

What is the process for applying for an exemption?

Step 1: The person(s) or enterprise(s) should use Form A to apply for an exemption and pay a fee of 0.01 per cent of their latest turnover.

Step 2: The Authority will conduct an investigation to determine whether the person(s) or enterprise(s) are engaged in an anti-competitive practice and whether such practice can be exempt under Section 32 (1) of the Act.

Step 3: The Authority will publish a notice in the Government Gazette 14 days before consulting any party that may have an interest, inviting such interested party to come and make representations regarding the application for exemption.

Step 4: If the exemption is granted by the Authority, Section 32 (4) requires the Authority to publish its decision in the Government Gazette and state its reasons for granting the exemption and not applying the prohibition in terms of the Act.

Step 5: The person(s) or enterprise(s) should pay an annual fee of 0.01 per cent of their latest turnover for the duration of the exemption.

How long are exemptions granted?

Exemptions are valid for the duration of the time that the Authority considers appropriate. The Authority may also set conditions to attach to the exemptions.

All exemption applications should be made to:

The Chief Executive Officer

Competition Authority

Private Bag 00101

Gaborone



Plot 28, Matsitama Road, Main Mall

Private Bag 00101

Gaborone

Phone: (+267) 393 4278

Fax: (+267) 312 1013

E-mail: CA@competitionauthority.co.bw

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Exemptions under the Competition Act

What is an exemption?

An Exemption is a written permission/authorisation to a business(es) or a person(s) by the Competition Authority to engage in a practice that is prohibited under Section 27(1) of the Competition Act. Therefore, if a business (es) or a person(s) wish to engage in conduct that is anti-competitive and can show or demonstrate that they contribute to one of the objectives under Section 32, then that business(es) or person(s) may be granted an exemption.

In terms of Section 32 of the Act, in order for a business(es) or person(s) to be granted an exemption it is important to prove that the conduct or practice they wish to engage in is not permitted by the Act because of its anti-competitive nature. Where the conduct is not proved to be anti-competitive it cannot be exempt.

Before an exemption can be granted by the Authority;

1. The person(s) or enterprise(s) will be required to prove to the Authority that the conduct they wish to be exempt from is not allowed by the Act or is anti-competitive;
2. The Authority will carry out its own investigations to satisfy itself that the conduct or practice that the person(s) or enterprise (s) wish to be exempt from is anti-competitive.

If the person(s) or enterprise(s) fail to show that the conduct they wish to be exempt from is against the Act and the Authority has upon its investigation not found grounds which support the exemption application then the person(s) or enterprise(s) will not be granted the exemption.

Who can apply for an exemption?

Any business(es) or person(s) may apply for an exemption under the Act. There are two types of exemptions which may be granted by the Authority:

1. Individual exemption – this is granted to a specific business or person to engage in anti-competitive conduct/practice.
2. Block exemption – this is granted to a specific category of conduct/practice or to a specific sector/industry to engage in anti-competitive conduct/practice.

What is the criterion used for granting exemptions?

After the Authority conducts its investigation and finds that the conduct or practice is anti-competitive and therefore not permitted under section 27(1) of the Act, the Authority may grant an exemption provided that it can be reasonably shown that there will be direct benefits to the public arising from the conduct/practice which outweigh the anti-competitive effects (that there are supporting reasons which make it believe that the exemption will benefit the public if granted). In terms of section 32(1) of the Act these benefits can be in the form of-

- The maintenance of lower prices, higher quality or greater choice for consumers;
- The promotion or maintenance of the efficient production, distribution or provision of goods and services;
- The promotion of technical or economic progress in the production, distribution or provision of goods and services;
- The maintenance or promotion of exports from Botswana or employment in Botswana;
- The strategic or national interest of Botswana in relation to a particular economic activity being advanced;
- The provision of social benefits which outweigh the effects on competition;
- The agreement occurring within the context of a citizen empowerment initiative of Government; or
- The agreement in any other way enhancing the effectiveness of the Government's programmes for the development of the economy of Botswana, including the programmes of industrial development and privatization.