



# Fair Trading Commission

## CONSULTATION PAPER

Interconnection Dispute Resolution Procedures

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## PART A - THE CONSULTATION PROCESS

### 1. INTRODUCTION

1. The Fair Trading Commission (The Commission) established by the Fair Trading Commission Act 2000-31, is the independent regulator of international and domestic telecommunications services and electricity services.

2. In carrying out its duties as an independent regulator, the Commission must operate in a transparent, accountable and non-discriminatory manner. Consultative documents and the public consultation processes are the main ways in which the Commission discharges its responsibilities relating to transparency and accountability.

3. In addition, the Commission is specifically charged under the Fair Trading Commission Act to consult with interested persons when it is discharging certain functions.

4. Section 4(4) of the *Fair Trading Commission Act 2000-31* states:

*“The Commission shall, in performing its functions under subsection (3)(a), (b), (d) and (f)<sup>1</sup>, consult with the service providers, representatives of consumer interest groups and other parties that have an interest in the matter before it.”*

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<sup>1</sup> Section 4(3) of the Act states:

*The Commission shall, in the performance of its functions and in pursuance of the objectives set out in subsections (1) and (2):*

- (a) establish principles for arriving at the rates to be charged by service providers;*
- (b) set the maximum rates to be charged by service providers;. . .*
- (d) determine the standards of service applicable to service providers;. . .*
- (f) carry out periodic reviews of the rates and principles for setting rates and standards of service of service providers...*

## **Consultative Documents**

5. On important issues that arise in the regulation of the utility industries, the Commission may issue a consultative document, a public discussion paper, in which the Commission:

- (a) brings to public attention important issues relating to utility regulation to promote public understanding and debate;
- (b) puts forward options and/or proposals as to the approach to adopt in dealing with these issues, to seek to resolve them in the best interests of the consumer, the service provider and the society at large; and
- (c) invites comments from interested parties, such as consumers, service providers, businesses, professionals and academics.

6. The issues at hand will influence the nature of the document and its content. On some issues, the Commission may simply set out what it regards as the available options and, although there would be some analysis of the pros and cons of the options, it might be that no one option emerges as the favoured or proposed approach. On other issues, the Commission might set out a clear preference for a particular approach and invite comments on this basis.

7. The views and analysis set out by the Commission in a consultative document are intended to invite comments which may cause the Commission to revise its views.

8. The consultative document generally includes a series of specific questions on which the Commission is particularly seeking comments. To ease the task of analysing comments, respondents should reference the relevant question numbers in the document. If they consider it appropriate, respondents may wish to address other aspects of the document for which the Commission has prepared no specific question. Respondents may only wish to answer some of the questions posed.

Failure to provide answers to all questions will in no way reduce the consideration given to the entire response. Commercially sensitive material should be clearly marked as such and included in an annex to the response. The Commission is under no obligation to consider comments received after April 25, 2003.

### **Analysis of Responses**

9. The Commission expects, in most consultations, to receive a range of conflicting views. In such circumstances, it would be impossible for the Commission to agree with all respondents. Through its documents the Commission will seek to explain the basis for its judgments and where it deems appropriate give the reasons why it agrees with certain opinions and disagrees with others. Sometimes analysis of new evidence presented to the Commission will cause it to modify its view. In the interests of transparency and accountability, the reasons for such modifications will be set out and, where the Commission disagrees with major responses or points that were commonly made, it will in most circumstances, explain why.

## **PART B - DISPUTE RESOLUTION PROCEDURES**

### **2. STRUCTURE OF PAPER**

*This Consultation Paper is not a legal document and does not constitute legal, commercial or technical advice. The Commission is not bound by this document. The consultation is without prejudice to the legal position of the Commission or its rights and duties to regulate the telecommunications market generally.*

1. This Consultation Paper is structured as follows:

- Section 3 summarises the background and legislative basis for the development of dispute handling procedures by the Commission;
- Section 4 sets out the general dispute resolution procedures;
- Section 5 describes the scope of the written hearing dispute handling process;
- Section 6 describes the scope of the dispute handling process by mediation;
- Section 7 outlines the consultation timetable.

