Private antitrust litigation in Latvia: overview

by Liga Merwin, Edvjis Zandars and Kaspars Oļševskis, Ellex Klavins

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A Q&A guide to private antitrust litigation in Latvia.

The Q&A provides a high level overview of the legal basis for bringing private antitrust litigation actions; parties to an action; limitation periods and forum; standard of proof and liability; costs and timing; pre-trial applications and hearings; alternative dispute resolution; settlement or discontinuance of an action; proceedings at trial; available defences; available remedies; appeals and proposed legislative reform.

To compare answers across multiple jurisdictions, visit the *private antitrust litigation Country Q&A Tool*.

This Q&A is part of the global guide to private antitrust litigation. The private antitrust litigation global guide serves as a single, essential, starting point of practical reference for both clients and practitioners in considering the various merits of commencing, defending or settling antitrust claims. For a full list of jurisdictional Q&As visit *www.practicallaw.com/privateantitrustlitigation-guide*

Legal basis for bringing private antitrust litigation actions

1. Can stand-alone and/or follow-on actions be brought in the context of private antitrust litigation? If so, what is the legal basis for bringing such actions?

Stand-alone actions

Private antitrust stand-alone actions can be brought before a court in Latvia. The previously effective rules have been supplemented by the implementation of Directive 2014/104/EU on actions for damages under national law for infringements of competition law provisions of the member states (Antitrust Damages Directive). However, the number of private antitrust cases remains very low. The few antitrust litigation actions brought before Latvian courts are predominantly follow-on actions.

Stand-alone actions are available for any kind of antitrust infringement, regardless of whether behaviour is bilateral, multilateral or unilateral.

Stand-alone actions to claim damages caused by infringement of antitrust law can be brought before a civil court independently of any antitrust proceedings before competition authorities. If so, the burden of proving of the infringement rests on the claimant.

Legislative. Chapter VI "Application of Competition Law in Civil Actions" of the Competition Law sets out an express legislative basis for bringing private stand-alone antitrust actions. In addition, Article 1779 of the Civil Law sets out a general duty on persons to compensate losses caused by their acts or failures to act. The procedural rules for private antitrust litigation are specified in the Civil Procedure Law.

Non-legislative. The legal basis for bringing a stand-alone action is legislative only. There is no non-legislative basis for bringing such actions. Latvian case-law only serves as a non-binding tool for interpretation of the law.

Adversarial or inquisitorial. All civil proceedings, including stand-alone actions, are based on the adversarial principle (*Article 10, Civil Procedure Law*).

Follow-on actions

Follow-on actions can be brought before a court if a decision or judgment has come into legal effect (that is, has become final) establishing a violation of the Competition Law or Articles 101 and/or 102 of the Treaty on the Functioning of the European Union (TFEU) (*Article 250.69(1), Civil Procedure Law*). A competition law violation established by a decision of a competition authority of another member state that has entered into effect is deemed to be proved unless it is proved otherwise (*Article 250.69(2), Civil Procedure Law*).

Although claims can be made after judgments and decisions that have not yet come into legal effect (that is, that are under appeal), the courts will not consider the violation of competition law to be proven. If a party to a follow-on action wishes to rely on a judgment or decision as proof of an antitrust infringement, the judgment or decision must be final and have conclusive effect.

As with stand-alone actions, follow-on actions are available for any kind of antitrust infringement, regardless of whether it is a multilateral or unilateral infringement.

Legislative. Chapter VI "Application of Competition Law in Civil Actions" of the Competition Law sets out an express legislative basis for bringing private follow-on antitrust actions. In addition, Article 1779 of the Civil Law sets out a general duty on persons to compensate for losses caused by their acts or failures to act. The procedural rules for private antitrust litigation are specified in the Civil Procedure Law.

Non-legislative. The legal basis for bringing a follow-on action is legislative only. There is no non-legislative basis for bringing such actions in Latvia.

Adversarial or inquisitorial. All civil proceedings, including follow-on actions, are based on the adversarial principle (*Article 10, Civil Procedure Law*).

Parties to an action

2. Who can bring an action and what must be demonstrated to commence an action?

Stand-alone actions
To commence a stand-alone action, a claimant must demonstrate that they have suffered losses as a result of an antitrust infringement (*Article 21(1), Competition Law*). A claimant must also demonstrate the antitrust infringement and causal link between the infringement and the losses suffered. Under the Competition Law, antitrust infringements include infringements of:

- The Competition Law.
- Articles 101 and 102 of the TFEU.
- The competition laws of EU member states that have the same purpose as Article 101 and 102 of the TFEU and which are applied in parallel to EU competition law in accordance with Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU (Modernisation Regulation).

Any person (natural or legal), who has suffered harm as a result of an antitrust infringement has standing to bring an action (*Article 21(1), Competition Law*). Third parties and direct and indirect purchasers can bring actions.

Parties to an infringing agreement can bring actions against other infringing parties to the agreement. The law does not directly prohibit such actions. However, their success is doubtful. Local counsel is not aware of any such cases in Latvia.

Follow-on actions
The same grounds as for a stand-alone action must be demonstrated. The infringement of competition law in a follow-on action must be demonstrated by a final decision or judgment in antitrust proceedings.

