

Executive summary and overview of the national report for Hungary

Section I – Summary of findings

The main source of Hungarian competition law is Act LVII of 1996 on the prohibition of unfair market practices and restriction of competition ("*1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról*", hereinafter referred to as the Competition Act)¹. According to Section 86 paragraph (1) of the Competition Act, in case of breach of Sections 2-7² (Chapter II.), the competition authority procedure falls within the competence of the courts. According to Section 45, all competition authority procedures not falling within the competence of the courts fall within the competence of the Competition Office ("*Gazdasági Versenyhivatal*", hereinafter referred to as Competition Office). A difference in principle lies behind this difference in competence: situations caught by Chapter II. of civil law dispute-nature between two (or more) directly interested parties, while the market practices caught by other chapters of the Competition Act are rather matters of public interest.

The procedures in respect of cartels and of abuse of dominant position are administrative³ and fall within the competence of the Competition Office. Law-suits for damages are civil law disputes and so, fall within the competence of the courts.⁴

Since both the procedure in respect of unfair market practices prohibited by Chapter II. of the Competition Act and the law-suits for damages fall within the competence of the courts, the Hungarian courts judged claims for damages based on these unfair market practices on couple of occasions⁵, but there is no significant case-law regarding claims for damages based on breach of the competition rules on cartels and on abuse of dominant position.

However, the Supreme Court ("*Legfelsőbb Bíróság*", hereinafter referred to as Supreme Court) decided at one occasion that the courts did not have competence for the procedure in respect of assessing the existence of an abuse of dominant position. It therefore stopped the procedure in this respect, but ruled that the courts did have competence to proceed in respect of the claim for damages, therefore ordered the first instant court to continue the procedure in respect of the latter. We experienced further, that the courts, varyingly, stopped or suspended proceedings until the decision of the Competition Office, because they did not consider themselves having competence to decide on the question of the existence of the prohibited market practice itself, when cartels or abuse of dominant position were at issue.

The practice of the courts can be criticised from theoretical legal point of view, because the above cited rules do not, in fact, restrain court assessing infringement of competition rules as one of the elements of the liability in damages, but only reserve the competence of 'competition authority procedure' (and not of the 'civil procedure') for the Competition Office.

Whatever the tension between practice and theory might be, private actions for damages, had to be, before 1 May 2004, based upon pre-existing national competition authority decision.

The amendment of the Competition Act came into force on 1 May, 2004. According to (new) Section 91/H. paragraph (1) of the Competition Act, in cases, where Articles 81 and 82 EC are to be applied, the provisions of Act III of 1952 on the Code of Civil Procedure ("*1952. évi III. törvény a Polgári perrendtartásról*", hereinafter referred to as Code of Civil Procedure) will be applied along with the provisions in Regulation 1/2003 (EC). As a result, under Article 6 of this Regulation, the courts will have the power to apply Articles 81 and 82 EC.

If no similar national competition rule comes into force, the practice of the courts may remain unchanged, resulting that the court will not show willingness to decide upon the legal consequences of damages without having a competition authority decision first, in cases of infringement of national competition rules on cartels and abuse of dominant position.

¹ The structure of the Competition Act is as follows: Part One: Chapter I. – Scope of the Act, Chapter II. – Unfair Market Practices (those that are committed by market participants to the detriment of competitors), Chapter III. – Deception of Consumers, Chapter IV. – Cartel, Chapter V. – Abuse of Dominant Position, Chapter VI. – Concentration; Part Two: Chapter VII. – The Competition Office, Chapter VIII. – General Rules of the Procedure of the Competition Office, Chapter IX. – The Process of the Procedure of the Competition Office, Chapter X. – Remedy in the Procedure of the Competition Office, Chapter XI. – Law-suit Commenced by the Competition Office, Chapter XII. – The Procedure of the Court in competition cases, Chapter XIII. – The Enforcement of the Decision of the Competition Office, Chapter XIV. – Closing Provisions. New Chapter XIV. comes into force on 1 May 2004 on the procedures, which is about the application of EC competition rules at the Competition Office and at Court (present Chapter XIV. will be renumbered as Chapter XV.).

Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there a specific, 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?	local or county court depending on case value
(ii) Are there specialised courts for private enforcement of competition rules?	no
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?	the basic rule is the place of living or seat of the defendant; no extra orbital causes of jurisdiction are accepted
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	not for damages
D. Procedural and substantive conditions	
(i) What forms of compensation are available?	restoration of the original status or compensation; money or in nature; lump-sum and allowance;
(ii) What are the other forms of civil law liability (if any)?	claim to stop behaviour threatening with the occurrence of damages
(iii) Does the infringement have to imply fault?	yes
(iv) If so, is fault based on objective criteria?	The test of culpability is the general expectation in the given situation
(v) Is bad faith (intent) required?	no, but can be a basis

² Sections 2-7 are the provisions of Chapter II. of the Competition Act: Section 2. – subsidiary clause on the prohibition of unfair market practices in general, Section 3. – false statement, infringement of good-will, Section 4. – breach of trade-secret, Section 5. – boycott, Section 6. – prohibition of copying, Section 7. – infringement of fair tender.

³ Section 44 of the Competition Act

⁴ Section 7. paragraph (1) second sentence of Act IV of 1959 on the Civil Code of the Hungarian Republic ("1959. évi IV. törvény a Polgári Törvénykönyvről")

⁵ BH 1998. évi 9. szám 442. jogeset,
BH 1994. évi 12. szám 687. jogeset,
BH 1994. évi 8. szám 430. jogeset

The above is the official way of citation of court decision published in the monthly periodical 'Bírósági Határozatok' (Decisions of Courts). The first four digits set the year, the following digit(s) set(s) the month when the periodical was issued, the last digits set the number of the case under which the case was published in the periodical.

(vi) Can negligence be taken into account?	yes
E. Rules of evidence	
a. General	
(i) Burden of proof and identity of the party on which it rests?	rests on the party, whose interest it is in that the court accepts a fact to be true
(ii) Standard of proof	the court establishes the facts of the case collating the evidences emerging from the statements of the parties and in the course of taking evidences, the court measures the evidences in their entirety and judges upon according to its own conviction
(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	no specific rules on discovery
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	no specific rules on discovery
(vi) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	no specific rules on discovery
b. Proving the infringement	
(i) Is expert evidence admissible?	on the issue of the infringement of law, no
(ii) To what extent, if any, is cross examination permissible?	the president of the proceeding court is entitled but not obliged to allow, however it is usually allowed in practice
(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?	these documents range from simple evidences to 'res iudicata'
c. Proving damage	
(i) Are there any specific rules for evidence of damage?	no
d. Proving causation	
	both can be proven

(i)	Which level of causation must be proven: direct or indirect?	
F. Grounds of justification		
(i)	Are there grounds of justification?	yes, exculpation on the ground that the defendant behaved himself in the given situation as it is generally expected
(ii)	Is the 'passing on' defence taken into account?	yes, as matter if damage exists
(iii)	Are 'indirect purchaser' issues taken into account?	yes, as matter of causality
(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, still allowed to claim damages, but apportionment
G. Damages		
a. Calculation of damages		
(i)	What economic or other models are used by courts to calculate damage?	none
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	no territorial limitation
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	ex ante
(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?	injury suffered
(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?	date of infringement
(ii)	What are the criteria to determine the levels	in respect of claims in Hungarian Forint: law; in respect of in foreign currency levels of interest on the capital

	of interest?	markets
(iii)	Is compound interest included?	no
H. Timing		
(i)	What is the time limit in which to institute proceedings?	claim for damages, five years; procedure of the Competition Office on the infringement of competition rules three years
(ii)	On average, how long do proceedings take?	2-5 years
(iii)	It is possible to accelerate proceedings?	not effectively
(iv)	How many judges sit in actions for damages cases?	first instant – 1; second instant - 3
(v)	How transparent is the procedure?	transparent, but public can be closed out
I. Legal costs		
(i)	Are Court fees paid up front?	yes
(ii)	Who bears the legal costs?	the losing party
(iii)	Are contingency fees permissible?	not prohibited
(iv)	Are contingency fees generally available for private enforcement of EC competition law?	not prohibited
(v)	Can the plaintiff/defendant recover costs?	yes
(vi)	What are the different types of litigation costs?	out of pocket expenses, legal fees, procedural duties etc.
(vii)	Are there any national rules for taxation of costs?	not specific
(viii)	Is any form of legal aid insurance available?	yes, but rare
(ix)	What are the likely average costs in an action brought by a third party in respect of a hard-core violation of competition law?	no available data
J. General		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	the competence of the Competition Office in establishing breach of competition rules, which in respect of a claim for damages is one element of the liability in damages
(ii)	If the answer to the previous question is yes, in what way do they differ from general	deciding on all elements of liability in damages are usually fall within the competence of the court

private enforcement rules?	
(iii) EC competition rules are regarded as being of public policy. Does that influence any answers given?	reflected in the competence
(iv) Are there any differences according to whether defendant is public authority or natural or legal person?	yes, in respect of authorities
(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	-
(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	-
Section III: Means to facilitate private enforcement of Articles 81 and 82 EC	
(i) Which of the above elements of claims for damages as applied in each Member State and accession country provide scope for facilitating the private enforcement of Articles 81 and 82 EC?	amendment of the Competition Act to facilitate application of Regulation 1/2003 (EC)
(ii) How could that be achieved?	
(iii) Are alternative means of dispute resolution available?	yes
(iv) If so, to what extent are they successful?	no known cases