Chapter

Latvia

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1 General

1.1 Please identify the scope of claims that may be brought in Latvia for breach of competition law.

According to Latvian Competition Law (CoL) the court (in addition to the Competition Council (CC)) may establish the fact of the infringement of CoL. A person that has incurred damages due to such infringement is entitled to bring a civil claim against the infringer for recovery of damages and statutory interest (6% of the sum of damages per year). Following the claimant's request the court is entitled to establish the amount of the compensation upon its own discretion. Furthermore, according to Article 197 of the Law on Civil Procedure (LoCP) the claimant is entitled to request the court to order the respondent to stop the infringement of the claimant's rights in the field of competition.

In any occasion of such private enforcement court proceedings, the court is obliged to inform the CC thereof. So far there have been only a few private enforcement proceedings in respect to the infringements of competition law.

In respect to administrative proceedings (an appeal against the decision of the CC) the scope of claims includes requests: (1) to revoke the decision completely or in part; (2) to recognise the decision as ineffective or having become ineffective; (3) to recognise the decision as illegal; and (4) to recognise that there has been a procedural infringement during the process of making the decision. Furthermore, according to the Law on Recovery of Damages Created by Public Institutions (LoRD) a person is entitled to request the recovery of damages incurred due to the breach of competition law by the CC.

1.2 What is the legal basis for bringing an action for breach of competition law?

Civil law action for the breach of competition law can be brought according to Civil Law (CiL) providing the basis for recovering damages and the statutory interest rate (as provided in question 1.1 above).

Administrative law action can be brought for the breach of:

- Article 101 TFEU or Article 11 CoL prohibiting certain agreements between market players.
- Article 102 TFEU or Article 13 CoL prohibiting the abuse of a dominant position.
- Article 7 of Council Regulation No.139/2004 (Merger Regulation) or Article 15 CoL prohibiting concentrations which are implemented before their notification or prior to their approval if such is deemed to be necessary.
- Article 18 CoL prohibiting unfair competition.

Furthermore, an administrative law action can likewise be brought for the breach of the Law on Advertising (LoA) if the advertisement does not comply with the principles of fair competition.

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

The basis for competition law claims is derived from national law (CiL, CoL, LoA) as well as international law (EU law, WTO normative enactments).

1.4 Are there specialist courts in Latvia to which competition law cases are assigned?

There are no specialist courts in Latvia *strictu sensu*.

Civil law claims in respect to the damages incurred due to the breach of CoL are heard by District Courts according to Article 24 LoCP.

Administrative law cases due to the breach of CoL and LoA are heard by the Administrative Regional Court according to Article 8 CoL.

However, the institution charged with public enforcement of competition law in Latvia is the CC to which private individuals and economic operators may apply with the requests to instigate administrative proceedings and investigations in respect to the breaches of CoL and TFEU. Furthermore, private individuals and economic operators can likewise submit claims in respect to infringements of TFEU to the European Commission (Directorate General for Competition).

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?

A civil rights action according to Article 21 CoL and Article 127 LoCP can be brought by a person whose civil rights have been infringed or disputed (an action for recovering damages incurred by the breach of CoL).

Furthermore, LoCP provides that a civil action in court can be brought also by persons to whom the law confers the rights to protect the interests of other persons. This would be the case when consumers have incurred damages due to the breach of CoL by

companies. According to Article 23 of Consumer Rights Protection Law (CRPL) such persons protecting the rights of consumers are consumer rights protection associations. Equal rights are conferred upon the Consumer Rights Protection Center by Article 25 CRPL.

The concept of class action as recognised in the US has not been implemented in the legal system of Latvia.

However, according to Article 75 LoCp several persons (claimants) are entitled to bring an action together. Multiple claimants may appoint a single representative for the purposes of the court proceedings. There exist other techniques in how to attain the pursuance of multiple claims by one person (e.g., establishing a limited liability company to which multiple claimants assign their claims for damages in a particular case; the company afterwards submits one claim for damages in respect to all the persons (shareholders of the company) having suffered damages for the breach of competition law).

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

According to Article 8 CoL the appeal against the decision (administrative act) of the CC shall be heard by the Administrative Regional Court as the first instance court. If the complaint has been submitted to the European Commission (Directorate General for Competition), the decision of the Commission can be appealed at the General Court and the Court of Justice.

