Staff Report

The Acquisition of

Massy Distribution (Jamaica) Limited

by

Caribbean Distribution Partners Limited

First Published: February 12, 2026

Revised*: March 3, 2026

Case no. 0026-25

PUBLIC VERSION

FAIR TRADING COMMISSION
17- 19 Connolley Avenue, Kingston 4, St. Andrew, Jamaica
www.jftc.gov.jm| fairtrading@jftc.gov.jm| Tel: 876.960.0120– 4

* This document supersedes all earlier versions of the report.

Investigating Officers

Legal Department

Susan Lawrence Simms, Senior Legal Counsel

Michelle T. Phillips, Legal Officer

Competition Bureau

Kevin Harriott, Competition Bureau Chief

Alrick Livingston, Competition Analyst

Kalifa Clarke, Research Officer

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I. THE PARTIES

The Purchasers:

Purchaser

1. Caribbean Distribution Partners Limited ("CDP/ the Purchaser") is a company incorporated under the laws of Trinidad & Tobago with registered office at No. 18 Victoria Avenue, Port of Spain, Trinidad.
2. CDP is a joint venture between the Trinidadian company, Agostini's Ltd., and the Barbadian company, Goddard Enterprises Ltd. Both companies are conglomerates that host multinational business portfolios with products found throughout the Caribbean. Goddard operates in several divisions, namely Automotive, Building Supplies, Services and Shipping, the Goddard Catering Group, and Manufacturing. Goddard operates over 100 companies and 136 brands. CDP acts as the holding company for the group's Fast-Moving Consumer Goods (FMCG) companies operating in six regional markets.
3. As of February 17, 2025, CDP is now Acado Limited ("Acado"), which is a consumer products joint venture between Agostini Limited and Goddard Enterprises Limited. Acado is the parent company of seven distribution entities operating in the Caribbean and one trading company based in Montreal. Currently, only one of the seven subsidiaries, Acado Foods, which manufactures a Swiss range of condiments, sells to Jamaica. Swiss products are currently distributed by the Cari-Med Group. The FTC was advised that these products (Swiss), as well as some insecticides, may move from their current supplier to Massy Distribution (Jamaica) Limited. Brands owned by Acado include Swiss Moo, Supercow, Peardrax, Richport, and Eve.

Vendor:

4. Massy Integrated Retail Ltd, ("MIR/ the Vendor") is a company incorporated under the laws of Trinidad & Tobago with registered offices at 39A Wrightson Road, Port of Spain, Trinidad.

Target:

5. Massy Distribution (Jamaica) Limited ("MDJ/ Massy") is a company incorporated under the laws of Jamaica and having its registered office at 3 Carifta Avenue, Kingston 11 in the Parish of St. Andrew. MIR is the parent company of the target company (and holds all but one share in the target company).
6. MDJ supplies consumer goods and pharmaceutical products across Jamaica. While widely known for its automotive and industrial divisions, the company also distributes a diverse range of household

essentials, personal care products, and healthcare supplies, partnering with trusted local and international brands such as Colgate-Palmolive, Unilever, P&G, Johnson & Johnson, and Nestlé.

7. In the consumer goods sector, MDJ supplies supermarkets, wholesalers, and smaller retailers with cleaning supplies like disinfectants and detergents, personal care items including soaps and shampoos, packaged foods, beverages, and baby care products such as diapers and infant formula.
8. Additionally, the company serves the healthcare industry by supplying prescription and over-the-counter medication; medical supplies such as bandages and first-aid kits, vitamins, supplements, and wellness products from leading pharmaceutical brands.

Figure 1: Divisional breakdown of Acado Limited.

