

MERGER WORKSHOP FOR COMPETITION AUTHORITIES IN THE CARIBBEAN
Port of Spain, Trinidad and Tobago
18-20 September 2019
AGENDA

<p>The workshop is designed to develop case handlers' practical and substantive skills for merger analysis. The first part of the workshop will focus on various practical and substantive issues and skills employed in an economics-based analytical framework for merger analysis. Sessions on substantive skills will cover market definition, unilateral and coordinated competitive effects theories, entry and expansion, efficiencies, failing firms, and remedies. Practical skills session will include planning and conducting a merger investigation, interviewing skills, and developing reliable evidence. The workshop includes a mock merger investigation in which the participants will plan and conduct a hypothetical preliminary investigation of a proposed merger, applying the various practical skills and substantive concepts discussed in the workshop.</p>	
WEDNESDAY 18 SEPTEMBER 2019	
<p>The first day of the workshop will be dedicated to the preliminary stages of a merger investigation. By the end of the day, participants should be armed with the tools need to: plan a merger investigation; formulate a workable theory (or theories) of harm; and have a more in-depth understanding of key elements in the merger assessment.</p>	
TIMES	TOPICS
8:30-9:00	<p>OPENING REMARKS</p> <p>INTRODUCTION OF PARTICIPANTS</p>
9:00-9:30	<p>INTRODUCTION TO INTERNATIONAL COMPETITION NETWORK RECOMMENDED PRACTICES ON MERGER NOTIFICATION AND REVIEW PROCEDURES</p> <p>This session will provide an overview of the International Competition Network's recommended practices for merger notification and review procedures, which address jurisdictional nexus, notification thresholds, timing of notification, review periods, requirements for initial notification, conduct of merger investigations, procedural fairness, transparency, confidentiality, interagency coordination, remedies, and agency powers.</p>
9:45-10:45	<p>INTRODUCTION TO THE MERGER ANALYSIS FRAMEWORK</p> <p>This session will provide an overview of the ICN's merger analysis recommended practices, which address the legal framework for merger analysis, and key elements of analysis, including market definition, the use of market shares (including thresholds and presumptions), competitive effects analysis in horizontal merger review, unilateral and coordinated effects, entry and expansion, efficiencies, and failing firm. Key recommendations will be examined in more detail, and illustrated through case examples, in subsequent sessions. Participants will then have an opportunity to apply these recommendations in the mock merger investigation.</p> <p><i>Q & A and Discussion</i></p>
10:45-11:00	COFFEE BREAK
11:00-11:45	PLANNING AN INVESTIGATION / CASE MANAGEMENT

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	<p>A written investigation plan is an essential tool to prepare during the early phases of an investigation. The process of writing an investigation plan will help the case handler think through the key legal and factual issues that need to be investigated and resolved. The written plan also can serve as a starting point for preparing other documents that may be required as the investigation progresses, such as requests for documents and data and investigative reports. Additionally, the investigation plan can be given to supervisors and shared with colleagues to show them the working theory of the investigation, explain how the case team plans to investigate the matter, and to get input on the investigation.</p> <p>This session will cover the parts of an investigation plan, including: (1) the introduction; (2) a discussion of the key facts that are known and those to be investigated; (3) the identification of the working legal theory or theories of harm; (4) the plan for collecting the facts; and (5) an estimate of the timing and resources needed to complete the investigation. While these steps will be presented sequentially, this session will emphasize how the investigative process actually is a cyclical process. That is, a working theory is hypothesized; potential evidence is identified, collected, and evaluated, and used as a basis for identifying further evidence; the working theory is then refined as needed; and the process continues until sufficient facts are found to support or reject a conclusion that the law has been, or is being, violated.</p> <p>In addition, this session will cover why and how to prepare a proof checklist. Preparing a proof checklist can be an invaluable aid to ensure that there is sufficient, credible evidence to establish each element of proof necessary to support a violation of law. A proof checklist typically consists of a list of the elements of proof required by law, coupled with the evidence necessary to establish each element of proof and the sources of that evidence.</p>
11:45-12:15	<p>PLANNING AN INVESTIGATION USING HYPOTHETICAL CASE - SMALL GROUP DISCUSSION</p> <p>Participants will be introduced to the facts of a hypothetical investigation which will serve as the basis for small group work. In this session, participants will be given copies of information regarding the proposed merger, and, based on their review of the materials, formulate candidate relevant markets, candidate theories of harm, and an initial investigation plan.</p> <p>Group Exercise #1: Review merger case file and brainstorm on key competition issues</p> <p>Group Exercise #2: Develop candidate relevant markets and theories of harm</p> <p>Group Exercise #3: Draft investigations plans</p>
12:15-1:30	<p>LUNCH</p>
1:30-2:00	<p>PLENARY SESSION - DISCUSSION OF INVESTIGATION PLANS</p> <p>Presentation of investigation plans by groups</p>
2:00-3:00	<p>ANALYTICAL FRAMEWORK - MARKET DEFINITION</p> <p>This session will explain the rationale and role of product and geographic market definition analyses in merger investigations, and it will describe the hypothetical monopolist or SSNIP test, which is the central analytic framework used when defining markets. The session will also address different kinds of evidence and different analytic techniques that can be used when defining markets.</p> <p><i>Q & A and Discussion</i></p>
3:00-3:15	<p>COFFEE BREAK</p>
3:15-4:15	<p>ANALYTICAL FRAMEWORK - COMPETITIVE EFFECTS</p> <p>This session will explore both the theory of competitive effects in merger investigations and the nature of evidence that can be used to test whether they are likely to arise. The discussion will cover both unilateral and coordinated competitive effects theories of harm. In addition to a summary of structural evidence that is used to assess the likelihood of competitive effects, the discussion will also introduce concepts such as diversion ratios, critical loss analysis, and natural experiments.</p> <p><i>Q & A and Discussion</i></p>

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4:15-4:45	<p>DEVELOPING CANDIDATE RELEVANT MARKETS AND THEORIES OF HARM - SMALL GROUP DISCUSSION</p> <p>Group Exercise #4: Upon further review of materials related to the proposed merger, participants will further refine candidate relevant market(s) and theory(ies) of harm in the hypothetical case and update investigation plans and proof charts.</p>
4:45-5:00	<p>PLENARY SESSION - DISCUSSION OF CANDIDATE RELEVANT MARKETS AND THEORIES OF HARM; UPDATE PROOF CHART</p> <p>Presentation of Exercise #4 by Groups and Discussion</p>
THURSDAY 19 SEPTEMBER 2019	
<p>The second day of the workshop delves deeply into the steps in an investigation, including sources of evidence and techniques to gather and assess evidence. Facilitators and participants will address both qualitative and quantitative evidence.</p>	
9:00-10:00	<p>ANALYTICAL FRAMEWORK - ENTRY AND EXPANSION</p> <p>The ease with which new firms can enter the relevant market is an important consideration in evaluating the ability of existing firms in a concentrated industry to increase prices above competitive levels. In evaluating the competitive effects of a merger, competition agencies and tribunals ask whether the merger would attract entry that would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects that otherwise may be likely to result from the merger. This session will outline the approach to entry analysis, including the three tests of timeliness, likelihood and sufficiency, and types and sources of evidence used in the analysis.</p> <p style="text-align: center;"><i>Q & A and Discussion</i></p>
10:00-10:15	<p>ENTRY AND EXPANSION - SMALL GROUP DISCUSSION</p> <p>Group Exercise #5: Based on further review of the merger case file, participants will analyse whether entry or expansion is likely to occur within a period of time sufficient to prevent or reverse an exercise of durable market power of the merged firm, focusing on the potential anti-competitive effects the merger otherwise would have. Groups will then update their proof charts with new theories and information.</p>
