CARICOM COMPETITION COMMISSION GUIDELINES ON JURISDICTION

In accordance with Chapter VIII of the Revised Treaty of Chaguaramas, 2001

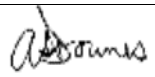
Organisation:	CARICOM Competition Commission
Policy Title:	Guidelines on the CCC's Jurisdiction under Chapter VIII of the Revised Treaty of Chaguaramas
Date submitted for approval:	28th March 2025
Approving Body/Committee:	The Board of Commissioners of the CARICOM Competition Commission
Approval Date:	10th April 2025
Signature of Chairman:	

Table of Contents

Jurisdiction iv
Rationale iv
Disclaimer iv
Citation iv
Section I – Interpretation 1
Section II – Introduction 3
Section III – Definition of *"Cross-border"* Business Conduct 5
Section IV – Definition of *"an enterprise in the CSME"* 7
A. The criteria for legal persons 7
Section V – Cross-border transaction circumstances 10
Section VI – Transaction with cross-border effect circumstances 11
Section VII – Final provisions 14

Jurisdiction

In the exercise of the power to establish its own rules under Article 174(7) of the Revised Treaty of Chaguaramas, 2001 and all other enabling powers the CARICOM Competition Commission hereby issues these Guidelines on Jurisdiction.

Rationale

The powers of the CARICOM Competition Commission to investigate, adjudicate and enforce the rules of competition under Chapter VIII of the Revised Treaty of Chaguaramas are granted in relation to *"cross-border business conduct."* The concept of *"cross-border business conduct"* is not defined in the Revised Treaty of Chaguaramas. Consequently, the primary rationale for these Guidelines on Jurisdiction is to clarify the concept of *"cross-border business conduct"* and to identify the circumstances in which the CARICOM Competition Commission may assert jurisdiction on that basis.

Disclaimer

These Guidelines are for general informational purposes only. They do not constitute legal advice with respect to any specific case and should not be relied upon as a statement of law on the Revised Treaty of Chaguaramas. Stakeholders are encouraged to seek appropriate legal advice in relation to matters contained in these Guidelines. They articulate the CARICOM Competition Commission's view of the criteria it considers relevant to an assessment of jurisdiction; however, the Commission may depart from the matters contained in these Guidelines as required according to the specific circumstances of or law applicable to any case. These Guidelines are also without prejudice to any interpretation or opinion of the Caribbean Court of Justice (CCJ) on the matters contained herein.

Citation

These Guidelines may be cited as: "The CCC Guidelines on Jurisdiction, 2025."

Section I – Interpretation

[1] Definitions:

Unless otherwise specified, the terms defined hereunder will have the following meanings:

"agreement" includes agreement as defined in competition legislation or applicable guidelines issued by the Commission.

"*business conduct*" includes any transaction or activity carried on for gain or reward or in the course of which goods or services are produced, manufactured or supplied as the case may be.

"cross-border business conduct" includes the definitions in Sections III, V and VI of these Guidelines.

"*CCJ*" means the Caribbean Court of Justice established under Chapter IX of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, 2001.

"concerted practice" includes concerted practice as defined in competition legislation or applicable guidelines issued by the Commission.

"*Commission*" means the CARICOM Competition Commission constituted under Article 171 of the Revised Treaty of Chaguaramas.

"*CSME*" means the CARICOM Single Market and Economy.

"dominant position" includes dominant position as defined in competition legislation or applicable guidelines issued by the Commission.

"*ECJ*" means the European Court of Justice.

"*EEC Treaty*" means the Treaty Establishing the European Economic Community.

"Enterprise" means 'enterprise' as defined under Article 1 of the Revised Treaty of Chaguaramas, 2001 and includes legal persons such as a company.

"Member State" means members of the CSME indicated under Article 3 of the Revised Treaty of Chaguaramas.

"*Revised Treaty*" means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, 2001.

[2] General principles:

In these Guidelines unless the context indicates otherwise:

a. references to “he/him” shall be taken to include “she/her”, unless otherwise provided.

b. words in the singular include the plural and words in the plural include the singular.

c. a period of time expressed as a number of days shall be computed as calendar days.

