

Executive summary and overview of the national report for Ireland

Section I – Summary of findings	
<p>Competition law is a relatively new area of law in Ireland. Prior to 1991, there was no general domestic legislation concerning competition law. In addition, the economic principles underlying competition law are complex and are relatively new in the context of Irish litigation. To date, the actions taken before Irish courts concerning alleged breaches of the competition rules have been lengthy and, consequently, the costs involved have been significant.</p> <p>There have been few reported decisions concerning actions for damages in respect of breaches of EC or national competition law brought in Irish courts to date.¹ In only one action to date, <i>Donovan and others v. Electricity Supply Board</i>², have damages been awarded to the plaintiffs involved for infringement of Irish competition law. There has been no reported case to date in which damages have been awarded for infringement of EC competition law.</p> <p>Although there has been relatively little civil competition litigation to date, this may change, particularly given the increasing emphasis placed upon enforcement by the Irish Competition Authority (the “Authority”) and the increasing public awareness of competition law. In addition, there are on-going attempts by the courts system to streamline and manage competition law cases more effectively in order to save time and costs. As part of the process, a number of High Court judges have recently been appointed to deal with competition law cases that are brought in the High Court.</p>	
Section II – status quo and forthcoming reforms – action for damages	
A. Legal Basis	
(i) Is there an explicit statutory basis?	Yes.
(ii) Is this statutory basis different from other actions for damages?	Does not differ in any material manner.
(iii) Is there a distinction between EC and national law in this regard?	No explicit statutory basis for actions for damages in respect of breaches of EC competition law.
B. Competent court	
(i) Which courts are competent?	<p>Circuit Court and High Court for actions for damages in respect of breaches of Irish competition law.</p> <p>District Court, Circuit Court and High Court for actions for damages in respect of breaches of EC competition law.</p> <p>Monetary jurisdictional rules apply.</p>
(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?	“Any person who is aggrieved” may bring an action in respect of breaches of Irish competition law. Not restricted to undertakings nor legal persons. Not restricted to persons in Ireland. Includes a person whose legal rights or interests have been affected or threatened and may also extend to a person who has a genuine grievance even if his/her legal rights have not been infringed.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to	Brussels Regulation, Brussels Convention and Lugano Convention apply.

¹ See section V of the Report on Ireland for summaries of the salient reported competition cases heard before the Irish courts involving claims for damages.

² [1994] 2 IR 305, [1997] 3 IR 573.

be admissible?	In all other cases, Irish courts assume jurisdiction where: <ul style="list-style-type: none"> - defendant has been duly served in Ireland; - defendant submits to the jurisdiction of the Irish courts; or - service outside Ireland has been performed in accordance with Order 11 of the Rules of the Superior Courts.
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	Class actions cannot be brought. Actions may be brought by representative bodies on behalf of its members seeking declaratory or injunctive relief but damages may not be awarded to a representative body on behalf of its members. The Authority may pursue public interest litigation.
D. Procedural and substantive conditions	
(i) What forms of compensation are available?	Damages, exemplary damages, injunctive relief, declaratory relief.
(ii) What are the other forms of civil law liability (if any)?	In respect of an abuse of a dominant position contrary to section 5 of the Competition Act, the court may order that the dominant position be discontinued unless specified conditions are complied with or require the adjustment of the dominant position. Directors, managers and other such officers may be criminally liable in respect of breaches of Irish and EC competition law in certain circumstances. The Companies Act, 1990 provides for disqualification of directors and other officers of a company in certain circumstances. Where a company breaches competition law, the shareholders of the company may be able to bring an action against the directors of the company: <ul style="list-style-type: none"> - under section 205 of the Companies Act, 1963; or - as a derivative action as an exception to the rule in <i>Foss v Harbottle</i>.
(iii) Does the infringement have to imply fault?	There is no need for a plaintiff to prove fault on the part of the defendant.
(iv) If so, is fault based on objective criteria?	Not applicable.
(v) Is bad faith (intent) required?	Not unless the question of exemplary damages arises.
(vi) Can negligence be taken into account?	Not applicable.
E. Rules of evidence	
a. General	
(i) Burden of proof and identity of the party on which it rests?	Plaintiff. There are statutory presumptions that affect the burden of proof in respect of certain types of evidence.
(ii) Standard of proof	On the balance of probabilities.

