INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Working Session

"Damage claims in competition matters: The dawn of a new era?"

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General Report

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1 INTRODUCTION

1.1 Overview

In order to preserve well-functioning product markets, competition law aims to prevent or correct anti-competitive behaviour, to maintain open market structures and to promote healthy competition in order to ultimately benefit consumers. Within most jurisdictions, enforcement of competition law is, in theory at least, based on a system of both public and private enforcement. In particular, many countries have established a system that enables individuals (such as victims of cartels) to claim compensation before the courts for the damages they have suffered. Yet, in reality the private enforcement of competition law is still underdeveloped in many jurisdictions, also within the European Union.

In the last decades, however, emphasis has been put on the private enforcement of competition law. It is increasingly acknowledged that private enforcement should be seen as an equally effective measure in enforcing competition law and can contribute to the development and effectiveness of the respective competition law system. With that said, although in a number of jurisdictions a similar quick development of a practice in private enforcement can be discerned, the actual substance and practice thereof varies significantly from jurisdiction to jurisdiction. Moreover, also the speed and level at which private enforcement develops in the different jurisdictions differs immensely.

Therefore, although it can be assumed that damages claims as a result of competition law infringements globally seem on a rise, the question remains how this development is working out before the different national courts. For the purpose of this General Report a questionnaire was sent to various jurisdictions with the aim to identify differences as well as common themes in damages claims following competition law infringements. The questions were aimed at obtaining specific information about common themes, such as competence of national courts, damages and the manner of calculation, the influence of competition authority decisions and limitation periods. As will be clear from the analysis of the submissions as described in Paragraph 2, the national reporters each have flagged topics that are under development or are unclear, but very rarely do these jurisdictions struggle with the exact same matters. With regard to the national reports from the EU, it was especially interesting to read that the EU directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (in the following "Private Enforcement Directive" or simply "Directive") will most probably facilitate in resolving issues, but hardly ever the same issues for all different EU Member States.

This General Report provides a brief summary of the responses and highlights interesting comments and observations contained in the National Reports. Obviously, the Report cannot dwell on each and every national characteristic that would be worth mentioning. Thus, for further reading, we refer to **Annex 1** and **Annex 2**. Annex 1 is a spreadsheet setting out in more detail the answers the national reporters provided to the questions posed, giving a more nuanced image of the information we received. Annex 2 aims at providing a schematic overview of most of the answers, to allow for an easy comparison between the different jurisdictions at first glance.

1.2 National Reports

The General Report is based on the 16 National Reports that have been drafted for the following jurisdictions:

Austria	Israel	USA
Belgium	Italy	
Brazil	Netherlands	
China	Poland	
Denmark	Russia	
Finland	Slovenia	
France	Sweden	
Germany	Switzerland	

We would like to thank all of the national reporters who have submitted information on each jurisdiction for their hard work.

1.3 General findings based on the National Reports we received

EU Member States

1.3.1 The national reports demonstrate that although the Private Enforcement Directive implementation process is well underway in most Member States, none of the Member States have finalised the implementation process. Even 'front running' Member States such as France, Germany and the Netherlands have not implemented the Directive yet.

1.3.2 The aim of the Directive is to create uniform (mostly procedural) rules, providing guidance for both national courts with an established practice in competition law damages claims, as well as national jurisdictions with low numbers of private enforcement cases. Contrary to our expectations, we have received rather little feedback from national reporters from EU Member States as to the expected changes the Directive would bring in their respective jurisdictions. The EU jurisdictions that have the least pending cases are, unsurprisingly, the ones where implementation of the Directive is at its earliest stages. One of the specific aims of the Directive is to promote private enforcement of competition law in exactly those jurisdictions. It remains to be seen how the Directive will assist in aligning a common practice and level of enforceability within the EU Member States and how it will serve as an instrument in the often complicated and cross-border nature of private enforcement proceedings.

1.3.3 Other jurisdictions

Although damages claims pursuant to competition law infringements are not regulated on a global level (as is the case within the EU), it was interesting to note that in broad terms, similar answers were received on general themes from reporters in non-EU jurisdictions. Of

course, on substantial topics such as punitive damages, the influence of national competition authorities on follow-on cases and limitation periods, vast differences were present. But the national reporter did show that relatively comparable systems exist with regard to parental and joint liability, disclosure mechanisms, legal privilege, the types of damages and methods of calculating damages.

