The court may ask judicial authorities in other jurisdictions to carry out steps aiming at evidence discovery in their respective countries.
b. Proving the infringement	
(i) Is expert evidence admissible?	Yes.
(ii) To what extent, if any, is cross examination permissible?	The parties to the proceedings and experts may question witnesses subject to consent by the court which is a standard practice.
(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?	Any statements/decisions are subject to the general principle of free evaluation of evidence by court. Decisions of competent authorities that a criminal or administrative offence has been committed are binding for the court.
c. Proving damage	
(i) Are there any specific rules for evidence of damage?	No (except for the concept of abstract loss of profit as defined in Article G of the Report). If damages impossible/exceptionally difficult to prove, the judge may determine it at his/her discretion.
d. Proving causation	
(i) Which level of causation must be proven: direct or indirect?	Czech law does not explicitly distinguish between direct and indirect causation.
<b>F. Grounds of justification</b>	

(i)	Are there grounds of justification?	Only circumstances excluding liability (see Article D of this Report).
(ii)	Is the 'passing on' defence taken into account?	Theoretically yes.
(iii)	Are 'indirect purchaser' issues taken into account?	Theoretically yes.
(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>		
a. Calculation of damages		
(i)	What economic or other models are used by courts to calculate damage?	Courts usually rely on expert reports.
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	More widely.
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	This distinction is not generally made.
(iv)	Are there maximum limits to damages?	Not anticipated damages are not compensated (subject to strict interpretation).
(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.
(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?	The late interest accrues from the date of a notice by the plaintiff to the party having caused the damage.
(ii)	What are the criteria to determine the levels of interest?	Twice the discount rate announced by the Czech National Bank.
(iii)	Is compound interest included?	No.
<b>H. Timing</b>		
(i)	What is the time limit in which to institute proceedings?	Four years after the injured party has learned, or could have learned, of the damage and of the party liable therefor, however, no later than 10 years after the

	breach of legal obligation has occurred
(ii) On average, how long do proceedings take?	1 year first instance, 2 to 5 years in total
(iii) It is possible to accelerate proceedings?	No or not used in relevant cases.
(iv) How many judges sit in actions for damages cases?	One in the first instance, three on appeal.
(v) How transparent is the procedure?	Public.
<b>I. Legal costs</b>	
(i) Are Court fees paid up front?	Yes.
(ii) Who bears the legal costs?	Each party bears its own costs.
(iii) Are contingency fees permissible?	Yes, but only under exceptional circumstances and if reasonable.
(iv) Are contingency fees generally available for private enforcement of EC competition law?	Yes, but only under exceptional circumstances and if reasonable.
(v) Can the plaintiff/defendant recover costs?	Yes, the party successful in the trial may recover costs, but rarely in full.
(vi) What are the different types of litigation costs?	Cash expenditures, including the court fee, the participants' loss of profit because of the proceedings, costs of evidence, costs of legal representation, costs of testimony, costs of expertise, costs of interpreting, etc.
(vii) Are there any national rules for taxation of costs?	No.
(viii) Is any form of legal aid insurance available?	Yes.
(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?	No case law, therefore, impossible to estimate.
<b>J. General</b>	
(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?	N/A
(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?	A pre-notice is to be given to the public authority prior to filing an action at a court.

(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?	N/A
(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	Virtual impossibility for a third party to become a participant to the administrative proceedings before the Competition Office. Difficulties in learning of existence of a relevant judgement.
(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	none (according to information available)
<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?	<ul style="list-style-type: none"> <li>a. Competent courts</li> <li>b. Rules of burden or proof</li> <li>c. Method of calculating damages</li> <li>d. Inexistence of collective/consumer actions</li> <li>e. Role of arbitration</li> </ul>
(ii) How could that be achieved?	<ul style="list-style-type: none"> <li>f. Specialised competition courts</li> <li>g. Shifting of burden or proof (in certain cases)</li> <li>h. More specific rules for calculation of damages</li> <li>i. Collective/consumer actions etc.</li> <li>j. Increased role of arbitration</li> </ul>
(iii) Are alternative means of dispute resolution available?	Arbitration
(iv) If so, to what extent are they successful?	None (according to information available).