(iii)	Limitations concerning form of evidence	In the main, trials are conducted by way of oral evidence. Documentary evidence must be proved by a witness. Sworn evidence may be given in writing in the form of an affidavit. It is possible for evidence to be admitted and witnesses to be summoned from other jurisdictions.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Discovery is available.
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	Discovery is available in respect of third parties within the jurisdiction of the court. Discovery is not available in respect of third parties outside the jurisdiction of the court.
(vi)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	Discovery is available in respect of the Authority subject to privilege. Discovery is not available in respect of foreign competition authorities or the Commission unless they are parties to the action.
b. Proving the infringement		
(i)	Is expert evidence admissible?	Yes.
(ii)	To what extent, if any, is cross examination permissible?	Permissible.
(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?	Of persuasive value.
c. Proving damage		
(i)	Are there any specific rules for evidence of damage?	No.
d. Proving causation		
(i)	Which level of causation must be proven: direct or indirect?	The plaintiff must establish that he/she has suffered injury by reason of the wrong complained of. The "but for" test is the test most commonly favoured by the courts in determining factual causation. In addition, the courts apply a reasonable foreseeability rule to determine the extent of a defendant's liability.
F. Grounds of justification		
(i)	Are there grounds of justification?	No reported competition cases to date that address justifications such as force majeure, act of god, act of state, consent of the plaintiff/act of the plaintiff, act of third party, act of victim, necessity, self defense/reacting to illegal conduct and protection of legitimate interests in the face of dominant firm.

(ii)	Is the 'passing on' defence taken into account?	Has not been raised in reported case law to date. On the basis of general principles, it may be possible, in theory, for a defendant to argue the passing on defence.
(iii)	Are 'indirect purchaser' issues taken into account?	Has not been raised in reported case law to date. On the basis of general principles, an indirect purchaser could, in theory, claim damages for breaches of the competition rules.
(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?	Principles of contributory negligence, benefit to the plaintiff and mitigation apply under Irish law.
G. Damages		
a. Calculation of damages		
(i)	What economic or other models are used by courts to calculate damage?	There are no reported cases to date in which economic models were considered by the court.
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	Once a plaintiff's action is properly brought in an Irish court, there is no bar to recovery of damages suffered within the EU.
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	There are no reported cases to date in which ex-ante or ex post estimates were used by the court. This will depend on the nature of the claim in each case.
(iv)	Are there maximum limits to damages?	No. However, the maximum damages that may be awarded in the District Court are €6,348.96 and the maximum damages that may be awarded in the Circuit Court are €38,092.00.
(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 the plaintiff.
(vi)	Are punitive or exemplary damages available?	Exemplary damages are available.
(vii)	Are fines imposed by competition authorities taken into account when settling damages?	The Authority does not have capacity to impose fines. There are no reported cases in which fines imposed by foreign competition authorities have been taken into account by an Irish court.
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 date on which the cause of action accrued.
(ii)	What are the criteria to determine the levels of interest?	The rate of interest is set by statute. The current rate is 8%.
(iii)	Is compound interest included?	No.