Section II – Introduction

[3] Competition is critical to the objectives and policies of the CSME, which is established under the Revised Treaty. Competition safeguards the economic benefits that are expected from the creation of a regional single market for goods and services. In this context, competition law enforcement is necessary in order to address cases in which business conduct - such as transactions or commercial practices in any given market - is likely to negatively affect competition.

[4] Chapter VIII of the Revised Treaty, which contains the Community Competition Policy, establishes the CARICOM Competition Commission to enforce the "*rules of competition in respect of anti-competitive cross-border business conduct.*"[1] This general mandate for enforcement is further particularized under Article 174 which provides that *[s]ubject to Articles 175 and 176, the Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.*

As a general matter based on Chapter VIII, the following conditions should exist in any given case for invocation of the Commission's jurisdiction to enforce the rules of competition in a Member State:

a. there should be business conduct by an enterprise(s) in the CSME;

b. the business conduct can include:

   i. a "*cross-border transaction*";

   ii. a "*transaction with cross-border effects*"; or

   iii. a "*business conduct with cross-border effects*";

c. the business conduct should be of a type or category of conduct likely proscribed under competition legislation in the relevant Member State(s); and

d. the business conduct should be capable of either *"prejudicing trade"* or *"preventing, restricting or distorting competition within the CSME."*

[5] The conditions under paragraph 4 are cumulative, and all must exist in the circumstances of a given case in order to vest the Commission with the requisite jurisdiction. Where the conditions are satisfied, Articles 175 and 176 stipulate the procedural mechanisms for invoking the Commission's jurisdiction to investigate, adjudicate and enforce the rules of competition as enacted in the Member States.

[1] Article 173(1). Given the scheme of Chapter VIII, in particular Articles 170(1)(b)(i), 170(2) and 177(1), the "*rules of competition*" to be enforced by the Commission are those model rules stated under Articles 177 – 179 of the Revised Treaty as they have been incorporated or transformed into municipal law by way of national competition legislation in the Member States.

[6] Based on Articles 174 - 176, the cross-border nature of business conduct is a requirement for the commencement of an investigation by the Commission, whether on request or *propio motu*. It is also important because it distinguishes the jurisdiction of the Commission as a regional institution from the jurisdiction of the national competition authorities that are established in the Member States.

[7] The concept of cross-border business conduct is not, however, defined in the Revised Treaty. There is currently no indication in the Revised Treaty of the circumstances in which business conduct may be treated as cross-border. Moreover there is currently a dearth of case law on the interpretation to be placed on the words *"cross-border"* in the Revised Treaty.

[8] Against that background, the Commission in the exercise of its Treaty power to regulate its own procedure under Article 174(7) as well as its inherent powers to interpret and apply Chapter VIII of the Revised Treaty of Chaguaramas, hereby issues these Guidelines for the purpose of clarifying the concepts of "*cross-border business conduct*" or *"business conduct with cross-border effects"* and to identify the circumstances in which it may assert jurisdiction on either of these bases.

[9] By these Guidelines, the Commission intends to promote transparency in its decision-making function in the field of competition law enforcement and policy development. It is hoped that this will enhance legal certainty for stakeholders, such as enterprises and their professional advisers, in the Commission's application of the "*rules of competition*". This is particularly relevant as it concerns the circumstances in which business conduct in the Caribbean Single Market and Economy may be treated as "*cross-border*" for the purposes of monitoring, investigation and adjudication by the Commission.

Section III – Definition of "Cross-border" Business Conduct

[10] Cross-border business conduct, as understood in the context of Chapter VIII of the Revised Treaty, is generally defined as a reference to business conduct that relates to more than one Member State. For the avoidance of doubt and except as provided in Section VI herein, business conduct that relates only to one Member State without potentially affecting another Member State is not cross-border business conduct, and accordingly will be outside of the scope of these Guidelines.

