

9 GCA CRIMES AND CORRECTIONS
CH. 69 ANTITRUST LAW

CHAPTER 69
ANTITRUST LAW

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§ 69.10. Definitions.

As used in this chapter:

(a) *Person* means an individual, corporation, business trust, partnership, association, or any other legal entity.

(b) *Relevant market* means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within Guam.

SOURCE: This entire Chapter was added by P.L. 21-18:4. Subsection (c) of this section, defining *touting*, was repealed by P.L. 21-57:1.

§ 69.15. Contract, combination, or conspiracy to restrain or monopolize or trade.

(1) A contract, combination, or conspiracy between two (2) or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful; or

(2) A contract, agreement, combination or conspiracy which controls or attempts to control the quantity, price or exchange of any article of manufacture, product of the soil or mind or any goods or services in restraint of trade is unlawful; or

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(3) Selling any goods or services at less than the cost thereof to a business consumer, or to give away any goods or services, (as “business consumer” and “goods or services” are defined in Article 1, Chapter 32, Title 5, Guam Code Annotated) for the purpose of injuring competitors or destroying competition is unlawful; or

(4) Secretly paying or allowing rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain business consumers special services or privilege, not extended to all business consumers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is unlawful; or

(5) Threatening economic retaliation or physical damage to any person or to any person's property if goods or services are not purchased.

SOURCE: Subsection (4) amended by P.L. 21-57:2.

§ 69.20. Establishment, Maintenance, or Use of Monopoly.

The establishment, maintenance or use of a monopoly, or an attempt or conspiracy to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding competition or controlling, fixing, or maintaining prices is unlawful.

§ 69.25. Exclusions.

Nothing in this chapter forbids the existence and operation of any labor, agricultural, or horticultural organization instituted for the purposes of mutual help, while lawfully carrying out its legitimate objects.

§ 69.30. Contracts for Restraint of Trade or Monopoly Void; Civil Liability of Participants; Injunctive Relief; Purchasers Relieved from Payment.

(a) All contracts and agreements in violation of §§ 69.15 or 69.20 of this chapter shall be void, and any person threatened with injury, or injured in his business or property, directly or indirectly, by a violation of §§ 69.15 or 69.20 of this chapter, may bring an action for appropriate injunctive relief, up to threefold the damages sustained, and costs and reasonable attorney's fees.

(b) If the court finds that there was a willful violation of this chapter, it may award treble damages.

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(c) For the purpose of this section “business or property” includes business or nonbusiness purchases and business and nonbusiness injuries.

§ 69.32. Jurisdiction.

An action for violation of this chapter shall may be brought in the Superior Court of Guam by any person or by the Attorney General in the name of the people of Guam, or, if the District Court of Guam has jurisdiction, it may be brought in the District Court of Guam.

§ 69.35. Official Investigation.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for a violation of this chapter, the Attorney General may serve upon the person, before bringing any action in the Superior Court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, or to produce the document or object for inspection and copying. The demand must:

- (1) Be served upon the person in a manner required for service of process in Guam;
- (2) Describe the nature of the conduct constituting the violation under investigation;
- (3) Describe the document or object with sufficient definiteness to permit it to be fairly identified;
- (4) Contain a copy of the written interrogatories;
- (5) Prescribe a reasonable time in which the person must appear to testify, within which to answer the written interrogatories, or within which the document or object must be produced, and advise the person that a reasonable opportunity will be afforded for examination and notation of corrections upon any transcript of an oral examination, that a copy of one's own transcript can be obtained upon payment of reasonable charges, and that objections to or reasons for not complying with the demand may be filed with the Attorney General at or before the designated time;
- (6) Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or objects; and

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(7) Be served with a copy of this chapter.

(b) If a person objects to or otherwise fails to comply with the written demand served upon that person under subsection (a) of this section, the Attorney General may file in the Superior Court of Guam a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition must be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper, that there is reasonable cause to believe there has been a violation of this chapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modifications the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(c) Any procedure, testimony taken, or material produced under this chapter and in the hands of the Attorney General is not a public document before bringing an action against the person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories or produced material, or disclosure is authorized by the court. Nothing herein shall preclude discovery being had in any other case of materials obtained from a person and in the possession of the Attorney General, to the same extent the material would be discoverable if it was in the possession of the person from whom taken.

(d) Any person compelled to appear under this section and required to testify under oath may be accompanied, represented and advised by counsel. An objection may properly be made, received and entered upon the record when it is claimed that such person is entitled to refuse to answer the questions on grounds of any constitutional or any other legal right or privilege.

(e) Nothing in this section shall be construed to prevent the regular use by the Attorney General of a grand jury for the production of documents or issuance subpoenas for witnesses, when the investigation relates to a criminal violation of this Chapter.

§ 69.40. Criminal Penalty.

(a) Any person in violation of §§ 69.15 or 69.20 of this chapter is guilty of a felony of the second degree. An indictment must be found or

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information or complaint filed within five (5) years from the date of the violation or from the date of the last overt act committed pursuant a conspiratorial plan.

(b) No criminal action may be brought against any person for the same violation for which such person has been convicted in a criminal proceeding for a violation of the Federal antitrust laws.

§ 69.45. Civil Penalty and Injunctive Enforcement.

(a) The Attorney General may bring an action for appropriate injunctive relief and civil penalties in the name of the people of Guam for a violation of this chapter. The trier of fact may assess for the benefit of the territory a civil penalty of not more than One Million Dollars (\$1,000,000) for each violation of this chapter when the violation is by an individual. If the violation is committed by a person other than an individual, then the trier of fact may assess for the benefit of the territory a civil penalty of not more than Fifty-Million Dollars (\$50,000,000) for each violation of this chapter.

§ 69.50. Judgment in Favor of Territory if Prima Facie Evidence.

A final judgment or decree determining that a person has violated §§ 69.15 or 69.20 of this chapter in an action brought by the Attorney General under this chapter, other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against that person in any other action against that person under the provisions of § 69.30 as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto. This section does not affect the application of collateral estoppel or issue preclusion.

§ 69.55. Limitation of Actions.

(a) An action under this chapter to recover a civil penalty is barred if it is not commenced within four (4) years after the claim for relief accrues.

(b) An action under this chapter to recover damages is barred if it is not commenced with four (4) years after the claim for relief accrues, or than one (1) year after the conclusion of any timely action brought by the Attorney General in whole or in part on any matter complained of in the action for damages, whichever is later.

§ 69.60. Remedies Cumulative.

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The provisions of this chapter are not exclusive. The remedies specified in this chapter for violation of any section of this chapter or for conduct proscribed by any section of this chapter are cumulative and shall be in violation or conduct provided for in any other law. Nothing in this chapter shall limit any other statutory or any common law rights of the Attorney General, or any other person. If any act or practice proscribed by this chapter is also the basis for a cause of action in common law or a violation of another statute, the person may assert the common law or statutory cause of action under the procedures and with the remedies applicable thereto.

§ 69.70. Severability.

If any of the provisions of this chapter or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.
