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**Joint Group on Trade and Competition**

**RIGHTS OF FOREIGN FIRMS UNDER COMPETITION LAWS**

**-- United States --**

**51564**

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**RIGHTS OF FOREIGN FIRMS UNDER COMPETITION LAWS**

**-- United States --**

**1. What are the rights of foreign as compared to domestic firms to sue directly in national courts under the antitrust laws? If firms can bring private actions, what tests must be satisfied for a firm to have standing to sue? To appeal from an adverse decision by a trial court or court of first instance?**

There is no difference between foreign and domestic firms with respect to the right to pursue private rights of action for antitrust violations in the U.S. courts. Section 4 of the Clayton Act provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue ... and shall recover threefold the damages by him sustained." Courts have developed rules clarifying what is meant by antitrust "injury," so as to focus on the objectives of the antitrust laws (*i.e.*, protecting competition, not competitors), and antitrust "standing," so as to eliminate suits by plaintiffs whose interest is excessively remote or indirect -- but these rules apply equally to all plaintiffs, foreign or domestic. Rights to appeal trial and appellate court decisions are also neutral, and follow established rules of appellate procedure with regard to timing, posting of bonds, etc. With respect to the rights of foreign firms in state courts, we are not aware of any states which treat foreign firms differently from domestic ones.

**2. What rights do foreign as compared to domestic firms have to petition the competition authority to bring action? Are there**

jurisdiction." Rule 2.2(a), 16 CFR 2.2(a). Both foreign and domestic firms are required to provide a signed statement that includes a description of the alleged violation, any available supporting

The costs of litigation for foreign and domestic firms are substantially the same. Whether a firm can appear in court through someone other than a lawyer depends on local court rules. However, firms in antitrust litigation normally are represented by counsel. Courts have the discretion to permit lawyers licensed in other jurisdictions to appear, and commonly do so, although the participation of a locally-licensed lawyer is also required. Submissions to the courts are in English. There is no formal requirement that submissions to the Department be in English, but the Department has very limited capacity to

**Notes**

<sup>1</sup> Commission Rule 2.2, which governs requests for Commission action, explains that "the Commission specifically retains its right to take such action as it deems appropriate in the public interest and under any of the statutes which it administers." 16 CFR 2.2(d).

<sup>2</sup> Rule 24 of the Federal Rules of Civil Procedure, for example, states that "anyone may be permitted to intervene in an action: ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common."

<sup>3</sup> This rule states that "[p]ersons who are qualified to practice law in a Member State of the European Community and authorized to practice before the Commission of the European Communities in accordance with Regulation No. 99/63/EEC are eligible to practice before the Commission." 16 CFR 4.1(a)(2).