S.I. 97 of 2022

FAIR TRADING ACT, 2022

(Act 12 of 2022)

FAIR TRADING (PRESCRIBED FORMS) REGULATIONS, 2022

ARRANGEMENT OF REGULATIONS

REGULATIONS

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S.I. 97 of 2022

FAIR TRADING ACT, 2022

(Act 12 of 2022)

Fair Trading (Prescribed Forms) Regulations, 2022

In exercise of the powers conferred by section 142(1) of the Fair Trading Act, 2022, the Minister responsible for trade hereby makes the following regulations —

Citation

1. These Regulations may be cited as Fair Trading (Prescribed Forms) Regulations, 2022.

Forms

2. The prescribed forms to be used under the relevant sections of the Act shall be as set out in the schedules.

Prescribed Forms

SCHEDULE 1

[Section 37]

Summons For Attendance

To ..... of .....

WHEREAS pursuant to section 37 of the Fair Trading Act, 2022, your presence is necessary for attendance as a witness in an investigation or for the production of documents for the purpose of an investigation.

You are hereby required to appear in person (or) by advocate, at the Commission at ……..... on the …..….. day of …..…..….. at …..….. o'clock in the ……..….. noon.

Herein fail not.

Take notice that as per Section 37 of the Fair Trading Act, 2022 failure to comply with the above without lawful or reasonable excuse is an offence and you may be liable on conviction to a fine.

Dated this ..... day of ..... 20.....

DATE AND SIGNED BY THE CHIEF EXECUTIVE OFFICER

THE SEAL OF THE COMMISSION

SCHEDULE 2

[Section 39(2)]

Authorisation for entry, search, inspection of goods or documents and taking of samples

Pursuant to section 39 of the Fair Trading Act, 2022, where an officer authorised by the Commission, in this section referred to as the "authorised officer", has reason to believe that goods will or may cause injury to a person, the authorised officer may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter into any premises in or from which the authorised officer has reason to believe that a person supplies goods of that kind in trade or commerce, and

(a) inspect goods of that kind;

(b) take samples of goods of that kind;

(c) inspect any documents relating to goods of that kind and make copies of, or take extracts from, those documents; or

(d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

You are hereby required to provide such assistance as the authorised officer considers necessary to enter the premises specified in the authorisation and to exercise the powers specified in subsection (1) in relation to those premises.

DATE AND SIGNED BY THE CHIEF EXECUTIVE OFFICER

THE SEAL OF THE COMMISSION

SCHEDULE 3

[Section 41 (1), (2) and (3)]

Fixed penalty form and fixed penalty issuance guidelines

A fixed penalty notice under section 41(3) shall be in the form set out hereunder.

Fixed Penalty Form

FIXED PENALTY NOTICE **Pursuant to Section 41 of the Fair Trading Act, 2022**	
Name & Address of the person or entity to whom the notice applies:	
License N°:	
Licensee N°:	
Date of inspection:	
Provision of the Act not complied with:	
The description of the circumstances that constitute the prohibited conduct are as follows:	
Penalty to be paid:	
Time within which the penalty is to be paid: ***The fixed penalty shall be paid within 30 days of the receipt of the notice to the Commission.***	
Consequence for failure to comply: ***Proceedings may be instituted against the enterprise or person to whom the notice is issued and does not comply with the fixed penalty notice within the period specified, for the prohibited conduct in respect of which the notice was issued.***	
Enquiries to be made to: **Chief Executive Officer** **Fair Trading Commission** **Block B, 3rd Floor, Room 301-306, Unity House, Victoria**	
Issued by: **Mr. Francis Lebon** **Chief Executive Officer** **Fair Trading Commission**	**Signed:** **Date:** .....

……

……

This slip must accompany your payment.

To: Chief Executive Officer
Fair Trading Commission
Block B, 3rd Floor, Room 301-306
Unity House, Victoria

I enclose with this letter the amount of ……

NAME:
ADDRESS:
Signature _____ Date _____

Pursuant to section 41(2) fixed penalty shall be issued in line with the following issuing guidelines.

