

The Procedure for Exemption from Liability for Violation of Legislation on Protection of Economic Competition in the Form of Anti-competitive Concerted Actions

I. General provisions

1.1. This Procedure defines the mechanism and procedural basis for applying full or partial exemption from liability for violation of legislation on protection of economic competition in the form of anticompetitive concerted actions of participants in accordance with Article 52-1 of the Law of Ukraine "On Protection of Economic Competition" (hereinafter – the Law).

1.2 The terms used in this Procedure shall have the following meaning:

state commissioner – the state commissioner of the Antimonopoly Committee of Ukraine, whose powers include consideration of the case on violation of legislation on protection of economic competition in the form of anticompetitive concerted actions, in respect of which applications for a marker or applications for exemption from liability have been submitted;

application for a marker – an application of a person participating in anticompetitive concerted actions for exemption from liability, by which the person declares the existence of anticompetitive concerted actions and undertakes to provide the Antimonopoly Committee of Ukraine (hereinafter – the Committee) with evidence and information that will provide sufficient grounds for issuing an order to initiate of proceedings or will be essential for making a decision in the case within the time period agreed with the Committee;

applicant – a legal entity or an individual who committed anticompetitive concerted actions and who applied to the Committee for exemption from liability for violation of the legislation on protection of economic competition in accordance with the provisions of Article 52-1 of the Law;

application for exemption from liability means an application of a person who committed anticompetitive concerted actions for exemption from liability, by which the person declares the existence of anticompetitive concerted actions and provides the Antimonopoly Committee of Ukraine with evidence and information that provide sufficient grounds for issuing an order to initiate of proceedings or are essential for making a decision in the case;

marker – a letter from the Committee confirming the priority of the applicant's application to the Committee for exemption from liability;

notification of participation in anticompetitive concerted actions – submission by the applicant to the Committee of an application for exemption from liability or an application for a marker;

authorized person of the Committee – an official of the Committee, who is authorized by the order of the Chair of the Committee to carry out actions related to the application of Article 52-1 of the Law as provided for by this Procedure.

The terms «anticompetitive concerted actions», «good», «undertaking» shall have the meaning given in the Law.

II. Grounds for full exemption from liability

2.1. The Applicant shall be fully exempted from liability if the conditions set forth in clauses 2.2-2.6 of this section are simultaneously met.

2.2. The applicant has notified earlier than the other parties to the anticompetitive concerted actions of its participation in the anticompetitive concerted actions before the submission of the statement of objections in the case.

Provision of information, documents and other evidence upon request of the Committee's authorities shall not be considered as notification of the applicant of participation in anticompetitive concerted actions.

The applicant shall be deemed to be the first to notify of the anticompetitive concerted actions if, at the time of submission of the application for exemption from liability or application for a marker, the Committee does not have an application from another person for exemption from liability for the committing of these particular anticompetitive concerted actions, or an application for a marker in connection with the committing of these particular anticompetitive concerted actions.

2.3. The Applicant has disclosed such anticompetitive concerted actions to the Committee.

The information disclosing anticompetitive concerted actions shall be deemed to be the information on the composition of the participants of anticompetitive concerted actions, the purpose and subject matter of these concerted actions, the goods concerned, the territory covered by the concerted actions, the period during which the anticompetitive concerted actions took place. Additional information disclosing anticompetitive concerted actions may also include other information on concerted actions available to the applicant, in particular the existence and content of agreements, notes, memoranda, correspondence, protocols of joint meetings confirming the concerted competitive behavior, with the provision of relevant supporting documents, and other evidence.

2.4. The applicant has provided evidence that is not available to the Committee at the time of filing the application and

is sufficient for the adoption of an order to initiate proceedings on the grounds of violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions, if on the day of submission of the application for exemption from liability, the order to initiate proceedings on the grounds of violation to which the application for exemption from liability relates has not been adopted,

is essential for making a decision in the case – if the order on initiating the case has been issued, but the Committee does not have sufficient evidence to complete the investigation and make a decision in the case.

Evidence that is essential for the adoption of a decision in the case is considered to be information, the scope and content of which individually or in combination allows to prove a violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions.

