DETERMINATION OF MERGER APPLICATION
Alignvest/Sagicor

Section 20 of the Fair Competition Act, CAP. 326C of the Laws of Barbados

Acquisition by Alignvest Acquisition II Corporation of all of the shares of Sagicor Financial Corporation Limited a company domiciled in Bermuda but operates in Barbados through its subsidiaries in Barbados the sale of life and non-life insurance services in Barbados.

Dated 01 November 2019

Introduction

1. On 22 July 2019, the Fair Trading Commission ("the Commission") received a merger application filed by Alignvest Acquisition II Corporation (hereafter "Alignvest") and Sagicor Financial Corporation Limited (hereafter "Sagicor")[1] as required under Section 20(1) of the of the *Fair Competition Act,* CAP.326C ("FCA"). The merger application seeks formal approval for the proposed acquisition of all of the shares of Sagicor (including its subsidiaries in Barbados) by way of a scheme of arrangement, by Alignvest, a Canadian publicly traded Special Purpose Acquisition Corporation (SPAC). Alignvest is an affiliated company of Alignvest Management Corporation ("AMC"), an alternative investment management firm (*i.e.* it does not manage conventional investment products/instruments) [2] based in Toronto.

[1] The reader is asked to note that Sagicor Financial Corporation Limited is a holding company that controls a number of subsidiaries as reflected in the Corporate Structure at Appendix A. Unless otherwise stated, all references to Sagicor in this report should be interpreted as including Sagicor Financial Corporation Limited and its affiliated companies.

[2] An alternative investment does not fall into one of the conventional investment categories such as stocks, bonds, and cash. Most alternative investment assets are held by institutional investors or accredited, high-net-worth individuals because of their complex nature, lack of regulation, and degree of risk. Examples of alternative investments include private equity or venture capital, hedge funds, managed futures, art and antiques, commodities, and derivatives contracts.
See: https://www.blackrock.com/americas-offshore/resources/education/alternative-investments-education-center/what-are-alternative-investments, Date Accessed: 17 October 2019
See also: https://www.investopedia.com/terms/a/alternative_investment.asp, Date accessed: 17 October 2019).

The Transaction

2. Alignvest has proposed to acquire 100% of the common shares of Sagicor[3]. Under this arrangement, shareholders will be paid in a combination of cash and shares. As a result of the transaction, Sagicor intends to delist from the Trinidad, London and Barbados Stock Exchanges and the new entity, Sagicor Financial Corporation Limited ("New Sagicor") will be listed on the Toronto Stock Exchange (TSX) .

3. Up to US$205 million in cash will be offered to Sagicor shareholders for the first 10,000 shares in Sagicor. Shares of Alignvest stock valued at C$10.00 per share will be given to all Sagicor shareholders who elect not to accept the cash for first 10,000 shares, and for any shares above 10,000 in Sagicor.

The Undertakings Involved

Alignvest Management Corporation

4. **Alignvest Management Corporation (AMC)** is an international alternative investment management firm that is headquartered in Toronto, Canada. It was established in 2011 to provide capital management, acquisition, student housing and financial advisory services. AMC's subsidiaries are therefore structured according to these investment platforms. **Alignvest is a subsidiary of AMC.** An overview of the operations of AMC's remaining subsidiaries is as follows:

   i. Alignvest Private Capital (APC): Provides money to business in the form of a loan or equity investment. APC's clients include pension plans, foundations and ultra-high net worth family offices[4].

[3] Specifically, Sagicor Financial Corporation Limited and its subsidiaries. Recall that the general term "Sagicor" is used to define same (see *supra.* note 1 at page 1).
[4] https://www.alignvestprivatecapital.com/

ii. Alignvest Investment Management (AIM): Invests in diversified portfolios with an emphasis on alternative assets and strategies[5].

iii. Alignvest Student Housing: Invests in the Canadian Purpose Built Student Accommodation ("PBSA") sector[6].

Purchaser: Alignvest Acquisition II Corporation

5. **Alignvest Acquisition II Corporation** (Alignvest) is a publicly-traded Special Purpose Acquisition Corporation ("SPAC") incorporated under the laws of the Province of Ontario for the purpose of effecting a qualifying acquisition (*i.e.* the acquisition of one or more businesses or assets, by way of a merger, amalgamation, arrangement, share exchange, asset acquisition, share purchase, reorganisation, or any other similar business combination). The head and registered offices of Alignvest are located at 100 King Street West, 70th Floor, Suite 7050, Toronto, Ontario, Canada M5X 1C7[7]. Alignvest is listed on the Toronto Stock Exchange where it trades under the symbol AQY.

The Target Business - Sagicor Financial Corporation Limited (Sagicor)

6. **Sagicor Financial Corporation Limited (Sagicor)** is a 178-year old company focused on the delivery of insurance products and related financial services in the Caribbean region—mainly in Barbados, Jamaica, Trinidad and Tobago, and the United States of America. The company was originally incorporated in 2002 under the Companies Act of Barbados as a public limited liability holding company. In 2016, Sagicor moved its corporate domicile from Barbados to Bermuda where it was registered as an exempted company, and continued as Sagicor Financial Corporation Limited. In the

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[5] https://www.alignvestinvestment.com/
[6] https://www.alignveststudenthousing.com/
[7] https://www.alignvestacquisition.com/

same year, the company registered as an external company under the Companies Act of Barbados.

7. Sagicor's principal activities include life and health insurance, annuities, pension investment and administration services, property and casualty insurance, asset management, commercial and retail banking, investment management and other financial services. Sagicor's common shares are currently publicly listed on the Barbados Stock Exchange, the Trinidad and Tobago Stock Exchange and, via depositary interests, on the London Stock Exchange.

8. Sagicor operates in twenty-two (22) countries and operates primarily through its three (3) reporting operating segments—Sagicor Life, Sagicor Jamaica and Sagicor USA.

