

---

The EC Competition Law (Articles 84 And 85) Enforcement  
Regulations 2001

Information required for applications for a decision

---

## **PART 1 INTRODUCTION**

This document lists the information and supporting documents which must be provided when making an application for a decision under regulation 7 or 10.

If the Applicant(s) considers that the Director would find any part of the information contained in the application to be confidential, in the sense given to that word by rule 21(1), he must set out that part of the information in a separate annex to the application marked "confidential information" and provide a written explanation as to why he considers that the Director should treat it as such.

This document must also be used when making an application under regulation 4(4) (see rule 15).

## **PART 2 INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION**

### **1 Information about the undertaking(s) submitting the application (the applicant(s)) and the other parties to the agreement**

- 1.1 Please give the full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the Applicant(s) and a brief description of the nature of its business. If the Applicant(s) is a partnership, sole trader or other unincorporated body trading under a business name, give the name(s) and address(es) of the partners or proprietor(s). Please quote any reference which should be used.
- 1.2 Please give the full name, address, telephone and fax numbers and e-mail address (where available) of any representative(s) who has been authorised to act for the Applicant(s), indicating whom they represent and in what capacity (e.g. a solicitor).
- 1.3 Where the declaration to be made in the form set out in Part 2A is signed by a solicitor or other representative of the Applicant(s), please provide written proof of that representative's authority to act on behalf of the Applicant(s).
- 1.4 If a joint application is being submitted, indicate whether or not a joint representative has been appointed. If a joint representative has been appointed, give his full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available), and indicate whom he represents.
- 1.5 Please give the full names, addresses (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers, nature of business, and brief description of the other parties to the agreement and any other persons engaging in the conduct which is the subject of the application, together with the name of a contact at each undertaking concerned, their address, telephone and fax numbers and details of their position in the undertaking.
- 1.6 Please provide details of the steps taken or to be taken to notify all the other parties to the agreement or conduct which is the subject of the application of whom the Applicant(s) is aware that the application is being submitted. Indicate whether those parties have received a copy of the application and if so, whether confidential information (as defined in rule 21(1)) was included in the copy of the application. If the Applicant(s) considers that it is not practicable to notify the other parties of the application, please give the reasons why it is not practicable.

1.7 Please identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this form, a group relationship exists where one undertaking-

- owns more than half the capital or business assets of another undertaking; or
- has the power to exercise more than half the voting rights in another undertaking; or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
- has the right to manage the affairs of another undertaking.

An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) forms part of the group of each of these undertakings.

## **2 Purpose of the application**

- 2.1 Specify whether the application is being made in relation to the prohibition in Article 81(1), the prohibition in Article 82 or both.
- 2.2 State which provisions or effects of the agreement or conduct which is the subject of the application might in the Applicant's view raise questions of compatibility with the prohibition in Article 81(1) and/or the prohibition in Article 82, and give reasons for that view.
- 2.3 If the application is for an extension of an exemption, state the date of expiry of the existing exemption and the reasons why an extension is sought. Please also give details of any changes that have occurred in the relevant market(s) (see 6.2 and 6.3 below) and in the agreement itself since the grant of the exemption. Specify how any such changes impact on the fulfilment by the agreement of the conditions set out in Article 81(3). Please also enclose a copy of the decision granting the exemption.

## **3 Jurisdiction**

- 3.1 Please state whether the agreement or conduct which is the subject of the application is also the subject of an application to any competition authority outside the United Kingdom. If so, please provide brief details (where applicable) of the outcome of such application, if known.
- 3.2 Please provide details of any previous contacts of which the Applicant(s) is aware with the Office of Fair Trading or the European Commission

relating to the agreement or conduct which is the subject of the application.

#### **4 Details of the agreement or conduct**

- 4.1 Please provide a brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date(s) and duration).
- 4.2 If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.
- 4.3 Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.
- 4.4 If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.
- 4.5 Please identify those Member States of the European Community trade between which may be affected by the arrangements. Please give reasons for your reply to this question, giving data on trade flows where relevant. Furthermore please state whether trade between the Community and any third countries is affected, again giving reasons for your reply.

#### **5 information on the parties to the agreement or conduct and the groups to which they belong**

- 5.1 Please attach one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings.
- 5.2 Please list the product and/or services market(s) in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.7 above) to which they belong are active.