2.5. The Applicant has terminated its participation in the anticompetitive concerted actions no later than the day of submission of the application for exemption from liability, unless such participation in the anticompetitive concerted actions is necessary to ensure the integrity of the case, confirmed in accordance with the fourth paragraph of this clause.

The termination of participation in anticompetitive concerted actions shall be deemed to be a refusal to fulfill or comply with any agreements, conditions, obligations that prevent, eliminate, restrict or may prevent, eliminate, restrict competition between the applicant and other participants in anticompetitive concerted actions, or their actual non-fulfillment during the period of this violation.

Evidence (information) of termination of participation in anticompetitive concerted actions shall be provided by the applicant. Such evidence (information) may include the applicant's proposal on the expediency of continuing its participation in anticompetitive concerted actions (their individual components) to ensure the integrity of the case.

If further participation of the applicant in anticompetitive concerted actions is necessary to ensure the integrity of the case, the applicant shall be notified by means of postal communication or in electronic form by means of information and communication systems by a joint letter from the State Commissioner and the authorized representative of the Committee within 15 calendar days from the date of receipt of the application for exemption from liability or the application for a marker by the Committee, specifying the specific actions in which it may participate, the term of such participation and the list of information that may be provided to the Committee. The information specified in such a letter shall be classified as information with limited access.

2.6 The Applicant cooperated with the Committee's bodies on the basis of, in particular, efficiency, promptness of information provision, completeness and reliability of the information provided, duration of cooperation:

1) provided all the necessary information and other evidence regarding the alleged anticompetitive concerted actions that are at its disposal or available to it during the entire time from the date of submission of the application for exemption from liability until the decision in the case is made;

2) ensure attendance at the call of the Committee's bodies to provide explanations and enable the Committee's bodies to receive explanations from the officials and employees working for the applicant as of the day of receiving explanations, as well as, if possible, from the officials and employees who worked for the applicant earlier during the entire time from the date of submission of the application for exemption from liability until the decision in the case is made;

3) did not destroy, falsify, or conceal information or evidence related to the alleged anticompetitive concerted actions during the entire time from the submission of the application for exemption from liability to the decision in the case, as well as before submitting the application for exemption from liability to the Committee;

4) did not disclose information about his/her intention to submit an application for exemption from liability, the content of such an application and cooperation with the Committee's bodies, except in cases agreed with the Committee's body, before the decision on the case is made.

III. Grounds for partial exemption from liability

3.1. For other participants of anticompetitive concerted actions (applicants) who cannot be fully exempted from liability due to the fact that such exemption is received by another participant of the relevant anticompetitive concerted actions who submitted an application for exemption from liability earlier than them, but who wish to receive partial exemption from liability, the amount of the fine shall be reduced by the decision of the permanent or temporary administrative collegium of the Committee, by the Committee, subject to compliance with the requirements specified in clauses 2.3, 2.5 and 2.6 of Section II of this Procedure, and in case of voluntary provision of evidence of anticompetitive concerted actions that are essential for making a decision in the case and are not available to the Committee.

3.2. The amount of the fine shall be reduced compared to the amount of the fine determined when making the decision provided for in paragraphs two and seven of part one of Article 48 of the Law, depending on the order of application of applicants to whom full exemption from liability cannot be applied:

1) for the first applicant – up to 50%;

2) for the second applicant – up to 30%;

3) for other applicants – up to 20%.

3.3 When reducing the amount of the fine established by part four of Article 52-1 of the Law, the additional value (usefulness) of the information received for proving the violation shall be taken into account, in particular, in terms of identifying additional participants in anticompetitive concerted actions, additional goods and territories covered by these anticompetitive concerted actions, additional sales volumes of goods covered by anticompetitive concerted actions; additional information on the methods of coordinating competitive behavior, evidence of additional facts of such coordination, as well as filing an application for exemption from liability before the order to initiate proceedings on the grounds of violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions is issued.

Evidence originating from the period of time to which the circumstances relate, if the Committee has only evidence that arose subsequently, or evidence directly proving certain circumstances, if the Committee has only indirect evidence of such circumstances, shall also be considered to be of additional value.