In column 1 shall be the relevant sections of contraventions and the number of products found for that contravention and in column 2 shall be the corresponding penalty for the number of products found in the contravention of the section

Considerations	**Fixed Penalty Fee**
Sections 76	
1 - 5 types of products in breach of the Act (per section)	SCR 1,500
6 - 10 types of products in breach of the Act (per section)	SCR 4,000
11 - 15 types of products in breach of the Act (per section)	SCR 6,500
16 - 20 types of products in breach of the Act (per section)	SCR 9,000
21 - 25 types of products in breach of the Act (per section)	SCR 11,500
26 - 30 types of products in breach of the Act (per section)	SCR 14,000
31 - 35 types of products in breach of the Act (per section)	SCR 16,500
Over 35 types of products in breach of the Act (per section)	SCR 20,000

Sections 72, 73,	
1 – 5 types of products in breach of the Act (per section)	Compliance Notice (no penalty)
6 – 15 types of products in breach of the Act (per section)	SCR 1,500
16 – 25 types of products in breach of the Act (per section)	SCR 4,000
26 – 35 types of products in breach of the Act (per section)	SCR 6,500
36 - 45 types of products in breach of the Act (per section)	SCR 9,000
46 - 55 types of products in breach of the Act (per section)	SCR 11,500
56 – 65 types of products in breach of the Act (per section)	SCR 14,000
66 - 75 types of products in breach of the Act (per section)	SCR 16,500
Over 85 types of products in breach of the Act (per section)	SCR 20,000
Section 74 (1) Wholesalers only	
1 type of products in breach of the Act (per section)	SCR 3,000
2 – 4 types of products in breach of the Act (per section)	SCR 6,000
5 - 10 types of products in breach of the Act (per section)	SCR 9,000
Over 10 types of products in breach of the Act (per section)	SCR 20,000
Section 74(1) Suppliers, excluding wholesalers	
1 type of products in breach of the Act (per section)	SCR 1,500
2 – 4 types of products in breach of the Act (per section)	SCR 3,000
5 - 10 types of products in breach of the Act (per section)	SCR 6,000
Over 10 types of products in breach of the Act (per section)	SCR 20,000
Sections 74, excluding Section 74 (1)	
1 – 5 types of products in breach of the Act (per section)	Compliance Notice (no penalty)
6 – 15 types of products in breach of the Act (per section)	SCR 1,500
16 – 25 types of products in breach of the Act (per section)	SCR 4,000

26 – 35 types of products in breach of the Act (per section)	SCR 6,500
36 - 45 types of products in breach of the Act (per section)	SCR 9,000
46 - 55 types of products in breach of the Act (per section)	SCR 11,500
56 – 65 types of products in breach of the Act (per section)	SCR 14,000
66 - 75 types of products in breach of the Act (per section)	SCR 16,500
Over 85 types of products in breach of the Act (per section)	SCR 20,000
Section 77	
Failure to provide receipt	SCR 3,000
Failure to provide a receipt that meets the requirement of the law	SCR1,500

SCHEDULE 4

CERTIFICATE OF PAYMENT/NON-PAYMENT OF FIXED PENALTIES

[section 41 (8)]

(AMEND AS APPLICABLE)

THIS IS TO CERTIFY THAT ON THE …….. of …….. 20…. A FIXED PENALTY WAS ISSUED TO …… of …….. .

IN OUR RECORDS, AS OF THE ……. DAY OF ……., THE ABOVE MENTIONED PERSON HAS MADE THE PAYMENT OF SCR…….. AS FULL AND FINAL SETTLEMENT WITH REGARDS TO THE FIXED PENALTY ISSUED IN HIS OR HER NAME.

HAS NOT MADE THE PAYMENT OF SCR…….. WITH REGARD TO THE FIXED PENALTY ISSUED IN HIS OR HER NAME.

