



## Competition law actions for damages - the picture in Ireland and Northern Ireland

22 August 2024

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**The A&L Goodbody competition teams in Ireland and Northern Ireland set out the main features of actions for damages as a result of breaches of EU and Irish competition law in Ireland and as a result of breaches of UK competition law in Northern Ireland.**

### The position on competition law actions for damages in Ireland

National competition authorities in Ireland (mainly the Courts, the Competition and Consumer Protection Commission (**CCPC**) and the Commission for Communications Regulation) investigate and/or enforce EU and Irish competition law.

Under EU competition law, Articles 101 and 102 of the Treaty on the Functioning of the European Union (**TFEU**), prohibit, respectively, anti-competitive agreements and abuses of dominance.

Irish competition law is based on EU competition law with Sections 4 and 5 of the Competition Act 2002 (as amended) (**Competition Act**) being the Irish competition law equivalents of Articles 101 and 102 TFEU.

A breach of EU competition law can lead to decisions by the European Commission (as well as national competition authorities) imposing substantial fines on companies which have entered into an anti-competitive agreement or abused a dominant position.

Third parties (companies and individuals) who are adversely affected by such anti-competitive conduct can apply to the national courts of Member States to seek and obtain damages (other reliefs might also be available such as declaratory relief or injunctive relief but this note focuses on damages only).

According to the case-law of the Court of Justice of the European Union, any person can claim compensation for harm suffered where there is a causal relationship between that harm and a breach of EU competition law.

Where the European Commission (or a national competition authority) finds a breach of EU competition law (and provided it is final) then that decision can be relied upon to bring a follow-on claim for damages in national courts (such as the Courts in Ireland).

In addition, a stand-alone decision finding a breach of EU (and Irish) competition law by the Irish Courts and, recently (as a result of an amendment to the Competition Act) by the CCPC, can also be relied upon to bring an action for damages in the Irish courts (though decisions of the CCPC are subject to a confirmation mechanism under the Competition Act involving independent adjudication officers and the Irish Courts themselves).

In Ireland, the main procedural rules for bringing such damages actions are contained in the Competition Act, the Rules of the Superior Courts and the European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017 (Regulations). The Regulations implement Directive 2014/104/EU (**Directive** (also known as the Damages Directive)). The Directive is designed to ensure a more level playing field for companies operating in the EU and to improve the conditions for all claimants to exercise their rights in bringing such actions for damages.

Breach of Articles 101 and 102 TFEU (and Sections 4 and 5 of the Competition Act) entitle those adversely affected to seek and obtain damages and can include actual loss, loss of profit and interest.

Other issues such as passing-on of overcharges caused by the breaches, disclosure of evidence and quantification of harm are all central parts of the system for bringing damages actions in the Irish Courts.

Currently (and unlike in the UK), Ireland does not (at least yet) have a system for collective actions in relation to breaches of competition law (though the position is different for consumer law). Also, litigation funding by third parties, for the most part, is not yet permitted in Ireland (though representative actions in the Irish Courts are permitted).

Irish Courts are gaining more experience of managing such actions for damages. In that regard, Irish Courts have a number of tools to assist them in managing claims for damages as a result of breaches of competition (including as a result of the implementation in Ireland of the Directive by the Regulations).

The 2023 amendment to the Competition Act, which gives a greater role to the CCPC in the investigation and enforcement of EU and Irish competition law in Ireland, also increases the likelihood of damages actions in the Irish Courts over time.

### **The position on competition law actions for damages in Northern Ireland**

As a result of Brexit, the UK Courts (including the courts in Northern Ireland), in effect, no longer enforce EU competition law in the UK - though the picture is more nuanced in relation to subsidies in Northern Ireland and in particular as a result of the Windsor Framework (Northern Ireland Protocol). This note does not address subsidies (or State aid).

UK competition law is largely contained in the Competition Act 1998, the Enterprise Act 2002 (as amended by the Enterprise and Regulatory Reform Act 2013) and the new Digital Markets, Competition and Consumers Act 2024 (most of which is not yet in force).

The UK competition law rules (including in Northern Ireland) are very similar to those under EU competition law (i.e. as contained in Chapters I and II of the Competition Act 1998 which are the equivalents of Articles 101 and 102 TFEU and which prohibit anti-competitive agreements and abuses of dominance in the UK).

Parties in breach of the Chapter I or II prohibitions can be liable to third parties by way of damages for losses suffered as a result of the breach.

Under the Competition Act 1998, individuals can bring damages actions and allows specified consumer groups to bring class actions in the Competition Appeal Tribunal (**CAT**) and in the High Court of Northern Ireland.

Any claim for damages actions for breach of UK competition law can be brought as either a follow-on damages action (where the competition breach has already been established) or on a stand-alone basis (where the competition breach must first be proven as part of the claim).

There has been considerable growth of competition collective proceedings in recent years before the CAT involving novel legal arguments. Historically such actions had been taken as follow-on damages actions but the more recent trend is for cases to be brought on a stand-alone basis.

Other issues such as passing-on of overcharges caused by the breaches, disclosure of evidence and quantification of harm are also all central parts of the system for bringing damages actions in the Northern Irish Courts.

### **Concluding comments**

Decisions of the European Commission, Competition and Markets Authority and national competition authorities (such as the CCPC) finding that companies have breached the prohibitions on anti-competitive agreements or abuses of dominance can lead not only to fines but opportunities for those affected by such breaches to seek, often substantial, damages in the relevant Courts in Ireland and Northern Ireland. Whether across the EU, the UK or in the US, there are more damages actions being brought for breaches of competition law/antitrust. A wide range of industries and sectors have been affected by such actions for damages (e.g. in financial services, payments, transport, consumer goods and energy).

The A&L Goodbody competition teams in Ireland and Northern Ireland have recent and significant experience of advising clients on the competition law aspects of the defence of such claims for damages in the Irish and Northern Irish Courts.

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