# DETERMINATION OF MERGER APPLICATION
# Sagicor General/Harmony General

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

**Acquisition by Sagicor General Insurance Limited, of the entire issued share capital of Harmony General Insurance Company Limited constituting the sale and reinsurance of non-life insurance services in Barbados.**

**Dated 01 November 2019**

## Introduction

1. On 13 December 2018, the Fair Trading Commission ("the Commission") received a merger application filed by Sagicor General Insurance Inc. ("Sagicor" or the Purchaser") and Harmony General Insurance Company Limited ("Harmony") as required under Section 20(2) of the *Fair Competition Act,* CAP. 326C ("FCA"), namely the acquisition of Harmony by Sagicor in Barbados.

## Putting the Transaction into Effect Prior to Commission Clearance

2. In May 2018, the Commission became aware that Sagicor, a subsidiary of the Sagicor Group, informed policy holders of the likelihood that the company would be taking over the policies of Harmony General Insurance Company Limited ("Harmony").

3. An investigation was initiated to calculate the market shares within any of the markets in which Sagicor, the purchaser, operated in order to determine if the transaction constituted a merger that should seek the permission of the Commission before proceeding.

4. Subsequently, the Commission contacted the parties and notified them, pursuant to Section 20 and 22(1) of the FCA, of the possible contravention of the FCA—that is, merging without obtaining permission from the Commission.

5. **It was determined that the transaction met the statutory threshold and that Sagicor should have sought permission from the Commission before proceeding with the merger in accordance with Section 20(1) and (2) of the FCA. The Commission however reviewed the transaction under the provision of Section 22 of the FCA which gives it the authority to review a transaction after a merger has occured.**

## The Transaction

6. On 13 September 2018, by way of an Amalgamation Agreement[1], Sagicor acquired the common shares and assets of Harmony and the physical location at Harmony Hall, St. Michael. The Applicants issued public notices at multiple instances to inform clients and the general public of Harmony General's ceasing to exist and information on the prevailing policies and policy numbers remaining in effect post-transaction.

## The Undertakings Involved

*Sagicor Group Limited*

7. **Sagicor Group Limited[2] (SGL)** is a group of companies, established in 1840, which offers life, annuity, group and individual health insurance. SGL is a publicly-traded company with over thirty-six thousand shareholders and is listed on the stock exchanges of Barbados, Trinidad and Tobago and London. In 2000, SGL acquired 23% interest in the company Life of Barbados and subsequently purchased majority shares in 2002. Following the acquisition, there was the demutualisation of the Barbados Mutual Life Assurance Society and the holding company, **Sagicor Financial Corporation**, was established.

[1] This document was submitted by the Parties dated December 8, 2018.
[2] Sagicor Financial Corporation Annual Report 2017

*Sagicor Life Inc.*

8. **Sagicor Life Inc. (SLI)** is a subsidiary of the Sagicor Financial Corporation. It provides life insurance, financial solutions including mutual funds and pension investments. SLI[3] is a company incorporated under the Companies Act, CAP. 308 of the Laws of Barbados.

*Sagicor General Insurance Inc.*

9. **Sagicor General Insurance Inc. (SGI)**, a subsidiary of the Sagicor Financial Corporation, offers a range of insurance protection, including marine, aviation and transport, motor vehicle and property insurance. SGI[4] is 53% owned by Sagicor Life Inc. and 45% owned by Goddard Enterprises Limited[5]. The remaining 2% is held by sundry minority shareholders. SGI operates general insurance business in Barbados, Trinidad & Tobago, St. Lucia, Dominica, Antigua and the Bahamas.

*Vendor - ABH Holdings Inc.*

10. **ABH Holdings Inc.** is a company incorporated under the provisions of the Companies Act, CAP.308 of the Laws of Barbados having its registered address at the Harmony General Insurance Building. Prior to the amalgamation, Harmony was 100% owned by ABH Holdings Ltd.

*The Target Business - Harmony General Insurance Company Limited*

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[3] The company's head office is located at Cecil F. de Caires Building, Wildey, St. Michael.

[4] Sagicor General Insurance's head office is located at Beckwith Place, Lower Broad Street, Bridgetown, St. Michael.

[5] Goddard Enterprises Limited is a multi-faceted business based in Barbados which spans the manufacturing, catering, automotive, building supplies and financial industries on a multinational level, with brands such as Purity Bakery, Hanschell Inniss, Goddard Shipping, Terrific Tiles and HIPAC, to name a few.

11. **Harmony General Insurance Company Limited** is an insurance company which was established in 1996 and licensed under the Insurance Act 1970. Harmony operated only in Barbados and provided all classes of general insurance including motor, accident and sickness, and property; coverage for marine, aviation and transport began in 2017.

