

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

BARBADOS

2016

Website:

http://www.ftc.gov.bb/index.php?option=com_content&task=view&id=86&Itemid=74

IMPORTANT NOTE: This template is intended to provide background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

[PART 1: LEGISLATION, GUIDELINES AND JURISDICTION \(Questions 1 – 4\)](#)

[PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION \(Questions 5 – 14\)](#)

[PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION \(Questions 15 – 17\)](#)

[PART 4: SANCTIONS \(Question 18\)](#)

[PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW \(Questions 19 – 23\)](#)

QUICK LOOK SUMMARY	
Mandatory or voluntary regime?	<input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Voluntary
Power to review non-notifiable transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
What are the time limits for review?	Initial review / Phase I: <input type="text" value="3 months"/> Extended review / Phase II: <input type="text" value="As required"/>
Substantive merger test?	<input type="checkbox"/> Dominance <input type="checkbox"/> Significant impediment to effective competition <input type="checkbox"/> Substantial lessening of competition <input checked="" type="checkbox"/> Other the merger would not affect competition adversely or be detrimental to consumers or the economy

PART 1: LEGISLATION, GUIDELINES AND JURISDICTION

1. Legal authority and guidance: Merger notification and review

(please provide title(s), popular name(s), effective date and citation(s)/web address)

Statutory law	
A. Notification provisions	<p>Section 20 of Fair Competition Act, CAP. 326C, 2002-19 outlines the merger notification provisions.</p> <p>Pre-merger notification is mandatory for all mergers that are of a size in excess of the threshold set in the Fair Competition Act, CAP. 326C (the “Act”).</p> <p>Enterprises may engage with the Commission before a proposed merger becomes public knowledge to seek informal and non-binding confidential guidance if they are unclear whether their market share is beyond the threshold set by the Act.</p> <p>If enterprises have proceeded to merge without the approval of the Commission, the Commission may direct the enterprises concerned to have the merger assessed by the Commission in accordance with the Act within such time as specified in the direction.</p> <p>The text of the entire act is available at http://www.ftc.gov.bb/library/CAP326C.pdf.</p>
B. Substantive merger review provisions	<p>Fair Competition Act, Section 20 (7) states:</p> <p>(7) The Commission, in the conduct of its investigation under subsection (6), shall take into account</p> <p>(a) the structure of the markets likely to be affected by the proposed merger;</p> <p>(b) the degree of control exercised by the enterprises concerned in the proposed merger in the market and particularly the economic and financial power of the enterprises;</p> <p>(c) the availability of alternatives to the services or goods provided by the enterprises concerned in the merger;</p> <p>(d) the likely effect of the proposed merger on consumers and the economy; and</p> <p>(e) the actual or potential competition from other enterprises and the likelihood of detriment to competition.</p> <p>The text of the entire act is available at http://www.ftc.gov.bb/library/CAP326C.pdf</p>

<p>C. Implementing regulations</p>	<p>The Fair Competition (Merger) Rules, 2009 outlines the merger rules.</p> <ol style="list-style-type: none"> (1) Where an enterprise is desirous of effecting a merger pursuant to Section 20 of the Fair Competition Act it shall <ol style="list-style-type: none"> (a) submit to the Fair Trading Commission a Merger Application Form pursuant to rule 2 of the Fair Competition (Merger) Rules, 2009 ; and (b) pay the merger application fee set out in the First Schedule (2) The merger application fee shall be payable for each merger application. (3) For the purposes of paragraph (2) <ol style="list-style-type: none"> (a) one of the parties to the merger shall pay the merger application fee; or (b) all the parties to the merger shall jointly pay the merger application fee
<p>D. Notification forms or information requirements</p>	<p>The Commission should be notified by the merging parties with the filing of a Merger Application form and a Merger proposal.</p>
<p>Agency guidance</p>	
<p>E. Guidance on merger notification process (e.g., regarding the calculation of thresholds, etc.)</p>	<p>There is a market share threshold for clearance by the Commission.</p> <p>If one of the merging parties, or the merging parties combined, control 40% or more of any market for goods or services supplied in Barbados.</p> <p>At the first stage of the evaluation process, parties that propose to merge should provide the Commission with all the details set out in the Merger Application Form and pay the prescribed Notification fees.</p> <p>The Commission will then conduct an initial market enquiry to define the relevant markets and determine the relevant market shares.</p> <p>Merging parties should not simply assume that the Commission’s definition of the relevant market(s) will accord with their own submissions.</p> <p>For this reason the Commission strongly encourages merging parties to approach it at the earliest possible stage if there is any possibility that the threshold may be breached.</p>
<p>F. Guidance on substantive assessment in merger</p>	<p>N/A</p>

review	
G. Guidance on merger remedies	<p>Following the investigation, where the Commission forms the view that a merger in its existing form should be prohibited, it will ordinarily provide the parties with the reasons for its view prior to making a formal decision.</p> <p>In some instances, the Commission will also indicate to the parties how its concerns might be remedied by modifying the proposal so that the merger does not contravene the Act.</p>
H. Guidance on the submission of information, especially regarding economic evidence or data, or electronic information	N/A
I. Guidance or statements regarding the treatment of confidential information and/or domestic laws/regulations on third-party or public access to information provided during the review process (e.g., transparency regulations or freedom of information provisions)	<p>Information provided to the Commission by persons contacted during the course of its investigation will be regarded as confidential, in accordance with Section 49 of the Act, except insofar as disclosure of the information is considered necessary for the Commission in the proper discharge of its functions.</p> <p>However, the Commission will not be bound to maintain the confidentiality of material where:</p> <ol style="list-style-type: none"> a. it has already been published in the public arena; or b. the person providing the information waives confidentiality in respect of the information. <p>The Commission may also in some cases provide information to other competition agencies whilst maintaining and protecting its confidentiality.</p>
J. Guidance on pre-notification consultations	The Commission strongly encourages parties to approach it, on a formal or informal basis, as soon as there is a real likelihood that a proposed acquisition that may be subject to the Act is certain to proceed, and certainly well before the completion of any merger.
K. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	N/A
L. If available, please provide a link to statistics on annual notifications received, clearances, prohibitions etc.	Fair Trading Commission – 2014 Annual Report

2. Agency or agencies responsible for merger enforcement

A. Name of agency. If there is more than one agency, please describe allocation of responsibilities.	Fair Trading Commission
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Good Hope Green Hill St. Michael BB12002 Barbados <i>Fax (246) 424 - 0300</i> <i>Tel: (246) 424 - 0260</i> info@ftc.gov.bb http://www.ftc.gov.bb/ English Language
C. Agency contact information for jurisdiction/filing guidance (including possible pre-notification consultations).	Director of Fair Competition Fax (246) 424 - 0300 Tel: (246) 424 - 0260 info@ftc.gov.bb English Language

3. Jurisdiction: Covered transactions

A. Definitions of potentially covered transactions (<i>i.e.</i>, share acquisitions, asset acquisitions, mergers, de-mergers and combinations such as consolidations, amalgamations and joint ventures)	<p>“Merger “is defined in Section 2 of the Act, and means</p> <ul style="list-style-type: none"> • The cessation of two or more enterprises from being distinct, whether by amalgamation, or by one or more enterprises acquiring control over another or otherwise; and • The engagement in a joint venture between enterprises which result in two or more enterprises ceasing to be distinct entities.
B. If change of control is a determining factor, how is control defined and interpreted in practice?	<p>Section 2(3)(a) and (c) of the Act states: ... For the purposes of this Act,</p> <p>(a) a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person;</p>

	<p>(c) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.</p> <p>It is not only the size of a shareholding that determines whether the holder can materially influence the policy of the company concerned. Other factors such as the distribution of the remaining shares and the composition of the board of directors will be considered.</p> <p>The Commission will rarely consider a shareholding less than 15% to be sufficient to cause two enterprises to cease being distinct business entities.</p>
<p>C. Are partial (less than 100%) interests/minority shareholdings covered? At what levels?</p>	<p>Yes (see response at 3B).</p>
<p>D. If the notification requirements cover joint ventures, what types of joint venture are covered (e.g., production joint ventures)?</p>	<p>Joint ventures are considered to the extent that the transaction between the enterprises means that two or more of them will cease to be distinct entities.</p>