……..
DATE AND SIGNED BY THE CHIEF EXECUTIVE OFFICER

THE SEAL OF THE COMMISSION

SCHEDULE 5

CHARGE PAYABLE FOR EXECUTION BY THE COMMISION

[section 60 (4)]

For the purposes of section 60(4) of the Act, the Commission shall charge a fee of 1% on any sum of money paid to and received by the Commission on behalf of a complainant in consequence of execution of a decision or order of the Tribunal and such fee shall be paid to the Commission.

SCHEDULE 6

REVIEW OF NOTICE

[section 124 (1)]

I …… of …… being dissatisfied with a notice issued to me by the Fair Trading Commission on the …….. of …….. 20.., hereby apply to the Tribunal for a review of that notice.

I hereby submit the following grounds in support of my review:

1.

2.

3.

4.

Attach the following documents

SCHEDULE 7

GRANT OF AUTHORISATION FORM

[section 128 (2)]

An enterprise desirous to enter into or carry out an agreement or to engage a business practice which, in its opinion, is an agreement, or practice affected or prohibited under Part V, may apply to the Commission for an authorisation to do so in the form set out hereunder.

Reference No:

PART 1: DETAILS OF APPLICANT	
Name(s):	Website
Address	
Telephone No:	Email Address:
Are you representing an enterprise (e.g. company association, partnership or society) in making this application? Yes: ☐ No: ☐ Please provide the relevant information relating to the enterprise below	
Name of enterprise:	Website:
Address:	
Telephone No:	Email Address:

If this Authorisation Form is being filed jointly with other natural and/or legal person(s), please tick the box ☐ and provide their name(s), contact details and other relevant information on a separate sheet.

Other relevant details:

PART 2: DESCRIPTION OF THE ALLEGED ANTI-COMPETITIVE ACTIVITY SEEKING AUTHORISATION
Nature of the anti-competitive activity: ☐ Abuse of Dominant Position ☐ Restrictive Horizontal Practices. ☐ Restrictive Vertical Practices
List the product/service that would be affected by the alleged anti-competitive activity:
In accordance with section 128 of the Fair Trading Act, 2022, please provide reasons for your proposal to engage in the alleged anti-competitive activity. Provide reasons as to why the Commission should recommend the authorisation to the Tribunal *If you need more space, please attach extra sheets to the document.*

Please list all the evidence supporting your claim and attach all the relevant documents: *(e.g. agreements, minutes of meetings, business documents, circulars, correspondence) Please identify any part of the information that should be treated as confidential*

Details of other parties who may be able to provide further information regarding your claim:

PART 3: MARKET INFORMATION
Set out your views on your possible competitor(s) in the market and provide their market share (or an approximate) and state whether you believe your engagement in the alleged anti-competitive activity will affect your competitors?

REVOCATION OR AMENDMENT OF AUTHORISATION

In accordance with Section 130 (1) of the Fair Trading Act, 2022, the Tribunal may—

(a) revoke an authorisation where it is satisfied that—

(i) the authorisation was granted on information that was false or misleading;

(ii) there has been a breach of any terms or conditions, subject to which the authorisation was granted; or

(iii) the circumstances that justified the grant of the authorisation no longer exist; or

(b) amend the authorisation where it is satisfied that the current conditions in the market necessitate an amendment.

STATEMENT OF DECLARATION

A person who gives to the Commission or an officer of the Commission any information which he or she knows to be false or misleading commits an offence and is liable on conviction to a fine of level 4 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment**.**

Section 139 (3) Fair Trading Act, 2022

"I, the undersigned warrant that the information given in this Authorisation Form is true, accurate and complete to the best of my knowledge, that the attached copies of the documents are unabridged, that all estimates are identified as such and submitted to the best of my knowledge of the facts of the case, and where an opinion is stated in good faith"

Name	
Signature	
Date	

FOR OFFICIAL USE ONLY

Receiving officers comments:		
Name:	**Signature:**	**Date:**

SCHEDULE 8

Merger Application Form

[section 133(2)]

An enterprise desirous of effecting a merger shall make an application to the Commission in the form and manner set out hereunder.