3.4. If the applicant provides sufficient evidence, that the Committee will use to prove additional facts that lead to an increase in the amount of the fine compared to the amount of the fine that would have been imposed on the participants of anticompetitive concerted actions in the absence of such evidence, in particular, those related to the market volume where the violation occurred or the consequences of the violation occurred, and the period during which the violation lasted, Committee's body (the permanent, temporary administrative collegium of the Committee, the Committee) when determining the amount of the fine for such applicant, shall not take into account the following circumstances, which were not known to the Committee prior to the submission of the said evidence by the respective applicant

IV. Cases in which the exemption from liability cannot be applied

4.1 The applicant may not be fully exempted from liability for violation of the legislation on economic competition protection in accordance with part three of Article 52-1 of the Law, if before the decision on the relevant case on violation of the legislation on protection of economic competition is made, the applicant does not meet at least one of the requirements set forth in clauses 2.2-2.6 of Section II of this Procedure.

4.2 The applicant may not be partially exempted from liability for violation of the legislation on economic competition protection in accordance with part four of Article 52-1 of the Law, if before the decision on the relevant case on violation of the legislation on protection of economic competition is made, the applicant does

not meet at least one of the requirements set forth in clauses 2.3-2.6 of Section II of this Procedure.

4.3 The applicant cannot be fully exempted from liability if he/she forced other participants of anticompetitive concerted actions to commit such actions or to continue them, which is confirmed by the case materials.

V. Submission of applications for exemption from liability

5.1. A participant of anticompetitive concerted actions intending to obtain exemption from liability for violation of legislation on protection of economic competition in accordance with Article 52-1 of the Law shall apply to the Committee for exemption from liability.

5.2. Information about the authorized person of the Committee, appointed by the order of the Chair of the Committee, his/her contact telephone numbers and e-mail address for submitting applications for exemption from liability (hereinafter – e-mail), shall be posted on the official website of the Committee.

5.3. The application for exemption from liability shall be submitted by the applicant in paper or electronic form to the Committee.

Envelopes (packages) received by the records management service marked "Exemption from liability. Contains information with restricted access" shall be transferred without registration (unopened, without familiarization with their contents) directly to the Committee.

An application in electronic form shall be submitted by sending it to the e-mail address posted on the official website of the Committee.

5.4. The application for exemption from liability and its attachments shall be signed by the head of the legal entity (person performing his/her duties), or by an individual entrepreneur – whose signature shall be certified by a seal (if any).

If an application for exemption from liability is submitted by an authorized representative, a power of attorney or other document confirming the authorized representative's powers shall be submitted simultaneously.

Powers of attorney or other documents issued by authorized bodies of foreign countries in the prescribed form are recognized as valid in Ukraine if they are legalized, unless otherwise provided by law or an international treaty of Ukraine.

Copies of documents and excerpts therefrom submitted together with the application for exemption from liability shall be certified in accordance with the procedure established by law.

Documents containing information and data in a foreign language shall be translated into Ukrainian and certified in accordance with the procedure established by law.

If the application is submitted in paper form:

- 1) the application for exemption from liability and all attachments thereto shall be submitted to the Committee in a sealed envelope marked «Exemption from liability. Contains information with limited access». The marks on the envelope shall not contain any information that would allow the applicant to be identified;
- 2) the application shall be accompanied by an electronic medium containing all information and documents contained in the application and attached thereto, recorded in a manner that technically does not allow for changes to be made to them;
- 3) the information submitted in electronic form must correspond to the information submitted in paper form. The correspondence of information in paper and electronic forms is confirmed by an entry in the application for exemption from liability.

If the application is submitted in electronic form:

- 1) the application and all attachments thereto shall be submitted to the Committee by sending an e-mail to the e-mail address specified by the order of the Chair of the Committee with the subject line «Exemption from liability. Contains information with limited access»;
- 2) the application and all attachments thereto shall be affixed with a qualified electronic signature of the head of the legal entity (person performing his/her duties) or individual entrepreneur and an electronic seal (if any).

5.5. The date and time of receipt of the application for exemption from liability in paper form and the list of documents attached thereto shall be recorded by the authorized person of the Committee in the register of applications for exemption from liability and for receipt of a marker (hereinafter – the Register). An extract from the Register shall be signed by an authorized person and sent to the applicant by means of postal communication or in electronic form by means of information and communication systems.