4. Jurisdiction: Thresholds for notification

Key threshold information	
<p>A. What are the thresholds for notification? If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)</p>	<p>Section 20 (1) of the Fair Competition Act states that: From the commencement of this Act, all mergers by an enterprise that</p> <ul style="list-style-type: none"> (a) By itself controls, or (b) Together with any other enterprise with which it intends to effect the merger is likely to control <p>not less than 40 percent of any market or such other amount of the market as the Minister may by order prescribe are prohibited unless permitted by the Commission in accordance with this section.</p>
<p>B. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)?</p> <p>If based on an “effects doctrine,” please</p>	<p>For purposes of the notification threshold the market shares are analyzed only with respect to markets in the whole or part of Barbados.</p>

describe how this is applied in practice.	
C. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	Yes. The notification can be triggered by one party's sales, assets or market share. See section 20 (1) (a) of the Fair Competition Act
D. Are any sectors excluded from notification requirements? If so, which sectors?	No
E. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)?	This is determined according to whether the mergers meet the threshold of market shares established in the legislation with respect to the Barbados market. The information required is the same whether foreign or domestic enterprise. The rules are the same with respect to the review period.
F. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so what is the procedure to initiate a review?	The Commission has the overarching mandate to promote, maintain and encourage competition. In addition it is also mandated to keep under review commercial activities to ensure that practices that may adversely affect the interests of consumers are prevented or terminated. See sections 5 and 6 of the Fair Competition Act If the Commission is of the view that a transaction, that falls below the thresholds or otherwise do not meet notification requirements, is likely to lessen competition or adversely affect the interests of consumers it can initiate an inquiry. The Commission will write to request such information as it deems necessary to satisfy itself that the transaction does not lessen competition or adversely affect the interests of consumers.
Calculation guidance and related issues	
G. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: (i) the value of the	The thresholds are calculated in relation to the Barbados Market, or a section of that market as applicable. (i) N/A (ii) N/A (iii) N/A (iv) Market share threshold is based on domestic sales, assets,

<p>transaction</p> <p>(ii) the relevant sales or turnover</p> <p>(iii) the relevant assets</p> <p>(iv) market shares</p> <p>(v) other (please describe)</p>	<p>subscribers etc. within the Barbados market.</p> <p>Sales are allocated according to the location of the customers.</p> <p>Exported goods are assessed in relation to the domestic firms' abilities to divert such goods into the domestic market in response to price signals.</p>
<p>H. Which entities are included in determining relevant undertakings/firms for threshold purposes?</p> <p>If based on control, how is control determined for notification purposes?</p>	<p>The entities included depends on the market being investigated. If there are subsidiary or parent firms operating in the same market these will be included in the relevant undertaking.</p> <p>Control is determined as in 3B</p>
<p>I. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>No</p>
<p>J. Describe the methodology for calculating exchange rates.</p>	<p>N/A</p>

PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION

5. Pre-notification

A. If applicable, please describe the pre-notification procedure (e.g., time limits, type of guidance given etc.)	Before a proposed merger becomes public knowledge, the parties concerned can seek informal and non-binding confidential guidance from the Commission.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	The merging parties should complete the merger application form and merger proposal as if the merger was already public. (Fair Competition (Merger) Rules, 2009)

6. Notification requirements and timing of notification

A. Is notification...	<input checked="" type="checkbox"/> Mandatory pre-merger <input type="checkbox"/> Mandatory post-merger <input type="checkbox"/> Voluntary
B. If parties can make a voluntary merger filing when may they do so?	See 1A
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	<p>A notification can be made as soon as the intention to merge has been established.</p> <p>Intent can be established with copies of any agreements or any other contracts on which the merger is based and or copies of the resolutions of the board of directors of any enterprise involved in the merger with respect to the acceptance of a merger proposal. These are required as part of the notification documentation.</p> <p>SI 2009 No 105-Fair Competition (Merger) Rules, 2009</p>
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for	See 6C

public takeover bids?	
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	N/A
F. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Yes

7. Simplified procedures

A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	There are no special procedures for notifying transactions that do not raise competition concerns. Naturally, the process will be shorter where the investigation determines that the merger is good for competition and no extensive efficiency analysis needs to be completed.
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8. Information and documents to be submitted with a notification