[11] Without limiting the generality of the foregoing definition of cross-border business conduct at paragraph 10 above, and in relation to the Commission's jurisdiction to monitor, investigate and adjudicate pursuant to Articles, 174, 175 and 176 the following definitions will generally apply:

a. "*Cross-border transactions*" – includes any business conduct that originates in the territory of a Member State and concludes in the territory of another Member State, which may include implementation of any part of the conduct in the territory of any other Member State.

b. "*Transactions with cross-border effects*" – includes any business conduct, which while originating and concluding in the territory of one Member State, could plausibly have consequences for economic activities in another Member State.

[12] The definition of "*transactions with cross-border effects*" at paragraph 11(b) above will also apply, with any necessary modification, to the reference to "*business conduct which has cross-border effects*" under Article 176 of the Revised Treaty.

[13] In recognition of the dynamic economic environment of the CSME, and in accordance with the definition of *"business conduct"* in Section I (Interpretation), references to *"business conduct"* in these Guidelines are meant to capture all types of transactions and economic activities that could raise competition concerns, regardless of the form in which they are structured by the enterprises involved or categorized under other legal regimes. This includes any business conduct that may have the effect of hindering or preventing an enterprise located in one Member State from establishing itself in another Member State.

[14] The foregoing definitions are consistent with the context in which the cross-border concept appears in the Revised Treaty. This treaty context primarily concerns economic activities among the Member States such as trade in goods and services as well as corporate establishment. The protection of the expected benefits from the exercise of rights of trade and establishment among the Member States is an important rationale for the regional competition policy in Chapter VIII of the Revised Treaty.[2]

[2] Article 169(2).

[15] The competition policy in Chapter VIII of the Revised Treaty shares some similarities with the competition policy of the European Union under the Treaty Establishing the European Economic Community and its successors. In this regard, the concept of cross-border business conduct under Chapter VIII of the Revised Treaty is broadly reminiscent of the concept of "*effect on trade between the Member States*" under Articles 85 and 86 of the EEC Treaty.

[16] While there are similarities between the competition regimes, there are also differences. Indeed, the Caribbean Court of Justice has cautioned against wholesale reliance on case law from the European Court of Justice due to "*the significant differences in the wording, nature and effect of the underlying legal instruments and the overarching governing system of law*."[3]

[17] Therefore although relevant guidance may be sought from the case law of the ECJ with respect to the concept of *"effect on trade between the Member States"* in the EU treaties, such case law cannot be conclusive on the definition to be given to cross-border business conduct in Chapter VIII of the Revised Treaty.

[18] By virtue of Articles 175 and 176 the business conduct in question must be by an "*enterprise in the CSME*". This in turn bears on the application of the foregoing definitions, and the Guidelines in the next section addresses this aspect.

[3] Trinidad Cement Limited v The Competition Commission [2012] CCJ 4 (OJ) at paragraph 27. For example, the concept of "effect on trade between the Member States" in European Union Law entails the related concept of "appreciability", which is recognized as a requirement by way of judicial interpretation by EU courts. The Revised Treaty does not refer to "appreciability", and the CCJ has not adopted the concept in CARICOM law.

Section IV – Definition of "an enterprise in the CSME"

[19] Enterprises, as defined in the Revised Treaty, are critical stakeholders in the achievement of the objects and goals of the CSME.[4] They are the subject of rights and obligations under the Revised Treaty as well as relevant implementing legislation in the Member States.

[20] Under Article 1 of the Revised Treaty, an "*enterprise*" means any person or type of organization, other than a non-profit organization, involved in the production of or the trade in goods, or the provision of services.[5] Broadly, this definition contemplates legal persons.

[21] Chapter VIII of the Revised Treaty prohibits enterprises from engaging in cross-border business conduct that prevents restricts or distorts competition in the CSME. The prohibition applies to an "*enterprise in the CSME*", as is evident by Articles 174, 175 and 176 of the Revised Treaty.

