

# Private Antitrust Litigation

in 27 jurisdictions worldwide

Contributing editor: Samantha Mobley

# 2010



Published by  
*Getting The Deal Through*  
in association with:

Anderson Mōri & Tomotsune

Baker & McKenzie LLP

Barretto Ferreira, Kujawski, Brancher e Gonçalves  
– Sociedade de Advogados (BKBG)

Bell Gully

Boekel De Nerée

CHSH Cerha Hempel Spiegelfeld Hlawati

CHSH Gilesco & Partenerii /  
Cerha Hempel Spiegelfeld Hlawati

Cleary Gottlieb Steen & Hamilton LLP

Edward Nathan Sonnenbergs Inc

Hausfeld & Co LLP

Law Offices Panagopoulos, Vainanidis,  
Schina, Economou

Linklaters LLP

Maclay Murray & Spens LLP

Mannheimer Swartling

Marques Mendes & Associados

Matheson Ormsby Prentice

Mayer Brown LLP

McMillan LLP

Roschier, Attorneys Ltd

Salans

SimmonsCooper Partners

SJ Berwin LLP

Vasil Kisil & Partners



## Private Antitrust Litigation 2010

**Contributing editor:**  
Samantha Mobley  
Baker & McKenzie LLP

**Business development manager**  
Joseph Samuel

**Marketing managers**  
Alan Lee  
Dan Brennan  
George Ingledew  
Edward Perugia  
Robyn Hetherington  
Dan White  
Tamzin Mahmoud  
Ellie Notley

**Subscriptions manager**  
Nadine Radcliffe  
Subscriptions@  
GettingTheDealThrough.com

**Assistant editor**  
Adam Myers

**Editorial assistant**  
Nick Drummond-Roe

**Senior production editor**  
Jonathan Cowie

**Chief subeditor**  
Jonathan Allen

**Senior subeditor**  
Kathryn Smuland

**Subeditors**  
Laura Zúñiga  
Ariana Frampton  
Sarah Dookhun

**Editor-in-chief**  
Callum Campbell

**Publisher**  
Richard Davey

### Private Antitrust Litigation 2010

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd  
2009

No photocopying: copyright  
licences do not apply.

ISSN 1742-2280

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of September 2009, be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0870 897 3239