2 ANALYSIS OF THE NATIONAL REPORTS

2.1 Chapter I: Status quo of private enforcement

2.1.1 It would appear that both individuals and undertakings have standing to bring proceedings and claim damages relating to competition law infringements in most jurisdictions listed above.

2.1.2 In Switzerland, however, only undertakings are entitled to file antitrust claims. Consumers and consumer protection organisations do not have the standing to file antitrust claims as they do not qualify as undertakings.

2.1.3 The National Reporters who submitted reports confirmed that their respective jurisdictions had not yet implemented the Private Enforcement Directive (at the time of writing). Most National Reporters indicated that the Directive was likely to be implemented by the deadline. For instance, both Italy and Sweden indicated that the Directive was likely to be implemented in December 2016.

2.2 Chapter II: Court and Procedure

2.2.1 The majority of jurisdictions do not have a specialised court for hearing antitrust cases.

2.2.2 However, in China antitrust based claims are heard at the intellectual property ("IP") court or IP division of the relevant court with jurisdiction. In 2014 specialized IP courts were set up in Beijing, Shanghai and Guangzhou and these IP courts have jurisdiction over antitrust civil litigations in the above three cities.

2.2.3 In Austria there are specialized Cartel Courts that will decide on antitrust infringements but damage claims must be submitted with the Austrian Civil Courts (not the Cartel Courts). France has designated by decree 16 specialised courts specifically for antitrust based-claims. In Belgium, collective damage actions can only be brought before the Commercial Court or Court of First Instance of Brussels. The different chambers of individual courts have specialisations, for example, in the Dutch speaking Commercial Court of Brussels the 5th chamber is specialised in competition law (and intellectual property).

2.2.4 Similar rules regarding forum (shopping) apply across jurisdictions, predominantly that the claimant must be domiciled in the given jurisdiction, or that the harm must have occurred within the jurisdiction to bring a claim. In Belgium where there are multiple defendants, the Belgian courts have jurisdiction if one of them is based in Belgium and the claims against the defendants are so closely connected that it is expedient to hear and determine them together.

2.2.5 In the United States, where there are multiple antitrust actions pending in different districts alleging common questions of fact, all cases may be transferred to a single district court.

2.2.6 In terms of duration of proceedings, understandably a definitive answer cannot be given in any of the jurisdictions under scrutiny, most estimates, however, indicating a time period of 2-3 years. In Russia, interestingly, the court shall consider a case within three months from the date a claim was filed. For a collective action the court of first instance should consider a collective action within five months from the date the claim was accepted by the court.

2.2.7 The general rule in relation to costs across jurisdictions is that the losing party must pay the winning party's fees. Interestingly in Belgium, pursuant to the Royal Decree of 26 October 2011, the compensation for representation costs is limited to EUR 33,000 per party (the exact amount depending on the value of the claim).

2.2.8 When considering alternative funding options or fee arrangements, there was a fairly wide range of answers. For example, Poland and Italy prohibit such agreements, whereas in Finland, Austria, Sweden, Slovenia and Russia there are no specific rules regarding alternative funding options but it is generally considered to be a lawful concept.

2.2.9 In Brazil, agreements such as conditional fee or damages based agreements working under a "no win, no fee" arrangement, may be allowed as the sole source of payment only in exceptional cases where the plaintiff cannot afford the fees.

2.2.10 Danish law allows for uplifts or bonuses in case of success. However, a lawyer may not enter into fee arrangements for payment of a share of any result achieved by the client upon conclusion of the case. Likewise, a lawyer may not agree to share his fees with a person who is not a lawyer.

2.2.11 In China where a civil case involves a property relationship, the client can choose the contingency fee, where the law firm and the client enter into a contingency fee contract to agree on the risk liabilities for both parties. However, the agreed contingency fee cannot exceed 30% of the total amount of the subject matter agreed in the contract.

2.2.12 In Belgium the bar rules prohibit making legal fees entirely dependent on the outcome of proceedings but it is possible to agree a success fee in addition to a fee determined in another way (e.g. a lump sum or an hourly fee).

2.2.13 In relation to the bundling/assignment of claims the answers supplied also varied significantly. The assignment of private antitrust claims to third parties is generally permissible in most of the jurisdictions. However there is no provision in Brazilian law allowing third parties to buy claims. In China third parties could not buy claims from cartel victims, because only those individuals who actually suffered from the monopolistic conduct have the standing to bring a civil lawsuit.

2.2.14 Many National Reports indicated that there was a collective redress system in their jurisdiction, or at least something similar. In Poland, only the claims regarding consumer protection, liability for damages caused by dangerous products and tort cases (with the exception of claims for the protection of personal property) can be settled in group actions proceedings.

2.2.15 In the United States private antitrust actions may be brought as class actions only where they meet certain requirements, such as the class being "so numerous that joinder of all members is impracticable".

2.2.16 In contrast, class action claims are not available for instance in Germany or Switzerland. However, undertakings can assign their antitrust based claims to associations, other individuals or undertakings. Alternatively, several parties may jointly raise their claims against one and the same defendant.

2.2.17 In Russia, Denmark, Sweden and Italy class actions operate on an opt-in basis. However, Israel's class action system provides for an opt-out mechanism.

2.3 Chapter III: Effect of National Decisions, Burden of Proof, Limitation Periods, Joint and Several Liability

2.3.1 With the exception of Austria and Germany, none of the jurisdictions are explicitly bound by the entire text of a National Competition Authority's ("NCA") decision. In Austria all Civil Courts are bound by a non-appealable decision of the Cartel Court, the European Commission and a NCA (of any EU Member State) that established an infringement of competition law.

2.3.2 In Poland, although the NCA's decisions themselves are non-binding, judgments of the court upholding a NCA decision are binding upon the court. In Brazil, not only is the decision non-binding but all of the evidence produced by or under the antitrust authority investigation can be re-examined by the courts.

2.3.3 Limitation periods across the jurisdictions generally vary from three to ten years from the day the damage occurred (or the discovery of the damage). The limitation period in Russia for bringing claims in respect of antitrust violations is one year. In Switzerland, claims for elimination or desistance of a hindrance and declaratory judgment claims are not subject to a limitation period at all.

2.3.4 Interestingly, although the general limitation period in Brazil is three years, Public Prosecutors have argued that damages caused by antitrust infringement constitute injury to the public patrimony and are therefore not subject to limitation periods.

2.3.5 When considering the liability regime as regard parent companies for the infringement of their subsidiaries, the responses could be categorised in the following ways:

(1) Responsibility falls on the company that committed the offence, not the parent company. An exception generally being accepted if the claimant can "pierce the corporate veil" (as described in the national reports of Poland, USA, China);

(2) A company and its parent company can be joint and severally liable (as described in the national reports of Italy, Brazil, Russia); and

(3) A parent company can be held liable for the infringement of its subsidiaries but only where there is evidence of active participation in the infringement (as described in the national reports of Austria, Denmark, Germany).

2.3.6 Infringing parties (i.e. cartelists) can normally be held jointly and severally liable for any damage caused. There is one jurisdiction which provides an exception; in the United States antitrust violators who have been accepted into the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 leniency program and satisfy the cooperation obligations therein are not subject to joint and several liability, but limited to actual damages directly attributable to them.

2.3.7 In Germany it has been held that the scope of the liability for each cartel participant is subject to the part each cartel participant contributed to the damage suffered by the cartel victim as well as the scope of responsibility for the damage caused. If one or more cartel participants have compensated the cartel victim to a greater amount than they should have, they may request compensation for the damages paid from the other cartel participants. However, according to German law there is no such limitation.

2.4 Chapter IV: Disclosure of evidence

2.4.1 Pre-trial discovery is only available in a handful of jurisdictions including the United States, Denmark and Israel. Attorney client privilege applies in the majority of the jurisdictions. The exceptions being China and Russia, where legal privilege does not exist.

2.4.2 In Austria there seems to be a conflict to the extent that the Austrian Antitrust Laws do not provide for legal privilege between the charged party and their counsels. Whereas, in Austrian literature, a legal privilege similar to the one known in EU-competition proceedings is increasingly often assumed and in practice applied.

2.4.3 It is interesting to note that in Slovenia the Higher Court of Ljubljana held that five types of evidence enlisted in the Civil Procedure Act are the only permissible types of evidence (visits, documents, witnesses, experts and hearings of litigating parties).

2.4.4 Generally, national courts have the power to order the defendant to disclose relevant evidence, usually based on a reasonable request from the claimant. However, in Austria, although the court may make such an order, there is no obligation for the party to comply. In case of non-compliance, the judge has to take the non-compliance into account in its consideration of evidence.

