

A (SWISS) COMPANY RISKING A CIVIL SUIT IN COMPETITION LAW IN A FOREIGN COUNTRY CAN INITIATE PROCEEDINGS FOR (NEGATIVE) DECLARATORY RELIEF IN SWITZERLAND

Private actions based on competition law are more frequent outside Switzerland. Exporting companies may face such private claims in foreign jurisdictions, without being able to choose the forum, unless the Swiss company risks an actual civil suit and wishes to defend itself in its own country by asking the judge of its forum to declare that there is no violation of competition laws. The Swiss case law is, however, very restrictive regarding declaratory proceedings, which can put Swiss companies at a disadvantage compared to their customers or competitors.

The Swiss Federal Tribunal, in a ruling of 14 March 2018 (4A_417/2017), allows Swiss companies and their foreign subsidiaries to introduce a negative declaratory proceeding in Switzerland. The standing of the company to ensure a forum in Switzerland is confirmed in international matters, except in cases of abuse. As the Swiss courts are not known for slow court proceedings, there is no reason to fear a “Swiss torpedo”.

With the development of private actions in competition law in the European Union, this change in case law will place Swiss companies on an equal footing with their customers and competitors. If they are reactive, Swiss companies can, therefore, bring their adversaries into their own jurisdiction.

Pranvera Këllezi
kellezi-legal.ch