iclg

Competition Litigation 2025

17th Edition

Contributing Editor:
Euan Burrows
Ashurst LLP

glg Global Legal Group

Expert Analysis Chapters

Q&A Chapters

Czech Republic

Vejmelka & Wünsch, s.r.o.

Tomáš Fiala

1 General

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

National competition rules are contained in Act No. 143/2001 Coll., on Protection of Economic Competition, as amended (the "Competition Act"). This Act is based on the principles of Articles 101 and 102 of the Treaty on Functioning of the European Union ("TFEU") as well as EU merger control rules. The competition rules are enforced at administrative level by the Office for Protection of Economic Competition (the "Office").

The scope of claims that may be brought before the competent Czech courts for the breach of the Competition Act and Articles 101 and/or 102 TFEU includes: (i) cease and desist orders; (ii) declaratory judgments; (iii) appropriate satisfaction; (iv) damages; (v) the surrender of unjust enrichment; and (vi) interim measures.

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

The substantive basis for bringing an action for breach of competition law forms the Competition Act and Articles 101 and/or 102 TFEU. As regards the damages claims for breaches of competition law, these are governed by Act No. 262/2017 Coll., on Damages in the Area of Economic Competition (the "Competition Damages Act"), implemented as from 1 September 2017 in the Czech Republic EU Directive 2014/104/EU on antitrust damages actions (the "Directive").

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

It follows from the answer to question 1.2 above that the legal basis for competition law claims derive both from EU and national competition law.

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

No; there are no specialist competition law courts in the Czech Republic. Therefore, the jurisdiction of a court to hear a case involving competition law will be determined by the general rules of jurisdiction laid down in Act No. 99/1963 Coll., the Civil Procedure Code, as amended (the "Civil Procedure Code"). Pursuant to the Civil Procedure Code, regional courts act as courts of first instance in matters concerning the protection of competition. Similarly, the Competition Damages Act provides that regional courts act as courts of first instance in disputes regarding compensation for damage caused by an anticompetitive behaviour. Accordingly, regional courts hear competition law cases in the Czech Republic. The high courts will rule on appeals against the decisions of the regional courts.

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? If collective claims or class actions are permitted, are these permitted on an "opt-in" or "opt-out" basis?

In general, any natural or legal person that has the capacity to assume legal rights and obligations may bring an action for damages before the competent Czech courts. Moreover, under the Civil Procedure Code, it is possible for several plaintiffs to bring an action jointly. Further, the Civil Procedure Code enables a person that has a legal interest in the outcome of the dispute to join the plaintiff as a "supporting participant". In addition, for reasons of procedural economy, the court has the right to join cases for the purpose of joint proceedings if the facts of the cases concerned are linked or if they involve the same parties.

However, most importantly, as of 1 July 2024, consumers, including small entrepreneurs with up to 10 employees and an annual turnover of up to CZK 50 million, may bring class actions, pursuant to the new Act No. 179/2024 Coll., on Civil Class Proceedings (the "Class Proceedings Act"). The law is based on the opt-in model, which means that consumers must actively register their claim. A group of at least 10 consumers is required in order for a class action to be admissible. Only non-profit organisations registered with the Ministry of Industry and Trade acting on behalf of a group of consumers can be plaintiffs in the proceedings and must be legally represented in court. The members of the group are not parties to the proceedings and only have limited procedural rights in the proceedings (e.g. to withdraw the application, to comment on the subject matter or conduct of the proceedings, right to information, to oppose a proposal for settlement, or to comment on an appeal). The Municipal Court in Prague is the competent court of the first instance.

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

There are no special rules under Czech law governing jurisdictional matters for competition law claims, but a number of general jurisdictional bases can be used to establish jurisdiction. In particular, the courts will have jurisdiction if the defendant has its seat or property in the Czech Republic, or if the event triggering the claim for damages occurred in the Czech Republic.

1.7 Does your jurisdiction have a reputation for attracting claimants or, on the contrary, defendant applications to seize jurisdiction, and if so, why?

The Czech Republic does not have a reputation of attracting claimants from other jurisdictions. Although the Competition Damages Act has removed the main elements that had hindered the development of private enforcement of competition law in the Czech Republic, there has been no apparent increase in claimants' interest since the effectiveness of this Act.

1.8 Is the judicial process adversarial or inquisitorial?

The Czech judicial proceedings are principally adversarial and the judge's role is primarily to resolve the dispute between the parties on the basis of the evidence they have proposed. However, the judge may examine evidence other than that proposed by the parties and can also examine witnesses.