2.4.5 The majority of National Reports state that a NCA's files are available to claimants with the exception of any confidential information, or alternatively, that claimants can gain access to the files, provided that they meet a certain criteria.

2.4.6 The exceptions to this are Poland, Switzerland and Denmark where the files are not accessible to the court or individuals (who were not party to the proceedings) under any circumstances.

2.5 Chapter V: The Passing-On of Overcharges

2.5.1 In the United States, although under federal law indirect purchasers of products or services are not allowed to bring antitrust claims for damages, many state laws allow indirect purchasers to bring antitrust damages actions, and the rules and limits of these actions vary by state.

2.5.2 It is noteworthy that although the Slovenian law does not provide for the possibility of indirect purchasers, decisions of the EU courts would likely be considered by the Slovenian courts before rendering a decision in similar circumstances.

2.5.3 It is apparent from the National Reports that umbrella damages are not recognised in many jurisdictions, for example in Russia, China, Sweden, the United States or Italy. However, they are generally available in a number of jurisdictions including Finland, Austria, France and Germany.

2.5.4 It has been noted, however, by a number of National Reporters that although it may be a theoretical possibility, it would be very difficult in practice for a victim of umbrella damages to prove that there was a causal connection between the infringement and the damage suffered.

2.5.5 A number of National Reporters stated that the passing-on defence was not recognised in their jurisdiction (e.g. Finland, Italy, Brazil, Slovenia). However, the majority of jurisdictions do recognise the defence, such as Austria, Denmark, France, Germany and China. The National Report for France set out a recent court finding on the matter whereby it was ruled that the victims of a cartel had not suffered any harm as the price increase had been passed on to final consumers.

2.5.6 Interestingly, although some states in the United States recognise the passing-on defence, it is not available at a federal level.

2.6 Chapter VI: Damages

2.6.1 The majority of National Reports stated that only compensatory damages could be awarded by the court and that no punitive damages were available. The aim being to put the claimant back in the situation which would have existed if the antitrust law had not been violated.

2.6.2 However, in the United States damages can be trebled for purposes of deterrence.

2.7 Chapter VI: Quantification of Harm

2.7.1 As a general rule the claimant would bear the burden of proof. However, in Denmark and Brazil it is possible for the judge to invert the burden of proof in special cases.

2.7.2 A number of National Reports stated that the elements of the offence requiring proof were the same as for any tort, namely: illegal conduct, loss, adequate causal link between the conduct and the loss, and fault of the tortfeasor.

2.7.3 All National Reports, with the exception of Brazil, set out that there was no difference between stand alone and follow-on actions per se. However, a follow-on action provides the claimant with the advantage of relying on a (sometimes rebuttable) presumption that the anti-competitive conduct took place. The focus of the follow-on private action is therefore on proof of damage.

2.7.4 The "but for" test appeared to be standard for damage quantification in order to put the injured party in the same position as it would be if the wrongful act did not occur.

2.7.5 A number of National Reports, including Poland, Brazil, Finland and China, noted that there are no specific guidelines for quantifying damages in competition cases. China further stated that the calculation of damages in civil litigation would therefore apply, i.e. the damage will be either (1) the actual loss sustained by the plaintiff as a direct result of the tortious activity or contract violation, or (2) where such actual loss is difficult to calculate, the actual benefit obtained by the defendant.

2.7.6 No specific defences are available for competition law cases but also defences typically used against civil liability claims. In the United States all general defences are available as would be the case in commercial litigation. In private antitrust actions, the Noerr-Pennington defence and state action immunity are often used to avoid private antitrust liability.

2.7.7 Under the Noerr-Pennington doctrine, private entities are immune from liability under the antitrust laws for attempts to influence the passage or enforcement of laws, even if the laws they advocate for would have anticompetitive effects. Therefore in the United States, an effort to influence the exercise of government power, even for the purpose of gaining an anticompetitive advantage, does not generally create liability under the antitrust laws.

2.7.8 Under the state-action doctrine, state and municipal authorities are immune from federal antitrust lawsuits for actions taken pursuant to a clearly expressed state policy that, when legislated, had foreseeable anticompetitive effects. When a state approves and regulates certain conduct, even if it is anticompetitive under Federal Trade Commission ("FTC") or Department of Justice ("DOJ") standards, the federal government must respect the decision of the state. Therefore, if a state sanctions anticompetitive conduct, the state is immune from investigation and possible prosecution by the FTC. This doctrine can apply to provide immunity to non-state actors as well if a two-pronged requirement is met: (1) there must be a clearly articulated policy to displace competition; and (2) there must be active supervision by the state of the policy or activity.

