

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Fair Trade Authority Curaçao, Curaçao

The following template is submitted by **Fair Trade Authority Curaçao, Curaçao** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The FTAC has been set up under the [National Ordinance on competition](#) [in Dutch: Landsverordening inzake concurrentie. The Fair Trade Authority Curacao (FTAC) is the independent competition authority of Curaçao.

The National Ordinance comprises the following rules for undertakings:

- the prohibition on cartels;*
- the prohibition on abuse of a dominant position; and*
- the obligation to notify certain concentrations*

The new rules of the National Ordinance on Competition came into effect as of September 1st, 2017. The Fair Trade Authority Curaçao (FTAC) monitors compliance with the National Ordinance on Competition. The FTAC will take action against companies that hinder, restrict or distort competition.

More Information is available on our website: <https://ftac.cw/en/>.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The rules laid down in the National Ordinance on Competition apply to all national and foreign undertakings and associations of undertakings that perform economic activities in the Curaçao market.

Article 3 of the Curaçao Constitution ensures that all who are in Curaçao are treated equally in equal cases and prohibits discrimination on any ground.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

- i. The website of the FTAC is available in all three of the official languages of Curaçao and contains all necessary information about the National Ordinance on Competition, task and powers of the FTAC. There also brochures available in all three official languages on, amongst others, The National Ordinance, the prohibition of cartels, the prohibition on abuse of a dominant position; and the obligation to notify certain concentrations The National Ordinance on Competition is published on the website in Dutch (official version) and English (informal translation).*
- ii. FTAC publishes all procedural rules on its website and is bound by these rules. See: <https://ftac.cw/en/regulations/other-decisions/>.*
- iii. See above*
- iv. FTAC is bound to follow these procedural rules. Compliance is enforceable in appeal proceedings*
- v. FTAC is bound by law to publicize its decisions, policies, procedural rules and regulations on its website and announce the adoption of decisions in cases and decisions on policies through the official channel of the government: “the Landscourant”.*

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide*

reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

I and ii. The FTAC informs the person(s) and enterprise(s) involved as soon as possible, if this doesn't interfere with the ongoing procedure.

The FTAC provides the involved parties with information about when and how to file objections or appeal against decisions of the FTAC, in accordance with chapter 2 and article 16 of the Landsverordening Administratieve Rechtspraak¹ and section 8.3 of the national ordinance on competition.

The procedures in the Investigation are also governed by the General Principles of Good Governance. One of these Principles is the Principle of due diligence: a proper, substantiated decision must be reached.

iii. Information requests from our Authority are subject to the abovementioned General Principles of Good governance. Among these principles are principles of diligence, subsidiarity and proportionality, which ensure that FTAC receives the information that it needs, with a as minimum burden as possible on the person(s) involved.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The FTAC aims to conclude all its investigations thoroughly and as quickly as possible.

Formal complaints and other formal request must be dealt with within 4 months, with one possibility for an extension of 4 months. See, article 6.1, under 4 & 5, article 7.5, under 5 & 6 of the national ordinance on competition.

Once FTAC has drawn up a statement of objections regarding a violation, a decision about a possible fine must be taken within 6 months. See article 7.12 of the National ordinance on competition.

¹ National ordinance on administrative justice/law

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

In its Investigations and Enforcement Proceedings, FTAC is required to make sure and seeks to ensure that any confidential information obtained by the FTAC during enforcement proceedings is not disclosed publicly.

Anybody that supplied information to the FTAC and claimed it to be confidential on the grounds included in article 8.1 and article 9.1 of the National Ordinance on Competition will be notified on how the FTAC ruled on that claim.

In all instances where FTAC discloses information obtained from Persons concerned, whether it be disclosure to the public or disclosure inter partes, FTAC weighs the interests of the persons involved against the public interest or against procedural interests. This usually results in specific information, such as business secrets and personal data, being redacted before disclosing a document.

FTAC will delay publication of its decision on the case for seven days to give parties the opportunity to contest the decisions of confidentiality before the court. They will also receive an confidential (with only the information they supplied visible the information claimed confidential will still be redacted) and non-confidential version of the decision, with all information claimed confidential redacted, for a final check on how confidential information if any was included in the decision.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Decisions of FTAC are taken jointly by the three members of the board. Article 2.6. of the National Ordinance on Competition prescribe that the members of the board and/or their partner have no direct or indirect interests (financial or otherwise) that may influence the performance of their duties or that may jeopardize their impartiality.

They need to give a written statement to the selection committee before they are appointed regarding their business interests and other assets and additional functions and activities and, if applicable, those of their spouse or partner. After their appointment, the member shall submit a written declaration to the Minister of economic affairs before they or their spouse or partner acquire new business interests and other assets, or accept additional

functions and activities. This also applies to interests which arise as a result of succession rights, gifts or other sources of income. The minister shall make public additional functions of a member.

Such publication will occur at the time of their appointment and subsequently through an annual publication of a list of such additional functions in the promulgation bulletin of the government, the Landscourant.

The obligation to submit the written declaration as referred above also applies to the intention to acquire or the acquisition of business interests, additional functions, additional activities respectively by other family members, if cognizance thereof is important in order to ensure a proper performance of their function as a FTAC member.

All employees of FTAC are obligated to comply with an Integrity Code of the FTAC. Before being employed by FTAC all employees need to undergo a back ground and integrity check. New additional functions and activities of employees need to be notified to the President of FTAC.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

i. ii. iii. The FTAC notifies the parties involved of alleged violations or claims against them as soon as possible, but only when this does not interfere with its Investigation.

In its decisions, FTAC always elaborates on its arguments.

Article 8.1 of the National Ordinance on Competition is applicable on decisions of the FTAC. It's mandated by law that before taking a decision (fining or otherwise), parties first get an opportunity to have access to the file and to present their views on the case, in writing or orally.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Due to the fact that competition law is relatively (since September 2017) new to everybody, the FTAC actually encourages any subject of an investigation to seek assistance from and / or to bring qualified legal counsel of its choosing to meetings with the FTAC.

The FTAC recognizes applicable privileges in accordance with legal norms in Curaçao.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

FTAC is bound by law to publicize its decisions on its website and announce the adoption of decisions in cases and decisions through the official channel for promulgation of the government: the Landscourant

In its decisions, FTAC always presents the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. The FTAC's is obliged by the general principles of administrative law to motivate in writing its decision. If FTAC does not sufficiently motivate its decision the court, can and will annul this decision.

If commitments are accepted, they will be an integral part of the decision of the FTAC in that particular case. As stated before all FTAC is bound by law to publish its decisions on its website and announce them in the "Landscourant"

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an

opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

All formal decisions are subject to judicial review. Parties can first file objections against the decision with FTAC or go straight to the court of first instance. If a party decides to go straight to the court of first instance the court can refer the case back to the FTAC. In that case the FTAC needs to treat the request of the court as if it was an objection by the party. However, FTAC is allowed to deny such a referral of the court.

When dealing with objections, a different team will then fully review the decision. This team has not been involved in any way in the case before, because of “the Chinese walls” that are in place at the FTAC. This can result in the FTAC changing the original decision. After FTAC decided on the objections filed by a party, parties can still bring the case before the court of first instance.

Parties have a second opportunity for appeal with The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba.