

CYPRUS

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I. Introduction

There has, to date, been no reported case for damages for breach of EC and/or national competition law in Cyprus. Although EC competition principles have been applied in Cyprus in parallel to the local rules and numerous decisions have been issued by the Protection for Competition Commission, no action has yet come before the Cypriot courts for damages for breach of the law. It is important to note that this is so despite the fact that there is a specific provision in the Protection of Competition Law (207/89) allowing for actions and injunctive relief for breach of the the national law.

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 a distinction between EC and national law in this regard?**

Section 35 of the Law for the Protection of Competition (207/89) hereinafter referred to as "The Law" explicitly provides that any person who suffers loss or damage as a result of an infringement of the Law i.e. as a result of anticompetitive practices has the right to bring an action for damages against the person(s) and/or entity(ies) responsible for such practices and/or seek an injunction to prevent the continuation of the infringement. The statutory provision relates to breach of the national competition legislation not EC law but the national law is modelled on EC law. There is no specific statutory basis for EC law based claims per se.

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

- (i) **Which courts are competent?**

The District Courts will have jurisdiction at first instance to adjudicate on claims for damages. The Supreme Court of Cyprus in its appellate jurisdiction can hear appeals without the need for leave.

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

There are currently no specialized courts to hear such claims.

C. Who can bring an action for damages?

- (i) **Which 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?**

There is no restriction on any person or entity to file such a claim. Since the claim is for damages, public interest litigation or a class action by a person who has not suffered direct loss or damage as a result of anti-competitive behavior by a person

on legal entity would be extremely unlikely to succeed. There is no limitation for standing of natural or legal persons from other jurisdictions.

Since at the moment there are no specialized courts all actions for breach of competition law will fall under the jurisdiction of the relevant district court.

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

Collective claims, class actions and actions by representative bodies per se are not prohibited but must be based on the premise that the Law provides for loss or damage suffered as a result of anti-competitive practices constituting a breach of the law. Cypriot law allows for "representative actions", as they are called, to be filed without specifying the availability of such actions particularly to competition law. As a general principle therefore such actions are available under Cypriot Law for breach of competition law although there has been no precedent to date. The courts in Cyprus may appoint one or more persons to sue and/or defend on behalf of numerous persons having the same interest in a cause or matter. Such authorisation presupposes the existence of power of attorney signed by the persons to be represented and empowering the person or persons who are to sue and/or defend on their behalf. Where such a court order is made the persons so represented are bound by the court's judgement.

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

(i) What forms of compensation are available?

The Law provides that the commission for the Protection of Competition (hereinafter "The Commission") has exclusive jurisdiction to investigate breaches of the Law. It is unclear whether this exclusivity precludes an action for damages without the ruling of the Commission since the wording of the Law is rather vague and there has not been an interpretation by the courts. However, our preliminary view is that it does not since there is no such express provision in the Protection of Competition Law. Furthermore and as regards EC Competition Law in view of the power of the national courts to apply Articles 81 & 82 our view is that the jurisdiction of the Protection of Competition Commission will not operate as a prerequisite for a legal or natural person to seek damages for a breach of EC Competition Rules before the relevant District Court.

Section 35 of the Law establishes a statutory right to file an action for damages for breach of the Law and, in addition gives the claimant the right to seek an interim and/or fraud injunction to prevent the continuation of the illegality.

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

The remedies available to the Claimant are damages for loss or damage suffered as a result of anti-competitive practices which constitute a breach of the Law. In addition, interim and/or final injunctions prohibiting the continuation of such breaches of the Law may also be sought.

(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?

The basic ingredient of an action based on section 35 of the Law is proof that there has been a breach of either Article 4 and/or Article 6 of the Law. Article 4 prohibits any action that results in:

- a) The direct or indirect fixing of prices or other terms of commercial transaction.
- b) The restriction or control of production, distribution, technological development or investments.
- c) The geographical or other classification of markets or the raw material sources.

- d) The application of unequal terms in similar transaction resulting in certain businesses finding themselves at a disadvantage.
- e) The imposition of obligations, not relevant to a transaction as a prerequisite to its execution.

Section 6 prohibits the exploitation of a dominant market position and specifically any behaviour that results or may result in any of the situations provided for in Section 4(a)-(e) as mentioned above.

Consequently, the Claimant in an action for damages must first prove that any of the provisions of section 4 and/or 6 have been breached and prove that such breach resulted in direct loss or damage to himself.

The relevant section (s.35) of the Protection of Competition Law lays down as a premise for an action for damages for infringement of the law, the acts or omissions in breach of sections 4 and 6 of the said Law. In that sense, the breach of the statutory duty giving rise to a claim for damages is a strict one and does not imply fault as a requirement.

