



AUTHORISATION PROCEDURES

Introduction

The Fair Competition Act, 2002-19 (“the Act”) recognises that certain arrangements between firms may benefit consumers even though they may in fact be anti-competitive. Section 29 of the Act provides that such arrangements may be authorised by the Fair Trading Commission.

What is an Authorisation?

An authorisation by the Commission grants to the parties concerned, protection from legal action to undertake practices which would otherwise be prohibited under the Act.

Enterprises seeking to undertake certain agreements including resale price maintenance, exclusionary provisions or establish tied contracts may apply to the Commission for an authorisation to do so.

Authorisation is granted only where the Commission is satisfied that the detrimental effects of the practice are outweighed by the countervailing benefits to the public which result from the practice.

Once a practice has been authorised by the Commission it may be implemented with immunity from action under the Act.

Application Procedure

Parties who are considering whether or not to apply for an authorisation can contact the Fair Trading Commission to seek clarification on relevant application issues, as well as to be informed as to the type and extent of material that will be required to support an application.

The Commission cannot authorise conduct that has already occurred so it is vital that the potential applicant is properly advised. The Commission strongly encourages persons to carefully consider or, seek advice on whether or not the application is appropriate in all circumstances.

Before making an application the following issues should be considered by the applicant:

- ❖ Is the conduct likely to breach the Act?
- ❖ Are there benefits which result from the proposed conduct?
- ❖ Will there be a net public benefit as a result of the proposed conduct?

The applicant must file the relevant application forms with the Commission in order to have the conduct considered. The Commission must be satisfied that the proposed agreement or practice is likely to promote the public benefit and is reasonable in all the relevant circumstances.

Public benefit

Public benefit is any thing of value to the community generally. It usually refers to those factors that contribute to the realisation of economic progress and efficiency.

Some factors that might be regarded as public benefits include:

- ❖ Promotion of competition
- ❖ Expansion of employment
- ❖ Improvement in the quality of products
- ❖ Reduction in the price of products

Public detriment

Public detriment refers to any thing resulting in a negative effect on the community generally. It usually refers to factors that impair the ability of the public to achieve the goals of economic progress and efficiency. Business conduct that is likely to contravene the Act will almost always be anti-competitive to some extent. Some examples of public detriment include:

- ❖ Higher prices
- ❖ Lower quality products
- ❖ Constraints on effective competition
- ❖ Reduced efficiency

Causal link of public benefits and detriments

The Commission must be satisfied that there is a causal link between the proposed conduct to be authorised and the benefits or detriments identified in the application. The Commission will take into consideration whether the benefits and detriments would still occur in the future if the authorisation is not granted.

Duration of an authorisation

In granting an authorisation to parties to engage in a particular conduct, the Commission may impose conditions on the practice being conducted to ensure that the benefits of the conduct will be achieved in a sustainable manner by a broad cross section of society, and the anti-competitive practices will be limited; or the likely harm mitigated.

Revocation or amendment of an authorisation

Before granting or revoking an authorisation the general public will be made aware of the application so that they can give their views on the proposal. The Commission will give regard to such views before making its final decision. The Commission can make a written decision indicating either that;

- ❖ the authorisation is granted unconditionally,
- ❖ the authorisation is granted subject to terms and conditions, or
- ❖ the authorisation is denied.

After the Commission has reached its final decision, the general public and specific interested parties will be informed of the decision and the reasons for it.