Merger Application Form

Please fill out all the parts of this form to the best of your knowledge and attach all the required documents.

Part 1: GENERAL INFORMATION

1. Information from the applicant(s) and other parties subject to the merger application.

ENTERPRISE REPORTING THE MERGER	
Name of enterprise:	Website:
Address:	

Phone Number	Email:
Category of enterprise: Sole Trader ☐ Partnership ☐ Company ☐ Other:	
Provide a brief description of your business:	

MERGER COUNTER PARTY INFORMATION	
Name of enterprise:	Website:
Address:	
Phone Number	Email:
Category of enterprise: Sole Trader ☐ Partnership ☐ Company ☐ Other:	
Provide a brief description of the nature of the enterprise's business:	

(a) In this merger, the enterprise reporting the merger transaction is:
Acquiring person[1] ☐ Acquired Person[2] ☐ Both ☐

[1]*Any enterprise which as a result of the proposed transaction will hold voting rights, security or assets in the target firm either directly or indirectly, or through fiduciaries, agents, or other entities acting on behalf of such enterprise.*

(b) State if the proposed merger is subject to filing requirements of another local or foreign authority other than the Fair Trading Commission.

If yes, please state the country and/or authority to which the filing is made/to be made, and all the decisions and/or directions issued by the local or foreign authorities in respect to the proposed merger.

2. Appointment of Representative(s):

Please give the name(s), address and contact information of the person(s) to which all communications should be made to and documents pertaining to this merger notification should be delivered to, and any representatives or joint representatives (if a joint notification) who have been authorized to act for each of the parties to the application.

3. State whether the shares or other interest are being purchased, leased, combined or otherwise transferred and the mode of payment for the merger:

4. State reasons for the proposed merger transaction:

(i) provide justification as to why the merger should be allowed.

[2]*Any enterprise party to the proposed merger or consolidation is a target firm if, as result of the transaction, the assets or voting securities of any entity included within such enterprise or company will be held by the acquiring firm(s)*

(ii) Specify whether any alternative purchaser/solution has been sought prior to the parties' decision to merge.

(If you need more space, please attach extra sheets to this document)

Part 2: Ownership and Control

5.

Provide the following information for all firms directly and/or indirectly controlling the firm filing the merger notification:	
Name of firm:	
Address:	Website:
Phone Number	Email:
Controlling the applicant: Directly ☐ Indirectly ☐	
If you need to list additional firms or provide additional information, please attach extra sheet(s)	

6.

Provide the following information for all firms directly and/or indirectly controlled by the firm(s) listed in question 5:	
Name of firm:	
Address:	Website:
Phone Number	Email:
Controlled: Directly ☐ Indirectly ☐	
If you need to list additional firms or provide additional information, please attach extra sheet(s)	

7.

Provide the following information for all firms directly and/or indirectly controlled by the parties to the merger	
Name of firm:	
Address:	Website:
Phone Number	Email:
Nature of control: Directly ☐	Indirectly ☐
If you need to list additional firms or provide additional information, please attach extra sheet(s)	

8. In a separate paper which you shall label Annex 1:

(i) Provide a flow chart highlighting the ownership and control structure of the merging parties pre-merger.

(ii) List any other equitable interest belonging to the parties to the merger.

(iii) Names and addresses of the current and past (two years) directors and shareholders of each parties to the merger.

(iv) Names and addresses of all enterprises active in any affected markets that are controlled, indirectly by the parties to the merger.

PART 3: DETAILS OF THE PROPOSED MERGER

9. Describe in detail the nature of the merger for which authorisation is sought including:

(a) Whether all or specific parties are subject to the merger;

(b) The structure of ownership and control after the completion of the merger;

(c) The value of the transaction (the purchase price or the value of all the assets, shares or other interests involved, as the case may be);

(d) Any financial or other support received from any source by any of the parties, the nature and amount of this support. (Including public authorities, Foreign Direct Investment (FDI), buy-out, etc.);

(e) The date or proposed dates of any major events designed to bring about the completion of the merger;

(f) A brief explanation of the economic and financial structure of the merger.

