LITHUANIA

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I. Introduction

The relatively short history of Lithuanian competition law started with the adoption of the first Law on Competition (''Konkurencijos įstatymas") on 15 September 1992 and has been marked by a gradual adjustment of national competition rules to EC competition law standards. The European Agreement Establishing an Association between the European Communities and their Member States and the Republic of Lithuania (signed on 12 June 1995) provided that a competition system for trade relations between the Community and Lithuania had to be based on the requirements set out in Articles 81, 82 and 87 EC, whereas the Lithuanian rules on competition had to be made compatible with those of the EC. With that in mind, the new Law on Competition No. VIII-1099 was adopted on 23 March 1999 (hereinafter referred to as the "1999 Law on Competition"). Furthermore, the new amendments (hereinafter referred to as the 'New Amendments') of the 1999 Law on Competition, designed to facilitate the enforcement of EC competition rules under the new regime provided in the Council (EC) Regulation 1/2003, came into force on 1 May 2004.

The Competition Council of the Republic of Lithuania (("*Lietuvos Respublikos Konkurencijos taryba*"), consisting of 5 members appointed by the President of the Republic of Lithuania, is responsible for enforcing national competition rules. Following the New Amendments the Competition Council is also designated as the competition authority responsible for the application of Articles 81 and 82 EC as required by Article 35(1) of the Council (EC) Regulation 1/2003.

The New Amendments are unlikely to have a substantial positive impact on the private enforcement of competition rules, which is still underdeveloped in Lithuania. There are two main areas with a potential for private actions. Firstly, a question of the validity of an anti-competitive agreement could be raised in civil courts, requiring the court to decide a case in accordance with the criteria established by the 1999 Law on Competition. Secondly, persons whose interests have been violated by the breach of competition rules can apply to civil courts for compensation. However, to the best of our knowledge, up to the time of writing there have been only two such cases, and these are still pending in the courts of first instance.

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?

Under Article 46(1) of the 1999 Law on Competition, any person whose interests have been violated by a breach of competition rules may apply to civil courts for damages. Such actions shall be governed by the general rules on civil liability as established by Articles 6.245-6.255 of the 18 July 2000 Civil Code of the Republic of Lithuania ("Lietuvos Respublikos civilinis kodeksas") (hereinafter referred to as the 'Civil Code').

As far as actions for damages are concerned the existing laws do not make any distinction between violations of EC and national competition rules. This is not expected to change after accession.

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

(i) Which courts are competent?

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

Actions for damages are heard by civil courts. The New Amendments (Article 50(1) of the Law on Competition) establish an exclusive jurisdiction of the Vilnius District Court acting as the court of first instance to hear civil disputes concerning violations of national competition rules or Articles 81 and 82 EC. In accordance with the Code on Civil Procedure of the Republic of Lithuania ("Lietuvos Respublikos civilinio proceso kodeksas") of 28 February 2002 (hereinafter referred to as the "Code on Civil Procedure")Appeals are heard by the Court of Appeal. The final review (cassation) is performed by the Supreme Court.

As actions for damages based either on national or EC competition rules will be subject to the jurisdiction of the same court, no differences in their treatment are expected.

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 within the jurisdiction in order for an action to be admissible?

The standing rules as defined in Article 46(1) of the 1999 Law on Competition are quite broad: any person, including those from other jurisdictions, whose interests have been violated by the breach of competition rules may apply to civil courts for damages. According to a general rule, the fact that the registered office of the defendant is in Lithuania constitutes a sufficient connecting factor for the action to be admissible. Besides, as follows from Article 787 of the Code on Civil Procedure, the defendant can be sued in Lithuania if it has any property (rights to property) in Lithuania or if the object of the dispute in question concerns obligations that have arisen or must be performed in Lithuania

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

The concept of class actions is not known in Lithuanian law. Collective claims are not recognized either. It is possible, however, for several persons to submit a joint action. Moreover, pursuant to Article 6.188(8) of the Civil Code, the Consumer Protection Institution is entitled to challenge unfair provisions of consumer contracts. The same institution, under Article 30(2) of the 10 November 1994 Law on Consumer Protection ("Vartotojų teisių apsaugos įstatymas") No. I-657 has a right to address the courts on behalf of consumers whose rights as defined in the aforementioned law have been violated. In addition, under Article 31(1) of the Law on Consumer Protection, any public consumer organization is entitled to bring actions on behalf of consumers for the purposes of defending their rights protected under the aforementioned law. However, to the best of our knowledge, these possibilities have never been explored as far as damages for violations of competition rules are concerned. Besides, the possibility of bringing such actions seems to be limited to situations when an infringement of the 1999 Law on Competition can, at the same time, be qualified as a violation of consumer rights under the Law on Consumer Protection or the Civil Code (this is a rather theoretical possibility that cannot be confirmed by the case law) as there is no explicit provision allowing the Consumer Protection Institution or public consumer organizations to act on behalf of consumers solely on the basis of the 1999 Law on Competition.

In addition, on the basis of Article 49 of the Code on Civil Procedure and Article 19(2)(1) of the Law on Prosecutor's Office ("Prokuratūros įstatymas"), a prosecutor can file an action (including claims for damages) for the purposes of defending public interest in cases of violations of legal acts. Considering to the

wide scope of this provision, it can be applied to violations of competition rules. However, we are not aware of any actions in this regard.

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

(i) What forms of compensation are available?

According to Article 6.249(1) of the Civil Code, a claimant can demand compensation both in the form of direct and indirect damages. Notably, Article 6.249(2) foresees that the profit made by the defendant can be acknowledged as damages.

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

No other forms of civil liability are available (except for a general right to require specific performance in case of contractual liability – Article 6.213 of the Civil Code).

Disqualification of directors is not provided as a specific sanction for a violation of competition rules. However, a violation of competition rules may, as a matter of principle, qualify for a violation of work discipline, which, according to Article 136(3) of the Labour Code ("Darbo kodeksas"), is a ground for dismissing a director from his/her office.

(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?

