

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

**Case No. MERG/24/08/2023/00044**

**BETWEEN**

**HANDA RESOURCES LIMITED  
AND ZAMSORT ZAMBIA LIMITED**

**APPLICANTS**

**AND**

**COMPETITION AND CONSUMER  
PROTECTION COMMISSION**

**RESPONDENT**

**BEFORE:**

**Commissioner Angela Kafunda  
Commissioner Fredrick Imasiku  
Commissioner Stanford Mtamira  
Commissioner Sikambala M. Musune  
Commissioner Emmanuel M. Mwanakatwe  
Commissioner Sambwa Simbyakula Chilembo  
Commissioner Derrick Sikombe**

**- Chairperson  
- Vice Chairperson  
- Member  
- Member  
- Member  
- Member  
- Member**

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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, Unico Minerals Limited and Handa Resources Limited. In its deliberations relating to the said merger, the Board of Commissioners at its 63<sup>rd</sup> Board Meeting for Adjudication of cases held on 11<sup>th</sup> August 2023, at 09:00 hours found and determined that the Commission was not aware of the transaction in which Arc Minerals Limited, Kopara Investments Limited and Arun V. Patel (“collectively shareholders in Handa Resources Limited”) had relinquished their shareholding in Zamsort Zambia Limited (“Zamsort”). It was the Board’s position that the relinquishing of shares in Zamsort by Arc Minerals Limited, Kopara Investment Limited and Arun V. Patel was a transaction that the parties should have notified with the Commission. Therefore, the Board of Commissioners resolved that the said transaction was, and remained null and void, as by law provided.
2. Furthermore, the Board of Commissioners determined that by implementing a transaction which ought to have been notified with the Commission, the parties involved committed an offence under Section 37 of the Competition and Consumer Protection Act No. 24 of 2010 (the “Act”). It was the Board’s position that the said transaction should be regularized with the Commission within 30 days of receipt of the Commission’s letter, dated 16<sup>th</sup> August 2023.
3. Following the Board’s determination, the Commission on 24<sup>th</sup> August 2023, received a merger application from Shamwana and Company Advocates and Notaries regarding the proposed merger in which Handa Shareholders were relinquishing their collective shareholding of 15000 shares in Zamsort Zambia Limited valued at K1.00 each following Zamsort’s Board of Directors and Members meeting held on 31<sup>st</sup> March 2022.
4. The donors are Shareholders of Handa, a company duly incorporated under the Laws of the Republic of Zambia, with company registration number 120200009440 and having its registered office at Plot No. 1266, Haile Selassie Avenue, Longacres, Lusaka Province, Zambia.
5. The donees of the shares being relinquished is Zamsort a company incorporated under the Laws of the Republic of Zambia, with company registration number 120040055378 and having its registered office at Plot No. 6636 (24), Mberere Road, Olympia Extension, Lusaka Province, Zambia.

### ***Reasons Necessitating Round Robin***

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

6. Management requested for the transaction to be considered by the Board of Commissioners (“the Board”) via round robin due to the linking nature of the transaction, and the consequential time sensitivity.

### **Legal Provisions and Assessment Tests**

#### **Legal Provisions**

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

7. 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”.*

8. 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 to review the merger in accordance with Section twenty-seven*

9. Section 26(1) states that; *“Parties to a merger transaction that meet the prescribed thresholds 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:***

10. 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)*

11. 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)*

12. 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 Public Interest Test - Section 31*

13. 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:***

14. This report was based on information that was submitted by the parties in the CCPC Form 1, literature reading obtained using desktop research and other information in possession of the Commission on the market.

### **The Parties**

#### **Zamsort Zambia Limited (“Zamsort”) – The Acquirer<sup>1</sup>**

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

15. Zamsort is a company incorporated under the Laws of the Republic of Zambia with company registration number 120040055378 and having its registered office at Plot No. 6636 (24), Mberere Road, Olympia Extension, Lusaka Province, Zambia. Zamsort’s principal activities are (i) mineral exploration and development and (ii) mining and processing.