(If you need more space, please attach extra sheets to this document.)

PART 4: MARKET INFORMATION

10. Explain the distribution channels[3] and service networks, if any, that exist in affected markets taking into account the following where appropriate:

(a) Distribution systems[4] prevailing on the related markets and their importance.

(b) Whether your enterprise is in competition with imported products ('Import Competition'[5])?

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[3] *A path through which goods and services flow in one direction (from vendor to the consumer), and the payment generated by them that flow in the opposite direction (from consumer to the vendor). A distribution channel can be as short as being direct from the vendor to the consumer or may include several interconnected intermediaries such as wholesalers, distributors, agents or retailers. Each intermediary receives the items at one pricing point and moves it to the next higher pricing point until it reaches the final buyer.*

[4] *All the channels making up the system.*

[5] *Refers to an industry that competes with imports.*

11. In a separate document entitled Annex 2, provide an estimate of:

- The market shares in terms of value and volume for each of the merging party for the past 5 years. (Indicate the basis and source for the calculations and provide relevant documents to confirm these calculations)

- The relative market shares of other suppliers/manufacturers (in terms of volume (units^2 and value (SCR)) – for the past 5 years. Indicate the basis and source for the calculations and provide relevant documents to confirm these calculations.

- The market shares of the merging parties in the market (in terms of volume (units^{2}and value (SCR)) both pre- and post-merger status?

  *Indicate the basis and source for the calculations and provide relevant documents to confirm these calculations.

- The total value, volume and sources of imports that has had an impact in the relevant market for the past 5 years.

12. Identify all relevant product/service sold by any of the notifying parties. In addition, list all substitute products and/or services, if any. Use the 5-digit Standard Industrial Classification (SIC) Codes to identify the product(s) and/or service(s):

Product/ Service of the notifying parties	SIC Code (if applicable)	Substitute(s) in the market	Geographic Region Sold

13. For each substitute identified in Question 12, please provide the contact details for the top five (5) producers and/or providers in each identified geographic area with and their estimated market share and/or turnover during the last twelve (12) months.

Product/ Service	Producer/ Provider Name & Information	Geographic Region	Turnover/market share (if known)

14. For each product and/or service sold by the notifying parties listed in question 12, please provide the turnover within the last twelve (12) months:

Product/Service	Geographic Region	Turnover (if known)

15. Identify the five largest customers of the products/ services provided by the notifying parties listed in Question14 with the all their contact details stating their individual share of the total sales of the goods and services attributed to each customer in the past 12 months.

Product/ Service	Customer Name & Information	Geographic Region	Purchases

PART 5: MARKET ENTRY

16. State whether there has been significant entry into any of the related markets over the past five years and provide an explanation for your claim?

17. In your opinion, what are the likelihood of new entrant(s) in the markets? Provide an explanation for your views.

18. If there is likely to be new entrants in the market, give names, address and contact telephone numbers of such entrants.

19. In a separate document entitled Annex 3, please describe the various factors influencing entry into related markets that exist in the present case, examining entry from both a geographical and product/services view point. In so doing, take account of the following where appropriate:

    (a) The total costs of entry including—

        (i) Research and Development (R & D);

        (ii) Establishment of distribution systems;

        (iii) Promotion & Advertising;

(iv) Servicing;

(v) Other costs;

- On a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;

(b) any legal or regulatory barriers to entry, such as government authorization or relevant regulations and/ or requirements pertaining to standards;

(c) any restrictions created by existence of patents, know how and other intellectual property rights in these markets and any restrictions created by licensing such rights;

(d) the extent to which each of the parties to the mergers are licensees or licensors of patents, knowhow and other rights in the relevant markets;

(e) the importance of economies of scale for the production of products in the related markets;

(f) Access to sources of supply, such as availability of raw materials and necessary infrastructure.

PART 6: GROUNDS FOR CLAIMING THE AUTHORIZATION

20. Provide reasons as to why the proposed merger will not restrain competition nor will it have any adverse effect on trade or the economy in general.