1.9 Please describe the approach of the courts in your jurisdictions to hearing stand-alone infringement cases, including in respect of secret cartels, competition restrictions contained in contractual arrangements or allegations of abuse of market power.

An alleged breach of competition law is only rarely employed as a sole legal ground for an action in the Czech Republic. Typically, such actions are associated with unfair competition or contractual law claims. However, it is our position that where a claimant is able to show that a defendant breached one of the main competition law prohibitions, the court should go ahead and give a judgment. On the other hand, if there would be doubt in the court's mind whether the agreement or practice is caught by one of the main competition law prohibitions, the court should stay the proceedings and await the decision of the Office or ask the Office to elucidate questions of fact and law concerning the application of relevant competition rules. The Office will be obliged to provide the courts with such assistance.

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Yes; the competent court may take an interim measure either before or during the proceedings if it is necessary to provisionally regulate the relationships of the parties, or if there is a danger that the enforcement of the court decision could be jeopardised.

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

The court acts at the request of a party who alleges damage to individual interests. The burden of proof rests on the plaintiff, who must pay a security of CZK 50,000 to cover any potential damage. In principle, the party may seek the court to order the other party to do something or to refrain from something. The court must decide about the motion for a preliminary measure within seven days.

3 Final Remedies

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

Final remedies granted by the competent courts involve: (i) the annulment of the Office's decision in whole or in part (including cancelling or reducing fines); (ii) declaratory judgments (if the claimant can prove compelling legal interests in obtaining such legal determination of a court); (iii) appropriate satisfaction; (iv) the surrender of unjust enrichment; and/or (v) damages.

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available? Are there any examples of damages being awarded by the courts in competition cases that are in the public domain? If so, please identify any notable examples and provide details of the amounts awarded.

Under Czech law, the damages that can be sought by plaintiffs are compensatory and cover both direct damage and lost profit. Additionally, the court will award compulsory statutory interest. On the other hand, Czech law does not recognise the concept of punitive or exemplary damages. The Competition Damages Act does not provide specific guidance on the quantification of harm and only stipulates that if it is impossible to quantify the amount of damages precisely, it will be determined by the court. The most important case, in which monetary damages have been awarded, though not conclusively, so far, is *ASIANA v STUDENT AGENCY*. This was a follow-on damages case in which a bus transport company, ASIANA, sued its competitor, STUDENT AGENCY, for damages arising from abuse of a dominant position by setting unreasonably low prices and having forced ASIANA out of the bus transport market on the Prague-Brno route in 2007 and 2008. Following the case's several-year-long legal battle, in January 2024, the High Court confirmed a judgment of the Regional Court in Brno that awarded approximately CZK 11 million in damages, as well as default interest, to ASIANA on the basis of a submitted econometric study, which measured losses as the difference between the earnings ASIANA would have received if the harmful event had not occurred and the earnings ASIANA has received following the harmful event. However, the High Court's judgment can be appealed to the Supreme Administrative Court and the case can continue.

3.3 Are fines imposed by competition authorities and/or any redress scheme already offered to those harmed by the infringement taken into account by the court when calculating the award?

In view of the fact that the purpose of damages is to compensate the injured parties, the courts should not take into account penalties imposed by the Office on the defendant undertakings.

4 Evidence

4.1 What is the standard of proof?

In civil law cases, the court evaluates the evidence at its own discretion, taking into account all facts stated in the course of the proceedings. The principle of free evaluation of evidence means that it depends on the decision of the court, which evidence it admits and how it will evaluate the evidence. Although no clear standard of proof has been established, Czech jurists consider that facts and propositions need to be proved with probability that is nearing certainty.

4.2 Who bears the evidential burden of proof?

As a general rule, each party carries the burden of submitting and proving those facts upon which its claim or defence is based. The court does not conduct its own investigation but relies on facts and evidence placed before it by the parties. The plaintiff must thus present his/her case and submit all facts supporting the action. In response, the defendant must make the objections and pleas to his/her defence.

4.3 Do evidential presumptions play an important role in damages claims, including any presumptions of loss in cartel cases that have been applied in your jurisdiction?

Yes; the Competition Damages Act includes several legal presumptions that should make it easier to prove damages claims. In particular, this Act has established a rebuttable presumption that the cartels cause harm. This presumption is a clear divergence from the rules on general liability for damage where the burden rests with the claimant to prove that damage was suffered. The burden of proof that the cartel does not cause harm has thus been shifted to the infringers (defendants).