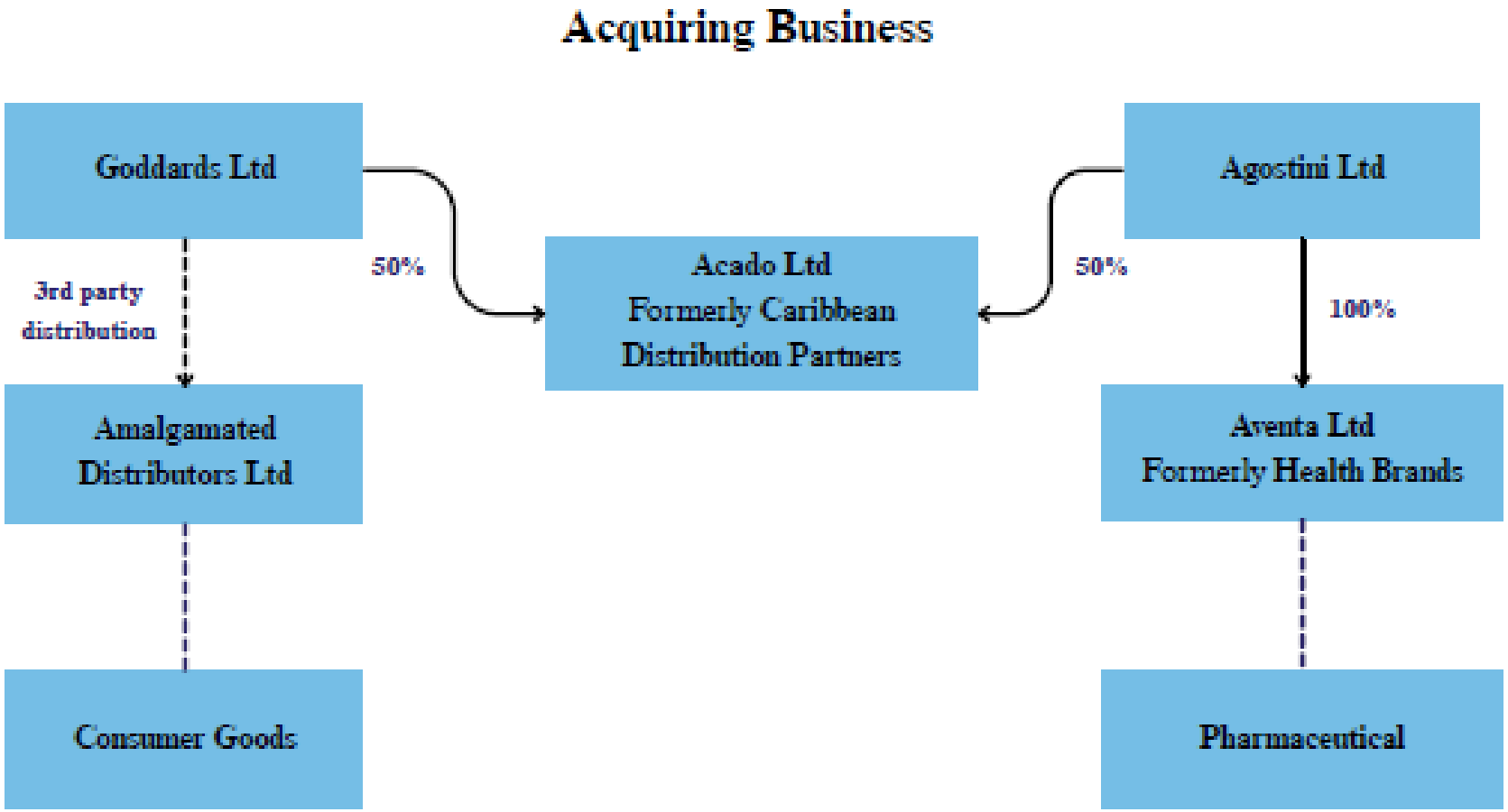
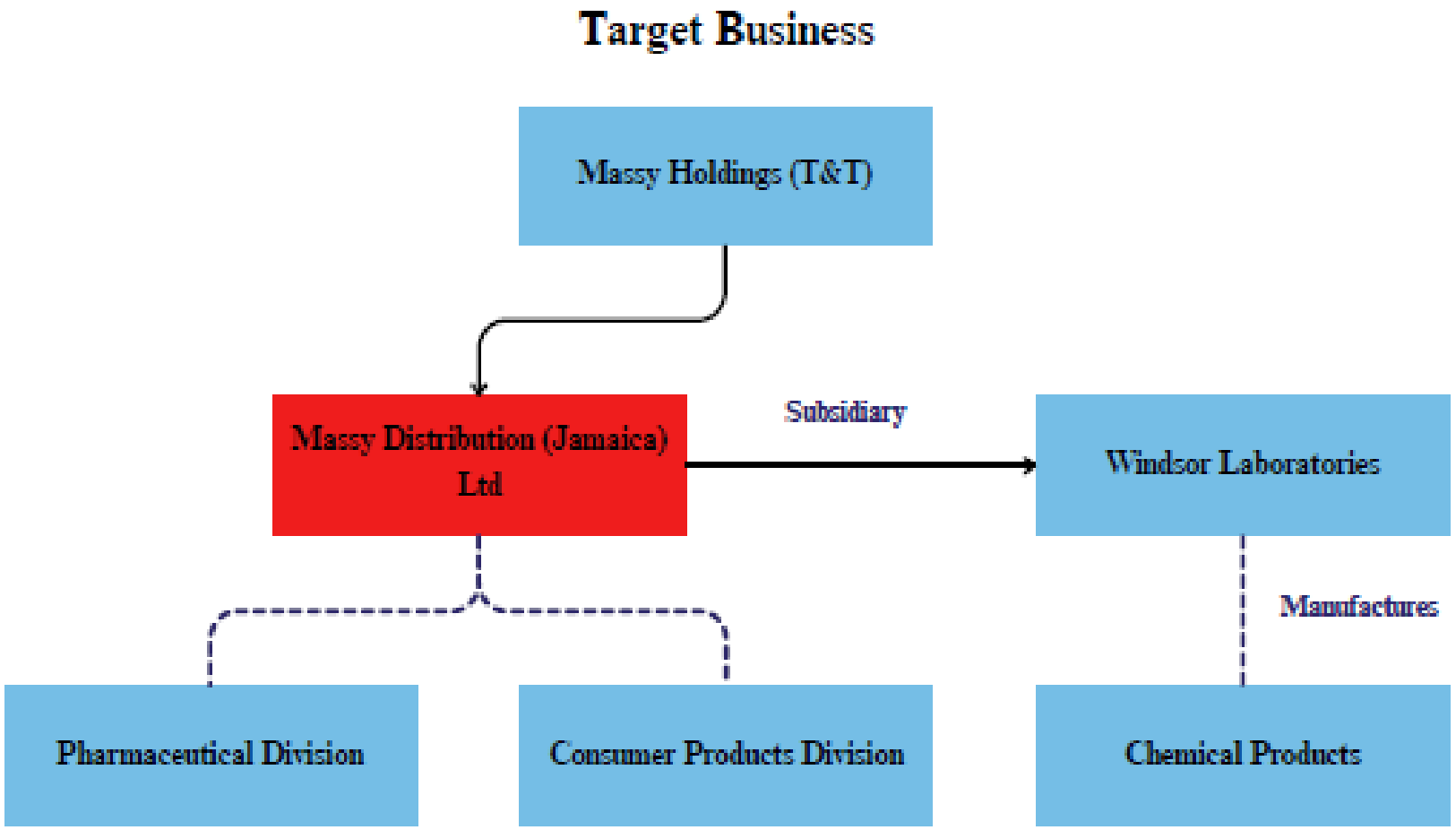


Figure 2: Divisional breakdown of Massy Distribution (Jamaica) Ltd.



II. THE CHALLENGED CONDUCT

9. The challenged conduct is Acado's proposed acquisition of MDJ. Companies affiliated with Acado directly compete with MDJ since they operate in the same product markets at the same level of the supply chain.
10. *Details of Transaction*: Through the Share Purchase Agreement dated February 3, 2025, Acado has proposed to purchase all issued shares in MDJ from MIR.
11. On completion of the Share Purchase Agreement, all ordinary shares of MDJ will be acquired by Acado. The shares in MDJ are currently held by Massy Holdings Ltd (1 share) and MIR (the remainder). Acado will also acquire 100% of MDJ's subsidiary, Windsor Laboratories Limited.
12. Subsequent to the signing of the Share Purchase Agreement (SPA), Acado nominated its subsidiary, Acado Jamaica Holdings Limited ("AJHL"), to be the entity that would become the holder of all the issued shares in MDJ.