Rationale for the Transaction

9. In Sagicor's "Notice of Shareholders' Meeting and Explanatory Statement Regarding a Scheme of Arrangement between Sagicor Financial Corporation Limited and Its Shareholders", the following rationale behind the proposed transaction was given[8]:

> *"Sagicor and [Alignvest] believe that the Scheme of Arrangement will unlock significant value for both Sagicor and the Shareholders in two ways: (1) the TSX is a liquid exchange market that will provide exposure to global institutional and large-scale investors which we expect will lead to better price discovery of our equity; and (2) any additional capital from the transaction will be held by New Sagicor, which we expect will help accelerate our organic growth strategy and fund future acquisitions."*
>
> *"[Alignvest] is delivering significant value to Sagicor as part of the business combination. Importantly, [Alignvest] and Sagicor believe that Sagicor trades at an unwarranted discount to its Canadian and Caribbean peers in large part due to Sagicor's disaggregated*

[8] In the interest of consistency, please note that the square brackets in this text reflect the replacement of AQY (Alignvest's trading symbol in the Toronto Stock Exchange) with 'Alignvest'.

shareholder base and muted price discovery on its current stock exchanges. [Alignvest]'s listing on the TSX is expected to provide Sagicor with access to a liquid market and sophisticated institutional investors. Sagicor management expects that the willingness and ability of such investors to actively evaluate the merits of the business will help secure an appropriate valuation. Accordingly, [Alignvest] and Sagicor expect that the discount at which Sagicor currently trades on the Barbados and Trinidad and Tobago stock exchanges compared to Canadian peers should be reduced or eliminated over time as a result of [Alignvest]'s listing on the TSX. "

"In addition, Sagicor is anticipated to benefit from a primary injection of [Alignvest]'s equity, which is expected to enable Sagicor to realize its organic and inorganic growth strategies. The proposed capital structure and [Alignvest]'s TSX listing are also expected to enable Sagicor to materially lower its cost of capital, which is expected to both increase Sagicor's profitability and further enhance its ability to execute on its strategic initiatives, both organic and inorganic.

"Further, [Alignvest]'s affiliated institutional portfolio manager, Alignvest Investment Management Corporation ("AIM"), will leverage its extensive experience managing global portfolios to optimize Sagicor's investment portfolio, consider additional investment strategies, lower third party advisor costs, and further enhance risk-management practices."

"As a result of the above, [Alignvest] and Sagicor see a clear path to substantial equity value creation for the Sagicor Shareholders. It is expected that the business combination of [Alignvest] and Sagicor will present an opportunity to grow Sagicor's net income from US$62 million, for the year ended 31 December 2017, to a target of US$115 million in 2020, based on the following:

- *Organic revenue growth has been assumed as 6% per annum for Sagicor's continuing operations in 2019 and 5% in 2020; and*

•[Alignvest] and Sagicor expect that the acquisition of Scotia Trinidad and Scotia Jamaica will contribute annual run-rate net income of approximately US$30 million following the anticipated closing in 2020, subject to regulatory approval. Subject to, among other things, the precise timing of when the Scotia Trinidad and Scotia Jamaica initiatives take effect, Sagicor is targeting 2019 net income of approximately US$77 million."[9]

Third Party Submissions

10. Third-party market participants such as executives from insurance companies were interviewed. The feedback received from third party observations on the transaction and the possible effects on consumers and the insurance industry was considered in the competitive analysis.

Relevant Market Analysis

11. The definition of the market is a critical starting point in the analysis of any merger situation. The products concerned in the relevant market include those goods and services supplied by the merging firms and their competitors, and the goods and services which could conceivably serve as their substitutes.

12. In identifying the range of products concerned in the relevant market the Commission usually applies the 'Small but Significant Non-transitory Increase in Price' (SSNIP) test. This test, also known as the 'Hypothetical Monopolist Test' starts with the

[9] The reader is asked to note that the proposed acquisition of Scotia Jamaica and Scotia Trinidad and Tobago insurance subsidiaries by Sagicor Financial Corporation is beyond the jurisdictional authority of the Barbados Fair Trading Commission. Additionally, the transactions are beyond the scope of this Sagicor/Alignvest Merger Review. However, the commission considered the proposal to determine whether there are likely to be local implications (see commentary under the heading "Additional Considerations: The Planned Acquisition of Scotia Jamaica and Scotia Trinidad" at para. 69, page 30). Notwithstanding the above, the Commission reserves the right, under the FCA, to review this or any transaction separately if any competitive concerns arise in the local market post-merger.

narrowest definition of the products sold by the merging firms and considers what substitutable products the consumer might turn to if the price of those products were increased by a small but significant amount (usually by 5%) for the foreseeable future. The products likely to be turned to are regarded as substitutes and are included in the market.

13. Though the SSNIP test can be a reliable tool for the market definition, it considers only the demand side effect, and by that, it omits the supply side response to a price increase. In so doing the size of the market can be underestimated and can result on the post-merger concentration calculation being overstated. It has been argued that competition authorities should also consider the potential impact of likely suppliers in the relevant market definition.

14. For example, in the 1992 Torras/Sarrio merger, the European Commission (EC) argued that the paper market was highly substitutable when assessed from the supply side. The European Commission stated that:

> *"[…] since the difference between coated and uncoated paper results from extra processing, the coating processing can be included whenever required. Since the different grades of paper result mainly from the blend used, the coating materials used and some other extra processing, it is relatively easy for a producer to switch from production of one paper type to another."*[10]

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[10] European Commission Case No IV/M.166 -TORRAS / SARRIO http://ec.europa.eu/competition/mergers/cases/decisions/m166_en.pdf
The transaction consists of the acquisition by Grupo Torras SA, through its 100% owned subsidiary Sarriopapel y Celulosa SA, of the entire non-board paper activities of SARRIO SA. The concentration comprises all of the Spanish pulp and non-board paper production and related distribution assets of SARRIO SA. The analysis led to the identification of several distinct product markets. First, wood and waste paper is turned into pulp. Secondly, pulp is turned into paper of different qualities, grades and weights. Finally, part of the paper production is sold to the consumer through merchants. These activities constitute separate markets as follows: the pulp market; the market for paper manufacture; the paper market; and the distributing market.

15. In its analysis the EC showed the market to be wider when the supply-side effects were considered and therefore argued that post-merger concentration would overestimate the impact on competition.

16. The UK Office of Fair Trading (OFT)[11] guidelines state that:

    "In identifying the relevant product market, the Authorities will pay particular regard to demand side factors (the behaviour of customers and its effects). However, they may also consider supply-side factors (the capabilities and reactions of supplier in the short term) and other market characteristics". (OFT Guidelines on Market Definition paragraph 5.2.6)

17. For example in the case (ABF/Cargill)[12], the OFT assessed the purchasing of grains and pulses separately from purchasing of oilseed rape, but did not preclude a wider market definition. Also in the analysis of market definition in the Grainfarmers/Centaur Grain[13] case it was noted that

    "Merchants and co-operatives are flexible over which farmers and customers they transact with to match customer requirements. No third parties made the case for segmentation by grain type. Both parties, and their major competitors, appear to offer marketing services across a broad range of grain types. "

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[11] Now the Competition and Markets Authority (CMA).