Bad faith or negligence need not be proven but may be taken into consideration in awarding exemplary damages, which, however, are rarely awarded by the Cypriot Courts.

E. Rules of evidence

(a) General

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

The burden of proof rests on the Claimant. The burden is to establish one or more breaches of section 4 and/or 6 of the Law and that such breach directly caused loss or damage to the Plaintiff.

(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 standard of proof, as in all civil cases, is the balance of probabilities. As we have noted at the outset it is still unclear whether a finding by the Commission that there has been such a breach is an irrebuttable presumption in court. Our preliminary opinion is that a ruling by the Commission that there has been a breach does not constitute irrebuttable evidence of such breach and is not a requirement to file the action. We must however qualify our opinion in the absence of guiding precedent and the vagueness of the wording in the Law.

(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?)

Evidence in Court may be oral or written. Due to a recent amendment of the Law of Evidence hearsay is now allowed and it is up to the Judge to decide the reliability weight of the hearsay evidence. Any of the parties are free to summon any witness they wish even from other jurisdictions although in the latter case there is no enforcement procedure to compel a witness' presence in a Cypriot Court. For local witnesses a summons is filed in court and served on them requiring their attendance to give evidence. Attendance is compulsory once the summons is served and the court may issue an arrest warrant to compel the appearance of a witness. Every party called as a witness has a legal obligation to appear in court but may refuse to answer questions if under a legal duty of confidentiality (e.g. banker or lawyer).

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

• **Defendants**

Pre-trial discovery and inspection of documents is available to the parties upon application to the court, although such application may be opposed if it concerns privileged documents (such as lawyer client correspondence). Any documents not disclosed at the pre-trial stage, may not subsequently be adduced in evidence by the party who has the documents. Any party may apply for the discovery of specific documents relating to the case or apply for a "general" discovery of all documents in the possession of the other party which relate to the case. The notable exception to the rule are "privileged documents" which relate to correspondence exchanged between the party and his legal advisors

There is no procedure to enforce discovery outside the jurisdiction of the Court for civil cases. There are several bilateral treaties allowing for such discovery in criminal matters. Consequently any evidence obtained through discovery in another jurisdiction will be subject to the same rules of filing as the rest of the evidential material

• **Third parties**

There is also no procedure to enforce pre-trial discovery from third parties but such parties may be called during trial either as witnesses or to produce documents at their possession. For the latter case there is a special summons (subpoena duces decum) requiring a person to produce a document in court.

• **Competition authorities (national, foreign, Commission)**

Employees of the Commission or other state authority may be summoned as witnesses and may also be summoned to produce documents.

(b) Proving the infringement

(i) Is expert evidence admissible?

Expert evidence may be adduced in court by summoning experts and filing any reports they may have prepared. Such experts are of course subject to cross – examination.

Under s.35 of the Courts of Justice Law 14/60 the Court may refer to an expert arbitrator the whole or part of a dispute and may at its discretion adopt in whole or in part the report filed by such an expert arbitrator. Such a course requires the consent of the parties. Similarly the parties themselves may agree to jointly appoint an expert and agree that his opinion/report will be binding on both of them. Experts which are jointly appointed by the parties or on whose appointment by the court the parties agree are generally considered to be more credible witnesses than experts appointed and paid by only one of the parties. The experts have usually wide powers to use their own knowledge, expertise and materials and are not normally restricted to the material adduced as evidence.

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

Cross-examination of witnesses is allowed a substantially wide scope and judges are generally reluctant to restrict either its length or its scope.

(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?

Decisions of the Commission or other governmental authorities have significant evidential value and corroborate the Claimant's case but are not in our opinion irrebuttable. It may however constitute a strong indication in court that there has

been a breach giving a right to damages. In fact, official public documents have a higher evidential value in law than other documents. The breach itself does not entitle a person to damages but the latter must strictly and particularly prove his/her loss, and a causal link between the two.

(c) Proving damage

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

Loss or damage must be the direct result of actions or omissions which constitute breach of section 4 and/or 6 and is subject to the general evidential standard of proving damage i.e. it must not be remote. The chain of causation between breach and loss must therefore be directly established. Once causation is established, the claimant must then strictly prove the financial or other loss and/or damage suffered by either documentary or oral evidence or both. General allegations of loss are not acceptable and proof of loss or damage must be supported by evidence. There is no process which will allow the relaxation of the rule but one should bear in mind that the standard of proof is that of the balance of probabilities and even if certain figures are difficult to prove if they are shown on the balance to be reasonably accurate they may form the basis of a court finding. Finally, the loss must be reasonably foreseeable – not remote. The test is that in the mind of a reasonable man, the damage was likely to occur as a result of the defendant's breach of competition rules. The damage must fulfill the following criteria: (a) it must be of a kind recognized by Law, (b) There must be foreseeability of damage to the Plaintiff, (c) the damage sustained must be the same as the damage foreseen.