**Rationale for the Transaction**

12. The Applicants have stated that the rationale for the transaction is a response to years of declining premium rates in the insurance industry. The decline in premium rates has resulted in a significant reduction in underwriting profits, which has also been exacerbated by a decline in investment income due to an extended period of low interest rates. Having concern for a greater impact on Sagicor from the recent Government of Barbados debt restructuring, it is believed by the Applicants that the amalgamation will create a stronger and more profitable entity which will benefit the policyholders and the industry, as it is important for industry participants to be financially sound.

**Third Party Submissions**

13. Third-party market participants such as insurance companies, brokers and agents 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. The Commission also considered the fact that the transaction and the Amalgamation Agreement was vetted and approved by the Financial Services Commission (FSC)[6].

[6]As it relates to the insurance industry, the relevant national legislation is the Insurance Act, CAP. 310[6] which provides for the authorisation and ongoing supervision of insurance companies operating in Barbados.

**Relevant Market Analysis**

14. 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.

15. 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 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.

16. 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 in the post-merger concentration calculation being overstated. It has been argued that competition authorities consider the potential impact of likely suppliers in the relevant market definition.

17. 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 EC 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."*[7]

18. 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.

19. In the UK, the guidelines for the Office of Fair Trading (OFT), now known as the Competition and Markets Authority (CMA), 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)

20. For example, in the ABF/Cargill[8] case, the OFT assessed the purchasing of grains and pulses separately from purchasing of oilseed rape, but did not preclude a wider market definition.

21. Also, in the analysis of market definition in the Grainfarmers/Centaur Grain[9] case, it was noted that

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[7] European Commission Case No IV/M.166 -TORRAS / SARRIO http://ec.europa.eu/competition/mergers/cases/decisions/m166_en.pdf

[8] https://assets.publishing.service.gov.uk/media/555de438ed915d7ae500010a/associated.pdf, Date accessed: 27 May 2019

[9] https://assets.publishing.service.gov.uk/media/555de38be5274a70840000a6/Grainfarmers.pdf, Date accessed: 27 May, 2019

*"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. … The OFT therefore considers that the most appropriate frame of reference for the merger is likely to be the procurement and supply of grain, pulses and oilseeds (subsequently referred to jointly as 'grain')."*

22. It is interesting to note, however, that in the Grainfarmers/Centaur Grain case, the authority did not conclude on the precise market definition, as it had not identified *"any competition concerns on even the narrowest reasonable basis (namely segmentation by grain type)"*.

23. With respect to the insurance, there is a strong national dimension to its 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[10].

24. 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

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[10] 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*.
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.

study[11] 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 marketing and other business practices of health insurers strongly suggest that health insurance markets are local (AMA, 2018:4).

25. 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)[12], 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."*[13]

26. The above is instructive and suggests that since the insurance industry tends to be very specialised, 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. 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*

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

[12] Hereafter referred to as "*Stewart/FNF*".

[13] Competition Bureau statement regarding proposed merger between Stewart and Fidelity National Financial, https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04386.html. Date accessed: 20 May 2019.

c) *pensions business and other business directly connected to insurance business.*

"*life insurance business*" *means*

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;*

27. In terms of establishing a definition of the relevant product market, the EC has traditionally distinguished between general insurance, life insurance, and reinsurance, thereby treating the same as separate product markets[14]. Lista (2013)[15] 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[16]. Lista further argued that the product market could be further segmented according to the

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[14] 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.

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

[16] 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.

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/ Viagère /Sinafer*[17] and *Commercial Union/General Accident*[18] are instructive in this regard. In *Commercial Union/General Accident* in particular, the Court 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.*"

28. However, this narrow approach does not appear to be rigidly applied, as the Commission has left the definition of the relevant geographic and product market open, rather than specific to the different types of insurance products[19]. The same is true for the U.S. and Australian markets. In the latter, the Australian Competition and Consumer Commission's (ACCC) assessment of the National Mutual and Lend Lease / MLC merger considered both a narrow and broad definition of the market (OECD, 1998)[20].

29. 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.

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[17] Case No IV/M. 919 - Abeille Vie/Viagère/Sinafer Notification of 6 May 1997 pursuant to Article 4 of Council Regulation No 4064/89

[18] Case No IV/M.1142 - Commercial Union / General Accident Notification of 27.03.1998 pursuant to Article 4 of Council Regulation N 4064/89

[19] As in Case No. IV/M.1082 - Allianz/AGF

[20] OECD (1998); Competition and Related Regulation Issues in the Insurance Industry; OECD, Paris. See also: https://www.accc.gov.au/media-release/accc-not-to-oppose-national-mutual-and-lend-lease/mlc-joint-venture. Date accessed: 19 March 2019.

