

# Competition Compliance, Governance and Enforcement: Practical Perspectives for Legal Counsel

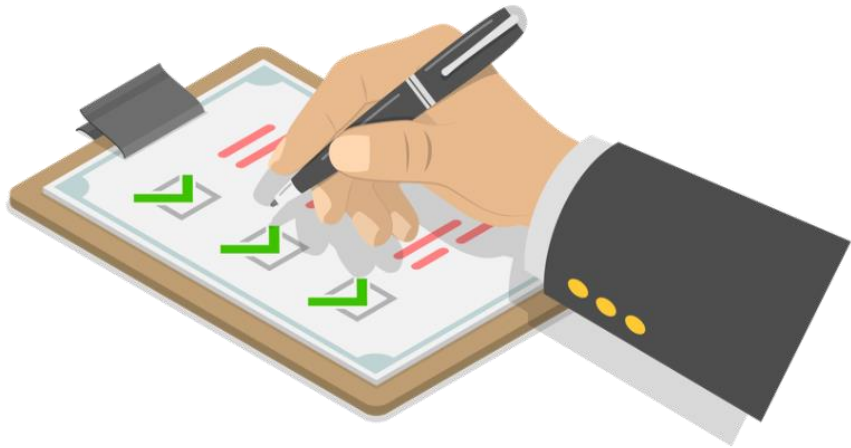


Thursday 18<sup>th</sup> June 2026

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# Today's Agenda



- About the FTC
- Considerations for Corporate Counsel
- Ensuring Compliance with the FTA
- Questions and Comments

# About the FTC

- Independent Statutory Body established pursuant to the Fair Trading Act 2006.
- Our objectives are to **promote, protect and maintain** competition in the Trinidad and Tobago market. We do this by:
  - Preventing anti- competitive conduct;
  - Taking action against abuse of dominance, restraint of trade and unfair or deceptive trade practices;
  - Diffusing and publishing information about competition policy;
  - Advising the Government on other laws affecting competition.



MERGER REVIEW



ADVOCACY AND  
OUTREACH



MARKET STUDIES



INVESTIGATION OF  
COMPLAINTS

\*At present, the FTC can only investigate anti-competitive activities occurring in Trinidad and Tobago



# The Fair Trading Act



SECURITIES  
INDUSTRY



TELECOMS



BANKING  
INDUSTRY



INTELLECTUAL  
PROPERTY



PROFESSIONAL  
ASSOCIATIONS/COLLECTIVE  
BARGAINING SITUATIONS



ACTIVITIES  
EXPRESSLY  
AUTHORIZED OR  
REQUIRED UNDER  
ANY TREATY OR  
AGREEMENT TO  
WHICH T&T IS A  
PARTY

- The Fair Trading Act is generally applicable across the economy.
- However, specific activities and sectors fall outside its scope as outlined in Section 3(1).
- When in doubt, consult the FTC.
- For matters involving regulated sectors, the FTC collaborates with the relevant regulator to determine which authority is best placed to address the issue, based on each body's statutory powers.





## Considerations for Corporate Counsel

# The FTC’s Engagement with Corporate Counsel

Role / Capacity	How Counsel Engages with the FTC
<b>Merger &amp; Acquisition Advisor</b>	<ul style="list-style-type: none"> <li>• Determine if a transaction triggers merger notification.</li> <li>• Prepare filings and supporting documents.</li> <li>• Respond to FTC information requests.</li> <li>• Advise executives on risks, timelines, and possible remedies.</li> </ul>
<b>Respondent in Complaints / Investigations</b>	<ul style="list-style-type: none"> <li>• Represent the company when complaints are filed.</li> <li>• Coordinate internal fact-finding.</li> <li>• Prepare responses to RFIs and ensure compliance with deadlines.</li> <li>• Advise on exposure, settlement, and compliance strategies.</li> </ul>
<b>Information Provider</b>	<ul style="list-style-type: none"> <li>• Submit data for market studies or sector inquiries.</li> <li>• Ensure accuracy and protect confidential information.</li> <li>• Manage legal claims for confidentiality.</li> </ul>
<b>Individual Consumer/Business Owner</b>	<ul style="list-style-type: none"> <li>• File consumer complaints in a personal capacity.</li> <li>• Seek guidance on consumer rights and unfair practices.</li> </ul>
<b>Partner in Regulated Sectors</b>	<ul style="list-style-type: none"> <li>• Coordinate with both the FTC and sector regulators (CBTT, TATT, RIC).</li> <li>• Help determine jurisdiction and manage parallel regulatory obligations.</li> </ul>

Submitting **verifiable, accurate information** is essential because the FTC’s assessments rely on facts that can be independently confirmed.