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	Where an enterprise is desirous of effecting a merger, it shall submit to the Commission the following: <ul style="list-style-type: none"> (i) The merger application form (ii) A merger proposal (iii) Copies of any agreements or any other contracts on which the merger is based (iv) A copy of resolutions of the board of directors of any enterprise involved in the merger with respect to the acceptance of a merger proposal (v) For each of the merging enterprises, 3 copies of the most recent financial reports, if any, and of the annual
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	<p>accounts</p> <p>(vi) A list of all other regulatory bodies which will be affected by the proposed merger</p> <p>(vii) Copies of applications made to other regulatory bodies under paragraph (v)</p> <p>(viii) A list of the notified mergers involving any of the merger enterprises in any other country during the last five years.</p> <p>SI 2009 No 105-Fair Competition (Merger) Rules, 2009</p>
B. Is there a procedure for obtaining information from target companies in the case of hostile/unsolicited bids?	<p>The Commission is given powers under the Fair Competition Act and the Fair Trading Commission Act to compel persons and organisations to provide it with the evidence it requires in the course of an investigation.</p> <p>In this instance, the Commission will exercise these powers.</p>
C. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalised?	N/A
D. What is the agency's practice regarding exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	N/A
E. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	<p>Yes.</p> <p>When investigating a proposed merger, the Commission will ordinarily obtain information from a variety of sources including the merging parties, competitors, suppliers, consumers as well as from relevant industry or Government organisations.</p>

9. Translation

A. In what language(s) can the notification forms be submitted?	All responses to questions and other prepared information should be submitted in English.
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<p>B. Describe any requirements to submit translations of documents:</p> <p>(i) with the initial notification; and</p> <p>(ii) later in response to requests for information.</p> <p>In addition:</p> <p>(iii) what are the categories or types of documents for which translation is required;</p> <p>(iv) what are the requirements for certification of the translation;</p> <p>(v) which language(s) is/are accepted; and</p> <p>(vi) are summaries or excerpts allowed in lieu of complete translations and in which languages are summaries accepted?</p>	<p>There are no specific requirements, but all information prepared by the parties would need to be in English. Supporting information prepared by other government agencies e.g. licenses would not have to be translated, but the Commission reserves the right to request an English translation of any document submitted.</p>
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10. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>The Commission must complete its review of the proposed transaction within 3 months after the receipt of a completed merger application or as soon as practicable thereafter.</p> <p>The parties cannot complete their closing unless permitted by the Commission.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No</p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional</p>	<p>The Commission can go beyond the 3 months period provided for in the Act to a period “as soon as practicable thereafter”.</p> <p>Section 20 (5) of the Act states that within 3 months after the receipt of an application under Subsection (2), or as soon as</p>

information suspend or re-start the review period?	practicable thereafter the Commission shall determine whether to grant or refuse permission and notify the applicant in writing of its determination.
D. Is there a statutory or other maximum duration for extensions?	There is no statutory maximum period for extensions. An affirmative clearance from the Commission is required before parties can close the transaction.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	N/A
F. What are the time periods for accelerated review of non-problematic transactions, if any?	There are no specific procedures for accelerated review but the merger application may be all that is necessary if the transaction does not raise competition concerns. Each case would be reviewed on its own merit.
G. What is the procedure for offering and assessing remedies and how does this impact the timing of the review?	Remedies can be offered by the merging parties at the time of application submission or anytime before a preliminary assessment is made by the Commission. If the merging parties fail to initiate the process and the Commission is of the view that remedies are necessary then the proposed remedies will be presented in the preliminary report. Following the investigation where the Commission forms the view that a merger proposal should be modified to reduce or eliminate the Commission's concerns, then the proposal can be restructured with the use of structural or behavioral undertakings. The Commission can, if necessary, appoint a trustee to monitor the remedy implementation. The negotiation of remedies may impact the timing of the review. In such instances the Commission and the Parties will ensure reasonable timelines are stipulated.

11. Waiting periods / suspension obligations

A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation,	Parties cannot close their transaction until the Commission completes its review and either gives permission to merge with or without conditions. The Commission's review will occur within 3 months after the receipt of an application, or as soon as practicable thereafter.
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<p>restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Yes. The Commission will make a judgment based on the particular circumstances.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)?</p> <p>If not, to what extent can the parties implement the transaction outside the jurisdiction prior to clearance (e.g., derogation from suspension, hold separate arrangements)?</p>	<p>N/A</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>No. The transaction is not automatically cleared.</p> <p>An affirmative clearance from the Commission is necessary before parties can close the transaction.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>Section 20 (5) of the Act states that “Within 3 months after the receipt of an application under subsection (2), or as soon as practicable thereafter the Commission shall determine whether to grant or refuse permission and notify the applicant in writing of its determination.”</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant</p>	<p>N/A</p>

early termination.	
G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no “irreversible measures” are taken).	<p>Section 22 (1), (2) and (3) of the Act states the following:</p> <p>(1) Where the Commission is of the opinion that enterprises have, without obtaining the permission of the Commission under Section 21, structured themselves in such a way as to constitute a merger within the meaning of this Act the Commission may by notice in writing direct the enterprises concerned to determine the merger within such time as is specified in the direction.</p> <p>(2) Before giving a direction under subsection (1), the Commission shall give the enterprises an opportunity to be heard.</p> <p>(3) Where an enterprise fails to comply with such a direction under subsection (1) the Commission shall apply to the Court for an order against the enterprise in the terms of the direction.</p>

12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	<p>Each party is required to complete the notification form separately.</p>
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	<p>No</p>
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	<p>No</p>
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or	<p>N/A</p>

apostilled?	
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13. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</p>	<p>Application fee – BDs \$500 per application</p> <p>Investigation fee - Where a merger has a:</p> <table border="1" data-bbox="662 453 1425 884"> <thead> <tr> <th rowspan="2">Total Combined Assets of Enterprises (\$BDS)</th> <th colspan="2">Merger Investigation Fees</th> </tr> <tr> <th>Marginal or positive Competition Effect</th> <th>Significant Negative Competition Effect</th> </tr> </thead> <tbody> <tr> <td>Less than 5,000,000</td> <td>5,000.00</td> <td>20,000.00</td> </tr> <tr> <td>5,000,000 – 20,000,000</td> <td>7,500.00</td> <td>30,000.00</td> </tr> <tr> <td>Greater than 20,000,000</td> <td>10,000.00</td> <td>40,000.00</td> </tr> </tbody> </table>	Total Combined Assets of Enterprises (\$BDS)	Merger Investigation Fees		Marginal or positive Competition Effect	Significant Negative Competition Effect	Less than 5,000,000	5,000.00	20,000.00	5,000,000 – 20,000,000	7,500.00	30,000.00	Greater than 20,000,000	10,000.00	40,000.00
Total Combined Assets of Enterprises (\$BDS)	Merger Investigation Fees														
	Marginal or positive Competition Effect	Significant Negative Competition Effect													
Less than 5,000,000	5,000.00	20,000.00													
5,000,000 – 20,000,000	7,500.00	30,000.00													
Greater than 20,000,000	10,000.00	40,000.00													
<p>B. Who is responsible for payment?</p>	<p>Both parties are responsible but only one fee is required</p>														
<p>C. When is payment required?</p>	<p>An initial fee is required at notification then a follow up fee is required as determined by the Commission depending on the outcome of the merger decision.</p> <p>See Merger Investigation Fees in Fair Competition (Merger) Regulations, 2009</p>														
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>Cheque/Wire transfer</p>														

14. Process for substantive analysis and decisions

<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers,</p>	<p>Screening mergers – Analysing information and data to determine for e.g. the market share</p> <p>Consulting third parties</p>
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consulting third parties)?	<p>Preliminary Report</p> <p>Response from parties</p> <p>Final Decision</p>
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	<p>Before granting permission, the Commission shall conduct an investigation into the proposed merger in order to satisfy itself that the proposed merger would not affect competition adversely or be detrimental to consumers or the economy.</p>
C. What theories of harm does the agency consider in practice?	<p>Theories of unilateral and coordinated effects are considered, including whether the Merger eliminates an important competitive force, Customers have limited possibilities of switching supplier or Upstream Control of Inputs, to name a few.</p>
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	<ul style="list-style-type: none"> • Market Definition • Market Concentration • Barriers to Entry • Competitive Effects Analysis • Post - Merger Effects (Detriment and/or Benefits to Competition)
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	<p>No, non-competition issues are not considered (in practice or by law) by the Fair Trading Commission.</p> <p>Section 20 (6) of the Act states that before granting permission the Commission shall conduct an investigation into the proposed merger in order to satisfy itself that the proposed merger would not affect competition adversely or be detrimental to consumers or the economy.</p> <p>Section 20 (7) of the Act states that the Commission, in the conduct of its investigation under subsection (6), shall take into account</p> <p>(a) the structure of the markets likely to be affected by the proposed merger;</p> <p>(b) the degree of control exercised by the enterprises concerned in the proposed merger in the market and particularly the economic and financial power of the enterprises;</p> <p>(c) the availability of alternatives to the services or goods provided by the enterprises concerned in the merger;</p> <p>(d) the likely effect of the proposed merger on consumers and the economy; and</p> <p>(e) the actual or potential competition from other enterprises and the likelihood of detriment to competition.</p>
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition,	<ul style="list-style-type: none"> • Unconditional Clearance • Conditional Clearance • Prohibition

