



## **Template pursuant to Section 3 (a) of the Framework on Competition Agency Procedures**

CARICOM Competition Commission; Caribbean Community (CARICOM)<sup>1</sup>

The following is submitted by the CARICOM Competition Commission (“CCC”) pursuant to Section 3(a) of the Framework on Competition Agency Procedures (“CAP”).

### **I. Introduction**

The CCC is an independent, regional competition authority that was established under Article 171 of the Revised Treaty of Chaguaramas (“RTC”) with enforcement powers to prohibit cross-border business conduct that prejudices trade or prevents, restricts or distorts competition within the CARICOM Single Market and Economy (“CSME”).<sup>2</sup> It is an institution within the Caribbean Community (CARICOM). The Commission was inaugurated on 18 January 2008 and is situated in Suriname.

The functions of the CCC are to: (a) apply the rules of competition in respect of anti-competitive cross-border business conduct; (b) promote and protect competition in the Community and co-ordinate the implementation of the Community Competition Policy; and (c) perform any other function conferred on it by any competent body of the Community.

The CCC has the power to both investigate and make determinations in respect of cross-border transactions or transactions with cross border effect.

In accordance with the Community Competition Policy, the CCC’s competition investigations are initiated in three ways: (1) requests from CARICOM Member States (Article 175.1 RTC); (2) requests from the Council for Trade and Economic Development (“COTED”) (Article 175.2 RTC); and (3) through its own initiative based on information gathered from its market surveillance (Article 176 RTC).

Based on its investigations, the CCC may make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the RTC. It has the power to order business enterprises to cease and desist from anti-competitive conduct and to take steps to overcome the effects of abuse of its dominant position in the market; order business enterprises to terminate restrictive agreements; and impose fines for breaches of the rules of competition. CARICOM Member States must enact legislation to ensure that determinations of the CCC are enforceable in their jurisdictions. A party which is aggrieved by a determination of the CCC in any matter may apply to the Caribbean Court of Justice (“CCJ”) for a review of that determination.

### **II. Laws, Regulations, and Policies relevant for the Implementation of the CAP**

*For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other*

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<sup>1</sup> CARICOM is comprised of the following Member States: Antigua and Barbuda; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Haiti; Jamaica; St. Kitts and Nevis; Saint Lucia; St. Vincent and the Grenadines; Suriname; and Trinidad and Tobago.

<sup>2</sup> The CSME is comprised of all the Members States of CARICOM except The Bahamas.

*references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.*

*Please update your Template reflecting significant changes as they relate to the CAP, as needed.*

The CCC is governed by the Revised Treaty of Chaguaramas (2001) as well as by its Rules of Procedure the latter of which was created in 2011. Under Article 169 of the Revised Treaty the objective of Community Competition policy shall be to ensure that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct.

## **b) Non-Discrimination**

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favourable than Persons of its jurisdiction in like circumstances.*

The CCC does not discriminate in the investigation and enforcement of the Community Competition Policy based on the nationalities of the parties concerned. Once the agency determines that its jurisdiction applies (i.e. the conduct involves a business enterprise within the meaning of the RTC, the conduct is cross-border transaction or has cross-border effects, and the conduct has an anti-competitive effect), it follows the same substantive rules for all cases.

## **c) Transparency and Predictability**

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The Community Competition Policy is enshrined in the RTC, which is widely available in hardcopy throughout the CARICOM region. The RTC is also published in English, Dutch and French. The CCC has also made available on its website, <sup>3</sup>links to the Community Competition Policy and the national competition laws of the CARICOM Member States that have already enacted their national competition laws and established their national competition authorities.

The CCC also has procedural rules for competition investigations and enforcement proceedings, which it makes available to the public through its website. These include its 2011 Rules of Procedures for Enforcement Proceedings (“2011 Rules”), 2015 Internal Guidance to Staff on CCC Administrative Procedures for the Assessment and Investigation of Competition Complaints, and 2015 Guidelines for Setting Fines. The CCC follows these procedural rules in investigations and enforcement proceedings where applicable. Additionally, in the past it has also raised awareness of its Rules of Procedure through sensitization sessions with stakeholders. It is important to note that the CCC is in the process of reviewing these documents to amend them to reflect changes in international best practices.

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<sup>3</sup> [www.caricomcompetition.org](http://www.caricomcompetition.org)

The CCC continuously updates its website with press releases to provide information to the public clarifying or explaining its investigations or competition assessments and enforcement decisions. The press releases are also shared with other regional organisations, national and regional newspapers, and the national competition authorities for publication.

