



DRAFT MERGER GUIDELINES

What is a Merger?

Section 13(1) of the Fair Trading Act (FTA) Ch. 81:13 defines a "merger" as, the cessation of two or more enterprises from being distinct whether by purchase or lease of shares or assets, amalgamation, combination, joint venture or any other means through which influence over the policy of another enterprise is acquired.

More specifically, an anti-competitive merger is outlined as one which “restricts or distorts competition in a market.”

Purpose of these Guidelines

These guidelines have been developed by the Trinidad and Tobago Fair Trading Commission (‘the Commission’) in relation to its functions under Part III Section 14 of the Fair Trading Act which states that enterprises shall not enter into a merger unless:

- they obtain permission from the Commission where their assets exceed fifty million dollars; and
- at least one of the enterprises carries on or intends to carry on business in Trinidad and Tobago.

These guidelines are designed to provide a breakdown to various stakeholders such as the merger parties, the business community and the public of the relevant information required in obtaining requisite permissions from the Commission as it relates to mergers.

The Commission wishes to remind the business community and the public that mergers can be good and when administered properly can result in efficiency gains to the parties involved and further may provide consumers with lower prices for goods and services.

A. Merger Application Process:

1. The Merger Application Form is received by the Commission as Part III, Section 14(1) (b) of the FTA requires that enterprises shall not enter into a merger unless they obtain permission from the Commission.
2. The Merger Application Form requesting permission from the Commission for the proposed transaction can be accessed on the Commission’s website.

3. In preparing the Merger Application Form and supporting documentation, enterprises may wish to include any of the following documents which may ultimately be relevant to the Commission's determination:
 - i. A copy of each organization chart for the enterprise as a whole and for each of the enterprise's facilities or divisions involved in any activity relating to any relevant product/service;
 - ii. A listing of all officials and representatives of the enterprise in any capacity relating to the proposed transaction or any relevant product/service;
 - iii. The respective titles, official business addresses and telephone numbers for each official or representative previously mentioned;
 - iv. A description of the type of the proposed transaction in accordance with Section 13(1) of the FTA;
 - v. The rationale for the proposed transaction (e.g. the efficiencies that will likely result);
 - vi. Details on ownership and control before and after the proposed transaction such as distribution of shareholdings, articles of association;
 - vii. Copies of resolutions of the board of directors of any enterprise involved in the proposed transaction with respect to the acceptance of same;
 - viii. Copies of any Agreements orally or other contracts on which the proposed transaction is based;
 - ix. The nature of all relevant businesses conducted including the general product or geographic market:
 - a. List each relevant manufactured product or service sold/ provided by the enterprise in the relevant area, and for each:
 - Provide a detailed description of the product/ service including its end users;
 - State the division, subsidiary, or affiliate of the enterprise that manufactures or sells or provides or has manufactured or sold or provided the product/service;
 - List the enterprise's sales to all customers in each relevant area, stated separately in units and dollars;
 - List the portion of the enterprise's sales to customers in each relevant area, stated separately in units and dollars, that were of products manufactured in Trinidad and Tobago;

- List the portion of the enterprise's sales to customers in each relevant area, stated separately in units and dollars, that were of products manufactured outside Trinidad and Tobago;
 - List the portion of the enterprise's sales to customers in each relevant area, stated separately in units and dollars, that were of products purchased from sources outside the enterprise and resold by the enterprise rather than of products manufactured by the enterprise;
 - The name, address, estimated sales, and estimated market share of the enterprise and each of the enterprise's competitors in each relevant area in the manufacture or sale of the relevant product;
 - For each relevant product manufactured or sold or service provided in the relevant area, submit (a) one copy of all current selling aids and promotional materials and (b) all documents relating to advertising and marketing plans and strategies;
 - All documents relating to the enterprise's or any other person's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, price structures, pricing analyses, price zones, and pricing decisions relating to any relevant product/service in the relevant area.
- x. State the location of each facility that manufactures or sells or has manufactured or sold any relevant product/service in the relevant area for the enterprise and for each such facility state:
- a. The current nameplate and practical capacity;
 - b. The capacity utilization rate for production of each relevant product manufactured at the facility (annually/monthly)
 - c. The formula inclusive of all factors utilized to calculate capacity;
 - d. The number of shifts normally utilized at such facility; and
 - e. The feasibility of increasing capacity by X% or more, inclusive of the time and costs required.
- xi. For each relevant product/service identify or describe (including the bases for your response) and submit all documents including, but not limited to, entry requirements such as research and development, licenses, distribution systems, total cost of successful entry into the production or sale of the relevant product/provision of service and total sunk costs entailed in satisfying the requirements for entry; identify barriers to entry, possible new entrants and minimum viable scale to compete profitably in the manufacture or sale of the relevant product/provision of service in each relevant area.
- xii. Copies of all documents relating to the enterprise's strategic plans, including, but not limited to, the expansion or retrenchment plans, research and developments efforts,

