

**IN THE MATTER BEFORE THE BOARD  
OF THE COMPETITION AND CONSUMER  
PROTECTION COMMISSION**

**Case No.: MERG/31/05/2023/00027**

**BETWEEN**

**ANGLO AMERICAN EXPLORATION  
BV, UNICO MINERALS LIMITED AND  
HANDA RESOURCES LIMITED**

**APPLICANTS**

**AND**

**COMPETITION AND CONSUMER  
PROTECTION COMMISSION**

**RESPONDENT**

**BEFORE:**

<b>Commissioner Angela Kafunda</b>	<b>- Chairperson</b>
<b>Commissioner Fredrick Imasiku</b>	<b>- Vice Chair</b>
<b>Commissioner Stanford Mtamira</b>	<b>- Member</b>
<b>Commissioner Sikambala M. Musune</b>	<b>- Member</b>
<b>Commissioner Emmanuel M. Mwanakatwe</b>	<b>- Member</b>
<b>Commissioner Sambwa Simbyakula Chilembo</b>	<b>- Member</b>
<b>Commissioner Derrick Sikombe</b>	<b>- Member</b>

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**DECISION**

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Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

## **Introduction**

### ***It was submitted that:***

1. The Competition and Consumer Protection Commission (the “Commission”) on 23<sup>rd</sup> May 2023, received a merger application from Corpus Legal Practitioners involving Anglo American Exploration BV (AAE), Unico Minerals Limited (UML) and Handa Resources Limited (HRL).
2. The acquirer, AAE is a company duly incorporated in the Netherlands and indirectly operates in Zambia through Anglo Exploration (Zambia) Limited (AEZL).
3. The joint acquirer, UML is a company duly incorporated in the British Virgin Islands. UML operates in Zambia through Zaco Investment Limited (Zaco).
4. The Target, HRL is a company duly incorporated in Zambia. HRL has two (2) subsidiaries in Zambia namely, Zaco and Afrimin Resources Limited (Afrimin).

## **Legal Provisions and Assessment Tests**

### **Legal Provisions**

#### ***It was submitted that:***

5. Section 8 of the Act provides that:  
*“Any category of agreement, decision or concerted practice which has its object or effect, the prevention, restriction or distortion of competition at an appreciable extent in Zambia is anti-competitive and prohibited”.*
6. Section 25 (1) of the Act states that a merger is subject to the provisions of this Part if it is reviewable by the Commission. Section 25(2) states that the Commission shall review a merger if-
  - (a) *The merger is subject to prior authorisation in accordance with Section twenty-six;*
  - or*
  - (b) *The Commission elects or reviews the merger in accordance with Section twenty-seven*
7. Section 26(1) states that; *“Parties to a merger transaction that meets the prescribed threshold under subsection (5) shall apply to the Commission for authorisation of the proposed merger in the prescribed manner and form”.*

## Assessment Tests

### *It was submitted that:*

8. In the investigation and assessment of potential and/or likely violations of the competition provisions of the Act, the Commission takes a multiple assessment approach, i.e., carries out a number of tests to ascertain whether the alleged violations have or are likely to result in any negative effects on the market, to the consumer, fair trade or the economy in general.

#### *(i) Substantial Lessening of Competition or "Effect" Test - Section 30(1)*

9. The Commission shall, in considering a proposed merger, assess whether the merger is likely to prevent or substantially lessen competition and take into account the likely and actual factors that affect competition in a defined market in Zambia.

#### *(ii) Dominance Test - Section 30(2)(h)*

10. Whether the transaction, through abuse or acquisition of a dominant position of market power, would or is likely to limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general.

#### *(iii) Public Interest Test - Section 31*

11. The Commission may authorise any act which is not prohibited by this Act, that is, an act which is not necessarily illegal unless abused if that act is considered by the Commission as being consistent with the objectives of the Act. In consideration of such matters, the Commission is required to apply public benefit tests. The Commission generally may, in considering a proposed merger, take into account any factor which bears upon the public interest in the proposed merger, including –

- a) the extent to which the proposed merger is likely to result in a benefit to the public which would outweigh any detriment attributable to a substantial lessening of competition;*
- b) the extent to which the proposed merger would, or is likely to, promote technical or economic progress and the transfer of skills, or otherwise improve the production or distribution of goods or the provision of services in Zambia;*
- c) the saving of a failing firm;*
- d) the extent to which the proposed merger shall maintain or promote exports from Zambia or employment in Zambia;*
- e) the extent to which the proposed merger may enhance the competitiveness, or advance or protect the interests, of micro and small business enterprises in Zambia.*

- f) *the extent to which the proposed merger may affect the ability of national industries to compete in international markets;*
- g) *socio-economic factors as may be appropriate; and*
- h) *any other factor that bears upon the public interest.*

### **Investigations conducted**

#### ***It was submitted that:***

12. The report was based on information that was submitted by the parties in the CCPC Form 1 of the Statutory Instrument No. 97 of 2011, literature reading obtained using reports submitted by the parties, desktop research and other information in the possession of the Commission on the market(s). In addition, the Commission wrote to third parties in accordance with Section 29 of the Act requesting for their comments regarding the proposed transaction.