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

Under Czech law, any means by which the facts can be ascertained may serve as evidence. The Civil Procedure Code expressly lists the following: examination of witnesses, expert witnesses, reports and statements of authorities, individuals or legal entities, notarial or executorial records and other documents, inspection by the court, and examination of the parties.

4.5 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)?

Under the Competition Damages Act, the parties have easier access to evidence necessary in action for damages. In particular, if a party needs specific documents that are in the hands of other parties or third parties to prove a claim, it may obtain a court order for the disclosure of such documents. The judge will have to ensure that disclosure orders are proportionate and that confidential information is duly protected. Non-compliance with a disclosure order is subject to the imposition of a procedural fine by the court. However, amnesty/leniency and settlements statements are excluded from the disclosure.

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

Under the Civil Procedure Code, each person, who is not a party to the proceedings, is obliged to appear as a witness when summoned by the court. This duty may be refused only if such person would expose himself or herself or related person to the risk of criminal proceedings. A person that fails to appear before the court without an excuse may be brought to the court by the police, if previously warned of such consequence. The judge can put the questions to the witness. The parties can also question the witness, if allowed by the court.

4.7 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?

The Competition Damages Act states that the decisions of other courts, the European Commission and the Office finding a competition law infringement are binding on the courts and constitute full proof that the infringement occurred. The decisions of the competition authorities of other EU Member States will constitute *prima facie* evidence of an infringement.

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

In order to protect business secrets, the court may impose under the Competition Damages Act a confidential duty on parties to which such secrets are disclosed. In the case of breaching such secret, a penalty of up to CZK 1 million may be imposed on the relevant party. Moreover, a non-financial penalty may be imposed as a consequence of which it is not allowed to use the evidence to which the breached confidentiality duty relates.

4.9 Is there provision for the national competition authority in your jurisdiction (and/or the European Commission, in EU Member States) to express its views or analysis in relation to the case? If so, how common is it for the competition authority (or European Commission) to do so?

The Competition Act provides for the possibility of the Office to assist domestic courts in proceedings for the application of Articles 101 and 102 TFEU. To that end, the Office may submit statements to the courts concerning the application of Community competition rules. We are not aware of the case where the Office acted as *amicus curiae* before the competent Czech courts.

4.10 Please describe whether the courts in your jurisdiction have a track record of taking findings produced by EU or domestic *ex-ante* sectoral regulators into account when determining competition law allegations and whether evidential weight (non-binding or otherwise) is likely to be given to such findings.

In the Czech Republic, to the author's best knowledge, a track record of using findings of sectoral regulators in competition litigation cases is missing. Similarly, we are unaware of any precedents relating to the legal effects of sectoral regulators' findings in follow-on actions before national courts, but it seems that any evidential weight of such findings would be governed exclusively by national procedural rules laid down in the Civil Procedure Code and the principle of free evaluation of the evidence by the court, meaning that it would depend on a decision of the court how to evaluate such findings. This issue was unaffected by the Competition Damages Act.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

No; there is no specific defence of justification and/or public interest available under Czech law. However, with respect to the undertakings entrusted with the operation of services of general interest (e.g. basic postal service), the Competition Act is applied to those undertakings insofar as such application does not render the performance of these services impossible. Therefore, they may invoke that their agreements or practices do not fall within the scope of application of the competition rules.

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

The Competition Damages Act stipulates that the defendants can rely on the passing-on defence against the claimant. The infringer can thus reduce compensation to direct customers by the amount they passed on to indirect customers. At the same time, the infringer will bear the burden of proof to demonstrate that the claimant offset the increased price it paid by raising the prices it charged to its own customers.

5.3 Are defendants able to join other cartel participants to the claim as co-defendants? If so, on what basis may they be joined?

Yes; the Civil Procedure Code enables a person that has a legal interest in the outcome of the dispute to join the plaintiff as a "supporting participant". Such person may participate in the proceedings either on the basis of his/her own motion or upon a motion of the plaintiff or the defendant.

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?

Yes; injured parties have five years to bring damages actions, starting from the time the infringement has ceased and the claimant became aware or can reasonably be expected to know (i) the harm and the identity of the infringer, and (ii) the competition law infringement. The Competition Damages Act also specifies instances where the running of limitation period is suspended, such as, for example, the investigation or the proceedings before the competition authority.

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?

Due to the lack of a significant body of case law regarding the competition law claims, it is difficult to assess the average length of judicial proceedings in these cases. However, our opinion is that the first instance proceedings should take from one to two years, while appellate proceedings could take another one to two years. Accordingly, we assume that the final judgment might be obtained within two to four years.

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)?