For example, in the non-life insurance market a distinction can be made between motor vehicle insurance and home insurance. 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*[21] the EC segmented the market based on the applicable national insurance classification. Additionally, in *Allianz/Going concern of Unipolsai Assicurazioni*[22] the EC made reference to legal assistance as a basis for defining the relevant market; in *NN Group / Delta Lloyd*[23] a distinction was made between group and individual customers; and in *CVC/Apollo/Brit Insurances*[24] consideration was given to the use of distribution channels (*i.e.* direct writers, tied agents or intermediaries such as banks and brokers).

30. 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.

31. What is compelling is that, because of the multiple dimensions from which the general insurance market can be defined, the EC in *Generali CEE / AS*[25] chose not to provide a precise product market definition for non-life insurance products.

32. **Based on the information above it can be concluded that the most practical approach to employ in defining the relevant product market would be to**

[21] Respectively, COMP/M.1712, Generali / INA; and COMP/M.6649, Allianz / Insurance Portfolio and Brokerage Services of Gan Eurocourtage.
[22] COMP/M.7233, Allianz/Going concern of Unipolsai Assicurazioni
[23] COMP/M.8257, NN Group / Delta Lloyd.
[24] COMP/M.6053 CVC/Apollo/Brit Insurance.
[25] COMP/M.9056, Generali CEE / AS.

**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. The *Stewart/FNF*[26] transaction provides a compelling argument to support the decision to focus on a particular market only: both parties (FNF and Stewart) offered title insurance. However, FNF also provided mortgage transaction services, whereas Stewart did not offer mortgage transaction services. As a result, the Competition Bureau's investigation focused primarily on title insurance. By way of extrapolation, the decision to focus on general insurance in this transaction only is sound[27].

33. 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 be no 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. This is intuitive. 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 superfluous. The *Generali CEE / AS* transaction referenced above is particularly relevant in this regard[28] 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*

[26] See *supra* note. 5 at pp. 2.
[27] Indeed, both Sagicor General and Harmony General offer general insurance coverage only. Life insurance is not included in either company's portfolio.
[28] 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.

*the purpose of the present case since no competition concerns arise under any plausible product market definition." (para. 15; pp.3)*

34. Further, since the specificity of coverage means that policies can be tailored according to individual needs,[29,30] 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 for the policyholder. Using commercial property insurance as an example, Consumers Guarantee Insurance (CGI), on one hand, offers three (3) 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)[31]. On the other hand, Cooperators General Insurance offers these add-ons as stand-alone policies[32]. 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).

35. Moreover, barriers to entry appear to be relatively low[33] and the regulatory obligations for offering general insurance are the same irrespective of the product

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[29] 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.
[30] 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.
[31] See: https://www.insurecgi.com. Date accessed: 13 May 2019.
[32] https://www.coopgeneral.com. Date accessed: 13 May 2019.
[33] It is inferred from *Stewart/FNF* that requirements would typically include specialised underwriting and sales staff.

class. To illustrate, the FSC lists the licensing/registration requirements for a domestic insurance company under the Insurance Act, CAP. 310[34]. These include:

- An application form for registration by an Insurance Company;
- A five year business plan, inclusive of financial projections;
- Details of reinsurance agreements;
- The company's articles of incorporation;
- A list of directors;
- Character references/police certificates of character for directors, officers and managers;
- A completed version of the Individual Questionnaire (questionnaire) released by the FSC;
- Creation of a statutory fund in the amount of BDS$250, 000.00 with respect to the company's long-term or motor insurance business.
- A statutory deposit of BDS$1,000,000.00 to carry on long-term insurance business, and not less than BDS$250,000.00 to carry on any class of general insurance business.

36. One can argue, therefore, that the requirements to provide general insurance services in Barbados do not represent a significant barrier to entry for the market.

37. 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*

[34] http://www.fsc.gov.bb/index.php/en/component/jdownloads/send/29-registration/181-licensing-registration-for-domestic-insurance-companies557?Itemid=0. Date Accessed: 20 May 2019.

*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)*

38. **To reiterate, life and non-life insurance are not interchangeable and should therefore be treated as separate markets. Moreover, analysis of relative market share in the non-life sector at the broad (*i.e.* product category) and narrow (*i.e.* product sub-market) dimensions did not yield any change in perspective with respect to the potential competitive harm that the transaction would produce -** in both scenarios it was determined that the transaction was unlikely to create competitive concerns. More specifically, the opinion was held that the merged firm would continue to face effective competitive constraints from the other general insurers that remain in the market.