etc.)?	
G. What types of remedies does the agency accept in practice? How is the process initiated and conducted in practice?	<p>The Commission prefers structural undertakings, i.e. where the merged firm agrees to divest a division, a business area or through the disposal of assets or shares to an effective competitor. However, behavioural remedies such as agreements on future price, output, quality and/or service are provided by the merged firm and as such can propose regulatory difficulties and for these reasons the Commission is less likely to favour behavioural undertakings.</p> <p>This process can be initiated by the merging parties. If the merging parties fail to initiate the process and the Commission is of the view that remedies are necessary then the proposed remedies will be presented in the preliminary report.</p>

PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION

15. Confidentiality

A. To what extent, if any, does the agency make public the fact that a pre-merger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	There is no specified requirement that the agency make this notification public.
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	Notifying parties do not have access to the Commission's file. However, these parties do have access to the preliminary report completed by the Commission.
C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what	<p>The Commission holds all information confidential. However, the Commission will not be bound to maintain the confidentiality of material where:</p> <ul style="list-style-type: none"> • It has already been published in the public arena; or • The person providing the information waives its right to confidentiality in respect of the information.

circumstances?	
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Parties may request confidentiality. This is honored to the extent that the disclosure thereof is considered necessary for the Commission in the proper discharge of its functions.</p> <p>The formal merger notification process applies to offers once the transaction is in the public domain. However, before a proposed merger becomes public knowledge, the parties concerned can seek informal and non-binding confidential guidance from the Commission. If this path is taken, the merging parties should submit the information normally required in a formal application as if the merger was already public.</p> <p>The Commission will assess the merger on a confidential basis to the best of its ability and advise the parties either that:</p> <ul style="list-style-type: none"> • The merger appears unlikely to raise concerns under the Act; • It is impossible to say whether or not the merger raises concerns under the Act without conducting an investigation; or • The merger appears to raise concerns under the Act. <p>This procedure and the Commission’s informal and non-binding guidance must be kept confidential by all parties.</p> <p>This process does not waive any requirement for the merger parties to formally notify the Commission of the merger in the prescribed manner.</p>
<p>E. Can the agency deny a party’s claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>Yes, the Commission can deny a party’s claim that certain information contained in notification materials is confidential.</p> <p>Section 11(3) of the Fair Trading Commission Act states that where</p> <p>(a) a person claims that confidential information</p> <p>(i) made available, or to be made available by or on behalf of the person, whether in oral evidence or in a written statement, submission or other document, at the hearing;</p> <p>or</p> <p>(ii) furnished, or contained in a document produced by the person</p> <p>is information the disclosure of which would be injurious to the interest of the person; and</p> <p>(b) the Commission is satisfied that the claim is justified and is not of the opinion that disclosure of the confidential information is necessary in all the circumstances,</p> <p>the Commission shall take all reasonable steps to ensure that the confidential information is not, without the consent of that person, disclosed in the proceedings or by the Commission to a person other than a member of the staff of the Commission who</p>

	<p>receives the relevant information in the course of his duties.</p> <p>Section 36 of the Fair Trading Commission Act states that the Commission may on application or on its own motion review and vary or rescind any decision or order made by it and, where under this Act a hearing is required before any decision or order is made, such decision or order shall not be altered, suspended or revoked without a hearing.</p> <p>Section 37 of the Act states that:</p> <p>(1)An appeal shall lie on a question of law to a Judge of the high Court from a decision or order of the Commission</p> <p>(2)The appellant shall give notice of appeal within 14 days of the decision or order of the Commission to the Commission and to the parties shall be entitled to be represented by counsel at the hearing of the appeal.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The Commission will not share confidential information with the general public; redacted versions of documentation are made available to prevent and limit public disclosure of information designated as confidential.</p>

16. Transparency

<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>The Fair Trading Commission publishes an annual report that contains a section on Competition policy. The document can be accessed online at www.ftc.gov.bb</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>Yes.</p> <p>Press releases are available on the agency's website at http://www.ftc.gov.bb/index.php?option=com_content&task=section&id=1&Itemid=2.</p>
<p>C. Does the agency publish</p>	<p>Yes.</p>

<p>decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</p>	<p>http://www.ftc.gov.bb/index.php?option=com_content&task=view&id=286&Itemid=1</p>
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17. Interagency Merger Cooperation