presentations to board of directors and all budgets and financial projections. For regularly prepared budgets and financial projections, the enterprise only needs to provide one copy of the financial year-end documents for prior years (a minimum of period of three years unless otherwise directed by the Commission) and cumulative year-to-date documents for the current year;

- xiii. Copies of all documents relating to competition in the manufacture or sale of any relevant product/provision of service in the relevant area, including, but not limited to, market studies, surveys and all other documents relating to:
 - a. Sales, market share, or competitive position of the Enterprise or any of its competitors;
 - b. Sales personnel call reports and win /loss reports;
 - c. Customer and competitor complaints, pending or completed law suits; and
 - d. The potential effect on supply and demand, cost, or price of any relevant product/provision of service as a result of competition from any other possible substitute product/service.
 - xiv. The gross worldwide assets of each of the enterprises engaged in the merger as at the last financial year;
 - xv. The total turnover (In Trinidad and Tobago and worldwide) for the last financial year of each enterprise engaged in the merger;
 - xvi. Written confirmation that the enterprise carries on or intends to carry on business in Trinidad and Tobago in accordance with Section 14(1)(b)(ii) of the FTA;
 - xvii. A listing of any regulatory bodies which will likely be affected by the proposed transaction and if so copies of applications made to such regulatory bodies;
4. The Commission reserves the right to request such further information to assist in its determination. Further in accordance with Section 14(2) of the Act, enterprises are to note that the one (1) month timeframe for permission will run from the date of **Receipt of the completed Merger Application Form** and not from the **Date of the Merger Application**.
 5. Before granting permission for a merger, the Commission shall satisfy itself that the proposed merger would not affect competition unfairly or would not be detrimental to the consumer and shall consult with the Securities Exchange Commission to ensure that the procedure required under the Securities Act for mergers has been followed.
 6. Once permission is granted by the Commission, the enterprises shall be notified by way of formal correspondence.

7. Conversely, where the Commission forms the view that the proposed transaction in its existing form is non-compliant, permission will not be granted and formal correspondence would be issued to the enterprises.

B. Mergers where Permission has not been granted by the Commission

In accordance with Section 16(1) of the FTA, where the Commission has reason to believe that **two or more enterprises have merged and have not obtained permission for the merger**, the Commission shall initiate an investigation into the matter.

C. Order for Divestment

At any time before the Commission makes an application for such an Order, the Commission and the enterprises may agree that the enterprises will divest within an agreed period, part of their combined business or operations and if the Commission is satisfied that such divestment would make the merger less likely to lessen competition in Trinidad and Tobago it shall approve the proposed merger.

D. Request for Assistance

Persons are encouraged to reach out to the Commission to clarify their obligations under the FTA.

E. Confidentiality

Any information provided to the Commission will be regarded as confidential in accordance with Section 51 of the FTA.

Contacting the Commission

Any inquiries about these Merger Guidelines should be directed to:

The Executive Director
Trinidad and Tobago Fair Trading Commission
Level 12, Nicholas Tower
63-65 Independence Square
Port of Spain
Email: tandtftc@gmail.com
Tel: (868) 623-2931 ext. 2202/2209/2212