The same categories of persons have standing as for stand-alone actions.

There are no express restrictions on parties to an infringing agreement bringing an action against other infringing parties to the agreement (*see above, Stand-alone actions*).

3. Is it possible to bring actions on behalf of multiple claimants (for example, collective actions)?

Stand-alone actions
Multiple claimants. In general, no collective action mechanism is available. However, collective redress is sometimes possible when the law empowers certain entities such as NGOs and consumer protection associations to protect the rights of other persons. An NGO can protect the rights and interests of its members in court in matters related to the goals of its activities (*Article 10(2), Associations and Foundations Law*). Similarly, consumer protection associations can represent in court the interests of consumers (*Article 23(3), Consumer Rights Protection Law*). However, there are no specific procedural regulations, and the general provisions of civil litigation apply.

Under the Civil Procedure Law, it is possible for multiple claimants to bring an action against the same defendant. In such a case, the co-claimants can transfer the conduct of the case to one of the co-claimants or to one joint representative (*Article 75(1)(3), Civil Procedure Law*).

If several claimants are bringing actions against the same defendant, the court can merge the cases into one court proceeding if this favours a quicker and more accurate examination of the cases (*Article 134(2), Civil Procedure Law*). However, there is no case-law so far where these mechanisms have been tested in antitrust litigation.

Opt-in or opt-out. There is currently no regulation of collective redress in Latvia in sense of opt-in or opt-out procedures. Claimants who want to act jointly must typically coordinate to launch a joint action.

Certification. There is currently no regulation of collective redress in Latvia. An action on behalf of multiple claimants does not require any form of certification. According to the Civil Procedure Law, each co-claimant acts independently in relation to the opposing party and co-claimants. However, co-claimants can transfer the conduct of the case to one of the co-claimants or to one joint representative (*Article 75, Civil Procedure Law*). The representative must be authorised to conduct the case by the co-claimants. The authorisation must be formalised by notarisation or can be expressed by oral application in court by the persons to be represented, as it is recorded in the minutes of the hearing (*Articles 75(2) and 75(3), Civil Procedure Law*).

Follow-on actions
The same applies to follow-on actions as for stand-alone actions (*see above*).

4. On what basis will a court or tribunal assume jurisdiction with respect to a claim?

Stand-alone actions
Claimants can bring actions against corporate entities domiciled within Latvia before the Latgale Suburbs Court of Riga City, which has sole jurisdiction to hear private antitrust cases as the first instance court.

Claimants can bring actions against corporate entities domiciled outside Latvia before the Latgale Suburbs Court of Riga City, if jurisdiction can be established under any of the grounds of jurisdiction under Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation).

Follow-on actions
The same applies to follow-on actions as for stand-alone actions (*see above*).

5. Can actions be brought against individuals (such as directors of corporate entities), whether domiciled within, or outside, the jurisdiction?

Stand-alone actions
There is currently no procedure for bringing antitrust actions against individuals (such as directors of corporate entities) in Latvia. However, once an action is satisfied, a redress from an individual, such as a director can be sought under the general rules of the Civil Law. So far, there are no antitrust litigation cases where such redress has been requested.

Follow-on actions
The same applies to follow-on actions as for stand-alone actions (*see above*).

Limitation periods and forum

6.What are the relevant limitation periods for stand-alone and/or follow-on actions? When do these start to run? Can these be extended?

Stand-alone actions
The Competition Law sets out the relevant limitation period rules. When implementing the Antitrust Damages Directive, the Latvian legislator has chosen a longer limitation period of ten years (the general limitation period under the Civil Law) than that of the Directive (five years).

Under Article 21.4 of the Competition Law, the limitation period for bringing an action for damages begins from the date the infringement of competition law has ended and the claimant knows or reasonably should know:

- About the conduct of the offender and that the conduct is an infringement of competition law.
- That they have suffered harm as a result of an infringement of competition law.
- The identity of the offender.

It is not possible to extend limitation periods under Latvian law. However, it is possible to suspend the limitation period. The limitation period is suspended while the competition authority assesses an infringement that is subject to a claim for damages. The suspension of the limitation period expires one year after the decision finding an infringement comes into force or the activities are otherwise terminated (*Article 21.4 (2), Competition Law*).

Follow-on actions
The same applies to follow-on actions as for stand-alone actions (*see above*).

7. Where can an action be commenced? Are there specific courts or tribunals before which stand-alone and/or follow-on actions may be brought?

Stand-alone actions
Cases concerning infringements of competition law, except for the cases regarding unfair competition, must be brought before the Latgale Suburbs Court of Riga City (*Article 24(1), Civil Procedure Law*).

Follow-on actions
The same applies to follow-on actions as for stand-alone actions (*see above*).

8. Where actions can be brought before different courts and tribunals, what are the comparative advantages and disadvantages of bringing actions in each forum?

Actions cannot be brought before different courts or tribunals other than the designated specialty court, the Latgale Suburbs Court of Riga City.

Standard of proof and liability

9. What is the standard of proof?

Standard of proof
A claimant must prove existence of three elements, the:

- Infringement of the competition law.
- Damages caused.
- Causal link between the two.