## 6 THE RELEVANT PRODUCT AND GEOGRAPHIC MARKET(S)

- 6.1 A "*relevant product market*" comprises all those products and/or services regarded by the consumer of the products or acquirer of the services as interchangeable or substitutable by reason of the products' characteristics, price and intended use. The "*relevant geographic market*" comprises the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.
- 6.2 Please supply and explain the definition of the relevant product market(s) which in the opinion of the Applicant(s) should form the basis of the analysis of the application. State the specific products or services directly or indirectly affected by the agreement or conduct which is the subject of the application and other products or services that may be viewed as substitutable. Give reasons for all assumptions or findings.
- 6.3 Please supply and explain the definition of the relevant geographic market(s) which in the opinion of the Applicant(s) should form the basis of the analysis of the application. Please identify the geographic scope of the relevant market(s), with reasons. Give reasons for all assumptions or findings.
- 6.4 For each of the relevant product and geographic market(s) identified in 6.2 and 6.3 above, give details of:
- (a) the level of concentration in the markets;
  - (b) the nature and extent of vertical integration;
  - (c) the direction and extent of trade within the European Community and/or between the Community and third countries;
  - (d) the prevailing methods of distributing products and services, including the extent of the involvement of undertakings which are not party to the agreement or conduct which is the subject of the application (i.e. third parties), and their significance;
  - (e) the significance of customer preferences, in terms of brand loyalty, product differentiation and the provision of a full range of products;
  - (f) the categories and relative strengths of different types of customer, including private and public sector purchasers; and

(g) the extent to which customers have long-term relationships with suppliers.

Where available, please provide a copy of the most recent long-term market studies (produced by the Applicant(s) in-house or commissioned by the Applicant(s) from outside consultants) which assess and/or analyse the relevant product market(s) and/or the relevant geographic market(s). Please supply references to any external published studies of the relevant product market(s) and/or the relevant geographic market(s) or, where available, please supply a copy of each such study with the application.

- 6.5 For each of the parties to the agreement or conduct which is the subject of the application, provide a list of all undertakings belonging to the same group (within the meaning of 1.7 above) which are active in the relevant product market(s) identified in 6.2 above, and those active in markets neighbouring the relevant product market(s) - that is, active in products and/or services which are regarded by the consumer as imperfect and partial substitutes for those products and/or services included in the relevant product market(s) as defined in 6.2 above. Such undertakings must be identified even if they sell the product or service in question in geographic areas other than those in which the parties to the agreement or conduct which is the subject of the application operate. Please list the name, place of incorporation, exact product and/or service provided and the geographic scope of operation of each member of the group.

## **7 The position of the undertakings in the relevant product market(s)**

- 7.1 Please provide the following information in respect of each of the previous three calendar or financial years, as available:

(a) the best estimates of the Applicant(s) of the market shares of each party to the agreement or conduct which is the subject of the application, in the products or services in the relevant product market(s) on the relevant geographic market(s), as identified in 6.2 and 6.3 above, and, if different, in the European Community, and in each Member State of the Community (for this section, where market shares are less than 20%, please simply state which of the following bands are relevant: less than 5%, less than 10%, less than 15%, less than 20%);

(b) identify the five main competitors of each party to the agreement or conduct which is the subject of the application in the relevant product and geographic market(s), and give the best estimates of the Applicant(s)

of their market shares in the products or services in the relevant product and geographic market(s); provide each competitor's name, address, telephone and fax numbers, and, where possible, a contact name;

(c) identify the five main customers of each party to the agreement or conduct which is the subject of the application, in the relevant product and geographic market(s), giving the customer's name, address, telephone and fax numbers, and, where possible, a contact name; and

(d) details of each party to the agreement or conduct's interests in, and agreements with, any other undertakings competing in the relevant product and geographic market(s), together with the best estimates of the Applicant(s) of those other undertakings' market shares in the products or services in the relevant product and geographic market(s), if known.

Information requested in this section must be provided for the group to which each party to the agreement or conduct which is the subject of the application belongs (within the meaning of 1.7 above) and not in relation to the individual undertakings which are party to the agreement or conduct which is the subject of the application.

Justification for the figures provided in response to the above must be given. Thus, for each answer to (a), (b) and (d), total market value or volume must be stated, together with the sales or turnover of each of the undertakings in question. The source or sources of the information should also be given and one copy should be provided of any document, where available, from which information has been taken.