If the application for exemption from liability is received in electronic form, the authorized person of the Committee shall notify the applicant of the date and time of receipt of his/her application for exemption from liability by sending an electronic message to the e-mail address from which the application for exemption from liability was received no later than the next business day after receipt of the application for exemption from liability.

5.6. The application for exemption from liability shall contain:

1) for legal entities – the name of the legal entity, including the abbreviated name (if any), the identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine, the organizational and legal form, the location of the legal entity;

for individual entrepreneurs – surname, full name, patronymic (if any), registration number of the taxpayer's account card or passport series (if any) and number (for individuals who, due to their religious beliefs, have refused to accept the registration number of the taxpayer's account card and have officially notified the relevant supervisory authority and have a mark in their passport stating the right to make payments by passport series (if any) and number), declared/registered place of residence (stay);

2) information on all participants in anticompetitive concerted actions known to the applicant;

3) information on the time during which the applicant committed anticompetitive concerted actions;

4) a detailed description of the anticompetitive concerted actions and evidence to support it;

5) information and explanations regarding its participation in anticompetitive concerted actions, in particular, the absence of circumstances provided for in section IV of this Procedure;

6) a list of evidence of anticompetitive concerted actions attached to the application;

7) any other information known to the applicant and necessary for the adoption of an order to initiate proceedings on the grounds of violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions and/or essential for the decision in the case;

8) a reasoned request to ensure the confidentiality of information about the applicant until a decision is made in the case (if submitted). In such cases, the applicant must provide the Committee with a non-confidential version of the relevant information.

5.7. Information about the participants of anticompetitive concerted actions known to the applicant shall include:

1) full names/surnames, full names, patronymics (if any), location/declared/registered place of residence (stay) of all undertakings known to the applicant that are parties to the anticompetitive concerted actions,

2) information on the officials of the undertakings participating in the anticompetitive concerted actions and persons involved in the concerted actions,

including those who have had contact with respect to such concerted actions, including persons acting on behalf of the applicant – surnames, full names and patronymics (if any), positions, e-mail addresses and other means of communication.

5.8. The detailed description of anticompetitive concerted actions shall contain information on:

content of anticompetitive concerted actions (price fixing, market allocation, etc.)

goods in respect of which the behavior is coordinated;

the subject of anticompetitive concerted actions and the role of each participant in them;

geographical boundaries of the anticompetitive concerted actions;

dates, places and forms of interaction between the parties to anticompetitive concerted actions, including those who have contacted regarding such concerted actions aimed at coordinating competitive behavior, and persons involved in such interaction;

actions of the participants of anticompetitive concerted actions, which resulted in or could have resulted in the coordination of competitive behavior.

In addition, the applicant must provide other information to the best of its knowledge that confirms the existence of anticompetitive concerted actions.

5.9. Information that may confirm the commission of anticompetitive concerted actions may include: paper documents (documents (except for electronic documents) on paper carriers, other types of documents, copies or extracts thereof certified in accordance with the procedure established by law) and/or electronic documents (including text documents, graphic images, plans, photographs, video and audio recordings, etc.), confirming the existence of concerted competitive behavior.

5.10. Upon receipt of the application for exemption from liability, the authorized person of the Committee shall prepare a submission to the Chair of the Committee regarding the appointment of a state commissioner to consider this application or its transfer to the state commissioner who considers the case of violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions to which the application for exemption from liability relates.

Upon the order of the Chair of the Committee, the authorized person of the Committee shall submit the application for exemption from liability together with the materials attached thereto to the relevant state commissioner.

5.11. If the application for exemption from liability does not meet the requirements set forth in clauses 5.3, 5.4, 5.6 – 5.8 of Section V of this Procedure and this prevents its consideration, the application shall be left without motion, and the State Commissioner shall notify the applicant by means of postal communication or in electronic form by means of information and communication systems within 15 calendar days from the date of receipt of the application and provide him/her with a deadline not exceeding 30 calendar days from the date of notification of the applicant for eliminating the deficiencies. The form and method of notification shall be determined by the state commissioner. In case of failure to comply with the above requirements within the prescribed period, the application shall be left without consideration, and the applicant shall be notified thereof in writing.