**Law**

**Business**

**Research**

<b>Introduction</b> Anthony Maton and Scott Campbell <i>Hausfeld &amp; Co LLP</i>	<b>3</b>
<b>Austria</b> Bernhard Kofler-Senoner and Hasan Inetas <i>CHSH Cerha Hempel Spiegelfeld Hlawati</i>	<b>8</b>
<b>Belgium</b> Françoise Lefevre, Johan Ysewyn and John Biart <i>Linklaters LLP</i>	<b>13</b>
<b>Brazil</b> Paulo Brancher <i>Barretto Ferreira, Kujawski, Brancher e Gonçalves – Sociedade de Advogados (BKBG)</i>	<b>18</b>
<b>Canada</b> David Kent, Martin Low QC and Jonathan Hood <i>McMillan LLP</i>	<b>24</b>
<b>Czech Republic</b> Lucie Bányaiová <i>Salans</i>	<b>29</b>
<b>England &amp; Wales</b> Samantha Mobley, Keith Jones and Francesca Richmond <i>Baker &amp; McKenzie LLP</i>	<b>33</b>
<b>Finland</b> Christian Wik, Inga Korpinen and Sari Rasinkangas <i>Roschier, Attorneys Ltd</i>	<b>44</b>
<b>France</b> Mélanie Thill-Tayara and Marta Giner Asins <i>Salans</i>	<b>49</b>
<b>Germany</b> Alexander Rinne and Monika Heymann <i>SJ Berwin LLP</i>	<b>55</b>
<b>Greece</b> Aida Economou <i>Law Offices Panagopoulos, Vainanidis, Schina, Economou</i>	<b>60</b>
<b>Hungary</b> Bernhard Kofler-Senoner, Tamás Polauf and Ditta Csomor <i>CHSH Cerha Hempel Spiegelfeld Hlawati</i>	<b>64</b>
<b>Ireland</b> Hazel McElwain and Nina Cummins <i>Matheson Ormsby Prentice</i>	<b>69</b>
<b>Italy</b> Mario Siragusa, Cesare Rizza and Marco D'Ostuni <i>Cleary Gottlieb Steen &amp; Hamilton LLP</i>	<b>75</b>
<b>Japan</b> Hideto Ishida and Shigeyoshi Ezaki <i>Anderson Mōri &amp; Tomotsune</i>	<b>82</b>
<b>Netherlands</b> Frederieke Leeftang <i>Boekel De Nerée</i>	<b>86</b>
<b>New Zealand</b> Simon Ladd, Phil Taylor and David Blacktop <i>Bell Gully</i>	<b>92</b>
<b>Nigeria</b> Babatunde Irukera and Ikem Isiekwena <i>SimmonsCooper Partners</i>	<b>97</b>
<b>Poland</b> Anna Maria Puksztó and Patrycja Salacińska <i>Salans</i>	<b>101</b>
<b>Portugal</b> Mário Marques Mendes and Pedro Vilarinho Pires <i>Marques Mendes &amp; Associados</i>	<b>106</b>
<b>Romania</b> Bernhard Kofler-Senoner, Marius Magureanu and Paula Bourdenet <i>CHSH Gilescu &amp; Partenerii / Cerha Hempel Spiegelfeld Hlawati</i>	<b>111</b>
<b>Scotland</b> Catriona Munro and Sarah Hoskins <i>Maclay Murray &amp; Spens LLP</i>	<b>115</b>
<b>Serbia</b> Milica Subotić <i>Janković, Popović &amp; Mitić</i> Bernhard Kofler-Senoner <i>CHSH Cerha Hempel Spiegelfeld Hlawati</i>	<b>122</b>
<b>Slovakia</b> Soňa Hanková <i>Salans</i>	<b>127</b>
<b>South Africa</b> Lee Mendelsohn and Mark Garden <i>Edward Nathan Sonnenbergs Inc</i>	<b>132</b>
<b>Sweden</b> Tommy Pettersson, Stefan Perván Lindeborg and Elin Eriksson <i>Mannheimer Swartling</i>	<b>138</b>
<b>Ukraine</b> Oleksiy Filatov and Oleksandr Mamunya <i>Vasil Kisil &amp; Partners</i>	<b>142</b>
<b>United States</b> T Mark McLaughlin, Andrew S Marovitz and Britt M Miller <i>Mayer Brown LLP</i>	<b>146</b>

# Lithuania

Ramūnas Audzevičius, Henrikas Celencevičius, Tomas Samulevičius and Giedrius Gražulis

Motieka & Audzevičius

## Legislation and jurisdiction

- 1 How would you summarise the development of private antitrust litigation?

The main goal during the period of transformation from the Soviet planned economy to the free market economy was to form the competitive market. Therefore, the following means were undertaken:

- transformation of the state property into the private property and diversification of the ownership forms; and
- formation of the rational industrial structure consisting of small, medium and large companies and the benevolent environment for their activities.

Law on Competition is the main document that regulates competition (or antitrust) field in Lithuania.

The first implementation of the Lithuanian antitrust policy was the abolishment of the control over prices by the state (except certain areas). That came into being in 1991 after the independence of Lithuania was restored.

However, the state regulates prices in certain areas, such as energy, public utilities, medical services, transport and telecommunications services. Modern-day price control on ceiling prices in areas above is explained by the existence of monopoly in the above-mentioned sectors. Such price control seeks to guarantee accessibility of those services and commodities to all social groups.

The enforcement of competition law bears colossal importance for the Lithuanian economy.

Legal basis for private enforcement is determined in the Law on Competition. This Law provides for a twofold approach to the private party enforcement of competition law.

Foremost, the Law on Competition provides that an undertaking, whose legitimate interests were violated by actions in breach of articles 81 or 82 of the EC Treaty or other restrictive actions prohibited by the Law on Competition, is entitled to bring an action before the Vilnius County Court for the termination of illegal actions and compensation for damage incurred.

