

## Executive summary and overview of the national report for Latvia

<b>Section I – Summary of findings</b>	
<p>In Latvian Competition law a provision regarding the obligation to compensate damage caused as a result of breach of the Competition law was included relatively recently – in the wording of the law which took effect on January 1, 2002. There is very little court practice in respect of this matter.</p> <p>To date, there has not been a court case in Latvia seeking recovery of damages for violation of EC Competition law. The fact that there are no such cases can be fully understood, taking into account that before admission to the European Union (May 1, 2004), the EC competition rules were not directly applicable to Latvia.</p> <p>With regard to violations of national competition laws, the Latvian courts have reviewed only a few cases and therefore it is impossible to say that any court practice has formed in this matter. Currently it could only be possible to try finding analogies with cases where claims are brought for recovery of damages resulting from illegal actions.</p>	
<b>Section II – status quo and forthcoming reforms – action for damages</b>	
<b>A. Legal Basis</b>	
(i) Is there an explicit statutory basis?	There are two separate legal basis for national law and EC based claims, the former stated in the Competition law and the latter general.
(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?	No.
<b>B. Competent court</b>	
(i) Which courts are competent?	Cases relating to violations of the Competition Law fall under the jurisdiction of district (city) 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 limitations – any natural or legal person (also foreign) can become a party in the civil proceedings.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	The main criteria for establishing jurisdiction of a Latvian court over the case is the place of residence or seat of the defendant.
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	Yes, however, such claims are not common.
<b>D. Procedural and substantive conditions</b>	
(i) What forms of compensation are available?	<p>The Civil procedure Law provides for different forms of compensation:</p> <ul style="list-style-type: none"> <li>- collection of money;</li> <li>- return of property in kind;</li> <li>- possibility to impose an obligation to perform certain activities.</li> </ul>

(ii)	What are the other forms of civil law liability (if any)?	There are no other forms of civil liability which would directly arise from the damage liability.
(iii)	Does the infringement have to imply fault?	Yes.
(iv)	If so, is fault based on objective criteria?	Under the Latvian Civil Law, when speaking of fault as a precondition to civil liability, an "objective" fault is to be understood as one which occurs in respect of any undesirable, illegal or other act or failure to act infringing on lawful interests, conflicting with the public interests and its established principles of operation. The concept of objective interpretation of fault is reflected in presumption of fault.
(v)	Is bad faith (intent) required?	The obligation to compensate does not necessarily require bad faith (intent).
(vi)	Can negligence be taken into account?	Negligence is also a form of fault.
E. Rules of evidence		
a. General		
(i)	Burden of proof and identity of the party on which it rests?	The general principle in a civil case is that the party must prove those facts on which it bases its claim or objection. A plaintiff must prove its claim and a defendant is obliged to submit evidence showing that his objections are correct.
(ii)	Standard of proof	The party must prove the facts that the party alleges. For a court to adjudge damages, the <u>plaintiff</u> must prove the existence of all preconditions (the illegal act of a person, guilt of this person, existence of damages and their specific amount and a causal link between the illegal act and damages) and therefore the burden of proof lies with the claimant. The defendant must prove that it is not at fault with regard to the specific disturbance of the rights or that the disturbance has not occurred.
(iii)	Limitations concerning form of evidence	The Civil Procedure Law imposes several restrictions on witnesses. For example, certain categories of persons cannot be summoned.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	If either party is unable to submit appropriate evidence but can instead provide information to the court, where such evidence can be obtained and is related to the case, that party can ask the court to request this evidence from any third parties. Such court request is binding on any person. For the purpose of the requisite standard of proof "almost certainty" is applicable.
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	If either party is unable to submit appropriate evidence but can instead provide information to the court, where such evidence can be obtained and is related to the case, that party can ask the court to request this evidence from any third parties. Such court request is binding on any person.
(vi)	Rules on (pre-trial or other) discovery within	If either party is unable to submit appropriate evidence

