

Application Form for Exemption from the Prohibition on Cartels

Purpose of this form

As of September 1, 2017 a prohibition on cartels applies in Curaçao. This has been laid down in Chapter 3 of the National Ordinance on Competition. As a result of the prohibition on cartels, certain anti-competitive agreements between undertakings are prohibited.

Undertakings may apply for exemption from the prohibition on cartels pursuant to Article 3.5 of the National Ordinance. This document should be used for the submission of an application. The document is divided into three parts:

- Part 1: general explanation
- Part 2: questionnaire
- Part 3: explanatory notes to specific questions of part 2

We recommend you to read the general explanation and the specific explanatory notes carefully before answering the questions in part 2. Additionally, a brochure on the prohibition on cartels is available on the website of the Fair Trade Authority Curaçao (www.ftac.cw). Other documents available on the website include a brochure on tenders and the prohibition on cartels, a general brochure on the National Ordinance and brochures on other competition rules, namely the prohibition on abuse of a dominant position and the obligation to notify concentrations. The brochures are also available in hard copy at the office of the FTAC.

Do you have questions about or have problems with the submission of your application?

Please feel free to contact one of the FTAC employees via the contact details below. You may also visit the FTAC office.

Fair Trade Authority Curaçao
Pietermaai 6
postoffice box 135, Punda
Willemstad
info@ftac.cw
Telephone number: +5999 461 0067



Part 1: general explanation

Undertakings may apply for exemption from the prohibition on cartels for “non-hardcore” restrictions of competition pursuant to Article 3.5 of the National Ordinance on Competition.

Four conditions to qualify for exemption

The National Ordinance requires that four cumulative conditions are complied with. So your application should comply with all four conditions in order to be granted exemption. The four conditions for exemption are:

1. the agreement should contribute to the improvement of production or distribution, or to the promotion of technical/economic progress; and
2. the agreement should allow consumers a fair share of the resulting benefits; and
3. competition should not be restricted further than is necessary; and
4. adequate competition in the market should be maintained.

The undertaking(s) which submit(s) an application for exemption should prove that the four conditions are met. Part 3 of this document contains guidelines for this purpose.

It is possible to provide draft answers to the questions in Part 2 as a basis for an informal consultation prior to the submission of the formal application. This way it can be avoided that an exemption application is submitted while it is not necessary, or that exemption is requested for an agreement which most likely does not qualify for exemption.

The explanatory notes to the National Ordinance state that the conditions for exemption are consistent with European legislation and case law. However in applying the standards, the legal, economic and social circumstances in Curaçao should be taken into account, including the characteristic features of a small island economy. In certain cases the benefits of a competitive restriction may outweigh the drawbacks, for instance, to obtain a minimum efficient scale.

Scope of the possibility of exemption

The exemption form is not intended for the following situations:

- Agreements which do not restrict competition. In this situation exemption is not required because competition is not affected by the agreement;
- Hardcore restrictions. These are the most serious restrictions of competition such as setting selling prices or other terms and conditions of sale between competitors. Exemption is not possible for such situations because they are always harmful;
- De minimis restrictions. These are agreements in which the joint market share of the participating undertakings is less than 30% and which do not involve hardcore restrictions. This situation does not require exemption because the agreements have only a minor impact on competition;
- Exempted restrictions. These are categories of agreements which are exempt by national decree. Since these agreements are already exempt, they do not require exemption. Such exemptions do not yet apply at the entry into force of the prohibition provisions as of September 1, 2017;
- Agreements which are not subject to competition law. In certain exceptional cases, competition law does not apply, for instance, in case of collective bargaining and in case of statutory provisions not allowing competition. Exemption is not required because competition law does not apply.



Are you not sure whether one of the above situations apply? Then feel free to contact the FTAC.

Who may apply for exemption from the prohibition on cartels?

Any undertaking which participates in an anti-competitive agreement may submit an application for exemption. However, it is preferred that the application is submitted by the participating undertakings jointly. One or more persons can be authorized to act as representatives of the participating undertakings.

How do you submit an application for exemption to the FTAC?

An application for exemption should be submitted to the Fair Trade Authority Curaçao (i) in triplicate, (ii) in hard copy, and (iii) in Dutch at the address below. The application may be submitted by post, by fax¹, in person at the reception desk or by dropping it off in the mailbox. In addition you should send a digital copy of the application by e-mail to info@ftac.cw.²

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One of the three copies of the application should bear the original signature of a person who has the power of representation or who is authorized, stating the name, job title, place and date. If you attach annexes in another language than the official languages Dutch, Papiamentu or English, the FTAC may request a translation of these annexes.