The Law on Competition prohibits standard restrictions on competition:

- restrictive agreements and practices (eg, price fixing, market sharing);
- abuse of dominant position (eg, refusal to supply, tying); and
- unfair competition (eg, misleading advertising, trademark infringements).

In case of unfair competition, an undertaking, whose legitimate interests were violated (eg, owner of the registered trademark, undertaking injured by misleading advertising), is entitled to bring an action before the courts for the termination of illegal actions or compensation for damage incurred, or both.

Also, Law on Competition establishes an obligation for undertakings that are in breach of the Law on Competition to indemnify

for the damages caused to other undertakings or natural and legal persons. Indemnification is to be granted in accordance with the procedure and principles established by virtue of the Code of Civil Procedure and the Civil Code of the Republic of Lithuania.

The jurisprudence of the European Court of Justice and court of first instance gets ever more popular in private antitrust litigation, although practice by national courts is still widely referred to and applied.

The first notable private antitrust case in Lithuania (to our best knowledge – also in European Union (EU)) was brought before the court without any pre-trial discovery procedures in national competition agency (the Competition Council). Motieka & Audzevičius attorneys-at-law (namely, Ramunas Audzevičius and Henrikas Celencevičius) are assisting the client of Motieka & Audzevičius – Lithuanian international carrier flyLAL – Lithuanian Airlines, AB regarding the mentioned case of the predatory pricing by Air Baltic A/S which (allegedly) breached article 82(2)(a) EC Treaty and (allegedly) caused damage.

- 2 Are private antitrust actions mandated by statute? If not, on what basis are they possible?

Private antitrust actions are mandated by statute in Lithuania. However, antitrust litigation proceedings are conducted by national competition agency (the Competition Council) and its decisions can be appealed to the administrative courts.

The claims for injunctive relief and damages may be based on the Law on Competition of Republic of Lithuania. Besides, the claimant is entitled to the full recovery of damages caused by unlawful conduct of defendant.

A further legal basis for private antitrust actions can be found in general tort law implemented by the Civil Code. The invalidity of agreements for antitrust reasons can also be based on provisions of the Civil Code.

- 3 If based on statute, what is the relevant legislation and which are the relevant courts and tribunals?

The relevant private antitrust legislation is both national and adopted by the EU.

There are the following Lithuanian laws on antitrust policy:

- the Law on Competition;
- the Law on Prices;
- the Law on Electronic Communication Networks;
- the Law on Electricity;
- the Law on Natural Gas; and
- the Resolutions “Concerning the Government of the Republic of Lithuania programme”.

The main document that regulates the antitrust policy in Lithuania is the Law on Competition. The purpose of this law is to protect and to

secure freedom of fair competition in the country. Also, this law seeks to harmonise the Lithuanian and the EU law regulating competition relations. The Law on Competition prohibits all actions of public and local authorities and undertakings that restrict or may restrict competition, as well as actions of unfair competition, establishment of rights, duties and liabilities of said institutions, and undertakings and the legal basis for the control of competition restriction, as well as unfair competition in Lithuania.

The Law on Competition is applicable to the activity of undertakings registered beyond the Lithuanian territory if said activity restricts competition in the domestic market. This law is not applicable to activity of undertakings that restricts competition on foreign markets, unless international agreements to which Lithuania is a party provide otherwise.

#### **The executive of the state antitrust policy – the Competition Council and the administrative courts**

The body executing the antitrust policy in Lithuania is the national competition agency (the Competition Council). The purpose ascended to this institution is to control the directions of the antitrust policy to fit the economical state of Lithuania and to harmonise the antitrust policy with the laws of the European Union.

The Competition Council controls the compliance by undertakings, public and local authorities with the requirements of the Law on Competition, establishes the criteria and procedure for providing the definitions of the relevant market and dominant position, investigates and defines relevant markets, determines the market share of undertakings, and their position in a relevant market; gives obligatory instructions to undertakings as well as public and local authorities to submit financial and other documentation, including that containing commercial secrets and other information required for market investigation or fulfilment of other tasks of the Competition Council.