If the application for exemption from liability is received after the statement of objection in the case has been sent to the parties and third parties, such application shall be left without consideration, and the State Commissioner shall notify the applicant by means of postal communication or in electronic form by means of information and communication systems within 15 calendar days from the date of receipt of the application for exemption from liability. The form and method of notification shall be determined by the state commissioner.

If the application for exemption from liability is accepted for consideration, the State Commissioner shall notify the applicant by means of postal communication or in electronic form by means of information and communication systems within 15 calendar days from the date of its receipt on its acceptance for consideration , and of the presence or absence of a case on the relevant violation of the legislation on protection of economic competition or the presence of a relevant marker and/or other application for exemption from liability in respect of concerted actions declared by such applicant. The form and method of notification shall be determined by the state commissioner.

5.12. If the State Commissioner concludes that the available data, including those received from the applicant, is sufficient to issue an order to initiate of proceedings on the grounds of violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions, which are the subject of the application, the State Commissioner shall, within 60 calendar days from the date of receipt of the application for exemption from liability, issue an order to initiate of proceedings, and notify the applicant by means of postal communication or in electronic form by means of information and communication systems within 3 working days from the date of its adoption. The form and method of notification shall be determined by the state commissioner.

If the State Commissioner concludes that the available data, including those received from the applicant, are insufficient to issue an order to initiate of proceedings on the grounds of violation of the legislation on protection of economic competition, the issue of termination of consideration of the application for

exemption from liability shall be decided by the permanent, temporary administrative collegium of the Committee, by the Committee, and the State Commissioner shall notify the applicant by means of postal communication or in electronic form by means of information and communication systems within 3 business days after making a decision to terminate consideration of the application, but not later than 60 calendar days from the date of receipt of the application for exemption from liability. The form and method of notification shall be determined by the state commissioner.

5.13. The participant of anticompetitive concerted actions may withdraw its application for exemption from liability and the information (evidence) he/she provided. The notice of withdrawal of the application shall be sent to the authorized person in paper form or to the authorized person's e-mail address specified on the official website of the Committee and shall be forwarded to the state commissioner. The form and method of notification shall be determined by the applicant.

In case of withdrawal of the application for exemption from liability, the State Commissioner shall leave such application without consideration and notify the applicant within 3 business days by means of postal communication or in electronic form by means of information and communication systems, as well as the time and method of returning the evidence submitted with the application. The form and method of notification shall be determined by the State Commissioner.

The withdrawal of the application for exemption from liability shall not prevent the Committee from exercising its powers under the legislation on protection of economic competition to obtain relevant information.

5.14. The authorized person shall ensure the maintenance of the Register, which shall indicate the applicant, form, date and time of submission of the application.

The register contains information with restricted access.

The register is maintained in paper and/or electronic form (if technically possible).

VI. Submitting applications for a marker

6.1. If the applicant does not have enough information provided for in clauses 5.6. to 5.8. of Section V of this Procedure at the time of applying to the Committee for exemption from liability, but such information may be provided later, in order to ensure the priority in reporting participation in anticompetitive concerted actions, he may apply to the authorized person of the Committee with an application for a marker from the Committee.

The marker confirms the date and time when the application for exemption from liability was submitted.

6.2. An application for a marker shall be submitted in accordance with the procedure established in clause 5.4 of section V of this Procedure and shall contain the information specified in subclauses 1 – 7 of clause 5.6 of section V of this Procedure, as well as indicating the form (paper or electronic) in which the applicant wishes to receive the marker.

6.3. On the basis of the application referred to in clause 6.1 of this section, the applicant shall be provided with a marker within 15 calendar days indicating:

1) the date and time of submission of the application for a marker, as well as the list of documents and information attached thereto, including data that are mandatory details of electronic documents in accordance with the Law of Ukraine «On Electronic Documents and Electronic Document Management»

2) the deadline for submission to the Committee of the information provided for in clauses 5.6 – 5.8 of Section V of this Procedure in full.

This period ranges from 20 to 60 calendar days.

Upon a reasonable request of the applicant, the deadline for submission of information may be extended up to 90 calendar days.

The request shall be submitted in paper form by means of postal communication or in electronic form by means of information and communication systems.

