

Cherokee Nation Code Annotated
Title 12: Civil Procedure
Chapter 2: Unfair and Deceptive Practices
§ 28. Unfair Competition Law
Cite as: 12 CNCA § 28

A. As used in this section The Cherokee Nation Antitrust Act shall be referred to as the "Antitrust Act,"

B. Definitions

As used in the Antitrust Act:

(1) "**Attorney General**" means the Attorney General of the Cherokee Nation, any attorney employed by the Office of the Attorney General designated by the Attorney General to act on his behalf and/or any other person retained or employed by the Attorney General as a duly authorized representative.

(2) "**District Court**" means the District Court for the Cherokee Nation.

(3) "**Nation**" means The Cherokee Nation.

(4) "**Person**" includes corporations, partnerships, and associations existing under or authorized by any state or territory of the United States, or any foreign state or nation.

(5) "**Public office**" means any organized body, office, agency, institution, or entity established by the laws or regulations of the Nation for the exercise of any function of government.

(6) "**Trust**" is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

(a) To create or carry out any restrictions on trade or commerce;

(b) To limit or reduce the production of, or increase or reduce the price of, a product or service;

(c) To prevent competition in design, manufacturing, making, transportation, sale, purchase or providing of a product or service;

(d) To raise, fix, maintain, or stabilize the price at which a product or service is sold, offered for, or intended for sale, barter, use, or consumption to the Cherokee Nation, or to any citizen of or entity owned by the Cherokee Nation, or to persons within the territories of the Cherokee Nation;

(e) To make, enter into, execute, or carry out contracts, obligations, or agreements, oral or written, of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, consumption or a service below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or service at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or service between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale of such article, commodity or service, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or of such article, commodity or service, that its price might in any manner be affected;

(f) To refuse to buy from, sell to, or trade with any person because such person appears on a blacklist issued by, or is being boycotted by, any other person or persons.

(g) To restrain or prevent competition in the letting or awarding of any public contract in derogation of any statute, ordinance, or rule requiring the use of competitive bidding or selection in the letting or awarding of a public contract.

(h) A trust as defined in this division is unlawful and void.

C. Prohibition of Agreements in Restraint of Trade.

No person shall enter into a combination, contract, or agreement, the purpose, effect or intent of which is to limit or fix the price or lessen the production or sale of an article or service in commerce, use, or consumption; to prevent, restrict, or diminish the manufacture or output of such article or service; or refuse to buy from, sell to, or trade with any person to exclude such person, product or service from competing in commerce.

D. Conspiracy Against Trade Prohibited.

Every combination, contract, or agreement in the form of a trust is declared to be a conspiracy against trade and is illegal. No person shall engage in such conspiracy or take part therein, or aid or advise in its commission, or, as principal, manager, director, agent, servant, or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, or rates, or furnish any information to assist in carrying out such purposes, or orders thereunder, or in pursuance thereof, or in any manner violate the Antitrust Act. Each individual violation of this section is a separate offense.

E. Illegal Contracts.

Any contract or agreement in violation of the Antitrust Act is void *ab initio*.

F. Jurisdiction

The District Court is vested with jurisdiction and is the appropriate venue for the adjudication of any investigations, proceedings or claims brought for any violations of the Antitrust Act.

Any proceedings to restrain, enjoin or to seek damages for violations of the Antitrust Act, shall be instituted by the filing of a complaint setting forth the case and praying for all such remedies requested. Any complaint and all subsequent proceedings thereafter shall comply with the Federal Rules of Civil Procedure and the Local Rules of the District Court.

Upon the filing of a complaint, and before final decree, the District Court may issue such temporary restraining order or prohibition as is just in the premises, including, but not limited to, restraining or enjoining the corporation and its officers and agents from continuing or committing, during the pendency of the action, the alleged actions upon which the complaint was brought.

