

Curaçao

COMPETITION FRAMEWORK

Competition Law	<p>National Ordinance of March 29, 2016, establishing the National Ordinance on Competition. Official Bulletin (2016 Nr. 16) (<i>Landsverordening van de 29ste maart 2016 houdende vaststelling van de Landsverordening inzake concurrentie. Publicatieblad (2016 nr. 16)</i>).</p> <p><i>[Please introduce the name of the laws constituting the National Competition Law Regime. Include the year of enactment and the corresponding amendments as well.]</i></p>
Competition Authority	<p>Fair Trade Authority Curaçao was authorized by national ordinance in 2016 and the competition laws of the constituent nation entered force on September 1, 2017.</p> <p>FTAC Website: https://ftac.cw/en/</p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>

POLICY-MAKING AGENTS

-DIVERSIFICATION-

How many agencies are responsible for competition enforcement?	<p>One, the FTAC. The FTAC's mandate is limited to prohibition of cartel behavior, abuse of dominant market positions, and merger review. The FTAC does not have authority to impose criminal liability. However, the FTAC may unilaterally impose binding directives to firms, administrative fines, or penalty payments (Article 7.1(1))</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]</i></p>
Do sector regulators have a competition policy enforcement mandate?	<p>No.</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	<p>Yes. FTAC signed a collaboration protocol with the Central Bank of Curaçao and St. Martin (CBCS) in 2018.</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law.]</i></p>

DISAGGREGATED FUNCTIONS—PROSECUTORIAL MODEL

Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?	No	<i>[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions.]</i>
Are disputes presented for decision to judiciary authorities?	No	FTAC's power is limited to administrative action and is not adjudicated through the judiciary. However, the judiciary maintains appeal authority over enforcement orders levied by FTAC (Art. 7.17) and of disputes related to refusal to testify or provide documents due to confidentiality (Art. 6.5). <i>[If the answer to your question is "yes", please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions.]</i>
Do private rights of action to challenge competition law infringements exist in your jurisdiction	No.	No private right of action is established in the National Ordinance and FTAC lacks the ability to act beyond administrative remedies. <i>[If the answer is "yes", please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]</i>

** Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators*

**FAIR TRADE AUTHORITY CURAÇAO
(FTAC)**

STATUS OF THE COMPETITION AUTHORITY

Accountability	Please, answer "Yes" in the boxes of this line if any of the duties on the right column apply to the authority, and "No" if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.	The Minister of Economic Development may not demand inspection of information or documents related to ongoing investigations. (Art. 2.18(2)) <i>[Introduce the relevant provisions]</i>
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.	<i>[Introduce the relevant provisions]</i>
		√	The authority has to report on an annual basis to the executive.	Every year, the FTAC must prepare an general report

				and financial statement for the Minister of Economic Development. (Art. 2.23) <i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities.	FTAC annual and 5-year reports presented to the Minister for Economic Development must be submitted to Parliament. (Arts. 2.23(5), 2.24(3), & 10.3) <i>[Introduce the relevant provisions]</i>
			Obligation to stand before parliament and to respond to congressmen on an annual basis.	<i>[Introduce the relevant provisions]</i>
		X	Its activities are monitored by an independent auditor or by oversight committees.	<i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	√	Decisions of the Competition Authority are subject to judicial review.	The judiciary maintains appeal authority over enforcement orders levied by FTAC (Art. 7.17) and of disputes related to refusal to testify or provide documents due to confidentiality (Art. 6.5). The judiciary here is the Court of First Instance (trial court). <i>[Aside from the relevant provisions please mention the judicial authority charged with the review.]</i>
		X	Decisions of the Competition Authority are	