The jurisdictional factors in civil litigation claims are two-fold:

- A Latvian court will hear the competition law claim when it pertains to its jurisdiction according to Council Regulation No.44/2001 (the person infringing competition law has been domiciled in Latvia; the damage by the breach of competition law has occurred in Latvia; the infringement of competition law has been performed through the operations of a branch, agency or other establishment situated in Latvia; the defendant enters the appearance before a Latvian court and other occasions stipulated in Regulation No.44/2001).
- According to LoCP, cases for recovery of damages due to the breach of CoL will be heard by a District Court as the first instance court. The judgment of the District Court can be appealed in a Regional Court and in the Chamber of Civil Cases of the Supreme Court. The cassation claim can be heard by the Department of Civil Cases of the Supreme Court Senate.

1.7 Is the judicial process adversarial or inquisitorial?

Judicial process in respect to civil law claims (claims for damages due to the breach of CoL) is adversarial. However, judicial process in respect to pure administrative law issues (administrative court proceedings in respect to the breach of CoL) is inquisitorial.

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Yes, interim remedies are available in competition law cases as stipulated further in question 2.2.

2.2 What interim remedies are available and under what conditions will a court grant them?

According to Article 137 LoCP, in civil litigation interim measures can be granted if there is basis for considering that the execution of the judgment may become difficult or impossible. Interim measures – securing of the claim - can be granted during the court proceedings as well as before the submission of the claim. The means of securing the claim in actions for the breach of CoL may be the following: (1) encumbrance of property and cash as well as payments due from third persons; (2) prohibition to perform certain activities; and (3) stay of enforcement proceedings.

According to Article 195 LoAP, in administrative litigation interim measures can be granted if there is a reason to consider that the appealed CC's decision might create a significant damage or loss ,the aversion or compensation of which would be considerably difficult or would require disproportional resources and if the court can establish that the CC's decision is *prima facie* illegal. The interim measures in the competition law cases can be the following: (1) a court decision substituting the administrative act (the CC's decision); or (2) a court decision obliging the CC to perform an action or forbidding the performance of an action.

3 Final Remedies

3.1 Please identify the final remedies which may be available and describe in each case the tests which a court will apply in deciding whether to grant such a remedy.

According to Article 21 CoL, a person that has suffered damages due to the breach of CoL is entitled to the recovery of damages and to the statutory interest (6% of the sum of damages per year). Furthermore, according to Article 197 LoCP the claimant is entitled to request the court to order the respondent to stop the infringement of the claimant's rights.

The test for granting the recovery of damages is stipulated in CiL.

According to Article 1779 CiL everyone is obliged to compensate the damages that he has created by his actions or omissions. Damages include actual losses and the future decrease of income. Furthermore, according to Article 1784 CiL if damages due to a person's illegal actions have been created outside contractual relationships, there is no need to establish the actual fault (intent or neglect) of the person in creating the damages. To recognise the obligation of recovering damages, it is necessary to establish the following: (1) breach of CoL; (2) damages suffered; and (3) causal link between the breach of CoL and the particular damages suffered.

In administrative litigation where a CC decision is appealed according to Article 253 LoAP the court is entitled to decide on the following: (1) revocation of the entire decision or its part or admittance of the decision as ineffective (in case it contravenes the substantive law or the procedural norms have been infringed during the process of taking the decision); (2) amending the decision (in case the court considers the fine imposed by the CC to be too high); and (3) ordering the CC to issue a new decision instead of the revoked or admitted ineffective decision.

In administrative litigation where a CC decision is appealed, following Article 92 LoAP a person who has suffered damages due to an administrative act (a CC decision) is entitled to appropriate compensation.

Recovery of damages can be requested together with the submission of the appeal to the court or if it has not been done, then the application for recovery of damages can be submitted to the CC after the final decision (court judgment) in the case has come into force.

The process of recovering damages created by the decision of the CC as a public institution is determined according to LoRD. The

test for granting recovery of damages is similar to the one established by CiL and stated above: (1) the CC decision contravenes the law; (2) there is a direct causal link between the CC decision and the damages created to a person; (3) for legal entities there can exist proprietary damages (the reduction of current property or the reduction of potential income) and personal detriment (to reputation, business secrets, intellectual property rights); in case of private individuals the concept of detriment involves also moral harm; and (4) in addition it is stipulated that the person suffering the damage must have done everything possible to avoid the damage or reduce its amount .