III. KEY INVESTIGATION TIMELINE

13. The Fair Trading Commission ("the FTC") became aware of the transaction by way of a newspaper report dated February 07, 2025, and initiated a review of the proposed transaction.
14. The FTC completed Phase 1 of its review on April 26, 2025, and informed both parties that the proposed transactions raised competition concerns. Accordingly, the parties were advised that the FTC would conduct Phase 2 of the review to gather relevant information to confirm or dispel these concerns. During Phase II, the FTC negotiated with the Purchaser to identify potential remedies that would address the FTC's concerns to the FTC's satisfaction in any relevant market.[2]

IV. THEORIES OF HARM

15. The question to be determined is whether the acquisition is more likely than not to restrict competition—whether on price, quantity, quality, or innovation—when compared to the counterfactual market (the state of the market in the absence of the acquisition).
16. The FTC reviewed the SPA on the presumption that it constitutes a potential breach of section 17 of the Fair Competition Act ("the FCA"), which prohibits agreements which have as their purpose,

[2] Fair Trading Commission (2020), Guideline to Reviewing Mergers, Acquisitions & Joint Ventures.

effect, or likely effect of substantially lessening competition in a market without any legitimate business or economic justification under the FCA.

17. The review commenced on the presumption that the SPA is likely to adversely affect competition in the Jamaican market. The SPA is presumed to distort competition by granting Acado control over critical assets of a current or potential rival, thereby eliminating a key competitive constraint. Accordingly, the FTC presumes that the SPA will remove a significant constraint on competition in at least one relevant market, thereby allowing Acado to exercise market power in the foreseeable future, by itself or in concert with other market participants, to the detriment of consumers.
18. A primary objective of this investigation is to identify, gather, and evaluate information sufficient to test (i.e., either confirm or refute) the presumption of harm.
19. The theory contends that the challenged conduct is likely to create a monopoly in the market for the distribution of insulin in Jamaica, in which Acado would acquire control of the leading brands of insulin distributed in the relevant market.

V. OVERVIEW

20. Jamaica's distribution industry plays a critical role in the country's economy, ensuring the efficient movement of goods from manufacturers and importers to retailers, businesses, and consumers. This industry contributes to 17.7% of gross value-added in Jamaica's GDP per capita[3]. As a logistics and trade hub in the Caribbean, Jamaica's distribution sector handles a wide range of products, including food and beverages, pharmaceuticals, automotive parts, electronics, construction materials, and household goods. The industry is supported by a network of wholesalers, distributors, and logistics providers that facilitates both local and international supply chains.
21. Key players in Jamaica's distribution market include large conglomerates, specialized distributors, and independent wholesalers. Among them, MDJ and Caribbean Producers Jamaica (CPJ) are prominent firms, though they represent just a fraction of the sector. MDJ focuses on pharmaceutical items, industrial supplies, and consumer goods, while CPJ is a major distributor of food, beverages, and hospitality supplies. However, the broader industry comprises numerous other distributors, including Seprod, Lasco Distributors, Wisynco, and JB Foods, which dominate segments such as dairy products, snacks, beverages, and bulk food items.

[3] Statistical Institute of Jamaica (2023) https://statinja.gov.jm/NationalAccounting/Annual/NewAnnualGDP.aspx

22. The distribution industry faces challenges such as high logistics costs, supply chain disruptions, and fluctuating import regulations, but it continues to grow due to increasing demand from retail, tourism, and manufacturing sectors. With the rise of e-commerce and digital logistics platforms, companies are adopting more efficient inventory and delivery systems to stay competitive. Jamaica's distribution sector remains a vital backbone of commerce, connecting global suppliers with local markets while adapting to new trends in trade and consumer demand.

VI. MARKET DEFINITION

A. Analytical framework

23. A relevant market for competition assessment comprises the smallest group of products that compete within a geographic area. Participants in a relevant market offer the most immediate and direct competition to those being investigated.
24. Two components of the relevant market are the product market and the geographic market. In essence, a relevant market for assessing competition effects is defined as a product (or group of products) and a geographic region in which the product is produced or sold such that a hypothetical profit-maximising supplier, not subject to price regulation, could profitably raise prices above the competitive level.

B. Relevant Product Markets

25. A relevant product market defines the product boundaries within which competition meaningfully exists and includes only those products that consumers consider reasonably interchangeable. A product market is therefore taken to comprise only goods and services which consumers regard as reasonable substitutes by reason of the product's characteristics, their prices, and intended use. For transactions involving mergers and acquisitions, the definition of the relevant product market necessarily starts with the products that are related in demand and offered by at least two parties to the transaction.
26. Parties to the SPA offer at least one service which customers are likely to consider to be reasonably close substitutes for each other and therefore a candidate relevant product for reviewing the challenged conduct.
27. The FTC identified (i) pharmaceutical products and (ii) consumer products as two broad categories of overlapping products, as affiliates of both parties distributed this range of products in Jamaica prior to the SPA. Goddard Ltd, one of the two parent companies of Acado, distributes consumer

products in Jamaica through a third-party distributor (Amalgamated Distributors Ltd). Agostini Ltd, the other parent company of Acado, distributes pharmaceutical products in Jamaica through its Aventa Jamaica Limited (formerly Health Brands Limited) subsidiary. MDJ distributes consumer products and pharmaceutical products in Jamaica.

Consumer Products

28. Consumer products refer to products typically bought for personal use. In other words, consumer products are goods purchased for personal consumption and include feminine care and hygiene products (e.g., sanitary napkins); household cleaning items (e.g., disinfectants and dishwashing liquids); and consumable goods (e.g., condiments, pasta, spreads).
29. *Feminine care and hygiene products*. Feminine hygiene is essential for vulvovaginal health and includes daily gentle cleansing and proper use of menstrual products. Aventa Jamaica Limited (Aventa) distributes sanitary napkins, underwear, feminine wipes, and similar products under the Prevail brand. MDJ distributes these products under brands including Stayfree, Playtex, and Carefree.
30. *Household cleaning items*. Cleaning products, such as disinfectants and dishwashing liquids, are substances intended to remove dirt, stains, and other contaminants from surfaces and are available in various forms, including liquids, powders, and sprays. They help maintain hygiene, aesthetics, and functionality, and prevent the spread of germs and allergens. Goddard distributes disinfectants and dishwashing liquids through the Beep brand, while MDJ distributes these products through the Lanher and Irex brands.
31. *Consumable goods*: Condiments, pastas, and spreads constitute a significant segment of the non-durable goods market, characterized by frequent repurchases and stable demand. These products serve as dietary staples or meal enhancers; condiments (e.g., ketchup, mustard) and spreads (e.g., peanut butter, jam) are complementary goods to core foods, while pastas function as primary carbohydrate sources. Goddard Ltd and MDJ distribute condiments and spreads through the Swiss brand and distribute pasta through the Ronzoni and Swiss brands.