What happens after submission of the application?

The FTAC will send the undertakings concerned or the proxy/proxies acknowledgment of receipt of the application. The FTAC will decide on the application as soon as possible but no later than four months after receipt of a complete application. This period may be extended by two months, within ten weeks after receipt of the application.

If the application is incomplete, the form will be sent back to the proxy with the request to complete the application within a set period of time. If the application cannot be completed within this period, the application cannot be assessed.

The FTAC may ask the undertakings participating in the agreement additional questions in order to assess the application. The assessment period is suspended during the period in which the questions are asked but have not yet been answered.

Uniform public procedure for the preparation of decisions

An application for exemption will be published in the *Curaçaosche Courant* and will be made available for inspection at the FTAC office.

After the assessment of the application, the FTAC will send a draft of the decision to be made to the applicant(s) and any other interested parties. Other interested parties may be competitors of the participating undertakings, for instance.

¹ There is a maximum of 20 pages for submission by fax.

² There is a maximum of 10 Mb by e-mail; it is permitted to send attachments to the application in parts in more than one e-mail.



The FTAC will make the draft, including the documents relating thereto which are reasonably required for an assessment of the draft, available for inspection at the FTAC office for a period of six weeks. The inspection will be announced in one Papiamentu and one Dutch language newspaper.

Interested parties may present a view on the draft decision within six weeks after commencement of the draft's inspection period. The applicant will subsequently be given the opportunity to respond to the views prior to the FTAC's final decision.

Objection and appeal

FTAC decisions are subject to objection or appeal in accordance with the National Ordinance on Administrative Proceedings [in Dutch: *Landsverordening Administratieve Rechtspraak*].

Conditions for exemption

An exemption may be backdated but no further than up to the date of receipt of the application.

An exemption will be granted for a designated period of time. An exemption may be granted subject to restrictions and requirements.

The FTAC will revoke an exemption if the information which was provided is inaccurate to the extent that the exemption would have been denied if the correct information had been known.



Part 2: information which should be provided when applying for exemption

1. Information about the participating undertakings

1.1 Provide a brief description of the activities of the participating undertakings.

1.2 State the following contact details of all undertakings participating in the anti-competitive agreement:

- o (trade) name;
- o trade register number or the foreign register and registration number;
- o legal form;
- o postal address and visiting address;
- o name and job title of the contact person;
- o telephone number and e-mail address of the contact person.

1.3 Is the participating undertaking part of a group? If so, please provide the following information:

- o (trade) name of the group;
- o trade register number or the foreign register and registration number;
- o the group's legal form;
- o the group's postal address and visiting address;
- o the names and trade names of all undertakings which are part of the group;
- o the structure of control within the group;
- o name and job title of the group's contact person;
- o telephone number and e-mail address of the contact person.

1.4 Is the application submitted by all the undertakings participating in the anti-competitive agreement? If not, which of the participating undertakings is submitting the application and why is/are the other undertaking(s) not involved in the application?

1.5 Is the application submitted by one or more proxies? If so, please state the contact details and job title of the proxy/proxies.

State on behalf of which undertakings the proxy acts and attach written evidence showing the proxy's power of representation. If the application is submitted by an association of undertakings or trade association, please provide a member list comprising the company names and addresses of the members.

1.6 Attach the most recently published annual financial statements of the participating undertakings, and if they are part of a group, the (consolidated) annual financial statements of the group as well.

If the application is submitted by an association of undertakings or trade association, please attach the annual financial statements of the participating members and not those of the association of undertakings or trade association.

2. Information about the markets in which the participating undertakings operate

Substantiate your answers to questions 2.2 through 2.7 as much as possible with references to analyses, reports, studies, research papers, presentations and other similar documents which the participating undertakings can provide. This will strengthen the verifiability of your answers. If a document cannot be found



in open sources, please attach it as an annex to your application. Please base your answers on sources which are as up to date as possible.