According to Articles 6.246 – 6.249 of the Civil Code, all of the following four elements of civil liability must be established:

- unlawful act (Article 6.246)
- damages (Article 6.249)
- causal link between the unlawful act and damages (Article 6.247)
- fault (either in the form of intent or negligence), which is based on objective criteria (Article 6.248). The standard of behaviour is that of "bonus pater familias"[1]. The standard is the same both to natural persons and undertakings, although the nature and the level of the duty to act carefully might differ depending on various factors, e.g., nature of activity, qualification, etc[2]. In essence, a stricter standard is applied in professional liability cases (e.g., doctors, notaries, etc.), but this seems to have a rather limited, if any, relevance to competition cases, where, as far as the liability of undertakings is concerned, the "bonus pater familias" standard will be transformed into the "reasonable businessperson" standard.

  Once the unlawful act is established the fault of the defendant is presumed (Article 6.248(1) of the Civil Code). Still, the existence of the unlawful act is not, in itself, sufficient in damages claims, and the aforementioned presumption is rebuttable. Notably, the contractual liability of an undertaking (businessperson) does not even require fault as a mandatory element (Article 6.256(4) of the Civil Code). In such cases, unless otherwise provided in laws or agreed between the parties, the non-performing undertaking can only escape contractual liability if force majeure is established.

1 *Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1* (*'The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1')* (Justitia, 2003) at 339, 340

2 *Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1* (*'The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1')* (Justitia, 2003) at 366, 367

E. Rules of evidence

(a) General

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

According to the general rules established in Article 178 of the Code on Civil Procedure, each party must prove circumstances on which it bases its claims. Thus, the claimant for damages will have to prove the unlawful act (infringement of competition rules), actual damages and the causal link between the unlawful act and the damages. Once the unlawful act is established the fault of the defendant is presumed (Article 6.248(1) of the Civil Code). This is a rebuttable presumption. Besides, as already mentioned, the contractual liability of undertakings arises without fault (see explanations above).

According to Article 182 of the Code on Civil Procedure, the following circumstances need not to be proven:

- Acknowledged by the court to be in public knowledge;
- Determined by an effective judgment of a court in civil or administrative proceedings with a participation of the same parties;
- Related to the effects of a criminal violation committed by a person as determined in an effective sentence of a court in criminal proceedings;
- Statutory presumptions (unless rebutted by the other party);
- Based on facts, admitted by the other party.

(ii) Standard of proof

The Code on Civil Procedure does not provide for a specific standard of proof, but it is generally accepted in the doctrine that a claim is proven sufficiently if there are no reasonable doubts as to whether the available evidence is substantial, relevant and admissible[3]. For this purpose the evidence must not be contradictory and must lead to a reasonable conclusion of the existence of the circumstance in question[4]. This standard of proof is higher than a balance of probabilities but lower than the certainty standard as applied in criminal cases.

The standard of proof in injunction proceedings is also not specified in the Code on Civil Procedure. Therefore, as far as final injunctions are concerned, the same "absence of reasonable doubts" standard as applied in damages claims would be used. However, with regard to interim injunctions the standard of proof seems to be lower although this is not expressly formulated in the Code on Civil Procedure. For example, Article 148(3) of the Code on Civil Procedure establishes that if the applicant requests interim protective measures to be applied before filing an action, it must, among other things, prove the existence of a "certain risk to the applicant's economic interests."

(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?)

As to the form of evidence, Article 177 of the Code on Civil Procedure allows reliance on explanations given by the parties and third parties, witnesses' evidence, documentary evidence, autoptic evidence, minutes of inspections, and expert evidence. In addition, evidence may be provided in the form of audio and visual records as well as photographs made in accordance with the law. As regards witnesses, any person that can give information on the circumstances relevant to the case can be called to witness. Witnesses from other jurisdictions can also be admitted. As documents issued by state institutions have *prima facie* evidential

3 Laužikas, E., Mikelėnas, V., and Nekrošius, V., *Civilinio proceso teisė ('Law of Civil Procedure')* (Justitia, 2003) at 416

4 *Ibidem*

value, the facts indicated in such documents are considered to be true unless proven otherwise and cannot be denied by using witnesses' testimonies.

Under Article 189(2) persons subject to professional secrecy can not be questioned as witnesses. The same privilege is specifically granted to advocates under Article 46 of the 18 March 2004 Law on Advocacy (*"Advokatūros įstatymas"*) (hereinafter referred to as the "Law on Advocacy")

Under Article 190, parties can request a court to subpoena witnesses. This can be done before proceedings begin as part of the "securing of evidence" procedure as explained in E(a)(iv) below. Failing to appear before the court and give evidence as a witness may result in fines up to LTL1,000 (approximately 290 EUR).

Article 179(2) of the Code on Civil Procedure limits the court's right to act ex officio to cases directly provided in the law. These are rather limited situations where the active role of the court is justified by the nature of certain categories of cases, for example, family litigation (Article 376(1) of the Code on Civil Procedure, employment litigation (Article 414(1) of the Code on Civil Procedure). However, the court is not given a right to subpoena witnesses ex officio in claims for damages for violation of competition rules.

(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis defendants, third parties and competition authorities (national, foreign, Commission).

Discovery, in such a form and scope as it is known in the common law countries, is not foreseen in Lithuanian rules of civil procedure. However, Articles 221-224 of the Code on Civil Procedure allow what is called "securing of evidence", i.e., making sure that evidence is recorded and preserved. In particular, under Article 221 persons (including parties and third parties) that have grounds to believe that it would be impossible or difficult to obtain evidence in the future may ask a court, either before or after submitting a claim, to "secure evidence". For this purpose the claimant must indicate the evidence that needs to be secured, circumstances to be confirmed by such evidence and reasons for securing such evidence (Article 222 of the Code on Civil Procedure). Failing to provide the above mentioned explanations may result in the court rejecting such request. The court must rule on the securing of evidence within 3 days after a request has been submitted to the court (Article 223(1) of the Code on Civil Procedure).

Any document that may be relevant for proving circumstances relied upon by a party or a third party can be required to be disclosed. However, under Article 199(3) of the Code on Civil Procedure, documentary evidence can not be obtained from persons that could not be called as witnesses to give the same information (e.g. advocates). As follows from Article 199(1) of the Code on Civil Procedure and its application in practice, the documentary evidence required to be disclosed must be described rather precisely, i.e., indicating what particular document is request, why it is believed that this document is held by a particular person and what particular circumstances this document could confirm.

The protection of business secrets is not explicitly mentioned as a grounds for refusal to disclose. However, business secrets are protected as the court may, upon request of the parties or ex officio, declare that the file is not available for public access (Article 10(2) of the Code on Civil Procedure).

Securing of evidence outside the jurisdiction is performed in accordance with the 1970 Hague Convention On The Taking Of Evidence Abroad In Civil Or Commercial Matters that Lithuania ratified on 13 April 2000. Unless international treaties to which Lithuania is a party provide otherwise, the admissibility of evidence obtained through disclosure outside Lithuania (*e.g.* through discovery in other countries) would be tested under the national rules of civil procedure.

As a general rule, the court can require production of documentary evidence on the request of either party to the proceedings or third parties. Article 179(2) of the Code on Civil Procedure limits the court's right to act ex officio to cases directly

provided in the law. These are rather limited situations where the active role of the court is justified by the nature of certain categories of cases, for example, family litigation (Article 376(1) of the Code on Civil Procedure, employment litigation (Article 414(1) of the Code on Civil Procedure). However, the court is not given a right to require production of evidence ex officio in claims for damages for violation of competition rules.

If requested by the court, the national competition authority will be obliged to grant access to its file.

According to Article 199(6) of the Code on Civil Procedure, failing to produce documents required by the court may result in a fine amounting to 1,000 LTL (approximately 290 EUR).

(b) Proving the infringement

(i) Is expert evidence admissible?

According to Article 177(2) of the Code on Civil Procedure expert evidence is admissible. As a matter of fact, in both of the only two cases on damages for violations of competition rules the court ordered the carrying out of an investigation to establish the amount of damages suffered by a claimant. Since both of these two cases are pending and we are bound by professional secrecy obligations, we can give no further information on this matter.

According to Article 212 of the Code on Civil Procedure, the court alone can appoint experts. Any so-called "expert" evidence presented by the parties will have a status of simple documentary evidence.

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

Cross-examination, such as it is known in other countries (e.g., the US), is not performed under Lithuanian rules of civil procedure. Examination of witnesses and experts by both parties and the court is foreseen in Articles 192(7) and 217(3) of the Code on Civil Procedure respectively. Generally, the scope of examination is limited to matters which witnesses or experts were called to certify or give their opinion on.

(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 Article 197(2) of the Code on Civil Procedure, documents issued by state institutions within the limits of their competence and in compliance with procedural formalities are regarded as official documentary evidence and have a higher (*prima facie*) evidential value. This means that circumstances indicated in such documents are considered to be true unless proven otherwise. Notably, for the purposes of denying circumstances certified in such documents witnesses cannot be used unless that would produce unfair, unjust or unreasonable effects. Although the Code on Civil Procedure does not specifically mention documents issued by foreign competent authorities, it does not exclude them either by using a general reference to "documents issued by state institutions" rather than "documents issued by Lithuanian state institutions". Thus, it would be reasonable to expect that the same principles would apply.

As regards decisions of courts, both national and foreign (the latter being subject to recognition and enforcement), once they come into force they acquire *res judicata* value.

(c) Proving damage

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

As a general rule, the existence and extent of damage should be proven in the same way as other elements of the damages claim. However, admitting that in certain situations the specific amount of damages might be difficult to prove[5], Article 6.249(2) foresees that the profit made by the defendant can be used as a measure of damage. Nonetheless, the actual existence of damage must be proven.

(d) Proving causation

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

Article 6.247 of the Civil Code is regarded as adopting a 'flexible causation doctrine'[6]. The aforementioned provision does not require that an illegal behaviour of the defendant must be the only cause of loss. For the purposes of establishing the causal link between the illegal behaviour and loss it is enough to prove that such behaviour is an adequate (sufficient) cause of loss[7]. The case law on the new Civil Code is yet to clarify what would be considered as "adequate", but in general the cause of loss would be held adequate if loss is regarded as a normal outcome given the circumstances of the case. The flexible causation doctrine also means that the causation should not necessarily be direct in order for the judge to reach a conclusion as to its sufficiency. Indirect causation was accepted even in the case law under the old 1964 Civil Code[8].

F. Grounds of justification

(i) Are there grounds of justification?

As there are no special rules on damages in competition cases, general provision of the Civil Code will be applied. According to Article 6.253(1) of the Civil Code, a defendant can be fully or partially released from the liability to pay damages if such damages occurred due to the following: force majeure, actions of the State, actions of a third party, culpable (intentional) conduct of the claimant (including consent), necessity, necessary defence or self-defence. Consent can only be a ground of justification if such consent does not violate rules of mandatory nature, public order, good morals and principles of prudence, fairness and equity (Article 6.253(5) of the Civil Code). Gross negligence of the claimant, as a ground for releasing the defendant, fully or partially, from the liability, is provided in Article 6.282 of the Civil Code.

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

Due to the absence of the case law on this matter, it is difficult to predict how courts would deal with "indirect purchaser" issues and whether they would accept 'passing-on' defences. As far as the latter are concerned the Civil Code seems to grant courts a wide degree of flexibility. In particular, Article 6.249(6) of the Civil Code provides that when actions of the plaintiff result both in damages and benefits for the claimant, the amount of damages can be reduced correspondingly, unless that would violate the principles of prudence, fairness and equity. In this connection one can envisage that proving the causal link between actions and benefits could be one of the major obstacles for the efficient use of "passing-on" defences (it would be for the defendant to show that higher costs had been passed on). The same would also be true with respect to "indirect purchaser" claims, which, as a matter of principle, are possible. Such "indirect purchaser" claimants

5 *Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1* (*'The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1')* (Justitia, 2003) at 342

6 *Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1* (*'The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1')* (Justitia, 2003) at 338

7 Ibidem, at 338

8 See „The review of courts' practice on application of laws related to compensation of damages resulting from car accidents" approved by the 16 June 2000 Resolution of the Senate of the Supreme Court No 27

will have to prove that the inflicted harm resulted from the actions of the defendant (probably because the higher prices have been passed on, but this would not be presumed).