The Competition Council analyses the correspondence of the adopted resolutions and decisions of governmental bodies and municipal institutions with the Law on Competition.

The administrative court are the ones competent to hear challenges of the Competition Council decisions in antitrust litigation proceedings. Nevertheless, Lithuanian Civil courts take the main role in proceedings under the actions for damages recovery.

The Competition Council has the right to appeal against such resolutions and decisions to the Supreme Administrative Court of Lithuania, and appeal the decisions of the local authorities to the regional administrative courts.

The Competition Council investigates the cases of unfair competition only in case of the infringements of the rights and interests of consumers or other economical subjects. This institution investigates and considers other infringements of the Law on Competition (not only unfair competition) and imposes penalties on the defaulters in cases and following the procedure provided for by law; it also starts the procedure before the court for the protection of interests of the state and other persons safeguarded by law.

#### **4** In what types of antitrust matters are private actions available?

Private actions are available in cases of proceedings for damages recovery, which may derive from cartel or other prohibited agreements cases, as well as from abuse of dominant position cases or other cases, where there was a breach of the Law on Competition. Private actions could also be related with challenging the validity of transaction that infringes competition rules defined by domestic statutes and EU legislation.

#### **5** What nexus with the jurisdiction is required to found a private action?

The conditions which must be satisfied to start a private antitrust action in Lithuania are: the place where damages were incurred has to be in Lithuania; or defendant's place of business must be established in Lithuania, etc.

#### **6** Can private actions be brought against both corporations and individuals, including those from other jurisdictions?

Yes. Private antitrust actions can be brought against both legal persons and individuals, including foreign persons and subjects from other jurisdictions. Claim of flyLAL Lithuanian Airlines against Air-Baltic Corporation is one of the major examples of private action against corporations.

#### **7** If the country is divided into multiple jurisdictions, can private actions be brought simultaneously in respect of the same matter in more than one jurisdiction?

Not applicable. Lithuania is not divided into multiple jurisdictions. Lithuania is a unitary state.

#### **Private action procedure**

#### **8** May litigation be funded by third parties? Are contingency fees available?

Yes. If the third party could prove that it has sufficient material and legal interest, it may start litigation. There is no prohibition to initiate the litigation. Nevertheless, it is far from common litigation practice in Lithuania to start litigation for the third party as it is understood in Western countries. It's much more common when the third party enters the litigation process, which has already started or is initiated by other parties, which are directly related to the dispute.

In general, the contingency fees are available. These fees are the subject of negotiations between legal representative and the client.

#### **9** Are jury trials available?

No, jury trials are not available in Lithuania.

According to the Law on Competition, the Vilnius County Court as the court of first instance has exceptional right to hear civil disputes concerning violation of national and EC competition rules. Interpretation and application of articles 81 and 82 of the EC Treaty by national courts derogating from the practice of the EC Commission constitutes infringement and amounts to the basis for renewal of the proceedings. Cases in the courts of first instance are investigated by one professional judge and in the appellate instance – by three.

#### **10** What pre-trial discovery procedures are available?

The administrative procedures in the national competition agency (the Competition Council) are available in Lithuania as compared to "discovery" under the common law system. It is for each of the parties in dispute to obtain and present the evidence that it wishes to rely on. A party can, however, request the court to order the other party to submit written evidence if the requesting party demonstrates that the requested documents could constitute possible relevant evidence in the action. Additionally, Lithuanian procedural laws provide for the mechanism of securing the evidence at the request of the party. Thus, the private party enforcement of competition law follows the standard adversarial court procedure.

In conclusion, for claimants (direct and indirect purchasers) the applicable standard of proof is the rule on balance of probabilities and for defendants (when arguing a passing-on defence) preponderance of the evidence is the applicable standard.

**11** What evidence is admissible?

Explanations of parties, written documents (eg, contracts, website printouts, e-mails, letters, attendance notes, telephone notes, etc), witness statements, experts' opinions, material evidence and other evidence are admissible in private action procedure. In administrative case the claimant should prove that either the exercises of the law or the administrative procedure was illegal. The administrative procedure should be carried out in accordance with the main principals of the public administration – impartiality, proportionality, supremacy of law, efficiency. The administrative courts have the right to satisfy the claimant's appeal based on every ground mentioned above.