(d) Proving causation

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

The chain of causation between breach and loss must be directly established. The important element in establishing causation is to prove the relation between the original action or omission and the consequences to the claimant. The standard of proof is the balance of probabilities i.e. that the action or omission (constituting a breach of the competition rules) of the defendant more likely than not contributed to the loss or damage to the defendant. Causation therefore is a question of fact and the test is the "but for" principle established by an English precedent (Barnett Vs Chelsea and Kensington Hospital Management Committee (1969) 1 QB p. 428).

F. Grounds of justification

(i) Are there grounds of justification?

Since the right of action is based on a breach of statutory duty, the defenses available are the ones afforded by the Law which exempts the actions provided for in section 4 of the Law provided that they can be shown to contribute to the enjoyment by the consumers of an improvement in the production or distribution of goods or in the technological or economic progress and does not allow the participating businesses the possibility to restrict or abolish competition in a significant segment of the market nor do they impose on the participating businesses any restrictions other than absolutely necessary.

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

The defences of "passing on" and "indirect purchaser" may in theory be available but there has not been any precedent on the issue.

The defence of passing on has not as yet been applied and/or tested in any competition related case in Cyprus and thus we can only examine it with reference to English case law, which has persuasive effect in a Court of law in Cyprus especially where there is no previous Cyprus case law on the matter.

The passing on defence was considered in the case of Kleinwort Benson Ltd v Birmingham CC 9/5/96 (QBENI 95/0412/E) in the context of 'unjust enrichment' where it was stated that:

"The essence of the defence is that the plaintiff ought not to recover the payment which has 'unjustly' enriched the defendant, if the result of restitution would be that the plaintiff, not being out of pocket, would himself receive a "windfall gain" (per Brennan J. in Commr. of State Revenue v. Royal Insurance (1994) 126 A.L.R.1 (H.C. Austr.)).

However the appeal in the above case was dismissed and the court rejected the passing on defence. Therefore, unless UK or EU case law, which will also have a persuasive effect in Cyprus as from May 1st 2004, accept and apply the passing on defence, it is unlikely that a Cypriot Court apply the passing on defence.

(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?

Section 57(1) of the Civil Wrongs Law as well as the common law principles that apply in Cyprus, clearly establish a defence of contributory negligence where a person suffers damage as the result partly of his/her own fault. In such cases the damages recoverable in respect thereof are reduced to such an extent as the court thinks fit having regard to the claimant's share of responsibility for the damage.

Moreover if the Plaintiff has derived a benefit from the breach of the Law and this benefit may be quantified it may be deductible from the amount of damages he/she may be entitled to. In the case of Kyriacos Christodoulou vs Gregori Gregoriou (1989) Cyprus Law Reports (CLR) p.183 the following two factors were considered to be of paramount importance in apportioning liability: (a) Blameworthiness, (b) Causative potency of acts or omissions. The defendant has under common law, a duty to mitigate his loss and may not claim damages in respect of any part of his loss that could have been avoided by reasonable steps on his part. As regards the equitable remedies of injunction since the law of equity demands that the Plaintiff should come to court with "clean hands" any responsibility or negligence on his part contributing to the breach may prejudice his/her rights to obtaining an injunction especially at the interim stage.

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?

The provisions in the Law regarding damages are not defined but as a general principle of Cypriot Law the Claimant can recover any loss or damage suffered as a direct result of a breach of sections 4 and/or 6 of the law. The basis is the actual loss or damage suffered by the Defendant but may also include loss of profit that must however be reasonably foreseeable. Loss of profit may in theory include the loss of a business opportunity although proving damages for such loss will be very difficult indeed. The gain to the Defendant is not taken into account in calculating the loss to the claimant. Nonmaterial loss is extremely hard to prove but in theory may be claimed as a head of damage.

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

The territory in which the loss was suffered is not directly relevant to the award itself but may raise issues of jurisdiction of the Cypriot courts if the breach has occurred outside Cyprus. If the Cypriot court assumes jurisdiction it may award damages even if the loss was incurred outside Cyprus.

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

The economic model on calculation of damages is based on the actual financial loss incurred.