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available?

In civil litigation the court determines the amount of damages taking into account the actual damages already incurred and the lost profit reasonably calculated by the party. To be awarded damages it is important to prove the real amount thereof as the courts are inclined to award the sums that are realistically proven. This should be particularly taken into account when calculating the amount of the lost profit. Furthermore, when requesting the compensation of the lost profit, a person must prove that the profit has been lost exactly because of the actions of the person infringing the CoL.

LoRD provides for the methods of calculating the damages in respect to administrative procedure. When determining the amount of the lost profit, the general risks and the circumstances of the particular case are taken into account. If it is not possible to determine a precise amount of damages, total overall damages or separate parts thereof are established. When evaluating the damages, a general experience, as well as the circumstances of the particular occasion, are reasonably taken into account. When determining the amount of damages, the legal and actual reasons of the actions of the CC and its motives as well as the actions of applicant are taken into consideration.

Article 13 LoRD provides that if the sum of damages does not exceed LVL 100,000, it is recovered in full amount. If this sum exceeds LVL 100,000, but does not exceed LVL 1,000,000, the damages are recovered in amount of 50% – 100%. If the damages are calculated in amount of more than LVL 1,000,000, they can be recovered in amount of less than 50%. According to Article 14 LoRD compensation for personal damages (to reputation, business secrets) may not exceed LVL 7,000 and the compensation for moral detriment in competition law cases will not exceed LVL 5,000. If the moral detriment is not severe, instead of paying the compensation, the CC is entitled to express apologies to the person in writing or to express public apologies.

Exemplary damages are not available in Latvia.

3.3 Are fines imposed by competition authorities taken into account by the court when calculating the award?

No, the fines imposed by the CC are not taken into account by the court when calculating the award unless the fines have already been paid and the person is requesting the respective amount as the damages.

4 Evidence

4.1 What is the standard of proof?

It should be taken into account that in the scope of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the proceedings of infringement of competition law instigated by the CC is considered as "criminal proceedings". Thus, the standard of proof in administrative cases would be beyond reasonable doubt. Whereas, in respect to civil proceedings, it would be clear and convincing evidence.

4.2 Who bears the evidential burden of proof?

According to Article 93 LoCP each party must prove its position. The claimant must prove the basis for its claim and the defendant must prove the basis for its objections.

Article 150 LoAP provides that the institution (the CC) must prove its objections against the application; however, generally the applicant (private person) must according to its possibilities take part in the collection of evidence. There are also specific circumstances where the burden of proof has been switched (i.e., transferred from the CC to the private party) – such occasions being ones involving Article 101 (3) TFEU.

4.3 Are there limitations on the forms of evidence which may be put forward by either side? Is expert evidence accepted by the courts?

As stipulated above according to LoCP and LoAP the following forms of evidence are provided by both procedural laws:

- explanations of parties and third persons (this evidence is considered proved if it has been confirmed by other forms of evidence);
- evidence provided by witnesses;
- recorded evidence (documents, audio, video recordings etc.); and
- material evidence (material things that by their features or their very existence can serve for establishing certain facts).

In addition to the aforementioned, in civil litigation the report of the institution invited to give its opinion in the particular case is likewise admitted as evidence. Whereas, in administrative litigation, the court can take into account the opinion expressed by a reputable association in a certain field.

LoCP and LoAP provide that only the forms of evidence stipulated in the law are acceptable.

Expert evidence is accepted by courts in civil litigation as well as in administrative litigation. The difference being that in civil litigation the expertise is asked by a party and the expert is chosen upon the agreement of parties whereas in administrative litigation the expertise is determined and the expert is chosen by court.

4.4 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?

In civil litigation under Article 98 LoCP as well as in administrative litigation under Article 155 LoAP it is possible to secure the evidence if the claimant/applicant considers that the submission of the necessary evidence can be impossible at a later stage. The evidence can be secured during the court proceeding as well as before the commencement of the court proceedings. In such case the evidence can be secured by a court decision.

According to Article 93 LoCP each party to the case must prove its submissions. If the party is unable to obtain the necessary proofs (e.g., documents, including from the other party or the CC), the

relevant documents are requested by the court from the particular persons holding the evidentiary documents. Following Article 150 LoAP parties to the administrative litigation proceedings must according to their abilities take part in obtaining the evidence. If, however, the evidence gathered by the parties is not enough, the court gathers the necessary evidence itself.

In addition to the aforesaid, according to Article 48 of the Law on the Bar of the Republic of Latvia sworn attorneys are entitled to request all the necessary information (e.g., documents) from public institutions and organisations as well as from private parties to provide legal service to their clients. The CC is obliged to grant access to the case file to the parties involved in the case. However, upon request of the party having provided specific information the CC can grant such information a restricted status.

4.5 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?

If the witness refuses to appear before the court without a justifying reason according to LoCP and LoAP the court is entitled to fine the witness in an amount up to LVL 40 (in civil litigation) and LVL 50 (in administrative litigation) or to bring the witness before the court by force. Furthermore, if the witness unjustifiably refuses to testify, he/she may be held liable according to Article 302 (1) of Criminal Law and consequently be punished by imprisonment for the period of up to 1 year or arrest, or forced labour, or a fine in an amount up to 20 minimal monthly salaries (currently LVL 3,600 in total).

In respect to the examination of the witness, in civil litigation as well as in administrative litigation participants to the case (including claimant/applicant, respondent and third persons involved) are entitled to question the witness. The first one to question the witness is the participant having summoned him/her. Afterwards – other participants to the case are able to question the witness.

4.6 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?

An infringement decision by a national or international competition authority, or an authority from another country would qualify as recorded evidence provided in Article 110 LoCP and as such would generally have a probative value as to liability. However, it should be taken into account that according to Article 97 (2) no evidence has a preliminary set force that would bind the court. Thus, during the process of examination and evaluation of the evidence provided by both parties the court would determine if the particular decision proves the liability of the person sued for the breach of the competition law.

4.7 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?

According to Article 11 (3) LoCP upon the request of a participant to the case the court may announce the hearings closed if there is the issue of commercial confidentiality. In such situation only the resolving part of court's judgment is announced in public.

Pursuant to Article 108 LoAP, to protect commercial confidentiality according to the reasoned court decision, the court hearings can be closed or if the case is tried in written proceedings, it is possible to restrict the access to case materials to exclude the persons that are not participants to the case. Only the participants to the case, experts and translators are entitled to take part in closed hearings. A court judgment made in closed hearings is published with excluded parts containing the information of commercially confidential nature.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

Defence of justification/public interest is not available.

5.2 Is the "passing on defence" available and do indirect purchasers have legal standing to sue?

So far there has not been an established court practice in respect to "passing on defence" cases and the ones involving indirect purchasers. According to Article 1770 CiL the definition of damages includes every loss that can be valued in material terms. Thus, the aforesaid passing on defence and claims of indirect purchasers would technically be admissible. However, it should be taken into account that, according to Article 1787 CiL, when calculating the lost profit, there can be no doubt or at least it must be proven until the level of credibility of legal proves that the damages have directly or indirectly been caused by the particular infringement.

6 Timing

6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

In civil litigation there are no set time limits for claiming the damages for the breach of competition law.

If the damages are claimed in respect to the decision taken by the CC, according to Article 17 LoRD a person can submit the application on recovery of damages within one year from the day it obtained the information or it had to obtain the information on the damage, but not later than five years from coming into force of the CC decision inflicting the damages.

6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

Since there are only a few cases of private enforcement of competition law, a typical breach of competition law claim would involve public enforcement. Because, according to LoAP, there are two instances for the examination of a competition law case (Regional Court and Supreme Court), the process would last approximately two years. However, the length depends on the circumstances of the case, the parties involved etc. Generally it is not possible to expedite proceedings.

7 Settlement

7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example if a settlement is reached)?

According to Article 227 (1) LoCP in case of reaching a settlement

in a civil litigation, the parties conclude it in writing and submit it to the court for approval. The settlement can be concluded in any stage of proceedings. Upon receipt of a written settlement document the court verifies if the parties have reached the settlement upon their free will, if it conforms to the requirements of LoCP and if the parties are familiar with the procedural consequences of the settlement. If the court concludes that the settlement conforms to the requirements of LoCP, it decides on the approval of the settlement and discontinues the proceedings. The discontinuation of the breach of competition law claims is possible also by the derogation from claim by the claimant. According to Article 164 LoCP (5) the court takes the decision approving the derogation from claim and discontinuing the proceedings.

