

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

<b>Section I – Summary of findings</b>	
<p>The legal basis for bringing an action for damages arising from breach of national competition law is the Slovenian Prevention of the Restriction of Competition Act ("<i>Zakon o preprečevanju omejevanja konkurence</i>"). There is no such explicit provision concerning EC law. This distinction is not important in practice, however, as actions for damages based upon national competition law and EC competition law would both be subject to the general tort rules applicable in Slovenia. According to the Act, a person who has suffered damages by an action prohibited under the Act is entitled to claim compensation in accordance with the rules of the legislation governing obligations, which means that such injured party has to bring an action for damages in accordance with the general tort rules applicable in Slovenia.</p> <p>There are no publicly available final court decisions concerning the damages arising from breach of Articles 81 and 82 EC or from breach of national competition law (except concerning unfair competition claims). The competent courts for such disputes would be the generally competent district courts. In practice, monetary compensation is almost exclusively claimed and awarded in damages actions, restitution to the previous condition is also possible. A person who causes damages to another person is obliged to repay such damages unless the wrongdoer proves that the damages occurred without his fault. Fault exists when the wrongdoer causes damages intentionally or negligently.</p>	
<b>Section II – status quo and forthcoming reforms – action for damages</b>	
<b>A. Legal Basis</b>	
(i) Is there an explicit statutory basis?	Yes for national competition law, no for EC.
(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?	Yes, but not important in practice as the general torts rules apply in both cases.
<b>B. Competent court</b>	
(i) Which courts are competent?	District courts (11 such courts exist in Slovenia) irrespective of the value of the claim. Higher Courts act as courts of appellate jurisdiction (4 such courts exist in Slovenia) and the Supreme Court of the Republic of Slovenia is generally competent for extraordinary legal remedies.
(ii) Are there specialised courts for private enforcement of competition rules?	No.
<b>C. Standing</b>	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	<p>No limitations on standing of natural or legal persons, including those from other jurisdictions. The court may grant standing for a particular lawsuit to entities without legal personality.</p> <p>Under conditions provided in the legislation security for legal costs may be required by defendants in case of foreign plaintiffs where Regulation 44/2001 does not apply.</p>

(ii)	What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	Defendant's seat or permanent residence in the Republic of Slovenia OR damaging act has been committed in Slovenia OR damages occurred within Slovenia OR other connecting factors (property in Slovenia, branch in Slovenia, submission, one of multiple defendants domiciled in jurisdiction and other connecting factors).
(iii)	Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	No.
D. Procedural and substantive conditions		
(i)	What forms of compensation are available?	Restitution to the previous condition ( <i>restitutio in integrum</i> ) and monetary compensation (ordinary damages and lost profit).
(ii)	What are the other forms of civil law liability (if any)?	None.
(iii)	Does the infringement have to imply fault?	Yes (situations in which a person is responsible irrespective of its fault are normally not applicable in actions for damages arising from breach of competition law). Violation of competition rules will not automatically imply that the fault element is fulfilled, but the burden of proof will be reversed as regards this element (rebuttable presumption).
(iv)	If so, is fault based on objective criteria?	Intent is based on subjective criteria, negligence on objective.
(v)	Is bad faith (intent) required?	No, negligence is sufficient.
(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?	In general, the plaintiff needs to prove the facts which constitute the basis of its claim and the defendant needs to prove the facts which constitute the basis of its objections. In damages actions, however, the burden of proof is shifted to the defendant as concerns fault (fault of the wrongdoer is presumed unless proven otherwise).
(ii)	Standard of proof	Certainty.
(iii)	Limitations concerning form of evidence	No formal limitations.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	The defendant may refuse the presentation of documents (specified by the plaintiff) in certain cases and may not refuse the presentation in enumerated cases. The defendant may not be forced to present a document, but the court considers, taking into account all circumstances, the meaning of the fact that the

	<p>defendant does not wish to present the document or falsely claims that the document is not in its possession.</p> <p>In case the defendant does not appear as witness or does not wish to testify, it may not be forced to do so.</p>
(v) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	<p>The court may only request from a third party to present a document in enumerated cases. In case a third party is obliged to present a document, but does not do so, it may be forced to do so.</p> <p>Each third party summoned as witness has to appear in court and, if not otherwise provided by law, also has to testify. If after formal invitation the witness does not appear and does not excuse his / her absence, such witness can be fined and / or brought to the court by force. In case the witness does not wish to testify (without having a legally valid reason), such witness may be fined or jailed.</p>
(vi) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	<p>Evidence can be requested from competition authorities, but production cannot be ordered.</p> <p>Documents issued in the prescribed form by state authorities, municipalities or entities (company, other entity or individual) when exercising public authority within their sphere of their competence are considered as "public documents". Facts stated in such public documents are presumed to be true (rebuttable presumption).</p> <p>Unless otherwise provided by an international agreement, foreign public documents which are properly legalized, have the same validity as national public documents under condition of reciprocity.</p>
b. Proving the infringement	
(i) Is expert evidence admissible?	<p>Yes. If expert evidence is duly proposed by the parties, the expert is selected by the court which may (and in practice usually does) consult the parties before the selection is made. Permanently appointed court experts for a particular field should primarily be appointed (if they exist).</p> <p>Experts can also be appointed for the assessment of the amount of damages.</p>
(ii) To what extent, if any, is cross examination permissible?	<p>Initial examination of witnesses, experts and parties is performed by the judge presiding the senate. Questions may then be asked by the members of the senate. Parties, their representatives and proxies may directly question witnesses, experts and opposite parties if the judge presiding the senate allows such direct questioning.</p>
(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?	<p>In case the competent body already decided that there is a breach, the court is bound by such a decision. Other statements and/or decisions would not be formally binding, but could be presented by a party in support of its arguments.</p>