<p>A. Is the agency able to exchange information or documents with foreign competition authorities?</p>	<p>Yes, the Commission can share publicly available information with other Competition Authorities, however, confidential information is not shared without consent of the parties.</p>
<p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>N/A</p>
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p>Yes, after the information is deemed confidential, the Commission is required to take all reasonable steps to ensure that confidential information is not, without the consent of the parties, disclosed in the proceedings or by the Commission to a person other than a member of the staff of the Commission who receives the relevant information in the course of his duties.</p>

PART 4: SANCTIONS

18. Sanctions/penalties

<p>A. What are the sanctions/penalties for:</p> <p>(i) failure to file a notification</p> <p>(ii) incorrect/misleading information in a notification</p> <p>(iii) failure to observe a waiting period/suspension obligation</p> <p>(iv) failure to observe or delay in implementation of remedies</p> <p>(v) implementation of transaction despite the prohibition from the agency?</p>	<p>Where the Commission is of the opinion that a merger has taken place, or is taking place, and the merger parties have not sought and obtained permission of the Commission, the Commission may direct the enterprises to have the merger assessed by the Commission in accordance with the Act.</p> <p>If merger parties proceed with a merger in breach of the Act the Commission may apply to the Court seeking remedies, which may include:</p> <ul style="list-style-type: none"> • Injunctions restraining the parties from completing the merger; • Penalties against individuals knowingly concerned in the merger including fines up to \$150 000 or to imprisonment for a term of 6 months or to both; or • Penalties against the merging firms, including fines up to \$500 000 or 10 percent of annual turnover, whichever is greater. <p>Section 8 of the Act states that a person who alters any record or destroys any record likely to be required for any investigation that has commenced under the Act is guilty of an offence and is liable on conviction on indictment to a fine of \$150 000 or to imprisonment for a term of 2 years or to both.</p> <p>Section 39 of the Act states that a person who, in any manner, impedes, prevents or obstructs any investigation or inquiry by the Commission under the Act or any authorized officer in the execution of his duties under the Act is guilty of an offence and is liable on summary conviction to a fine of \$40 000 or to imprisonment for a term of 6 months or to both.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(v)?</p>	<p>Any enterprise or natural person that fails to comply with the directions of the Commission.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The Commission is required to bring judicial action. In some instances matters can be brought through the criminal or civil jurisdiction of the courts. Typically, legislation determines what is a criminal offence and what is a civil offence. It would seem that the Act allows certain conduct to be both a civil and a criminal offence.</p> <p>Sections 22 and 37 also allows the Commission to apply for civil remedies such as an injunction and damages in the High Court where there has been a failure to comply with a directive of the Commission or a contravention of the obligations or prohibitions of the Act. This procedure is commenced by the filing of a claim form in the High Court along with the Statement of Case.</p>

	The length of time the above procedures may take is unpredictable and depends on the number of matters being heard before the Courts at the time.
D. Are there any recent or significant fining decisions?	No

PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW

19. Ministerial intervention

A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No
B. What are the grounds for such ministerial intervention? Other policy goals? Are they defined? What guidance is available regarding such grounds?	N/A
C. Describe the main elements of the ministerial intervention process and procedures, and indicate any guidance available	N/A

20. Administrative and judicial processes/review

A. Describe the timetable for judicial and	Section 36 of the Fair Competition Act states that where pursuant to Section 30 of the <i>Fair Trading Commission Act</i> a notice has been served on a business enterprise, any person who is aggrieved by
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administrative review related to merger transactions.	a finding of the Commission may, within 15 days after the receipt of a notice, appeal to a Judge in Chambers.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	N/A
C. Are there any limitations on the time during which an appeal may be filed?	See 20A.

21. Additional filings

A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	<p>There are filing requirements necessary with the Central Bank (financial institutions), the Securities Commission (public companies), and the Supervisor of Insurance (Insurance entities) depending on the transactions and type of unions proposed.</p> <p>All agencies, however, retain the power of prohibition.</p>
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22. Closing deadlines

A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	<p>There are no deadlines for closing following permission by the Commission, except to the extent that specific periodic conditions are attached to the permission granted. Where the period may have expired, the permission granted pursuant to the merger application would no longer apply.</p>
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23. Post merger review of transactions

A. Can the agency reopen an investigation of a transaction that it	No. There are no specific provisions in this regard.
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previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?