- 2.1 Provide a brief description of the types of goods and/or services to which the anti-competitive agreement relates.
- 2.2 Provide a reasoned explanation as to how the market to which the anti-competitive agreement applies, should be defined.
Make sure to include the product dimension and the geographical dimension of the market definition. State, if applicable, substitute goods and/or services.
- 2.3 Provide an accurate as possible estimate of the size (in value and/or in volume) of the relevant market to which the anti-competitive agreement applies.
- 2.4 Provide an accurate as possible estimate of the market share (based on value and/or volume) of all undertakings participating in the anti-competitive agreement.
- 2.5 Provide an accurate as possible estimate of the market share (based on value and/or volume) of the three most important competitors of the participating undertakings.
- 2.6 Describe the demand side of the relevant market. Please include at least the following aspects in you answer:
 - o how supply meets demand (ad hoc, tenders, framework agreements, etcetera);
 - o the extent to which customers are organized (such as group purchasing organizations or the presence of several large customers);
 - o the duration of the customer relation (ad hoc, year contracts, ongoing contracts, etcetera);
 - o the main criteria in the selection of suppliers;
 - o the (trade) names of the three main suppliers.
- 2.7 Describe the opportunities to enter the relevant market as a new undertaking. What are the main entry barriers?
- 2.8 What are the main trade associations in the relevant market? Are the participating undertakings members of one of these trade associations?
- 2.9 Does one of the participating undertakings have an interest of 20% or more in one or more undertakings which operate in one of the relevant markets? If so, please describe this participation.

3. Information about the anti-competitive agreement

- 3.1 Provide a description of the anti-competitive agreement, concerted practice or decision of an association of undertakings. Please include at least the following aspects in you answer:
 - o the strategic and economic rationale of the agreement;
 - o the parties involved in the agreement;
 - o the start date of the agreement;



- o the duration of the agreement;

Attach, if available, a copy of the anti-competitive agreement to your application as an annex.

3.2 To which of the following competitive factors does the anti-competitive agreement relate? Please elaborate and refer to components or provisions from the agreement, where applicable:

- o purchase or selling prices;
- o trading conditions other than purchase and selling prices;
- o the number of goods to be manufactured or sold, or services to be performed;
- o to what customers the products and/or services will be sold;
- o the location where products and/or services will be sold;
- o technological developments;
- o the production method;
- o the distribution method;
- o suppliers or sources of supply;
- o the opportunity to resell products or services;
- o the separate or joint provision of goods or services;
- o other factors, namely ...

3.3 Are there any pending legal proceedings or have legal proceedings been conducted regarding the anti-competitive agreement or related agreements? If so, please attach available documents concerning the legal proceedings and the outcome thereof if known.

For example, has the agreement already been assessed by another competition authority or government agency?

4. **Conditions for exemption**

These questions require you to provide a reasoned and substantiated explanation, using as much as possible quantitative data, as to why you think that the anti-competitive agreement complies with the four following cumulative conditions for exemption (as also stated in Article 3.5 of the National Ordinance on Competition).

4.1 Explain how the anti-competitive agreement contributes to the improvement of production or the distribution of goods and/or services or to the promotion of technical and/or economic progress in the market.

4.2 Explain how the anti-competitive agreement allows consumers a fair share of the resulting benefits (question 4.1).

4.3 Explain why all anti-competitive provisions in the agreement are required to realize the improvement and/or progress referred to in question 4.1.

4.4 Provide reasoned justification as to why the anti-competitive agreement does not eliminate competition for a substantial part of the relevant market for goods and/or services.



5. Confidentiality

Providing a reasoned explanation, state what information in your application should be regarded as confidential in the sense of Article 8.1 of the National Ordinance on Competition.

You may highlight the confidential information of the application in bold or by placing it between square brackets. This can be whole sentences but also specific words or numbers. You should attach an annex to the application, explaining - per confidentiality claim - why this information is classified as confidential. Make sure to make reference to one or more confidentiality grounds, as referred to in the second and third paragraph of Article 8.1.

6. Declaration of accuracy and completeness

Your application should conclude with the declaration below, which needs to be signed by or on behalf of all participating undertakings:

“The applicant(s) hereby declare(s) that the information provided in this application is, to the best of their knowledge and belief, true, and accurate and complete, that true and complete copies of documents required by the form, have been submitted, and that all estimates are identified as such and are their best estimates of the underlying facts and that all expressed opinions are sincere. They are aware of the provisions of Article 3.12, first paragraph, of the National Ordinance on Competition.”