### **The Parties**

#### **Anglo American Exploration BV (AAE) – Acquirer 1**

#### ***It was submitted that:***

13. AAE is a company duly incorporated in the Netherlands. The principal activity of AAE is to undertake all activities in connection with exploration and mining. AAE is a member of the Anglo American Plc Group of companies. Anglo American Plc Group of companies is incorporated in England and Wales with a primary listing on the London Stock Exchange and secondary listings on the Johannesburg Stock Exchange, Swiss Exchange, Botswana Stock Exchange, and Namibian Stock Exchange.
14. AAE indirectly operates in Zambia through Anglo Exploration Zambia Limited (AEZL). The nature of business of AEZL is the exploration of mineral resources, with a focus on near term production and provision of exploration project management administration services.
15. The parties submitted that AAE holds an indirect interest in AEZL through Ambase Investment Africa (Zambia)(Pty) Limited, which is 100% owned by AAE, and Balgo Nominess (Pty) Limited, also 100% owned by AAE.

#### **Unico Minerals Limited (UML) - Acquirer 2**

#### ***It was submitted that:***

16. UML is a company duly incorporated in the British Virgin Islands. UML is 100% controlled by Arc Minerals Limited (Arc Minerals), a company duly incorporated in the British Virgin Islands. Arc Minerals is a listed company, and no single

shareholder holds more than 10% shares. The top three (3) shareholders of Arc Minerals include Karl-Erik von Bahr (7%), Lärarnas Riksförbund (5%) and Hargreave Hale Limited (4%). The parties submitted that UML operates in Zambia through Zaco Investment Limited (Zaco) where it has 0.7% shares. The parties further submitted that UML would transfer its shares in Zaco to Handa Resources Limited as part of an internal reorganisation process, prior to the implementation of the proposed transaction. The principal activities of Zaco are (i) mineral exploration and development and (ii) mining and processing.

### **Handa Resources Limited (HRL) – Target**

#### **It was submitted that:**

17. HRL is a company duly incorporated in Zambia. The principal activities of HRL are (i) mineral exploration and development and (ii) mining and processing. Handa has two (2) subsidiaries in Zambia namely, Zaco (99%) and Afrimin Resources Limited (Afrimin) (80%). The nature of business of Afrimin is Mining and quarrying.

### **Findings**

#### **Competition Analysis**

#### **Consideration of the Relevant Market**

#### ***It was submitted by the Technical Committee (TC) of the Board of Commissioners that:***

18. The relevant markets were found to be;
- i. The exploration of minerals such as cobalt, copper, gold, lead, molybdenum, nickel, silver, zinc, uranium, and platinum group metals in North-Western Province of Zambia.
  - ii. The mining and processing of minerals such as cobalt, copper, gold, silver, zinc in North-Western Province of Zambia.

#### **Consideration of Substantial Lessening of Competition or “Effect” Test**

#### **Market Concentration**

#### ***It was submitted by the TC that:***

19. The market for mining and processing of minerals such as cobalt, copper, gold, silver, zinc in North-Western Province of Zambia was concentrated at 76%. The proposed transaction would not entrench the market concentration as the parties to the proposed transaction were yet to commence mining activities and likely to create

competition for the top (three) 3 mining firms constituting the 76% market concentration.

20. Market concentration for the market involving the exploration of minerals such as cobalt, copper, gold, lead, molybdenum, nickel, silver, zinc, uranium, and platinum group metals in North-Western Province of Zambia, could not be established. This was because information concerning market shares for companies holding exploration licences was not readily available

***Barriers to Entry***

***It was submitted by the TC that:***

21. There were minimal barriers to entry in the identified relevant markets which mainly included obtaining regulatory approvals such as mining and exploration licences from the Ministry of Mines and Minerals Development, obtaining environmental impact assessment and approvals from Zambia Environmental Management Agency, and other regulators. It was established that the other barriers to entry were start-up costs to buy the equipment for mining.

***Import Competition***

***It was submitted by the TC that:***

22. There was no import competition in the identified relevant markets.

***Countervailing Power***

***It was submitted by the TC that:***

23. It was established that countervailing power did not exist in the identified relevant markets. This was because HRL did not have any customers.