10:15-10:30	<p>PLENARY SESSION - DISCUSSION OF ENTRY AND EXPANSION</p> <p>Presentation of Exercise #5 by Groups and Discussion</p>
10:30-10:45	COFFEE BREAK
10:45-11:15	<p>ANALYTICAL FRAMEWORK - EFFICIENCIES</p> <p>The pursuit of efficiencies is often the primary purpose motivating firms to merge. Over time, competition agencies, tribunals, and courts have become more receptive to incorporating efficiencies in their evaluation of mergers. Nevertheless, because putting forward an efficiencies defence is inherently a speculative exercise and at times can be self-serving, competition agencies and the courts have imposed a significant burden on parties to quantify and verify efficiencies. This session will briefly trace the development of efficiencies analysis, outline the steps required to prove up efficiency savings, and examine cases in which efficiencies played a significant role.</p> <p style="text-align: center;"><i>Q & A and Discussion</i></p>
11:15-12:15	<p>DEVELOPING RELIABLE EVIDENCE THROUGH INTERVIEWS</p> <p>This session will focus on the tactics and skills of witness interviewing. Because no one tactic will work with every witness, the session will explore various tactics and skills used when interviewing different types of witnesses – friendly, neutral and hostile. The session will include suggestions on developing and organizing an interview outline, using documents in an interview, questioning techniques, and interview report writing.</p> <p style="text-align: center;"><i>Q & A and Discussion</i></p>
12:15-12:45	<p>INTERVIEWS - SMALL GROUP PREPARATION</p>

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	Group Exercise #6: Participants, working in their assigned teams, will draft an interview outline for use in interviewing a witness on the issue of the relevant market in the proposed merger investigation.
12:45-1:45	LUNCH
1:45-2:15	INTERVIEWS - SMALL GROUP ACTIVITY Group Exercise #7: Conduct an interview (Role playing). Participants from each team will conduct a mock interview of a witness on the narrow issue of market definition.
2:15-2:45	PLENARY SESSION - VIDEO OF INTERVIEW We will watch a video of how an experienced investigator conducted an interview of the same witness.
2:45-3:00	PLENARY DISCUSSION - CONDUCTING INTERVIEWS Participants then will be asked to provide feedback on the interview.
3:00-3:15	PLENARY DISCUSSION - USING A PROOF CHART Working as a large group, we will update the investigation plan and proof chart based on new information learned during the interview.
3:15-3:30	COFFEE BREAK
3:30-4:30	DEVELOPING RELIABLE EVIDENCE THROUGH DOCUMENT AND DATA REQUESTS Documentary evidence in merger investigations generally falls into five categories: (1) documents created before the merger was under consideration; (2) documents created in connection with the merger; (3) descriptive evidence from market participants; (4) written responses to inquiries and compulsory requests for information; and (5) expert analysis and opinions. In this session, we will examine each type of evidence, including its strength and weaknesses, and strategies for developing reliable evidence. In this session, we will examine each type of evidence, including its strength and weaknesses, and suggestions for developing reliable evidence. We will also consider challenges encountered when requesting and analyzing data, strategies for managing and reviewing voluminous productions, and strategies for gathering documentary evidence. <i>Q & A and Discussion</i>
4:30-5:00	ANALYZING DOCUMENTS - SMALL GROUP ACTIVITY Group Exercise #8: Participants, working with their assigned teams, will review the additional documents submitted by the merging parties, along with an interview report from the interview conducted. Each team will update their investigation plan and proof chart.
FRIDAY 20 SEPTEMBER 2019	
The final day of the workshop explores important analytical issues and tools and designing remedies to reverse the anticompetitive effects of a merger.	
9:00-9:30	ANALYSIS OF HYPOTHETICAL CASE AND PROOF CHART - PLENARY DISCUSSION Group Exercise #9: Groups will present their findings after the first day of investigation on each of the main elements of merger analysis, including a critical review of efficiency arguments made by the merging parties.