Checklist for annexes

Please check whether the following documents have been attached prior to submitting your application:

- if the undertaking or undertakings is/are assisted by a proxy: written evidence showing the proxy's power of attorney (question 1.5);
- the most recently published annual financial statements of the participating undertakings, and if they are part of a group, the (consolidated) annual financial statements of the group as well (question 1.6);
- analyses, reports, studies, research papers, presentations and other similar documents to describe the market and to provide transparency to the market shares of the participating undertakings and competitive undertakings (questions 2.2 through 2.7);
- if applicable, a copy of the anti-competitive agreement (question 3.1);
- if applicable, documents concerning pending legal proceedings or legal proceedings which have been conducted regarding the anti-competitive agreement or related agreements (question 3.3.);
- documents substantiating compliance with the conditions for exemption (questions 4.1 through 4.4);
- a table containing a reasoned explanation as to why the information is classified as confidential (question 5).
- a declaration signed by or on behalf of all participating undertakings stating that the information provided in the application is complete and accurate (question 6).



Part 3: explanatory notes to specific questions in part 2

Explanatory notes to question 1.2

The FTAC has to know who submits the application and on behalf of what undertakings. It is customary that an application is submitted jointly by the undertakings participating in an agreement, whether or not represented by a proxy. The FTAC also wants to be able to contact the undertakings for any further questions.

Explanatory notes to question 1.3

Competition law, including the prohibition on cartels, focuses on undertakings. An undertaking is an organizational unit or entity which performs an economic activity. The legal form of an economic entity is irrelevant for the purpose of competition law. This is why a corporate group or group of various legal entities may be regarded as one economic entity or undertaking for the purpose of competition law, and why the activities of the entire group are included in the assessment of an application for exemption.

A group is an economic entity in which legal entities and companies are associated as far as their organization is concerned. Group undertakings are legal entities and companies which are associated in a group.

Explanatory notes to question 1.5

If undertakings are assisted by one or more proxies, the proxy/proxies in principle will be the contact person(s) in communications with FTAC staff. A proxy could be an attorney or lawyer, for instance. The proxy may also be a person employed by one of the participating undertakings.

Please attach written evidence showing the proxy's power of attorney. When the proxy acts on behalf of all undertakings concerned, then each individual undertaking should submit an authorization. If another person becomes the proxy in the course of the procedure, the FTAC should be notified immediately and written evidence showing the power of representation of this other proxy should be submitted.

Explanatory notes to question 2.2

In order to be able to assess the application for exemption, the relevant market needs to be defined. The term "relevant market" is derived from European competition law.³ In applying this term, the FTAC will take account of the legal, economic and social circumstances in Curaçao.

The relevant market forms the basis for determining the market share of the participating undertakings and for assessing the impact on competition. In defining a relevant market, both the market's product dimension and geographical dimension should be taken into account.⁴

The relevant product market comprises goods and/or services which the consumer considers to be substitutes by reason of product characteristics, price and intended use. Physical and technical characteristics of the goods or the nature of the services, price ratios and reactions of customers to price changes are determinant factors to define the relevant product market.

³ See the European Commission Notice on the definition of relevant market for the purposes of community competition law' (PbEG 97/C 372/03).

⁴ Sometimes the relevant market also has a temporal dimension. Competition during high season, for example, can be very different from competition during low season.



When describing the relevant product market, one frequently will have to deal with the question of which market definition is the right one. If the undertakings have any doubt about the proper market definition, it is wise to use several market definitions. The follow-up questions regarding market share and competition, among others, should be answered for each separate market definition.

Example: Two undertakings have an anti-competitive agreement regarding the sale of apples and pears to consumers. They are not sure whether the relevant product market is that of apples, pears, apples and pears or even fruit in general. Therefore they submit market information about the following possible product markets: (i) apples; (ii) pears; (iii) apples and pears; and (iv) fruit.

The relevant geographical market is the area in which the undertakings concerned operate and where the conditions of competition are sufficiently similar. In addition, there are clear differences in the conditions of competition in the neighboring areas. The relevant geographical market may be a part of Curaçao, the whole of Curaçao or a larger area (for example the Caribbean region, Latin America or the whole world). Decisive factors for market definition include: the distribution of market share among suppliers in different areas, the customers' reactions to price changes, the purchasing behavior of customers and trade flows between areas.

Example: Two undertakings have an anti-competitive agreement regarding the sale of apples and pears to consumers. Both undertakings are located in Westpunt. If many residents from Westpunt do not buy their fruit outside Westpunt, the relevant geographical market is probably limited to Westpunt.

However, if many of the residents from Westpunt buy their fruit from different places in Curaçao, the relevant geographical market is probably larger than Westpunt. Therefore the undertakings should submit market information about the following possible relevant markets: (i) the sale of fruit in Westpunt; (ii) the sale of fruit in the west of Curaçao; and (iii) the sale of fruit in Curaçao.