Each party must prove the facts on which they base their claims or objections. Claimants and defendants must prove that their claims and defences are well-founded (*Article 93(1), Civil Procedure Law*).

Burden of proof

The burden of proof for establishing an infringement of a competition law, the damage caused and a causal link is on the claimant. However, the claimant does not have to prove the infringement if there is a final and non-appealable decision or judgment of the competent authority or court.

The defendant can use a passing-on defence, claiming that the claimant passed the overcharge on to their own customers. It is up to the defendant to prove passing-on (*Article 21.1(2), Competition Law*).

Rebuttable presumptions

There is a reputable presumption of harm resulting from cartel agreements. According to the Competition Law, an infringement arising from a cartel agreement causes harm and a price increase of 10% as a consequence, unless the defendant proves otherwise (*Article 21(3), Competition Law*).

Another reputable presumption is that the passing-on of an overcharge to an indirect purchaser is considered proven, unless the defendant proves otherwise, if the indirect purchaser can demonstrate that:

- The defendant infringed competition law.
- The direct purchaser paid an overcharge due to the infringement.
- The indirect purchaser purchased goods that were the object of the infringement or goods derived from or containing such goods.

(*Article 21.1 Competition Law.*)

A more general reputable presumption exists if one party refers to evidence that is at the disposal of the other party, and the other party refuses to submit on a request of the court or destroys that evidence without denying that the evidence is or was at its disposal. The court can then recognise the facts to be shown by that evidence as proven (*Article 250.69(3), Civil Procedure Law*).

10. Is liability on a joint and several basis?

Liability for antitrust infringements is on a joint and several basis. Competition law offenders are jointly and severally liable for damages resulting from joint infringement of competition law (*Article 21(4), Competition Law*). However, there are some exceptions to this rule.

A small or medium-sized enterprise is liable only for damages to its direct and indirect purchasers or suppliers if both:

- Its market share on the relevant market during the infringement of competition law was less than 5%.
- The application of joint and several liability would irreversibly endanger its economic viability and would result in the total loss of value of the enterprise's assets.

(*Article 21(5), Competition Law*.)

However, this exception does not apply to enterprises that have:

- Previously committed competition law violations.
- Organised or led the infringement of competition law.
- Forced other market participants to commit an infringement of competition law.

An offender that is exempted under the leniency programme is jointly and severally liable for damage suffered to its direct or indirect purchasers or suppliers, and to other persons only if full compensation cannot be obtained from other market participants who participated in the infringement (*Article 21(7), Competition Law*).

The general rule is that a person who has suffered damage as a result of an infringement is entitled to claim and receive compensation from the offenders (*Article 21(1), Competition Law*). Indirect purchasers can seek damages from cartel members. For an indirect purchaser to prove the passing-on of overcharges on to it, it must prove that the:

- Defendant committed an infringement of competition law.
- Infringement resulted in an overcharge to the direct purchaser.
- Indirect purchaser purchased goods subject to the infringement, or goods derived from or containing such goods.

(*Article 21.1 (4), Competition Law*.)

There is not yet any case-law in Latvia on indirect purchaser claims.

The defendant can only bring a recourse claim against other infringing parties when it has fully (or proportionately to its fault) compensated the claimant for damages caused by the infringement of the competition law under joint and several liability (*Article 21 (8), Competition Law*).

Although there is no express regulation or case-law in this respect, the general limitation period of ten years under the Civil Law would likely apply.

Costs and timing

11. What are the recent trends in relation to the costs of bringing an action before the relevant courts/ tribunals?

Stand-alone actions
Court fees are fixed by law and depend on the amount in dispute. Statutory attorneys' fees are capped (*Articles 37 and 44(1)(1), Civil Procedure law*).

Follow-on actions
The same applies to stand-alone actions (*see above*).

12.What is the applicable principle regarding the apportionment of the costs of the action? Is there a "loser pays" approach to costs?

Stand-alone actions
The "loser pays" approach is applied by default. If the claim is partially satisfied, litigation costs are covered proportionally by both parties (*Article 41, Civil Procedure Law*).

Follow-on actions
The same applies to stand-alone actions (*see above*).

13. Can parties insure against costs risk associated with an action?

Stand-alone actions
The parties can take out legal expenses insurance to insure against the costs risk associated with an action (*Article 19(1)(17), Insurance and Reinsurance Law*). However, as far as local counsel is aware, the offer of such services in Latvia is very limited and it is not common practice for parties to seek to insure against these kinds of risks.

Follow-on actions
The same applies as for stand-alone actions (*see above*).

14. Can a third party fund the costs of bringing an action?

Stand-alone actions
Third party funding is not regulated under national law. Local counsel is also not aware of any precedents in relation to this (in state courts or in arbitration). However, the use of third-party funds is not expressly prohibited.

Follow-on actions
The same applies as for stand-alone actions (*see above*).

15. Can claimants assign their claim to a third-party funder?

Claimants can assign their claim to a third-party funder. Under the Civil Law, claims can be assigned to third parties by assignment (*Chapter 9, Civil Law*). Although there have not been any antitrust claims assignment cases, the assignment of claims in general is a common practice in Latvia.

16. Can parties engage legal representation under either a "conditional" fee arrangement, or a "damages-based" fee arrangement?