The annexes in this paper set out flowcharts illustrating the dispute resolution procedures.

### 3. BACKGROUND

2. Interconnection, the linking of public telecommunications networks to facilitate the communication between the users of licensed carriers, is critical to the development of a competitive telecommunications market.

3. The Fair Trading Commission is charged under the Telecommunications Act 2001-36 with responsibility for approving Reference Interconnection Offers and interconnection agreements and for resolving interconnection disputes referred to by the parties.<sup>2</sup>

4. Interconnection Agreements are to be commercially negotiated between the carriers and disputes may arise between the parties during or after negotiation. Disputes in the telecommunications market can hinder the development of competition or delay, the provision of innovative services and reduction in prices. Effective, fair, transparent and timely resolution of disputes is therefore critical.

5. The Commission believes that a formal mechanism must be put in place to resolve such issues and invites comments on a proposed procedure in this consultation document.

6. The Telecommunications Act 2001-36 recognises the importance of dispute resolution procedures. Section 31 (1) states that:

*“Any disputes that arise between parties in respect of the negotiating of an interconnection agreement may be referred to the Commission in writing for resolution by either party to the negotiations where*

*(a) all reasonable efforts have been made by the parties to resolve the dispute;*

*and*

*(b) the parties have negotiated in good faith.”*

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<sup>2</sup> Telecommunications Act 2001-36 Part VI Sections 27 (1), 29 (2), 31 (1)

7. Additionally it is stated in Section 31(5) that:

*“The provisions of this section in respect of dispute resolution apply in respect of*  
*(a) pre-contract interconnection disputes; and*  
*(b) disputes referred to the Commission under the terms of an interconnection*  
*agreement.”*

#### **4. GENERAL**

8. The Commission intends to utilise formal and informal procedures to effect the resolution of disputes between parties.

9. While section 5 details formal procedures of resolution – the Written Hearing process - the Commission is mindful of the role that less formal procedures may play in resolving disputes. The Commission therefore also proposes at section 6 to offer a Commission mediation service to parties where it is felt that such a course of action would be more effective in reaching a speedy resolution to a dispute.<sup>3</sup> In such cases, the Commission will designate one of its Commissioners as mediator for a limited time period, to assist the parties in voluntarily resolving the issue between them. The Commissioner would be disqualified from thereafter participating in a subsequent related proceeding should the matter remain unresolved. This service is without prejudice to the parties’ individual or collective rights.

10. Parties to a dispute can also contact the Commission in writing on an informal basis where it is felt that this may be more appropriate to a particular situation. In such cases, the Commission may be in a position to provide clarification or assistance to the parties that would assist them in resolving the matter bilaterally.

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<sup>3</sup> The procedures are illustrated in the flowcharts set out in the Appendix on the paper



## 5. WRITTEN HEARING

11. Any Party, while negotiating a request for interconnection or under the terms of an interconnection agreement, may in accordance with the dispute resolution provisions outlined at section 31 of the Telecommunications Act, refer in writing, a dispute arising in respect of that interconnection negotiation for determination. (“the Referring Party”)

12. The Referring Party must notify the Non-referring Party of its intention to refer the dispute to the Commission for resolution through a written hearing at least ten (10) business days prior to its request to the Commission.

13. The Referring Party must provide a written letter of application to the Commission in making a request to the Commission seeking its intervention to resolve a dispute.

14. The application must include, an Official Report which should include the following:

- (a) A description of the unresolved issues and the efforts taken to resolve those issues; and
- (b) Evidence to support the issues described including, but not limited to:
  - a summary of events or circumstances that led to the dispute,
  - a clear summary of the areas of agreement and disagreement,
  - correspondence,
  - dispute notices,
  - minutes of meetings,
  - additional facts if available,
  - research where necessary to clarify the issues being disputed,

- (c) what is sought from the Commission;
- (d) contact information and designated representatives.