# Key Legal Counsel Obligations in Competition Compliance

Area to Review	Counsel's Obligation / Focus
Distribution arrangements	Identify exclusivity, resale restrictions, or anti-competitive allocation of markets/customers.
Employment agreements	Check for non-compete clauses, non-solicitation terms, and information-sharing risks.
Company policies / processes / guidelines	Ensure internal rules do not facilitate collusion, price signalling, or discriminatory practices.
Supply agreements	Assess for exclusivity, MFN clauses, loyalty rebates, or restrictive purchasing terms.
Territorial & customer restrictions	Determine whether limitations unlawfully partition markets or restrict competition.
Pricing & promotional practices	Review for price-fixing risks, predatory pricing, or misleading discount structures.
Group purchasing	Evaluate whether joint buying arrangements reduce competition or foreclose suppliers.
Exclusive contracting	Identify foreclosure risks or dominance concerns.
Trade association activities	Monitor information exchange, meeting conduct, and collective decision-making.
Standards setting	Ensure processes are open, non-discriminatory, and not used to exclude competitors.
Joint R&D	Confirm collaboration does not extend into pricing, output, or market allocation.
Pricing surveys	Assess whether data collection risks facilitating price signaling or coordination.

Counsel can independently verify information by cross-checking all claims **against internal records, audited financials, contracts, and documented business practices**, rather than relying solely on management representations. They should also corroborate key facts with **third-party sources such as regulators, market data, or industry benchmarks** to ensure the information provided to the FTC is accurate, defensible, and capable of withstanding scrutiny.



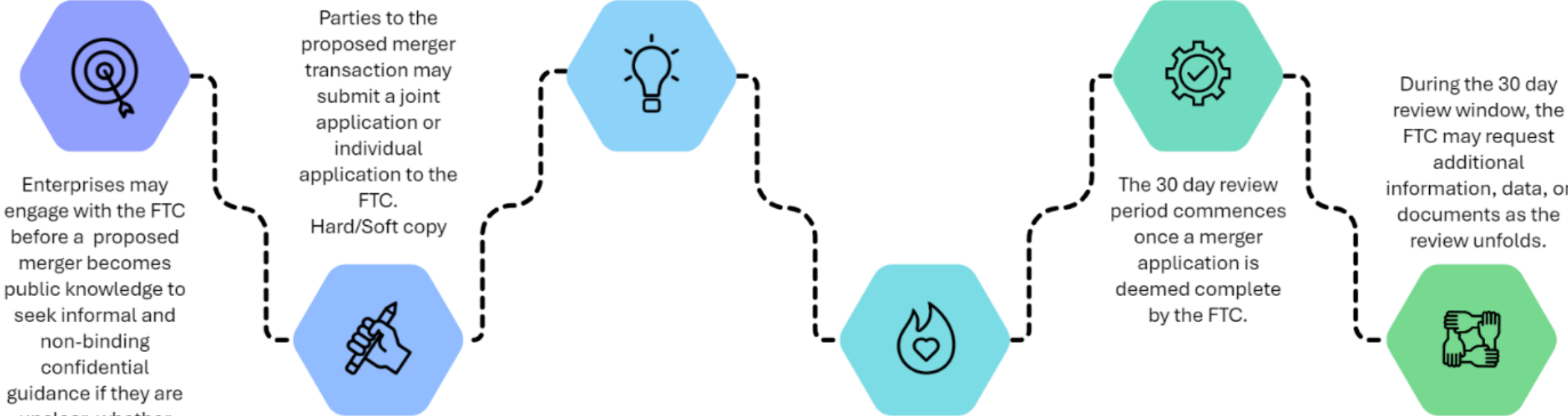


# Merger Transactions Due Diligence Tips

# FTC Merger Review at a glance

● At present, there is no fee attached to filing a merger application.

Part III Section 14(1)(a) and (b) of the Fair Trading Act states that enterprises shall not enter into a merger unless:  
they obtain permission from the Commission where their **assets exceed TT fifty million dollars**; and **at least one of the enterprises carries on or intends to carry on business** in Trinidad and Tobago.



Enterprises may engage with the FTC before a proposed merger becomes public knowledge to seek informal and non-binding confidential guidance if they are unclear whether their market share is beyond the threshold set by the Act.

Parties to the proposed merger transaction may submit a joint application or individual application to the FTC. Hard/Soft copy

Even internal restructurings or simple asset purchases can fall within the FTC's reach; don't assume they're exempt.

The 30 day review period commences once a merger application is deemed complete by the FTC.

During the 30 day review window, the FTC may request additional information, data, or documents as the review unfolds.



# “Carrying on Business in T&T” Examples

Administering, managing, or otherwise dealing with, property situated in T&T as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

Creating evidence of a debt or security interest in property in T&T and securing/collecting any of its debts or enforcing its rights locally.

Local economic activities in the pursuit of profit, employment of staff, advertising of the business, the existence of tangible assets.

- Establishing or using a share transfer office or share registration office in T&T .
- Director or shareholders' meetings held in T&T .

Compliance with regulatory requirements for example the TTSEC, Companies Registry etc.

Investing any of its funds or holding any property locally.



# Gun jumping

- In accordance with Section 16(1) of the Act where the FTC has reason to believe that two or more enterprises have merged and have not obtained permission for the merger, the **FTC shall initiate an investigation into the matter.**
- Examples include but are not limited to:
  - Sharing** competitively sensitive information (pricing, customers, future strategy) before closing or having the acquirer participate in the target's sales bids before approval;
  - Coordinating** business decisions such as pricing, output, marketing, or product launches;
  - Seeking** approval from the other party for routine business actions pre-closing;
  - Integrating** operations early (joint planning, joint teams, shared systems);
  - Exerting** control over the target before legal ownership transfers;
  - Implementing** merger-related changes (e.g., restructuring, layoffs, customer communications) before approval;
  - Agreeing** to restrict competitive behaviour (e.g., no-poach, no-bid, market allocation) during the review period;
  - Prematurely** transferring funds, beneficial ownership or consolidating operations.



# Merger Application-Due Diligence Tips

Submit as many documents and information to support the application for example:



- The rationale for the instant acquisition (including but not limited to the benefits of, and/or investment case for the acquisition) future plans for the acquired company following the acquisition;
- Copies of any documents (including planning documents, due diligence reports, strategy documents, minutes of meetings, customer research, pricing studies, reports, presentations, surveys, analyses, industry/market reports and recommendations) in the parties' possession which have been prepared exclusively for the intended acquisition;
- A copy of the agreement prescribing the terms and conditions of the acquisition or in the alternate the terms and conditions in contemplation;
- Confirmation of whether there is any intention post-amalgamation to discontinue any of the present products and services offered by the Target and if answered in the affirmative, the details of same.
- An explanation detailing how the financial figure was determined for the price of this proposed transaction and the relevant supporting documentation;
- An explanation of how the capital was raised by the Acquirer for this proposed transaction and the relevant supporting documentation;

# Merger Application Tips continued

- Confirmation of whether there is any intention post-acquisition to expand product and service offerings in Trinidad and Tobago and if answered in the affirmative, the details of same;
- Copies of the Acquirer and Target's latest Annual Information Form for Trinidad and Tobago or any document which highlights a description of its lines of business, the products and services offered, a breakdown of gross premium revenues and fees as well as other revenues for ancillary services of these lines of business for the past five years;
- Whether to date there has been any shareholder dissent with respect to the proposed acquisition. If answered in the affirmative the nature and outcome of same;
- Whether the acquisition will trigger any changes or terminations for staff of the Target and if answered in the affirmative the details of same;
- If the merger before you involves a foreign company who has enlisted financial advisers. Whether there are any specific objections from financial advisers with respect to the proposed merger;
- Confirmation of whether the Target has other potential businesses in Trinidad and Tobago as options in the event this acquisition is not successful and if answered in the affirmative the details of same.

**\*This checklist is not exhaustive**

**\*The FTC places trust in Corporate Counsel that the documents and information submitted are accurate**



# Spotlight on Failing Firm Defence



- Even if a merger involves a failing enterprise (enterprise that has been consistently earning negative profits and losing market share to such an extent that it is likely to go out of business), that is only one factor considered by the FTC in deciding whether to challenge it.

- Parties seeking to avoid a challenge of a merger that could be considered anticompetitive should be prepared to provide extensive information to the FTC both to show that a firm is truly failing, and that there are not alternative resolutions to the proposed merger that would be less harmful to competition.

- Information must be provided regarding:


- The failing enterprise's insolvency or imminent bankruptcy;
- The lack of competitively-preferable purchasers for the failing enterprise;
- That restructuring and retrenchment of the failing enterprise would not be competitively preferable; and
- That liquidation of the failing enterprise would not be competitively preferable.