**d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The Caribbean Court of Justice (the final judicial authority for regional competition cases) in the *Trinidad Cement Limited v. the CARICOM Competition Commission*<sup>4</sup> matter decided that at the stage of investigation the CCC is not required by law to notify the respondent particularly because at this stage they are not under legal jeopardy since no binding decision can be made. However, if the case proceeds to an adjudication where a decision can be made the parties are notified at the commencement at that stage. Nevertheless, the CCC has in its investigative practice notified the respondents in some cases where it would not prejudice the investigation.

**e) Timing of Investigations and Enforcement Proceedings**

*Each Participant will endeavour to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

The CCC always endeavours to conclude investigations within a reasonable time period, subject to the exigencies of the matter. In accordance with Article 175.6 of the RTC, where the CCC decides to conduct the investigation, it shall: (a) notify the interested parties and COTED; (b) complete the investigation within 120 days from the date of receipt of the request for the investigation; and (c) where the circumstances so warrant, extend the time period for completion of the investigation and notify the interested parties. For enforcement proceedings there are not stated timelines for rendering of a decision however this is an issue which will be addressed in the revision of the current Rules of Procedure.

**f) Confidentiality**

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*

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<sup>4</sup> *Trinidad Cement Limited v Competition Commission*, Final judgment, Application No OA 1 of 2012, [2012] CCJ 4 (OJ), ITL 093 (CCJ 2012), 12th November 2012, Caribbean Community [CARICOM]; Caribbean Court of Justice [CCJ]

iii. *Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The CCC's investigations and enforcement procedures are subject to several rules and internal staff policies regarding the treatment of confidential information.

Investigations - During investigations, the CCC treats information received from parties under investigation or third parties as confidential.

Article 170.4 of the RTC also does not require a Member State to disclose confidential information that would be prejudicial to the public interest or to the legitimate commercial interests of enterprises, public or private. Any confidential or proprietary information disclosed during an investigation shall be treated on the same basis as that on which it was provided.

Although upon completion of an investigation a report is written, it is not made public. Non-confidential summaries or extracts of the report may be made available orally during an enquiry if one is held. (Rule 8).

Enforcement Proceedings - Rule 47 of the 2011 Rules provides that oral hearings may be held in the absence of the public if there is a belief that matters may be disclosed which contain confidential information in accordance with Article 170.4 of the RTC. Where oral hearings are held, all parties are bound by an obligation not to disclose confidential matters revealed during the hearing and must file a Secrecy Undertaking. A breach of the Secrecy Undertaking shall be sanctioned in accordance with the law of the place of the hearing. Additionally, evidence and transcripts from these oral hearings are marked "Confidential" and are separated from public documents. Access to these documents is restricted to the public.

In accordance with Rule 68 of the 2011 Rules, a party, upon the filing of a document, may request by motion that all or any part of the document be held in confidence. The request for confidentiality must include a summary of the nature of the information in the document and an explanation of why, having regard to Article 170.4 of the RTC, the information is confidential and its disclosure would prejudice the party's commercial interest or that of the person who provided the party with the information.

#### **g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

The CCC has rules, policies and guidelines to ensure that its members of staff are objective and impartial and do not have material conflicts of interest. It is the intention to further strengthen these rules in the near future by incorporating the relevant parts in the Rules of Procedure.

#### **h) Notice and Opportunity to Defend**

i. *Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defence, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or*

*claims.*

- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defence, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

If after an investigation, the CCC believes enforcement proceedings are warranted, a notice is served on the subject outlining the statement of issues and material facts. Respondents to enforcement proceedings are given 60 business days to file their responses to the CCC (Rule 13 of 2011 Rules of Procedure). The response must contain evidence or arguments which they believe the CCC should consider in making its determination; rebuttals of any allegations of fact or law made in the statement of issues and material facts; and the determination requested by the respondent.

#### **i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

As a matter of policy, the CCC does not deny the request of a party to an enforcement proceedings to be represented by qualified legal counsel of its choosing (Rule 39 (2)).

Regarding privilege the CCC provides for legal professional privilege in its Rules of Procedure (Rule 7). This applies to communication as well as documents and other materials created in the course of providing legal advice on the application of competition rules to the individual in question or to his/her business.

#### **j) Decisions in Writing**

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Determinations, orders and directions made by the CCC must be written. The determinations must also be

published, including the reasons for such determinations. Copies of determinations must be made available free of charge upon request and must be sent to all parties. In the light of its determination, the CCC shall take any action it considers appropriate in accordance with Article 174.4 of the RTC. It may also make such order as it sees fit requiring a party to compensate another party for the costs incurred. These costs are guided by the laws of the relevant Member State.

**k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

Subject to Articles 175 and 176 of the RTC, the CCC may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME. A party which is aggrieved by a determination of the Commission under paragraph 4 of Article 174 of the RTC in any matter may apply to the Caribbean Court of Justice (CCJ) for a review of that determination.