Pharmaceutical products

32. Pharmaceutical products constitute a critical segment of the healthcare industry, encompassing prescription drugs, over-the-counter (OTC) medications, and biologics. MDJ is a key distributor of

14 brands of medical products and equipment throughout Jamaica and the wider Caribbean. Similarly, Aventa, an affiliate of Acado, maintains a portfolio of more than 10 medical products and equipment brands.

33. There are numerous product overlaps in the brands distributed by MDJ and Aventa within these portfolios regarding the diseases treated – providing oncology, endocrinology, and anti-infectives, among other medical treatments and products.
34. Following the Phase 1 assessment, the FTC identified consumer products and pharmaceutical products as the key relevant product markets, warranting a deeper examination under Phase 2. Insulin is a life-sustaining biologic medication with high inelastic demand due to its limited substitutability for treating diabetes. Consumer inertia is a significant impediment to entry into the market for insulin medications, arising from the joint roles of patients and prescribing physicians in the demand for insulin. The analysis will focus on market concentration, potential foreclosure risks, and whether the merger would reduce incentives for the development of next-generation insulin.
35. In summary, the relevant product markets assessing the challenged conduct are:
    i. Pharmaceutical products (including sub-markets); and
    ii. Consumer products (including sub-markets).

C. <u>Relevant Geographic Markets</u>

36. Having identified the relevant product markets, the next step is to identify at least one relevant geographic market, which comprises an area in which at least two parties (or affiliates) are involved in the supply of any relevant product and in which the conditions of competition are sufficiently similar. This area is a geographical territory that can be distinguished from neighbouring areas, in which competition conditions in a relevant market of a product are sufficiently the same for all participants in such a market[4]. For each relevant product market identified, a geographic market is defined.
37. Distributors cater to retail outlets throughout Jamaica. Accordingly, the relevant geographic markets comprise the entire Jamaica (including sub-regions within Jamaica).

[4] Geographic Market Definition in European Commission Merger Control http://ec.europa.eu/competition/publications/reports/study_gmd.pdf Retrieved August 8, 2019.

38. The FTC concludes that the relevant markets for assessing the Agreement are (i) pharmaceutical products (including sub-markets); and (ii) pharmaceutical products (including sub-markets), sold in Jamaica (including regions within Jamaica).

VII. LEGAL ANALYSIS

A. Analytical Framework

39. The functions of the FTC are outlined in section 5 of the Fair Competition Act ("FCA"). Notably, section 5(1)(a) empowers the FTC to investigate on its own initiative to determine whether any enterprise is engaging in business practices in contravention of the Act.
40. In the *Fair Trading Commission v Digicel & Anor*[5] The Privy Council confirmed that section 17 of the FCA confers jurisdiction on the FTC to investigate and intervene in mergers and acquisitions. It was stated that section 17 applied to any agreement falling within subsection (1), being "any agreement containing provisions having as their purpose or likely effect the substantial lessening of competition in the relevant market."[6] The FTC, it was stated, is not precluded from investigating or intervening in any sector of a market, unless expressly prohibited by law.
41. The Food and Drug Act (FDA) and the Pharmacy Act are the main pieces of legislation that apply to the relevant market. Other legislation includes the National Health Fund Act and the Customs Act. After examining the provisions of the FDA and the Pharmacy Act, the FTC determined that nothing in these Acts precludes the FTC from investigating anticompetitive conduct in this industry.
42. Based on the foregoing, the FTC has the jurisdiction to investigate the challenged conduct, and there are no provisions that preclude the FTC from investigating anticompetitive conduct in this sector. Accordingly, the FTC has jurisdiction to investigate the challenged conduct.

Relevant Section of the FCA

43. Section 17 is examined in detail below and states as follows:

> *(1) This section applies to agreements which contain provisions that have as their purpose the substantial lessening of competition or have or are likely to have the effect of substantially lessening competition in a market.*

[5] Fair Trading Commission v. Digicel & Another [2017] UKPC 28
[6] *Fair Trading Commission v. Digicel & Another* [2017] UKPC 28 per Lord Sumption at paragraph 26

(2) Without prejudice to the generality of subsection (1) agreements referred to in that subsection include agreements which contain provisions that-

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development or investment;

(c) share markets or sources of supply;

(d) affect tenders to be submitted in response to a request for bids;

(e) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts, being provisions, which have or are likely to have the effect referred to in subsection (1).

(3) Subject to subsection (4), no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection (1); and no such provision is enforceable.

(4) Subsection (3) does not apply to any agreement or category of agreements the entry into which has been -authorized under Part V or which the Commission is satisfied-

(a) contributes to-

(i) the improvement of production or distribution of goods and services;

or

(ii). the promotion of technical or economic progress,

while allowing consumers a fair share of the resulting benefit;

(b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or

(c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

44. Based on the foregoing, to establish a contravention of section 17 of the FCA, the following must be present:
    a. There is an agreement
    b. The agreement contains provisions that have:
        (i) The purpose;

(ii) The effect; or

(iii) The likely effect

Of substantially lessening competition in a market; and

c. The Agreement does not fall within the exemptions listed in section 17(4) of the FCA.

45. The requirements of section 17 are disjunctive, and as a result, the provisions of the agreement need to have either (a) the purpose, (b) the effect, or (c) the likely effect of substantially lessening competition in the relevant market. In circumstances where any one of these requirements is satisfied, then section 17 would be breached, subject to the exemptions provided in subsection 4 of the section.

46. Section 17(4) contemplates that some agreements may appear anticompetitive but may have pro-competitive effects. In this regard, agreements that are determined to contribute to the technical or economic progress and give consumers a fair share of the resulting benefit will not be found to be in breach of section 17.

B. <u>The Purpose of substantially lessening Competition in a market</u>

47. The concept of "purpose" is not defined by the FCA, but it has been defined in competition law as the effect, end, goal, objective, or aim sought to be achieved or accomplished by the provision.[7] Australian cases provide instructive guidance in defining "purpose" in anticompetitive considerations.

48. Section 2(4) of the FCA states that "references in this Act to the lessening of competition shall, unless the context otherwise requires, include references to hindering or preventing competition." The FCA, however, does not explicitly define the notion of "substantially lessen competition". Nonetheless, an examination of Australian decisions assists in providing guidance regarding this concept. In Stirling Harbour Services Pty Ltd v Bunbury Port Authority8, the Full Court stated that:

> *"Conduct has the effect of lessening competition in a market only if it involves a reduction in the level of competition which would have otherwise existed in that market but for the conduct in question.[9]"*

[7] The Purpose of Substantially Lessening Competition: The Divergence of New Zealand and Australian Law by Paul Scott p.173 and citing *Seven Networks Limited v News Limited* [2009] FCAFC 166 at pgs. 852 and 898

[8] [2000] FCA 1381

[9] Ibid, para 66

49. The test under this section is that the conduct must have the purpose, being the object, effect, goal, or aim, of substantially lessening competition. An assessment of conduct that substantially lessens competition involves an assessment of the firm's ability to profitably divert price, quality, variety, service, innovation, or any other aspect of the competitive process or its performance outcomes from their competitive levels for a significant period.

50. In Stirling Harbour Services Pty Ltd v Bunbury Port Authority, it was held that *"Conduct has the effect of lessening competition in a market only if it involves a reduction in the level of competition which would otherwise have existed in that market but for the conduct in question."*[10]

51. Section 17 of the FCA is materially similar to Article 81 of the Treaty establishing the European Union. The interpretation of Article 81 of the EC Treaty by the European Court of Justice indicates that if the Agreement has as its purpose the restriction of competition, an economic analysis of its anti-competitive effect is not necessary.[11] An agreement that does not have as its purpose the substantial lessening of competition must thereafter be examined to determine if it has had, is having, or is likely to have the effect of substantially lessening competition in a market.[12]

52. Effect on competition is determined by an economic analysis of the relevant product and geographic market, whereby relevant issues for consideration are whether access to the relevant market is impeded and, if so, whether the subject agreement has contributed to that foreclosure effect.[13] Where the answer is in the affirmative to the above questions, the agreement is treated as being in conflict with Article 81 of the EC Treaty.

53. An important consideration in determining the effect of the agreement is the competition that would occur in the relevant market in the absence of the agreement. In the instant case of the SPA, this is known as the counterfactual.

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[10] [2000] FCA 1381 at 66.

[11] VdS v. Commission, Case 45/85 [1987] ECR 405, 4 CMLR 264, para. 39. In as much as section 17 of the FCA is in similar terms as Article 81 of the Treaty Establishing the European Community (EC Treaty), the FTC considers the jurisprudence developed by the European Court of Justice (ECJ) in its interpretation of this provision, if relevant, as guidance in its interpretation and application of section 17 of the FCA.

[12] Javico v. Yves St.Laurent, Case C-306/96[1998] ECR 1-1983, [1998] 5 CMLR 172.

[13] Delimitis v. Henninger Braüer AG, Case C-234/89[1991] ECR I-935, [1992] 5 CMLR, 210, para. 24-27.

C. Assessment of the Purpose

54. To assess the purpose of the acquisition, the FTC requested the agreement from the parties. By letter dated February 26, 2025, local counsel for Acado/CDP wrote to the FTC outlining the transaction and enclosing the Share Purchase Agreement for All Issued Shares of MDJ. The FTC examined the SPA to determine whether any clauses therein contain provisions that have as their purpose, the substantial lessening of competition in any relevant market.
55. Non-compete provisions. Non-Compete Clauses or clauses in restraint of trade often feature in mergers or acquisitions to protect the purchaser's interests in the newly acquired and purchased entity. These clauses ensure that the vendor will not, for a certain period of time, among other things, enter into a competing business, solicit customers or employees from the entity sold, or provide advice to others seeking to establish a similar or competing business.
56. A non-competition covenant in relation to a transfer or sale of a business should be recognized as lawful/ allowable if it fulfils:
    i. the legitimate purpose of the restriction (i.e., it protects the legitimate interest of the parties, usually the purchaser), and
    ii. It is proportionate (i.e., reasonable in relation to its duration, subject matter, territory and the persons subject to them). Generally, periods of up to 2 years are considered reasonable when only goodwill is being transferred and up to 3 years when both goodwill and know-how are transferred.[14]
57. Finally, it is stated that when determining cases involving non-competition clauses, equal and composite weight should be given to all factors being the subjects, territory, scope, and duration, and the reasonableness or proportionality of these covenants.[15]
58. Article 101 of the Treaty on the Functioning of the European Union ("TFEU"), which is materially similar to section 17 of the FCA, provided some guidance on the interpretation of non-compete clauses. The EU's Merger Control Regulation and Ancillary Restraints Doctrine provides that the European Commission's authorisation of concentrations would cover restrictions that are directly related and necessary to the implementation of the concentration.[16] It is essential that these two requirements exist, or the restriction may not be considered ancillary and may infringe Article 101

[14] Non-Compete Covenants in Case of a Business Transfer, Mykolo Romerio University faculty of Law 2011 p. 90
[15] Ibid.
[16] Butterworths Competition Law Service/ Division VII Merger Control/ Chapter 11…- paragraph 273

TFEU.[17] For a restraint to be directly related to the transaction, it must be economically related and intended to allow a smooth transition.[18] In mergers and acquisitions, non-competes are allowed to protect the value of goodwill and know-how being transferred, and restraints not serving this purpose are not seen as necessary.[19] Restraints must be strictly necessary to protect the purchaser's investment,[20] and the length of time of the restraint imposed on the vendor must not go on longer than necessary. The essential question is how long it takes to protect goodwill from being eroded by the vendor starting its own business or joining a competitor.[21]

59. The provision should also be proportionate to the interest being protected.[22] Proportionality is examined based on the subject matter of the restraint, who is bound, the geographic scope, and the duration.[23]

<u>Important Clauses</u>

60. Clause 1.2(d) States that any reference to the Target in any representations or warranties applies mutatis mutandis to the Target Subsidiary.
61. Clause 5 – Completion
62. Clause 5.1(c) specifies that completion is to take place on the Completion date, subject to clause 5.2, the Vendor and the Purchaser obtaining all necessary regulatory and third-party approvals relevant to each Party as required for the transfer of the Sale Shares to include the receipt of a "no objection" letter from the FTC;
63. Clause 5.2 Post-Completion. The Parties acknowledge and agree that, to the extent any regulatory or third-party approvals are not obtained on, or before the Completion Date, such approvals shall be obtained post-completion within a reasonable time to be agreed by the Parties in writing, provided that it is not mandatory that the approvals be received prior to the transfer of the Sale Shares. Pursuant to Clause 5.3 Fair Trading Commission Notification, The Parties acknowledge that this transaction may be subject to review by the ("FTC") and they agree that they shall together approach the FTC for its no-objection to the transaction pursuant to section 29 of the Fair Competition Act… The clause further provides that "The Parties acknowledge and agree that should

[17] Ibid
[18] "The dangers of non-compete clauses in sale and purchase agreements" October 2016 by Slaughter & May
[19] Ibid
[20] Ibid
[21] Ibid.
[22] "The dangers of non-compete clauses in sale and purchase agreements" October 2016 by Slaughter & May
[23] Ibid.

the FTC find that the transaction will substantially lessen competition and that this Agreement shall have no effect and is unenforceable, the Parties shall use best efforts to provide acceptable remedies to the FTC to cure the lessening competition concern. The Parties further agree that should the remedies not be acceptable to the FTC, the Parties shall treat this Agreement as terminated, and all sums paid to the Vendor shall be refunded."

64. Clause 8 Non-Solicitation states:

8.1. The Vendor undertakes that it will not:

8.1.1. for a period of three (3) years from the Completion Date establish, develop, or invest in any Competing Business within the island of Jamaica save through the appointment of a third-party sub distributor for the distribution of any consumer or pharmaceutical products which are not distributed within Jamaica by the Vendor or any of the Vendor affiliated companies as at the Completion Date;

8.1.2. for a period of three (3) years from the Completion Date, solicit, canvass or entice away from the Target any person, firm or company in Jamaica who was at any time during the period of six

(6) months immediately preceding the Completion Date a material client or customer of the Target, for the purpose of directly offering to that client or customer services materially competing with those of the Target in Jamaica;

8.1.3. for a period of three (3) years from the Completion Date solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the Employees employed in a senior managerial, supervisory, technical or sales capacity from the Target or any of its subsidiaries for the purposes of employment by the Vendor in a Competing Business within Jamaica.

65. Clause 12.1.3 provides that either party may terminate the agreement if the Vendor is unable to procure any applicable regulatory approval.

66. The FTC is mentioned in the SPA as an entity from whom the parties need to obtain regulatory approval and/or non-objection to complete the transaction, which was slated for completion on April 28, 2025. Clause 5.3 specifically states that if the FTC finds that the agreement "will

substantially lessen competition" and that the remedies proposed/ provided by the Parties are not acceptable to the FTC, then the Agreement will be terminated. Whether the merger will substantially lessen competition was the subject of an economic assessment and is discussed below under the heading Assessment of Effect and Likely Effect.

67. The Non-Solicitation clause in the SPA provides that the Vendor shall not inter alia, develop or establish a competing or similar business to that of the Target within Jamaica, save through a third party distributor and in relation to products not distributed by the Vendor or its affiliates, nor solicit or entice away any customer or senior employee of the Target for a period of three years post Completion.
68. It is generally accepted that a period of three (3) years is reasonable and proportionate where both goodwill and know-how are transferred.
69. The FTC undertook a comprehensive review of the SPA and information provided in relation thereto. The FTC is of the view that the duration and scope of clause 8 and its subclauses are reasonable and do not and are not likely to contravene any section of the FCA nor raise any competition concerns. Additionally, the SPA did not raise any other competition concerns in relation to its purpose, object, aim, or goal.
70. To establish that the conduct has the effect or likely effect of substantially lessening competition in the relevant market, it is necessary to show harm to rivals and consumers in that market as a result of the conduct. In this regard, an economic assessment was conducted to examine the market before and after the challenged conduct.
71. A summary of the assessment of competitive effects is provided next in Section VIII.

VIII. Assessment of Effect or Likely Effect on Competition (Competitive Effects)

72. In this section, the FTC examines the SPA to determine whether there is any provision which have, or is likely to have, the effect of substantially lessening competition in any relevant market.
73. The SPA will be deemed to have such an effect if it removes significant competitive constraints from any relevant market.
74. Therefore, this assessment examines how the SPA affects the competitive constraints within the relevant markets in the port-transaction period. A useful starting point in this assessment, therefore, is an analysis of the anticipated change in market concentration arising from the transaction. Higher market concentration is sometimes associated with weaker competitive constraints on the market leader, all other things being constant. If the transaction significantly increases market

concentration, the FTC presumes that the SPA raises competition concerns. This presumption is subject to verification by examining other market conditions in the post-transaction period.

75. Market concentration offers a useful, but sometimes insufficient, indicator of the competitive constraint a market leader faces from current rivals. The Herfindahl-Hirschman Index (HHI) of market concentration is a common measure based on the distribution of market shares within each relevant market. Horizontal merger assessment considers the post-transaction market concentration and the increase in concentration arising from the transaction.

A. <u>Initial Analysis (changes in market concentration)</u>

76. HHI is calculated by squaring the market share of each firm in a market and summing the resulting numbers. It ranges from 0 (when there are many equally sized participants) up to 10,000 (when there is only one participant).
77. The range of market concentration as measured by the HHI can be classified as: (i) Unconcentrated: HHI less than 1,500 points; (ii) Moderately concentrated: HHI between 1,500 and 2,500 points; and (iii) Highly concentrated: HHI greater than 2,500 points.
78. Assessments of competitive effects consider both pre-transaction and post-transaction concentration, and the increase in concentration as a consequence of the transaction.