[12] This transaction involved the joint venture between the agricultural merchanting divisions of Associated British Foods plc and Cargill plc. The definition of the relevant markets took note of the observations that agricultural merchanting consists of a number of discrete activities which can be split conceptually between the supply to farmers of certain agricultural inputs (e.g. seed, fertiliser, animal feed and agrochemicals) and the purchase from farmers of agricultural outputs (e.g. grains, pulses, oilseeds).
See:https://assets.publishing.service.gov.uk/media/555de438ed915d7ae500010a/associated.pdf

[13]ME/3850/08. This transaction consisted of the merger between the Grainfarmers Group and Centaur Grain Group. The OFT determined that the most appropriate frame of reference for the merger was the procurement and supply of grain, pulses and oilseeds. However, it is important to note that further to not identifying any competition concerns on even the narrowest market definition (*i.e.* the market for grains) the OFT felt that it was not necessary to come to a conclusion on the precise product market definition.
See: https://assets.publishing.service.gov.uk/media/555de38be5274a70840000a6/Grainfarmers.pdf ; Accessed on May 27, 2019

18. Interestingly, in the Grainfarmers/Centaur Grain case the OFT determined that the most appropriate frame of reference for the merger was the procurement and supply of grain, pulses and oilseeds. However, it is important to note that further to not identifying any competition concerns on even the narrowest market definition (i.e. separate markets according to grain type) the OFT felt that it was not necessary to come to a conclusion on the precise product market definition.

19. With respect to the provision of insurance coverage, there is a strong national dimension to coverage. This sentiment is premised on the fact that detailed information is required on the insured (e.g. financial information of the customer, his/her activities, risk profile) and is influenced by local economic factors including established market structures. Implicit in the latter is the expectation that there are different national systems of regulatory supervision for the insurance industry[14].

20. Furthermore, the distribution channels for insurance products are national as there are currently no opportunities for cross-border selling. Support for a national dimension to the provision of insurance coverage (pursuant to the geographic market definition) is obtained from the American Medical Association (AMA), whose 2018 study[15] indicated that distance is a critical factor in determining health care coverage. Specifically, the AMA asserted that the local nature of health care delivery and the

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[14] See for example, *Case No IV/M.759 - Sun Alliance/Royal Insurance*. See also *COMP/M.5010, Berkshire Hathaway/Munich Re/GAUM*; and *COMP/M.6217, Bâloise Holding/Nateus/Nateus Life*. In these cases the relevant geographic market for life and non-life insurance was described as national. Notwithstanding the observation that in the US the McCarran-Ferguson Act provides for a partial exemption from federal antitrust laws on certain activities of insurance companies, the difference in the regulatory regimes is perhaps most notable in the Canadian insurance industry where mergers are regulated at both the federal and provincial level under the Insurance Companies Act, the Invest Canada Act, and the Competition Act.

[15] American Medical Association (2018); Competition in Health Insurance: A Comprehensive Study of US Markets; At: https://www.ama-assn.org/system/files/2018-11/competition-health-insurance-us-markets_1.pdf; Accessed: 19 March 2019.

marketing and other business practices of health insurers strongly suggest that health insurance markets are local (AMA, 2018:4).

21. More importantly, the Competition Bureau of Canada concluded in its assessment of the 2018 merger proposal on behalf of Stewart Information Services Corporation (Stewart) and Fidelity National Financial Inc. (FNF)[16], that the likely geographic market for title insurance was provincial *"[since] title insurance is priced and sold differently in each province, based on risk of claims, distinctions in how land is conveyed, and compliance rules pertaining to compensation of real estate lawyers, who often facilitate the sale of title insurance."*[17]

22. The above is instructive, and suggests that since the insurance industry tends to be very specialized, a corresponding precedent is set for the determination of the relevant product markets. Notably, the broad definition of insurance within the Insurance Act CAP. 310 of the Laws of Barbados provides enough scope for the delivery of different types of insurance products. By extension, the different types of insurance products may represent separate product markets. According to the Act:

"*insurance business*" *includes*

a) *the assumption of the obligations of an insurer in any class of insurance business;*
b) *re-insurance business; and*
c) *pensions business and other business directly connected to insurance business.*

"*life insurance business*" *means*

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16 Hereafter referred to as "*Stewart/FNF*".

17 See Competition Bureau statement regarding proposed merger between Stewart and Fidelity National Financial. At: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04386.html. Date Accessed: 20 May 2019. Both parties (FNF and Stewart) offer title insurance. However, FNF also provides mortgage transaction services, whereas Stewart does not offer mortgage transaction services. As a result, the Competition Bureau's investigation focused primarily on title insurance.

a) *the undertaking of liability under policies of insurance upon human life;*
b) *the granting of annuities upon human life; or*
c) *the undertaking of liability referred to in paragraph (a) or the granting of annuities referred to in paragraph (b) that can be termed "variable life insurance business" or "variable annuity business" respectively;*

"marine, aviation and transit insurance business" means the business of effecting and [carrying] out, otherwise than incidentally to some other class of insurance business, contracts of insurance

a) *upon vessels or aircraft, or upon the machinery, tackle, furniture or the equipment of vessels or aircraft; or*
b) *upon goods, merchandise or property of any description whatever on board vessels or aircraft; or*
c) *upon the freight of, or any other interest in or relating to, vessels or aircraft; or*
d) *against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks; or*
e) *against risks incidental to the construction, repair or docking of vessels, including third-party risks; or*
f) *against transit risks, whether the transit is by sea, inland water, land or air, or partly one and partly another, including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance, but not including risks the insurance of which is motor vehicle insurance business; or*
g) *against any other risks the insurance of which is customarily undertaken in conjunction with or as incidental to any business referred to in the foregoing paragraphs of this definition;*

"motor vehicle insurance business" means the business of effecting contracts of insurance against loss of, or damage to or arising out of or in connection with the use of, motor vehicles, including third-party risks;

"ordinary life insurance business" means insurance whereby an insurer assumes in return for the payment of a sum or sums of money, a contingent obligation dependent on human life but does not include industrial life insurance, personal accident, sinking fund or cancellable group life insurance;

"*property insurance business*" *means the issue of, or the undertaking of liability under, policies of insurance against loss or damage to real or personal property of every kind and interests therein from any hazard or cause, or against loss consequential upon such loss or damage, not being risks the insurance of which is motor vehicle insurance business or marine, aviation and transit insurance business;*

23. In terms of establishing a definition of the relevant product market, the European Commission (EC) has traditionally distinguished between general insurance, life insurance, and reinsurance, thereby treating same as separate product markets[18]. Lista (2013)[19] asserted that on the demand side, it has been the approach of the EC to derive as many product markets as there are insurance for the different types of risk[20]. By way of illustration, the Court in <u>BNP Paribas/Fortis</u> asserted that *"[…] from the demand side, life and non-life insurance can be divided into as many individual product markets as there are different kinds of risks covered, given that their characteristics, premiums and*

[18] For example, see COMP/M.5384, BNP Paribas/Fortis; COMP/M.6957, IF P&C/TopDanmark; COMP/M.5083, Groupama/OTP Garancia; COMP/M.5031, ACE/CICA; COMP/M.4808, CVC/Charterhouse/PHL/AA/Saga; COMP/M 4284, Axa/Winterthur; COMP/M.4701, Generali/PPF Insurance Business; and COMP/M.4047, Aviva/Arik Life.

[19] Lista A. (2013), EU Competition Law and the Financial Services Sector; Routledge.

[20] See for example, COMP/M.5384, BNP Paribas/Fortis, COMP/M.4284, AXA/Winterthur and COMP/M.7478, Aviva/Friends Life/Tenet; COMP/M.6521, Talanx International/Meiji Yasuda Life Insurance/Warta; COMP/M.4701 Generali/PPF Insurance Business.

purposes are distinct and that there is typically no substitutability from the consumers' perspective between different risks insured."[21]

24. Lista further argued that the product market could be further segmented according to the distribution methods (e.g. direct sale, or sale through intermediaries such as brokers, and agents), or the breakdown of distribution arrangements for individual products. The EC Decisions in *Abeille Vie/Viagere/Sinafer*[22] and *Commercial Union/General Accident*[23] are instructive in this regard. In *Abeille Vie/Viagere/Sinafer* the Commission noted that the distribution of life insurance products in France can be conducted through mechanisms such as agents and brokers, financial intermediaries, regional banks and independent agents and brokers. As such, the distribution of life insurance was regarded as a relevant market. In *Commercial Union/General Accident* in particular, the Commission asserted that, "*On the demand side, life and non-life insurance can be divided into as many product markets as there are insurances covering different kinds of risk. Their characteristics, premiums and purposes are distinct and there is typically no substitutability for the consumer between the different risks insured."*

25. However, this narrow approach does not appear to be rigidly applied as the Commission left the definition of the relevant geographic and product market open, rather than specific to the different types of insurance products. One of the reasons for this approach stems from the observation that the transaction was not expected to give rise to any serious competition concerns[24]. The same is true for the US and Australian markets. In the latter, the Australian Competition and Consumer Commission's (ACCC) assessment of the National Mutual and Lend Lease / MLC

[21]At para. 69.
[22] Case No IV/M. 919 - Abeille Vie/Viagère/Sinafer Notification of 6 May 1997 pursuant to Article 4 of Council Regulation No 4064/89
[23] Case No IV/M.1142 - Commercial Union / General Accident Notification of 27.03.1998 pursuant to Article 4 of Council Regulation N 4064/89
[24] Similar inferences occur in Case No. IV/M.1082 - Allianz/AGF

merger considered both a narrow and broad definition of the market (OECD, 1998)[25]. In this case, as with the other referenced cases, the broad definition of the market sufficed on the grounds that neither scenario created competitive concerns. According to the Chairman of the ACCC Chairman, Professor Allan Fels;

"*In this case, the ACCC examined a number of possible markets in the financial services industry and found that, even if narrow market definitions were to be adopted, the concentration thresholds would not be breached as a result of the merger.*"[26]

26. The above notwithstanding, if one considers the principle of substitutability, the argument prevails that the different types of insurance are not interchangeable (Lista, 2013:103). Accordingly, the different types of insurance products may indeed represent different product markets. This is especially true for the life and non-life insurance markets. That said, the principle of substitutability can be applied within product markets such that a further narrowing of the market occurs according to the type of risk that is covered. For example, in the non-life insurance market a distinction can be made between motor vehicle insurance and home insurance.

27. The above does not preclude the use of alternative referents from which the general insurance market can be segmented. Indeed in *Generali / INA*; and *Allianz / Insurance Portfolio and Brokerage Services of Gan Eurocourtage*[27] the Commission segmented the market based on the applicable national insurance classification[28]. Additionally, in

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[25] OECD (1998); Competition and Related Regulation Issues in the Insurance Industry; OECD, Paris.
[26] See: https://www.accc.gov.au/media-release/accc-not-to-oppose-national-mutual-and-lend-lease/mlc-joint-venture. Date Accessed: 19 March 2019.
[27] Respectively, COMP/M.1712, Generali / INA; and COMP/M.6649, Allianz / Insurance Portfolio and Brokerage Services of Gan Eurocourtage.
[28] The sub-markets (which include motor insurance; home and contents insurance; general liability insurance; commercial; and contractors risk insurance) closely align in large measure with what was determined obtains in the Barbados market.

Allianz/Going concern of Unipolsai Assicurazioni[29] the Commission made reference to legal assistance as a basis for defining the relevant market; in NN Group / Delta Lloyd[30] a distinction was made between group and individual customers; and in CVC/Apollo/Brit Insurances[31] (as with Abeille Vie/Viagere/Sinafer) consideration was given to the use of distribution channels (*i.e.* direct writers, tied agents or intermediaries such as banks and brokers).

28. Substitutability may however be contested from the supply-side dimension given the argument that the different product types do not require specialist skills. That is to say, a common set of skills is required for risk assessment, administration, and claims management, and is therefore not contingent on the type of product offered. Hence suppliers of general insurance can compete in the broad category segments in addition to the narrow segments.

29. What is compelling is that because of the multiple dimensions from which the general insurance market can be defined, the Commission in Generali CEE / AS[32] accepted past decisional practices and chose not to provide a precise product market definition for non-life insurance products. Despite identifying several potential product markets, and noting that there were indications of potential degree of supply-side substitutability between some insurance products, the Commission recognised that product segmentation is based on the fact that the characteristics and purpose of the

29 COMP/M.7233, Allianz/Going concern of Unipolsai Assicurazioni. This transaction concerned the acquisition of sole control by Allianz of a portion of the non-life insurance business controlled by the holding Unipol Gruppo Finanziario S.pA. in Italy.

30 COMP/M.8257, NN Group / Delta Lloyd. This transaction concerned the acquisition by NN of Delta Lloyd. Both entities are based in the Netherlands and are financial services providers, whose principal activity is in the area of insurance.

31 COMP/M.6053 CVC/Apollo/Brit Insurance.

32 COMP/M.9056, Generali CEE / AS. This transaction Generali, the parent company of an international group of companies active in the insurance and financial sector, sought to acquire Adriatic Slovenica, Zavarovalna družba, d.d. ("AS", Slovenia) by way of purchase of shares. In its assessment the Commission distinguished several non-life insurance segments, including (i) accident and sickness, (ii) motor vehicle, (iii) property, (iv) liability, (v) marine, aviation and transport, (vi) credit and suretyship and (vii) travel insurance.

different types of insurance are distinct, and that there is typically no substitutability between different types of insurance from a customer's perspective.[33]

30. Based on the information above it can be concluded that the most practical approach to employ at defining the relevant product market would be to differentiate between life and non-life insurance. There is ample case law to support this approach in so far that (from a supply-side dimension) the principle of substitutability points to the separation of the life and non-life insurance markets.

31. Moreover, there appears to be sufficient latitude within the case law to support the decision against the further delineation of the non-life market into more specific/specialised sub-markets. The principle of substitutability also suggests that there need not be a further delineation of the market according to its substituent products. This too is reflected in the cited cases (and judgements) which tend to look at the life and non-life markets in totality (*i.e.* from a broad perspective/definition). From a demand-side perspective the general insurance sub-markets (*e.g.* auto/motor, residential, commercial insurance) are not close substitutes. However, one is guided by the assertion that if a broader definition is more reflective of the relevant market, analysis of the individual sub-markets may be excessive. The <u>*Generali CEE / AS*</u> transaction referenced above is particularly relevant in this regard[34] given the Commission's assertion below:

"The Commission considers that there is no reason to depart from the past decisional practice and that the product market definition for non-life insurance in Slovenia can be left open for the purpose of the present case since no competition concerns arise under any plausible product market definition." (para. 15; pp.3)

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[33] *Op cit.* (para. 11).

[34] Notably, although the EC decided to adopt a broad definition of the market, the Parties nevertheless provided market share data based on all plausible market definitions, including the regulatory classes determined by the Slovenian Insurance Act. Further, the EC also adopted a similarly broad definition of the geographic market.

32. Further, since the specificity of coverage means that policies can be tailored according to individual needs,[35, 36] there are few factors that preclude a general insurance provider from offering more specific coverage within the general insurance product category. This is in recognition of the fact that rather than offering all of the individual components of a major product a provider may opt to introduce these components as add-ons, for which there is an incremental cost to the policyholder. Using commercial property insurance as an example, Consumers Guarantee Insurance (CGI), on one hand, offers three levels of coverage (Commercial Fire Only; Commercial Fire & Limited Perils; and Commercial Fire & Perils). The customer can purchase any combination of add-ons as additional coverage (*e.g.* Burglary, Business Interruption, Public Liability, Employers Liability, Contractors All Risk)[37]. On the other hand, Cooperators General Insurance offers these add-ons as stand-alone policies[38]. The above inference is absent the assertion that general insurance companies typically seek to obtain most of the client's business by offering a packaged deal (*e.g.* reduced premiums if the customer purchases residential and auto insurance). An equivalent argument can be made for life insurance coverage.

33. Further comfort still, is provided by the following:

> "*Market definition is not an end in itself but a key step in identifying the competitive constraints acting on a supplier of a given product or service. Market definition provides a framework for competition analysis. For example, market shares can be calculated only after the market has been defined and, when considering the potential for new entry, it is necessary to identify the market that might be entered. Market definition is usually the first step in the assessment of market power.*" *(OFT Guidelines on Market Definition)*

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[35] For example, body part insurance. One celebrity is known to have insured her legs for US$2 million, while another insured his voice for US$6 million.
[36] For the most part, no two policies are the same. Policies can differ along several dimensions (*e.g.* by risk profile comprising age, gender, health, occupation, residence, marital status, family size, *etc.*). This factor alone creates a further argument that the sub-markets could be further sub-divided such that each policyholder is a *de facto* market.
[37] See https://www.insurecgi.com. Date Accessed: 13 May 2019.
[38] See https://www.coopgeneral.com. Date Accessed: 13 May 2019.

34. In its assessment of the market conditions, the Commission has determined that there is a distinction between the distribution of life and non-life products, and has used this distinction as the basis for providing a broad definition of the market only. Hence, in the current review, it regarded the proposed acquisition as a transaction that involved the life insurance market, the non-life insurance market and the land holdings/property development market. These are described in turn in the sections that follow.

The Life Insurance Market

35. Sagicor's main lines of business are life and health insurance, annuity insurance, employee benefits and asset management. Sagicor offers these products and services to both individuals and groups. Life insurance products include whole life, term life, creditor life, endowment, unit-linked, disability insurance and critical illness insurance. Asset management services are provided primarily through mutual funds, in which some life insurance policies participate.

The General (Non-Life) Insurance Market

36. Sagicor offers primarily property and motor vehicle insurance to individuals and groups. Property and motor vehicle insurance provides a benefit on losses due to occurrences such as, among others, natural disasters, fires, accidents and theft.

The Property Development (Land Holdings) Market

37. Sagicor Life acquired 77% of interest in Barbados Farms Limited (BFL) whose common shares are listed on the Barbados Stock Exchange. BFL engages in

agriculture—primarily the production of sugar cane—and owns land which is utilised for agriculture, leased, being developed for resale[39] or not in use.

The Relevant Geographic Market

38. Competition agencies normally use a similar process to determine the geographic market where the product is or may be potentially supplied. The geographic market is essentially the area in which (i) persons find it feasible to source an alternative product; and (ii) suppliers find it viable to supply the product or service in that particular area.

39. The Commission generally defines the relevant geographic market by identifying the area over which the merged firm and its rivals currently supply, or could supply the product. The Commission also will consider the area to which buyers can or would practically turn to find alternative sources of supply.

40. In deference to the findings from *Sun Alliance/Royal Insurance; Berkshire Hathaway/Munich Re/GAUM; and Bâloise Holding/Nateus/Nateus Life*[40] (where the relevant geographic markets were defined as national); the assertions of the AMA regarding the local nature of the health insurance markets[41]; and the legal and regulatory parameters under which local insurance companies operate, the Commission found that the relevant geographic market under consideration in this matter is delimited to Barbados.

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[39] The Estates of St. George is a recent initiative of Sagicor. It was launched in March 2019 as a multi-million dollar Senior Living Community (senior citizens retirement village) in Boarded Hall, St. George. (See: https://www.theestatesatstgeorge.com).
[40] See *supra* note 14 at 9.
[41] See *supra* note 15 at 9.

Competitive Analysis

41. The Commission considered the potential impacts of the proposed transaction on the relevant product markets in Barbados, which are identified as follows:
    - The market for the provision of life insurance;
    - The market for the provision of non-life (general) insurance; and
    - The market for land holdings or property development.

42. The findings of an assessment of the potential impacts of a merger are highlighted and used to inform the Commission's decision regarding the merger application. It is important to note that Section 20(7)(d) and (e) of the FCA do not require the Commission to prove future conduct. As such, the analyses conducted are *ex ante* in nature and enable the same to contemplate potential impacts of the proposed transaction.

The Structure of the Markets Affected by the Proposed Merger

43. In examining the structure of the markets affected by the proposed merger, consideration was given to the number and relative size of the firms in the market, and to the size of the barriers facing new firms seeking to enter the market. Attention was also paid to the level of consumer demand, including the degree of penetration in the market.

Number of Firms

44. Sagicor's competitors include other regional insurers that compete with Sagicor in many jurisdictions, as well as local insurers that specialise in smaller territories. In some jurisdictions in the Eastern and Southern Caribbean[42], Sagicor faces competition

[42] It should be noted that these jurisdictions are out of the remit of the Barbados Fair Trading Commission.

from banks, securities brokerage firms, investment advisors and other financial intermediaries that offer insurance products, annuities and mutual funds.

45. There are a total of six (6) competitors in the life insurance market in Barbados – namely Amphora Life Insurance Company Ltd., Scotia Insurance Caribbean Ltd., Pan American Life Insurance Group, Insurance Corporation of Barbados Ltd. (ICBL), and Guardian Life of the Caribbean Ltd. Sagicor occupies [55-65]% [43]of the market.

46. Sagicor's primary competitors for the general (property and casualty) insurance market are, Massy United, CGI and ICBL, which collectively account for [40 -50]% of the non-life insurance market. In comparison, Sagicor accounts for [20-30]% of the market.

47. The market for land holdings or property development presents a special case insofar that this activity also includes the cultivation of sugar cane. Sagicor, through its subsidiary Barbados Farms Limited, competes with numerous real estate/property development entities, as well as plantations or crop farmers in this market. In review, it was opined and accepted that this market did not warrant in-depth analysis for competitive effects given the high number of activities, competitors and potential markets that comprise this sector—all of which overlap to varying degrees.

Dominance and the Exercise of Significant Market Power

48. Competitive concerns may arise if a firm is able to have such control (or dominance[44]) of a market or markets that it is able to act unilaterally (*i.e.* independently of its

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[43] These figures are based on Gross Written Premiums for financial year 2018.

[44] Korah (2000:81) defined dominance as the ability of a firm to set its prices and make other market decisions without being constrained by competitive pressures. See Korah V. (2000); An Introductory Guide to EC Competition Law and Practice; 7th ed.; Hart Publishing, USA. Additionally, the European Court of Justice in ***Case 27/76, United Brands v. Commission, [1978] E.C.R. 207*** at para. 65, defined defines a dominant position as: *"[…] a position of economic strength enjoyed by an undertaking which enables it to prevent*

competitors). In such instances, the firm is characterised as being able to exercise significant market power. Oftentimes, unilateral conduct is manifested in the firm's ability to increase prices; its insensitivity or refusal to improve the quality of its products/services; and/or its pursuit of strategies that may distort competition. For example, a firm with significant market power may be able to undertake anti-competitive conduct such as predatory pricing, which may be designed to remove existing competitors or raise barriers to new entry.

49. To assess whether or not a firm holds a position of dominance, the Commission will first define the relevant market(s) and then consider the market share of the firms therein. The Commission may then assess the consequent level of competition in the particular market based on its contestability and the presence of barriers to entry to the market. Market dominance, within the context of a merger transaction, can be determined by considering the market share of players within the affected market(s), the level of concentration within the market(s) and the economic and financial power of the merging parties in relation to other existing or potential competitors.

50. If a firm has a large market share and is supported by significant barriers to entry, then it is unlikely to be effectively constrained by its competitors. In such cases, proponents such as the European Union (EU)[45] assert that the firm is likely to have significant market power because it can unilaterally increase its prices independently of its competitors customers and ultimately its consumers.

Market Share

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effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of consumers."

[45] See EU (2002); Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services; European Union.

51. In its assessments of market dominance, the Commission has determined that a firm with a sustained market share of 50% or more is likely to be in a position of dominance. Section 20(1) of the FCA mandates a review of the transaction by the Commission if a merger results in a combined market share in excess of 40% in any affected market. Data available to the Commission revealed that the relative market share (based on Gross Written Premiums for financial year 2018) of players was not expected to change when a comparison was made of the pre-merger and post-merger general insurance and life insurance markets.

52. Insurance company representatives were interviewed and indicated that they do not anticipate that the proposed Sagicor/Alignvest transaction would have any impact or altering the life insurance and general insurance landscapes in Barbados, as the markets are considered highly competitive.

Market Entry

53. The Commission's assessment of the market *vis-à-vis* the presence of barriers to entry (or the ease of market entry) shows that, in relative terms, it is easier to enter the general insurance market than the life insurance market. With respect to administrative barriers, the adjudication of claims for the general insurance market follows a formula-based process, whereas life insurance claims are subject to more complex analysis involving the use of actuarial science to calculate benefit-payments or a series of payments for the life insured[46].

54. Administratively, the licensing and registration requirements for a domestic insurance company under the Insurance Act, CAP. 310 of the Laws of Barbados are the same for entities wishing to offer general and life insurance coverage. Exceptions

[46] As a corollary, life insurance businesses are required to have a full-time actuary on its staff. This requirement does not prevail for entities that offer general insurance only.

occur in the statutory deposits for these offerings. According to the Insurance Act, an entity wishing to provide long-term or motor insurance is required to establish a statutory fund in the amount of BBD$250,000.00. Additionally, a statutory deposit is required: for a company to be registered under the Insurance Act to conduct any class of insurance business, it must deposit BBD$1,000,000.00 to the FSC in order to carry on long-term insurance business, and not less than BBD$250,000.00 to carry on any class of general insurance business. A corollary of the above is that these are potential barriers to new entrants to the insurance market.

55. That said, it is imperative, in this instance, to differentiate between *de novo* entry (to wit, entry of a completely new entity in the market) and entry by an existing player in a new product market. Few factors preclude a general insurance provider, which is already active in the market, from offering either more specific or additional coverage within the general insurance product category. As highlighted above, barriers to entry are likely to be relatively low for the general insurance provider that wishes to expand its portfolio[47]. However, concerning life insurance, the requirements are more stringent: as a prerequisite, the entity must establish the necessary statutory fund, have an actuary on staff and have proper underwriting arrangements. Anecdotal evidence indicates that though it is possible, general insurance providers typically do not enter the life insurance market because of the administrative burdens incurred.