[22] Although Chapter VIII enables the Commission to exercise jurisdiction over an "*enterprise in the CSME*" in respect of anti-competitive conduct, the Revised Treaty does not indicate the circumstances in which an enterprise will be considered to be "*in the CSME*". Nonetheless, under the general law, jurisdiction may be exercised over a legal person once there is a sufficient connection between the person and the territory that is under the authority of the entity that asserts jurisdiction.[6]

[23] The determination by the Commission of whether an enterprise is "*in the CSME*" under this territoriality principle involves mixed questions of law and fact. It involves the principles, set out in these Guidelines, as the broad legal criteria to be satisfied for making the determination. It also involves factual issues regarding the evidence that the Commission will consider relevant for substantiating the existence of the criteria in any given case.

A. The criteria for legal persons

[24] Where a legal person, such as a company, is an "*enterprise*" within the meaning of the Revised Treaty, it will be considered to be "*in the CSME*" for the purposes of Chapter VIII where any of the following criteria is satisfied in relation to any Member State:

a. it is incorporated under relevant companies legislation;

b. it is incorporated under any relevant Act of Incorporation or other statutory instrument;

---

4 Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana [2009] CCJ 1 OJ at paragraph 13.

5 Article 1. "goods" are defined as "all kinds of property other than real property, money, securities or choses in action" and "services" are defined as "services provided against remuneration other than wages in an approved sector".

6 In the case of the Commission, this is the territory comprised of the Member States of the CSME.

c. it is registered as a foreign or external company under relevant companies legislation; or

d. it has established a place of business.

[25] A company or other legal person will need to satisfy one of the foregoing criteria irrespective of whether any other related legal person satisfies any of the criteria.

[26] Examples of the type of evidence which the Commission will consider relevant to satisfy the criteria under paragraphs 24(a), (b) and (c) in relation to any Member State, include but are not limited to:

a. a Certificate of Incorporation or any other like document issued by the relevant authority and in the name of the company;

b. an Act of Incorporation together with any relevant statutory instrument; or

c. a Certificate of Registration or any other like document issued by the relevant authority and in the name of the company;

[27] In relation to paragraph 24(d), the Commission will consider that a company or other legal person has "*established a place of business*" under these Guidelines and for the purpose of the Revised Treaty where:

a. in any Member State there is a physical location associated with the company or legal person and from which any activity related to its objects is carried out; or

b. the company or legal person has an agent in any Member State and the agent has authority to enter into contracts on behalf of the company or legal person without submitting such contracts to the company or legal person for approval.[7]

[28] Examples of the type of evidence which the Commission will consider relevant in deciding whether a company or other legal person has established a place of business under these Guidelines and for the purpose of the Revised Treaty in relation to any Member State, include but are not limited to:

a. owning or leasing any location in a Member State from which any activity related to its objects is undertaken;

[7] South India Shipping Corporation Ltd. v. The Export-Import Bank of Korea [1985] 1 Lloyd's Rep 413. See also Rakusens Ltd v Baser Ambalaj Plastik Sanayi Ticaret AS [2001] EWCA Civ 1820. Further a field and more recently the principle has also been affirmed in Kam Leung Sui Kwan v Kam Kwan Lai et al (2015) HKCFAR 501 at paragraphs 11 – 17.

b. hiring of employees in a Member State or having tangible assets in a Member State that is associated with the business of the company or legal person;

c. keeping corporate records such as books, accounts, or registers of membership at any location in a Member State;

d. establishing or using a share transfer office or share registration office in a Member State;

e. holding statutory meetings in any location in a Member State at which any part of the company's or legal person's business is conducted; or

f. any other evidence which indicates that the company or legal person held out a location in any Member State as its place of business.

the Commission may consider such evidence as cumulatively satisfying the general legal criteria under paragraph 27 as it considers fit in any given case.

Section V – Cross-border transaction circumstances

[29] A cross-border transaction is one which includes business conduct that originates in the territory of a Member State and concludes in the territory of another Member State, which may include implementation of any part of the conduct in the territory of any other Member State. The circumstances in any given case which will justify invoking the Commission's jurisdiction to monitor, investigate and adjudicate on this basis are varied and will primarily depend on the nature of the business conduct and the location of the relevant parties.