(If you need more space, please attach extra sheets to this document)

21. Summarise any provisions that you may have in any of your agreement that may restrict the other parties to the merger in their freedom to take independent commercial decisions.

22. State how the merger will allow the merged parties to achieve efficiency gains? (*Include risks and cost involved to achieve such efficiencies.)*

23. Provide the information/contentions relied upon to substantiate the aim of the proposed merger (This may include competitive effects, efficiencies, failing firms, public interest issues e.g. employment, export development, increased tax, consumer welfare, technological transfer, market development, etc).

[Note: The Commission will need to be satisfied that the agreement is consistent with the objectives of the FairTrading Act, 2022.

PART 7: DECLARATION

I/We declare that, to the best of my and/or our knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying fact and that all the opinions expressed are sincere. I recognize that providing information which is false or misleading is punishable by law in accordance with section 139 of the Fair Trading Act, 2022.

Date at.....this.....day of.....year.....

Name(s):.....
.....
.....
.....

Signature (s):
.....

I/We attach the following relevant documents:

- □ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet)
- □ Copy of Agreement or other documents relating to the merger transaction
- □ Press Release or other Shareholders, Board or management statement on the merger transaction
- □ Other market or industry study reports that support the transaction
- □ Copies of Business plans for each party to the merger for the current year and medium term (that is preceding 3 years)
- □ Copies of all relevant documents pertaining to the failing firm/department claims: the documents should clearly indicate that failure is unavoidable under current ownership, trading conditions prevailing will result in poorer performances, all possible refinancing avenues have been explored and exhausted to no avail and finally all other plausible effort to redeem the firm/department has been explored.

Office Use only

Received By:	
Name:	**Signature:**
Date received:	**Reference Number:**

Please quote this reference number in all correspondence from the FTC

Please be advised that a non-refundable fee of SCR 1500 is payable upon submission of the completed application.

Should the Commission approve the proposed merger the parties concerned will be subjected to a fee as described in the table below of their combined most recent turnover for their preceding financial year. Conditions where the parties applying for the merger are either individual or both failing firms the Commission will use its discretion to set the most appropriate fee possible.

Thresholds for Combined Turnover or Asset Value	**Fee**
SCR 10 million or less than 25 million	0.1 % of combined turnover or asset value
SCR 25 million and above	0.5% of combined turnover or asset value

Notes:

1. *If the information required by this Merger Application Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided*

2. *The information sought or requested for submission by the Commission is considered relevant and necessary to the assessment of the application.*

3. *Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 139 of the Fair Trading Act, 2022 provides that misleading or incorrect information where supplied intentionally can make the notifying party or parties liable to a fine or imprisonment or to both.*

4. *The application must be completed in English/ French or Creole and type-written or printed. The information requested by this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified true copies.*

5. *Abandonment of merger. The filing firm must inform the Commission in writing if it has decided to abandon the merger. The merger notification fee paid in respect of that merger shall be non-refundable.*

6. *The notification should be delivered during normal working hours that is between 8.00 am to 4.00pm from Monday to Friday at the following address:*

Chief Executive Officer *Fair Trading Commission* *Block B, 3rd Floor* *Unity House* *Victoria*	*Tel: +248 4325250* *Email: (competition@fic.sc)*

Part 8: Acknowledgement of Receipt

This acknowledgement of receipt will be returned to the name and address inserted below
To be completed by the Applicant(s)
To: name and address of Applicant(s)
Name(s):.....

Address of Applicant (s):
.....
.....
.....

OFFICIAL USE ONLY

To be completed by Fair Trading Commission

NOTIFICATION REQUIREMENTS

Merger Notification Fee SCR:

Paid by:
Manner of Payment:
Received by:
Date payment received:

Action Officer:	
Name:	**Signature:**
Date received:	**Reference Number:**

Please quote this reference number in all correspondence from the Fair Trading Commission.

MADE this 15th day of September, 2022.

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE