Executive summary and overview of the national report for France

Section I – Summary of findings	
Please provide a summary which should not exceed one page of your findings.	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	General tort law regime, i.e. Article 1382 *et seq*. Civ. Code and 1147 *et seq*. for contractual claims. It has to be noted that in a contractual claim where the contract is null, the legal basis for an action for damages is Article 1382 Civ. Code.
(ii) Is this statutory basis different from other actions for damages?	No. But one specific statutory basis in national law for actions for damages concerning restrictive practices : Article L. 442-6 Com. Code. It does not apply to anti-competitive practices.
(iii) Is there a distinction between EC and national law in this regard?	Under Article L. 420-6 Com. Code a fine may be imposed for fraudulent participation in an anti-competitive practice prohibited by Articles L. 420-1 and L. 420-2 Com. Code. It is unclear whether this criminal provision also applies to Articles 81 and 82 EC.
B. Competent court	
(i) Which courts are competent?	Commercial courts ("*Tribunaux de commerce*") Civil courts ("*Tribunal de Grande Instance*" and "*Tribunal d'Instance*") Administrative courts ("*Tribunaux administratifs*") Criminal courts ("*Tribunaux correctionnels*") Competition cases can also be handled during arbitration proceedings.
(ii) Are there specialised courts for private enforcement of competition rules?	There are no specialised courts for bringing such actions.
C. Standing	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	The claimant has to justify that he has an interest in the case and the right to sue. The claimant's interest must be personal, existing, real and legitimate. Natural non national claimants and legal non national claimants have standing under the same conditions as national claimants.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	In both commercial and civil proceedings the competent French court is that of the place where the defendant is established. In tort cases, the court of the place where the damage occurred or where the anti-competitive practice took place is also competent. In commercial matters, jurisdiction clauses are very common. In contractual claims, the court of the place of execution of the main contractual obligation also has jurisdiction.
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	There are no class actions under French law. However, in civil and commercial proceedings, the courts have admitted that an association may bring an action to defend the sum of individual interests of its members, if certain conditions are met. Several statutes have also allowed actions by an association, either for the defence of individual interests, or for the defence of a collective

	interest. The conditions for bringing such an action are very strict. Actions by associations is limited in actions for damages for breach of competition law. Before administrative courts, associations may bring an action to defend their own interest or the collective interest they represent. One type of action, similar to public interest action can be brought by the Minister of Economy, the Public Ministry and the president of the Competition Council.
D. Procedural and substantive conditions	
(i) What forms of compensation are available?	The plaintiff may obtain financial compensation. This is the most common way to compensate a victim for a breach of competition law. The plaintiff may also obtain non financial compensation, such as an injunction to cease an anti-competitive practice, to be granted access to facilities, a ruling that the contract is void, or the publication of the judgement. Any type of damage can be compensated (material, moral, loss of amenities, loss of a chance, etc.).
(ii) What are the other forms of civil law liability (if any)?	There are no other forms of civil law liability. Nevertheless, directors may be dismissed or held liable if they have engaged the undertaking in illegal practices.
(iii) Does the infringement have to imply fault?	Tort law requires fault to be proven. However, the illegality of an act irrebuttably presumes the fault.
(iv) If so, is fault based on objective criteria?	In an action for damages under competition law, breach of the competition rules constitutes fault. In the absence of breach of competition law, an unreasonable behaviour or negligence can also constitute a fault.
(v) Is bad faith (intent) required?	In French tort law no intent is required.
(vi) Can negligence be taken into account?	Negligence can constitute a fault in tort law.
E. Rules of evidence	
a. General	
(i) Burden of proof and identity of the party on which it rests?	In an action for damages, the burden of proof rests on the plaintiff, who must prove fault, damage and a causal link between the two. In an action for damages in EC competition law, the plaintiff will have to prove either that an agreement is contrary to Article 81(1), or that the defendant holds a dominant position, which it has abused.
(ii) Standard of proof	To prove fault, the plaintiff will either prove that the defendant has breached the law, or that he did not act as a normally careful and diligent person would have done ("*bon père de famille*"). Furthermore, the conviction of the judge must be won ("*emporter la conviction du juge*")
(iii) Limitations concerning form of evidence	There is a distinction to be drawn between the proof of legal facts (no limitation on the admissible forms of evidence) and legal acts (where such a limitation exists in civil matters). The parties to a contract (legal act) can only prove it by documentary evidence. This rule does not apply in commercial matters and to contract valued less that 800 EUR. Evidence regularly obtained abroad is admissible.
(iv) Rules on (pre-trial or other) discovery within	The court may order disclosure of documents by the parties, a third party, or public bodies, call witnesses,

