

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

<b>Section I – Summary of findings</b>	
<p>Finnish law provides business undertakings with a relevant legal basis for the private enforcement of competition rules.</p> <p>Damage claims have, however, so far not to any significant degree been the subject of litigation.</p> <p>Giving the Finnish Market Court (otherwise possessing exclusive competence in competition matters) competence to also rule on damages claims would, in general, facilitate and reduce costs related to private damages actions.</p> <p>The major obstacles for the institution of private damage actions, and the main reasons for such actions not already being taken are probably not specific to Finland, but rather pertain to private competition damage actions, in general.</p> <p>It is expected that antitrust litigation in Finland will increase in the years to come.</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?	Yes, the Competition Act, Article 18a
(ii) Is this statutory basis different from other actions for damages?	Yes, gives specific statutory basis for actions for damages for breach of competition rules
(iii) Is there a distinction between EC and national law in this regard?	No
<b>B. Competent court</b>	
(i) Which courts are competent?	The District Courts with appeal to the Courts of Appeal
(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?	The specific statutory right to claim compensation for damages for breach of competition rules expires if an action has not been instituted within five years
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	The Competition Act applies also to business arrangements taking place outside of Finland, to the extent that such arrangements have significant effects in Finland and/or is directed against Finnish consumers
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	Class actions cannot be instituted under Finnish law
<b>D. Procedural and substantive conditions</b>	
(i) What forms of compensation are available?	The right to compensation under the Competition Act (Article 18a(1)) covers actual losses such as expenses, price differences, lost profits and other direct or indirect economic damages
(ii) What are the other forms of civil law liability (if any)?	No other forms of civil liability are prescribed in the Competition Act
(iii) Does the infringement have to imply fault?	Compensation for damages under Article 18a of the Competition Acts requires intentional or negligent

	behaviour
(iv) If so, is fault based on objective criteria?	The court will in each case assess whether sufficient evidence has been presented in support of intentional or negligent behaviour
(v) Is bad faith (intent) required?	Intent or negligence is required
(vi) Can negligence be taken into account?	Yes
<b>E. Rules of evidence</b>	
<b>a. General</b>	
(i) Burden of proof and identity of the party on which it rests?	No specific provisions on standard of proof exist. The burden of proving that a violation of competition rules has occurred and that loss has been caused due to such breach rests with the plaintiff
(ii) Standard of proof	The court will in each case assess the relevance, materiality and weight of the evidence that the parties present
(iii) Limitations concerning form of evidence	Both written and oral evidence is admitted
(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Finnish law does not provide for any mechanism comparable to pre-trial exchange of documents or other "discovery". When proceedings have been instituted, the court may upon request of a party order the other party (or a third party) to disclose specified documents, if deemed relevant
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	See answer E(iv) above
(vi) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	See answer E(iv) above
<b>b. Proving the infringement</b>	
(i) Is expert evidence admissible?	Yes
(ii) To what extent, if any, is cross examination permissible?	Cross examination is permissible
(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?	The evidential value of a statement and/or decision made by national authorities/courts and authorities in other EU Member States will depend of the ruling court's assessment of its relevance in each case and the finality of the decision in question
<b>c. Proving damage</b>	
(i) Are there any specific rules for evidence of damage?	No
<b>d. Proving causation</b>	

(i)	Which level of causation must be proven: direct or indirect?	Plaintiff must prove that a line of events links the breach of competition rules to the loss
F. Grounds of justification		
(i)	Are there grounds of justification?	The court may (i) mitigate the amount of damages to what it finds reasonable, in case the injured party has contributed, (ii) impose compensation jointly and severally, if damages caused by more than one business and (iii) divide the payment of damages as between defendants based on their degree of responsibility. A possible division of damages as between defendants does not affect the right of the plaintiff(s) to whom all defendants are liable jointly and severally
(ii)	Is the 'passing on' defence taken into account?	No relevant case law found
(iii)	Are 'indirect purchaser' issues taken into account?	Indirect purchasers may in theory claim damages, but they would need to prove that they themselves have suffered losses, i.e. that the alleged higher price has been passed on to them.
(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?	See answer to F(i) above
G. Damages		
a. Calculation of damages		
(i)	What economic or other models are used by courts to calculate damage?	No case law exists
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	No case law exists
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	No case law exists
(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?	In general, damages are assessed on the basis of the 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 case law exists
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?	Interest can, in general, be claimed as of one month from the day on which the claim for damage was first presented, if accompanied by an explanation as to its basis

(ii)	What are the criteria to determine the levels of interest?	Interest can (if not otherwise agreed) be claimed with a yearly rate of 7 % over the relevant reference rate applied by the European Central Bank
(iii)	Is compound interest included?	No
<b>H. Timing</b>		
(i)	What is the time limit in which to institute proceedings?	See answer C(i) above
(ii)	On average, how long do proceedings take?	Between one and three years before the District Court
(iii)	It is possible to accelerate proceedings?	Yes, if allowing only one judge to decide the case
(iv)	How many judges sit in actions for damages cases?	As a starting point, three professional judges
(v)	How transparent is the procedure?	Court proceedings are, as a general rule, public
<b>I. Legal costs</b>		
(i)	Are Court fees paid up front?	Yes, a minor registration fee
(ii)	Who bears the legal costs?	The losing party will, as a general rule, be ordered to compensate the winning party's legal fees and costs in full. The court may also order partial compensation or that each party shall bear its own costs
(iii)	Are contingency fees permissible?	In general, not prohibited, but very rarely used
(iv)	Are contingency fees generally available for private enforcement of EC competition law?	See answer I(iii) above
(v)	Can the plaintiff/defendant recover costs?	See answer I(ii) above
(vi)	What are the different types of litigation costs?	Recoverable costs are: expenses (including compensation of witness) and fees of legal counsel(s) (both national and foreign)
(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 exists. In large commercial disputes costs, in general, vary between 20,000 and 200,000 EUR in the District Court (plus similar amount if appealed)
<b>J. General</b>		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	Yes, the statutory basis is specific
(ii)	If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	The specific statutory provision favours damage actions for breach of competition rules
(iii)	EC competition rules are regarded as being of public policy. Does that influence any	No

answers given?	
(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?	No case law exists
(vi) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	No case law exists
(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	The fact that the Market Court cannot decide on damage, i.e. separate, civil proceedings have to be initiated even in cases where the Market Court has ruled that a breach has occurred
(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 case law exists
<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?	Finnish legislation provides a relevant legal basis for the private enforcement of competition rules by business enterprises
(ii) How could that be achieved?	Giving the Market Court competence to also rule on damages claims would facilitate and reduce costs related to private damages actions for breach of competition rules
(iii) Are alternative means of dispute resolution available?	Yes
(iv) If so, to what extent are they successful?	At this point of time, alternative means of dispute resolution are, in general, not applied to any considerable extent