56. Notably, the presence and effects of administrative and financial barriers as hindrances to competition is tempered by the countervailing buying power within both markets. In concurrence with the interviewees, it was noted that (individual and corporate) consumers have the power to switch between providers or cancel policies

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[47] It is inferred from *Stewart/FNF* that requirements in this instance would typically include specialised underwriting and sales staff. No additional skills are needed to offer additional categories of coverage within the overall portfolio.

at any given time. In addition to the presence of low switching costs, customers are not prevented from purchasing policies from multiple providers (*ceteris paribus*).

57. Thus, it was concluded that despite the outlined nuances, entry into the general insurance market (and to a lesser extent, the life insurance market) could be timely, likely and sufficient to deter or counteract any possible negative competitive effects. These effects are not thought to arise from the transaction under review given current assertions that the transaction is unlikely to cause any change in the markets involved.

58. Critically, the proposed transaction is not expected to result in any marked change in the market (inclusive of market share) or the players therein. Alignvest has no business interests in Barbados that will be separately affected, either positively or negatively, by the transaction. It is also important to note that no change in the direct ownership of Sagicor and its local subsidiaries has been proposed. This suggests that fundamentally, all existing contracts with suppliers/customers, as well as all business arrangements, will remain intact post-merger.

Market Concentration and the Exercise of Dominance

59. Further to the above, consideration is given to market concentration levels and any changes therein as a result of the merger. According to the International Competition Network (ICN), the level of market concentration is used as an initial indicator or screen of potential competition concerns (ICN, 2006)[48]. Market concentration is an aggregation indicator which measures the extent to which a firm (or small group of firms) within a particular market can exercise its (their) dominance over other firms competing in the same market. The significance of the measures of concentration is reflected in their description of prevailing market conditions with regard to the

[48] ICN (2006); ICN Merger Guidelines Workbook; ICN Merger Working Group: Investigation and Analysis Subgroup; Prepared for the Fifth Annual ICN Conference in Cape Town; April 2006.

competitive restraints players may be able to exert on each other and what will prevail post-merger.

60. The Herfindahl-Hirschman Index (HHI)[49] is used to measure market concentration and is derived by calculating the squared market shares of all firms in the market[50]. HHI can lie between zero (which represents a large number of firms in the market each with zero market share[51]) and 10,000 (representative of a monopolist structure where only one firm occupies the market[52]). To illustrate, consider a hypothetical market in which there are only four (4) players/firms — Firm A, B, C, and D — with market shares (MS) of 10%, 30%, 25%, and 35%, respectively[53]. Calculation of the HHI score is as follows:

$$HHI = (MS_A)^2 + (MS_B)^2 + (MS_C)^2 + (MS_D)^2$$

$$HHI = (10)^2 + (30)^2 + (25)^2 + (35)^2$$

$$HHI = 100 + 900 + 625 + 1225$$

$$HHI = 2850$$

61. For guidance, an HHI measure below 1,500 is indicative of a market with a low concentration of players (*i.e.* there are many players). HHI measures that are between

[49] This Herfindahl-Hirschman Index was developed independently by the economists A.O. Hirschman (in 1945) and O.C. Herfindahl (in 1950). Hirschman presented the index in his book, National Power and the Structure of Foreign Trade (Berkeley: University of California Press, 1945). Herfindahl's index was presented in his unpublished doctoral dissertation, "Concentration in the U.S. Steel Industry" (Columbia University, 1950).
See: https://fraser.stlouisfed.org/files/docs/publications/FRB/pages/1990-1994/33101_1990-1994.pdf. Date accessed: 18 December, 2018.
[50] The Herfindahl-Hirschman Index (HHI) is a common measure of market concentration and is used to determine market competitiveness (often pre and post- merger). It is calculated by squaring the market share of each firm competing in a market and then summing the resulting numbers. The primary disadvantage of the HHI stems from the fact that it is such a simple measure that it fails to take into account the complexities of various markets.
[51] Such is synonymous with a market that is under perfect competition.
[52] The HHI under a monopolistic structure (*i.e.* only one firm is in the market and therefore has 100% market share) is $100^2 = 10{,}000$.
[53] The sum of the market shares of all players in the market must equal 100%.

1,500 and 2,500 indicate moderately concentrated markets, while measures above 2,500 suggest a highly concentrated market (*i.e.* a market with relatively few players). Intuitively, highly concentrated markets are more conducive to anticompetitive conduct and are therefore subject to greater scrutiny by competition authorities.

62. Setting aside the fact that the referenced markets are at different concentration levels, these levels remain unchanged post-merger given the zero values assigned to 'delta' (*i.e.* the change in HHI arising from the merger). This is noteworthy given the general standards contained in both the US Horizontal Merger Guidelines[54] and the EU Merger Guidelines[55].

63. The US guidelines instruct as follows:

"The Agencies employ the following general standards for the relevant markets they have defined:

i. Small Change in Concentration: Mergers involving an increase in the HHI of less than 100 points are unlikely to have adverse competitive effects and ordinarily require no further analysis.

ii. Unconcentrated Markets: Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.

iii. Moderately Concentrated Markets: Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.

iv. Highly Concentrated Markets: Mergers resulting in highly concentrated markets that involve an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200

[54] https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c, Date accessed: 04 December, 2018.

[55] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0205(02)&from=EN, Date accessed: 05 December, 2018.

points will be presumed to be likely to enhance market power. The presumption may be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power." (Section 5.3)

64. The EU guidelines are equally prescriptive:

"The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1 000. Such markets normally do not require extensive analysis.

The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150, except where special circumstances such as, for instance, one or more of the following factors are present:

(a) a merger involves a potential entrant or a recent entrant with a small market share;

(b) one or more merging parties are important innovators in ways not reflected in market shares;

(c) there are significant cross-shareholdings among the market participants;

(d) one of the merging firms is a maverick firm with a high likelihood of disrupting coordinated conduct;

(e) indications of past or ongoing coordination, or facilitating practices, are present;

(f) one of the merging parties has a pre-merger market share of 50 % of more." (Schedule 19)

65. Sub-bullet (i) in the US merger guidelines (see paragraph 40 above), and paragraph 1 in the EU guidelines (see paragraph 41 above) are applicable to the current scenario and thereby offer definitive guidance. The Commission is justified in its position that

the proposed transaction is not likely to create competitive concerns on the basis that there is likely to be no change in market composition and/or structure post-merger.

