

Executive summary and overview of the national report for Sweden

Section I – Summary of findings	
<p>Section 33 of the Competition Act provides that an undertaking, which has intentionally or negligently infringed the prohibitions against anti-competitive agreements or abuse of a dominant position in the Act, shall compensate the injury caused thereby to another undertaking or to a party to an agreement with the infringing undertaking. This provision is deemed to be applicable by analogy to infringements of EC competition law.</p> <p>The preparatory works of the Competition Act refer to general principles of tort law under which only parties covered by the protected subject-matter of the law in question are entitled to compensation. It is further stated that damages claims based on infringements of competition law can be brought by parties to the breaching agreement, as well as competitors and other undertakings that are “directly” injured by the anti-competitive behaviour in question, but not by “undefined groups of consumers” who are only indirectly affected by the behaviour. It is unclear (and subject to discussion) whether the statements in the preparatory works constitute a further limitation of the circle of those entitled to damages, in addition to the limitation inherent in the wording of Section 33 itself (undertakings and parties to an agreement with the infringing party). In any event, for a private individual to be entitled to damages, a contractual relationship with the infringing undertaking must exist.</p> <p>The object of the liability for damages for competition law infringements is to restore the plaintiff’s financial position to what it would have been if the infringement had not occurred. As a general rule, non-contractual liability does not cover pure financial loss, unless the loss is caused by criminal behaviour. Therefore, liability for competition law infringements can be said to hold a special position in Swedish tort law.</p> <p>The right to damages under the Competition Act lapses if no claim is brought within five years from the date on which the injury arose.</p> <p>General courts, primarily the district court of the defendant’s “home forum”, are competent to hear cases relating to damages under the Competition Act. In addition, the Stockholm District Court is always competent in such cases.</p> <p>Recently, a Government Committee has suggested to expand the circle of those entitled to damages under competition law, in particular to include groups of private consumers, and to explicitly include infringements of EC competition law within the scope of Section 33.</p>	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	Yes, Section 33 of the Competition Act.
(ii) Is this statutory basis different from other actions for damages?	Yes. Unlike in the case of competition law infringements, non-contractual liability does not normally cover financial loss unrelated to personal and property injury (pure financial loss) unless the loss is caused by criminal behaviour.
(iii) Is there a distinction between EC and national law in this regard?	The text of the law only refers to national competition law, but the provisions are in general deemed to be applicable by analogy to infringements of EC competition law.
B. Competent court	
(i) Which courts are competent?	General courts (primarily the district court being the defendant’s “home forum”)
(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?	Standing is limited to undertakings and those (whether undertakings or not) in a contractual relationship with the infringing party, but without discrimination as to nationality or residence/seat.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to	The competent court is primarily the court for the place where the defendant resides or has its seat.

	be admissible?	
(iii)	Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	Class action is available in Sweden, but only undertakings and parties in a contractual relationship with the infringing party are entitled to compensation.
D. Procedural and substantive conditions		
(i)	What forms of compensation are available?	Compensation for financial loss, including both direct costs, loss of income and loss of or damage to property.
(ii)	What are the other forms of civil law liability (if any)?	Liability under company law for incorporators, board members and managing directors for injury caused intentionally or negligently to the company.
(iii)	Does the infringement have to imply fault?	Intent or negligence is required.
(iv)	If so, is fault based on objective criteria?	There must be intent or negligence by a person in a leading position within the breaching company.
(v)	Is bad faith (intent) required?	No, negligence is sufficient.
(vi)	Can negligence be taken into account?	Yes.
E. Rules of evidence		
a.	General	The Court in its discretion may evaluate freely all evidence presented by the parties. Virtually all kinds of evidence are admissible.
(i)	Burden of proof and identity of the party on which it rests?	The plaintiff has the burden of proof.
(ii)	Standard of proof	"Proven" / "shown" (but in the absence of proof of the extent of injury, a court may estimate the amount of damages).
(iii)	Limitations concerning form of evidence	Virtually none.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Discovery in the proper sense does not exist in Swedish law, but a party may be ordered to produce specified documents that can be assumed to be of importance as evidence.
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	Also third parties may be ordered to produce specified documents that can be assumed to be of importance as 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)	Also public authorities (such as the Swedish Competition Authority) may be ordered to produce specified documents that can be assumed to be of importance as evidence. With a few exceptions, this applies even to documents covered by secrecy.
b.	Proving the infringement	
(i)	Is expert evidence admissible?	Yes.
(ii)	To what extent, if any, is cross-examination permissible?	At a main hearing, a party may ask questions to all witnesses, including those called by other parties.
(iii)	Under which conditions does a statement	The Court in its discretion may evaluate freely all evidence presented by the parties. Typically, decisions

	and/or decision by a national competition authority, a national court, an authority from another EU Member State have evidential value?	by other courts and authorities are given considerable weight by Swedish courts.
c.	Proving damage	
(i)	Are there any specific rules for evidence of damage?	If it is impossible or difficult to prove the extent of injury, the court may estimate it at a reasonable amount.
d.	Proving causation	
(i)	Which level of causation must be proven: direct or indirect?	Direct causation must be proven.
F. Grounds of justification		
(i)	Are there grounds of justification?	No, there are no special grounds of justification as regards the liability as such, only as regards the amount of the damages ("net" loss).
(ii)	Is the 'passing on' defence taken into account?	Yes - as long as it has an effect on the actual injury sustained.
(iii)	Are 'indirect purchaser' issues taken into account?	Yes - as long as it has an effect on the actual injury sustained.
(iv)	Is it relevant that the plaintiff is (partly) responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement?	Yes, contributory negligence is taken into account when calculating the damages. Benefits for the plaintiff caused by the infringement are taken into account when calculating the damages.
G. Damages		
a.	Calculation of damages	
(i)	What economic or other models are used by courts to calculate damages?	Damages cover only actual injury. The court will compare the plaintiff's actual financial situation with a hypothetical situation without the infringement.
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	As long as the plaintiff can show actual injury and causality, there are no formal limitations as to territory.
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	As long as the plaintiff can show actual injury and causality, there are no formal limitations as to ex post and ex ante estimates.
(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?	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?	From the 30th day after the plaintiff claimed compensation from the defendant in writing, or at least from service of the summons application.
(ii) What are the criteria to determine the levels of interest?	The interest is eight percentage points above the reference rate of interest of the Central Bank.
(iii) Is compound interest included?	No.
H. Timing	
(i) What is the time limit in which to institute proceedings?	The right to damages lapses if no claim is brought within five years from the date on which the injury was sustained.
(ii) On average, how long do proceedings take?	Depending on the complexity of the case and the number of instances, roughly from one year for a "simple" case with no appeal to perhaps five years (or more) for a complex case in three instances.
(iii) It is possible to accelerate proceedings?	No. However, it is possible to have partial judgments under Swedish law.
(iv) How many judges sit in actions for damages cases?	The <i>district court</i> normally consists of three legally qualified judges. Four legally qualified judges normally sit in the <i>court of appeal</i> . Five justices constitute a quorum in the <i>Supreme Court</i> .
(v) How transparent is the procedure?	Documents in the file are as a rule public. Information on the business and operation of an undertaking will, however, be treated as confidential if the undertaking can be expected to suffer injury if the information is disclosed. A party wishing that certain information be treated as confidential should make such a request to the court. Oral court hearings are normally open to the public. In principle, there are no legal barriers to the publishing of judgments.
I. Legal costs	
(i) Are Court fees paid up front?	The plaintiff must pay an application fee of 450 SEK (appr. 50 EUR). Otherwise, court proceedings in Sweden are financed by the state with no fees for the parties.
(ii) Who bears the legal costs?	The general rule is that the losing party shall reimburse the winning party for litigation costs.
(iii) Are contingency fees permissible?	Within the framework of class action, the court may rule that contingency fees are set. Otherwise, the Swedish Bar Association does not accept that its members charge contingency fees.
(iv) Are contingency fees generally available for private enforcement of EC competition law?	See above.
(v) Can the plaintiff/defendant recover costs?	Yes, the winning party can recover all reasonable litigation costs from the losing party.
(vi) What are the different types of litigation costs?	Compensation for litigation costs shall fully cover all reasonable costs for preparing the case, including counsel's fees and the time and effort expended by the party itself.
(vii) Are there any national rules for taxation of costs?	No specific rules. Costs are recoverable to the extent they have been "reasonably incurred to safeguard the party's interests". This determination is carried out by the court.

(viii)	Is any form of legal aid insurance available?	Apart from private legal aid insurance, the possibility of receiving legal aid is very limited. In general, public legal aid for legal persons is not available.
(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?	This varies widely, from quite little (perhaps around 100,000 SEK) in a straightforward case with no appeal to millions of SEK in a complex case through three instances.
J. General		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	Most answers above largely apply to tort actions in general.
(ii)	If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	The most important difference is that non-contractual liability does not normally cover pure financial loss, except in case of criminal behaviour. In this respect, liability for competition law infringements is one of a few exceptions.
(iii)	EC competition rules are regarded as being of public policy. Does that influence any answers given?	No, but this study does not analyse whether or not EC law requires more generous remedies for infringements of EC competition law than those available under Swedish law.
(iv)	Are there any differences according to whether the defendant is a public authority or a natural or legal person?	There are no such differences.
(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?	No.
(vii)	Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	To our knowledge, there is as yet no Swedish case law on damages for breach of competition law, either based on the Competition Act or on EC competition rules.
(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 such statistics are 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?	A Government Committee has recently made several proposals, <i>inter alia</i> in order to facilitate private competition law enforcement. This includes expanding the circle of those entitled to damages, prolonging the limitation period and introducing a discovery-like procedure to the plaintiff's benefit (see Annex 1). It would also be possible – although more difficult and far-reaching – to introduce the possibility to claim other types of damages than actual damages, such as punitive damages or treble damages.
(ii)	How could that be achieved?	See above, as well as main report.
		Yes, arbitration is one alternative dispute resolution

(iii)	Are alternative means of dispute resolution available?	method.
(iv)	If so, to what extent are they successful?	No public figures or studies are available regarding such issues. The lack of case law from the courts on damages under competition law seems to indicate that alternative means of dispute resolution are used.
Section IV: Economic models		
(i)	Are there any alternative economic or other models for the calculation of damages to those used by national courts which are discussed in literature or other fora? Which, if any, of these alternative models would you recommend?	To our knowledge, there is not really any discussion on alternative economic models.
(ii)	How are quantitative assessments by experts received by judges involved in damages cases, do they have a tangible influence on the court's decision and were any comments made by the judges involved on the quality of the analysis – were they regarded as readily comprehensible?	Such assessments are generally well received.