9:30-10:15	FURTHER DISCUSSION OF QUANTITATIVE TOOLS TO UNDERSTAND MARKET DEFINITION, MARKET POWER AND COMPETITIVE THEORIES OF HARM During this session, we will discuss quantitative techniques, including application of SSNIP, diversion ratios, critical loss, HHIs, and UPP. We will discuss how these tools are used in merger analysis and what types of qualitative evidence may offer additional support. <i>Q & A and Discussion</i>
10:15-10:30	COFFEE BREAK
10:30-11:00	INTERVIEWS - SMALL GROUP PREPARATION

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	Group Exercise #10: Participants, working in their assigned teams, will draft an interview outline for use in interviewing a witness on the issue of the competitive effects in the mock case.
11:00-11:30	INTERVIEWS - SMALL GROUP ACTIVITY Group Exercise #11: Conduct an interview (Role playing). Participants from each team will conduct a mock interview of a witness on the issue of competitive effects.
11:30-12:00	PLENARY DISCUSSION - UPDATE PROOF CHART Working as a large group, we will update the investigation plan and proof chart based on new information learned during the interview.
12:00-1:00	LUNCH
1:00-2:00	REMEDIES The object of a merger remedy is to restore the competition lost (or to maintain the competition that would be lost) because of the transaction. For some mergers, the likely harm to competition can only be prevented by an outright prohibition of the transaction. In other situations, however, appropriate modifications or conditions can resolve the competitive concerns while still allowing the merger to proceed. This session will focus on the latter situation, including: (a) what assets should be divested; (b) who is an appropriate buyer for the assets; (c) what is an appropriate price and time period for the sale; and (d) what post-divestiture relationships may exist between the seller and the buyer of the assets. <i>Q & A and Discussion</i>
2:00-2:15	SMALL GROUP DISCUSSION OF REMEDIES IN HYPOTHETICAL CASE Group Exercise #12: Working in small groups, participants will discuss possible remedies to reverse the anticompetitive effects of the hypothetical merger.
2:15-2:30	PLENARY DISCUSSION - REMEDIES IN HYPOTHETICAL CASE Presentation of Exercise #12 by Groups and Discussion
2:30-3:00	SMALL GROUP PREPARATION FOR ARGUMENTS TO CONTINUE OR CLOSE INVESTIGATION In this segment, participants will be divided into three groups representing: (1) Commission Staff; (2) Merging Parties; and (3) the Commission Decision Makers. The group representing the Commission Staff will prepare their best evidence and arguments for conducting an extended review of the proposed merger, including competitive theories of harm. The group representing the Merging Parties will prepare their best evidence and arguments as to why the merger does not raise substantial anticompetitive concerns and should be closed without further investigation. The group representing the Commission Decision Makers will prepare to hear the arguments and to ask questions to assist them in their decision-making process.
3:00-3:15	COFFEE BREAK
3:15-3:45	IN A MOCK DECISIONAL MEETING, GROUPS PRESENT ARGUMENTS FOR CONTINUING, AND FOR CLOSING, THE INVESTIGATION The Commission Staff and the Merging Parties will present their evidence and arguments to the Decision Makers. Commission Staff will be given 10 minutes to present its recommendation; the Merging Parties will be given 10 minutes to present their arguments. The Commission Decision Makers may ask questions of each side during its presentation, and again for up to 10 minutes at the end of both presentations. At the conclusion of the presentations, the Commission Decision Makers will deliberate whether the proposed merger should or warrants further investigation, and the basis for their conclusions.
3:45-4:15	OPEN DISCUSSION REGARDING THE WORKSHOP AND ANY UNEXPLORED AREAS RELATING TO MERGER ANALYSIS <i>Q & A and discussion, including of additional ICN resources related to merger analysis.</i>