66. **With respect to market concentration, a general insurance market HHI of 1187 pre and post-merger was calculated. In each case, the HHI is below 1500, which is the threshold used to identify high concentration. Hence, based on the HHI calculation, the general insurance market is competitive.**

67. **Ordinarily, a market with an HHI below 1500 would not require further analysis by the standards contained in both the US Horizontal Merger Guidelines[56] and the EU Merger Guidelines[57]. Furthermore, there is a delta score of zero (which reflects no difference in pre-merger and post-merger HHI scores). No change in**

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[56] This is noteworthy insofar that the general standards contained in both the US Horizontal Merger Guidelines and the EU Merger Guidelines both point to the same conclusions. The US guidelines instruct as follows:
"The Agencies employ the following general standards for the relevant markets they have defined:
i. Small Change in Concentration: Mergers involving an increase in the HHI of less than 100 points are unlikely to have adverse competitive effects and ordinarily require no further analysis.
ii. Unconcentrated Markets: Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.
iii. Moderately Concentrated Markets: Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.
iv. Highly Concentrated Markets: Mergers resulting in highly concentrated markets that involve an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power. The presumption may be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power." (Section 5.3)

[57] The EU guidelines are equally prescriptive:
"The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1 000. Such markets normally do not require extensive analysis.
The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150, except where special circumstances such as, for instance, one or more of the following factors are present:
a) a merger involves a potential entrant or a recent entrant with a small market share;
b) one or more merging parties are important innovators in ways not reflected in market shares;
c) there are significant cross-shareholdings among the market participants;
d) one of the merging firms is a maverick firm with a high likelihood of disrupting coordinated conduct;
e) indications of past or ongoing coordination, or facilitating practices, are present;
f) one of the merging parties has a pre-merger market share of 50 % or more."(Schedule 19)

concentration indicates that the transaction is unlikely to have adverse competitive effects and requires no further analysis.

68. **The market for life insurance had an HHI of 4004, which is reflective of a concentrated market that has six (6) players only. However, the delta score is zero (which reflects no difference in pre-merger and post-merger HHI scores). As indicated if there is no change in concentration that is a strong indication that the transaction is unlikely to have adverse competitive effects and requires no further analysis.**

Additional Considerations: The Planned Acquisition of Scotia Jamaica and Scotia Trinidad

69. The Applicants have asserted that, *"Sagicor is anticipated to benefit from a primary injection of [Alignvest]'s equity, which is expected to enable Sagicor to realize its organic and inorganic growth strategies"* which can be interpreted to signify future proposed acquisitions within the markets[58]. It should be noted that any future acquisitions, however structured, involving the Applicant(s) will necessitate the submission of a Merger Application to the Commission for consideration. This assertion is grounded in the fact that the entity will satisfy the 40% merger threshold in the life insurance market[59], thereby triggering the merger review process.

70. It is further noted that Alignvest intends to acquire Scotia Trinidad and Scotia Jamaica. In this regard, the Commission explored the nature of the relationship between the key players in the proposed transaction—namely Scotia Insurance Caribbean Limited (SICL), Scotia Trinidad, and Scotia Jamaica. The objective hereto was to determine whether Scotia Jamaica and/or Scotia Trinidad hold shares or hold any equitable interest in SICL. SICL is domiciled in Barbados and is therefore subject to local competition rules. If SICL is (directly or indirectly) owned by either Scotia Trinidad

[58] See Applicants' Rationale for the Merger at page 4.
[59] Sagicor Life currently possesses [XX]% of the life insurance market.

or Scotia Jamaica, the purchase of these entities by Sagicor would automatically confer ownership of SICL to Sagicor without the latter having to first seek clearance from the Commission. It follows that Sagicor would have circuitously acquired SICL via this 'back channel'. Nevertheless, the Commission would still have the power to conduct an *ex post* investigation of this transaction, albeit under the ambit of an anticompetitive agreement.[60] As implied, the assessment would be conducted after the merger is consummated, thereby creating challenges (absent the requirement to determine the merger) in identifying remedies if anticompetitive harm is identified.

71. It was subsequently confirmed that ScotiaLife Trinidad & Tobago Limited and Scotia Life Insurance Company Limited, in Jamaica, do not hold shares or share any equitable interest in Scotia Insurance Caribbean Limited.

72. The above indicates that there is no requirement to examine the transactions further as the Commission is satisfied that, *prima facie,* the planned acquisitions do not raise competitive concerns.

Summary of Competitive Assessment

73. In the analysis of the proposed Sagicor/Alignvest transaction, it was determined that the attendant business activities reside in a broad range of markets. These relevant markets include the life insurance market, non-life (general) insurance markets and the market for land holdings or property development.

74. Additionally, it was determined that pre-merger, Sagicor is a dominant player in the identified markets and the proposed transaction will not, in the short term, change Sagicor's position therein. Importantly, the transaction transfers ownership and

[60] Section 13(5) of the FCA is sufficiently broad to encompass the transaction described above. Further, precedence was set in *Fair Trading Commission v. Digicel Jamaica Limited* [2017] UKPC 28. Privy Council Appeal No 0059 of 2016. In its judgement, the UK Privy Council ruled that, *inter alia,* Section 17 of the Fair Competition Act governing anti-competitive agreements applies to mergers and acquisitions.

control of Sagicor and its subsidiaries to Alignvest which, prior to this transaction, had no business interests in Barbados. Hence, the current market position of Sagicor remains post-merger.

75. Moreover, it was found that the financial and regulatory barriers to entry are likely to persist post-merger since it is not anticipated that the transaction will cause any material change thereto.

Conclusion

76. The Fair Trading Commission, pursuant to Section 20 of the FCA completed analysis of the merger application submitted by Alignvest Acquisition II Corporation and Sagicor Financial Corporation Limited.

77. The Commission noted that Alignvest does not operate in any of the markets in Barbados; it is unlikely that the transaction would create a shift in market power or market dominance; and the pre-merger conditions are expected to continue.

78. The Commission therefore found that the transaction does not lessen competition in the markets for life or non-life (general) insurance in Barbados.

Determination

79. The Fair Trading Commission, pursuant to Section 20 of the Fair Competition Act, CAP.326C, determined that the result of the acquisition by Alignvest Acquisition II Corporation of all of the shares of Sagicor Financial Corporation Limited does not lessen competition in the markets for life or general insurance in Barbados and accordingly approves the transaction without condition under Section 20 of the Act.

Sandra Sealy
Chief Executive Officer
Fair Trading Commission