2.7.9 All National Reports, without exception highlighted the importance of economic experts when assessing damages. A number of jurisdictions, including the United States and Israel, also highlighted their importance when explaining and defining the market in which the antitrust injury occurred.

2.7.10 The majority of National Reports indicated that there are no restrictions on the use of experts and the type of experts employed depends on the type of case and the issues at hand. Examples of experts submitted in the National Reports include accountants, technical, legal and industry experts.

2.7.11 In relation to follow on claims, fines imposed by the relevant NCA would not be taken into account by the courts. In the United States, although fines imposed by the DoJ, or any other enforcement agency, are not considered when quantifying damages in private follow-on actions, there is an exception for defendants qualifying for statutory leniency programs.

2.8 Chapter VII: Alternative Dispute Resolution

2.8.1 Arbitration is available in the majority of the jurisdictions with the exception of Russia where there is no alternative dispute resolution available for antitrust disputes. In China – although the law is silent on the matter – the National Reporter concluded that it was likely that some antitrust claims could be resolved through arbitration.

2.8.2 The National Reporter for Slovenia noted that to date the Slovenian courts have been more favourable to the defendants in antitrust cases and therefore a defendant would probably not seek to reach a settlement.

2.8.3 In addition to arbitration, mediation is available in Brazil, the United States, Slovenia, Denmark, France and Germany. In Germany mediation procedures often take place in front of "Kartellgerichte", which are conciliation offices with special knowledge on antitrust law.

2.9 Chapter VIII: Settlements

2.9.1 Although antitrust claims can be settled in all jurisdictions, the National Reports demonstrate that the procedure differs. For example, court approval is not required for settlements in Finland, Sweden or Denmark, whereas it is required in Italy, Brazil and Russia.

2.9.2 In the United States there is no specific settlement procedure outside of the class action process, but sometimes parties are able to reach settlement through arbitration or some other ADR mechanism. To enforce the settlement, the parties must resort to the courts. The timing of these settlements will be established under the local court's rules for ADR procedures.

2.10 Chapter IX: Recent case law

The majority of National Reports contained some interesting case law. A few examples have been included below:

Finland

"The Asphalt cartel case" - a judgment rendered by the Supreme Administrative Court of Finland, where the court found that a nationwide bid-rigging cartel had been operating in the Finnish asphalt paving market from 1994 until 2002. The District Court of Helsinki rendered its decision on 28th of November 2013, whereby 39 municipalities were awarded damages in the aggregate amount of EUR 37.5 million. The State of Finland's claim was dismissed as the Court held that the State had been aware and participated in the cartel. The decision has not gained legal force as most of the parties have appealed against the decision.

Italy

The Court of Cassation held that national courts must order full disclosure by the defendant in case of evidence incompletely submitted by a plaintiff where there is a "plausible" indication of an antitrust infringement.

According to the Court, the plaintiff only needs to demonstrate that there is a "plausible" indication that a company has infringed antitrust rules. As a result, the national court must order full disclosure by the defendant, as well as technical reports from independent experts.

This judgment is expected to substantially increase the chances of successful stand-alone actions brought against companies for alleged antitrust infringements, thereby considerably increasing the number of those claims.

Sweden

In June 2015, the Supreme Court delivered its judgment in a case between The Absolut Company AB and Systembolaget AB, concerning a challenge of an arbitral award, in which

the plaintiff had successfully claimed damages on the grounds that Systembolaget had abused its dominant (monopoly) position on the purchasing market for alcoholic beverages in Sweden.

The Supreme Court dismissed Systembolaget's appeal and concluded, among other things, that the arbitral tribunal's competition law assessment was clearly not contrary to mandatory EU competition law. The Supreme Court also noted that, even if the assessment made by the arbitral tribunal would have been incorrect to the extent that it was not supported by the substantive rules on the prohibition against abuse of dominant position, this would not mean that such a stricter application of the law would cause the arbitral award to be invalid.

Russia

In December 2015 the Supreme Court satisfied the claim of BIOTEK on compensation of damages expressed in the lost profits inflicted by TEVA.