c. Proving damage	
(i) Are there any specific rules for evidence of damage?	Generally not. However, if the court establishes that a party is entitled to monetary compensation for damages, but the amount of such compensation cannot be established or could only be established with excessive difficulties, the court can decide on the amount at its own discretion.
d. Proving causation	
(i) Which level of causation must be proven: direct or indirect?	Indirect causation is also sufficient.
<b>F. Grounds of justification</b>	
(i) Are there grounds of justification?	Yes.
(ii) Is the 'passing on' defence taken into account?	It could be used by the defendant as a way of reducing the amount of damages.
(iii) Are 'indirect purchaser' issues taken into account?	Indirect purchasers may theoretically claim damages.
(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?	If the plaintiff also contributed to the occurrence of damages or caused the damages to be greater than they would otherwise have been, such plaintiff is only entitled to a proportionally reduced amount of damages.  In case the plaintiff has benefited from the infringement, the amount of benefit is deducted from the compensation as awarded.
<b>G. Damages</b>	
a. Calculation of damages	
(i) What economic or other models are used by courts to calculate damage?	The court should, also taking into account circumstances arising after the damages were caused, award compensation in the amount which is necessary to make the plaintiff's financial situation as it would have been had there been no damaging act. The plaintiff is entitled to ordinary damages (i.e. monetary compensation for destroyed goods, costs of repair, costs arising from the fact that the plaintiff has temporarily not been able to use a certain product etc.) and to the lost profit. Lost profit to be awarded is the profit which could have been justifiably expected in the normal course of events or taking into account special circumstances, but which was not achieved due to the wrongful act of the defendant.
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	Damages can be awarded for injury suffered more widely (EC or broader).

(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	Generally ex-post (time of trial).
(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?	Damages are assessed on the basis of injury suffered by the plaintiff.
(vi)	Are punitive or exemplary damages available?	No.
(vii)	Are fines imposed by competition authorities taken into account when settling damages?	No.
<b>b. Interest</b>		
(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 / date of judgment.
(ii)	What are the criteria to determine the levels of interest?	Legislation.
(iii)	Is compound interest included?	No.
<b>H. Timing</b>		
(i)	What is the time limit in which to institute proceedings?	Within three years of the moment when the injured party got to know about the damage and the identity of the wrongdoer (subjective term) and in any case within five years following the time when the damages occurred (objective term).
(ii)	On average, how long do proceedings take?	Up to several years before the first instance court.
(iii)	It is possible to accelerate proceedings?	Only if the court is illegally delaying proceedings.
(iv)	How many judges sit in actions for damages cases?	The first instance court senate is composed of one judge and two law judges (jurors). Senates with the Higher Courts are composed of three judges when deciding about appeals and senates with the Supreme Court of the Republic of Slovenia are composed of five judges when deciding about revisions and claims for protection of lawfulness.
(v)	How transparent is the procedure?	Hearings are public, judgments are generally not public. Judgments of the Supreme Court of the Republic of Slovenia and some judgments of Higher Courts are publicly available.
<b>I. Legal costs</b>		
(i)	Are Court fees paid up front?	Partially.

(ii) Who bears the legal costs?	Preliminarily each party bears the litigation costs of such party, recovery is possible.
(iii) Are contingency fees permissible?	Yes, if the agreement on contingency fee is in writing and provided that the contingency fee does not exceed 15% of the amount awarded.
(iv) Are contingency fees generally available for private enforcement of EC competition law?	Not (yet) clear.
(v) Can the plaintiff/defendant recover costs?	Yes.
(vi) What are the different types of litigation costs?	Court fees, costs of the court related to the particular court proceedings (costs of evidence, including experts etc.), costs of parties (attorney fees, travelling expenses, translation costs etc.).
(vii) Are there any national rules for taxation of costs?	Yes.
(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?	The plaintiff's costs would approximately amount to EUR 5,700, assuming that the value of the dispute is approximately EUR 42,000.
<b>J. General</b>	
(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?	NA
(iii) EC competition rules are regarded as being of public policy. Does that influence any answers given?	Generally not.
(iv) Are there any differences according to whether defendant is public authority or natural or legal person?	No substantial differences.
(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 leniency programmes have been created in Slovenia by the Slovenian Competition Protection Office so-far.

(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	Whether a breach exists is a preliminary question when deciding on damages arising from breach of national and/or EC competition law. In case such a preliminary question has not yet been decided upon by the competent body, the court is entitled to solve such a question itself (with effects for the current litigation only) or order the staying of proceedings until such time as the competent body finally decides on the issue.
(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	None.
<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?	<ul style="list-style-type: none"> <li>- reduction of court delays,</li> <li>- increased general awareness of competition issues,</li> <li>- availability of court practice,</li> <li>- specialised court (or exclusively competent court),</li> <li>- more plaintiff-favourable manner of damage calculation (e.g. by taking into account also the defendant's profits).</li> </ul>
(ii) How could that be achieved?	
(iii) Are alternative means of dispute resolution available?	Such alternative means of dispute resolution are being developed.
(iv) If so, to what extent are they successful?	NA