**12** What evidence is protected by legal privilege?

All kinds of communication between the principal and attorneys at law are protected by legal privilege. The advice from in-house counsel is not privileged.

**13** Are private actions available where there has been a criminal conviction in respect of the same matter?

Under Lithuanian law private actions are available regardless of whether there has been a prosecution under competition or criminal law. There is no difference between private actions as to whether there has been a criminal conviction or not.

**14** Can the evidence or findings in criminal proceedings be relied on by plaintiffs in parallel private actions? Are leniency applicants protected from follow-on litigation?

Yes, the evidence or findings in criminal proceedings can be relied on by plaintiffs in parallel private actions. Nevertheless, the judge in civil matters is not bound by the findings of the criminal court; however, findings in the criminal court could play the role in absence of other evidence.

No, leniency applicants are not protected from follow-on litigation.

**15** What is the applicable standard of proof for claimants and defendants?

According to the Code of Civil Procedure, the parties have to prove their allegation on which they base their claims. The standard of proof established by the procedural laws is that of "beyond reasonable doubt". Hence, the plaintiff bears the burden of proof with regard to the infringement of the Law on Competition and of the incurrance of damage and its amount. The defendant, conversely, has a right to refute the plaintiff's allegations and bring in evidence to the contrary, although the defendant is presumed to have acted at a fault.

**16** What is the typical timetable for collective and single party proceedings? Is it possible to accelerate proceedings?

There is no standard timetable for court proceedings. The total length of litigation including all instances could be around three years. The proceedings may be accelerated if there is applicable decision of national competition agency (the Competition Council) in force regarding antitrust behaviour.

**17** What are the relevant limitation periods?

General limitation period is 10 years in Lithuania. But for some actions there are limited limitation periods (eg, there is a three-year limitation period for damages action).

Limitation period starts from the moment the interested party learns about the breach of his legitimate interests by antitrust behav-

our. Generally, limitation period may start from the exercise of the antitrust behaviour or when the damages were incurred.

There is also a three-year limitation period for the application of the administrative responsibility for the breach of antitrust law. In case the breach is conducted by the continuing actions this limitation period starts after the commitment of the latest actions.

**18** What appeals are available? Is appeal available on the facts or on the law?

In administrative procedure conducted by national competition agency (the Competition Council) the interested party may appeal to the Vilnius district administrative court (the administrative court of first instance), the decision of which may be reversed by the Supreme administrative court (the court of the appellate instance).

In civil procedure conducted by national civil courts the claim based on the infringement of articles 81 and 82 of the EC Treaty shall be handled by the Vilnius district court (court of first instance). The decision of the latter may be reversed by the Lithuanian Appeal court (court of the appeal instance). The Supreme Court of Lithuania may reverse the decision of the court of the appeal instance (cassation). All appeals, except the latter, are available both on the facts and in the law. Cassation is available only on issues of law.

**Collective actions****19** Are collective proceedings available in respect of antitrust claims?

Class actions are provided under Lithuanian law. However, due to the lack of certain legislative instruments implementing the mechanism of class actions, collective consumer antitrust actions are not at present considered a genuinely relevant cause of action. Notwithstanding that, actions brought by a prosecutor in defence of public interests and actions from either consumer protection institutions or public consumer organisations are possible (although, as stated above, they cannot claim indemnification for damages). Collective proceedings in the sense of participation of several parties in the proceedings (without all injured parties being called through the means of mass media etc), are available in respect of antitrust claims in Lithuania.

**20** Are collective proceedings mandated by legislation?

Yes, but only by the procedural rules.

**21** If collective proceedings are allowed, is there a certification process? What is the test?

There is no certification process in collective proceedings.

**22** Have courts certified collective proceedings in antitrust matters?

The Lithuanian national courts have not clearly certified collective proceedings in antitrust matters.