H. Timing		
(i)	What is the time limit in which to institute proceedings?	Six years from the date on which the cause of action accrued.
(ii)	On average, how long do proceedings take?	Varies on a case by case basis.
(iii)	It is possible to accelerate proceedings?	It is possible to apply for interlocutory proceedings.
(iv)	How many judges sit in actions for damages cases?	District Court, Circuit Court and High Court all sit as one judge courts. The Supreme Court may sit as a three to seven judge court, depending on the nature of the appeal.
(v)	How transparent is the procedure?	High level of transparency. The general rule under the Constitution is that justice is to be administered in public.
I. Legal costs		
(i)	Are Court fees paid up front?	Filing costs are paid up front.
(ii)	Who bears the legal costs?	In general, where a party is successful in his or her civil action, the court will order that the losing party pay the successful party's legal costs.
(iii)	Are contingency fees permissible?	No. However, conditional ("no foal, no fee") fees are permissible.
(iv)	Are contingency fees generally available for private enforcement of EC competition law?	No. However, conditional ("no foal, no fee") fees are permissible.
(v)	Can the plaintiff/defendant recover costs?	Parties bear their own legal costs for proceedings but may obtain a court order for costs subsequently.
(vi)	What are the different types of litigation costs?	Litigation costs may include court fees, lawyers fees and additional fees for professional witnesses.
(vii)	Are there any national rules for taxation of costs?	Yes.
(viii)	Is any form of legal aid insurance available?	A party may obtain private insurance in relation to litigation.
(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?	Costs will vary on a case by case basis. However, in a claim for €1 million that involves the engagement of solicitors, junior counsel and senior counsel and a two week trial, where infringement and damages are relatively easy to establish, costs are likely to be in the region of €150,000, assuming the use of the full range of pre-trial procedures, including discovery and the retention of expert witnesses.
J. General		
(i)	Are some of the answers to the previous questions specific to the private enforcement of competition rules?	No.

(ii)	If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	Not applicable.
(iii)	EC competition rules are regarded as being of public policy. Does that influence any answers given?	Standing: the Competition Act provides that "any person who is aggrieved" by a violation of Irish competition law has standing to bring an action in respect of that violation.
(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?	No material differences.
(vi)	Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	No. It is open for a defendant that has previously sought immunity under the immunity programme to argue that, in seeking immunity, the defendant was not admitting guilt.
(vii)	Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	Ireland is a party to the EC Convention on the Law Applicable to Contractual Obligations of 1980 (the " Rome Convention "). Where the Rome Convention does not apply, Irish common law conflicts of law rules apply. The modern approach developed by the common law to determine the proper law of a contract is to ascertain the law which the parties intended to apply. If no intention is expressed, the intention is presumed by the courts from the terms of the contract and the relevant surrounding circumstances. As regards non-contractual competition based claims, the Irish courts appear to favour a flexible approach in deciding the question of applicable law.
(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	Not available.
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?	<ul style="list-style-type: none"> ● With a view to increasing transparency, clarity and publicity in relation to competition law, the Authority could issue explanations of the competition law rules and set out the remedies available to individuals and undertakings in the event of a breach of the competition rules. In addition, the Authority could issue an explanation of how to go about bringing a civil claim. ● The publication of judgments and awards in competition law cases on one easily accessible database would increase transparency and clarity. ● The availability of class actions and/or collective claims would offer potential plaintiffs the option of sharing the risk of litigation.

	<ul style="list-style-type: none"> ● The establishment of a specialised competition law court or panel to deal exclusively with competition law cases could result in increased judicial expertise in this area. Such a specialised court could also deal with appeals in relation to merger control determinations of the Authority. The Competition Appeal Tribunal in the UK could serve as a model in this regard. ● Allowing for court-appointed experts to assist judges with understanding complex issues could offer a valuable aid to judges in competition law cases. ● A relaxation in competition law cases of the requirements a plaintiff has to fulfil to be granted discovery would make it easier for plaintiffs to obtain evidence. ● Allowing the courts in competition law cases to call for an expert report on the evaluation of damages would assist judges in quantifying damages. ● Reducing the length of proceedings would help reduce costs in competition law cases. This could be achieved in part by tighter procedural timeframes, stricter application of procedural deadlines and more effective case management by the courts. ● Increased use of written evidence by way of affidavit and less reliance on oral evidence in competition law cases could assist in speeding up competition law litigation. The Competition Appeal Tribunal in the UK could serve as a model in this regard.
(ii) How could that be achieved?	Please refer above to Section IIII(i).
(iii) Are alternative means of dispute resolution available?	Arbitration and mitigation are available. In addition, settlement between the parties before the court reaches final judgment is an alternative means of dispute resolution.
(iv) If so, to what extent are they successful?	Not possible to comment as no publicly available statistics are available.