Stand-alone actions
The law does not directly prohibit conditional or damages-based fee arrangements. However, the Latvian Bar is part of the Council of Bars and Law Societies of Europe and is bound by the Charter of Core Principles of the European Legal Profession, Article 3.3 of which prohibits contingency fees. Therefore, where the legal representative is a sworn advocate, the only acceptable fee models are where the advocate receives an increased fee for a successful outcome in addition to a basic fee.

Follow-on actions
The same applies for stand-alone actions (*see above*).

17. If it possible for a defendant to a claim to bring an application for security for costs?

The Civil Procedure Law sets out a procedure for securing claims. This procedure can be applied when there are reasonable grounds to believe that enforcement of the court judgment could be problematic or impossible. It can potentially also be applied for security for costs. However, there is no case law on this.

18. What is the current trend, if any, regarding the period of time from commencing an action to a subsequent first instance judgment by a competent body?

Stand-alone actions

There have been few cases of private antitrust litigation in Latvia. Of those cases only one was initiated as a semi stand-alone action. In *Akciju Sabiedrība "PKL Flote" against Rīgas Brīvosta* (*Case No C04293109*), PKL Flote commenced an action after the Latvian Competition Council had issued an infringement decision. However, the decision had not yet come into legal effect. Since the decision came into legal effect during the proceedings and was relied on by the court, this case only partially demonstrates the likely duration of stand-alone actions in Latvia. Due to the several cassation complaints being submitted, it took in total around ten years to be fully litigated. There have not been any other stand-alone actions so far.

Follow-on actions

The latest private antitrust litigation cases show that it can take around one year from commencing an action until the first instance judgment is rendered. However, the practice in private antitrust litigation also demonstrates that the cases usually also go through the appeals and cassation procedure before the judgment becomes final. The final judgment has been delivered only in some cases, while in others it is still pending. For example, the *PKL Flote* case took in total around ten years to be fully litigated and demonstrates how time consuming private antitrust litigation can be. One of the main reasons behind the numerous reviews by various instance courts in the case were the diverse opinions of parties and courts on the calculation of damages and lost profits.

In general, there are various factors that are likely to increase the period of time for litigation of these kind of cases. The most significant of these include the lack of experience of courts and judges with such cases. This is due to the low number of private antitrust actions in general and the relatively new legal provisions transposed to Latvian law from the Antitrust Damages Directive. Other factors include:

- The complexity of the case.
- The behaviour of the parties (for example, a party not attending court hearings, submitting multiple procedural requests to the court, filing new evidence, requiring expert opinion and so on).

- The complexity of the quantification of damages.

Pre-trial applications and hearings

19. Where statements of case are lodged with the relevant court or tribunal, can third parties seek to obtain copies?

Stand-alone actions
Third parties able to show a legal interest can seek to obtain access to the statements of a case. Granting access is within the court's discretion.

However, a party to the case can request the court or the court at its own discretion can declare the court hearing to be closed, if:

- It is necessary to protect official secrets or commercial secrets.
- Restricted-access information must be protected in actions concerning the reimbursement of losses for violations of the competition law.
- It is in the interests of the court trial.
- It is necessary to protect the private life of persons and confidentiality of correspondence.

If so, only the operative part of the ruling is publicly declared, the rest of it is declared in closed hearing (*Article 11, Civil Procedure Law*).

Therefore, the materials of the cases that are reviewed in closed hearings, other than the introduction and operative part of the judgment, are held secret and are not accessible to third parties, who do not have legal rights to access this kind of information. This information is held secret for 20 years after the final judgment has become non-contestable. After this term it becomes restricted-access information, which is more easily accessible, but is still not publicly available (it can be accessed if the person presents a legitimate legal reason) (*Articles 282(2), 283(3) and 284, Civil Procedure Law*).

Follow-on actions
The same applies as for stand-alone actions (*see above*).

20. Can a claimant seek interim measures?

Stand-alone actions
There are no special rules for interim measures in stand-alone actions. However, the claimant can rely on the general rules for interim measures under the Civil Procedure Law and can request the court to secure a claim.

The court will secure a claim only if there are reasonable grounds to believe that enforcement of the court judgment in the case could become problematic or impossible. The claimant must submit a reasoned application to the court beforehand (*Article 137(1), Civil Procedure Law*).

It is possible to obtain an interim relief on a "*quia timet*" ("because he or she fears") basis, since only a reasonable ground to believe that enforcement of the court judgment may become problematic or impossible is required.

Interim relief has so far not been granted in any private antitrust litigation cases in Latvia. However, this is not a sign of the unavailability of this legal instrument but is due to the low number of private antitrust litigation cases in general.

Follow-on actions
The same applies as to stand-alone actions (*see above*).

21. Can a defendant seek to dispose of all or part of the action prior to a full trial?

There is no analogue to "strike out" rules under Latvian law. Therefore, a defendant cannot apply to "strike out" all or part of a stand-alone or follow-on action to dispose of the action before a full trial.

There is also no analogue to summary judgment rules under Latvian law. Therefore, a defendant cannot apply to obtain summary judgment to dispose of all or part of a private action before a full trial.

22. Can a defendant seek to stay an action (for example, pending the outcome of an investigation by a competent competition authority, or an appeal)?