G. Right to Civil Cause of Action

The Nation or any citizen of the Nation or any entity owned, in whole or in part, or controlled by the Nation who may be damaged or injured by any agreement, monopoly, trust, conspiracy, or combination in restraint of trade which is declared unlawful by this Antitrust Act shall have a cause of action as a Plaintiff against any person causing such damage or injury regardless of whether the Nation or such citizen or entity dealt directly or indirectly with the defendant, and without regard to the amount in controversy. Such action may be brought by the Attorney General on behalf of the Nation in its sovereign capacity as *parens patriae*, on behalf of any citizen or citizens of the Nation and/or on behalf of any corporation or other entity which is owned, in whole or in part, or controlled by the Nation.

H. Parties Defendant—Multiple Proceedings

In any action or proceeding in the District Court, all persons that are party to or participating in the trust or conspiracy against trade violative of the Antitrust Act may be made parties defendant, and shall be jointly and severally liable for any and all damages and attorney's fees and costs of Plaintiff. Actions or proceedings for damages and for an injunction may be instituted simultaneously, or while one or another of them is pending, such actions or proceedings being instituted in the District Court. No action or proceeding for an injunction is a bar to an action or proceeding for damages, nor is an action or proceeding for damages a bar to one instituted to restrain and enjoin.

I. Statute of Limitations

Any action or proceeding for a violation of the Antitrust Act shall be forever barred unless commenced within ten (10) years after the cause of action accrued, except for any such action brought by the Cherokee Nation Attorney General as *parens patriae*. For purposes of this Section, the cause of action shall have "accrued" on the date upon which the Plaintiff discovered sufficient facts to be able to determine that it was harmed by the specific violation or violations of the Act alleged in the complaint.

J. Evidence.

In any case brought for violation of the Antitrust Act it is sufficient to prove that a trust, combination or conspiracy exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it or proving or producing an article of agreement or a written instrument on which it may have been based; or that it was evidenced by a written instrument.

K. Remedies

In addition to the remedies described elsewhere in this Chapter, the Plaintiff in any action commenced hereunder in the District Court who is threatened with injury or additional injury by reason of any person's violation of such acts may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief.

L. Recovery of Fees and Costs

In any action commenced under this section, upon judgment entered by the District Court in its favor, the Plaintiff will be entitled to the recovery of reasonable attorney's fees and costs. Costs for purposes of this section shall include all of the costs incurred by Plaintiff for investigation and proceedings related to any violation of this Antitrust Act, including but not limited to, the e-discovery costs for processing and hosting electronically produced and stored information obtained through subpoena and/or discovery whatever the source.

M. Damages

The Plaintiff in any action commenced hereunder, may sue for and recover damages for the entire time period in which damages were suffered as a result of any violation of this Antitrust Act, at Plaintiff's election, either:

- (1) treble the damages sustained, or
- (2) damages in the amount equal to ten thousand dollars (\$10,000) for each transaction affected by any actions forbidden or declared unlawful by this Antitrust Act, or

(3) the full sales price for all products or services affected by any actions forbidden or declared unlawful by this Antitrust Act.

These damages remedies are in addition to any other remedies provided by law or in equity, and these remedies shall not diminish or offset any other remedy.

N. INJUNCTIVE RELIEF

A. The court may, in its discretion, include in any judgment for relief an injunction against a violation of this chapter or such other restraint as it may deem expedient in order to deter the defendant from, and insure against, his committing a future violation of this Act;

B. Any injunction against a violation of this Act, whether interim or final, shall cover every article or product and not merely the particular article or product involved in the action;

C. It is not necessary for the plaintiff, in any action under this chapter, to provide or file any undertaking or bond for the issuance of any interim or final injunction;

Historical Data and Statutory Notes

LA 16–16, eff. April 21, 2016. Amended LA 08–18, eff. May 18, 2018. Renumbered from 12 CNCA § 27.

2018 Legislation

LA 08–18, Section 2, provides:

"Section 2. Purpose. The purpose of this Act is to modernize the laws and the Cherokee Nation and to protect elders, disabled and all other Cherokee citizens from unfair and deceptive business practices, unsafe products and unfair competition."