

CHAPTER 3

Anticompetitive Practices

SECTIONS

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§ 301. Definitions.

As used in this chapter, “person or persons” includes an individual or individuals, corporations, firms, partnerships or any other association existing under or authorized by the laws of the Trust Territory.

Source: COM PL 3C-57 § 1; TT Code 1970, 33 TTC 301; TT Code 1980, 33 TTC 301.

§ 302. Prohibited activities.

It is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is:

- (1) to create or carry out restrictions in trade or commerce;
- (2) to limit or reduce the production, or increase the price of, merchandise or of any commodity;
- (3) to prevent competition in the manufacture, making, transportation, sale, or purchase of any merchandise, produce, or commodity;
- (4) to fix at any standard or figure whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption;
- (5) to discriminate in price between different purchasers of commodities of like grade and quality, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; provided, that nothing herein contained shall prevent differentials in price which only make allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to be purchased, sold, and delivered;

(6) to make or enter into or carry out any contract, obligation, or agreement by which the persons do any of the following:

(a) bind themselves not to sell, dispose of, or transport any article or commodity below a common standard figure or fixed value;

(b) agree to keep the price of such article, commodity, or transportation at a fixed or graduated figure;

(c) establish or set the price of any article, commodity, or transportation between them or themselves and others, so as directly or indirectly to preclude free and unrestricted competition among themselves or any purchaser or consumer in the sale or transportation of any such article or commodity;

(d) agree to pool, combine, or directly or indirectly unite any interest that they may have connected with the sale or transportation of any such article or commodity that might in any way affect its price.

Source: COM PL 3C-57 § 2; TT Code 1970, 33 TTC 302; TT Code 1980, 33 TTC 302.

Case annotation: Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. *AHPW, Inc. v. FSM*, 13 FSM R. 36, 39 (Pon. 2004).

When there is no doubt about the violation of 32 F.S.M.C. 302(2), but when there is nothing of record to establish that even if a *trochus* harvest had been held after 1994, the plaintiff would have been successful in purchasing enough *trochus* so that it would have had an adequate source of supply for its button operation, the plaintiff has failed to establish that it was damaged by the defendant's conduct as proscribed 32 F.S.M.C. 302(2). Since that conduct was tortious in nature, the plaintiff is entitled only to nominal damages. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555 (Pon. 2004).

Averaging three years of normal operations when the pepper supply was continuous when the manufacturing process was uninterrupted to arrive at an annual profit, is a projection that provides a reasonable basis from which a plaintiff's lost profits can be approximated or inferred under the lower burden of proof applicable for damages in anticompetitive practices cases. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555 (Pon. 2004).

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should be no recovery for further diminution of a business's value, predicated on the defendant's continuing wrongdoing, after the defendant has been enjoined. The court will thus not award prospective damages from the time of the lawsuit's filing onward because injunctive relief, to which the claim would have been amenable, would have terminated the conduct complained of. But since under the continuing tort doctrine, a plaintiff is entitled to recover all of the damages that result from on-going tortious conduct, even though the inception of the conduct lies outside the limitations period, the court will award damages from the start of the anticompetitive pepper processing operation in mid-1995 until the plaintiff filed suit. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555-56 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. *AHPW, Inc. v. FSM*, 13 FSM R. 36, 41 (Pon. 2004).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq.* *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 417 (Pon. 2001).

The long-arm statute provides how service may be effected, outside of the FSM Supreme Court's territorial jurisdiction, against those who have done certain acts which subject them to the personal jurisdiction of the FSM Supreme Court, and such service has the same force and effect as though it had been personally made within the FSM. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 (Pon. 2001).

The Attorney General has the authority to prosecute violations of the Consumer Protection Act, but private business entities do not. The Act recognizes that unfair or deceptive trade practices are criminal, and also confers standing on consumers who are injured by the practices to recover their actual damages or \$100, whichever is greater. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 418 (Pon. 2001).

§ 303. Agreements lessening competition—Unlawful.

It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, or commodities for use within the Trust Territory, or to fix a price charged therefor, or discount from, or rebate upon, such price, on condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale, or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any district of the Trust Territory.

Source: COM PL 3C-57 § 3; TT Code 1970, 33 TTC 303; TT Code 1980, 33 TTC 303.

Case annotation: Attempts to threaten or induce merchants not to sell competing products violate 32 F.S.M.C. 303. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 417 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204-05 (Pon. 2001).

§ 304. Unlawful agreements void.

Any contract or agreement in violation of this chapter is, to that extent, void and not enforceable at law or equity.

Source: COM PL 3C-57 § 4; TT Code 1970, 33 TTC 304; TT Code 1980, 33 TTC 304.

§ 305. Competitive agreements.

It is not unlawful to enter into agreements or form an association or combination the purposes and effect of which is to promote, encourage, or increase competition in any trade or industry.

Source: COM PL 3C-57 § 5; TT Code 1970, 33 TTC 305; TT Code 1980, 33 TTC 305.

§ 306. Criminal and civil liability of violators.

(1) Any person who violates section 302 or 303 of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$5,000.

(2) Any person who is injured in his business, personal property, or real property by reason of another's violation of sections 302 or 303 of this chapter may sue therefor in the High Court in the district where the defendant resides or where service may be obtained, and may recover three times the damages sustained by him together with a reasonable attorney's fee and the costs of suit; provided, that the Trust Territory and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section, and may, through the Attorney General or the District Attorney, bring an action on behalf of the Trust Territory, its political subdivisions, or public agencies to recover the damages provided by this section, including a reasonable attorney's fee together with the costs of the suit.

(3) Upon conviction under this chapter of a noncitizen business, as defined in chapter 2 of this title, the High Commissioner may revoke such noncitizen's business permit.

Source: COM PL 3C-57 § 6; TT Code 1970, 33 TTC 306; TT Code 1980, 33 TTC 306.

Case annotation: The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 (Pon. 2001).

Damages under 32 F.S.M.C. 306(2) are subject to trebling. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555, 556 (Pon. 2004).