

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Barbados

May 4, 2009

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

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

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>Generally enterprises are encouraged to voluntarily seek notification 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 prior 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>
B. Notification forms or information requirements	<p>Merger applications are to be filed on Merger application forms.</p> <p>Form A - Merger Notification Form Form B - Merger Clearance Form</p>
C. Substantive merger review provisions	<p>Fair Competition Act, Section 20 (1): "From the commencement of this Act, all mergers by an enterprise that (a) by itself controls, or</p>

	<p>(b) together with any other enterprise with which it intends to effect the merger is likely to control</p> <p>not less than 40 percent of any market for goods and services in Barbados or such other amount of the market as the Minister may by Order prescribe are prohibited unless otherwise permitted by the Commission in accordance with this section.”</p>
D. Implementing regulations	None
E. Interpretive guidelines and notices	Merger Guidelines are currently being used.

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Fair Trading Commission
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>Good Hope Green Hill St. Michael BB12002 Barbados</p> <p><i>Fax (246) 424 - 0300</i> <i>Tel: (246) 424 - 0260</i> info@ftc.gov.bb http://www.ftc.gov.bb/ English Language</p>
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	<p>Yes. Director of Fair Competition Fax (246) 424 - 0300 Tel: (246) 424 - 0260 info@ftc.gov.bb English Language</p>

3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>“Merger “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.
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Company A obtains a controlling interest in Company B by securing a shareholding carrying more than 50% of the voting rights in the company;</p> <p>Company A obtains a shareholding sufficient to control the policy of Company B; or</p> <p>Company A acquires a shareholding sufficient to materially influence the policy of Company B.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Yes (as at 3B)</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Joint ventures are considered to the extent that the transaction between the enterprises means that one of them will cease to be distinct.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>Section 20 (1) (a) (b), as at question 1c above.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If</p>	<p>The merger notification threshold apply to all relevant undertakings/firms as defined at 3A; and</p> <p>Control is interpreted as at 3B.</p>

based on control, how is control determined?	
C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	The thresholds are not subject to adjustment.
D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	The Fair Trading Commission will assess the market shares as at the time of investigation.
E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?	The Fair Trading Commission will, having defined the relevant markets, add the individual market shares of all businesses in the market, to determine the proportionate market shares of the relevant enterprises. The criteria used to determine these shares will be the respective value and volume of product turnover of the enterprises.
F. Describe methodology for calculating exchange rates.	N/A
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	The thresholds are calculated in reference to the Barbados Market, or a section of that market as applicable.
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	Yes
I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please	Domestic presence used to conduct business in Barbados, and the relevant market shares as established in the Act.

<p>describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p>	
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</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>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>Yes. As at 4E.</p>
<p>L. 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)?</p>	<p>No</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>This is determined according to whether the mergers meet the threshold of market shares established in the legislation with respect to the Barbados market.</p> <p>The information required is the same whether foreign or domestic enterprise.</p> <p>The rules are the same with respect to the periods.</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>No</p>

5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes, for enterprises at or beyond the established threshold.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>N/A</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>Yes. When preliminary agreement has been reached to merge.</p>
<p>D. 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>	<p>There is no earliest date by which a notification can be made given that the intention to merge has been established.</p>
<p>E. Must notification be made within a specified period following a triggering event? If so, 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 public takeover bids?</p>	<p>There is no specified period. As soon as there is a real likelihood that a proposed merger that may be subject to the Act may proceed, and certainly well before the completion of the merger.</p>
<p>F. 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.</p>	<p>Yes. They can write formally to the Commission to request an extension providing the circumstances for the request. There is a maximum length of time for the extension. The Commission will determine in each case what is reasonable.</p>

6. Simplified procedures

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 responses, 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.

7. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).

- Description of merger proposal.
- Notices to other regulatory authorities
- Background information about parties
- Assessment of market and degree of competitiveness
- Financial reports

B. Are there any document legalization requirements (e.g., notarization or apostille)?

No.

C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?

No.

8. 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.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	There are no specific requirements, but all information prepared by the parties would need to be in English. Supporting information prepared by other agencies eg. licenses would not have to be translated, but the Commission reserves the right to request an English translation of any information submitted.

9. Review periods

A. Describe any applicable review periods following notification.	Within 3 months after the receipt of an application, or as soon as practicable thereafter. The closing is suspended to the extent that such mergers and acquisitions are prohibited unless permitted by the Commission.
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	No

<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>There is no statutory maximum period for extensions, but the Commission can go beyond the 3 months period provided for in the Act, to a period "as soon as practicable thereafter".</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>There are no specific procedures for accelerated review but Form A (merger notification form) may be all that is necessary if the merger did not raise competition concerns. Each case would be reviewed on its own merit.</p>

10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</p>	<p>Within 3 months after the receipt of an application, or as soon as practicable there after. The closing is suspended to the extent that such mergers and prohibited unless permitted by the Commission.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Yes. There are no special circumstances, but the Commission will make a judgement based on the particular circumstances.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction</p>	<p>The waiting periods are limited with respect to the transactions that relate to the market in Barbados. In this regard the merger is prohibited unless permitted by the Commission.</p>

<p>that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	<p>The transaction is not cleared if three months passes without an objection from the Commission. An affirmative clearance is necessary.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>No</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>See 9C</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 early termination.</p>	<p>A formal request can be made to the Commission.</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before</p>	<p>See 1A.</p>

waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	
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11. 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?	Each party is required to complete the notification separately.
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No.
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)?	No
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 apostilled?	N/A.

12. Filing fees

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)?	To be determined
B. Who is responsible for payment?	Both parties are responsible but only one fee is required.
C. When is payment required?	An initial fee is required at notification then a follow up fee is required as determined by the Commission.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Cheque/wire transfer

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	<p>Information provided to the Commission will be regarded as confidential, except insofar as disclosure of the information is considered necessary for the Commission in the proper discharge of its functions.</p> <p>Where a person claims that certain information which that person had supplied to the Commission if disclosed would be injurious to the interest of the person. The Commission shall take all reasonable steps to ensure that such information is not disclosed without the consent of that person.</p> <p>The Commission must be provided with sufficient non-confidential information about the merger to enable it to properly carry out its inquires or investigation.</p>
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<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>No</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<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.
<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 confidentially. This is honoured to the extent that the disclosure thereof is considered necessary for the Commission in the proper discharge of its functions.</p>
<p>E. 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>No, there are no formal information exchange agreements with foreign competition authorities in place.</p> <p>However, the Act includes provisions for the Commission to co-operate with the CARICOM Community Competition Commission and competition authorities of other CARICOM Member States.</p>
<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</p>	<p>The Commission will not share confidential information with other agencies except insofar as stated at 13A.</p>

14. Transparency

<p>A. Does the agency publish an annual report? 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 had from our mailing address at 2B or http://www.ftc.gov.bb/library/2008_annual_report_ftc_barbados.pdf</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes.</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Yes.</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</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>Section 20(c) provides for a fine of BDS\$500,000 or a fine of 10% of turnover of enterprise for financial year preceding date of offence which ever is the greater.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>Any enterprise that fails to comply with a Commission direction.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required</p>	<p>Required to bring judicial action.</p>

to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	
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16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	Where pursuant to section 30 of the Fair Trading Commission Act a notice has been served on a business enterprise, any person who is aggrieved by a finding of the Commission may, within 15 days after the receipt of notice, appeal to the judge in chambers.
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?	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. All agencies, however, retain the power of prohibition.
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18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	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 application would no longer apply.
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19. Post merger review of transactions

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