and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	but can instead provide information to the court, where such evidence can be obtained and is related to the case, that party can ask the court to request this evidence from any third parties. Such court request is binding on any person and therefore also on the competition authorities.
b. Proving the infringement	
(i) Is expert evidence admissible?	Yes. A court must order expert-examination in a matter, following a request of a party, where the clarification of facts relevant to the matter requires specific knowledge in science, technology, art or another field.
(ii) To what extent, if any, is cross examination permissible?	Cross-examination is permissible, however, a witness may only be questioned regarding facts relevant to the specific case.
(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?	A statement and/or decision by a national competition authority, a national court or an authority from another EU Member State is not binding on national court. However, parties may submit such decisions as evidence on the case.
c. Proving damage	
(i) Are there any specific rules for evidence of damage?	The following facts must be proved in order to satisfy a damages claim: <ul style="list-style-type: none"> <li>- illegal act of any person (act or failure to act);</li> <li>- fault of this person;</li> <li>- existence of damages and their specific amount;</li> <li>- causative relation between the illegal act and damages.</li> </ul>
d. Proving causation	
(i) Which level of causation must be proven: direct or indirect?	If the damage is direct, a direct causal link between this damage and the illegal act must be proven. If the damage is indirect, also the indirect causative relation of this damage with the illegal act must be proven.
<b>F. Grounds of justification</b>	
(i) Are there grounds of justification?	According to general civil law grounds of justification are force majeure, consent of victim and self-defence.
(ii) Is the 'passing on' defence taken into account?	A passing-on defence is acceptable; however, the defendant may choose between active and passive defence and he or she does not have an obligation to undertake the burden of proof while the claimant has not proven his or her claim.
(iii) Are 'indirect purchaser' issues taken into account?	The Civil Law provides for existence of causal relation between the illegal action and occurrence of losses. Although theoretically 'indirect purchaser' could claim compensation for losses on the general basis, in fact this person could face problems in relation to proving the causal relation in respect of the caused losses, since a third party will be involved in the case.
(iv) Is it relevant that plaintiff is (partly)	A victim, even before the loss has occurred, must with

responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement?	due care and diligence, as generally must be exercised by an honest and careful person, endeavour to prevent or at least reduce his or her losses. If the victim does not mitigate his or her losses, he or she could lose the right to compensation, unless the other party has in bad faith infringed their rights.
<b>G. Damages</b>	
<b>a. Calculation of damages</b>	
(i) What economic or other models are used by courts to calculate damage?	<p>In Latvia, the principle of full compensation of damages is applicable and therefore the damages awarded by the court must correspond to the equivalent in money to the damage (loss) caused.</p> <p>In Latvian court practice, no special economic or other models that are used by courts to calculate damage can be found. The amount of losses is proved by the parties and the methods of calculation of losses may differ from case to case. The court only assesses the losses and validity of their calculation.</p>
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	The claim for compensation of damage shall be brought in respect of all damage incurred as a result of the specific breach. The Latvian law does not limit the damages by the place of their occurrence to the extent that they can be proven.
(iii) Are ex ante (time of injury) or ex post (time of trial) estimates used?	Ex ante. The amount of damages are determined as of the moment loss occurred. Assessment of the amount of damages can be claimed at court, taking into account the inflation rate and contractual interest.
(iv) Are there maximum limits to damages?	The Latvian law does not establish a maximum limit for award of damages. The amount of compensation for damages can be limited only in a contractual relationship.
(v) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	If a person suffers losses from the illegal actions of another person, the person causing the loss is liable for all such losses. Upon assessment of losses, the amount of profit made by the defendant is irrelevant.
(vi) Are punitive or exemplary damages available?	Latvian law does not provide for either punitive damages or the right of a court to increase or reduce the amount of damages to be collected.
(vii) Are fines imposed by competition authorities taken into account when settling damages?	As at the date of preparation of this report, in Latvia there have not been any court cases awarding damages from someone who has already had a fine imposed upon them by the Competition Council. Theoretically, taking into account the current legal regulation, the fines imposed by the Competition Council should not in any manner affect the assessment of damages.
<b>b. Interest</b>	
(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 right to claim interest arises from the moment when the victim obtains the right to claim the damages.