Consumer Products

79. The FTC identified several other large distributors of consumer products that final consumers in Jamaica are likely to consider as reasonable alternatives to the products distributed by the parties to the SPA. These products span a range of feminine care products, household cleaning supplies, and consumable goods. These competing distributors of consumer products include Grace Kennedy, Seprod, Lasco and Cari-Med.
80. Accordingly, the SPA is unlikely to result in any significant change in market concentration in the distribution of in the market for consumer products and therefore raises no concern for competition.

Pharmaceutical Products

81. The FTC also identified several other large distributors of pharmaceutical products that final consumers in Jamaica are likely to consider as reasonable alternatives to all but one of the products

distributed by the parties to the SPA. These competing distributors include Cari-Med, RA Williams, Lasco Pharmaceuticals, New Vision Distributors, MJD Pharmaceuticals, Federated Pharmaceuticals, Ayrtons, Medimpex, Medical Products Jamaica, and Medical Disposables & Supplies.

82. The FTC did not identify any distributor that offers reasonable substitutes to the insulin medication distributed by the parties to the agreement. Insulin is an essential hormone therapy used to manage diabetes, a chronic condition affecting many persons living in Jamaica. Insulin is a life-sustaining medication that regulates blood sugar levels. It is categorized by its duration of action (rapid-acting, short-acting, intermediate-acting, or long-acting) and delivery method (vials, cartridges, or prefilled pens). Challenges such as import dependency, cold-storage requirements, and distribution limitations in rural areas create barriers to consistent access.
83. Insulin in Jamaica follows a structured supply chain involving pharmaceutical manufacturers, authorized distributors, healthcare institutions, and pharmacies. Unlike agricultural products such as juices and dairy, insulin is entirely imported because Jamaica lacks local production capabilities. Global pharmaceutical companies—including Eli Lilly, Novo Nordisk, and Sanofi—manufacture insulin in various forms (vials, cartridges, and prefilled pens) and supply them to licensed Jamaican distributors, primarily MDJ and Asofarma (Aventa). These distributors manage regulatory compliance, cold storage, and bulk distribution to ensure product integrity.
84. Once imported, insulin is supplied to multiple points of care, including public hospitals, private pharmacies, and National Health Fund (NHF)-approved providers. The NHF plays a critical role in accessibility, as it subsidizes specific insulin brands, influencing market demand and affordability. Patients typically access insulin through public healthcare facilities (for low-cost or free access), private pharmacies (for out-of-pocket purchases), or NHF-affiliated pharmacies (for subsidized pricing on approved products)
85. The distribution process for insulin is tightly regulated by Jamaica's Ministry of Health & Wellness, ensuring compliance with storage requirements (e.g., refrigeration) and prescription protocols. Unlike consumer goods such as beverages, insulin distribution presents greater logistical challenges, including temperature-controlled transport and strict inventory tracking to prevent shortages. Currently, the market for insulin medication in Jamaica is served by two exclusive distributors, MDJ and Aventa (an affiliate of Acado), which together distribute three brands. Within this relevant market, there are six sub-markets coinciding with the six classes of medications used to treat diabetes, based on patients' needs.

86. The share of the brands of insulin within each sub-market is presented in the table below.

Table 1: Market Share of Insulin Distribution, 2024

Class of Insulin Medication	**Market Share (based on sales revenue)**
Class - Intermediate Acting	
Eli Lilly (Aventa)	[redacted]%
NovoNordisk (MDJ)	[redacted]%
Class - Long Acting	
Eli Lilly (Aventa)	[redacted]%
NovoNordisk (MDJ)	[redacted]%
Sanofi (MDJ)	[redacted]%
Class - Rapid Acting	
Eli Lilly (Aventa)	[redacted]%
NovoNordisk (MDJ)	[redacted]%
Sanofi (MDJ)	[redacted]%
Class - Short Acting	
NovoNordisk (MDJ)	[redacted]%
Eli Lilly (Aventa)	[redacted]%
Class - Short and intermediate acting	
NovoNordisk- (MDJ)	100%
Class - Rapid and intermediate acting	
NovoNordisk- (MDJ)	100%

87. The table shows that MDJ is the leading distributor in the class of *long-acting* insulin medication and the sole distributor of the classes of *short and intermediate-acting* and *rapid and intermediate-acting* insulin medication. Aventa is the leading distributor in the *intermediate acting*- class of insulin medication. In the *short-acting* and the *rapid-acting* classes, sales are almost evenly split between Aventa and MDJ.

Intermediate-Acting Insulin

88. Intermediate-acting insulins provide a longer duration of action, often covering blood sugar needs for half a day or overnight. There are fewer participants in the market for Intermediate-Acting Insulin. There are two manufacturers, Eli Lilly and NovoNordisk, that dominate this class. MDJ and Asofarma (Aventa) distribute these products, with Eli Lilly holding a significant advantage in the distribution of insulin under the Intermediate-Acting category.
89. Aventa distributed approximately [redacted]% of the Intermediate-Acting insulin in 2024, while MDJ distributed the remaining [redacted]%.
90. Based on the above, the FTC concludes that the SPA will result in a highly concentrated Intermediate-Acting insulin market with an HHI of [redacted] Accordingly, the SPA is presumed to harm competition in the relevant market.
91. To the extent that the transaction significantly increases the HHI, the FTC presumes that it raises significant competition concerns. A deeper analysis of other conditions in the relevant markets is therefore undertaken to confirm or refute this presumption.

Rapid-Acting Insulin

92. Rapid-Acting insulin medication is designed to quickly lower blood glucose levels, typically taken just before or after meals. Due to their short duration, rapid-acting insulins are often used in conjunction with the long-acting basal insulin in intensive insulin regimens. Brands compete on delivery mechanisms, and switching costs are low for patients, but prescribers prefer established brands.
93. The two distributors had almost equal market shares of the market for rapid-acting insulin medication. MDJ, distributor of NovoNordisk and Sanofi had a market share of at [redacted]% while Aventa had a share of [redacted]%. The market is highly concentrated with an HHI [redacted] points but competition is sustained by multi-brand participation and NHF accessibility.

Short-Acting Insulin

94. Short-Acting insulins have a slightly slower onset than rapid-acting types and are often used to cover meals or correct high glucose levels. These insulins are commonly used in hospital settings or for patients requiring precise dosing adjustments. The market share for short-acting insulin is almost evenly distributed, with Eli Lilly (Aventa) holding [redacted]% and NovoNordisk (MDJ) holding the other [redacted]%.