\* The failing firm defence is **not an absolute** or "get out of jail free" card in merger control



# Examples of Documentation to support the defence

- Appraisals showing limited alternative use
- Asset valuation reports (liquidation vs. going concern)
- Auditor “going-concern” warnings
- Board minutes discussing closure or insolvency
- Cash-flow statements and projections showing negative liquidity
- Correspondence with banks, creditors, or insolvency practitioners
- Cost cutting plans already implemented and exhausted
- Debt restructuring proposals and rejections
- Documentation showing loss of capacity or market presence if liquidation occurs
- Draft or filed insolvency applications (if applicable)
- Engagement letters with restructuring advisors
- Evidence that key assets would be scrapped or sold outside the market
- Internal memos on inability to continue operations
- Liquidation analyses showing negative or minimal recovery
- Loan agreements showing covenant breaches
- Market analyses showing inability to compete effectively
- Notices of layoffs, plant closures, or facility shutdowns
- Reports from restructuring advisors

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- 2026: CMA UK provisionally the completed acquisition in **Constellation Developments Limited / ABVR Holdings Limited** on the basis that Aston Barclay could not have continued as a going concern absent the merger, as it had no access to capital necessary for its restructuring and although there were four alternative interested purchasers, the transaction would have resulted in weaker conditions of competition because they would not have been prepared to run the target as a national player compared to the pre-merger conditions.
  - 2024: CMA UK cleared **Eurofins/Cellmark** accepting compelling evidence of Cellmark’s deteriorating financial position; Cellmark was a supplier to UK police forces and government bodies), and the absence of viable alternative purchasers.

# Beyond Labels: The Substance of a Merger

Transaction Type	Why It May Be Considered a Merger	Key Indicators of Control / Combination	Typical Competition-Law Concerns	Documents Commonly Required for Filing
<b>Acquisition of Assets</b>	Acquisition of assets that constitute a business or part of a business can amount to a merger even without share transfer.	<ul style="list-style-type: none"> <li>Assets enable operation of a business</li> <li>Transfer of IP, contracts, goodwill</li> <li>Acquisition of productive capacity</li> </ul>	<ul style="list-style-type: none"> <li>Reduction in competitors</li> <li>Foreclosure if key inputs are acquired</li> </ul>	<ul style="list-style-type: none"> <li>Asset purchase agreement</li> <li>Valuation reports</li> <li>Description of assets/business</li> <li>Financial statements of the transferred business</li> <li>Market share estimates</li> </ul>
<b>Joint Venture (JV)</b>	A JV is a merger when it creates a full-function, jointly controlled business.	<ul style="list-style-type: none"> <li>Joint control (veto rights, equal votes)</li> <li>Independent operational capability</li> <li>Long-term structural arrangement</li> </ul>	<ul style="list-style-type: none"> <li>Coordination risks between parents</li> <li>Market concentration if JV competes with parents</li> </ul>	<ul style="list-style-type: none"> <li>JV agreement</li> <li>Governance documents (veto rights, board structure)</li> <li>Business plan &amp; financial projections</li> <li>Parent company financials</li> <li>Market definition &amp; competitive assessment</li> </ul>
<b>Internal Restructuring</b>	Even within a group, restructuring may be a merger if it results in a change in control between previously independent entities.	<ul style="list-style-type: none"> <li>Transfer of control between group entities</li> <li>Consolidation of previously separate units</li> <li>Change in ultimate beneficial ownership</li> </ul>	<ul style="list-style-type: none"> <li>Usually low concern unless restructuring affects joint ventures or independent businesses</li> </ul>	<ul style="list-style-type: none"> <li>Group structure before &amp; after</li> <li>Internal transfer agreements</li> <li>Corporate resolutions</li> <li>Ownership charts</li> <li>Explanation of control changes</li> </ul>
<b>Purchase of a Lease</b>	A lease may be a merger if it grants control over a business location or productive assets enabling market participation.	<ul style="list-style-type: none"> <li>Long-term operational control</li> <li>Transfer of business operations tied to premises</li> <li>Lease includes equipment, staff, goodwill</li> </ul>	<ul style="list-style-type: none"> <li>Local market concentration</li> <li>Elimination of a competitor's presence</li> </ul>	<ul style="list-style-type: none"> <li>Lease agreement</li> <li>Description of business activities at the site</li> <li>Maps/geographic market info</li> <li>Financials of the business tied to the premises</li> <li>Competitive impact assessment</li> </ul>
<b>Acquisition of Shares</b>	Classic merger scenario: acquiring shares that confer control, material influence, or decisive influence.	<ul style="list-style-type: none"> <li>Majority shareholding</li> <li>Minority stake with veto rights</li> <li>Influence over strategic decisions</li> </ul>	<ul style="list-style-type: none"> <li>Horizontal/vertical concentration</li> <li>Coordinated effects with partial ownership</li> </ul>	<ul style="list-style-type: none"> <li>Share purchase agreement</li> <li>Shareholder agreements (veto rights, governance)</li> <li>Pre- and post-transaction ownership charts</li> <li>Financial statements</li> <li>Market share and competitor data</li> </ul>

\* The proposed transaction **should not lead to the culmination of any anti-competitive practices** such as tied selling and bundling of discounts (if it constitutes an abuse of monopoly power), unfair selling prices/predatory pricing/discriminatory behaviour, engaging in market restriction or fixing or restricting the resale price of products, bid rigging, collusion or cartel behaviour etc.





## MERGER REVIEW

# FTC's considerations in its merger analysis

Certain **quantitative, legal and economic conceptual constructs** will be undertaken by the FTC in its analyses to reach a decision as to whether, a merger is likely to substantially/significantly prevent or lessen competition. These may include, but are not limited to:

- Market Definition and Market Share
- Market Concentration
- Competitive Effects
- Barriers to Entry and Expansion
- Efficiencies
- Failing Firm/Exiting Assets
- Counterfactual
- Presence of overlaps
- Potential Abuse of Monopoly Position
- Online search of the parties-articles/information relating to the Acquirer being involved in litigation, the subject of an investigation, blacklisted or any potential cause for concern in the local market for the past five years
- The actual and potential level of competition in the market
- Views of competitors, consumers, regulatory authorities, other Competition Agencies (where applicable)



# FTC's considerations in its merger analysis continued

- Will consumers face higher prices, lower quality products or services, reduced service, or fewer choices as a result of the merger
- Transactions involving undertakings whose turnover does not reflect their actual or future competitive potential:
  - Start-ups with significant potential;
  - Important innovators;
  - Important competitive force;
  - Companies with access to important materials;
  - Providers of key inputs for other industries.
- Creation or strengthening of a dominant position
- Elimination of an important competitive force
- Reduction of competitors' ability or incentive to compete (e.g., by hampering their access to supplies or markets)
- Ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices
- Industry trends towards vertical concentration



# Snapshot: Evidence Required for Key Merger-Review Concerns

Concern / Issue	What the FTC Looks For	Type of Evidence Required
<b>Counterfactual (What would happen without the merger?)</b>	Whether the merger changes the competitive trajectory of the market.	<ul style="list-style-type: none"> <li>Internal business plans and forecasts</li> <li>Market studies and demand projections</li> <li>Evidence of failing-firm conditions (if claimed)</li> <li>Competitor entry/exit data</li> </ul>
<b>Justifying Efficiencies</b>	Whether efficiencies are merger-specific, verifiable, and passed on to consumers.	<ul style="list-style-type: none"> <li>Cost-saving calculations with supporting data</li> <li>Integration plans</li> <li>Supply-chain efficiencies with quantifiable metrics</li> <li>Evidence efficiencies cannot be achieved without the merger</li> </ul>
<b>Portfolio Effects</b>	Whether combining product lines increases ability to foreclose rivals or leverage market power.	<ul style="list-style-type: none"> <li>Product-line mapping</li> <li>Customer switching data</li> <li>Internal strategy documents showing bundling, tying, or cross-promotion plans</li> <li>Market-share data across related categories</li> </ul>
<b>Post-Merger Effects (Price, quality, innovation)</b>	Likely impact on competition, consumer welfare, and market dynamics.	<ul style="list-style-type: none"> <li>Economic modelling (UPP, diversion ratios, price-cost margins)</li> <li>Historical pricing data</li> <li>Customer/competitor interviews</li> <li>Evidence of innovation pipelines</li> </ul>
<b>Rationale for the Transaction</b>	Whether the merger is driven by efficiency, expansion, or elimination of competition.	<ul style="list-style-type: none"> <li>Board minutes and strategic presentations</li> <li>Internal emails and memos</li> <li>Due-diligence reports</li> <li>Financial analysis supporting the business case</li> </ul>
<b>Market Definition &amp; Substitutability</b>	How closely products/services compete and the geographic scope.	<ul style="list-style-type: none"> <li>Customer surveys</li> <li>Price-correlation analysis</li> <li>Switching patterns</li> <li>Import penetration data</li> </ul>
<b>Barriers to Entry &amp; Expansion</b>	Whether new competitors can discipline the merged entity.	<ul style="list-style-type: none"> <li>Licensing and regulatory requirements</li> <li>Capital cost estimates</li> <li>Evidence of past entry attempts</li> <li>Contractual exclusivities</li> </ul>
<b>Buyer Power</b>	Whether large customers can constrain the merged firm.	<ul style="list-style-type: none"> <li>Contract terms with major buyers</li> <li>Evidence of buyer switching</li> <li>Negotiation history</li> <li>Market share of major purchasers</li> </ul>
<b>Vertical or Conglomerate Effects</b>	Risk of foreclosure, discrimination, or access restrictions.	<ul style="list-style-type: none"> <li>Supply-chain mapping</li> <li>Input/output dependency data</li> <li>Contractual exclusivity clauses</li> <li>Internal documents on leveraging strategies</li> </ul>

\*Illustrative purposes only





## Spotlight on Anti-Competitive Offences



## ANTI-COMPETITIVE AGREEMENTS OR PRACTICES

### 17. (1) An Agreement which—

- (a) fixes prices directly or indirectly other than in circumstances where the agreement is reasonably necessary to protect the interests of the parties concerned and not detrimental to the interests of the public;
- (b) limits or controls markets, technical development or investment;
- (c) shares markets or sources of supply;
- (d) applies dissimilar conditions to equivalent transactions and thus places some trading partners at a disadvantage to others; and
- (e) makes contracts subject to extraneous conditions,

is an anti-competitive agreement and is prohibited under this Act.

(2) Any decision or concerted practice of an association of enterprises, the object of which is the prevention, restriction or distortion of competition, is anti-competitive and prohibited under this Act.

- **Agreement** is broadly defined so as to include activities ranging from a legally enforceable contract between two or more parties to an informal albeit clear understanding, whether entered into in writing or verbally.
- **Concerted Practice** is a form of anticompetitive market coordination without an agreement necessarily being reached.

It has the purpose of harming competition where commercially sensitive information, such as:

- Prices
- Discounts
- Rebates
- Interest rate levels
- Increases or reductions in prices, volume, capacity
- Marketing plans, risks, investments,
- The customer base is shared.

# Competition Law: Key Conduct & Indicators

Conduct	Key Indicators / Red Flags	Key Documents Counsel Should Review
<b>Price Fixing</b>	<ul style="list-style-type: none"> <li>• Exchange of confidential pricing information</li> <li>• Parallel price changes</li> <li>• Similar timing of price adjustments</li> <li>• Uniform discount/rebate structures</li> <li>• Identical language in price announcements</li> </ul>	<ul style="list-style-type: none"> <li>• Emails/WhatsApp/SMS between competitors</li> <li>• Internal pricing memos</li> <li>• Board/management approvals on pricing</li> <li>• Customer notices of price increases</li> <li>• Meeting agendas/minutes (industry associations)</li> </ul>
<b>Market Allocation / Customer Sharing</b>	<ul style="list-style-type: none"> <li>• Stable customer division patterns</li> <li>• Absence of competition in “allocated” segments</li> <li>• Predictable non-overlapping market behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• Sales territory assignments</li> <li>• Key account lists</li> <li>• CRM/customer allocation records</li> <li>• Sales strategy documents</li> <li>• Communications between sales teams</li> </ul>
<b>Cartels</b>	<ul style="list-style-type: none"> <li>• Few competitors in market</li> <li>• Homogeneous products/services</li> <li>• High barriers to entry</li> <li>• Excess capacity</li> <li>• Suspicious bidding patterns</li> <li>• Coordinated unexplained behavior</li> </ul>	<ul style="list-style-type: none"> <li>• Tender/bid submissions and bid histories</li> <li>• Bid evaluation reports</li> <li>• Procurement committee records</li> <li>• Inter-firm communications</li> <li>• Industry association meeting records</li> </ul>
<b>Disclosures &amp; Exchange of Competitively Sensitive Information</b>	<ul style="list-style-type: none"> <li>• Sharing of pricing, margins, costs, or strategy between competitors</li> <li>• Coordination via trade associations</li> <li>• Parallel commercial decisions following exchanges</li> <li>• Reduced independent pricing behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• Trade association minutes, agendas, membership rules</li> <li>• Emails / WhatsApp / SMS between competitors</li> <li>• Meeting attendance records</li> <li>• Benchmarking or shared industry reports</li> <li>• Internal compliance policies</li> </ul>
<b>Abuse of Dominant Position</b>	<ul style="list-style-type: none"> <li>• Exclusionary conduct against competitors</li> <li>• Unjustified price discrimination</li> <li>• Barriers to entry or expansion</li> <li>• Sudden changes in access or supply conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Pricing structures and discount policies</li> <li>• Customer contracts and exclusivity clauses</li> <li>• Internal strategy and board papers</li> <li>• Market share and dominance analyses</li> <li>• Complaints from competitors/customers</li> </ul>