In administrative proceedings according to Article 282 LoAP proceedings can be discontinued by the decision of the court if the applicant derogates from its application or if the administrative agreement has been concluded between the applicant and CC.

8 Costs

8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

In civil litigation the claimant/defendant can recover legal costs from the unsuccessful party. However, according to Article 44 (1) LoCP legal costs can be recovered in the amount of not more than 5% from the sustained claims. If the claim has an immaterial character, the legal costs to be recovered are not more than the statutory fee of an attorney at law. Travel and residency costs in respect to appearance at court or presence at gathering evidence abroad are recovered according to the rates for recovering costs in respect to business trips as provided by relevant Regulations of the Cabinet of Ministers. Costs in respect to gathering written evidence are recovered in their actual amount.

In administrative litigation the applicant can avail itself on the norms of LoRD to recover the legal costs as damages incurred due to the infringement of CoL by the CC.

8.2 Are lawyers permitted to act on a contingency fee basis?

There are no specific requirements in respect to legal fees of lawyers in general. However attorneys at law admitted to the Latvian Bar and their assistant attorneys are not permitted to act on a contingency fee basis.

8.3 Is third party funding of competition law claims permitted?

Third party funding of competition law claims is permitted.

9 Appeal

9.1 Can decisions of the court be appealed?

Decisions of the court in civil litigation made in the first instance (District Court) can be appealed in Regional Court and in the Chamber of Civil Cases of the Supreme Court. The decisions can likewise be appealed in cassation order in the Senate of the Supreme Court.

Decisions of the court on competition law issues made in administrative litigation in the first instance (Regional Court) can be appealed in cassation order in the Senate of the Supreme Court.

10 Leniency

10.1 Is leniency offered by a national competition authority in Latvia? If so, is (a) a successful and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Leniency is offered by the CC and it mostly refers to the reduction of the fines imposed. However, the leniency regime does not interfere with the civil law claims in respect to damages.

10.2 Is (a) a successful and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

The court is entitled to request all the necessary information for the just resolving of the dispute. In this respect the court is not bound by the CC decision granting the leniency.

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Agris Bitāns is the managing partner of Eversheds Bitāns Law Office. He has legal experience of over 17 years. He is widely recognised and acclaimed litigator in Latvia and also a professor of Contracts, Torts and Roman Law at the University of Latvia. He is the author of a highly regarded treatise 'Torts and Contractual Liability' (published in 'Civil Liability and Its Forms'). Agris is a co-author of the commentaries on the Civil Law of Latvia and author of numerous legal articles. Currently he works on co-authoring of commentaries to specific articles of the Constitution of Latvia.
The practice areas of Agris Bitāns include competition law, intellectual property law, contract law, e-commerce, patient rights, mass media and advertising law as well as PPP projects. Agris likewise serves as an arbitrator at the Chamber of Commerce Arbitration Court and continues serving as a member of the Council of the Latvian Bar. He also holds the office of the President of Latvian AIPPI group.

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Liena Rubene joined Eversheds Bitāns Law Office on April 26, 2010. Liena's main areas of specialisation are commercial law, M&A and competition law.
Previously Liena Rubene was working as a lawyer at Procurement Monitoring Bureau of Latvia and later as a legal consultant at Deloitte Latvia. From October 2009 to February 2010 inclusive she was doing an internship in Brussels at the European Commission (Directorate General for Competition).
In 2005 Liena graduated from the University of Latvia, Faculty of Law (Riga, Latvia), where she obtained the Bachelor's degree in Law (LLB) with Professional qualification of a lawyer, the studies were continued in Riga Stradins University (Riga, Latvia) with the graduation in 2007 and obtaining a Master's degree in Business Administration (MBA). In 2007/2008 Liena continued her legal education at Queen Mary College, University of London (London, United Kingdom), where she obtained the Master's degree in Corporate and Commercial law (LLM).
Liena Rubene has been admitted to Latvian Bar and is an Associate of the Chartered Institute of Arbitrators.

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