

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

Fair Trading Commission, Barbados

The following template is submitted by the Fair Trading Commission, Barbados pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

I. Introduction

The Barbados Fair Trading Commission (BFTC) is a statutory corporation which falls under the Ministry of Energy, Small Business and Entrepreneurship. The BFTC was established January 2, 2001 and is responsible for enforcing the Fair Competition Act (FCA) which was introduced on January 3, 2003. Through this Act the BFTC promotes and maintains effective and healthy competition in the Barbadian market.

More information on the BFTC can be found on its website: www.ftc.gov.bb

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 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.

b) Non-Discrimination

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

This is germane to the fair competition rules.

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.*

One of the values of the BFTC is to be transparent; demonstrating impartiality by communicating its procedures, investigations and decisions in an unambiguous manner.

The following instruments are available on the BFTC's website:

Fair Competition Act CAP. 326C,

SI 2009 No. 104 Fair Competition Merger Fees Regulations,

SI 2001 No. 105 Fair Competition Merger Rules,

SI 2009 No. 114 Fair Competition Application for Authorisation Rules and

SI 2009 No. 115 Fair Competition Authorisation Fees Regulations.

Also available on the BFTC's website are its Annual Report as well as articles on concluded investigations, newspaper articles and other publications.

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 BFTC conducts investigations on its own initiative or if a complaint is received that points to anticompetitive conduct. Parties receive written notification upon the commencement of an investigation, stating the breach being investigated and citing relevant parts of the Act where the breach is likely to have occurred. The identity of any complainant is withheld.

Parties are asked to submit any information that the BFTC deems necessary for the determination of the outcome of the investigation. Parties are given the opportunity to be heard in such matters. Provisions are also made for Parties to review the findings report and opine on same. Any person who is aggrieved by a finding of the Commission may appeal to a Judge in Chambers.

The Act provides for the treatment of commercially sensitive and/or confidential information.

Parties to an intended merger are required to submit an Application to merge to the BFTC before the merger is completed. Failure to do so is a breach of the Act and can result in penalties.

There are timelines for the completion of a merger: The Act prescribes a period of 3 months for a merger review and decision. Extensions to the merger review period can be granted with adequate justification.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor 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 BFTC strives to conclude investigations related to anti-competitive conduct as quickly and as efficiently as possible. Merger investigations have a time-frame of three (3) months or as soon as possible thereafter. Factors which may affect the completion of an investigation may include delays in submission of requested information.

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.*
- 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 BFTC is bound by strict protocols regarding the handling of information received. This is communicated to parties when the BFTC requests information. Parties are also asked to disclose what information they deem sensitive. The Commission can make a determination as to whether such information is confidential. Where necessary redacted versions of reports are uploaded to the BFTC's website.

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.

Where conflicts of interest may occur, persons are exempted from all aspects of the investigation. This includes access to documents, meetings and the decision-making process.

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 defense, 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 defense, 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.*

Where a party or parties are not in agreement with the Decision of the BFTC they can request a hearing with the Board to present their case and reasons for objection. The Act provides for appeals to decisions of the Commission.

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.*

During any aspect of an investigation or query Parties are free to retain Legal representation to act on their behalf.

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.*

At the conclusion of an investigation Parties are issued with the BFTC's Decision. Included in the Decision are the BFTC's findings, and steps to be undertaken to remedy the conduct or penalisation where necessary. In terms of mergers the Decision states whether the merger will be granted or denied and any conditions to the merger if granted.

Press releases are issued on the day of the Decision and the Decision is placed on the BFTC's website.

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).

Any person who is aggrieved by a decision of the Commissions may appeal to a Judge in Chambers.

Where an appeal is brought against any findings of the Commission any direction of the Commission that is based on such findings remain in force pending the determination of the appeal, unless the Judge otherwise orders.