

## Competition Law - COMPETITION LAW ACTIONS FACTSHEET (May 2019)

If you are a company victim of anticompetitive conduct (cartel, abuse of dominant position), several legal actions are possible:

**(1)** You can first lodge a complaint to the French Competition Authority on the basis of the model below:

### Exemple de présentation d'une saisine contentieuse

<p><b>SAISINE DEVANT L'AUTORITE DE LA CONCURRENCE RELATIVE A DES PRATIQUES ANTICONCURRENTIELLES MISES EN OEUVRE PAR XXX DANS LE SECTEUR XXX</b></p>	
<p><b>POUR : La société XXX</b> Société au capital de Immatriculée au RCS de XXX n° XXX Dont le siège est XXX Représentée par son Président Directeur Général</p>	
<p><b>CONTRE :</b> Il est préférable que vous identifiez de façon détaillée les entreprises que vous mettez en cause (dénomination adresse, siège social).</p>	
<p><b>- La société XXX</b> Société au capital de Immatriculée au RCS de XXX n° XXX Dont le siège est XXX Représentée par son Président Directeur Général</p>	
<p><b>La société XXX</b> Société au capital de Immatriculée au RCS de XXX n° XXX Dont le siège est XXX Représentée par son gérant</p>	
<p><b>Objet de la saisine:</b></p> <p>Cette plainte est fondée sur les éléments de fait et de droit suivants :</p>	
<p><b>I Le secteur concerné</b> secteur, produits, biens ou services concernés.</p>	
<p><b>II Les faits</b> relatés chronologiquement</p>	
<p><b>III Les pratiques concernées</b> La société XXX dénonce... -une entente (viser l'article L. 420-1 du Code de commerce et/ou l'article 101 du Traité sur le fonctionnement de l'Union européenne (TFUE) ; -un abus de position dominante (viser l'article L. 420-2 du Code de commerce et/ou l'article 102 du Traité sur le fonctionnement de l'Union européenne) ; -des prix abusivement bas (viser l'article L. 420-5 du Code de commerce)...</p>	
<p><b>IV Conclusion:</b> La société XXX demande à l'Autorité de la concurrence :... Elle demande en outre ...</p>	
<p>Signature.</p>	
<p>PIECES ANNEXES (Bordereau détaillé des pièces jointes)</p>	

A complaint to the Competition Authority will, as a general rule, be preferred where the practice in question is limited to the national territory.

**(2)** For anticompetitive practices at the local level, it is also possible to notify the Directorate General of Competition for Consumption and the Repression of Fraud (DGCCRF)<sup>1</sup>. An online contact procedure is available.

\* \* \*

**(3)** You can also apply to the European Commission in particular where the practice at stake has an impact in several European countries.

The complaint is made on the basis of Form C (below). An online procedure is also possible.

<b>FORM C</b> COMPLAINT PURSUANT TO ARTICLE 7 OF REGULATION (EC) No 1/2003
<b>I. Information regarding the complainant and the undertaking(s) or association of undertakings giving rise to the complaint</b>
1. Give full details on the identity of the legal or natural person submitting the complaint. Where the complainant is an undertaking, identify the corporate group to which it belongs and provide a concise overview of the nature and scope of its business activities. Provide a contact person (with telephone number, postal and e-mail-address) from which supplementary explanations can be obtained.
2. Identify the undertaking(s) or association of undertakings whose conduct the complaint relates to, including, where applicable, all available information on the corporate group to which the undertaking(s) complained of belong and the nature and scope of the business activities pursued by them. Indicate the position of the complainant vis-à-vis the undertaking(s) or association of undertakings complained of (e.g. customer, competitor).
<b>II. Details of the alleged infringement and evidence</b>
3. Set out in detail the facts from which, in your opinion, it appears that there exists an infringement of Article 81 or 82 of the Treaty and/or Article 53 or 54 of the EEA agreement. Indicate in particular the nature of the products (goods or services) affected by the alleged infringements and explain, where necessary, the commercial relationships concerning these products. Provide all available details on the agreements or practices of the undertakings or associations of undertakings to which this complaint relates. Indicate, to the extent possible, the relative market positions of the undertakings concerned by the complaint.
4. Submit all documentation in your possession relating to or directly connected with the facts set out in the complaint (for example, texts of agreements, minutes of negotiations or meetings, terms of transactions, business documents, circulars, correspondence, notes of telephone conversations...). State the names and address of the persons able to testify to the facts set out in the complaint, and in particular of persons affected by the alleged infringement. Submit statistics or other data in your possession which relate to the facts set out, in particular where they show developments in the marketplace (for example information relating to prices and price trends, barriers to entry to the market for new suppliers etc.).
5. Set out your view about the geographical scope of the alleged infringement and explain, where that is not obvious, to what extent trade between Member States or between the Community and one or more EFTA States that are contracting parties of the EEA Agreement may be affected by the conduct complained of.
<b>III. Finding sought from the Commission and legitimate interest</b>
6. Explain what finding or action you are seeking as a result of proceedings brought by the Commission.
7. Set out the grounds on which you claim a legitimate interest as complainant pursuant to Article 7 of Regulation (EC) No 1/2003. State in particular how the conduct complained of affects you and explain how, in your view, intervention by the Commission would be liable to remedy the alleged grievance.
<b>IV. Proceedings before national competition authorities or national courts</b>
8. Provide full information about whether you have approached, concerning the same or closely related subject-matters, any other competition authority and/or whether a lawsuit has been brought before a national court. If so, provide full details about the administrative or judicial authority contacted and your submissions to such authority.
Declaration that the information given in this form and in the Annexes thereto is given entirely in good faith.
Date and signature.

<sup>1</sup> In practice it will be the regional branches of the DGCCRF (the so called DIRECCTE) in metropolitan France, and the DIECCTE in overseas territories.

If the complaint is followed by an investigation, it can lead to a fine being imposed on the company (or the companies) which has / have implemented the illegal practices. The fine can be up to 10% of the consolidated global turnover.

Interim measures may also be imposed by the authority and in some cases, undertakings, from which you may indirectly benefit as a complainant.

However, you will not obtain any compensation for your loss before the Competition Authority or the European Commission, which will simply impose an administrative fine as a result of the illegal conduct. Only national courts are competent to award damages as a result of your prejudice as a victim.

\* \* \*

**(4)** You can therefore take action and bring a damage claim to the competent national courts in order to obtain compensation for your loss.

Such action is made by way of summons (*assignation*).

It will be necessary to prove the fault (that is, to prove the anti-competitive practice), the harm suffered and the causal link.

The proof of the fault will be all the easier to establish in case of prior decision from a competition authority having already imposed a fine for the practice of which you consider yourself victim (i.e. a follow-on action). The fault and the harm suffered (in case of cartels) will in such event be presumed.

A stand-alone action (that is to say in the absence of a prior decision) is also possible, but the result is more uncertain.

It should be stressed that a large number of actions for damages are terminated with the conclusion of a settlement agreement between the parties.

### **Other actions**

**(5)** If you are not a victim but the perpetrator of an anti-competitive practice, you may seek immunity or a reduction of the fine proactively by filing a leniency application. Such a request may be made to the European Commission or any other national competition authority, such as the French Competition Authority.

**(6)** If you are a supplier, customer or competitor of a company that is party to a corporate transaction (M&A, Joint-Venture) you have the possibility to intervene during the merger control procedure before the competition authority in charge of the review of the transaction by submitting any type of document with the objective to demonstrate the future negative effect of the transaction on the market.