No; it follows from the Competition Damages Act that if the parties to the proceedings inform the court that they entered into negotiations over out-of-court settlement, the court will automatically suspend the proceedings for a period of up to two years.

7.2 If collective claims, class actions and/or representative actions are permitted, is collective settlement/settlement by the representative body on behalf of the claimants also permitted, and if so on what basis?

Yes, under the Class Proceedings Act, settlements are permitted; however, the court's approval is required. The court will only approve the settlement where it is satisfied that the terms of collective settlement are just taking into account the interests of the group.

8 Costs

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

Yes; the court will determine allocation of costs in its final decision. As a rule, a party who had full success in the case shall be reimbursed the costs, including the court fee and costs of legal representation, by the unsuccessful party. However, in practice, only part of the actual cost of litigation is recovered by the winning party.

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

Yes; attorneys are allowed to agree on a success fee based on a share of the total amount awarded in the case. Such an arrangement must be reasonable and may not be clearly disproportionate to the value and complexity of the matter.

8.3 Is third-party funding of competition law claims permitted? If so, has this option been used in many cases to date?

As a rule, each party shall pay its fees and expenses incurred in the course of the court proceedings. However, a party is not restricted from asking third persons for assistance with financing such expenses, including its lawyer's costs. Recently, third-party litigation funders have started to operate on the Czech market.

9 Appeal

9.1 Can decisions of the court be appealed?

Yes; any party can bring an appeal against the decision of the regional court before the competent high court. The appeal must be filed within 15 days after the delivery of a written form of the contested court decision.

10 Leniency

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

Yes; the Office operates a leniency programme, whose main principles are set out in the Competition Act, while the detailed conditions are contained in the Office's guidance that is available at its website.

In order to safeguard the effectiveness of the leniency programme, the Competition Damages Act provides an exception from joint and several liability for successful leniency applicants; these immunity recipients will be obliged to compensate only their own purchasers.

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 Competition Damages Act has introduced certain restrictions on the disclosure of certain types of documents. In particular, immunity/leniency statements and settlements submissions are protected and permanently excluded from the disclosure. Other documents prepared by the defendants specifically for the purpose of the administrative proceedings (e.g. responses to the information requests) are only temporarily excluded from the disclosure, which can be ordered after the Office closed the proceedings.

11 Anticipated Reforms

11.1 What approach has been taken for the implementation of the EU Directive on Antitrust Damages Actions in your jurisdiction? How has the Directive been applied by the courts in your jurisdiction?

Although the Competition Damages Act, which implemented the Directive in the Czech Republic, has been in operation almost six years, the private enforcement of competition infringement claims is still very rare and there is no relevant case-law of national courts on this matter. It is, therefore, practically impossible to assess the courts' approach to application of new instruments and use econometric evidence in damages calculation.

11.2 Please identify, with reference to transitional provisions in national implementing legislation, whether the key aspects of the Directive (including limitation reforms) will apply in your jurisdiction only to infringement decisions post-dating the effective date of implementation; or, if some other arrangement applies, please describe it.

It follows from the Competition Damages Act that its procedural provisions (e.g. the rules referring to disclosure of evidence) have governed proceedings initiated after 25 December 2014, i.e. after the Directive entered into force. However, substantive provisions (e.g. statute of limitation or scope of damages) have governed actions brought after the Competition Damages Act took effect, i.e. after 1 September 2017.

11.3 Are there any other proposed reforms in your jurisdiction relating to competition litigation?

No changes in the legislation governing competition litigation are expected in the Czech Republic in the near future. Nonetheless, on 1 July 2024, the Class Proceedings Act came into force. This Act has introduced the previously unknown concept of collective proceedings to the Czech law and could lead to an increase in competition litigation.

Tomáš Fiala is an attorney at Vejmelka & Wünsch. Tomáš has worked in the Competition Office as the EU Department Director. Tomáš participated as a speaker at several seminars and conferences and is an author of various legal articles on competition law.

Vejmelka & Wünsch, s.r.o.
Italská 27
120 00, Prague
Czech Republic

Tel: +420 222 25 30 50
Email: prague@vejwun.cz
URL: www.vejwun.cz/en/tomas-fiala

iclg International Comparative Legal Guides

The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Competition Litigation 2025 features two expert analysis chapters and 18 Q&A jurisdiction chapters covering key issues, including:

- Interim Remedies
- Final Remedies
- Evidence
- Justification / Defences
- Timing
- Settlement
- Costs
- Appeal
- Leniency
- Anticipated Reforms

The International Comparative Legal Guides are published by: glg Global Legal Group