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Bolivia

Competition Litigation

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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Bolivia.

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Bolivia: Competition Litigation

1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

In Bolivia, competition damages claims may only be brought as follow-on actions. This means that a prior determination by the Autoridad de Fiscalización de Empresas (AEMP, by its acronym in Spanish) is required, as it is the only entity legally empowered to establish the existence of anticompetitive conduct.

Such claims may be based on absolute or relative anticompetitive conduct, as defined in Supreme Decree No. 29519. Absolute conduct is prohibited per se and includes agreements between competitors involving: (i) price fixing or information exchange; (ii) output restrictions; (iii) market allocation; and (iv) bid rigging.

Relative anticompetitive conduct, by contrast, requires a rule-of-reason analysis. It includes: (i) exclusivity agreements; (ii) resale price maintenance; (iii) tying; (iv) refusal to deal; (v) boycotts; (vi) predatory pricing; (vii) conditional incentives; (viii) cross-subsidization; (ix) price discrimination; and (x) conduct that raises rivals' costs or reduces their demand.

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

In Bolivia, to initiate a civil proceeding for damages arising from anticompetitive conduct, it is necessary to have a final administrative decision that has acquired the status of *res judicata*, in regard to the existence of anticompetitive conduct. This serves to establish the claimant's legal standing to initiate proceedings arising from the commission of an unlawful act. Once such a ruling has been obtained, the claimant is entitled to file an ordinary lawsuit in order to seek the corresponding compensation.

3. What remedies are available to claimants in competition damages claims?

The Claimant may seek compensation for damages, including loss of profits from which they have been deprived as a result of anticompetitive practices. To that

end, they must demonstrate the existence of the harm and establish a causal link between such practices and the impact suffered in the course of their economic activities.

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

Under Bolivian law, there is no specific measure of damages applicable exclusively to competition damage claims. The law on civil liability is based on the principle of full reparation, meaning that all damages caused must be compensated.

Bolivian regulations distinguish between emerging damage, which refers to the actual loss or direct harm suffered and must be effective and verifiable, and loss of profit, which consists of the benefits not received as a consequence of the damage and is also considered a direct harm.

It is important to note that only follow-on claims are allowed under Bolivian law, meaning that damages claims generally depend on the findings of the AEMP.

In its administrative decisions, the AEMP typically evaluates factors such as the severity and duration of the infringing conduct, its impact on the market, the profits gained, and the harm caused to the community, which can influence the measure of damages.

Regarding joint and several liability, the Bolivian legal framework appears to allow for its application in competition damages cases, although this is not explicitly regulated. Currently, there are no express exceptions for specific defendants—such as leniency applicants—in the context of private enforcement of competition law.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

The right to seek compensation for harm caused by anticompetitive practices, as is it considered an unlawful

act, prescribes after three years, counted from the date on which the Res judicata judgement act confirming the commission of anticompetitive practice is issued.

Under Bolivian law, the prescription period is interrupted by a judicial claim, a decree, or an act of attachment notified to the party against whom prescription is sought, even if the court is incompetent. Additionally, prescription is interrupted by any other act that serves to place the debtor in default.

The interruption of prescription resets the period, effectively nullifying the time elapsed prior to the interruption. This principle ensures that the creditor's right remains enforceable, preventing the extinguishment of the right due to mere inaction.

6. Which local courts and/or tribunals deal with competition damages claims?

In Bolivia, the competent courts to rule on claims for civil damages, regardless of their subject matter, are the civil-commercial courts.

7. How does the court determine whether it has jurisdiction over a competition damages claim?

In Bolivia, the Civil Procedural Code provides that jurisdiction is determined based on two criteria: subject matter and territory. When examining a claim for damages, which falls within the domain of civil law, the proper jurisdiction lies with the civil and commercial courts, as outlined in our response to the preceding question.

8. How does the court determine what law will apply to the competition damages claim?

The basis for claiming damages arising from an anticompetitive practice is that such damages result from an unlawful act. Consequently, this claim is grounded in the Bolivian Civil Code. In this respect, courts recognize that the applicable law for these claims is civil law.

9. What is the applicable standard of proof?

In Bolivia, the applicable standard of proof in competition damages claims is generally the preponderance of the evidence. Claimants must demonstrate that it is more likely than not that the facts supporting their claim are true.

