LATVIA

Raimonds Slaidins/ Liga Hartmane
Klavins & Slaidins
Blaumana iela 22
Riga LV-1011
T: +371 703 52 22
F: +371 703 52 52

I. Introduction

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.

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.

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.

II. Actions for damages - status quo

A. What is the legal basis for bringing an action for damages?

(i) Is there an explicit statutory basis, is this different from other actions for damages and is there is a distinction between EC and national law in this regard?

Article 21 of the Competition Law ("*Konkurences likums*") states that a market participant who deliberately or negligently violates the provisions of Sections 11 (prohibited agreements), 13 (abuse of dominant position), 15 (merger rules of market participants) or 18 (unfair competition) of this law shall cover the losses which, as a result of the violation, are caused to another market participant or a party to a contract. This provision of law specifically provides for the obligation to compensate losses caused as a result of a breach of the Competition Law. The general obligation to compensate loss as well as the procedure for assessment of loss is regulated by the Civil Law (*"Civillikums"*). The procedural rules relating to the compensation of loss is regulated by the Civil Procedure Law (*"Civilprocesa likums"*).

In relation to EC competition law claims, there is no explicit statutory basis for bringing an action for damages in Latvia. However, such a claim may be raised in compliance with the Civil Law general provisions on compensation for damages. Besides, the Commercial Law indirectly provides for the possibility of such a claim, while it obliges the court, which has accepted such a claim and initiated an action on the violation of EC Competition Law, to inform the Competition Council thereof (Competiton Law, Section 35).

B. Which courts are competent to hear an action for damages?

(i) Which courts are competent?

Cases relating to violations of the Competition Law fall under the jurisdiction of district (city) courts. Claims are brought according to the location of the defendant. Civil cases are judged on their merits by the court of first instance (district or city court), but following an appeal of the judgment of this court it would be heard by the court of second instance in the appeal procedure.

In accordance with Article 20 of the Competition Law, concurrently with the Competition Council, a court may also determine a violation of the Competition law. Courts which adjudicate civil claims in relation to violations of the Competition Law must inform the Competition Council thereof.

Although the Competition Law does not directly provide for the right of a Latvian court to adjudicate cases resulting from EC Competition Law, such a possibility is provided for by Regulation 1/2003 according to which national courts have the power to apply Articles 81 and 82 directly.

(ii) Are there specialised courts for bringing competition-based damages actions as opposed to other actions for damages?

There are no specialised courts for bringing competition-based damages actions as opposed to other actions for damages.

C. Who can bring an action for damages?

(i) What limitations are there to the standing of natural or legal persons, including those from other jurisdictions? What connecting factor(s) are required with the jurisdiction in order for an action to be admissible?

In accordance with the Civil Procedure Law (Article 74), any natural or legal person (also foreign) can become a party in the civil proceedings – claimant or defendant, respectively.

The main criteria for establishing the jurisdiction of a Latvian court over the case is the place of residence or seat of the defendant. In accordance with the Civil Procedure Law (Article 26) actions against natural persons are brought to court in accordance with their place of residence, and against legal persons – in accordance with their seat (registered address).

(ii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?

A claim for damages is a civil claim and therefore this claim can be filed at court by any person whose civil rights or interests protected by law are infringed or challenged.

The Civil Procedure Law (Article 75) provides that an action may be brought by several plaintiffs against one defendant. In fact, each co-plaintiff acts independently in relation to the other party and other co-participants and his/her action is not binding on the rest of the participants. However, the Civil Procedure Law also provides that co-participants may assign the conduct of the matter to one of the co-participants or to one joint representative.In a judgment in favour of several plaintiffs, the court shall set out which part of the judgment refers to each of them, or that the right to recovery is solidary (Section 198).

The above mentioned provisions of the Civil Procedure Law form a theoretical basis for class actions and collective claims in Latvia, but there is no such legal precedent in the field of competition law. In fact, class actions and collective claims are not common in Latvia, which may mainly be explained with the fact that, to a large extent, individual citizens' comprehension of their rights in a democratic country is still developing. In other words, many legislative norms are still not applied in practice. More common are those cases where a public organization or foundation is acting as a claimant on behalf of its members (for example, trade unions)

Regarding joint action, Article 75 as well as Article 134 of the Civil Procedure Law are applicable. Article 134 provides for joinders of claims and civil matters, where several plaintiffs are bringing actions against one and the same defendant. A judge is entitled to join such matters in the same court proceeding, provided such joinder favours quicker and a more correct adjudication of the matters, and the parties do not object. It is within the court's judgment to determine issues of claim and joinder of similar cases. In this case as well, the resulting judgment may be common to all plaintiffs (solidary recovery right) or the court shall set out which part of the judgment refers to each of them.

Public interest litigation in Latvia is not regulated separately. Theoretically, such claims may be possible according to general principles of the Civil Procedure Law which state that every natural or legal person has a right to protection of their infringed or disputed civil rights, or interests protected by law, in court (the Civil Procedure Law, Section 1). However, it is hard to imagine that the damages would be compensated as a result of such claim, while according to damage compensation principles in Latvia decribed in this Report the damage should be substantially proven (see Section E below). It should be noted that currently there is no public interest litigation experience in Latvia, therefore it is hard to tell what the result would be, should such claim be brought.