Explanatory notes to questions 2.3 through 2.5

It is important to substantiate the answers to these questions as much as possible. This can be done by means of references to analyses, reports, studies, research papers and presentations. If you do not have any market information at your disposal, please provide a substantiated estimate.

The total size of the relevant market may be expressed in value or in volume. The market value comprises the turnover of all undertakings which operate in the relevant market. The total market volume comprises the total production of all undertakings in the relevant market. The market share of the undertakings concerned and of the competitors may be expressed in value (% of the total turnover) or in volume (% of the total number of products or services sold). If possible, please state the size of the market and the market share based on value *and* volume.

A format which can be used to answer these questions is available on the FTAC website under the heading "regulations" → "[forms](#)".

Explanatory notes to question 2.7

Competition in a market does not only come from existing suppliers but it is also determined by the threat of new entrants. In case of a substantial threat of new entrants, there is more potential competition in a market, as a result of which compliance with the fourth condition for exemption can be obtained more easily.



Competitive pressure from potential competitors is greatly influenced by the level of entry barriers. If the entry barriers are low, there is more potential competition. Examples of entry barriers are:

- Laws and regulations. This can for instance be licensing requirements for entering the market. When a potential entrant has to comply with many rules, or needs a license to enter the market, the entry barriers are higher than when entry is completely free.
- Investment costs. If a large investment is required to enter the market, this can be an important entry barrier for potential entrants. In this respect it also becomes relevant to what extent the costs are 'sunk costs'.
- Sunk costs are investment costs which cannot be recovered when an undertaking exits the market. By way of illustration: an investment in inventory probably can be recovered in part when exiting the market by selling the inventory to, for instance, a competing undertaking which continues to operate in the market. In case of a large investment in a factory this can be much more difficult.
- Minimum efficient scale in the sector. If an undertaking in a sector can only operate at a profit when it holds a large share of the sales market, entry is more difficult than when a small share of the market may suffice.
- Switching barriers for customers. When customers cannot easily switch between suppliers in the market, for instance due to long-term contracts, it is more difficult for an entrant to attract customers and to operate at a profit.

The undertakings participating in the agreement should substantiate their views on entry barriers as much as possible. Examples of former entries are relevant in this context. Economic prospects for the future may also be relevant: in terms of entry, stagnating sectors are less interesting for new entrants than growth markets. Finally, the customers' position may be important if it can be substantiated that strong customers will pave the way for new entrants.

Explanatory notes to question 3.1

If applicable, the participating undertakings should submit a copy of the contract in which the agreement has been laid down. In case of a decision by an association of undertakings or trade association which, for instance, was adopted during a meeting, the participating undertakings should submit the decision as recorded in the minutes. Anti-competitive agreements may regard contracts but also verbal agreements, *gentlemen's agreements* or concerted practices. Additionally, is it required to describe in detail what the anti-competitive agreement entails and with what purpose the agreement was made.

For more information about anti-competitive agreements, please refer to the brochures on the prohibition on cartels, and tenders and the prohibition on cartels on the FTAC website (www.ftac.cw). The brochures are also available at the FTAC office. Are you not sure whether an agreement is anti-competitive? Then you should contact a specialist or the FTAC.

Explanatory notes to question 3.2

This question requires you to describe which components of the agreement lead to a restriction of what competitive factor and why the restrictive condition has been included in the agreement. An agreement or condition may lead to more restrictions. A condition poses a competitive restriction if the freedom of the entrepreneur is restricted with regard to one of the abovementioned competitive factors. If an agreement for instance, restricts the freedom of the participating undertakings to set their own prices then this constitutes an anti-competitive price restriction. If the freedom to produce as much as desired is restricted, this constitutes a restriction of capacity.



Explanatory notes to question 3.3

An earlier assessment of the anti-competitive agreement by another competition authority or government agency may be relevant for the FTAC's assessment of the application. Therefore undertakings should also provide transparency in any other processes and in the assessment relating to those cases. However, the FTAC will at all times perform its own independent assessment based on the information provided and the current market conditions.

This may concern processes for instance at:

- ministries;
- other national or foreign supervisory authorities such as the telecommunications and postal services regulator [in Dutch: *Bureau Telecommunicatie en Post*];
- foreign competition authorities;
- national or foreign judicial bodies;
- arbitration.