39. **In its assessment of the market conditions, the Commission determined that there is a distinction between the distribution of life and non-life products, and this distinction was used as the basis for providing a broad definition of the market only. As such, the relevant market in this instance is the market for non-life (general) insurance in Barbados.**

**Competitive Analysis**

40. Research shows that there are typically three (3) variables that are used to characterise company performance in the insurance industry:
    i. **Gross Premiums:** *The amounts an insurance company expects to receive over the life of a policy term. This affects the amount the policyholder will pay for coverage under the insurance contract. For example, if a policyholder pays $1,000 for a six-month automobile insurance policy, the gross premiums for that period are $1,000.*[35]

[35] Source: https://www.sapling.com/8591030/net-vs-gross-premium-insurance

ii. **Net Premiums:** *These refer to the income an insurance company will receive for assuming risk under an insurance contract, minus expenses associated with providing coverage under a policy.*[36]

iii. **Earned Premiums:** *Insurance policies that are paid under installment plans can also affect net premiums. In an installment plan, a policyholder does not pay for the entire policy period at inception or renewal. Instead, the policyholder makes installment payments, usually monthly or bimonthly. Net premiums earned reflect the portion of the premiums the policyholder has already paid and for which the insurance company has already afforded coverage.*[37]

41. The Casualty Actuarial Society (CAS) [38] defines Gross Written Premiums (GWP) as the amount of premium charged for written premiums for a policy during a reported period[39]. Section 688 of the Insurance Companies Act of Canada defines Gross Premium Income as follows:

    *"Gross premium income of a company, society, foreign company or provincial company means its premium income from its insurance business in Canada calculated without reduction in respect of reinsurance premiums paid or payable"*

42. Similarly, Section 688 defines Net Premiums as follows:

[36] Source: https://www.sapling.com/8591030/net-vs-gross-premium-insurance
[37] Source: https://www.sapling.com/8591030/net-vs-gross-premium-insurance
[38] The Casualty Actuarial Society (CAS) is an international organization for credentialing and professional education on property and casualty risks. See: https://www.casact.org/about/.
Note: A casualty actuary is a professional skilled in the analysis, evaluation and management of the financial implications of future contingent events primarily with respect to general insurance, including property, casualty, and similar risk exposures. A casualty actuary has practical knowledge of how these various risks interact with each other and the environment in which these risks occur (*op. cit*).
[39] Extracted from the CAS Study Notes on Premium Accounting.
At: https://www.casact.org/library/Miscell/blanchard6a.pdf. Date Accessed: 20 May 2019.

*"net premiums of a company, society, foreign company or provincial company means its gross premium income less*

*(a) premiums paid or payable in respect of the reinsurance of risks undertaken under its policies in respect of its insurance business in Canada, and*

*(b) dividends paid or allowed by it to its policyholders in respect of its insurance business in Canada."*

43. The foregoing lends to the use of Gross Written Premiums as the unit of measure in determining market share among general insurance companies in Barbados. The Commission acquired data on the Total Gross Premiums Written for the period 2014 to 2018 from the FSC and its annual report.

44. Recall that the Commission elected to leave the definition of the relevant geographic and product market open, rather than specific to the different types of insurance products, since it was determined that the transaction created no competition concerns[40]. Notwithstanding the above, the Commission's assessment of potential competitive effects considered the plausible market definitions which include the sub-markets derived from the narrow approach to market definition. To avoid confusion, theses sub-markets are referred to hereafter as product segments. The market share estimates (presented as percentages) for each product segment become the basis of subsequent analysis.

*Non-life (General) Insurance*

45. There were 16 companies in the general insurance market prior to the transaction. Each of the general insurance companies interviewed indicated that there was likely to be no anti-competitive concerns or effect as a result of the transaction. It was

[40] This conclusion was based on the preliminary assessment of the transaction, and substantiated in the Competitive Assessment of this report.

reiterated that the industry is competitive. Notably, the companies are competing within the general insurance industry under constraints that are underpinned by a premium base that has not grown significantly over a 20-year period. The interviewed stakeholders have highlighted that the companies compete through the premiums as the product offerings for general insurance are very similar within a price sensitive industry. The prevailing view, therefore, is that the amalgamation would increase a company's financial stability, thereby strengthening its ability to pay claims. Moreover, the industry at large has not recorded any significant changes within the general insurance market post – transaction.