D. What are the procedural and substantive conditions to obtain damages?

(i) What forms of compensation are available?

The Latvian Civil Procedure Law provides for several forms of compensation – collection of money, return of property in kind (determining its value and in case of non-existence of the property, collecting this amount) and a possibility to impose an obligation to perform certain activities. It should be noted that Latvian law provides for compensation of actually caused losses, respectively, the losses caused will be assessed in money and the aforesaid forms of compensation are only the forms in which these losses can be covered. This means that the compensation of losses does not have any direct relation with, for example, return of the specific property, but it could be one of the forms of indemnity.

(ii) Other forms of civil liability (e.g. disqualification of directors)?

The Latvian law does not provide for other forms of civil liability which would directly arise from the damage liability.

(iii) Does the infringement have to imply fault? If so, is fault based on objective criteria? Is bad faith (intent) required? Can negligence be taken into account?

Latvian legal theory recognizes the following four preconditions for satisfaction of a damages claim:

1) illegal act of any person (act or failure to act);
2) fault of this person;
3) existence of damages and their specific amount; and
4) causal link between the illegal act and damage suffered.[1]

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 the presumption of fault. However, this does not mean that upon determination of civil liability and the amount thereof, fault is unnecessary.[2] Article 1635 of the Civil Law states that it is possible "to claim a remedy from the transgressor, insofar as he or she may be held at fault for such act".

1 Torgāns K. Comments of Civil Law, 270 page
2 Bitāns A. Civil Liability and Forms of Civil Liability. 78-79 pages.

Thus the application of civil liability (also in cases of violation of EC and national competition law) may not be enforced without the determinatino of the violator's fault. The fault of the transgressor is identified by assessing whether unlawful action differs from standards of conduct. If the conduct of the transgressor does not meet such requirements, the fault is presumed. The Civil Procedure Law (Articles 1612, 1617, 1657, etc) obliges the party to prove its innocence.

The obligation to compensate does not necessarily require bad faith (intent). Negligence is also a form of fault. Article 1775 of the Civil Law states that compensation is payable for any loss which is not accidental. Accidental loss does not have to be compensated by anyone due to the fact that in case of accidental loss (force majeure) it is impossible to determine the causative relations with the illegal act of any person and in this case, there is also no material precondition for the liability – fault.

E. Rules of evidence

(a) General

(i) Burden of proof and identity of the party on which it rests (covering issues such as rebutted presumptions and shifting of burden to other parties etc.)

The general principle in a civil case is that the party must prove those facts on which it bases its claim or objection. In accordance to the Part 1 of the Article 93 of the Civil Procedure law a plaintiff must prove its claim and a defendant is obliged to submit evidence showing that his objections are correct. This apply to both proving that the competition rules have been infringed and to the damages caused to the plaintiff in cases when the violation of competition is not reviewed by the Competition Council and there is no decision of the Competition Council adopted to that effect. At the same time, in cases when the claimant brings a claim to court regarding, for example, recovery of damages, based on violation of the competition rights which the Competition Council has already determined by its decision (and this decision has not been appealed and has entered into force), the claimant does not have an obligation to prove the fact of the violation itself, i.e. an illegal act.

A passing-on defence is acceptable, however, the defendant may choose between an active or 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. A plaintiff must prove that he or she possesses rights and that the defendant has infringed (or challenged) these rights.

The defendant does not have the obligation to actively prove or disprove the allegations of the plaintiff, while the plaintiff still has not proven his or her claim. The defendant must prove that the disturbance of the plaintiff's rights either did not occur at all or that in the relevant case it is not the fault of the defendant.

Therefore, the burden of proof still lies with the party who at any given stage of the proceedings wishes to disprove the conclusions established by evidence and favourable to the opposite party. Besides the above mentioned Article 93 of the Civil Procedure Law this is provided by Article 128, 136, Part 5 of the Article 165 of the Civil Procedure Law.

(ii) Standard of proof NB any technical expressions that exist in national law such as for example "beyond reasonable doubt" must be clearly explained

The party must prove the facts that the party alleges. Recovery of damages is based on four criteria: 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. For a court to adjudge damages the plaintiff must prove the existence of all afore-mentioned preconditions 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. The judge evaluates the claim according to his personal knowledge and convictions, logic, and scientific findings based on the evidence examined during the hearing. A court may

request additional evidence if it considers that any of the facts are not proven by the materials in the case or other evidence. The Latvian Civil Procedure Law states that the facts which according to the law are deemed to be established do not have to be proven.

On the whole our jurisdiction has no direct definition as to the level of evidence, sufficient to consider a fact proven, there does not exist the legal requirement to achieve certain levels of evidence, as for instance, ''beyond reasonable doubt'' or ''balance of probability''. It is stated that a court, in making a verdict should indicate why it has given preference to one piece of evidence as compared to the other and why it has adjudged certain facts proven, but some other – unproved. By a broad reading of The Latvian Civil Procedure Law and the body of other laws and principles one can conclude that a fact should be proven to a certain level of credibility, i.e., "almost certainty".