[30] Without limiting the generality of the foregoing, examples of cross-border transactions include:

Box 1 - Agreements

a. An agreement or concerted practice will constitute a cross-border transaction where it is partly made in one Member State and partly made in another Member State.

Example: A group of competing enterprises in Member State A enters into an exclusive supply agreement with an enterprise in Member State B.

b. An agreement or concerted practice will constitute a cross-border transaction where it is made in one Member State but the transaction is implemented or adopted, or is intended to be implemented or adopted, in another Member State.

Example: A group of competing enterprises in Member State A agree amongst themselves to implement a joint venture in Member State B.

Box 2 – Unilateral Conduct

c. Business conduct by an enterprise will constitute a cross-border transaction where any part, step or activity which directly or indirectly relates to such conduct is implemented or adopted in more than one Member State.

Example: An enterprise who holds a dominant position implements a pricing policy on goods or services sold in Member State A but produced or supplied from its operations in Member State B.

[31] For the purposes of these Guidelines the concept of "*implementation*" includes situations where any part of the business conduct takes place in a Member State (for example, advertisements to customers in any Member State or filing of documents with any authority in any Member State) or is carried out by an enterprise in any Member State.

[32] Where business conduct by an enterprise(s) in the CSME is not of the type outlined by way of example at paragraph 30, the Commission may in any given case determine that it constitutes a cross-border transaction based on the specific circumstances of the case.

Section VI – Transaction with cross-border effect circumstances

[33] A transaction with cross-border effects or business conduct which has cross-border effects is one which while originating and concluding in the territory of a Member State, could plausibly have consequences for economic activities in another Member State. Such consequences may occur in relation to the portion of the relevant product market in the other Member State (direct effect) or in relation to a neighbouring relevant market (such as an upstream or downstream market) in the other Member State(s) (indirect effect).

[34] The circumstances in any given case which will justify invoking the Commission's jurisdiction to monitor, investigate and adjudicate on this basis are varied and will involve consideration of the relevant legal and economic context in which the business conduct occurs.

[35] In principle the standard for evaluating business conduct under this ground of jurisdiction is whether such conduct in one Member State could plausibly have consequences for economic activities in another Member State. This means that the conduct must, in the relevant legal and economic context, be "capable" of having that economic effect (i.e. spillover/spread effect).[8] If in that context such economic effect is implausible then there will be no jurisdiction under this ground.

[36] As a general matter the Commission will assess plausibility on the basis of objective factors of law and fact that constitute the relevant legal and economic context of business conduct in a given case. These may include but are not limited to:

a. the objective(s) and terms of an agreement;

b. the objective(s) and content of a policy, practice or action by an enterprise;

c. the nature of the goods or services in question;

d. the nature and extent of the business conduct in question;

e. the structure of the relevant market(s) and the position of the parties thereon;

f. historical competitive conduct or lack thereof;

[8] Miller International Schallplatten GmBH v Commission (Case 19/77) 1 February 1978. See more recently, Asnef-Equifax v Ausbanc (C-238/05) 23 November 2006 at paragraph 35.

g. consumer perceptions and behavior in the relevant market(s);

h. regulatory requirements and/or industry practices and customs;

i. the pattern of trade in the goods or services in question; or

j. any other circumstance relevant to competition.

[37] The Commission may consider any or all of the foregoing factors as are relevant in the circumstances of a given case. In relation to any or all of those factors, the Commission may not only examine their past and current states as at the date of the business conduct in question, but may also take into account their foreseeable future states or foreseeable subsequent developments in assessing the plausibility of business conduct to have economic consequences in more than one Member State.[9]

[38] As a general matter, the subjective intention of the enterprises involved will not be relevant to the assessment, unless it is an intention to affect trade between the Member States or economic activities in more than one Member State.

[39] Since the rationale for this standard is to regulate the threshold issue of jurisdiction, there is no requirement for the Commission to prove that the business conduct has actually or will actually have consequences for economic activities in another Member State.[10] Subject to paragraph 40, it is sufficient to show the plausibility of business conduct to have such consequences by generally taking into account the factors under paragraph 36, as are relevant in a particular case. There is also no requirement for the Commission to estimate the probability of the occurrence of such economic effect.