		subject to review or control of an independent authority different from the judiciary?	<i>[Aside from the relevant provisions please mention the judicial authority charged with the review.]</i>
		Other obligations/comments: <i>[Please introduce any other obligation or comment that you consider relevant.</i> <i>Introduce any comment that you consider relevant regarding the status of accountability of accountability of the competition authority.]</i>	
Independence	Please, answer “Yes” or “No”		
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	Criteria for appointment is expressly written in Chapter 2 and lists the procedure for nomination by an advisory committee and appointment by National Decree, the mandatory qualifications, ethical guidelines for financial interest, and incompatible other responsibilities. (Arts. 2.2-2.6). Removal is for cause and detailed in Article 2.9, with specific rules for suspension pending criminal investigations. <i>[Please introduce the relevant provisions, and if the answer to this question is “no”, explain briefly why in your opinion the criteria are not clear or transparent.]</i>	
Does the executive have powers to decide on specific cases based on public interest?	No	<i>[Please introduce the relevant provisions, and if the answer to the question is “yes”, explain in which cases the executive can decide on public interest bases.]</i>	
Does the executive retain decision-making powers over the Competition Authority?	Yes	FTAC adjudications of individual cases may not be vetoed, but the Minister of Economic Development retains authority over funding, rules of order, and policy rules (not relating to establishment of facts or interpretation of statutory requirements in specific situations) guiding FTAC. (Arts. 2.15, 2.19, 2.21)	
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	No	While FTAC is required to publish reports following a determination of an infringement, the report is only required to include the party responsible for the infringement, the infringement, and a description of the infringement. (Art. 7.11). The FTAC is required to make reasonable efforts to ensure that parties subject to penalty understand the nature of the sanction. <i>[Please introduce the relevant provisions.]</i>	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	No	The Minister for Economic Development retains veto authority over the budget of the FTAC, which is proposed by the FTAC itself. (Art. 2.21). The National Ordinance sets out the procedure for edits by the Minister as well as for when the Minister withholds approval outright – in which case the FTAC is authorized to only incur 90% of the expenses outlined in their budget proposal. <i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i>	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No	“Collected penalty payments and administrative fines refund the Country’s public resources.” (Art. 2.22(2)). <i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i>	
GOVERNANCE OF THE COMPETITION AUTHORITY			

Is the Competition Authority governed by a single chairman or by a collegiate body?	<p>Collegiate body. The organization is composed of between 3 and 5 members with a designated President and Vice President. (Art. 2.2)</p> <p><i>[Answer "single chairman" if the directive organ of the authority is composed of one person. Answer "collegiate body" if the authority's directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Direction Body]</i></p>		
How are the members of the Authority's directive organ chosen?	<p>Members of the body are nominated by a appointments committee composed of an external consulting agency, the President of the Common Court of Justice of Aruba, Curaçao, St. Maarten, and of Bonaire, St. Eustatius and Saba, and an existing member of the FTAC. A call for nominations is required to be made publicly. The nominees from the committee are appointed via national decree. (Arts. 2.2-2.6).</p> <p><i>[Please describe the election process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]</i></p>		
Is there a fixed period during which removal is prohibited?	No	<p>Removal from FTAC is for cause and can be dismissed at their own request, upon turning 70, upon personally bankruptcy, upon severe dept, under new guardianship, criminal conviction, criminal investigation following a suspension period, mental or physical illness preventing performance of duties, misconduct, negligence, performance of incompatible other duties, or improper asset management. (Art. 2.9). Members of FTAC are appointed for a four-year term renewable once. (Art. 2.2).</p> <p><i>[If your answer is "yes", please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]</i></p>	
Is the tenure of the heads renewable?	Yes	<p>FTAC members may have their four-year appointment renewed once. (Art 2.2)</p> <p><i>[Please introduce the relevant provisions]</i></p>	
Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	<p>FTAC appointees must (1) be fluent in Dutch, (2) have 10 years of administrative experience, (3) be an expert in administrative, competition, or consumer law, (4) have completed an academic course of study, and (5) not have financial interests that could create conflicts of interest. (Art 2.5). Additionally, FTAC members are automatically removed upon turning 70. (Art 2.2).</p> <p><i>[If your answer is "yes", please make reference to the qualifications required by law and the relevant provisions.]</i></p>	
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Part of a Bigger Entity	<p>While FTAC members are only removable for enumerated, for-cause reasons and case decisions are not reviewable by the Ministry, the Minister for Economic Development retains control over the budget, operating procedures, and policy rules (not relating to establishment of facts or interpretation of statutory requirements in specific situations) of FTAC. (Arts. 2.15, 2.19, 2.21)</p> <p><i>[If your answer is "part of a bigger entity", please explain briefly how the bigger entity is organized.]</i></p>	
POLICY DUTIES			
Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Exclusive	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		<p>Other mandates:</p> <p><i>[Include any other mandates entrusted to the Competition Authority.]</i></p>	