## **8 Market entry and potential competition in the relevant product and geographic market(s)**

8.1 For each of the relevant product and geographic market(s) identified in 6.2 and 6.3 above, describe:

(a) the factors influencing entry in product terms into the relevant product market(s); that is, the barriers which exist to prevent undertakings not presently manufacturing products or providing services within the relevant product market(s) from entering the market(s), taking account of, in particular but not exclusively, the extent to which:

- entry is influenced by the requirements of government authorisation or standard-setting, in any form, and any legal or regulatory controls on entry to the market(s);

- entry is influenced by the need to have access to transport infrastructure;
- entry is influenced by the availability of aircraft, vessels or other vehicles required for providing services;
- entry is influenced by the length of contracts between an undertaking and its suppliers and customers; and
- research and development and licensing patents, know-how and other intellectual property rights are important; and

(b) the factors influencing entry in geographic terms into the relevant geographic market(s); that is, the barriers which exist to prevent undertakings already marketing or providing products or services within the relevant product market(s) outside the relevant geographic market(s) from extending sales into the relevant geographic market(s), taking account of, in particular but not exclusively, the importance of:

- trade barriers imposed by law;
- local specifications or technical requirements;
- procurement policies;
- the existence of adequate and available local distribution and retailing facilities;
- the need to have access to transport infrastructure; and
- strong consumer preference for local brands or products.

8.2 Estimate the amount of time required for entry into the relevant product and geographic market(s), taking account of the individual barriers to entry referred to in the answer to 8.1 above.

8.3 State whether any new undertakings have entered the relevant product market(s) in geographic areas where the parties to the agreement or conduct which is the subject of the application sell, during the last three years. Identify these undertakings by full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and, where possible, a contact name. Please give the best estimates of the Applicant(s) of the market shares of each such undertaking in the products or services in the relevant product and geographic market(s).

## **9 Exemption**

- 9.1 If exemption from the prohibition in Article 81(1) is sought, explain how the agreement contributes to improving production or distribution and/or promoting technical or economic progress, and how consumers will be allowed a fair share of the resulting benefit. Explain how each restriction imposed by the agreement is indispensable to the attainment of those objectives, and how the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question (as identified in 6.2 and 6.3 above).

## **10. Other information**

- 10.1 Please provide details of trade publications in which advertisements seeking the views of third parties might be placed.
- 10.2 Please give any other information which the Applicant(s) considers may be helpful.

## **11. Supporting documents**

Please ensure that the Applicant(s) has attached the following documents (where relevant) to the application:

- (a) if 1.3 above applies, written proof of the representative's authority to act on the Applicant(s) behalf;
- (b) if 2.3 above applies, a copy of the decision granting the exemption;
- (c) if 4.2 above applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application;
- (d) one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings (see 5.1 above);
- (e) where available, one copy of the most recent long-term market studies which assess and/or analyse the relevant market(s) (in-house studies produced by the Applicant(s) or commissioned by the Applicant(s) from outside consultants) (see 6.4 above);
- (f) where available, one copy of any external studies of the relevant product and/or the relevant geographic market(s) (see 6.4 above); and

(g) where available, one copy of any document from which information has been taken and provided in answer to 7.1 above.

**Part 2A:**

**Under regulation 24, it is an offence, punishable by a fine or imprisonment or both, to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, under regulation 33 its officers may be guilty of an offence.**

**Declaration**

The undersigned declare that all the information given above and in the .....pages annexed hereto is correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates of the underlying facts.

Place and date

---

Signatures

---

---

Status

---

---

---

name(s) in block capitals

### Part 3: Acknowledgement of Receipt

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

*To be completed by the Applicant(s)*

To:

---

(name and address of Applicant(s))

---

---

---

---

The application dated

---

concerning

---

involving the following undertakings:

1.

---

2.

---

[and others]

---

*To be completed by the Office of Fair Trading*

was received on

---

and registered under reference number

---

**Please quote this number in all correspondence with the Office of Fair Trading.**

**Part 4 - To be completed by the applicant(s)**  
**Information for the OFT public register**

1. Please give the full names of the parties to the agreement(s) or conduct which is the subject of the application, as in the response to 1.1 and 1.5 above.
2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the nature and objectives of the agreement(s) or conduct which is the subject of the application.
3. Please describe the relevant products(s) or service(s) involved.