There is no rule under Latvian law that would require the stay of proceedings if there is an ongoing competition authority investigation into the same alleged infringement. However, the court must suspend civil proceedings if examination of the case is not possible before a decision in another civil, criminal or administrative case (*Article*

214(5), Civil Procedure Law). Therefore, in a situation where a competition authority has found an infringement and its decisions are under review by an administrative court, the court reviewing the stand-alone action could potentially rely on this ground to stay the proceedings either on its own initiative or based on a party's request.

In the *PKL Flote* case, PKL Flote launched a damages claim while the decision of the Competition Council was still being contested in an administrative court. The first instance court in 2010 did not stay the proceeding and dismissed the case due to lack of proof of the infringement or the amount of damages, among other grounds. The court also indicated that an infringement should not be viewed in parallel by a civil court and the Competition Council. While the case was further appealed by PKL Flote in civil court, the review of the Competition Council's decision in administrative courts was completed and the decision became final.

Given that more than eight years have passed since the first instance civil court gave its judgment and new rules have been implemented, this particular judgment is only one indicator and there have been no other cases like this. However, the approach taken by some claimants has been to wait for the decision of the Competition Council or other competition authority to become final and only then to proceed with launching follow-on private antitrust litigation.

A defendant would be likely to seek to stay an action brought against it if the court requests extensive information/evidence to be produced or if settlement negotiations are being conducted between the parties.

23. Can a party seek to have a specific issue (such as limitation) tried as a preliminary issue in advance of a full trial?

Latvian law does not allow the trying of issues in advance of a full trial. However, the court will review any procedural issues and requests of the parties before proceeding to the substantive issues.

In addition, a court can also decide to hold a preparatory hearing. During a preparatory hearing, the court interviews participants in the case to:

- Clarify the subject-matter and limits of the dispute.
- Explain to the participants their procedural rights and obligations, and the consequences of performing or failing to perform procedural actions.
- Take decisions on various requests by the participants (such as on summoning witnesses, the provision of evidence, the ordering of expert examinations and so on).

Evidence and legal privilege

24. Are existing findings of fact and/or infringement in a decision or judgment of a competent authority or body binding in the context of an action?

Competition authority decisions
Under the Civil Procedure Law, infringements of the Competition Law and Articles 101 and 102 of the TFEU that are established by decisions of the Competition Council or a Latvian court that have entered into legal effect do not need to be proved anew in private antitrust litigation (*Article 250.69, Civil Procedure Law*). This position was also recently held by the Latvian Regional Court (*Riga Regional Court judgment of 16 May 2017, Case No C04293109*).

Other findings included in a decision of a competent competition authority have only evidentiary value and are not binding on the court hearing antitrust litigation proceedings.

Judgments
The same applies to judgments by competent courts (*see above*).

25. What is the evidential status of findings of fact and/or infringement in a decision or judgment of a body in a third country?

Infringements of competition law that are established by a decision that has entered into effect by a competition authority of another EU member state do not need to be proved, unless a party to the case provides the court with evidence to the contrary (*Article 250.69(2), Civil Procedure Law*). Therefore, infringements established by the competition authorities of other EU member states serve as persuasive evidence only.

Other findings included in a decision of a competent competition authority have only evidentiary value and are not binding on the court hearing antitrust litigation proceedings.

26. If discovery is available, what is the general procedure for discovery, and what documents would need to be disclosed?

Latvian Law does not have a procedure equivalent to discovery under the common law legal system. However, Latvia has implemented the disclosure of evidence rules from the Antitrust Damages Directive and has a procedure for securing evidence under the Civil Procedure Law.

Based on the Antitrust Damages Directive, the court can require evidence on a participant's request, taking into account:

- The extent to which the request or objections against the request are justified under the information available.
- The status of the evidence and costs of acquisition, particularly in relation to persons who are not participants in the case.
- Whether the required evidence includes restricted-access information, particularly in relation to persons who are not participants in the case, and the intended procedures for protection of the restricted-access information.

(*Article 250.66(1), Civil Procedure Law*.)

A party to the proceedings can also secure evidence if they have reason to believe that the submission of the necessary evidence may later be impossible or problematic (*Article 98(1), Civil Procedure Law*). Applications for securing evidence can be submitted at any stage of the proceedings, as well as before the bringing of an action to a court. An application for securing evidence is decided by a court or a judge within ten days of its receipt.

The disclosure of evidence rules in the Civil Procedure Law do not provide for specific categories of documents to be disclosed. However, in deciding on disclosure, the court must ensure that the disclosure is proportionate and consider the legitimate interests of all parties and third parties concerned (*see above*).

To secure evidence, a party must indicate in the application the:

- Given name and surname of the applicant, the case for which the securing of evidence is required, and its potential participants.
- Evidence to be secured.
- Facts that the evidence is necessary to establish.
- Reasons why the applicant is requesting the securing of evidence.

The claimant is not entitled to obtain copies of confidential versions of the decisions of competition authorities. However, under the Antitrust Damages Directive, a claimant can ask the court to request disclosure of specific evidence in the file of a competition authority, including confidential information (*Article 250.66, Civil Procedure Law*).

