

## Making a Complaint to the FTC regarding Anti-Competitive Conduct

Fair and healthy competition induces competing businesses to increase their operational efficiency, and ultimately leads to the production of lower priced and better quality goods and services.

There are occasions however when businesses disregard the rules of fair competition and engage in practices likely to restrict or distort this process. Practices of this nature include:

### Anticompetitive Agreements

- a) Agreeing to fix purchase or selling prices,
- b) Limiting or controlling production, markets, technical development or investment;
- c) Artificially dividing up markets or sources of supply;
- d) Influencing tenders to be submitted in response to a request for bids.

### Abuses of Dominance

- a) Attempting through their superior market power to undermine the operations of their rivals, by preventing them from being able to secure their raw materials and supplies or distribute their products effectively

These anticompetitive practices disrupt the competitive process while seeking to protect individual interests. Conduct of this nature is prohibited under the Fair Competition Act.

Any business, consumer, or interested party who is affected by any anti-competitive conduct, or who has knowledge of such activity is encouraged to make a complaint to the Commission.

- Complaints of anti-competitive activity can be made to the Commission verbally or in writing.
- When making a complaint concerning an anti-competitive practice it is not necessary to provide one's name, but some contact information is always helpful especially if there is need for later clarifications, and follow up.
- The Commission will accept and act on anonymous complaints once they are valid, and where individuals believe that they may be the victim of reprisal if their identity is known. Persons are reminded however that all documents, and information submitted to the Commission is considered confidential.
- A complainant should provide the Commission with as much facts as possible about the alleged activity. This will establish the validity of the complaint and allow us to more quickly determine if the alleged conduct has the potential to breach the Act.
- Where a complainant can provide or direct the Commission to actual documents or other written evidence this is always an asset in corroborating and adding merit to any allegation. It also shortens the investigation period.
- The Commission will acknowledge all formal complaints received and will also inform the complainant in writing of the outcome of the inquiry.

## Investigation

It is important to note that the Commission will not investigate frivolous or malicious complaints, therefore having received a complaint the Commission will first seek to determine whether the allegation is valid; and could possibly amount to a breach of the Fair Competition Act. If this is found to be the case then a formal inquiry is initiated. The Commission also through its independent monitoring programme will on its own accord initiate an investigation if it becomes aware of any matter which satisfies these criteria.

In conducting an inquiry the Commission will:

- Collect from the complainant as much preliminary information as possible to substantiate the complaint made.
- Conduct independent economic and legal research to verify that the practice can be rightly classified as an anti-competitive conduct.
- Collect further evidential information from the investigated firm's competitors, consumers, or from any affected or knowledgeable persons of the matter.
- Notify the firm of the nature of the complaint it has received, allowing it the opportunity to respond to the allegation and provide any information to establish its innocence of any misconduct.
- Collect any further information and conduct additional research in support or clarification of the matters responded to by the investigated firm.
- Prepare a final report on the matter based on all the available information.

## Decision

On conclusion of an investigation, a decision will then be taken as to whether the actions complained about amounts to a breach of the FCA.

Where the Commission has reason to believe that an enterprise has abused or is abusing a dominant position, or a group of enterprises have engaged in any agreement or trade practice that is anti-competitive. The Commission shall prepare a report indicating the practices that constitute the contravention of the Act and shall:

- b) Notify the enterprise(s) of its finding accompanied by a copy of the report; and
  
- c) Direct the enterprise(s) to cease the abusive practice within a specified period.

Having been informed of the Commission's findings, a person who then fails to terminate the anti-competitive practice within the specified period is guilty of an offence under the Act.

If you require any further information in relation to making a complaint concerning possible anti-competitive conduct please contact the Commission at 424-2FTC.