46. Evidence suggested that there was sufficient competition post-merger and there are no concerns in relation to the amalgamated agreement. It was emphasised that it is easier to enter the general insurance market than the life insurance market, as the claims for the general insurance market follow a formula-based process in relation to the settling of claims. Thus, it was concluded that entry into the general insurance market would be timely, likely and sufficient to deter or counteract any possible effects from the transaction. In concurrence with the interviewees, consumers have the power to switch between companies or cancel policies at any given time with few implications such as administrative costs, lost coverage or 'goodwill' that accrues over time.

*Conclusion on Non-life (General) Insurance*

47. With respect to market concentration, a general insurance market HHI[41] of 1280 pre-merger and 1372 post-merger was calculated. In each case, the HHI is below 1500,

[41] The Herfindahl-Hirschman Index (HHI) is a common measure of market concentration and is used to determine market competitiveness, often pre and post- merger, and acquisition transactions. It is calculated by squaring the market share of each firm competing in a market and then summing the resulting numbers. By industry and best practices, a market with an HHI of less than 1,500 is considered to be a competitive marketplace, an HHI of 1,500 to 2,500 to be a moderately concentrated marketplace, and an HHI of 2,500

which is the threshold used to identify high concentration. Hence, based on the HHI[42] calculation, general insurance is competitive.

48. Ordinarily, a market with an HHI below 1500 would not require further analysis by the standards contained in both the U.S. Horizontal Merger Guidelines[43] and the EU Merger Guidelines[44]. Furthermore, there is a delta score of 92 (which reflects a difference in pre-merger and post-merger HHI scores). This small change in

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or greater to be a highly concentrated marketplace. 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.

[42] The HHI is calculated based on 2017 data as 2018 information on all companies was not readily available from the regulator.

[43] 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)

[44] 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.

49. Evidence indicated that the presumption of dominance test (which uses a 50% market share threshold, or a 40% market share threshold for merger review as an indication of dominance) would conclude that the presumption of dominance is unsupported, since no company has a market share that exceeds 25% under either standard.

50. Having merged, Sagicor/Harmony has a market share of approximately [10-20]% of GWP in general insurance and with respect to each product segment, Sagicor/Harmony controls no more than [10-20]%.

*Product Segments in non-life (general) Insurance*

51. Gross Premiums Written are divided into eight (8) general insurance categories: Property; Pecuniary Loss; Liability; Motor Vehicle; Marine, Aviation & Transport; Accident & Sickness; Bond Investment; and Other. These categories represent the FSC's classification based on the insurance product by type, rather than distinct markets as normally defined for competition enforcement purposes. Hence, these categorisations are not necessarily suitable for determining the relevant market.

52. For instance, the "Other" category may include different product categories grouped as one insurance product or an uncommon insurance product that is too small in terms of revenue to merit having its own category. A useful example is the combination of general insurance coverage for a motor vehicle with insurance coverage for property damaged or stolen while in the motor vehicle. Research revealed that the insurance categories are, in large part, a company's specific interpretation of the most appropriate category for a particular written insurance.

53. The fact that insurance categories depend largely on the company's discretion and that of the regulator necessitates the need for prudence in the assessment of the market strictly on an evidentiary basis, *i.e.* verification of whether there is harm to competition in a particular market, and not assumptions concerning what the relevant market may be perceived to be.

54. When companies were asked about factors that facilitate or preclude entry in a particular service, they all stated that a general insurance license allowed a company to offer whatever category of general insurance it desired. If, for example, a company appears to have 100% of a segment or category of a general insurance, it is not necessarily indicative of other companies' inability to compete. Rather, it may be a case of the company's interest in providing a product that others are not interested in providing.

*Conclusion on Product Segments in non-life (general) Insurance*

55. Evidence indicated that the majority of pre-merger and post-merger product segments in which Sagicor and Harmony General are players are competitive, given HHI scores that are below 1500. Exceptions occur for the Marine, Aviation and Transport whose HHI scores for the pre-merger and post-merger markets show that they are likely to be moderately competitive.

56. The delta scores for the segments of interest were below 100, even at this level of activity, and again dispels any likelihood of competitive concerns arising from the transaction.

**Conclusion**

57. Given the above information, there was no evidence of likely competitive harm arising from the merger transaction, as the market appears competitive. As a result,

the opinion is that the transaction does not present competitive concerns and therefore does not lessen competition in the general insurance industry in Barbados. The consequence is that the Commission **no rationale to** determine the merger **in accordance with Section 22 of the FCA**.

**Determination**

58. The Fair Trading Commission, pursuant to Section 20(5) of the Fair Competition Act, CAP.326C, determined that the result of the acquisition by Sagicor of the common shares and assets of Harmony and the physical location at Harmony Hall, St. Michael, does not lessen competition in the market for 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**