PORTFOLIO INSTRUMENTS

Law Enforcement

<p>Does the Competition Authority have powers to investigate cartels?</p>	<p align="center">Yes</p>	<p>The FTAC has the ability to investigate any agreement or decision made by an undertaking that has the objective or effect of preventing, restricting, or distorting competition if the market share of the undertaking(s) exceed 30% of the market in which they operate (a 3.1 para. 1 violation). Additionally, the FTAC has the authority to investigate practices of all undertakings and agreements between undertakings that directly or indirectly (1) set selling prices or terms and conditions of sale, (2) set tender prices or tender bid conditions, (3) limit or control production or sales including refusal to deal, (4) market sharing behavior. (a 3.1 para. 2 violation) (Art. 3.1).</p> <p>In the case of a para. 1 violation, the FTAC may impose a binding directive and fines or penalty payments for repeat offenders. In the case of a para. 2 violation, the FTAC may impose administrative fine or penalty payment. Fines are limited to the greater of NAf 1million or 10% of the turnover of the undertaking/aggregate turnover of the undertakings. Penalties can be applied both to the legal entity and to individual persons responsible for the infraction. (Curaçao Penal Code Art. 1:127; N.O. Art. 7.1(6)) Individual persons can be held severally liable to the fines imposed on a legal entity.</p> <p>[If the answer is “yes”, please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed.]</p>
<p>Does the Competition Authority have powers to investigate unilateral Conduct?</p>	<p align="center">Yes</p>	<p>The FTAC has the authority to investigate abuse of a dominant position defined as (1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, (2) limiting production, market or technical development to the detriment of consumers, (3) applying dissimilar conditions to equivalent transactions, and (4) making the conclusion of contracts subject to other obligations unrelated with the subject of the contract. (Art. 4.1). If the action can be “objectively justified” it is not abuse. (Art. 4.1).</p> <p>The FTAC may impose obligations for up to three years on the party and may do so anticipatorily “in urgent cases” (Art. 4.2-4.4). Additionally, the FTAC may impose fines for noncompliance. (Art. 7.1). Fines are limited to the greater of NAf 1million or 10% of the turnover of the undertaking/aggregate turnover of the undertakings. Penalties can be applied both to the legal entity and to individual persons responsible for the infraction. (Curaçao Penal Code Art. 1:127; N.O. Art. 7.1(6)) Individual persons can be held severely liable to the fines imposed on a legal entity.</p> <p><i>[If the answer is “yes”, please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed.]</i></p>

Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger review?	No	<p>The FTAC has the ability to review concentrations and its power but not to block or modify such concentrations. (Chapter 5, Art. 7.9). Concentration is defined as the merger of two or more previously independent undertakings or acquisition by one or more persons or legal entities that acquire the interests in capital or assets of another undertaking. Concentrations must be reported when the aggregate turnover over the previous calendar year exceeds ANG 125 Million of at which ANG 15 Million was realized in Curaçao by at least two concerned parties. (Art. 5.2) Additionally, concentrations must be reported if the concentration creates or increases a market share of 30% or more in Curaçao. The FTAC may impose fines not exceeding the greater of 1 Million NAf or 1% of the turnover for a failure to notify. (Art 7.2). Additionally, the FTAC may impose fines for providing incorrect or incomplete information with regards to a concentration notification.</p> <p><i>[If the answer is "yes", please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]</i></p>
Is the notification of merger transactions mandatory?	Yes	<p>Concentrations must be reported when the aggregate turnover over the previous calendar year exceeds ANG 125 Million of at which ANG 15 Million was realized in Curaçao by at least two concerned parties. (Art. 5.2) Additionally, concentrations must be reported if the concentration creates or increases a market share of 30% or more in Curaçao. The FTAC may impose fines not exceeding the greater of 1 Million NAf or 1% of the turnover for a failure to notify. (Art 7.2). Additionally, the FTAC may impose fines for providing incorrect or incomplete information with regards to a concentration notification.</p> <p><i>[If the answer is "yes", please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]</i></p>
Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?	N/A	<p>The FTAC cannot block or modify a concentrating transaction and thus there is no decision-making that would have bearing on the closure of a transaction. There is only a duty to notify.</p> <p><i>[Please mention the relevant provisions and add any explanation that you deem necessary]</i></p>
Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?	No	<p><i>[Please mention relevant provisions]</i></p>
Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?	No	<p><i>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</i></p>
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<p>FTAC is authorized to access all areas, with the exception of homes, without the express consent of a resident as well as examine vessels. (Art. 6.2) No express limitation is given regarding timeframe.</p> <p><i>[If the answer is "yes", please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</i></p>
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<p>"The FTAC may launch an investigation <i>ex officio</i> or in response to an applications." (Art. 6.1(2))</p>

