

DAMAGES DIRECTIVE

By 27 December 2016, the Croatian Parliament needs to implement the Directive 2014/104/EU on antitrust damages actions ("Damages Directive"), which is expected to streamline the procedure for private individuals and businesses to sue for damages in cases of competition law infringements. Will Croatia be successful in taking its cut of one of the fastest growing niche areas in law, which in the EU alone is estimated at EUR 20 billion?

Competition law rules can be enforced in two principal ways – either through public enforcement, which in the EU is the task of national competition authorities and the European Commission or through private enforcement, which relies on private initiatives of private entities damaged by certain competition law infringements. To illustrate, if there is a pricing cartel, it could be prosecuted by the competent regulator (by imposing fines capped at 10% of the annual turnover of each cartelist), but also by its customers, distributors and any other stakeholders by suing the cartelists for damages before national courts.

While public enforcement works well, private enforcement (with a few notable exceptions) has been lacking in its efficiency due to the high initial investment required to pursue such damages, lack of court practice which would make the potential outcomes less uncertain, difficulties in the collection of information on the infringement, reluctance of many national courts to take on such cases, and difficulties in quantifying damages, to name a few.

In order to facilitate further development of effective competition law enforcement, the European Parliament has passed the Damages Directive, which Member States should transpose into national legislation by 27 December 2016. The main direct aim of the Damages Directive is to streamline, standardise and lift the common burdens that in the past have been associated with private enforcement of competition law.

Along with a wide palette of changes that the Damages Directive is bringing about, some examples include establishing individual responsibility of each infringement participant for the entire harm caused to victims, sets of detailed rules for discovery of information and quantification of damages, a rebuttable presumption stating that cartel infringements cause harm, special rules regarding the statute of limitation directed towards providing an adequate period for filing claims, as well as provisions stimulating settlements and alternative dispute resolution. Prospective claimants will also not have to wait for the competition authorities to establish an infringement (**follow-on actions**), but will be able to sue for damages independently of public enforcement proceedings (**stand-alone actions**).

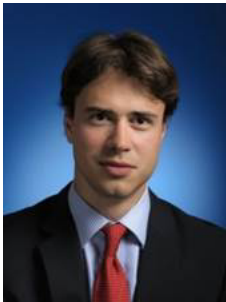
Another important aspect of the Damages Directive is that it may unlock significant commercial potential that private competition law enforcement holds. Due to its market-wide effects, damages claims in private enforcement cases very often include seven digit compensation figures. Additionally, experiences from other jurisdictions show that a predominant number of these cases ends up in out-of-court settlements, which typically enables plaintiffs to collect their compensation relatively early on in the proceedings.

Although private enforcement has been on the rise in the last couple of years, most practitioners agree that there is still much commercial potential for it to develop into a standalone market and further strengthen effective competition enforcement. Whether that will be the case in Croatia as well will predominantly depend on how well the Damages Directive will be incorporated into the Croatian procedural law framework, how willing judges will be to deal with the technicalities of what we expect to be complex and sophisticated damages cases, and whether there will be adequate support from the Croatian Competition Agency in discovering the infringements.

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