# Practical Advice for Common Market Concerns



## Price Increase Announcements

### Enterprises should in their social media blasts:

- Explain their own business reasons only
- Avoid language that implies industry-wide alignment (“everyone is raising prices”, “the sector is moving this way”)
- Focus on cost drivers, supply chain issues, or investment needs specific to their business.



## Concerns about “copying” products

### Counsel should help the client determine whether the issue is:

- Competition law–related (e.g., exclusionary conduct, predatory pricing, collusion)
- Intellectual property–related (e.g., trademark, copyright, patent infringement)
- Consumer protection–related (e.g., misleading marketing)
- A normal competitive response



# Practical Advice for Common Market Concerns continued



## To Complain or not to complain

- X Personal disputes with a company, such as a billing error, poor customer service, or a refused repair.
- X Issues with a store's specific return policy or failure to provide a refund.
- X Private disagreements between two parties regarding the terms of a contract
- X Requests for information on the reputation, legitimacy, or financial status of a specific business.
- X Problems with debt collection agencies.



## Understanding Monopolies

**A monopoly is not illegal by itself but abuse of monopoly power is**

Counsel should watch for behaviours that keep rivals out, such as:

- **Refusing access** to essential facilities
- **Exclusive contracts** that foreclose the market
- **Predatory pricing** aimed at eliminating competitors
- **Tying or bundling** that forces customers into unwanted products.



# Types of Evidence in Anti-Competitive Cases

Where an enterprise faces parallel civil or criminal cases and/or Tribunals/Hearings, anticipate cross-use of evidence.

Avoid "Black Box" Models: -Regression models with dozens of variables but no explanation of why each was chosen; -Machine-learning models that produce predictions without interpretable logic; -Simulations where the algorithm is proprietary or undisclosed.



**Direct Evidence:** Emails, Documents, and Communications: Judges look for explicit agreements or communications between competitors that indicate price-fixing, collusion, or abuse of dominance.

Example: Emails or memos where competitors agree to set prices or divide markets.

**Circumstantial Evidence:** Evidence of identical price increases, tender coordination, or similar market behavior that is difficult to explain without coordination

Example: Competitors raise prices simultaneously without any reasonable market justification.

**Market Data and Economic Analysis:** Economic models, pricing data, and market share statistics showing changes in competition after a merger or cartel behavior.

Example: Post-merger price hikes or market behavior changes that demonstrate a reduction in competition.

**Witness Testimony:** Testimonies from employees or whistleblowers inside the enterprise who can testify to unlawful practices or agreements.

Example: A former employee discloses details of a price-fixing arrangement between competitors.

**Documentary and Physical Evidence:** Any formal agreements or even recordings of meetings where collusion or anti-competitive agreements were discussed.

Example: A recording of a cartel meeting where participants agree to divide markets or set prices.



# Making a Complaint to the FTC



- Anyone suspecting anticompetitive behaviour by a business enterprise, whether being directly affected or not by such behaviour, may file a complaint with the FTC. Complaints may be provided to the FTC directly, anonymously or through an intermediary (such as a legal adviser). They may be submitted on behalf of more than one person or party.
- To assist the FTC in assessing the matter, a Complainant should submit any information that it has or has access to, and is encouraged to provide as much of the following information as possible:

A description of the relevant facts regarding the conduct the Complainant is concerned about

Information on any documents that relate to the conduct including copies of those documents where possible

Information about the business enterprise or individual(s) involved in the conduct, including their contact information where known

Specify the nature and scope of the business activities pursued by the business enterprise or individual involved in the conduct

Indicate if a relationship exists between the legal entity or natural person submitting the complaint and the subject(s) of the complaint (e.g., customer, competitor, etc)

Where necessary, a description of the Complainant's position on the market, i.e., a list and description of the customers buying/selling the product or service, the suppliers thereof and the rivals active on the same level of the distribution chain

Submit statistics or other data available that relate to the facts set out, in particular where they show developments in the marketplace to support the allegations complained about (e.g., information related to prices and price trends, barriers.)