**23** Are 'indirect claims' permissible in collective and single party proceedings?

Indirect claims are permissible both in collective- and single-party proceedings.

**24** Can plaintiffs opt out or opt in?

Not applicable.

**Update and trends**

Competition law is facing challenges of rapid technological change in a global world. Technology and globalisation increasingly allow the creation of market leaders, and soon the new market leaders will oust them. A lot of competition rules came into being under circumstances so different from today, which leads to the fact that such rules are sometimes deprived of their relevance, but they still form legal basis for relevant actions and serve as a platform for competition policy. One of the major problems is the institutional restrictions on entrance to the market and competing in it.

Notably, competition policy and competition regulation in Lithuania, EU and throughout the world has had a series of debates. In particular, talks on the emerging threats for competition, and the competition policy against such threats were debated. Limitations of competition as such are primarily due to the various legal restrictions and the administrative practices by the state. The situation in Lithuania is somewhat more favourable, because the Law on Competition provides for the possibility of challenging the unlawful actions by the government and local government that restrict competition. However, the practice shows that such a tool, while adequate, is not sufficient – conditions of competition are totally dependent on government policy and individual decisions.

On the other hand, European and Lithuanian experience shows that penalisation of undertakings for the abuse of dominant position,

cartels or mergers often go beyond the legitimate expectations of market participants. In certain circumstances competition rules distort what could be the most efficient market structure, and severely penalise transactions that are merely an exercise of the rights of ownership. Moreover, certain competition law mechanisms are a potential tool against competitors that organise their activities in a more efficient manner (and eg, are able to offer a smaller price, which is always under suspicion of “predation”).

Cartel cases in Lithuania show that violations usually can be qualified as non-material. The negative results of the cartel are caused not by the cartel itself but by the state regulation, which allows ineffective cartels to stay. Practice has shown that competition is strongest when there is a minimum state participation in the economy. This is not linked with the state activities against cartels.

The determination of abuse of a dominant position is not sufficiently defined. In fact it can be applied to any case where any significant role in the entrance reserves the competitive edge. This constitutes a barrier for ensuring competition, and often reduces the opportunities to compete for customers.

The Law on Competition catches too many small mergers, which do not seriously affect the market in Lithuania. The existing regulation costs business a lot of expenditures, delays and operational decisions.

**25** Do collective settlements require judicial authorisation?

Yes, as any other, but only in the manner that they do not contradict with imperative legislation. Only the civil case could be settled, but there is no such option in the administrative procedure.

**26** If the country is divided into multiple jurisdictions, is a national collective proceeding possible?

Not applicable. Lithuania is not divided into multiple jurisdictions. Lithuania is a unitary state.

**27** Has a plaintiffs' collective-proceeding bar developed?

Not much, since there are not many cases regarding collective proceedings in antitrust cases.

**Remedies**

**28** What forms of compensation are available and on what basis are they allowed?

Recovery of damages is always available. Recovery of damages is limited to actual direct and indirect loss.

**29** What other forms of remedy are available?

According to the Law on Competition of Republic of Lithuania, undertaking is entitled to the following additional remedies: termination of illegal actions; imposition of the obligation to make one or several statements of a certain content or form, denying the previously submitted incorrect information or giving explanations as to the identity of the undertaking or its goods; seizure and destruction of the goods, their packaging or attributes, directly related to unfair competition, unless the infringement can be eliminated otherwise.

Besides, violations of the competition laws may be subject to serious penalties: the offenders can be forced to stop illegal activities, to sell the business or part of the assets or part thereof, shares, reorganisation of the company. Unfair practices are subject to penalties ranging from 3 per cent to 10 per cent of the gross annual income (turnover) of the previous business year.

**30** Are punitive or exemplary damages available?

The punitive damages are forbidden and the exemplary damages are not available by Lithuanian law.

**Some notes on damages in general**

According to the Civil Code, damages include the amount of direct expenses related to the injury (direct losses), as well as income not received due to the infringement by the defendant (indirect losses). The purpose of damages is to compensate the injured party for the loss that he has suffered from the defendant's illegal conduct. Damages also include reasonable expenses to remit the damage and expenses to recover damages in proceedings.