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

In actions for torts the usual test applied is the loss incurred at the time of the injury. The common law defence of "novus actus interveniens" is also available in Cyprus and may be put forward by the defendant. The principle provides that if there is an event subsequent to the time of injury that affects the quantum, this may be taken into consideration provided that it is proven that this event caused the change in the quantum by interfering with the normal claim of causation.

In the case of an ex ante award the court will not adjust for inflation but will award interest on damages at 8% from the date the action was filed in court. If however the loss has not crystallized entirely by the time of the trial but it can be proven that an identifiable and measurable loss will be incurred in the future the ex-post test may also be applied.

(v) Are there maximum limits to damages?

There is no maximum limit to the damages that may be claimed.

(vi) Are punitive or exemplary damages available?

Exemplary or punitive damages are available under Cyprus Law but rarely awarded. They may be awarded to punish a defendant or act as a deterrent for similar behaviour. The behaviour of the Defendant must be shown to have been particularly repulsive and/or repeated for a claim for such damages to have a chance to succeed. Such behaviour was considered in the case of Papakokkinou & others vs Kanther (1982) Cyprus Law Reports p.65 to be one that demonstrates arrogance, immoral motive or tendency to humiliate the other party.

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

Fines imposed by competition authorities cannot be taken into consideration since they do not compensate the claimant. Fines are imposed and collected by the Commission.

(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?**

Interest is awarded as a matter of law from the date the action was filed in court.

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

The interest rate on court judgments is currently fixed by the Court of Justice Law at 8%.

(iii) Is compound interest included?

No compound interest is allowed on court judgements. There is currently a review of the interest awarded on judgments and there are moves that it should become variable to reflect the market rates but it seems unlikely to change in the near future.

H. Timing

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

There is currently no time bar to institute proceedings but this will almost definitely change in January 2005 with the imposition of a time bar of six years for such claims.

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

The length of the proceedings varies but if the action goes to a full hearing it can take 2-3 years before judgment is issued.

(iii) Is it possible to accelerate proceedings?

In theory a claimant could apply for a summary judgement at any time after the filing of his statement of claim but for this to be successful it would be necessary to prove that there is a complete absence of a defence and as such we do not think that this procedure is applicable for these proceedings. There is no other way of accelerating proceedings.

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

Any actions in the District Courts are heard by one judge depending on the scale of the claim. For claim up to CYP25.000 (twenty five thousand Cyprus Pounds) approximately 43.000EURO a District Judge sits on the case.

For actions between CYP25.000-CYP50.000 approximately 43.000-86.000 a senior District judge has jurisdiction and for actions above that amount a President of the District Court adjudicates.

Appeals are heard by a panel of three Supreme Court Judges and no leave is required to file an appeal.

(v) How transparent is the procedure?

Procedure is generally considered to be very transparent and it is open to the public.

I. Costs

(i) Are Court fees paid up front?

Certain court fees are paid upon the filing of the writ in the form of stamps. These vary according to the scale of the claim.

(ii) Who bears the legal costs?

The general rule is that costs follow the result of the action which means that almost invariably the losing party pays the costs.

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

Contingency fees are not permissible under the rules of the Cyprus Bar Association. Clients may however by written agreement agree a lump sum or special fee in excess of the fees prescribed by the subsidiary legislation.

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

The party that is successful in their action or defence may recover their court fees from the losing party. However, they may recover only those costs as are fixed by subsidiary legislation and are approved by the Court Registrar. For example expenses for an expert witness are not usually recoverable. Fees that are

recoverable will include most types of court work such as court appearances, trial preparation, drafting of pleadings etc. They will not include work such as meetings with clients, advice and opinion etc

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

The fees for court work are fixed by subsidiary legislation which is reviewed every few years. Lawyers may however charge their clients for out of court work in accordance with their fee practice or by agreement.

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

All costs except stamps bear VAT at 15%.

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

Legal aid is currently not available in civil cases but the position is currently under review and will probably change in the short term. There is currently no scheme for insurance of legal costs except through private insurance companies and even that is very uncommon..

(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?

It is not possible to estimate the average costs of proceedings since these vary substantially depending on the scale of the claim.

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?

At this time there is no specific procedure for the private enforcement of competition rules and the answers above relate to the only procedure currently available that is the general private enforcement rules in relation to any action for damages.

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

Issues of public policy may affect the decisions of the Competition Commission but they are unlikely to affect the issue of compensation at a District Court or the level of damages to be awarded. However, in theory Courts are bound to consider issues of public policy in their judgements.