(iii) Limitations concerning form of evidence (e.g. does evidence have to be documentary to be admissible. Which witnesses can be called, e.g. the CEO of a company? Can evidence/witnesses from other jurisdictions be admitted/summoned?)

The following forms of evidence are permitted:

1) testimony by parties and third parties;
2) testimony of witnesses,
3) documentary evidence,
4) real evidence,
5) expert conclusion,
6) opinion of state or local government institutions.

The Article 106 of the Civil Procedure Law imposes several restrictions on witnesses. For example, certain categories of persons cannot be summoned, including ministers – regarding facts which have come within their knowledge through hearing confessions, and persons whose position or profession does not permit them to disclose certain information entrusted to them; minors – regarding facts adverse to their parents, grandparents, brothers or sisters; persons whose physical or mental deficiencies render them incapable of the appropriate assessment of facts relevant to the matter; and children under the age of seven.

The following persons may refuse the duty to testify according to Article 107 of the Civil Procedure Law: relatives in a direct line and of the first or second degree in a collateral line, spouses, affinity relatives of the first degree, and family members of parties; guardians and trustees of parties, and persons under guardianship or trusteeship of the parties; and persons involved in litigation in another matter against one of the parties.

There are no other restrictions in respect of witnesses and therefore a CEO of a company can be called as a witness as well as witnesses from other jurisdictions.

Considering that Latvia is a member state of the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters and Hague Convention of 1970 on the Taking of evidence Abroad in Civil or Commercial Matters, all civil procedure matters, including the taking and application of evidence, must meet the requirements of the above Conventions. In addition it should be noted that with respect to documentary evidence from other jurisdictions, it must be submitted in Latvian and therefore documents from foreign jurisdictions must be duly legalized or apostilled, translated into Latvian and certified by the sworn notary.

(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis:

- **Defendants**
- **Third parties**
- **Competition authorities (national, foreign, Commission)**

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 a court request is binding on any person and therefore also on the competition authorities. Jurisprudence shows that the court may obligate the national competition authority to submit to court specific case materials, provided that they are an essential evidence to the case and may assist in case adjudication.

Should the court consider it necessary and essential it may, according to The Hague Convention, send its request for certain evidence to a corresponding country abroad, which in its turn acts in compliance with the above Convention.

After receipt of the statement of claim the defendant must submit to the court his or her written explanations supported by evidence.

The Civil Procedure Law does not require disclosure of all evidence which is in the possession of the parties. However, the relevant party must also take into account that Article 93 of the Civil Procedure Law sets specific time limits for submission of evidence and the court may refuse to accept evidence which is not submitted in time and it can impose a fine on the relevant party for the delayed submission of evidence in accordance with Article 120 of the Civil Procedure Law. A fine in compliance with the Administrative Code of the Republic of Latvia may amount to LVL 250.00. The court may impose a fine not only on case participants, who disobey court instructions, but also on third persons, who fail to perform court requests in time. The court in cases envisaged by the Civil Procedure Law may also enforce other procedural sanctions, if case participants disobey court instructions, but it does not refer to the obligation of submission pf evidence.

Besides, as already mentioned above, the court is entitled to request evidence from the parties both in response to the request of the case participant's, and ex officio. Namely, Section 4 of the Article 93 of the Civil Procedure Law states that if the court adjudges that there is insufficient evidence submitted on any of the facts according to which the parties file their claims or objections, the court gives a notice to the parties on the above and, if necessary, determines the time limit for the submission of evidence. The judge has broad freedom of action either to confine to evidence interrogation indicated in the plea of a certain party, or to request other evidence the court may deem necessary. Nevertheless, the court is not actively participating in the gathering of evidence, as Latvian civil procedure is based upon the principle of competition. If the court has requested documents, but a party refuses to submit them to the court without denying possession of those documents, the court may recognize the relevant alleged facts to be proven.

If any of the parties requests that the court to obtain evidence, the description thereof should be detailed enough to differentiate it from other evidence, to assess whether the evidence is applicable to the case, and the explication of the party should clearly state why this certain evidence is to be found with the indicated person.

In compliance with provisions of Section 16 of the Civil Procedure Law, seized evidence is admissible as well. If the person has grounds to consider that the submission of the necessary evidence later would be impossible or hindered, this person may request the court to seize this evidence. Such an application may be submitted to the court before the claim is brought or during case adjudication.

Moreover, evidence obtained through discovery in another jurisdiction can be admitted before proceedings before the Latvian courts.

(b) Proving the infringement

(i) Is expert evidence admissible?

Article 121 of the Civil Procedure Law states that 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. If necessary, a court may order several such examinations. The

parties must select the expert, by mutual agreement, but if agreement cannot be reached within the time limit set by the court, the expert must be selected by the court. If necessary, several experts may be selected. Participants in a matter have the right to submit to the court issues which they feel require such an expert opinion. The law does not directly provide for the rights of the court to order an examination upon its own initiative, however, it should be noted that in practice, in case of conflicting evidence or lack of evidence, the court often proposes the performance of an examination which is then carried out if any of the parties agrees to it.