Lithuanian courts are entitled to award damages based on the estimation made themselves at their own discretion in case the plaintiff is able to prove that causality, but evidence regarding the exact amount of the plaintiff's loss cannot be obtained or would be exceptionally difficult or costly to provide. The profit made by the defendant can be used as a measure of damages in such cases. According to the Lithuanian law the Courts may also award future damages on the ground of evidence that such damages have sufficient probability to occur in the future.

The recommended maximum possible litigation costs are established by supplementary acts of the government. Usually the courts award litigation expenses at their own discretion, therefore attorney fees are awarded only to a limited extent.

**31** Is there provision for interest on damages awards?

There are general legislative provisions for interest, as minimum. But the plaintiff may seek for compensation of extra reasonable expenses, which were suffered to prevent greater damages, to evaluate them or to collect them without litigation. Also interest is available from the start until the end of the proceedings.

**32** Are the fines imposed by competition authorities taken into account when settling damages?

The fines imposed by the national competition agency (the Competition Council) are not taken into account when settling damages. The claimant is entitled to seek full recovery of damages.

**33** Who bears the legal costs? Can legal costs be recovered, and if so, on what basis?

As a general rule, the legal costs are borne by the unsuccessful party. The legal costs include the costs for the court proceedings (state costs) and the parties cost as well as the attorneys at law fees. The court allocates legal costs between the parties on a pro-rata basis according to the outcome of the case. The winning party can recover the legal costs on the basis of a separate decision fixing the substantive amount of the recoverable costs. In this regard, attorney-at-law fees are calculated on the basis of statutory fees.

**34** Is liability imposed on a joint and several basis?

When damages were caused by several subjects (legal persons or individuals), the liability of the defendants is joint and several. Therefore, each defendant is liable for the damages incurred by the claimant.

**35** Is there a possibility for contribution and indemnity among defendants?

In case several defendants have caused damages, one defendant is entitled to sue another cartel member in recourse pursuant to the scope of their participation in the cartel.

**36** Is the 'passing-on' defence allowed?

No, the 'passing on' defence is not allowed in Lithuania. Even if the defendant is able to demonstrate that the purchaser passed on the excessive purchase price, the 'passing on' defence is not available if it leads to an unjustified benefit for the defendant.

**37** Do any other defences exist that permit companies or individuals to defend themselves against competition law liability?

The companies and individuals may be granted an exemption from fines provided that full information relating to the cartel agreements is presented to the national competition agency (the Competition Council). Besides, there are additional conditions for this defence.

**38** Is alternative dispute resolution available?

In common, arbitration proceedings are available in accordance with Lithuanian law. However, such proceedings are only admissible if an arbitration clause has been agreed between the parties. General rule is that in case of administrative litigation (eg, when challenging the decision by the Competition Council), arbitration procedure is not available. However it should be available in private actions, if there is an arbitration agreement between the parties.



**Ramūnas Audzevičius**

**ramunas.audzevicius@ma-law.lt**

Gyneju street 4  
01109 Vilnius  
Lithuania

Tel: +370 5 2 000 777  
Fax: +370 5 2 000 888  
www.ma-law.lt

**GETTING THE DEAL THROUGH®**

**Annual volumes published on:**

Air Transport	Merger Control
Anti-Corruption Regulation	Mergers & Acquisitions
Arbitration	Mining
Banking Regulation	Oil Regulation
Cartel Regulation	Patents
Construction	Pharmaceutical Antitrust
Copyright	Private Antitrust Litigation
Corporate Governance	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Environment	Real Estate
Franchise	Restructuring & Insolvency
Gas Regulation	Securities Finance
Insurance & Reinsurance	Shipping
Intellectual Property & Antitrust	Tax on Inbound Investment
Labour & Employment	Telecoms and Media
Licensing	Trademarks
	Vertical Agreements

**For more information or to  
purchase books, please visit:  
[www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com)**



Strategic research partners of  
the ABA International section



THE QUEEN'S AWARDS  
FOR ENTERPRISE  
2006



The Official Research Partner of  
the International Bar Association