Copies of statements/complaints which have been submitted to the Complainant by external parties, employees, agents, witnesses, who have been affected by the conduct complained about.

**\*Complaints may be made by telephone, e-mail, post, in person at the FTC's office, or via its Complaints Form by visiting the FTC's website at [tandftc.org](http://tandftc.org). There are no costs associated with filing a complaint at this time.**



## Ensuring Compliance with the FTA

# Why does compliance with the FTA matter?

## PART VII

### POWERS OF THE COURT

**44.** (1) The Court shall have jurisdiction to hear and determine—

(a) applications made by the Commission for an Order to—

- (i) prohibit or restrict the transfer of shares;
- (ii) prohibit an agreement, practice or decision from being made or carried out;
- (iii) terminate an agreement or practice;
- (iv) prohibit the acquisition of the assets of one company by another company except such acquisition as are permitted under mergers referred to in section 14;
- (v) require a company to divest specified assets or shares; or
- (vi) disqualify persistent offenders from serving as company directors;

(b) reviews of any decision made by the Commission at the request of any party;

(c) applications for deferment under section 45; and

- Further to its powers which are set out in several provisions in the Fair Trading Act, the FTC can take to Court [any business or individual](#) who it believes is guilty of anti-competitive conduct and has failed to take corrective measures, after being instructed by the Commissioners.
- Knock on effects enterprises often face after being investigated or penalized for anti-competitive conduct: share prices dropping, credit ratings downgraded, higher insurance premiums, risk of being blacklisted, reputational damage, disqualification from public procurement, removal from approved supplier lists, supplier retaliation or renegotiation, loss of key customers, employee turnover, civil lawsuits and class actions, loss of competitive advantage etc.



# Spotlight on Offences

Issue / Misconduct	Case Law	What Authorities Found	Professional Duties / Required Safeguards
<b>Providing misleading or false information</b>	<i>EU: Canon/Toshiba, Facebook/WhatsApp, General Electric</i>	Parties <b>submitted incomplete or inaccurate information during merger review</b> ; fines imposed for procedural breaches.	<b>Duty to verify all factual claims</b> ; cross-check data with internal documents; ensure consistency across submissions.
<b>Withholding material information</b>	<i>US: Bazaarvoice/PowerReviews, EU: Altice</i>	Parties <b>failed to disclose key documents showing anti-competitive intent</b> ; authorities treated this as obstruction.	<b>Duty to disclose all relevant internal documents</b> ; avoid selective disclosure; maintain document-retention integrity.
<b>Misrepresenting market data or competitive effects</b>	<i>UK: Pfizer/Flynn Pharma, EU: Google Shopping (conduct cases)</i>	Authorities found that parties provided <b>market data that was incomplete or framed to mislead</b> .	<b>Duty to validate market data sources</b> ; ensure economic evidence is independently reviewed; avoid advocacy disguised as fact.
<b>Failing to correct errors in submissions</b>	<i>EU: Marine Harvest, US: multiple HSR cases</i>	Authorities fined parties <b>for not correcting inaccurate filings or failing to update information</b> .	<b>Duty to promptly correct any errors</b> ; continuous obligation to update authorities as new facts emerge.
<b>Gun-jumping and premature integration</b>	<i>EU: Altice, US: Flakeboard/SierraPine</i>	Parties <b>exchanged competitively sensitive information</b> and coordinated before approval.	<b>Duty to implement clean-team protocols</b> ; verify that integration steps occur only after clearance.

s. 11 of the FTA: A person who alters any record or destroys any record likely to be required for any investigation that has commenced under this Act, is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.



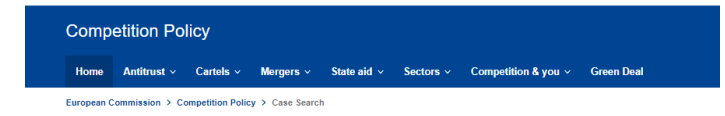
# Competition Law Resources



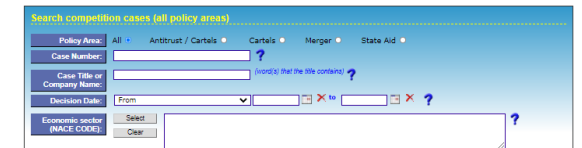
Competition & Regulation European Summer School and Conference



CENTRE FOR COMPETITION POLICY



## Case Search



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Thank You



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