The court must assess expert opinion in the same manner as any other evidence in the case. Upon assessment of evidence included in the expert opinion and determination of its credibility and significance to the case, it is necessary:

1) to exclude from the opinion conjectures, assumptions and conclusion of the expert which do not fall within the scope of his or her professional knowledge;
2) to verify the credibility of the facts on which the expert has based his or her opinion;
3) to examine general conclusions and ascertain whether they are objective, scientific theses and not the personal opinion of the expert;
4) to ascertain that the opinion logically follows from the facts;
5) to compare the opinion with other facts in the case regarding which credibility has been verified.[3]

Parties in the case may also propose their own experts (i.e. individually without agreement or court order). The determination of such an expert shall have the effect of written evidence and the court shall consider it by assessing case evidence. The resolutions submitted by these experts may have a significant role, considering the competition principle provided for by the Civil Procedure Law and which requires the parties in the case to prove their position and the court adjudicates the case on the basis of evidence submitted by the parties (see Section G(a)(iii) bellow).

However, it should be noted that by assessing one party's expert opinion together with the opinion of a court appointed expert, it is most likely that the opinion of the expert assigned by the party will be deemed to be of less value. This may generally be explained by the supposition that such an opinion cannot be as objective and credibile, as one of the parties has commissioned and paid for the opinion, while the court assigned expert must submit an objective and credible opinion in compliance with the law and he/she bears criminal liability for the submission of a misleading opinion.

Regarding fact-gathering powers, Latvian law provides restrictions only for court assigned experts. Such an expert should prepare their opinion only with regard to the issues mentioned in the court decision and according to the court information and documents. If the expert states that the information is not sufficient to make an objective opinion, he/she is entitled to require additional documents or information from the court, which the court submits, if possible, or the court requires that the parties shall submit such information. The expert is also entitled to note that for an objective view on existing case more facts are required. This does not apply to an expert assigned by one of the parties, - rights and liabilities of such an expert are set in their agreement with the person retaining them.

In competition cases, just as in other civil cases, expert opinion may be prepared on any facts requiring specific knowledge to identify them. According to the circumstances, the expert may be necessary for both the establishment of damage, and setting the amount thereof.

(ii) To what extent, if any, is cross-examination permissible?

Testimony of witnesses is one of the methods of proof in a civil case. In accordance with the Civil Procedure Law (Article 105), a witness is a person who has knowledge of facts relating to the matter and who has been summoned by the

3 Līcis A. Comments on Civil Procedure Law, 123 page.

court to a court hearing. Where a participant in a matter requests the examination of a witness, he or she shall indicate what facts relevant to the matter the witness may affirm.

A witness may only be questioned regarding facts relevant to the specific case. The Civil Procedure Law also states that testimony based on information from unknown sources, or on information obtained from other persons, unless such persons have been examined, is not admissible as evidence.

It should also be noted that testimony of witnesses cannot be used as a method of proof in respect of all facts relevant to the case. Facts which by law are required to be substantiated by a special form of proof, for example, written form of document, cannot be proved by testimony of witnesses.

Cross-examination is permissible, provided the above restrictions are followed.

(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?

According to Latvian legislation 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 a national court.

However, this does not mean that parties can not submit such decisions as evidence in the case. Thus, for example, decision of the Competition Council on the relevant matter could serve as the grounds for the party's allegation that their rights were infringed (see Section E(a)(i) above), namely, the party would not have to prove the fact of infringement if the relevant authority – the Competition Council, has already determined this fact. Decisions of competition authorities of other member states could be of a similar importance in the relevant cases.

However, it should be noted that the court will always be able to assess each such decision submitted by the parties in comparison with the other evidence in the case and draw its conclusions on whether it can be deemed sufficient for substantiating the judgment. Thus, for example, there was a similar situation in one of the very few cases in Latvia where the court heard the claim for compensation of damages in relation to violation of the Competition Law[4]. The Competition Council had adopted a decision in this case by which the violation of law was determined and by which the party substantiated its claim. Upon assessment of the decision of the Competition Council which was submitted as evidence in the case, the court declared this decision invalid as the Competition Council had incorrectly applied the provisions of law. Therefore, the court determined that the violation of the Competition Law was not proved and that there were no grounds for compensation of damages.

Consequently, in each specific case the court will assess the weight of arguments presented by the parties and will accept or reject them, respectively. Adjudications and rulings of national courts in similar cases would certainly be of the greatest importance.

(c) Proving damage

(i) Are there any specific rules for evidence of damage?

According to the Latvian legal theory, the following facts must be proved in order to satisfy a damages claim:

1) illegal act of any person (act or failure to act);
2) fault of this person;
3) existence of damages and their specific amount;
4) causative relation between the illegal act and damages.[5]

4 Case No.SKC-461, *SIA „Latgales Reklāma" vs. SIA „Dautkom"*, 2001, Supreme Court Senate.
5 Torgāns K. Comments on Civil Law, 270 page.

Article 1776 of the Civil Law provides for another precondition which theoretically could be considered as the fifth precondition for a right to claim damages, namely, that a victim may not claim damages if he or she could have, through the exercise of due diligence, prevented the loss. The exception to this rule can be made only in the case of a bad faith infringement on rights.

In accordance with the Civil Procedure Law (Article 93), the plaintiff shall prove that his claim is well-founded, but the defendant shall prove that his objections are well-founded. Therefore, the law provides for a burden of proof, but in practice a number of questions arise concerning the subject of proof and division of burden of proof between the parties. The division of the burden of proof will depend on the peculiarities of the specific case. In accordance with the substance of the Civil Law and the Civil Procedure Law, in cases relating to compensation of damages (also in cases resulting from violations of the Competition Law), the plaintiff shall prove that (1) the defendant has actually caused damages, and (2) the amount of damages. The defendant shall prove that that there is no fault on his part in causing the plaintiff's damages or that the damages have been caused due to the fault of the plaintiff himself since he has not acted with due care or has acted in bad faith. Furthermore, the defendant, by his proof, does not have to retort the existence of those facts or circumstances which the plaintiff has failed to prove, namely, the defendant has the right to simply deny the claim while the plaintiff has not submitted evidence, which provides a basis for his claim.

(d) Proving causation

(i) Which level of causation must be proven: direct or indirect?

In order to apply for compensation relating to damage, the causal link between the illegal act and damages must be proven. If the damage is direct (according to Article 1773 of the Civil Law, where it is the natural and inevitable result of an illegal act or failure to act), a direct causal link between this damage and the illegal act must be proven. If the damage is indirect (Article 1773, where it is caused by an occurrence of particular circumstances or relationships), also the indirect causative relation of this damage with the illegal act must be proven.

Considering the causative relationship, in the case of a violation of the Competition Law, those losses shall be compensated which can be reasonably anticipated and which evidently result from the specific violation. It should be noted that civil liability cannot occur for any (all) consequences. The Civil Law (Articles 1774, 1775) does not unambiguously recognize the possibility to compensate losses which have occurred as a result of several mutually unrelated causes, i.e. if the causative relation is incidental, a coincidence has taken place.

In practice the court will determine the causative relationship as follows. At first it will determine the fact that a person has committed the specific activity or inactivity, a result of which the Competition Law was violated. Then the consequences – damages are determined. The next step is to establish the link between the damages and the specific activity, namely, determine that this activity (failure to act) was a cause of the relevant damages.

In cases which arise from violations of the Competition Law, the causative relationship between the illegal act and damages will often be indirect, as generally these damages occur indirectly and not as a result of a specific action (agreement between two market participants on market division indirectly, by coincidence of certain conditions, causes damage to a third party not a party to this agreement (violation)). However, there could be situations when damages are direct, for example, in case of abuse of dominant position when unfair provisions of the agreement are imposed on one market participant and he therefore incurs direct loss resulting from this agreement. Of course, in this case, besides the direct losses there may also be any indirect losses.

F. Grounds of justification

(i) Are there grounds of justification?

In accordance with the Civil Law (Articles 1773 and 1774), an accidental loss is not required to be compensated by anyone. The loss is accidental where it is caused by a chance event or force majeure.

Article 1636 of the Civil Law also states that if a person exercises a right belonging to him or her, or acts pursuant to the wishes of the aggrieved party, or is forced to act in justified self-defence due to unlawful acts of the latter party, there is no fault. This article describes three cases when there could be no determination of fault:

1) if a right belonging to a person is exercised. In this case it is necessary to take into account that the rights shall be exercised in good faith, considering the rights of other parties;
2) the person acts pursuant to the wishes of the aggrieved party (consent). In this case it is necessary to take into account that there will be no fault while this act will not affect the interest of third parties with the consent of the aggrieved party;
3) self-defence, if taken whithin the scope of necessary self-defence.

(ii) Are the 'passing on' defence and 'indirect purchaser' issues taken into account?

A passing-on defence is acceptable. The procedural rules (Article 93 of the Civil Procedure Law) state that each party must prove those facts by which it substantiates its claims or objections; however, the defendant may choose between an active and passive defence. The defendant does not have an obligation to undertake the burden of proof while the claimant has not proven his or her claim. The defendant also has the right to chose either an active defence (immediatley after the case is brought to provide evidence in the case, seek possibilities to substantiate his opinion) or passive defence (do nothing until the moment when the plaintiff proves his claim).

A plaintiff must prove that he or she possesses rights and that the defendant has infringed (or challenged) these rights. The defendant does not have the obligation to actively prove or disprove the allegations of the plaintiff, while the plaintiff still has not proven his or her claim. The burden of proof passes to the defendant from the moment the plaintiff has proved his claim. Then the defendant must prove that the disturbance of rights either did not occur at all or that in the relevant case it is not the fault of the defendant.

With regard to 'indirect purchaser', it can be noted that the Civil Law provides for the existence of a causal relation between the illegal action and occurrence of losses. Theoretically an 'indirect purchaser' could claim compensation for losses on a general basis, although this person could face problems in relation to proving the causal relation (see Section E(d) above) in respect to the caused losses, since a third party will be involved in the case.

(iii) 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? Mitigation?

In accordance with Article 1776 of the Civil Law, a victim may not claim damages if he or she could have, through the exercise of due diligence, prevented the loss. An exception to this rule can be stated only in case of a bad faith infringement of the rights.