The court is not entitled to request leniency statements (or records of such statements) or settlement submissions from the parties or other persons.

The court can request evidence from case materials of the competition authority, if it is not possible to acquire such evidence from participants in the case or other persons. If the evidence obtained does not contain leniency statements (or records of such statements) or settlement submissions, a court can add such evidence to the private antitrust litigation case materials (*Article 250.67, Civil Procedure Law*).

27. Can a party oppose the provision of any documents not in their possession or control?

A party can oppose the provision of any documents not in their possession or control. In general, a party can argue that:

- The documents to be provided are not relevant to the substance of the case or are not admissible by law.
- The request is too broad.
- The request is not justified under the available information.
- The volume of the required documents or the costs related to requiring them are not commensurate with the amount of the claim brought.
- The documents contain restricted-access information, such as settlement or leniency materials in cases decided by competition authorities.
- Disclosure of the documents can cause obstacles for efficient application of the competition law.

(*Articles 94, 95(1), 250.66 and 250.68, Civil Procedure Law*.)

Opposition can be made to the court either in writing before the court session, or orally during court session, before the court decides whether there is basis to satisfy the request for the provision of documents (*Article 162, Civil Procedure Law*).

28. Can parties rely on legal privilege to withhold documents from inspection?

Under Article 6(3) of the Advocacy Law, parties can withhold documents that have been prepared by advocates in providing legal assistance to them. The legal privilege extends to sworn advocates, assistants to sworn advocates and advocates of EU member states, as defined in Article 4 of the Advocacy Law.

The privilege does not extend to lawyers who are not advocates. By law, advocates must be independent in exercising their activities (*Articles 3 and 6(1), Advocacy Law*), and therefore must suspend their advocate activities when taking employment (*Decision Nr.190 of the Council of Sworn Advocates of Latvia of 17 October 2017, p. 5*). Therefore, since the roles of an in-house lawyer and an advocate are usually incompatible due to the employment status of the in-house lawyer, in practice the privilege does not extend to in-house lawyers.

An unlawful action of an advocate in the interests of a client, as well as an action for the promotion of an unlawful offence of a client, are not recognised as a provision of legal assistance (*Article 6, Advocacy Law*). Therefore, documents that concern such actions by an advocate are not covered by attorney-client privilege.

Alternative dispute resolution

29. Can the parties seek to resolve the action through alternative dispute resolution?

Parties can seek to resolve disputes through mediation under the Mediation Law or arbitration under the Arbitration Law. There are no restrictions on resolving private antitrust matters by mediation or arbitration.

The parties are not normally required to engage in alternative dispute resolution before the court proceedings.

The claimant must indicate in the statement of claim information on the use of mediation for settlement of a dispute before applying to a court (*Article 128(2), (5.1), Civil Procedure Law*). The court will refuse to accept a statement of claim if the parties have entered into valid arbitration agreement to submit the dispute to arbitration (*Article 132(1), (3), Civil Procedure Law*).

Parties must engage in mediation before court proceedings if they have entered into a mediation agreement and there is no evidence that mediation was unsuccessful (*Article 132(1), (3.1), Civil Procedure Law*). There are no implications for refusing to engage in alternative dispute resolution, unless the parties have already entered into valid mediation or arbitration agreement.

Article 1 of the Civil Law provides a general obligation to exercise rights and perform duties in good faith.

The parties may save time and litigation costs by engaging in alternative dispute resolution. However, if parties have agreed to mediation and then fail to come to an agreement, this leads to delayed dispute resolution, as court proceedings are postponed while mediation is in progress (*Article 209(8), Civil Procedure Law*).

Settlement or discontinuance of an action

30. What are the tactical advantages and disadvantages associated with making an offer of settlement?

Stand-alone actions
Advantages. Settlement may allow the parties to avoid ill feeling and continue their business relationship. Settlement saves time and litigation costs. If the court approves the settlement or the dispute is settled through mediation, the parties may obtain partial repayment of the state legal fees (*Articles 37(1)(5) and 37(1)(7), Civil Procedure Law*).

Disadvantages. The most notable disadvantages are the:

- Financial loss related to the satisfaction of the claim.
- Risk of potential encouragement to other claimants to launch private antitrust litigation against the infringer.
- Requirement for the claimant to reduce the amount of the damages claim by the proportion settled with the infringer.

Follow-on actions
The same applies for stand-alone actions (*see above*).

31. Is permission required from the relevant court or tribunal to settle any action prior to or during trial?

No permission is required from the court or tribunal to enter into a settlement. However, the settlement must be approved by the court to ensure enforcement (*Articles 164(5), 164(6), 228 and 540(1), Civil Procedure Law*).

Settlement can be reached at any stage of the court proceedings (*Article 226(1), Civil Procedure Law*).

The parties to a settlement can typically agree on the cost implications of a settlement. If the court approves the settlement, the parties can obtain partial repayment of the state legal fees (*Article 37(1)(5), Civil Procedure Law*). Other fees due to the state are divided between the parties by the court, unless the settlement provides other means to cover those fees (*Article 42(5), Civil Procedure Law*).