(ii)	What are the criteria to determine the levels of interest?	If the interest is claimed on the basis of law (in case there is no agreement establishing the amount of interest) then the rate of 6% per annum set by law shall be applied, which is invariable in respect of all cases, irrespective of the subject and character of the transaction.
(iii)	Is compound interest included?	The Latvian law does not provide for compound interest.
<b>H. Timing</b>		
(i)	What is the time limit in which to institute proceedings?	Taking into account that the Competition Law does not provide for a specific time limit in respect of damages claims resulting from violations of the Competition Law, then such claims lapse within the general prescription term stated by the Civil Law – 10 years.
(ii)	On average, how long do proceedings take?	The Civil Procedure Law does not set any time limits in respect of review of the cases and therefore it is difficult to predict how long the proceedings would take. The average duration of the proceedings at the court of first instance would be approximately one to two years.
(iii)	It is possible to accelerate proceedings?	The Civil Procedure Law does not provide for the possibility to accelerate the proceedings.
(iv)	How many judges sit in actions for damages cases?	In a court of first instance a judge sitting alone will adjudicate a civil matter. In courts of appeal and cassation the civil cases are adjudicated collegially (usually composed of three judges).
(v)	How transparent is the procedure?	According the general principle of open adjudication of cases, the hearing of civil cases is open in all courts. Closed hearings of civil cases can be held only upon the well-grounded decision of the court.  Participation of the parties in the case is actually not limited in any manner.
<b>I. Legal costs</b>		
(i)	Are Court fees paid up front?	A state fee is payable upon submission of a statement of claim. The office fee is payable upon receipt of documents from court (copies of materials in the case, statements, etc.). Expenses relating to the proceedings are payable by the party which requests the relevant procedural activity prior to the hearing of the case or carrying out of the relevant procedural activity.
(ii)	Who bears the legal costs?	Legal costs are recovered from the defendant in favour of the plaintiff if the plaintiff's claim is satisfied in full or in part. If the claim is dismissed, these fees are recovered from the plaintiff in favour of the defendant.
(iii)	Are contingency fees permissible?	Latvian law does not prohibit agreements on contingency fees.
(iv)	Are contingency fees generally available for private enforcement of EC competition law?	There are no restrictions in respect of application of contingency fees in claims resulting from violations of EC competition law.

(v)	Can the plaintiff/defendant recover costs?	The party in whose favour a judgment is made is awarded all court costs incurred by such party, from the opposite party.
(vi)	What are the different types of litigation costs?	The Civil Procedure Law provides for three types of litigation costs: 1) costs related to assistance of attorneys; 2) costs related to attending court sittings; 3) costs related to gathering evidence.
(vii)	Are there any national rules for taxation of costs?	Yes.
(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?	The costs of an action will mainly depend on the amount of damages claimed. For example, the amount of the state fee directly depends on the amount of the claim and also legal fees will certainly be higher in the case of a large and more complicated 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?	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?	In general, there is no difference. There are certain restrictions by law imposed on the state authorities that are not applicable to natural persons, for example, they may not agree on settlement of disputes by way of arbitration.
(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.
(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	The main issues relating to private enforcement of EC and national competition law are already described above.
(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	In Latvia, there have been no cases based upon the violation of EC competition rules in which the issue of damages has been decided. With regard to the violation of national competition rules there have been very few cases in Latvia, however, we have no exact number of cases as such information is not aggregated and publicly

	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?	<p>Due to the absence of damages actions for violation of competition rules in Latvia our suggestions are rather theoretical and relate more to damages actions in general.</p> <ol style="list-style-type: none"> <li>1. The main problem in claiming damages arising from illegal action is evaluation of amount of damages.</li> <li>2. The length of court proceedings in general is a disincentive in Latvia. Taking into account complexity of competition cases, such proceedings might take very long time.</li> <li>3. Theoretically under Latvian law an 'indirect purchaser' could claim compensation for losses on a general basis, however, in fact this person could face problems in relation to proving the causal relation (see Section E(d) above) in respect of the caused losses, since a third party will be involved in the case.</li> </ol>
(ii) How could that be achieved?	<ol style="list-style-type: none"> <li>1. The main solution to problem regarding evaluation of damages, especially in claims for damages according to competition rules, would be issue of certain instructions (which would bind also the courts) on the different methods of calculating damages.</li> <li>2. This is a problem of whole system and may not be solved only with respect to the competition cases.</li> <li>3. The way in which the indirect purchaser's action could be facilitated would be to create an express rule stating that the choice of a middleman to pass on increased costs either wholly or partially would not be sufficient to break the chain of causation.</li> </ol>
(iii) Are alternative means of dispute resolution available?	Resolution of any civil dispute, other than where one of the parties is a public authority, and which is based on the agreement between the parties, can be submitted to the courts of arbitration. No other means of dispute resolution are available under the Latvian law.
(iv) If so, to what extent are they successful?	Arbitration proceedings are private and confidential, therefore it is not possible to find out to what extent the arbitration proceedings are successful in competition cases.