	and outside the jurisdiction of the court vis-à-vis parties	hear consultants, appoint experts, make personal verifications. These powers do not extend beyond France.
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	The judge may order third parties to produce evidence. Third parties may refuse if they justify of a legitimate reason. Professional privilege or business secrets can constitute a legitimate reason, but this is rarely admitted in practice. The order to produce a document may be accompanied by periodic penalty payments. The judge may also call witnesses who in principle cannot refuse to testify.
(vi)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	French jurisdictions may consult the French Competition Council regarding the anti-competitive practices defined in articles L. 420-1, L. 420-2 and L. 420-5 Com. Code and in Article 81 and 82 EC. Similarly, the Minister for Economic Affairs may give its opinion before civil, commercial or criminal courts, in order to ensure compliance with national competition law.
b.	Proving the infringement	
(i)	Is expert evidence admissible?	Expert evidence is admissible before French courts. Firstly, litigants may have their own expert to help them prove fault, damage or causation. Secondly, an expert may be appointed by the judge to assist him on particular issues of fact. In competition law cases, experts are very often appointed to assess the damage.
(ii)	To what extent, if any, is cross examination permissible?	There is no cross examination as such in French proceedings. However, parties may ask the judge to question the witness. Witnesses are convened by the judge. Furthermore, the adversary principle must be ensured at all times during the procedure.
(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 decision by the French Competition Council does not bind a court in France. However, it has strong evidential value when it comes to proving fault (i.e. the anti-competitive practice). The same can be said of the opinion given by the French Competition Council when consulted by a court. References to decisions of other national competition authorities seem to have only been factual to date
c.	Proving damage	
(i)	Are there any specific rules for evidence of damage?	The plaintiff must prove that the damage he suffered is direct and certain. In contractual claims only, the damage must also be foreseeable. There are no relaxation rules for proving damage.
d.	Proving causation	
(i)	Which level of causation must be proven: direct or indirect?	The level of causation required by French courts is not entirely clear. In competition law cases, courts seem to favour the theory of the determining factor ("*causalité adéquate*"), thereby requiring a direct link between the fault and the damage.
F. Grounds of justification		
(i)	Are there grounds of justification?	There are several grounds of justification in French law, other than the specific grounds of justification in competition law (article 81(3) EC and its French equivalent, article L. 420-4 Com. Code) : act of God ("*force majeure*"), act of a third party *("fait d'un tiers*"), act of the victim ("*fait de la victime*") and

	act of the Government ("*fait du prince*").
(ii) Is the 'passing on' defence taken into account?	Yes. In French tort law, where the plaintiff has passed on an overcharge to a subsequent purchaser, there is no damage for the plaintiff.
(iii) Are 'indirect purchaser' issues taken into account?	Indirect purchaser' issues are taken into account. However, due to the absence of much published case law, there are not a lot of examples concerning this issue.
(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?	If the plaintiff is partly responsible for the damage, there will be an apportionment of the damage (see grounds of justification). If the plaintiff has benefited from the infringement, the damages may be reduced in consequence.
G. Damages	
a. Calculation of damages	
(i) What economic or other models are used by courts to calculate damage?	There is not a single model used by courts or experts. It is a case-by-case approach.
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	In the evaluation of damages under French law, there is no limitation regarding to the place where the injury was suffered.
(iii) Are ex ante (time of injury) or ex post (time of trial) estimates used?	Damages are assessed at the time of the court's decision.
(iv) Are there maximum limits to damages?	There are no maximum limits to damages. The entire injury is compensated.
(v) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	It is a general principle of tort law that damages are always assessed on the basis of injury suffered by the plaintiff, and not on the basis of profit made by the defendant.
(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 judgement or the date of a decision by a competition authority?	The rule is that for contractual damages, interests are awarded from the date a demand for payment is made. For damages caused by a tort, interests will run from the date of the judge's decision, if not otherwise stated by the judge.
(ii) What are the criteria to determine the levels of interest?	The rule is that the applicable rate of interest is the statutory rate fixed by law each year. In contractual disputes, a contractual rate may have been specified.