96. The pre-transaction Herfindahl-Hirschman Index (HHI) across the six classes of medication ranges between [redacted] points (the *rapid-acting class) and* [redacted] *points (the short and intermediate-acting* class), indicating highly concentrated sub-markets. The merger would effectively change the insulin market from a duopoly to a monopoly, resulting in a significant increase in market concentration across four of the five sub-markets, with each sub-market measuring an HHI of 10,000. The merger would result in an increase in HHI ranging between 0 and 5,000 points.
97. Mergers that increase market concentration by more than 200 points raise significant concerns for competition. The demand for insulin is price-inelastic since it is a lifesaving product with limited alternatives. A single distributor gaining full control could lead to higher prices, absent the timely entry of new distributors in the market post-transaction.
98. The FTC concludes that the acquisition is likely to result in a significant increase in market concentration in the market for insulin medication, and is therefore presumed to substantially lessen competition, absent other market conditions to mitigate the same.

B. <u>Further Analysis (Impediments to Entry)</u>

95. An assessment of the impediments to entry is useful for confirming or refuting the presumption of harm to competition arising from the significant increase in market concentration from the challenged conduct.
96. The demand for insulin is jointly determined by prescribers (medical doctors), health insurance providers (through pharmacy benefit manager formularies), and patients. In turn, prescribers may be influenced by medical representatives (i.e., sales representatives of a particular brand) who provide information about that brand. As such, for new entry to take place, prescribers would have to be confident that it would have to be at least as effective for the patient, health insurance would have to be convinced that it would be cost-effective to cover, and patients would have to be persuaded to switch to a new brand of medication. Further, for such an entry to deter anticompetitive conduct of a monopoly incumbent, such an entry would have to take place in a timely manner, say, less than two years.
97. Demand dynamics within the insulin sub-markets vary by class. Medications within the *rapid-acting* and *short-acting* classes are often treated as more interchangeable commodities, with competition characterized by price sensitivity and potential for brand switching, particularly driven by health insurance coverage. In contrast, medications in the *long-acting* class and more complex analogue

mixtures are characterized by much less frequent patient switching, owing to greater clinical inertia, the risks of disrupting a stable regimen, and higher patient-specific dosage tailoring.

99. To the extent that successful entry has not been observed in the market for insulin despite significant revenues generated by the two distributors, the FTC concludes that there is a significant impediment to entry, which makes competitive entry unlikely.

C. Summary

100. The challenged conduct is likely to adversely affect competition in the market for insulin, as it would lead to a single distributor of all classes of insulin. This presents profound, systemic risks to competition and patient welfare.

101. Specifically, the monopoly distributor would have a captive base comprising all diabetic patients nationwide, by virtue of being the exclusive supplier to every pharmacy, hospital, and other health care customers. The central risk is leveraging: the distributor could link favourable pricing, formulary placement, or delivery terms for other medical supplies to any given healthcare facility's exclusive use of other products carried by the monopoly distributor of insulin medication.

102. The FTC concludes that the challenged conduct has the effect of substantially lessening competition in the insulin market.

D. Evaluation of Exemptions

103. The FTC is not satisfied that Acado's distribution of all three brands of insulin medication meets the conditions stipulated in section 17(4) for the challenged transaction to be exempt from being treated as a contravention of section 17 of the FCA.

IX. SUMMARY & OVERALL CONCLUSION

104. The FTC reviewed a Sale and Purchase of Shares Agreement executed on February 4, 2025, among Acado, formerly CDP, and MIR.

105. The agreement was reviewed under section 17 of the FCA, which prohibits agreements which have as their purpose, effect or likely effect of substantially lessening competition in a market without any legitimate business or economic justification under the FCA.

106. The FTC concludes that:

a. The relevant product markets for assessing the agreement comprise (i) the consumer product market (including sub-markets); and (ii) the pharmaceutical market (including sub-markets).
b. The relevant geographic market is the entire island of Jamaica.
c. The SPA does not have the purpose of substantially lessening competition in the relevant market.
d. The SPA is likely to have the effect of substantially lessening competition by removing competition in the insulin market since it would result in a single distributor controlling the only three brands in the relevant market.
e. The SPA does not qualify for the exemption provided for in section 17(4).
f. The FTC should challenge the SPA as it will likely harm rivalry and patients in the insulin market in Jamaica.

X. RECOMMENDATION

107. In this section, the FTC proposes remedial measures designed to mitigate the anticompetitive effects described in Section VIII.
108. The primary features of the remedial measures are outlined in the Appendix to the report.
109. The FTC recommends that the Buyer and other relevant party enter into a Consent Agreement with the FTC as a condition of the FTC's issuance of a *Statement of Non-Objection* to the consummation of the acquisition.

XI. STATEMENT OF NON-OBJECTION

110. It is recommended that the FTC issue a *Statement of Non-Objection* if the consummated acquisition meets any of the following structural conditions, each designed to sufficiently remedy the identified harm to competition in the market for insulin:
    i. Allows for the acquisition of only the consumer goods portfolio.
    ii. Allows for the acquisition of the consumer goods portfolio and the non-insulin segment of the pharmaceutical portfolio.
    iii. Allows for the acquisition of the entire consumer goods portfolio and up to two of the three brands of insulin medication if the Consent Agreement with the FTC is agreed upon.
111. If option (iii) is pursued, the Consent Agreement under FCA Regulation 6(3) (Form D) should include the proposed remedial measures presented in the Appendix to this Report.

APPENDIX: PROPOSED REMEDIAL MEASURES

112. The proposed remedial measures are as follows:

i. Acado/Aventa will discontinue the distribution of the Eli Lilly brand of insulin medication upon the commencement of distribution by a new distributor of the Eli Lilly brand. This is expected to occur by September 2026.

ii. Acado will appoint an independent party to submit monthly Compliance Reports to the FTC, on Aventa's sales and mark-up levels until the new distributor takes over distribution.

iii. Acado/Aventa will maintain the full economic viability, marketability, and competitiveness of the Eli Lilly Insulin Business until the new distributor takes over distribution.

iv. Acado/Aventa will ensure a consistent supply - maintain sales and mark-up levels, quality, service, and customer support until the new distributor takes over distribution.

v. Acado/Aventa will not in any way be affiliated with the new distributor.