In proceeding initiated by BIOTEK, BIOTEK claimed damages at TEVA in the amount of 16.5% from the sum of the contract which was not concluded between them and, in contrast, was concluded between TEVA and its subsidiary. This sum of lost profits was justified by the fact that in the case of concluding this contact BIOTEK will gain the profit in the mount not less than 16.5% from the sum of this contact.

Belgium

"The Lift Cartel case" - Following the infringement decision of the European Commission in 2007, the Commission itself brought proceedings before the Brussels Commercial Court on behalf of the European Union for damages it suffered as a result of elevators and escalators installed in buildings used by the European institutions in Belgium and Luxembourg. Several Belgian government bodies also brought a damage claim. On 24 November 2014 the Brussels Commercial Court dismissed the action of the European Commission on the ground that it had failed to demonstrated that it had suffered damages from the cartel in Belgium (in 2011 the Court had already rejected jurisdiction over the Luxembourg claims of the Commission). On 24 April 2015 the Brussels Commercial Court also dismissed the action of the Belgian government bodies on similar grounds.

Germany

In the German cement cartel case, CDC, a Belgium-based company specialized in collecting and enforcing claims of cartel victims against the cartel participants, had been assigned the claims of various victims of the cement cartel in order to pool these claims and to assert them against the cartel participants. In exchange, CDC received a purchase price consisting both of a small fixed amount and a success fee. Furthermore, the cartel victims contributed a certain amount to the court fees depending on their liquidity and their shares in the total claim amount. When filing its lawsuit CDC applied for a reduction of the value in dispute (*annotation*: which forms the basis of the litigation costs) to only EUR 5 million because of insufficient financial means to bear the entire costs in case of defeat.

The courts held that the assignment of the claims to CDC being a plaintiff-SPV was immoral and therefore void, because CDC was insufficiently funded. CDC would not have been capable of covering the litigation costs of the defendants in case of defeat. The defendant's

right for recovery, however, may not be circumvented by using a poor vehicle as plaintiff that reduces the plaintiff's risk of legal costs to the detriment of the defendant.

Hence, in order to be valid, the plaintiff company to whom such claims are assigned needs to have sufficient financial means in order to be able to bear the legal costs involved.

The Netherlands

In the CDC/Sodium Chlorate case, the Court of Appeals decided on matters relating to the application of Section 6(1) Reg. 44/2001 (with regard to the centralisation of jurisdiction in the case of several defendants) and the application and effects of forum and arbitration clauses. In this judgment, the Court of Appeal dismissed arguments by defendant Kemira that the case should have been brought in Finland. The District Court dismissed the arguments by the defendants that the forum and arbitration clauses in the supply contracts with the claimants obliged them to bring the claim before a Finish court. The Amsterdam Court of Appeal furthermore followed the recent ECJ answers to preliminary questions raised by the Landgericht Dortmund on Section 6(1) Reg. 44/2001. The court decides that the claims against Kemira and Akzo Nobel, against whom the claim was withdrawn following a settlement, were closely connected within the meaning of Section 6(1) Reg. 44/2001. The Dutch court therefore has jurisdiction, also with regard to Kemira. With regard to the jurisdiction and arbitration clauses, the court concludes that these do not cover actions for damages regarding infringements of competition law.

The TenneT/ABB case is an example of a case in which the Dutch courts accepted jurisdiction to hear claims against non-Dutch entities because the claim was primarily based on tort and the tortious act was considered to be committed in the Netherlands (the contract with Tennet was signed in the Netherlands) and the damages were sustained in the Netherlands.

France

In the telecommunication sector, SFR claimed against France Telecom the historical French and state-owned operator for abuse of dominant position in the fixed phone with respect to holiday homes. In first instance, the Paris commercial tribunal condemned on 12 February 2014 France Telecom to pay SFR EUR 51.38 million damages as a result of the loss of revenues with respect to holiday homes on the basis of Article L. 420-2 of the French commercial code. On 8 October 2014, the Paris Court of appeal reduced to zero the damage to be paid to SFR. According to the Court, the first instance jurisdiction failed to properly define the relevant market, as for example clarified in the European Commission's notice dated 9 December 1997. The Court was not convinced by the « Small but Significant Non transitory increase in Price », argued by SFR. It was not demonstrated that a relevant market limited to holiday homes, which represents less than 1% of the home phone market (about 330 000 clients) exists. The claimant did not also prove the exclusionary effect of the denounced practices.