(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?

As mentioned in F(i) above, a defendant can be fully or partially released from the liability to pay damages if such damages occurred due to the contributory negligence of a claimant (Article 6.282 of the Civil Code). As the result, the claimant is also obliged to mitigate losses. As to the claimant benefiting from the infringement, Article 6.249(6) of the Civil Code provides that in such cases the amount of damages can be reduced correspondingly, unless that would violate the principles of prudence, fairness and equity.

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?

Article 6.249(1) of the Civil Code entitles the claimant to direct and indirect (loss of profits) damages. Admitting that in certain situations the specific amount of damages might be difficult to prove[9], Article 6.249(2) foresees that the profit made by the defendant can be used as a measure of damages. In addition, Article 6.249(4) provides that the claimant can also demand compensation for the following:

- reasonable expenses for the prevention or mitigation of damages
- reasonable expenses related to the calculation of damages
- reasonable expenses related to recovery of damages without court involvement

According to Article 6.250 of the Civil Code, non-material damage can only be recovered in cases directly foreseen by law. As the Law on Competition does not expressly allow claims for non-material damage, this possibility is not available in competition cases.

(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?

Article 6.251(1) of the Civil Code establishes that the aggrieved party is entitled to full compensation for harm sustained unless a limited liability is established by laws or agreement between the parties. The principle of full compensation for harm sustained has several important consequences. Firstly, it means that there are no maximum limits to damages as long as the aggrieved party is able to prove them. However, Article 6.251(2) of the Civil Code leaves for the court's discretion, by taking into consideration the nature of liability, financial position of the parties and their relationship, to reduce the amount of damages if full compensation would produce unacceptable or severe results. Secondly, the full compensation principle is limited in such a way that the aggrieved party must not be enriched by damages. Thus, punitive or exemplary damages are not available. Finally, damages must be compensated in full irrespectively of whether they occurred within or outside the jurisdiction.

9 *Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1* (*'The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1')* (Justitia, 2003) at 342

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

The current case law on damage compensation[10] does not spell out any specific economic models for the calculation of damages. However, it is acknowledged in legal doctrine that a combination of both subjective (concrete) and objective (abstract) calculation methods should be used[11]. The subjective (concrete) calculation method is based on the principle of differentiation[12]. Damages are calculated by comparing the position of the aggrieved party before and after the violation in question. According to the objective (abstract) calculation method the value of damaged or destroyed property is determined[13].

Although there is no summary of the case law on this matter, the practical experience confirms that Lithuanian courts use both subjective and objective calculation methods. The latter seems to be preferred in calculating direct damages (for example in cases for compensation of damages inflicted on a person or property), whereas the former is used to determine indirect damages (lost profit). Considering the differences between these two methods and taking into account specificity of competition-related cases, one may expect that the subjective (concrete) method would be more suitable for determining damages incurred due to violation of competition rules.

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

As a general rule, established in Article 6.249(5) of the Civil Code, damages are calculated on the basis of ex-post estimates, and specifically, estimates made on the day of adoption of a court's decision. The same Article provides for exceptions to this general rule if its application would lead either to unjustified enrichment or only partial compensation of harm[14]. In such situations the estimates can be made as of the day of injury or the day of filing a claim for damages to the court.

(v) Are there maximum limits to damages?

No.

(vi) Are punitive or exemplary damages available?

No.

(vii) Are fines imposed by competition authorities taken into account when settling damages?

Due to the absence of the relevant case law, it is difficult to predict whether courts, when calculating damages, would take into account fines imposed by competition authorities. However, the above-quoted Article 6.251(2) of the Civil Code seems to allow courts, by taking into consideration the financial position of the defendant, to reduce the amount of damages if full compensation would produce unacceptable or severe results.

(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?

10 N.B. case law on compensation of damages for violation of competition rules is practically non-existent (except for two cases that are still pending)

11 Mikelėnas, V., *Civilinės atsakomybės problemos: lyginamieji aspektai ("Problems of Civil Liability: Comparative Aspects")* (Justitia, 1995) at 147, 148; and Mizaras, V., *Autorių teisės: civiliniai gynimo būdai ("Civil Remedies of Infringement of Copyright"*) (Justitia, 2003) at 100-102

12 Mikelėnas, V., *Civilinės atsakomybės problemos: lyginamieji aspektai ("Problems of Civil Liability: Comparative Aspects")* (Justitia, 1995) at 148

13 Ibidem, at 147

14 *Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1* (*"The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1")* (Justitia, 2003) at 343, 344

Article 6.37(2) of the Civil Code establishes that interest is awarded from the date when court proceedings were instituted.

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

Article 6.37(2) does not give any guidance as to the criteria for determining the level of interest, but the Commentary on the Civil Code explains that the statutory interest established in Article 6.210 of the Civil Code should be used. In particular, under Article 6.210 the interest of either 5% or 6% (the latter in case both parties are private legal persons) is payable.

(iii) Is compound interest included?

As a general rule, established by Article 6.37(4) of the Civil Code, compound interest is prohibited, unless specifically allowed by other laws (this is not the case as far as competition laws are concerned) or if the parties agree otherwise. The latter agreement must not contradict the principles of fairness, prudence and equity.

H. Timing

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

According to Article 1.125(8) of the Civil Code, actions for compensation of damage are subject to a three-year limitation period. The period runs from the date on which the claimant has become aware or ought to have become aware of the infringement.

(ii) On average, how long do proceedings take?

On our assessment, proceedings in the first instance court might take from 3 to 6 months, depending on the complexity of the case. However, at this point we expect that in most instances the courts will tend to treat this type of dispute as complex and appoint experts to establish the amount of damages sustained by the claimant as a result of infringement of competition rules. Thus, a six-month period should be regarded as a more realistic time-frame for the proceedings in the court of first instance. Proceedings in the court of appeal and in the Supreme Court of Lithuania, which is the court of last resort, might take in total approximately 8 months. Therefore, in general the proceedings for recovery of damage in civil courts might take from 11 to 14 months. On the other hand, the current practice is such that the claimants before (or along with) the institution of the action for damages in a civil court, usually apply to the national competition authority – Competition Council of the Republic of Lithuania (*"Lietuvos Respublikos Konkurencijos taryba"*) – requesting an investigation of the alleged infringement of competition rules. The investigation of the Competition Council has to be performed within five-month period, although this period may be further extended by its reasoned decision for additional period up to two months. Noteworthy, that the law does not impose limitation on the number of such extensions, thus the length of the investigation in practice depends on the complexity of investigation and workload of the Competition Council. Furthermore, at least one of the parties whose interests are prejudiced by the findings of the Competition Council usually appeals the decision of the Competition Council to the specialised administrative court. Therefore, in practice civil courts usually suspend the proceedings until the administrative court of last resort adopts a ruling on the legality of findings of the national competition authority. Proceedings in the administrative courts usually take from 4 to 6 months.

(iii) Is it possible to accelerate proceedings?

The Code on Civil Procedure provides for simplified, and therefore accelerated, procedures applicable in pecuniary actions (i.e. when the subject matter of the claim is money), provided the claim is substantiated by documentary evidence. In addition to other procedural aspects distinguishing simplified procedures from the ordinary procedure, some of the simplified procedures provide for a possibility to a

court adopt the so called preliminary judgement. Preliminary judgement is based on the evidence submitted by the claimant and is rendered if, upon the reasonable judgement of the court, such evidence substantiate the claim. Such judgment is adopted without knowledge of the other party – defendant and is communicated to the defendant only after its adoption. The preliminary judgement enters into force in case the defendant fails to file the objections within the prescribed period of time.

In principle simplified procedures in general and preliminary judgement in particular are applicable in the case of a "simple dispute", i.e. when claimant possesses all necessary documentary evidence and the court may adopt a decision regarding his entitlement to the claim on the balance of probabilities, without extensive preparation and public trial. However, in the case where the dispute becomes complex (e.g. the defendant files with a court reasoned arguments contesting the claim) the simplified procedure may be transformed into an ordinary one. One could assume that the claimant might be able to initiate the simplified procedure in the case the of presence of a valid (i.e. enforceable) pre-existing decision of the Competition Council, provided such a decision confirms the fact of infringement of competition rules by the defendant. However, this has never happened in practice and, in our opinion, such a course of action is very unlikely. First and foremost, the Competition Council, which conducts investigations of the alleged infringements, is required by law neither to determine precisely all the undertakings which sustained damage due to the infringement of competition rules nor to compute the amount of the sustained damage. Therefore, even in case of a pre-existing valid decision of the Competition Council the amount of damages will remain an open issue which, in our opinion, is too complex to be decided using a simplified procedure. In the absence of a pre-existing decision of the Competition Council, employment of the simplified procedure is virtually impossible. In conclusion, we do not envisage practical possibilities that would allow accelerating the proceedings. However, the New Amendments foresee establishing an exclusive jurisdiction of Vilnius District Court acting as the court of first instance to hear civil disputes concerning violation of national competition rules or Articles 81 and 82 EC. We believe that concentration of the disputes at issue in one single court will enhance proficiency of the judiciary and enable them to handle actions for damages in a more expedient manner.

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

Damages cases are usually heard in the court of first instance by one judge. According to Article 62(1) of the Code on Civil Procedure, the chairman of the court of first instance may take into account the complexity of the case and form a panel of three judges, although this is not usual in practice. In the court of appellate instance three judges sit on the panel. In the Supreme Court of Lithuania the panel usually consists of three judges, although the most complex cases are heard either by a panel of seven judges or by the plenary session of the Civil Cases' Division of the Supreme Court of Lithuania consisting at least of 12 judges.

(v) How transparent is the procedure?

The Code on Civil Procedure provides for a number of principles that mean that proceedings are treated in a transparent manner. In particular, the court hearings are public, except when parties request the court to hear the case in chambers in order to prevent the disclosure of commercial secrets; each party has a right to challenge a judge hearing the dispute or an expert invited to give expert determination if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality; each party has a right to get acquainted with all materials of the case; before the hearing of the case the parties have an extensive exchange in written pleadings; the court by reasoned decision may refuse to accept evidence if a party fails to present such evidence in due time; interested third parties have a right to intervene in the case; in certain instances the court may invite representatives of public authorities representing a public interest to give an opinion on the matters relevant to the case; all evidence presented in the case must be examined during the hearing; the decision of the court may rely only on evidence which has been properly examined during the hearing; decisions of the

court have to be reasoned; when a case is finally resolved all the materials of the case, including submissions of the parties, become available to the general public, except for the documents which constitute commercial secrets. In addition, as a matter of practice, decisions of the Supreme Court of Lithuania are also available on the Internet. Those decisions which are considered to be relevant for uniform interpretation and application of laws are also published in the journal issued by the Supreme Court.

I. Costs

(i) Are Court fees paid up front?

As a general rule the Court fees must be paid up front. However, according to Article 83(3) and Article 84 of the Code on Civil Procedure, the court may take into consideration the economic situation of the claimant and either reduce the amount of the stamp duty (*i.e.* a fee determined on the basis of the amount of the claim) or defer the payment of the stamp duty until the decision of the court in the case at issue is adopted. For this purpose the claimant must provide evidence proving his poor economic situation. See also point (viii) below.

(ii) Who bears the legal costs?

In the course of the proceedings each party must pay its own legal costs. However, if the party prevails in the proceedings it shall be awarded the legal costs which have to be compensated by the losing party. In case of partial dismissal/satisfaction of the lawsuit the legal costs shall be divided among the parties in the following manner: the claimant shall be awarded a part of the legal costs which is proportional to the value of the satisfied claims while the defendant shall be awarded a part of legal costs which is proportional to the value of the dismissed claims.

(iii) Are contingency fees permissible? Are they generally available for private enforcement of EC competition rules?

Article 50(2) of the Law on Advocacy allows an attorney to enter into arrangement with a client whereby the attorney's fee is made dependant on the outcome of the case. Thus, since the enactment of the 18 March 2004 Law on Advocacy contingency fees are permissible under Lithuanian law in damages actions for breach of competition law. According to Article 50 of the law, the amount of attorney fee must correspond to complexity of the case, experience and expertise of the attorney, financial status of the client and other circumstances, if any, which might be relevant to the particular situation. Besides, the agreement on the amount of attorney fee must not infringe the principles of professional conduct. Due to the novelty of the law we are not in the position to conclude what is the practical relevance of the above-mentioned statutory requirements setting up the principles which should be taken into account by the attorney for the purpose of negotiating the amount of attorney fee. However, in our opinion, provision of Article 50 implies that amount of attorney fee, including the one established as contingency fee, should be reasonable.

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

In principle the prevailing party is entitled to recover the full amount of litigation costs from the unsuccessful litigant, except for the amount of the attorney fees, which may be recovered only in the amount authorised by law. The 2 April 2004 Order No. 1R-85 of the Minister of Justice approved the Recommendations on the Maximum Amounts of Attorney Fees that can be Recovered in Civil Proceedings (hereinafter referred to as the "Recommendations"). The Recommendations have also been approved by the 24 March 2004 Resolution of Lithuanian Bar. In principle the Recommendations establish a procedure for calculation of remuneration for separate procedural actions such as e.g. drafting of a claim, representation in the court, filing of appeal, etc. rather than fixed amounts. Thus, the actual amount of attorney fee which may be recovered from unsuccessful litigant is established on individual basis, i.e. depending on the length of the proceedings and procedural

actions which were taken in the case at issue. Besides, the amounts of recommended attorney fees are provided as coefficients and, therefore, are made depended on the amount of minimal monthly salary which is established by the Government of the Republic of Lithuania and increased from time to time correspondingly to the growth of economy. Due to the above as well as casuistic nature of the Recommendations, we are not in the position to provide the whole list of the specific amounts or average aggregate amount of attorney fee which might be recovered from unsuccessful litigant. However, for instance, currently the maximum compensation for drafting of a statement of claim that might be recovered from loosing party is 1,500 Litas (approximately EUR 434); the maximum recoverable compensation for drafting of the rejoinder is 875 Litas (approximately EUR 253); the same amount of maximum recoverable compensation is established for drafting of the reply to the rejoinder of the defendant; the recoverable compensation for one hour of representation in court is 75 Litas (approximately EUR 22); the maximum recoverable compensation for drafting of the appeal is 1,000 Litas (approximately EUR 290) and 1,250 Litas for drafting of cassation complaint (approximately EUR 362). Pursuant to the Recommendations, in exceptional circumstances (e.g. due to complexity of the case) a court is allowed to diverge from the recommended maximum amounts of attorney fees and set forth the higher tariffs to be recovered by winning party from the unsuccessful litigant.

Besides, the prevailing party shall not be entitled to recovery of costs related to the service of a witness if the testimony of such particular witness, invited upon the request of this party, was not relevant to the issue in the case. The cost of a court-appointed expert shall be borne by the unsuccessful litigant as well.

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

Article 79 of the Code on Civil Procedure distinguishes between two types of litigation costs: stamp duty and the legal costs incurred in supporting or contesting a lawsuit. A stamp duty is usually assessed as a percentage from the amount of a claim and is payable by the plaintiff upon institution of legal proceedings. The legal costs incurred in supporting or contesting a lawsuit embrace the items enumerated in Article 88 of the Code on Civil Procedure such as fees for witnesses, court appointed experts, institutions providing services of forensic experts and interpreters are entitled for their service, attorney fees, service fees, expenses related to the execution of a court's decision as well as other reasonable expenses which are necessary to ensure the conduct of the hearing. Thus, in principle the list of legal costs incurred in supporting or contesting a lawsuit is open-ended and the courts have discretion to recognise as legal costs the expenses which are not specifically enumerated in Article 88 of the Code on Civil Procedure.

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

Rules for taxation of costs are provided in Chapter VIII of Part I of the Code on Civil Procedure, the 15 November 1999 Order No. 315 of the Minister of Justice, the 6 December 2002 Order No. 344 of the Minister of Justice, the 6 December 2002 Order No. 344/388 adopted jointly by the Minister of Justice and the Minister of Finance, the 31 December 2002 Order No. 432 of the Minister of Justice and 29 September 2003 Order No. B-42 of the Director of Lithuanian Centre of Forensic Expertise, the 2 April 2004 Order No. 1R-85 of the Minister of Justice and the 26 March 2004 Resolution of Lithuanian Bar. These legal enactments lay down the rules of taxation of the costs of litigation specifically enumerated in Article 88 of the Code on Civil Procedure. However, in principle the courts have discretion to recognise as costs of litigation other expenses which are not specifically mentioned in the above enactments, provided that the amount of such expenses is reasonable and such expenses were necessary to ensure the conduct of the hearing.

As a general rule, the parties in the course of the legal dispute must also present to the court the documents proving the amount of expenses incurred in relation to the proceedings. Such documents have to be presented until the end of the hearing. According to Article 270(2) of the Civil Code, decision of the court adopted on the merits of the case should also contain provisions on the apportionment of

the litigation costs. This means that taxation of costs is conducted by the same judge (panel) who hears the case, along to the resolution of the main dispute. Subsequently, in case appellate court or the Supreme Court of Lithuania decides to overrule the decision of the lower court and adopts a new decision, such a new decision must also contain new provisions on the apportionment of the litigation costs. Since the issue of taxation of costs is resolved by adopting the decision of the court on the merits of the case, the party contesting the apportionment of the litigation costs must appeal the decision of the court in accordance with the ordinary procedure of appeal, i.e. there is no simplified or extraordinary procedure applicable in case the appeal contests only the apportionment of the litigation costs. In the event the loosing party refuses to pay the litigation costs which have been awarded to the winning party or if the appeal of the loosing party contesting the apportionment of the litigation costs was dismissed, the awarded litigation costs shall be recovered in accordance with ordinary procedure for execution of the decisions of the court, i.e. the winning party shall be entitled to seek the bailiff's assistance.

According to Article 7 of the 8 September 2003 Law on Insurance No. IX-1737 (*"Draudimo įstatymas"*), insurance companies are entitled to provide legal aid insurance service. However, to the best of our knowledge, none of the local insurance companies for the time being provides such type of insurance on the regular basis. On the other hand, this does not exclude the possibility for an interested party to agree on the insurance of legal aid on individual basis, however, in such instance the terms of insurance contract will have to be negotiated on individual basis as well.

(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?

Since the only two cases on damages for the violations of competition rules are still pending, we are not in the position to assess the likely average costs in an action brought in respect of a hard-core violation of competition law. On the other hand, taking into account the fact that the substantial portion of costs in the litigation of such type will most probably consist of the amount of stamp duty, attorney fees and fees to the court appointed expert or institution providing forensic expert services, we present the data which might serve as an indicator of possible costs. In particular, according to Article 80 of the Code on Civil Procedure, the amount of the stamp duty depends on the value of a claim (e.g. amount of compensation claimed by the plaintiff). The stamp duty of 3% is charged in the event the value of the claim does not exceed 100,000 Litas (approximately EUR 28,962); claims in the range of amount from 100,000 Litas to 300,000 Litas (approximately EUR 86,886) shall be subject to the stamp duty of 3,000 Litas (approximately EUR 867) plus 2% from the amount which is above 100,000 Litas; claims exceeding 300,000 Litas shall be subject to stamp duty of 7,000 Litas (approximately EUR 2,027) plus 1% from the amount which is above 300,000 Litas. However, in any case the amount of the stamp duty may not exceed the 30,000 Litas (approximately EUR 8,687) cap established by Article 80(1) of the Code on Civil Procedure. As a general practice, attorney fees charged by experienced counsels vary from EUR 50 to 185 per hour. Upon our assessment, the costs of the expertise performed by the Lithuanian Centre of Forensic Expertise might vary from 3,000 to 10,000 Litas (approximately from EUR 869 to 2,896).

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?

Current provisions of Lithuanian laws on private enforcement of competition rules do not differ from the general private enforcement rules. However, from Lithuania's accession to the EU national courts, applying Articles 81 and 82 EC, will have to take into account provisions of Council Regulation (EC) No. 1/2003 of 16 December 2002 On the Implementation of the Rules on Competition laid down in Articles 81 and 82 EC. Besides, as was mentioned above, the New Amendments

foresee establishing an exclusive jurisdiction of Vilnius District Court acting as the court of first instance to hear civil disputes concerning violation of national competition rules or Articles 81 and 82 EC. Furthermore, the New Amendments (Article 50(4) of the Law on Competition) provide for a possibility to renew legal proceedings (i.e. to institute repeated legal proceedings) in case a decision of a national court relating to application of the Articles 81 and 82 EC is contrary to a decision of the EC Commission.

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

Competition rules are regarded as being of public policy in Lithuania, although actions for damages should be regarded as a private matter. However, this does not influence any answers given above.

(iii) Are there any differences according to whether defendant is public authority or natural or legal person?

In the damages cases there is no difference as to whether the defendant is a natural or legal person or public authority, provided such public authority falls under the definition of undertaking as established in Article 3(4) of the 1999 Law on Competition. At this point it should be noted that the notion of undertaking is broad and in principle covers any entity engaged in an economic activity. However, in the event that competition rules were infringed by act, omission or decision of a public authority adopted in the sphere of public administration, i. e. acting in public capacity, the dispute regarding compensation of damage shall be heard by specialised administrative courts pursuant to the 14 January 1999 Law on Administrative Proceedings No. VIII-1029. (*"Administracinių bylų teisenos įstatymas"*). Since there are only two instances of the administrative courts (first instance and appellate), the administrative proceedings are usually more speedy in comparison with proceedings in the civil courts. Besides, actions for damages in administrative courts are not subject to stamp duty which makes litigation cheaper. The substantial difference between the actions brought before the administrative courts if compared with proceedings conducted in the ordinary civil courts is such that in the event of an infringement of competition rules by the public authority acting in public capacity the fault of the authority is not a necessary element for its liability for damages. It will be sufficient to prove the illegality of an act, omission or decision of public authority adopted in the sphere of public administration (i.e. the fact of infringement of competition rules), amount of damages and causal link between the unlawful act and damages. There are no other significant practical differences between the actions brought before civil courts and administrative courts.

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

Under the national law, the Competition Council may grant immunity from fines to a dominant undertaking where amicable settlement of damages claims takes place. Notably, the immunity from fines in the case of amicable settlement is available only in the event competition rules were infringed by a dominant undertaking abusing its position, but not in cartel cases. In particular, according to Article 43(2) of the Law on Competition, the dominant undertaking, which has infringed the law by abusing its dominant position, shall be exempted from sanctions (fines) in the case it voluntarily compensates for damage caused by the infringement of the law and provides to the Competition Council the evidence as regards to this matter before the end of the investigation, provided, however, the following preconditions are also met:

- the undertaking provides complete information required for the investigation of abuse of dominant position and co-operates with the Competition Council during the investigation;
- the illegal actions committed by the undertaking have not caused substantial and irreparable damage to the interests of other undertakings or public interests;

- the undertaking voluntarily suspends the illegal actions and provides to the Competition Council the evidence as regards to this matter before the end of the investigation.

As far as the anticompetitive agreements, decisions and concerted practices are concerned, amicable settlement of damages claims may not be regarded as a statutory basis to apply a leniency program and release an undertaking from sanctions and, vice versa, the fact that no sanctions have been applied in a cartel case with respect to a whistle-blower does not grant the latter an immunity from civil liability. However, according to Article 42(2) of the Law on Competition, voluntary compensation for damage shall be regarded as an extenuating circumstance which must be taken into consideration by the Competition Council when assessing the amount of fine. Arguably, such compensation for damage, in order to be recognised as diminishing the gravity of the infringement, must take place before the competition authority adopts a decision on the merits of the case.

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

Lithuania is a unitary state which has a uniform system of civil courts and a uniform system of administrative courts. One of the main functions of the Supreme Court of Lithuania is to ensure uniform interpretation and application of the law among the civil courts while the Chief Administrative Court of Lithuania performs the same function as the system of administrative courts. By virtue of the foregoing as well as due to the relatively small size of the country, there should be no regional differences as regards damages actions for breach of national or EC competition rules.

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

According to Article 1.46 of the Civil Code, the law of the country where the damage occurs shall be applied with respect to the non-contractual competition based damage claims. However, in case anticompetitive practices infringe the interest of only one single person, then the law of the country where such a person has its place of business shall be applied.

There are no other major issues which are specifically relevant to the private enforcement of EC competition law in Lithuania. Such practical issues as absence of Lithuanian translations of the case-law of the ECJ and Court of First Instance or lack of experience of the judiciary as far as direct application of the EC law is concerned might be regarded as factors which make application of the EC competition law in national courts more problematic. Nevertheless, these problems are not specific to EC competition law but are related to implementation of the EC law in general.

(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

Since Lithuania is going to accede to the European Union on the 1 May 2004, there have been no cases based on the violation of EC competition rules so far. To the best of our knowledge, there are only two cases on damages for the violations of national competition rules prohibiting abuse of dominant position (Article 9 of the Law on Competition, equivalent to Article 82 of the EC Treaty). Both of them are still pending in the courts of first instance.

<u>III. Facilitating private enforcement of Articles 81 and 82 EC</u>

(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?

Probably the single most important obstacle for a more efficient private enforcement of competition rules is the immense complexity of the type of cases for recovery of damages. A more particular illustration of this complexity and related issues is provided below:

- There is a vicious circle: on the one hand, because of complexity of the cases, they are extremely rare; and, on the other hand, because these cases are rare, competent courts do not have sufficient experience in resolving them, which makes every new case very complex.
- Although the case law is almost non-existent, experience shows that proving damage and causation (e.g. proving causation in "indirect purchaser" claims or in "passing-on defences) is very difficult as there are numerous economic factors to be taken into account when calculating indirect damages and establishing causal link between such damages and violation of competition rules.
- In this connection one can envisage that proving the causal link between actions and benefits could be one of the major obstacles for the efficient use of "passing-on" defences (it would be for the defendant to show that higher costs had been passed on). The same would also be true with respect to "indirect purchaser" claims, which, as a matter of principle, are possible. Such "indirect purchaser" claimants will have to prove that the inflicted harm resulted from the actions of the defendant (probably because the higher prices have been passed on, but this would not be presumed).
- The potential for collective actions - both in the form of joint claims or claims submitted on behalf of consumers by the Consumer Protection Institution or public consumer organizations - has not been put into practice.
- Because of complexity of cases, litigation is likely to be very expensive and therefore practically inaccessible for the great majority of persons.
- Arguably, courts are still not the preferred place to solve commercial disputes.

Considering the weaknesses of the current status of private enforcement, the following improvements could be considered:

- There should be a continuing education of both the judiciary and businesses. The latter should be explained the advantages of private enforcement whereas the former must be prepared to deal with complex legal and especially economic matters.
- In such a small country as Lithuania it might be useful to consider the possibility of concentrating these kinds of cases in a single court acting as the court of first instance. That would allow accumulation of experience and a certain degree of specialisation. For this purpose, one of the existing civil courts of higher level could be used as a separate specialised court.
- The European Commission could assist both the courts and potential litigants by issuing non-mandatory guidelines explaining possible economic models and tools that could be used in actions for damages.
- Introduction of statutory damages (i.e., damages directly defined by law, as opposed to actual damages) could be considered. However, acknowledging the simplification that they would bring, one cannot overlook substantial drawbacks as it would be extremely difficult to establish a just, fair and reasonable level of statutory damages.
- As with statutory damages, allowing contingency fees, as recently introduced by the new Law on Advocacy, might have a positive impetus for encouragement of private enforcement actions in antitrust cases.
- The existing difficulties with proving causation should be overcome once the application of a 'flexible causation doctrine' adopted by Article 6.247 of the Civil Code[15] becomes more settled in the case law.
- It could be worth considering if the existing Consumer Protection Institution and public consumer organizations should be given a more specific competence to file actions on behalf of consumers for harm inflicted by violation of competition rules. The current competences seem to be limited only to violations specified in the Law on Consumer Protection.

15 *See* explanations at E(d)(i) above

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

As far as alternative dispute resolution methods are concerned, the possibility of applying them is rather doubtful. In particular, Article 11(1) of the 2 April 1996 Law on Commercial Arbitration ("Komercinio arbitražo įstatymas") No. I-1274 provides that competition-related disputes may not be submitted to arbitration. Thus, it seems that the only way claims for damages caused by violations of competition rules could be solved in arbitration proceedings is when the fact of infringement of competition rules has already been established.

Mediation, as an alternative means of dispute resolution, is available, but, to the best of our knowledge, has never been used in practice in competition related cases. We are also aware of one settlement of a damages claim arising out of a violation of the Law on Competition (Article 9 – abuse of a dominant position). However, due to professional secrecy obligations we cannot provide a more detailed account on this settlement case.

IV. Bibliography

Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga: Prievolių teisė. T.1 (*"The Commentary of the Civil Code of the Republic of Lithuania. Book 6. Law of Obligations. Vol.1")* (Justitia, 2003).

Laužikas, E., Mikelėnas, V., and Nekrošius, V., *Civilinio proceso teisė ("Law of Civil Procedure")* (Justitia, 2003).

Mikelėnas, V., *Civilinės atsakomybės problemos: lyginamieji aspektai ("Problems of Civil Liability: Comparative Aspects")* (Justitia, 1995).

Mizaras, V., *Autorių teisės: civiliniai gynimo būdai ("Civil Remedies of Infringement of Copyright"*) (Justitia, 2003).

V. National case law summaries

No cases to report.