During the period specified in the marker for submission to the Committee of the information provided for in clauses 5.6 – 5.8 of Section V of this Procedure in full, at the request of the applicant or at the initiative of the authorized person of the Committee, consultations may be held with the participation of the applicant, the authorized person of the Committee.

The marker shall be provided to the applicant by means of postal communication or in electronic form by means of information and communication systems.

6.4. An applicant who has applied for a marker shall not be granted a marker in case of non-compliance with clauses 2.2 of Section II and/or 6.2 of Section VI of the Procedure.

6.5. The order of submission of the application for exemption from liability shall be determined in accordance with the date and time of submission of the application for obtaining the marker, provided that the applicant has submitted the application for exemption from liability within the established time limit and subject to the

requirements of clauses 2.1, 2.3 – 2.6 of Section II, Section IV and 6.4 of Section VI of this Procedure.

6.6. Information and evidence provided within the time limit specified in the marker, taking into account the third paragraph of subclause 2 of clause 6.3 of this section, shall be deemed submitted on the day of submission of the application for the marker.

The Committee shall take into account any evidence and information submitted after the expiration of the specified period, but they shall not be considered submitted at the time of submission of the application for the marker.

6.7. Simultaneously with the full provision of the information provided for in clauses 5.6 – 5.8 of Section V of this Procedure, in accordance with clause 6.2 of Section VI of this Procedure, the applicant shall submit to the Committee an application for exemption from liability in accordance with clauses 5.1 – 5.4, 5.9 of Section V of this Procedure.

VII. Adoption of a decision on exemption from liability

7.1. The information and evidence received from the applicant(s) shall be set forth in the submission with preliminary conclusions in the case of violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions as information with limited access.

7.2. The decision on full or partial exemption from liability for the committed violation shall be made by the permanent, temporary administrative collegium of the Committee, by the Committee upon the results of consideration of the case on violation of legislation on protection of economic competition in the form of anticompetitive concerted actions, which are the subject of the application for exemption from liability.

Such a decision on the applicant shall specify:

- 1) the presence or absence of grounds for applying exemption from liability for violation of the legislation on protection of economic competition or reducing the amount of the fine in accordance with Article 52-1 of the Law
- 2) presence or absence of circumstances specified in clause 4.1, 4.2 of section IV of this Procedure.

VIII. Consultations

8.1. Before or after submitting an application for exemption from liability, application for a marker, the participant of anticompetitive concerted actions or his authorized representative shall have the right to receive from Committee's body

preliminary consultation regarding the information and documents required for submission and consideration of the relevant application.

Consultation prior to submission of the application for exemption from liability, application for a marker may be provided without disclosure of information about the identity of the participant of anticompetitive concerted actions or his representative.

8.2. The consultation shall be conducted in person by an authorized person of the Committee on the basis of an oral or written request from any person. A written request shall be submitted by means of postal communication or in electronic form by means of information and communication systems.

The schedule of consultations is posted on the official website of the Committee.

A written request for a consultation within the schedule of consultations at the discretion of the applicant shall be sent to the authorized person by postal means or in electronic form to the e-mail of the authorized person. The authorized person shall notify about the possibility of holding a consultation at a certain time within the schedule of consultations by means of postal communication or in electronic form by means of information and communication systems.

8.3. The information received by the Committee's authorized representative during the consultations shall be classified as information with limited access, the disclosure of which is subject to legal liability.

8.4. The issues discussed, the main content of explanations, remarks, comments provided during the consultation shall be recorded in the protocol of the consultation, which shall be drawn up and signed by the authorized person of the Committee within three working days after the consultation.

A copy of the protocol shall be provided by means of postal communication or in electronic form by means of information and communication systems to the person who requested the consultation upon request.

IX. Confidentiality

9.1. The Committee's body, on the basis of a reasoned request in the interests of consideration of the case on violation of legislation on protection of economic competition in the form of anticompetitive concerted actions, shall ensure confidentiality of information about the participant of anticompetitive concerted actions or his representative until the decision in the case is made.

It is not allowed to publish issues related to the consideration of applications for exemption from liability in the draft agendas of meetings of the Committee's bodies,

as well as to publish decisions on the termination of the consideration of such applications.

9.2. The list of officials and employees of the Committee who have access to applications for exemption from liability and the information and documents attached thereto shall be determined by the Chair of the Committee.