15. The Non-referring Party is required to provide its comments, if any, in written letter form, within the ten day period of having been notified of the Referring Party's intention, on why the Commission should or should not intervene to resolve the dispute.

16. The Commission will provide notice to both parties ("Notice of Intention"), within ten (10) business days of having received the letter of application, as to whether or not it intends to intervene to resolve the dispute.

17. The Commission may choose not to intervene to resolve the dispute if it does not believe that it is appropriate to do so.

18. If the Commission decides to intervene to resolve the dispute, the Non-referring Party will also be required by way of its Notice of Intention to submit to the Commission an Official Report within fifteen (15) business days of receipt of the Commission's Notice of Intention.

19. The Non-referring Party's Official Report must also include all of the items as set out in paragraph 14 above.

20. The parties are required to provide a copy of their respective Official Report to the other party within fifteen (15) business days of receipt of the Commission's Notice of Intention.

21. The parties should indicate to the Commission the sections of its Official Reports that it considers to be confidential or commercially sensitive.

22. Parties must also indicate why these sections are confidential or commercially sensitive and are to be withheld from the other party. An application under Rule 13

of the Utilities Regulation Act 2000-30 Procedural Rules must be filed by the party asserting such a claim and Rule 13 processes will govern such an application.

23. If the Commission is of the view that some sections should not be deemed as confidential or commercially sensitive, the Commission will release the information to the other party for comment.

24. The parties will be allowed to provide the Commission with a written “Response” on the other party’s Official Report within ten (10) business days of receipt of the other party’s Official Report. That Response should contain:

- (a) matters raised by the other party not addressed in its own Official Report,
- (b) Additional related information or clarifications not provided in the original Official Report.

25. If the Commission is of the view that any additional information submitted by either party warrants consideration by the other party, that other party shall be provided with the additional information and allowed five (5) business days to provide a reply to the additional information.

26. In reviewing the unresolved matters and coming to its decision, the Commission will give consideration to:

- (a) the matters set out in the parties’ Official Reports, Responses and additional information, and
- (b) any other information which the Commission deems relevant

27. The Commission may also require the parties to provide any additional information for clarification as may be considered necessary by the Commission at any time.

28. If either party fails at any time to provide the required information to the Commission within the timeframes specified, the Commission may without prejudice to either party, decide to resolve the issue on the facts available to it.

29. Having come to a decision the Commission will seek to issue a Preliminary Ruling within thirty (30) business days of receipt of the parties' Responses. The Commission may extend this period if the nature of the dispute warrants such. The Preliminary Ruling will set out:

- (a) the Commission's views on the matters,
- (b) supporting reasons for the Commission's views; and
- (c) the preliminary decision with respect to the issues presented.

30. A Party ("the Referring Party") may, within ten (10) business days from the date of issue of the Preliminary Ruling request, in written letter, that the Commission reconsider its decision. That party shall provide compelling reasons as to why the Commission should modify its Preliminary Ruling.

31. The Commission will provide the Non-Requesting Party with a copy of the request to reconsider its decision, and allow the Non-Requesting Party five (5) business days to present its views on the request before the Commission.

32. After reviewing the request for consideration along with the Official Reports, the responses, and any other information it deems necessary, the Commission will seek to issue a Final Order within twenty (20) business days of receipt of the request for reconsideration, setting out all the items above.

33. The Final Order shall be a matter for public record, and shall be delivered to all parties of record in the dispute.

34. The Final Order shall be fully binding on the parties concerned.

## 6. DISPUTE MEDIATION

35. Parties while negotiating a request for interconnection or under the terms of an interconnection agreement, may in accordance with the dispute resolution provisions outlined at section 31 of the Telecommunications Act, refer in writing, a dispute arising in respect of that interconnection negotiation to the Commission for mediation.

36. Parties must provide a written letter of application to the Commission in making a request to the Commission seeking its intervention to resolve a dispute. The letter must be signed by the authorised representatives of each party.