The court can make any relevant order before it has approved the settlement. As soon as the court approves the settlement by making a decision, it simultaneously decides to terminate court proceedings (*Article 228(2), Civil Procedure Law*). After that, the court can only make orders that are permissible after termination of proceedings, such as decisions to replace a party by its successor or decisions related to the execution and enforcement of the settlement agreement.

In general, no collective action mechanism is available. However, collective redress is sometimes possible when the law empowers certain entities such as NGOs and consumer protection associations to protect the rights of other persons. An NGO can protect the rights and interests of its members in court in matters related to the goals of its activities (*Article 10(2), Associations and Foundations Law*). Similarly, consumer protection associations can represent the interests of consumers in court (*Article 23(3), Consumer Rights Protection Law*). However, there are no specific procedural regulations, and the general provisions of civil litigation apply.

Proceedings at trial

32. Are actions heard by a jury?

There is no trial by jury. All court cases are decided by professional judges.

33. How is confidential information protected during the course of proceedings?

The court can restrict the rights of a case participant to review evidence containing restricted-access information if that evidence has been submitted in non-disclosed form and where disclosing it may cause substantial harm to any participant in the case or another person (*Article 250.66(5), Civil Procedure Law*).

There is no specific requirement for a "ring of confidentiality " in anti-trust proceedings. If the case materials include commercial secrets, the court gives written warning to the case participants and other persons who have access rights to the case materials that they must not disclose the commercial secrets and would be liable for disclosing them (*Article 11(3.1), Civil Procedure Law*).

The court can declare the court hearing or any part of it as closed, if it is necessary to protect commercial secrets, the private life of persons and the confidentiality of correspondence. (*Article 11(3), Civil Procedure Law*.)

Usually, only the case participants (and, if necessary, experts and interpreters) can participate in closed court hearings. In addition, only the operative part of the court ruling is publicly declared (*Articles 11(4), 11(5) and 11(8), Civil Procedure Law*).

34. What evidence is admissible?

In general, the following forms of evidence are admissible in private antitrust litigation:

- Explanations by parties and third persons (as participants in the court proceedings).
- Testimonies of witnesses.
- Written evidence.
- Material evidence.
- Expert examination.
- Opinions of institutions.

(*Chapter 17, Civil Procedure Law*.)

The court accepts only evidence that is relevant in the case (*Article 94, Civil Procedure Law*).

Evidence from criminal proceedings is admissible in private antitrust litigation. However, during criminal proceedings, before the criminal case is submitted to court, the materials located in the criminal case are investigation secrets and are accessible only to the officials who perform the criminal proceedings, such as investigators and prosecutors (*Article 375, Criminal Procedure Law*).

Witness evidence is admissible in private antitrust litigation. The court can impose a coercive fine on a witness or have the witness brought to court by forced conveyance, if the witness fails to arrive without justified cause (*Article 109(2), Civil Procedure Law*). Witnesses are questioned by the court. However, the court may allow case participants to question the witness. Questions are first asked by the participant at whose request the witness was called, and thereafter by other participants in the case (*Articles 170(4) and 170(5), Civil Procedure Law*).

Expert evidence is admissible. Experts are questioned by the court, which may allow the case participants to question the expert. Questions are first asked by the participant at whose request the expert was called, and thereafter by other participants in the case (*Article 175(2), Civil Procedure Law*).

Available defences

35. Is a "passing-on" defence available?

The passing-on defence is available. It can be used to argue that the claimant has not sustained material harm, or that the extent of such harm is smaller than is claimed by the claimant. However, the defendant must prove that the claimant has passed on the overcharges to its customers (*Article 21.1(2), Competition Law*). Currently, there are no known cases where the passing-on defence has been employed in Latvia.

36. Are any other defences available?

The defendant can argue that:

- They have not infringed competition law.
- The claimant suffered no losses.
- There is no causal link between the defendant's conduct and the claimant's losses.

In principle, arguments of non-infringement could also include an argument that the defendant did not have control over the subsidiary that infringed competition law. There is no local private antitrust court precedent available in this respect.

Available remedies

37. Are damages available, and if so, on what basis are damages awarded?

Damages
Damages are compensatory. Their aim is to put the claimant in a position comparable to the situation where there was no infringement of the competition law. It is possible to claim compensation for all material harm caused, including both actual loss (*damnum emergens*) and loss of profit (*lucrum cessans*) (*Article 21(1), Competition Law*). The claimant must prove that it has suffered losses, the infringement of competition law and the causal link between the defendant's conduct and the losses suffered by the claimant.

If it is impossible in practice to determine the amount of losses caused by an infringement of competition law, or it is excessively difficult to determine it precisely, the court can determine the amount of losses on the basis of the evidence (*Article 21(1), Competition Law*).

There are no legal requirements for the courts to take into account public financial penalties when determining the amount of damages. There is also no case-law on this.

There are no rules under Latvian law that provide for voluntary redress schemes and procedures for competition law infringers. However, Latvia has transposed into the Competition Law the joint and several liability rules from the Antitrust Damages Directive.

Restitutionary damages are not available as such. However, a claimant could potentially use the profits achieved by the defendant(s) to quantify its own damages (*Riga Regional Court judgment of 16 May 2017, Case No C04293109*).

Exemplary damages are not available.