The means of proof are regulated by both substantive and procedural law and include documentary evidence, confession, witness statements, presumptions, judicial inspection, reconstruction of facts, expert reports, and evidence through official reports. With technological advances, electronic documents and legally recognized electronic signatures, including those generated by email, are also valid forms of evidence.

The right to present evidence is a fundamental element of due process, allowing the judge to thoroughly analyze the facts and apply the relevant legal norms based on sound reasoning and the evidence produced and debated by the parties.

Importantly, under Bolivian law, only follow-on claims are permitted in competition cases. This means that the existence of anticompetitive conduct is conclusively established by the administrative decision of the AEMP. Therefore, claimants in civil proceedings are not required to prove the infringement itself again but must focus on proving the harm suffered and the causal link to the conduct identified by the AEMP.

10. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

Local courts in Bolivia are fully bound by infringement decisions issued by the domestic competition authority, the AEMP, as it is the only entity legally authorized to determine the existence of anticompetitive conduct. As a result, competition damages claims can only proceed as follow-on actions.

Foreign competition decisions are not automatically enforceable. Recognition would require an exequatur process before the Bolivian Supreme Court, involving the submission of duly translated and apostilled documents. This procedure can take up to two years.

11. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

In Bolivia, a private damages action cannot proceed while a public enforcement action is pending. The AEMP is the only entity empowered to determine the existence of anticompetitive conduct.

As a result, all damages claims must necessarily be

follow-on in nature. There is no legal basis for initiating a private action before the AEMP has issued a final decision confirming the infringement.

12. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation of claims through case management)? What, if any, threshold criteria have to be met?

Under Bolivian law, there are no specific mechanisms applicable to the aggregation of competition damages claims. Notably, class actions are not permissible, as claimants must have legal standing—meaning they must be directly affected by the conduct of the defendant in order to bring a claim.

However, the Bolivian Code of Civil Procedure allows the joinder of cases when there is identity of parties or connection of claims, which could facilitate the consolidation of similar claims in order to avoid contradictory decisions, reduce procedural costs and streamline the administration of justice.

Article 346 of the Code of Civil Procedure establishes that joinder may be decreed by the judge or at the request of a party, at any time during the proceedings and before judgment is pronounced.

As for the effect of this figure, we can say that once the joinder has been decreed, the process that is most advanced in its processing will be suspended until all the others reach the same state.

Once the progress of the proceedings has been equalized, they will all be processed in a single file and will be ruled on by the same judgment.

13. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

In Bolivia, there are no specific defenses unique to competition damages claims. However, unique defenses exist within the investigative proceedings conducted by the AEMP. In these investigations, economic agents may justify their conduct based on efficiency gains.

Such efficiency defenses include innovations, cost reductions, quality improvements, or other benefits that outweigh anticompetitive effects. These justifications are evaluated by the AEMP to determine whether sanctions

are appropriate.

Regarding the burden of proof, it rests on the investigated party to demonstrate that their conduct is lawful or justified by efficiency gains. Claimants must prove the anticompetitive conduct and resulting damages.

Thus, in competition damages litigation, the absence of unique defenses means the focus is on proving causation and harm. Justifications are mainly addressed in the administrative or regulatory context rather than in the damages claim itself.

14. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

In Bolivia, within the framework of competition defense proceedings, any suitable form of evidence is admissible, including expert reports. Expert evidence is appropriate when the assessment of disputed facts requires specialized knowledge, particularly of an economic nature, in order to demonstrate market efficiency or the absence of anticompetitive conduct. The party that submits the expert report shall bear its costs.

15. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

The proceeding for a claim of damages is conducted as an ordinary civil proceeding. The ordinary civil process in Bolivia includes oral and written stages and includes the following stages:

- a. Prior Conciliation: An obligatory hearing is held to attempt to resolve the conflict without proceeding to trial.
- b. Filing the Complaint: If conciliation fails, the complaint is submitted in writing, meeting the legal requirements already established by law. To file the complaint a tariff must be paid (four per thousand on the claim's amount).
- c. Admission of the Complaint: The judge evaluates the complaint and, if appropriate, admits it and orders the citation of the defendant.
- d. Response to the Complaint: The defendant has a period to respond to the complaint and may file a counterclaim.
- e. Preliminary Exceptions: If exceptions are raised, they are resolved before proceeding with the process.