37. Within five (5) business days of filing the letter of application with the Commission each party must file and serve an Official Report containing:

- (a) A description of the unresolved issues and the efforts taken to resolve those issues.
- (b) Evidence to support the issues described including, but not limited to:
  - a summary of events or circumstances that led to the dispute;
  - a clear summary of the areas of agreement and disagreement;
- (c) what is sought from the Commission;
- (d) contact information and designated representatives.

38. Each Party is required to provide its comments, if any, in written letter form, within the ten (10) business days of having received a copy of the other Party's Official Report.

39. The Commission will acknowledge receipt of the application and provide notice to both parties (“Notice of Intention”) within ten (10) business days of having received the letter of application as to whether or not it intends to intervene to resolve the dispute.

40. The Commission may choose not to intervene to resolve the dispute if it does not believe that it is appropriate to do so.

41. If the Commission decides to intervene to resolve the dispute the Commission shall appoint a member of the Commission to act as mediator whose task will be to work with the parties to assist them in reaching a resolution on the matters of dispute.

42. The identification of the Commission mediator will be presented to the disputing parties for their review and approval within ten (10) business days of the Notice of Intention.

43. The Commission mediator shall seek to convene an informal dispute resolution conference(s), as necessary with the disputing parties within ten (10) business days of the appointment of the mediator.

44. The Commission mediator will notify the parties of the time, date, and location of the conference.

45. Only the representatives of the disputing parties and the Commission mediator will attend the conference. The disputing parties must provide the appropriate personnel with authority to discuss and resolve the dispute at the settlement conference.

46. The parties will be required to present to the conference such information as listed earlier.

47. The Commission mediator shall chair and participate fully in the proceedings, provide additional information, identify solutions, persuade, and propose options for resolution of the unresolved issues. The Commission mediator cannot impose or make binding decisions on his/her own.

48. The mediator's role shall be limited to assisting the parties in attempting to reach an agreed resolution on the areas of dispute.

49. The mediator shall be bound by the rules of confidentiality as at section 11 of the Fair Trading Commission Act.

50. A summary of the findings of the conference shall be prepared by the mediator and shall be communicated to all the disputing parties within five (5) business days of the proceedings. The Commission mediator is only permitted to inform the Commission whether the matter has been resolved.

*Q1. Do respondents agree that the timeframes proposed for the resolution of disputes is appropriate? If not, why? What alternative timeframes would be appropriate and why?*

*Q2. Do respondents agree with the procedures detailed in the dispute procedure for the written hearing and mediation? If not please identify the relevant paragraphs and suggest alternatives?*

*Q3. Do the respondents consider that any other type of dispute resolution should be considered? If so, please specify and elaborate.*

## 7. THE CONSULTATION TIMETABLE

51. The consultation period will run from April 4, 2003 to April 25, 2003. During this period, the Consultation Paper will be available free of charge from the Commission's office, 9 a.m. to 4 p.m., Mondays to Fridays. Comments should be submitted in writing, before 4.00 p.m. on April 25, 2003 to:

Commission Secretary  
Fair Trading Commission  
Manor Lodge  
Lodge Hill  
St. Michael  
Barbados

## QUESTIONS TO CONSIDER

*Q1. Do respondents agree that the timeframes proposed for the resolution of disputes is appropriate? If not, why? What alternative timeframes would be appropriate and why?*

