



**AFTA Policy Rules on Priorities
for Applications for Action**

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2 INTRODUCTION

The AFTA supervises compliance with the Competition Ordinance (CO). In the performance of this duty, the AFTA has the option to choose which investigations to initiate and when. The AFTA receives more applications for enforcement and signals about possible violations than it can investigate given its capacity. Therefore, the AFTA must set priorities. In light of its mission, the AFTA does this based on its prioritization policy. The prioritization policy provides insight into why the AFTA conducts an investigation in one case and not in another, in response to an application for action.

Before explaining the prioritization policy, it is important to realize that the AFTA is not required to conduct an investigation based on each formal application, signal or complaint received. Only in case of a formal application for action is the AFTA required to issue a decision. There is a formal application for action if the person making the application is an interested party within the meaning of Article 3 of the National Ordinance on Administrative Justice (abbreviated in Dutch as: “Lar”). Such a formal application must be in writing and be complete in the sense that the applicant provides the information and documents that are necessary for the assessment of its application and that it can reasonably obtain.

Signals and complaints that do not include a formal application can lead to an investigation, just like a formal application. For this, the AFTA also uses its prioritization policy to determine whether conducting an investigation is the best option, but in such a case AFTA does not have to issue a written decision to the applicant as to why it is or is not conducting an investigation.

3 AFTA PRIORITIZATION CRITERIA

The AFTA is committed to investigating and addressing as many potential violations as possible. The AFTA uses the following questions to determine the priority of initiating an investigation in response to an application for action:

- How harmful is the potential violation to the consumer interest and the proper functioning of markets?
- What is the economic and social interest of the action taken by the AFTA?
- Risks, resources and costs; is the AFTA able to act effectively and efficiently?

The silver thread running through all questions is that all decisions to take action are substantiated by information and evidence gathered based on market research, contacts with companies and consumers, research and international best practices. The information is then evaluated and processed to determine the source and extent of the problem. When balancing the different interests, the AFTA embraces the principle that it serves first and foremost the interests of the consumer in general.

If the answer to one or more of these questions leads to the conclusion that any further investigation of the application for action is not a priority, the AFTA will reject the application for lack of priority.



4 CONSUMER INTEREST AND PROPER MARKET FUNCTIONING

The mission of the AFTA is: “to make markets work for the benefit of consumers and companies.” To answer the question of how harmful the potential violation is to the consumer interest and the proper functioning of markets, the AFTA explores whether the potential violation directly or indirectly affects the consumer in the short and long term. This may be the case, for example, if the potential violation results in higher prices, a restriction on consumer choice or conditions or reduced quality. In addition, harm occurs when companies frustrate the proper functioning of the market and, for example, jointly increase prices, allocate customers between them, manipulate the market, unfairly influence other market players or exploit vulnerabilities or dependencies. Companies themselves have an interest in the proper functioning of the market and a level playing field that allows them to rely on market forces to promote economic progress and prosperity.

5 ECONOMIC AND SOCIAL INTEREST

To answer the question as to the importance of the economic and social interest in the action taken by the AFTA, the AFTA explores the impact of the potential violation on the economy of Aruba as a whole and the impact on the social functioning of Aruba.

The AFTA explores the economic impact by assessing the markets potentially affected by the violation. If this assessment shows that the size thereof is relatively small, the impact on the Aruban economy will also be small, in principle. If the size is relatively large, the AFTA will assess the impact of the potential violation on the relevant market in Aruba.

The AFTA explores the impact on social functioning by assessing the impact of the potential violation on the market in question and on the daily functioning of society in Aruba. This may be the case, for example, with certain violations in sectors such as energy supply, healthcare, telecommunications and financial services. Or the AFTA may decide to initiate an investigation because this will not only promote the public interests the AFTA represents by law, but other public interests such as sustainability or privacy as well.

6 EFFECTIVENESS AND EFFICIENCY

An investigation conducted by the AFTA of a possible violation is effective if it is likely that the AFTA will be able to establish that a violation has been committed and to end this violation after extensive investigation. In this regard, the requirements laid down by administrative law and case law will be taken into account. If, based on an investigation, it could be established that a violation has been committed, the AFTA will assess how that possible violation and its adverse effects could be ended permanently.

In addition, the AFTA considers the effectiveness of an investigation by asking whether the AFTA is the most appropriate (government) agency to act. In certain cases, the civil court or another government agency may be the appropriate body because it has more appropriate powers. This also applies, if the investigation cannot be conducted with the available manpower and the financial resources allocated to the AFTA. The AFTA is publicly funded. For each investigation, the Authority has to consider whether the potential violation justifies the ongoing use of resources, weighed against other possible investigations.



In addition, synergy benefits for already ongoing processes of the AFTA, for example, may be a reason to prioritize an investigation.

7 APPLICATION PRIORITIZATION CRITERIA AND ACCOUNTABILITY

The prioritization policy is limited to the question whether the AFTA will initiate an investigation. It is not about the possible analysis or instrument choice of the AFTA.

The AFTA receives more applications and signals than it can investigate given its capacity. To ensure that the AFTA can focus on the socially most important investigations, it analyzes the applications, complaints and signals received based on the aforementioned questions. This analysis is not a mathematical exercise, and the above explanation is not exhaustive. There may be circumstances that have not been discussed above but may still play a role in assessing whether to prioritize an investigation. The AFTA will have to account for this, for example, in its annual report. If an application for action is rejected for lack of priority, the AFTA will explain its reasoning for not initiating an investigation in a public decision.