A victim, even before the loss has occurred, must with 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. Application of this provision of the Civil Law in practice

means that a court in certain cases may recognize the negligence of the victim to be so immaterial that he or she is not deprived of the right to compensation, although this compensation can be reduced, based on the victim's mutual fault.[6] The court could reduce the amount of compensation for losses only if the fault of the injured party itself is determined in relation to the occurrence of losses. The Latvian law does not provide for any other option to reduce the amount of compensation for losses, since the general principle is the any loss caused shall be compensated in its actual amount.

In case the claimant has benefited from the infringement, the damages will be reduced in respective proportion. Considering the principle that actual losses are compensated, any benefit of the claimant in relation to the infringement will reduce the amount of actual losses.

G. Damages

(a) Calculation of damages

(i) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?

In accordance with Article 1784 of the Civil Law, if a person suffers losses from the illegal actions of another person and this is not within the scope of a contractual relationship, the person causing the loss is liable for all such losses. In the assessment of losses and calculation of the plaintiff's damages, the amount of profit made by the defendant is irrelevant. The gain of the defendant is of importance in cases when the Competition Council calculates an administrative fine for violation of the Competition Law, but not in respect of determination of the amount of loss.

A loss can be any diminution, loss or destruction of property as well as decrease in anticipated profits and consequences of other infringements on rights that can be assessed financially.[7] In accordance with the Civil Law and other currently effective regulations in Latvia, the plaintiff (legal entity) can receive compensation only for material losses. In Latvia, compensation for non-material loss (moral injury) can be claimed only by natural persons (Articles 2352 and 2353 of the Civil Law).

Taking into account that that there is no court practice in Latvia in relation to compensation of losses for violation of competition laws, it is difficult to give any prognosis as to the criteria which the court will follow when calculating the amount of losses in such cases. Theoretically the amount of losses shall cover not only the nominal loss, but also loss of earnings etc, however, evidence available in each specific case will be of a great importance, namely, how convincingly the claimant will be able to prove the amount of losses.

(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) What economic or other models are used by courts to calculate damage?

In accordance with the Civil Procedure Law (Article 11), one of the principles of proceeding with a claim in a civil case is the principle of competition which means that each party must prove to the court the validity of its claims, counterclaims and objections. The court adjudicates the legal relationship of the parties in the dispute based solely on the evidence which is submitted by the parties.

The court will not attempt to calculate the amount of losses upon its own initiative,

6 Torgāns K. Comments on Civil Law, 271. lpp.
7 Torgāns K. Comments on Civil Law, 267. lpp

this must be proven by the parties. The law does not in any manner regulate economic or other methods which the parties can use for calculation of losses.

The basic principles of calculation of losses established by the Civil Law include the following:

1) any deprivation which can be assessed financially shall be recognized as a loss;
2) not only the value of the principal property and its appurtenances, but also any expenses caused as a result of the breach shall be considered;
3) not only the normal value of the property, but also its specific value to the injured party shall be considered;
4) loss of anticipated profits shall be considered.

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 assesses these losses and the validity of their calculation.

(iv) Are ex-ante (time of injury) or ex-post (time of trial) estimates used?

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 inflation rate and contractual interest.

The court could also consider losses which have occurred from the moment the violation was committed until the moment the court judgment is made, if such losses are sufficiently grounded, the plaintiff was unable to prevent them and he has described them sufficiently in the statement of claim. Namely, the court compensates those losses which are proved and which compensation the plaintiff has claimed upon filing the statement of claim. In addition, lawful interest can be claimed (see Section G (b) below).

(v) Are there maximum limits to damages?

The Latvian law does not establish a maximum limit for award of damages. In accordance with Article 1784 of the Civil Law, if a person suffers losses from the illegal actions of another person outside of the scope of a contractual relationship, the person causing losses is liable for all such losses. The amount of compensation for damages can be limited only in a contractual relationship.

(vi) Are punitive or exemplary damages available?

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. The amount of compensation must not exceed the damage (loss) caused.

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 against 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 since the Civil Law states that the compensation shall be payable for any loss which is not accidental (Article 1775) and the victim has the right to receive compensation in the amount of the losses suffered.

(b) Interest

(i) Is interest awarded from the date

- **the infringement occurred; or**
- **of the judgment?; or**
- **the date of a decision by a competition authority?**

In accordance with Article 1756 of the Civil Law, the obligation to pay interest is based either on a legal transaction or on law. Article 1759 states that interest is payable for the late payment of a debt. Therefore, the right to claim interest arises from the moment the victim obtains the right to claim the damages. In addition to the amount of damages, the court in its judgment also awards interest lawfully incurred, if such is claimed.

(ii) What are the criteria to determine the levels of interest?

The Civil Law (Article 1765) states that the lawful interest rate shall be fixed at 6% per annum. 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. It should be noted that the Civil Law (Article 1763) states that accumulation of interest shall cease when the amount of interest still outstanding has reached the amount of the capital sum.

(iii) Is compound interest included?

The Latvian law does not provide for compound interest.

H. Timing

(i) What is the time limit in which to institute proceedings?

As 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 (Article 1895) – 10 years. The prescriptive period shall begin to run on the day when the claim is established such that an action can be brought against the defendant (Article 1896 of the Civil Law). The claim is 'established' when there are sufficient basis for the plaintiff to bring an action against defendant.

(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 duration of the proceedings depends on many factors such as, for example, complexity of the case, work load of the relevant courts, etc. The average duration of the proceedings at the court of first instance would be approximately one to two years.

(iii) Is it possible to accelerate proceedings?

The Civil Procedure Law does not provide for the possibility to accelerate the proceedings. In practice, there is the possibility to request the court to schedule the proceedings as soon as possible, providing grounds for such a request. It should be noted though that the court does not have the obligation to comply with such request and therefore satisfaction of this request fully depends on the wishes and abilities of the court at the given time.

(iv) How many judges sit in actions for damages cases?

In accordance with Article 12 of the Civil Procedure Law, in a court of first instance a judge sitting alone will adjudicate a civil matter. In courts of appeal and cassation 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 (Article 11 of the Civil Procedure Law). Closed hearings of civil cases can be held only upon the well-grounded decision of the court, in order to protect the private life of participants in the case and protect official, adoption, service, professional, production and commercial secrets. Judgments of the court are announced publicly.

Participation of the parties in the case is actually not limited in any manner. They participate also in the closed hearings, may be present at all procedural steps taken by courts or bailiffs, except for the deliberation of court rulings and judgments in the session room. The participants in the case may have access to the contents of all court rulings, materials of the case and may make copies of these documents.[8]

I. Costs

(i) Are Court fees paid up front?

In accordance with Article 33 of the Civil Procedure Law, court fees are the state fee, office fee and costs relating to the review of the case (amounts payable to witnesses and experts, or the amounts necessary for inspection or examination of witnesses offhand, delivery of court summons and publication of announcements in newspapers).

A state fee is payable upon submission of a statement of claim, in the amount stated by law, depending on the amount of the 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 (or both parties if they have jointly submitted the request) prior to the hearing of the case or carrying out of the relevant procedural activity.

(ii) Who bears the legal costs?

The Civil Procedure Law provides for payment of legal fees (Article 44). These costs are compensated in their actual amount, however, not exceeding 5% of the part of claim which has been satisfied. Legal fees 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? Are they generally available for private enforcement of EC competition rules?

Latvian law does not prohibit agreements on contingency fees. There are also no restrictions in respect of application of contingency fees in claims resulting from violations of EU or national competition laws. The plaintiff should only take into account that the Civil Procedure Law provides for restrictions on the amount up to which the attorney fees can be claimed from the defendant (see Section I(iv) below).

(iv) Can the plaintiff/defendant recover costs? Are there any excluded items?

In accordance with the Civil Procedure Law (Article 41), the party in whose favour a judgment is made is awarded all court costs incurred by such party, from the opposite party (see description in section (i) above). If a claim has been satisfied in part, the recovery of court costs shall be adjudged to the plaintiff in proportion to the amount of the claim accepted by the court, whereas the defendant shall be reimbursed in proportion to the part of the claim dismissed in the action. If a plaintiff discontinues an action, he or she shall reimburse court costs incurred by the defendant. In this case the defendant shall not reimburse the court costs paid by the plaintiff. However, if a plaintiff discontinues his or her claim because, after

8 Līcis A. Comments on Civil Procedure Law, 22 pages.

they are submitted, the defendant has voluntarily satisfied them, the court shall, pursuant to the request of the plaintiff, award recovery of the court costs paid by the plaintiff as against the defendant.

The Civil Procedure Law also provides for reimbursement of costs relating to conduct of the case in the following amounts:

1) costs for the assistance of attorney – the actual amount thereof, but not exceeding five per cent of the part of the claim which has been satisfied and in claims which are not financial in nature, not exceeding the normal rate for attorneys;
2) travel and accommodation costs related to attendance at a court sitting – in accordance with the rates for reimbursing official travel costs determined by the Cabinet of Ministers; and
3) costs related to obtaining written evidence – the actual amount disbursed.

Costs relating to the case are recovered from the defendant in favour of the plaintiff if his or her claim is satisfied in full or in part as well as if the plaintiff discontinues the claims because the defendant has voluntarily satisfied them. If the claim is dismissed, the costs relating to the case are recovered from the plaintiff in favour of the defendant.

(v) What are the different types of litigation costs?

The Civil Procedure Law (Article 33) provides for three types of litigation costs:

1) costs related to assistance of attorneys;
2) costs related to attending court hearings;
3) costs related to gathering evidence.

The amount and procedure for reimbursement of these costs is described in section (iv) above.

(vi) Are there national rules for taxation of costs?

Yes. As referred to in section (iv) above, in Latvia there are several laws regulating the amount of litigation costs, for example, regulations regarding attorney fees and regulations regarding reimbursement of travel costs. The Civil Procedure Law regulates the amount of state and office fees.

(vii) Is any form of legal aid insurance available?