***Removal of a vigorous competitor***

***It was submitted by the TC that:***

24. The transaction would not lead to the removal of a vigorous competitor in the identified relevant markets. This was because the merging parties were not competitors in the identified relevant markets due to the nature of exploration activities (where no marketable product is produced). It was submitted that players in this market did not necessarily compete against each other until when they entered into the mining and processing market where they could mine and sale minerals.

### **Consideration of Dominance**

#### ***It was submitted by the TC that:***

25. Due to the unavailability of data on market shares in the market for exploration activities, dominance for the merging parties could not be established in this market. Further, since the merging parties were yet to enter the market for mining and processing of minerals, they had not yet acquired any market shares and as such, the merging parties were not dominant in this market.

### **Public Interest consideration**

#### ***It was submitted by the TC that:***

26. The implementation of the proposed transaction would lead to the creation of employment indirectly and directly when a mine is developed and operational. Further, once minerals are produced, it was likely that a good portion of them would be exported, hence promoting exports.

### **Further submissions by Management**

27. Management submitted that after the TC had, at their 161<sup>st</sup> sitting of the 28<sup>th</sup> of June 2023 granted interim unconditional authorization to the transaction, the Commission received additional information to the effect that the Exploration Licence No. 19906-HQ-LEL, being the target asset in the transaction was a subject of dispute before the Courts of Law.
28. Management also submitted that further interrogation of the matter had revealed that there had been a transfer of shares by Arc Minerals, Kopara Investments Limited, and Arun V. Patel (the shareholders of HRL), to Zamsort Zambia Limited, which transfer amounted to a notifiable merger and that this was effected without the authorization of the Commission.
29. Management submitted that following the Board Directive on the 11<sup>th</sup> of August 2023 to seek the Legal Opinion of the Attorney General regarding whether the Board would be on firm ground to consider the merger involving the target asset in the subject transaction, Management submitted that the Attorney General's Chambers had in a letter dated 15<sup>th</sup> of August 2023 provided the Legal Opinion.

### **Board of Commissioners (the Board) Deliberations**

30. The Board deliberated and determined that the transfer of shares between HRL and Zamsort amounted to a notifiable merger. The Board further determined that HRL

and Zamsort Zambia Limited be advised to regularize the transaction in which shares in Zamsort Zambia Limited were relinquished by Arc Minerals, Kopara Investments Limited, and Arun V. Patel. The Board noted and was guided by the Opinion of the Attorney General that the Competition and Consumer Protection Commission (CCPC) could proceed to make a final decision on the merger application of the parties as the issue of *subjudice* and committal did not arise.

**Relevant market**

31. The Board deliberated that the relevant markets were;
- i. Exploration of minerals such as cobalt, copper, gold, lead, molybdenum, nickel, silver, zinc, uranium, and platinum group metals in North-Western Province of Zambia.
  - ii. Mining and processing of minerals such as cobalt, copper, gold, silver, zinc in North-Western Province of Zambia.

**Substantial Lessening of Competition**

32. The Board deliberated that the proposed transaction would not lead to substantial lessening of competition in the identified relevant markets because post-merger, the transaction would not result in the removal of a vigorous competitor, lead to any barriers to entry, nor enhance market concentration.

**Abuse of Dominance**

33. The Board deliberated that the proposed transaction was not likely to result in the creation of a dominant player in the identified relevant markets and as such, abuse was unlikely.

**Public Interest Consideration**

34. The Board deliberated that the transaction had no public interest concerns. It was observed that the proposed transaction would create employment opportunities and promote exports when minerals are discovered and a mine is developed in the area of interest.

**Board Decision**

- 31 Given the foregoing analysis and conclusion that the proposed joint venture involving Anglo American Exploration BV (AAE), Unico Minerals Limited (UML) and Handa Resources Limited (HRL) would not lead to the substantial lessening of competition



or abuse of dominance in the identified relevant markets, nor raise public interest concerns;

- I. The Board decided that the parties be granted **Unconditional Final Authorisation**. The authorisation of this transaction does not preclude the parties from obtaining any other relevant regulatory approvals pursuant to Section 36 of the Competition and Consumer Protection Act No. 24 of 2010 (the Act).
- II. The Board also directed that within thirty (30) days of receipt of the Final Authorisation, HRL and Zamsort Zambia Limited should regularise the transaction in which HRL relinquished its shares in Zamsort Zambia Limited pursuant to Section 25 of the Act.
- III. Further, the Board directed that HRL and Zamsort Zambia Limited be fined one percent (1%) each, based on their latest Audited Financial Statements for being in violation of Section 37 of the Act, payable within 30 days of receipt of the Final Authorisation.

**Dated 18<sup>th</sup> August 2023**

  
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**Chairperson**

**Competition and Consumer Protection Commission**