

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

Section I – Summary of findings	
<p>Ever since individual <i>locus standi</i> before the Cartel Court was introduced in 1993, private enforcement of competition rules has played an important role in Austria. To a considerable extent, actions by private parties, or by public institutions such as the Chamber of Labour, have compensated for the lack of a public prosecutor in competition matters (A public prosecutor in competition matters was installed in Austria only with the 2002 amendment to the Cartel Act. Today, two federal agencies – the Federal Competition Authority on the one hand and the Federal Cartel Attorney on the other – may bring actions before the Cartel Court.). However, in most cases these private enforcement measures do not consist in actions for damages but rather in requests for cease and desist orders. Although damages might be obtained under general principles of tort or on the basis of the Act against Unfair Competition before the civil or commercial courts, no such awards have been reported yet. Recently, the possibility of civil actions for damages was intensively discussed in the context of the <i>Lombard Club</i>-case decided by the European Commission.</p>	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	No
(ii) Is this statutory basis different from other actions for damages?	No
(iii) Is there a distinction between EC and national law in this regard?	No
B. Competent court	
(i) Which courts are competent?	General civil or commercial district or regional courts.
(ii) Are there specialised courts for private enforcement of competition rules?	The Cartel Court in Vienna is, <i>inter alia</i> , competent to hear actions from private parties. However, it is not entitled to award damages but only to issue cease and desist orders.
C. Standing	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	No
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	See Regulation 44/2001
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	There are certain possibilities to join claims. In addition, both the UWG and the Cartel Act invest certain representative bodies with a right to bring public interest litigation. However, such right is restricted to request cease and desist orders, i.e. does not encompass damages.
D. Procedural and substantive conditions	
(i) What forms of compensation are available?	Natural restitution or pecuniary compensation.
(ii) What are the other forms of civil law liability (if any)?	No other forms of civil law liability (apart from cease and desist) is available.

(iii)	Does the infringement have to imply fault?	Yes.
(iv)	If so, is fault based on objective criteria?	No. Either intent or negligence, ie a state of mind which can only exist in a natural person, is required.
(v)	Is bad faith (intent) required?	No
(vi)	Can negligence be taken into account?	Yes
<b>E. Rules of evidence</b>		
a.	General	
(i)	Burden of proof and identity of the party on which it rests?	Plaintiff.
(ii)	Standard of proof	The judge must be fully convinced.
(iii)	Limitations concerning form of evidence	None.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	None.
b.	Proving the infringement	
(i)	Is expert evidence admissible?	Yes
(ii)	To what extent, if any, is cross examination permissible?	Both parties may put questions to the witnesses after they have been interrogated by the judge.
(iii)	Under which conditions does a statement and/or decision by a national competition authority, a national court, an authority from another EU Member State have evidential value?	A statement from another competition authority or court may be used by the Austrian courts as indirect evidence, but they have no binding effect.
c.	Proving damage	
(i)	Are there any specific rules for evidence of damage?	If evidence of damage is impossible or unreasonably difficult, the judge may assess the amount of damage to the best of his knowledge and belief.
d.	Proving causation	
(i)	Which level of causation must be proven: direct or indirect?	Direct.
<b>F. Grounds of justification</b>		
(i)	Are there grounds of justification?	Self-defence, state of emergency, impossibility to know the law.
(ii)	Is the 'passing on' defence taken into account?	Yes.

(iii) Are 'indirect purchaser' issues taken into account?	Yes.
(iv) Is it relevant that plaintiff is (partly) responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement?	Yes. Contributory fault will lead to a reduction of damages.
<b>G. Damages</b>	
a. Calculation of damages	
(i) What economic or other models are used by courts to calculate damage?	None specific.
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	World-wide.
(iii) Are ex ante (time of injury) or ex post (time of trial) estimates used?	The best factual basis is used, be it either ex ante or ex post.
(iv) Are there maximum limits to damages?	No
(v) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	On the basis of injury suffered by plaintiff.
(vi) Are punitive or exemplary damages available?	No
(vii) Are fines imposed by competition authorities taken into account when settling damages?	No
b. Interest	
(i) Is interest awarded from the date the infringement occurred the date of the judgment or the date of a decision by a competition authority?	From the day plaintiff requests defendant to pay the amount in dispute.
(ii) What are the criteria to determine the levels of interest?	Fixed by law at 4% or 8% above base rate respectively.
(iii) Is compound interest included?	As of pendency
<b>H. Timing</b>	
(i) What is the time limit in which to institute proceedings?	Three years from the day the damage and its author are known to plaintiff.
(ii) On average, how long do proceedings take?	Between one and two years in first instance.
(iii) It is possible to accelerate proceedings?	No

(iv)	How many judges sit in actions for damages cases?	One or three
(v)	How transparent is the procedure?	Highly transparent
<b>I. Legal costs</b>		
(i)	Are Court fees paid up front?	Yes
(ii)	Who bears the legal costs?	During the proceedings, each side of its own. After the courts decision, the losing part is requested to reimburse the winner.
(iii)	Are contingency fees permissible?	Not for lawyers.
(iv)	Are contingency fees generally available for private enforcement of EC competition law?	No
(v)	Can the plaintiff/defendant recover costs?	Yes
(vi)	What are the different types of litigation costs?	Court fees, lawyers fees, costs for experts, costs for witnesses
(vii)	Are there any national rules for taxation of costs?	No
(viii)	Is any form of legal aid insurance available?	Yes
(ix)	What are the likely average costs in an action brought by a third party in respect of a hard-core violation of competition law?	Depends entirely on the amount in dispute, the complexity of the case and the amount of evidence to be gathered
<b>J. General</b>		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	In general, no
(ii)	If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	n.a
(iii)	EC competition rules are regarded as being of public policy. Does that influence any answers given?	No
(iv)	Are there any differences according to whether defendant is public authority or natural or legal person?	No
(v)	What are the key differences, if any, from region to region <u>within</u> the Member State as regards damages actions for breach of national or EC competition rules?	None
(vi)	Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	No

(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	Austrian law provides for wide possibilities for private parties to request cease and desist orders in cases where competition law is infringed.
(viii) Please provide statistics about the number of cases based upon the violation of EC competition rules in which the issue of damages was decided upon	No decisions on damages yet reported
<b>Section III: Means to facilitate private enforcement of Articles 81 and 82 EC</b>	
(i) Which of the above elements of claims for damages as applied in each Member State and accession country provide scope for facilitating the private enforcement of Articles 81 and 82 EC?	Expanding the competences of the Cartel Court
(ii) How could that be achieved?	See (i)
(iii) Are alternative means of dispute resolution available?	Arbitration
(iv) If so, to what extent are they successful?	Arbitration in competition matters meets with reservation in Austria.