In Latvia, it is possible to obtain legal aid insurance as this type of insurance is provided for by the effective Latvian laws regulating insurance. The laws do not provide for any restrictions in respect of acquisition of legal aid insurance. Therefore, in each specific case it is necessary to agree with the relevant insurance company on the scope of this insurance, the activities it will cover, any minimum thresholds, etc. It should be noted that currently in Latvia this type of insurance is not very common (not all insurance companies have the relevant licenses) and usually they cover legal costs in cases where a person brings a court claim against the holder of such insurance.

(viii) 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 legal fees will certainly be higher in the case of a large and more complicated claim .

For example, according to the Civil Procedure Law, the amounts of state fees in civil cases are as follows:

1) if the amount claimed is from 5,001 lats to 20,000 lats – 200 lats plus 1.6 per cent of the amount claimed exceeding 5,000 lats,
1) if the amount claimed is from 20,001-100,000 lats – 440 lats plus 1% per cent of the amount claimed exceeding 20,000 lats;
2) if the amount claimed is from 100,001-500,000 lats – 1240 lats plus 0.3%

per cent of the amount claimed exceeding 100,000 lats.

J. General

(i) Are some of the answers to the previous questions specific to the private enforcement of competition rules? If so, in what way do they differ from the general private enforcement rules?

The Latvian law does not establish any specific procedure in respect to the private enforcement of competition rules.

(ii) EC competition rules are regarded as being of public policy. Does that influence any answers given?

No. The procedure of recovery of damages is regulated by the Civil Law irrespective of the source of their origin.

(iii) 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.

(iv) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?

No.

(v) Are there differences from region to region within the Member State as regards damages actions for breach of national or EC competition rules?

No.

(vi) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction

There are no other relevant issues to be mentioned.

(vii) 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 made publicly available.

III. Facilitating private enforcement of Articles 81 and 82 EC

(i) Which of the above elements of claims for damages (under sections II) provide scope for facilitating the private enforcement of Articles 81 and 82 EC? How could that be achieved?

Due to the absence of damages actions for violation of competition rules in Latvia our suggestions are theoretical and relate more to damages actions in general.

1. The main problem in claiming damages arising from illegal action is the evaluation of the amount of damages. The plaintiff usually is unable to evaluate the amount of damages properly and prove this evaluation in court. Theoretically the amount of losses shall cover not only the nominal loss, but also loss of earnings etc, however, evidence available in each specific case is of great importance, namely, how convincingly the claimant is able to prove the amount of losses.

Currently, the court adjudicates the legal relationship of the parties in the dispute based solely on the evidence which is submitted by the parties, moreover, the court is very reluctant to accept calculations of, for example, loss of earnings.

The main solution to this problem, especially in claims for damages according to competition rules, would be to issue certain instructions (which would bind also the courts) on the different methods of calculating damages.

2. The length of court proceedings in general is a disincentive in Latvia. Taking into account the complexity of competition cases, such proceedings might take a very long time. However, this is a problem of the court system and may not be solved only with respect to competition cases.

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.

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.

(ii) Are alternative means of dispute resolution available and if so, to what extent are they successful?

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.

Taking into account that dispute resolution at the court of arbitration requires an agreement between the parties then arbitration, although theoretically possible, in practice is not applied in cases which are related to compensation of losses resulting from violations of law and not based on a contractual relationship. This can be explained by the fact that it is difficult to agree on arbitration at the time when the dispute has already arisen. In Latvia, arbitration is often used for the resolution of disputes resulting from contractual relationships as its proceedings are much faster than those at the common court. The quality of arbitration awards depend on the chosen arbitration and judges of the relevant arbitration.

No other means of dispute resolution (such as for example mediation) are available under Latvian law.

IV. Bibliography

1. Līcis A. Comments on Civil Procedure Law (1999)
2. Torgāns K. Comments on Civil Law (1998)
3. Bitāns A. Civil Liability and Forms of Civil Liability (2000).

V. National case law summaries

There is currently no case law with regard to actions for damages for breach of EC law in Latvia. 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. There is one highest instance court (Supreme Court Senate) judgment at our disposal where damages are claimed for violation of the Competition Law.

Name and reference of the case
Case SKC-461, *SIA "Latgales reklāma" vs. SIA "Dautkom"*, 2001, Supreme Court Senate.

Facts and legal issues
The Competition Council has determined that SIA "Dautkom", being in a dominant position in the market of cable television services in the Daugavpils Town, delayed the transmission of SIA "Latgales reklāma" TV program to the cable television customers and thereby, using its dominant

position, has violated the prohibition imposed by the Competition Law. In accordance with the Civil Law, SIA "Latgales reklāma" brought the claim for compensation of losses (collection of not gained profit) from SIA "Dautkom".
In this case, the decision of the Competition Council was reviewed as it served as evidence of the fact of infringement which would entitle the plaintiff to receive compensation of losses.
The court declared that the substance of the dispute is decided by the question concerning validity and legality of the decision of the Competition Council. The decision was declared illegal as SIA "Dautkom" had acted in accordance with the Law on Radio and Television.

Held
The claim of SIA "Latgales reklāma" was dismissed since, by recognising the non-compliance of the decision of the Competition Council with the requirements of law, the validity of the refusal of SIA "Dautkom" to broadcast SIA "Latgales Reklāma" TV program was acknowledged. If no unlawful acts are determined then there is no basis for compensation of damages.