(iii) Is compound interest included?	Yes, at the plaintiff's request and if the judge agrees.
H. Timing	
(i) What is the time limit in which to institute proceedings?	Extra-contractual damages: 10 years from the date on which the injury has appeared (appearance of the initial injury, or the day of the increase of the initial injury) Contractual damages: 30 years from the date of appearance of the injury. Contractual and extra-contractual damages arising out of commercial matters: 10 years from the appearance of the injury. Administrative matters: very specific rules apply. Usually 2 months from the publication of the administrative refusal to compensate the injury.
(ii) On average, how long do proceedings take?	No general answer can be given. The case law seems to show that proceedings can be quite long, especially when an expert has to be appointed.
(iii) It is possible to accelerate proceedings?	There are emergency procedures ("*procédure de référé*") under which the plaintiff may request interim measures, such as an injunction or interim payment. The latter can be asked for payment for injury resulting from a fault. One particular emergency procedure can be used for a judgement on the merits: fixed date summons ("*assignation à jour fixe*").
(iv) How many judges sit in actions for damages cases?	Commercial and civil courts: in principle, three judges. Administrative courts: a collegial court with an odd number of judges (usually 3 or 5, possibly 1 for small claims).
(v) How transparent is the procedure?	Procedures before the French courts are transparent. Furthermore, litigants are supposed to be associated in every important stage of the procedure.
I. Legal costs	
(i) Are Court fees paid up front?	In principle, most court fees are paid at the end of the proceedings. However, when an expert is appointed, the claimant may have to pay a certain sum in advance. When it is the defendant who requests the appointment of an expert, he must pay this sum in advance.
(ii) Who bears the legal costs?	In principle, the unsuccessful litigant is ordered to pay the taxable charges incidental to proceedings ("*les dépens*"). In addition, under Article 700 NCPC, the judge has a discretionary power to order the unsuccessful party to pay the costs incurred by the two parties, and not comprised in the taxable charges incidental to proceedings. The costs under Article 700 NCPC mainly include lawyers fees (that are not included in taxable charges).
(iii) Are contingency fees permissible?	Contingency fees are prohibited for lawyers in French law, unless they only come as a complement to usual fees and agreed in writing by the client.
(iv) Are contingency fees generally available for private enforcement of EC competition law?	See iii
(v) Can the plaintiff/defendant recover costs?	Plaintiff : yes. Defendant : yes. (see ii).
(vi) What are the different types of litigation costs?	There are various litigation costs, such as taxes, fees for public officers or for the notification of official acts, expert fees, lawyers fees, etc.
	Usually, the unsuccessful party bears the taxable costs.

(vii)	Are there any national rules for taxation of costs?	However, the judge may discretionary decide to apportion taxable costs, for example for reasons of equity. If the claimant withdraws his claim, he must bear the costs of the proceedings.
(viii)	Is any form of legal aid insurance available?	Legal aid is available for all types of proceedings. However, since it is not available to corporations, the rules on legal aid are not of great interest in claims based on EC competition law, more often brought by corporations. Insurance companies may offer legal assistance contracts.
(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 average cost can be given, as it does really vary from one case to another. As most actions for breach of competition law are complex cases, the costs may be quite high.
J. General		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	The answers given are not specific to the private enforcement of competition rules.
(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?	Since EC competition rules are of public policy, parties cannot agree to avoid application of these rules in a contract. The question whether courts have to apply EC competition rules ex officio is a complex and debated issue.
(iv)	Are there any differences according to whether defendant is public authority or natural or legal person?	There is no difference worth mentioning except that when the practice at stake is attributable to a public authority using prerogatives of public authorities ("*prérogatives de puissance publique*"), the competent court will normally be the administrative court.
(v)	What are the key differences, if any, from region to region within the Member State as regards damages actions for breach of national or EC competition rules?	There are no key differences from region to region regarding damages actions for breach of competition rules. However, one difference is that the composition of commercial courts in the regions of *Alsace* and *Moselle* somehow differs from that of the other commercial courts in France. It has to be noted that the level of expertise in competition law of the different courts in France is variable.
(vi)	Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	There is no specific provisions as to interaction between leniency programmes (or settlements proceedings) and actions for claims for damages.
(vii)	Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	N/A
(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	To our knowledge, no statistics are available. There are few reported cases. Regarding the cases reported in the study : - EC competition law based actions only: 3

	- National competition law based actions only: 6 - Both EC and national law based actions : 3 - Cases where damages were awarded with respect to actions based on EC competition law: 3/3 - Cases where damages were awarded with respect to actions based on national competition law: 5/6 - Cases where damages were awarded with respect to actions based on EC and national competition law: 2/3 - Court ruling preceded by a decision of the European Commission: 1 - Court ruling preceded by a decision by the French Competition authority: 4 - Court ruling preceded by an opinion by the French Competition authority: 1 - Court ruling not preceded by any decision of any Competition authority (French or European), nor by any opinion : 6
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) Access to evidence for the victim b) Length and cost of the proceedings c) Lack of expertise in competition law of the judges. Lack of the full required expertise of experts when only one expert is appointed by the judges for a case d) Access to evidence for experts e) Access to court for the victim f) Incentives for the victim to bring action for damages
(ii) How could that be achieved?	b) Guidance for evaluating damages b+e) Development of collective actions c) Training for judges and to a lesser extent of experts d) Procedural adjustments e) Incentives for the victim to bring action for damages (punitive damages even if debated in the legal doctrine and contrary to general principle of French law)
(iii) Are alternative means of dispute resolution available?	Arbitration proceedings are often used in commercial matters. Arbitrators may grant damages, but cannot impose fines or injunctions. Mediation is also available.
(iv) If so, to what extent are they successful?	Arbitration proceeding are often kept confidential. Therefore, it is difficult to answer this question. Mediation is developing in France.