Interest

Interest is available on any material damages. Interest is accrued from the day the losses occurred until the day the compensation for losses was paid (*Article 21(1), Competition Law*). The default interest rate is 6% per year (*Article 1765(1), Civil Law*).

The accrual of interest is stopped as soon as the amount of interest has reached the principal sum, or when insolvency proceedings of the defendant have been declared (*Article 1763 of Civil Law, Article 63(1)(3), Insolvency Law*).

38. How are damages quantified?

The court checks the calculation of damages provided by the claimant against the evidence available in the case file, taking into account explanations given by the parties.

For a cartel agreement, unless proved otherwise, it is presumed that as a result of infringement the price was increased by a 10% overcharge (*Article 21(3), Competition Law*). This presumption can be used to calculate the actual losses.

If it is impossible in practice to determine the extent of the losses caused by an infringement of competition law, or it is excessively difficult to determine it precisely, the court can determine the amount of losses on the basis of the evidence (*Article 21(1), Competition Law*).

There is no established court practice available on calculation of damages and the existing cases are the only potential examples. In the latest private antirust case, the court considered that the losses suffered by the claimant were equal to the profit earned by the defendant in the period of infringement, since unless the defendant had infringed the competition law all of the profit would have been gained by the claimant (*Riga Regional Court judgment of 16 May 2017, Case No C04293109*).

In another case, the Supreme Court did not object to the calculation of lost profit by subtracting the claimant's actual profit from its hypothetical profit if no infringement would have occurred (*Supreme Court of the Republic of Latvia judgment of 30 September 2016, case no C40128313, SKC-884/2016*). However, this judgment, is not yet final.

No extensive court practice is available for private antitrust cases and there is no formal preference for any kind of admissible evidence. In general, in lawsuits concerning damages the courts prefer documentary and expert evidence over witness statements, but this can depend on the facts of the case.

39. Are any other remedies available?

A claimant can request the court to terminate and prohibit activities that infringe competition law, or to oblige the defendant to perform actions that prevent the infringement of competition law (*Article 20(2), Competition Law*). In principle, it is also possible to claim compensation for non-material harm (*Article 1635(1), Civil Law*).

Appeals

40. Is it possible to appeal the judgment of the relevant court or tribunal?

It is possible to appeal a judgment of a first instance court to the regional court (*Article 414(1), Civil Procedure Law*). Case participants can appeal against the judgment of the appeal court to the Supreme Court through the cassation procedure (*Articles 4(3), 450(3), Civil Procedure Law*).

The basis of an appeal to the regional court is the party's belief that the judgment of the first instance court is incorrect. The party can use any applicable arguments based on facts and law. However, the party must stay within the range of the initial claims. It is possible to submit a cassation complaint regarding a judgment of the appeal court if the appeal court has:

- Incorrectly applied the norm of substantive law.
- Breached norms of procedural law.
- Acted outside its competence in examining a case.

(*Article 450(3), Civil Procedure Law*.)

Reforms

41.Are there any reforms proposed or due regarding the legal regime applicable to private antitrust actions?

There are no currently proposed reforms in relation to private antitrust actions.

Contributor profiles

Liga Merwin, Managing Partner and Head of EU & Competition practice

Ellex Klavins

T +371 6781 4848
F +371 6781 4849
E *liga.merwin@ellex.lv*
W *www.ellex.lv*

Professional qualifications. Lawyer, Latvia

Areas of practice. All aspects of local and EU competition law and regulatory matters; consumer and retail; pharmaceutical; financial services.

Recent transactions

- Representing a leading grocery chain operator in Latvia in three complicated merger cases where the client acquired retail space previously used by the competitors.
- Representing JCDecaux (an outdoor advertising company) in vertical infringement case at the Competition Council.
- Representing OP Insurance company in a complex merger clearance.
- Representing Volvo Trucks corporation in follow on damages claims in Latvia in relation to a European Commission decision regarding participation in a trucks cartel.
- Representing the retail chain operator AS Drogas in one of the first damages claims for competition law infringement in Latvia.

Languages. Latvian, English, Russian

Professional associations/memberships. Latvian Bar Association; International Bar Association (IBA).

Publications

- *Solidary competition – article for Latvian daily business publisher Dienas Bizness in May 2018.*
- *International Agency and Distribution Handbook EMEA 2018.*
- *Part of the business – still beyond competition article for online media Delfi; 28.02.2018.*
- *Are we ready for the XXI century? Commentary for Latvian daily newspaper Diena; 04.09.2018.*

Edvijs Zandars, Senior Associate

Ellex Klavins

T +371 6781 4848
F +371 6781 4849
E *edvijs.zandars@ellex.lv*
W *www.ellex.lv*

Professional qualifications. Lawyer, Latvia

Areas of practice. Competition and EU Law; intellectual property; trade.

Languages. Latvian, English, Russian

Professional associations/memberships. Latvian Bar Association.

Kaspars Oļševskis, Associate

Ellex Klavins

T +371 6781 4848
F +371 6781 4849
E *kaspars.olsevskis@ellex.lv*
W *www.ellex.lv*

Professional qualifications. Lawyer, Latvia

Areas of practice. Competition and EU law; corporate; trade.

Languages. Latvian, English, Russian

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