[40] While the Commission will usually assess plausibility on a case-by-case basis using the factors under paragraph 36, there are certain circumstances which will give rise to a rebuttable presumption in some cases that business conduct in one Member State is capable of having consequences for economic activities in another Member State.

[41] Broadly, such circumstances will concern the nature of the business conduct. Consistent with relevant case law the following circumstances will permit application of the presumption:

a. where the business conduct is capable of creating or reinforcing the national division of Member State markets;[11] or

---

9 Asnef-Equifax v Ausbanc (C-238/05) 23 November 2006 at paragraph 44.

10 Miller International Schallplatten GmBH v Commission (Case 19/77) 1 February 1978.

11 Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid et al v Commission, Case T-29/92, February 21 1995 at paragraphs 229 - 230.

b. where the business conduct is capable of altering the structure of competition in a relevant regional market.[12]

[42] Without limiting the generality of the foregoing at paragraph 41, examples of such circumstances that will permit application of the presumption include:

Box 3 - Agreements

a. An agreement or concerted practice in one Member State will constitute a transaction with cross-border effects or business conduct which has cross-border effects where it covers the entire territory of that Member State.

Example 1: An agreement to fix prices among all the enterprises in Member State A.

Example 2: A resale price agreement between two enterprises in Member State A, where it is of a class or category of agreements that is common place among enterprises in that Member State.

In principle, agreements or concerted practices by enterprises in a Member State that cover the entire territory of that Member State are capable of reinforcing the national division of markets because they artificially differentiate the conditions of competition in that Member State from that which may obtain in other Member States. On this basis, such agreements conflict with the economic interpenetration (that is, the removal of economic barriers and integration of markets) among the Member States that is contemplated under the CSME in the Revised Treaty.

In some cases agreements or concerted practices that cover the entire territory of a Member State may afford the enterprises involved in such business conduct the potential to exclude entry into the Member State by rival enterprises that are not involved in such agreement or concerted practice. Where available information indicates that such a potential for exclusion may exist, the agreement or concerted practice will be presumed to have cross-border effect in accordance with paragraphs 40 and 41.[13]

[12] Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents Corporation v Commission, Joined Cases 6 and 7/73, March 6 1974 at paragraph 33. See also Compagnie Maritime Belge Transports SA et al v Commission, Joined Cases T-24/93, T-25/93, T-26/93 and T-28/93, October 8 1996, at paragraph 203.

[13] SC Belasco et al v Commission (Case-246/88), 11 July 1989, at paragraphs 32 – 38.

Box 4 – Unilateral Conduct

b. Business conduct by a dominant enterprise in one Member State will constitute a transaction with cross-border effects or business conduct which has cross-border effects where it could eliminate or is intended to eliminate an actual or potential regional rival.

Example 1: An enterprise who holds a dominant position in a Member State implements a predatory pricing scheme to eliminate a regional rival.

Example 2: An enterprise who holds a dominant position in a Member State enters into long-term exclusive contracts with most customers in the regional market, thereby foreclosing market access.

In principle, business conduct by an enterprise who holds a dominant position in a Member State is capable of altering the competitive structure of a relevant regional market where the conduct has the potential to exclude regional rivals. [14] This is because eliminating or injuring or intending to eliminate or injure an actual or potential regional rival will plainly alter the competitive structure by either reducing the number of rivals in the market or reducing the competitive pressure which such rivals can exert on the dominant enterprise.

Section VII – Final provisions

[43] These Guidelines will not apply where the business conduct in question is of a type or category of business conduct that is excluded from the rules of competition under Articles 168 and 183 of the Revised Treaty or under applicable national competition legislation.

[44] The Commission reserves the right to review and amend these Guidelines from time to time in accordance with legal and economic developments, emerging market conditions, or institutional priorities.

[45] These Guidelines shall enter into force under Article 174(7) upon approval by the Board of Commissioners.

[14] A regional rival is an enterprise in a Member State that exports to, or imports from, other Member States or who may potentially do so.