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

There is no difference if the defendant is a public authority or natural or legal person per se. However certain public authorities (e.g. the water boards) have by law a monopoly position and their rates are imposed by statute. Consequently, an action against such authorities may not be possible unless the specific law regulating them is changed or abolished. Such laws are indeed gradually being repealed and replaced in line with the "acquis communautaire".

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

Not applicable as there are no leniency programmes in Cyprus.

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

There is no difference between regions in Cyprus in the applicable legal principles.

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

Since the private enforcement of EC competition law is currently undeveloped as an area of Cyprus law it is not possible to make an assessment on any major issues at this time.

- (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**

There has to date been no reported case of a court in Cyprus for damages for violation of either national or EC competition rules.

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?**

The EC Treaty was ratified by the Cypriot Parliament July 25, 2003 by law 35(III)/2003 which will enter into force as from 1st May 2004, i.e. on accession of Cyprus to the European Union. As such, and according to the Cypriot Constitution, the EC Treaty will become in its entirety part of Cypriot law and such law will naturally include Articles 81 and 82 EC.

This poses an interesting situation whereby issues relating to competition will then not only be dealt with through the Protection of Competition Law of 1989 (the Law) as amended, but also through the Ratification Law of 2003. The Law provides that it is up to the Competition Commission to determine breaches of competition law following either complaints or following investigations of its own accord.

As mentioned above, it is not our opinion that this is the way the Law should be interpreted) it is conceivable that the same may be interpreted so as to mean that an individual who seeks damages for breach of competition law has to wait for such a finding by the Competition Commission and then file an action in a district court for an award of damages. This is not only a lengthy procedure but it also poses risks for the individual, as he has essentially no say at the stage where the issue of breach is being decided.

However, any individual has the right to sue directly in a district court for breach of his statutory rights under the Law of Civil Wrongs, CAP.148. With the Ratification Law of 2003, Articles 81 and 82 EC have become precisely that -statutory rights of individuals. EC case law has already determined that the rights and obligations conferred in Articles 81 (1) and 82 of the EC Treaty produce direct effects in relations between individuals and create rights for the individuals, which the national courts must safeguard and Cypriot Courts will be bound to follow European Courts' precedents as of May 1 2004.

Therefore, it appears that as of May 1 2004 an individual in Cyprus will have the choice and the right to sue for private and direct enforcement of Articles 81 and 82 of the EC Treaty for breach of his statutory rights instead of having to wait, for a finding of the Competition Commission that a breach of competition law has occurred.

It is also important to note that under the Cypriot Constitution (Article 169), international Treaties that have been ratified by the Parliament have supremacy over conflicting local legislation. Therefore if the issue of conflict between the Protection of Competition Law of 1989 and the Ratification Law of 2003 were raised

before a Cypriot Court, the court would have to apply the Ratification Law, i.e. Articles 81 and 82 directly and conclude on its own accord whether there has been a breach of the said articles without having to rely on a finding by the Competition Commission.

Therefore, it appears that with the coming into force of the Ratification Law 2003 on May 1 2004, Articles 81 and 82 may be privately enforced in Cypriot Courts and consequently will resolve the existing uncertainty. It is important to note that Cypriot Courts, due to the lack of expertise on the issue will more likely than not follow the examples set by the case law of the E.C.J. and the UK Courts. UK case-law or common law, are precedents of persuasive effect in Cypriot Courts in situations where there is an absence of Cypriot case law deciding an issue.

The length of the proceedings in Cyprus may sometimes act as a deterrent to filing an action for damages for breach of competition rules. What would probably encourage the injured party to seek remedy is the possibility of obtaining an interim injunction blocking any actions that may breach the competition rules pending trial or examination by the Protection of Competition Commission. Such a possibility exists in the law but has not been tested and if the usual rules of issuing interlocutory injunctions are applied it is a stern test to pass. Perhaps, the law should provide that an interim injunction should invariably be granted pending any investigation by the Protection of Competition Commission.

An amendment to the Law constituting a finding by the Commission that there has been a breach of competition rules as a cause of action by itself will speed up the proceedings and reduce the burden of proof on the claimant.

In addition, making the gain that the defendant may have derived from the breach, or a substantial part of it, a mandatory part of any award for damages (e.g. as exemplary damages) would act as a deterrent. To this end the law should oblige the defendant to disclose on oath any financial or other information available for inspection to the Commission in order to determine the actual gain of the defendant from the breach.

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

The only alternative means of dispute resolution currently available is arbitration but in order for this to be available the parties must agree to it and the arbitrator appointed will only decide on issues that the parties agree to leave to his judgement.

IV. Bibliography

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V. National case law summaries

N/a