

**S.I. 2009 No. 105**

**Fair Competition Act**  
**Cap. 326C**

**FAIR COMPETITION (MERGER) RULES, 2009**

*Arrangement of Rules*

*Rule*

1. Citation.
2. Merger application.
3. Determination of applications.
4. Merger investigation fees.
5. Approval of merger.
6. Appeals.

**SCHEDULE**

**Fair Competition Act  
Cap. 326C**

**FAIR COMPETITION (MERGER) RULES, 2009**

The Fair Trading Commission in exercise of the powers conferred on it by section 50 of the *Fair Competition Act*, with the approval of the Minister makes the following Rules:

1. These Rules may be cited as the *Fair Competition (Merger) Rules, 2009*. Citation.
  
2. (1) Where an enterprise is desirous of effecting a merger, it shall Merger application.
  - (a) submit to the Commission the following:
    - (i) the Merger Application Form set out in the *Schedule*; Schedule.
    - (ii) a merger proposal;
    - (iii) copies of any agreements or any other contracts on which the merger is based;
    - (iv) a copy of resolutions of the board of directors of any enterprise involved in the merger with respect to the acceptance of a merger proposal;
    - (v) for each of the merging enterprises, 3 copies of the most recent annual financial reports, if any, and of the annual accounts;
    - (vi) a list of all other regulatory bodies which will be affected by the proposed merger;

- (vii) copies of applications made to other regulatory bodies under paragraph (vi);
  - (viii) a list of the notified mergers involving any of the merger enterprises in any other country during the last 5 years; and
- (b) pay to the Commission the merger application fee specified in the *Fair Trading Commission (Fair Competition Merger Fees) Regulations, 2009*.
- S.I. 2009  
No. 104.
- Schedule.
- (2) The Merger Application Form set out in the *Schedule* to these Rules shall contain the following particulars in relation to each of the merging enterprises:
- (a) names and official addresses;
  - (b) names and positions of senior officers;
  - (c) ownership and control;
  - (d) the nature of all relevant businesses conducted;
  - (e) the reasons for the merger;
  - (f) details of all relevant group relationships associated enterprises, degrees of dependency and percentages of holdings;
  - (g) where shares in another enterprise are to be acquired, the amount of the shares to be acquired and the total shares owned in it by the purchaser or any related enterprise;
  - (h) the total turnover for the last financial year of
    - (i) each enterprise engaged in the merger in Barbados; and
    - (ii) each relevant group of enterprises worldwide; and

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- (i) the gross worldwide assets of each of the enterprises engaged in the merger as at the last financial year.
- (3) A merger proposal required under paragraph (1) shall contain information on the following:
- (a) the method used to effect the merger, whether by
- (i) the acquisition of assets;
  - (ii) the acquisition of shares;
  - (iii) amalgamation;
  - (iv) combination; or
  - (v) the acquisition of an interest in a combination;
- (b) the factors upon which the proposed merger is conditional;
- (c) the consideration given and received by the enterprises which are parties to the merger;
- (d) whether any of the merging enterprises will cease to be distinct as a result of the merger;
- (e) the product or service markets to be affected by the merger;
- (f) the geographic markets to be affected by the merger whether international, regional or national and in relation to those markets the merger proposal shall provide
- (i) an estimate of the value and volume of each market;
  - (ii) the turnover and market shares of the merging enterprises in each relevant market; and

- (iii) the names and market shares of all competitors with over 5 per cent of the market share;
- (g) the barriers or restrictions to new entry into the relevant markets to be affected by the merger whether legal, regulatory or economic;
- (h) the nature and extent of any vertical links involving or between merging enterprises in the relevant markets to be affected by the merger;
- (i) the reasons why the proposed merger will not affect competition adversely or be detrimental to consumers or the economy taking into account
  - (i) the structure of the markets likely to be affected by the proposed merger;
  - (ii) the degree of control exercised by the enterprises concerned in the proposed merger, in the market, and particularly the economic and financial power of the enterprises;
  - (iii) the availability of alternatives to the services or goods provided by the enterprises concerned in the merger;
  - (iv) the likely effect of the proposed merger on consumers and the economy; and
  - (v) the actual or potential competition from other enterprises and the likelihood of detriment to competition;
- (j) the reason why the merger is likely to bring about gains in real efficiencies and as distinct from pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that results or are likely to result from the merger;
- (k) the quantitative estimate of the real efficiencies that are likely to result from the merger;

- (l) the quantitative estimate of the likely effects of the limitation upon competition that is likely to result from the merger; and
- (m) the reasons why the proposed merger represents the least anti-competitive known alternative uses of assets where one of the parties to the proposed merger is faced with actual or imminent financial failure.

(4) An enterprise which contravenes this rule is guilty of an offence and is liable on conviction on indictment to

- (a) in the case of an individual, to a fine of \$150 000 or to imprisonment for a term of 6 months or to both; or
- (b) in the case of a corporate entity, to a fine of \$500 000.

3. The Commission shall make a determination in relation to the grant or refusal of an application for permission to merge pursuant to section 20(5), (6) and (7) of the Act. Determination of applications.

4. Where the Commission conducts an investigation into a proposed merger under section 20(6) of the Act, the Commission may charge investigation fees in accordance with section 47 of the *Fair Trading Commission Act* and the *Fair Trading Commission (Fair Competition Merger Fees) Regulations, 2009*. Merger investigation fees. Cap. 326B. S.I. 2009 No. 104.

5. Where the Commission decides to grant permission to the enterprises to effect the merger, it shall notify the enterprises in writing of its determination. Approval of merger.

6. (1) Where the Commission refuses to grant permission or revokes permission to the relevant enterprises to effect the merger, it shall notify those enterprises in writing of its determination and the reasons for that determination. Appeals.

(2) The parties to the proposed merger who are aggrieved by a decision made by the Commission under paragraph (1) may appeal to a Judge in Chambers in the manner set out by section 36 of the Act.

## SCHEDULE

*(Rule 2)***MERGER APPLICATION FORM****1. GENERAL INFORMATION**

The party supplying this information is

 the acquiring party       the acquired party       other party to the proposed transaction

Name of the party to the transaction for which this information is supplied

Address of head office and principal offices of the party

Website address

E-mail address	Telephone number	Fax number
Payment of prescribed fee  <input type="checkbox"/> Included in full <input type="checkbox"/> Will be made in full by another party to the transaction  <input type="checkbox"/> Partly included, remaining payment to be remitted by another party to the transaction <input type="checkbox"/> Not included but will be remitted by the notifier  <input type="checkbox"/> Cheque <input type="checkbox"/> Wire transfer <input type="checkbox"/> Date expected:		Official receipt for fee payment should be issued to:

SCHEDULE – *Cont'd*

MERGER APPLICATION FORM – *Cont'd*

**1. GENERAL INFORMATION – *Cont'd***

Name of authorised individual		Other individual who may be contacted	
Title:		Title:	
Telephone Number:	Fax Number:	Telephone Number:	Fax Number:
Address:		Address:	