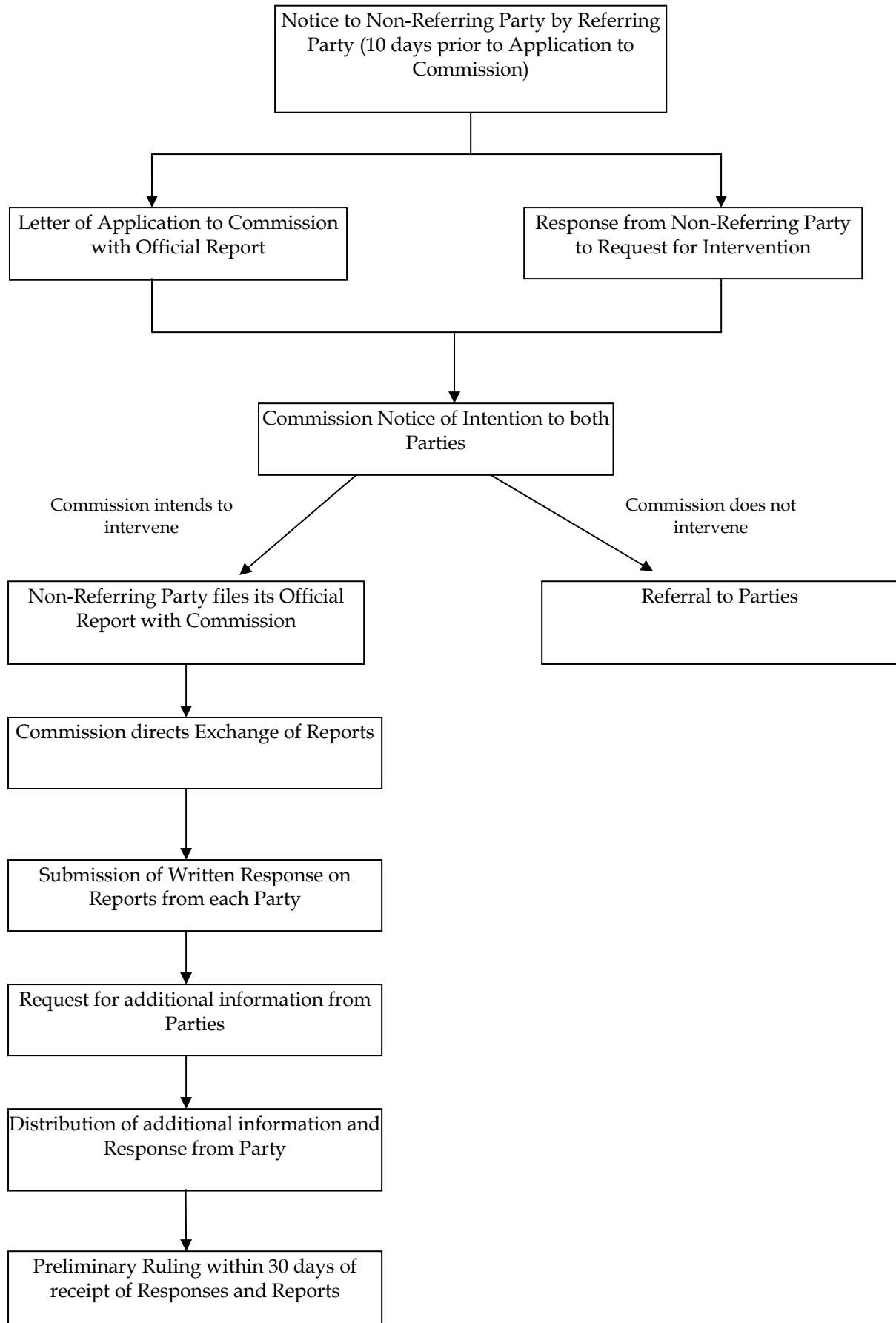
*Q2. Do respondents agree with the procedures detailed in the dispute procedure for the written hearing and mediation? If not please identify the relevant paragraphs and suggest alternatives?*

*Q3. Do the respondents consider that any other type of dispute resolution should be considered? If so, please specify and elaborate.*

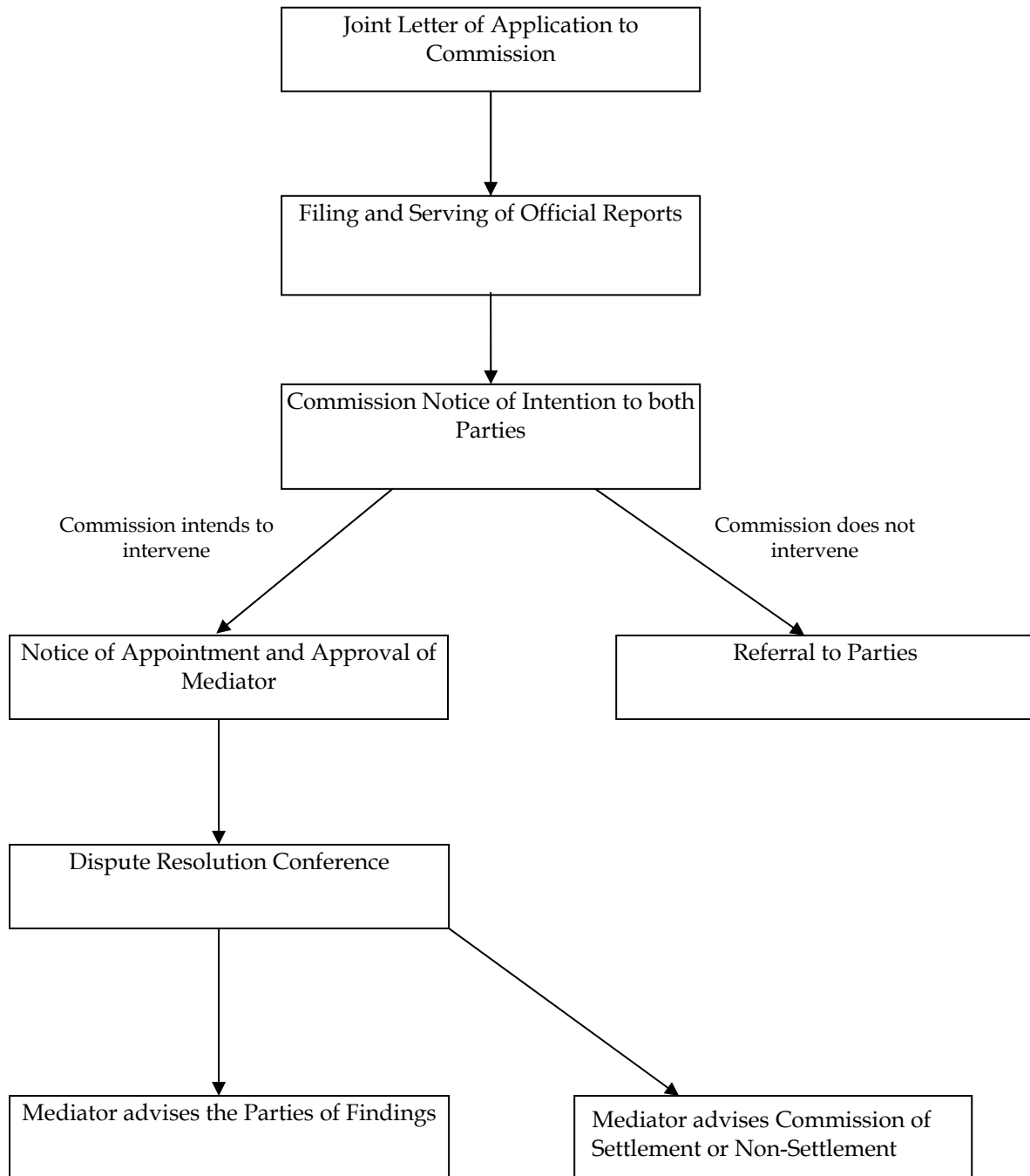


## **APPENDICES**

## Written Hearing (Preliminary Ruling)



## Dispute Mediation Process



**Fair Trading Commission  
Manor Lodge, Lodge Hill  
St. Michael, Barbados  
Telephone: (246) 424-0260  
Fax: (246) 424-0300  
E-mail: [info@ftc.gov.bb](mailto:info@ftc.gov.bb)  
Website: [www.ftc.gov.bb](http://www.ftc.gov.bb)**