- f. Preliminary Hearing: Held to define the factual issues to be proven and the evidence to be presented.
- g. Evidentiary Phase: The parties present their evidence in a hearing, allowing the judge to assess the evidence.
- h. Judgment: The judge issues a final decision on the case. This Judgment can be appealed, and subsequently, the Court of Appeals decision may reach the cassation instance before the Bolivian Supreme Tribunal.

Furthermore, it should be noted that once a final and res judicata judgment is obtained and the party does not voluntarily comply therewith, an enforcement phase must be initiated.

16. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

In Bolivia, ordinary legal proceedings can take up to 2 years to get to trial. Yes, This Judgment can be appealed, and subsequently, the Court of Appeals decision may reach the cassation instance before the Bolivian Supreme Tribunal, this appealing face can take up to 3 years until obtain a res judicata judgment.

17. Do leniency recipients receive any benefit in the damages litigation context?

In Bolivia, leniency recipients benefit mainly through reduced administrative sanctions by the AEMP. Agents who admit to anticompetitive conduct and fully cooperate may receive penalty reductions under Supreme Decree No. 29519. However, these benefits do not explicitly extend to damages litigation.

The law requires the identity of leniency applicants to remain confidential. This confidentiality could impede damages claims depending on how it is applied and the case specifics. Currently, there is no judicial precedent addressing the effect of this confidentiality on private damages actions.

Therefore, leniency programs incentivize cooperation and reduce administrative penalties. Nonetheless, their impact on civil damages claims remains unclear under Bolivian law.

18. How does the court approach the assessment

of loss in competition damages cases? Are "umbrella effects" recognised? Is any particular economic methodology favoured by the court?

In Bolivia, there are no judicial precedents regarding the assessment of loss in competition damages cases, and the concept of "umbrella effects" is not recognized under current legislation or case law.

The quantification of damages will likely depend on the findings of the AEMP, which is the sole entity authorized to determine whether anticompetitive conduct has occurred.

In its administrative decisions, the AEMP considers several factors that could be relevant for estimating loss, including: the severity and duration of the conduct, market impact, profits obtained, and harm caused to the community.

No specific economic methodology is currently favored by Bolivian courts. Any loss assessment in follow-on damages cases would necessarily be tied to the scope and findings of the AEMP's resolution.

19. How is interest calculated in competition damages cases?

In relation to interest computation, once damages have been quantified and incorporated into a final judgment, the claimant is entitled to seek interest commencing from the date on which enforcement of the judgment is permissible. The applicable interest will be the rate established in the Civil Code, which amounts to 6% per annum on the amount determined in the judgment.

20. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

Yes. Under Bolivian law, joint and several liability applies to unlawful acts (e.g. anticompetitive conduct). This means that a claimant is entitled to seek full compensation for the damage from any one of the defendants involved in the infringement, regardless of their individual share in causing the harm.

However, a defendant who has paid the full amount of the damages may subsequently seek contribution (or indemnity) from the other co-infringers through a separate legal action. In such proceedings, the court will assess the relative participation or fault of each party in the unlawful conduct to determine their respective share

of liability.

Although there is no specific allocation mechanism established for competition damage claims, the general rules of civil liability apply, and the courts may consider factors such as the degree of involvement, the benefits obtained, and the causative link between each defendant's actions and the resulting harm.

21. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

Under Bolivian law, competition damages claims may be disposed of in full without a trial if they do not meet the legal requirement of being follow-on claims. Only the AEMP is legally empowered to determine the existence of anticompetitive conduct. Therefore, if a claimant initiates a damages action without a prior administrative resolution by the AEMP establishing an infringement, the claim may be rejected outright.

Beyond this specific requirement for competition-related actions, such claims may also be dismissed—either wholly or partially—under the general procedural rules applicable to civil claims. These may include, for example, failure to meet formal requirements, prescription of the claim, or the existence of prior settlements or indemnity agreements concerning the same facts.

22. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

Although there is no explicit legal provision specifically addressing the collective settlement of competition damages claims under Bolivian law, the general principles of civil procedure and dispute resolution apply. Accordingly, it is possible to reach settlement agreements, both individual and collective, in competition damages cases. Such settlements may be concluded even after a damage claim has been filed.

The legal framework permits parties to resolve disputes through conciliation or settlement agreements, enabling multiple claimants and defendants to settle their claims collectively, thus avoiding lengthy litigation.

Moreover, Bolivian law allows for the inclusion of parties outside the jurisdiction in these settlements, enabling foreign entities involved in the anticompetitive conduct or damages to participate in the resolution process.

23. What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

As a general rule, the administrative competition authority may designate certain information contained in competition law proceedings as confidential. In this proceeding conducted by the AEMP, economic agents under investigation may request that certain information be classified as confidential, provided that specific conditions established by law are met. In particular, such a request will be admissible when the information involves industrial, commercial, or strategic secrets protected by special legislation; when its disclosure could unduly harm the legitimate interests of the economic agents involved or of the market in general; or when, by its nature, the information warrants confidential treatment, as long as the requesting party duly justifies such classification.

However, invoking confidentiality does not exempt the applicant from the obligation to submit a non-confidential summary of the information, which enables other parties to effectively exercise their right to information and right of defense. It is worth noting that the classification of information as confidential does not prevent the AEMP from disclosing, in general terms, the factual and legal grounds for its decisions or the evidentiary elements on which they are based, provided such disclosure is carried out in a manner that protects the confidentiality of the information as designated by the parties.

However, such confidentiality designation from administrative competition authority is not binding on the judicial authority reviewing a claim for damages. If the court deems that information within the administrative file is essential to rule on the merits of the damages claim, it may request that the file be submitted despite its confidential status.

24. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process?

In principle, the procedure for claiming damages is a civil process governed by the principle of publicity. This means that the information contained in the file is freely accessible to the parties involved or to those who demonstrate a legitimate interest. Therefore,

safeguarding confidentiality is neither immediate nor automatic.

Notwithstanding the foregoing, civil proceedings are also governed by the dispositive principle, which provides that the process unfolds in accordance with the parties' requests. In this sense, the parties may request that the information submitted during the proceedings be kept confidential, specifying that any disclosure made for purposes other than resolving the claim may give rise to a damages action.

25. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

Yes, litigation costs can be recovered from the other party under the following considerations:

At first instance, the court provides that, if the plaintiff requests it in their complaint, and if the claim is upheld, the plaintiff may recover the costs of the proceedings. These costs include all necessary and justified expenses incurred by the prevailing party, such as court fees and charges, fees for experts, custodians, auctioneers, publications, attorneys, and other legally established items.

The amount to be reimbursed must be approved by the judge, who has the authority to adjust the amounts that the losing party is required to pay. Once the judge confirms the amount payable by the losing party, that party may file objections to those amounts.

26. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

Yes, third-party funding is permitted in competition

litigation, and lawyers may also agree to contingency or conditional fee arrangements. While funders are generally not liable for the other party's costs, this may vary depending on the case and contractual terms.

27. What, in your opinion, are the main obstacles to litigating competition damages claims?

In Bolivia, the main obstacle to litigating competition damages claims is the absence of judicial precedents in follow-on actions. While the AEMP, has issued administrative decisions confirming anticompetitive conduct, no damages claim has yet been brought or resolved before the courts.

This lack of case law creates legal uncertainty regarding key elements such as causation, quantification of harm, and the evidentiary threshold required to succeed in court.

As competition damages claims must be based on a prior AEMP decision, the absence of follow-on litigation limits practical guidance on how courts will engage with administrative findings or apply economic analysis.

Consequently, the legal framework exists, but the untested nature of judicial enforcement remains a key barrier to private competition damages claims in Bolivia.

28. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

No significant developments in competition litigation are expected in Bolivia over the next five years, mainly due to the lack of judicial precedents in this area. However, in 2021, the AEMP issued a notable decision recognizing a two-sided relevant market.

This recognition aligns with global trends in competition law related to digital platforms, which serve two distinct groups of customers connected through network effects. Should a follow-on damages claim arise from such a case, it would present additional challenges in assessing harm, given the complexity of two-sided market dynamics.

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