Explanatory notes to question 4.1

Substantiate, if possible by means of documents, the advantages of the anti-competitive agreement. A relevant document would be, for instance, an economic report which contains a calculation of the benefits or efficiency improvements. Such benefits may include:

- a lower cost price of the product or service;
- a quality improvement;
- improved or faster services;
- creation of a new product or service (innovation).

The benefits should outweigh the anti-competitive drawbacks of the agreement. It is up to the undertaking submitting the application for exemption to provide proof that the benefits of the agreement outweigh the drawbacks. This should concern objective benefits, not subjective benefits for the participating undertakings only. Therefore benefits resulting from the possibility to exercise more market power are not taken into account. An agreement between undertakings, for instance, to raise prices or to divide markets may lead to benefits for the participating undertakings but does not lead to pro-competitive effects (or: efficiency benefits) in the market. Such agreements only lead to higher profits for the participating undertakings to the detriment of customers.

In the reasoned justification you should address the following factors:

- the nature of the benefits. This regards, for instance, efficiency benefits which lead to a lower cost price, quality improvements or innovation;
- the relation between the agreement and the benefits. It should be proved that the anti-competitive agreement is required to realize benefits;
- the probability and scope of the benefits. The benefits should be substantiated as much as possible with quantitative factors;
- how and in what time frame the benefits will be realized.

Explanatory notes to question 4.2

The benefits should not only be to the advantage of the participating companies, users should also have a fair share in the benefits. Users not only include consumers but also other buyers such as distributors and retailers. A fair share



means that the benefits for users should outweigh the drawbacks resulting from the agreement. Subsequently, the benefits of the agreement should not only outweigh the drawbacks, as required under the first condition, the benefits which are passed on to the user should also outweigh the drawbacks.

A benefit like cost savings, for example, is more likely to be passed on to the user if there is more competition in the market. The extent to which users react to a price change of the product or service (price elasticity of demand) is another important factor.

In case of advantages like quality improvements and new products, undertakings should provide a carefully drafted reasoned explanation of the real benefits for users.

Explanatory notes to question 4.3

The undertakings participating in the agreement should provide proof that there are no realistic and feasible less restrictive alternatives to realize the benefits, other than entering into the anti-competitive agreement. Furthermore, the undertakings should substantiate that all anti-competitive elements of the agreement are required to realize benefits. If the benefits are also feasible without any competitive restriction, this condition will not have been complied with.

Explanatory notes to question 4.4

The participating undertakings should substantiate that despite the agreement there is ample competition in the market. Take into consideration your answers to questions 2.3 through 2.7 regarding market share, market structure, competition and potential competition. Low entry barriers usually mean more potential competition.

Explanatory notes to question 5

Article 8.1 of the National Ordinance on Competition stipulates that the FTAC shall make the draft of the decision on the application for exemption to be made, including the underlying documents, available for inspection at the FTAC office. Confidential information will not be disclosed. You may use the following grounds, as referred to in the second and third paragraph, to justify why certain information is confidential according to you:

- it involves information which could damage the unity of the government, as referred to in Article 11 of the Curaçao Constitution;
- it involves information which could compromise Curaçao's security;
- it involves non-public corporate and manufacturing data;
- the interest in disclosure does not outweigh the economic or financial interests of Curaçao;
- the interest in disclosure does not outweigh the criminal investigation and prosecution of criminal offenses;
- the interest in disclosure does not outweigh the inspection, control or monitoring by or on behalf of administrative bodies;
- the interest in disclosure does not outweigh the respect for personal privacy;
- the interest in disclosure does not outweigh the interest of the addressee in being the first to have the information;
- the interest in disclosure does not outweigh preventing a disproportionate benefit or unjustified disadvantage for the natural persons or legal entities or third parties involved in the matter.



Please use the format made available on the FTAC website under “regulations” → “[forms](#)” for the submission of confidentiality claims. The FTAC will assess your confidentiality claims. If insufficient justification is provided for an individual confidentiality claim, the FTAC will contact you or your proxy/proxies. The FTAC will also seek contact if it intends to reject a confidentiality claim.

The FTAC will assume that it may disclose any information which you do not consider confidential.

At least five days prior to the inspection period, the FTAC will notify you or your proxy/proxies of which information in the draft decision and the underlying documents will be made available for inspection.

Explanatory notes to question 6

The information in your application should be complete and accurate. If you are unable to provide certain information, we kindly request you to state the reasons why. Article 3.12, first paragraph of the National Ordinance on Competition, stipulates that the FTAC is authorized to revoke an exemption if the information which was provided is inaccurate to the extent that the exemption would have been denied if the correct information had been known.