		<i>[Please, mention the relevant provisions]</i>	
Does the Competition Authority have powers to accept leniency applications?	Yes	<p>There is no explicit leniency or immunity provision in the National Ordinance or any regulatory document promulgated by the FTAC. However, all penalties are on a “may impose” basis and thus the FTAC retains discretionary authority.</p> <p><i>[If the answer is “yes”, please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]</i></p>	
Does the Competition Authority have powers to accept seek criminal punishment?	No	<i>[If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]</i>	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	Yes	<p>The Minister of Economic Development may request that FTAC provide advice regarding the impact of proposed or applicable legislation on competition. Additionally, FTAC may provide such advice on its own initiative. (Art. 2.17)</p> <p><i>[if the answer is yes, please specify if there is any kind of limitation to the agency’s authority to issue opinions, include relevant provisions]</i></p>	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	<i>[if the answer is yes, include relevant provisions]</i>	
Rulemaking			
Can the Competition Authority issue guidelines?	Subject to approval.	√	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		√	Guidelines on the economic analysis of abuse of dominance cases.
Can the Competition Authority issue binding regulation on competition?	Yes.	<p>“The FTAC may establish policy rules concerning the performance of its duties” (Art. 2.16). The Minister of Economic Development may establish policy rules not relating to establishment of facts or interpretation of statutory requirements in specific situations. (Art. 2.19).</p> <p><i>[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]</i></p>	
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	<p>Yes. (Art. 2.14)</p> <p><i>[If the answer is “yes”, include relevant provisions]</i></p>	
Can the Competition Authority report to the legislature on the results of market studies?	Yes	<p>Yes. Such research must be made public and available for inspection. (Art. 2.14)</p> <p><i>[If the answer is “yes”, include relevant provisions]</i></p>	
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	<p>“The FTAC may launch an investigation <i>ex officio</i> or in response to an applications.” (Art. 6.1(2)). Additionally, penalties imposed as the result of infractions are made by the FTAC unilaterally subject to appeal and limitations through the National Order (Chapter 7).</p>	

		<i>[If the answer is "yes", include relevant provisions]</i>
Does the Competition Authority impose punishments?	Yes	<p>The FTAC does not have authority to impose criminal liability. However, the FTAC may unilaterally impose binding directives to firms, administrative fines, or penalty payments (Article 7.1(1))</p> <p><i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i></p>
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes	<p>The FTAC acts as the unilateral competition enforcement agency. The FTAC has the authority to launch investigations under its mandate <i>ex officio</i> or in response to applications. (Art. 6.1(2)). If an application is made, the FTAC is required to decide on its course of action no later than four months after receipt, but subject to a two-month extension. (Art. 3.4) There is a five-year statute of limitations for pursuing administrative punishment. (Art 7.9). Following an investigation that the FTAC determines was in response to an infraction, the FTAC must issue a report detailing the parties responsible, the infringement, and details regarding time and place of the infringement. Draft decisions must be made publicly available after 5 days following notification to parties (Art. 8.1). Interested parties may present oral or written comment on the draft, which must be included in the final report. (Art. 8.4). The comment period lasts six weeks (Art. 8.5).</p> <p>Fines, where applicable, must be paid within 13 weeks of a decision. Appeals regarding decision must be made within six weeks of receipt of the report and the appeal suspends implementation of administrative action.</p> <p><i>[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is "No" mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body]</i></p>
Can the Competition Authority's decisions be appealed to a court?	Yes	<p>The judiciary maintains appeal authority over enforcement orders levied by FTAC (Art. 7.17) and of disputes related to refusal to testify or provide documents due to confidentiality (Art. 6.5). The judiciary here is the Court of First Instance (trial court).</p> <p><i>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review.]</i></p>
Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.		