#### **Handa Resources Limited (“Handa”) – The Target<sup>2</sup>**

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

16. Handa is a company duly incorporated under the Laws of the Republic of Zambia with company registration number 120200009440 and having its registered office at Plot No. 1266, Haile Selassie Avenue, Longacres, Lusaka Province, Zambia. Handa’s principal activities are (i) mineral exploration and development and (ii) mining and processing<sup>3</sup>.

### **Findings**

#### **Competition Analysis**

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

#### ***The Board Resolved that:***

17. The relevant markets were found to be;

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<sup>1</sup> Submissions by the parties in Form 1

<sup>2</sup> Submissions by the parties in Form 1

<sup>3</sup> PACRA Printout as submitted by the parties.

- I. Exploration of minerals such as copper and cobalt in North-Western Province of Zambia.
- II. Mining and processing of minerals such as copper and cobalt in North-Western Province of Zambia.

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

***Market Concentration***

***The Board Resolved that:***

18. The market concentration for the exploration of minerals such as copper and cobalt in North-Western Province of Zambia could not be determined as information concerning market shares for companies holding exploration licences was scarce. However, the Board established that there were several companies with exploration licenses near the area relating to the proposed transaction.
19. The CR-3 for the market for mining and processing of minerals such as copper and cobalt in North-Western Province of Zambia was found to be 76%, implying that the relevant market was highly concentrated.

***Barriers to Entry***

***The Board Resolved that:***

20. There were no significant barriers to entry in the identified relevant markets besides the structural barriers which mainly are Government Regulatory requirements to set up a business as well as huge start-up costs to set up the mine and production processes as well as expertise (technical know-how).

***Import Competition***

***The Board Resolved that:***

21. The identified relevant markets had no import competition.

***Countervailing Power***

***It was submitted by Management that:***

22. The identified relevant markets had no countervailing power.

***Removal of a vigorous competitor***

***The Board Resolved that:***

23. The proposed transaction was not likely to lead to the removal of a vigorous competitor. This is because the proposed transaction was simply a voluntary surrender of interests/shareholding in Zamsort. On this basis, the Board resolved that this transaction is not likely to lead to the removal of a vigorous competitor in Zambia.

**Consideration of Dominance**

***The Board Resolved that:***

24. Dominance in the identified relevant markets could not be established because Zamsort had not yet commenced operations and as such had not yet acquired any market shares.

**Public Interest Consideration**

***It was submitted by Management that:***

25. There were no public interest concerns arising from this transaction. It was noted that the transaction presented an opportunity for promoting indigenous business in that by virtue of this transaction Zamsort became a wholly Zambian owned business and consequently the benefits were that once the company begun its operations all income would remain in the local economy with the possibility of promoting local businesses.

**Board of Commissioners Deliberations**

***Relevant market***

26. The relevant markets were found to be:
- I. Exploration of minerals such as copper and cobalt in North-Western Province of Zambia.
  - II. Mining and processing of minerals such as copper and cobalt in North-Western Province of Zambia.

***Substantial Lessening of Competition***

27. The Board deliberated that the proposed transaction would not lead to the substantial lessening of competition in the relevant markets identified. This was because post-

merger, the transaction did not result in the removal of a vigorous competitor, change in market structure nor a creation of a dominant player. In addition, the mining sector is well regulated by Government as such, anti-competitive conduct in the identified relevant markets was unlikely to ensue. Thus, the transaction was not likely to result in substantial lessening of competition in the relevant markets.

***Abuse of Dominance***

28. 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***

29. The Board deliberated that the transaction had no public interest concerns. It was noted that the transaction presented an opportunity for promoting indigenous business in that by virtue of this transaction Zamsort became a wholly Zambian owned business and consequently the benefits were that once the company begun its operations all income would remain in the local economy with the possibility of promoting local businesses.

**Board Decision**

30. Given the foregoing analysis and conclusions, the Board of Commissioners decided to grant the parties **Unconditional Final Authorisation** to the proposed transaction because investigations and assessment revealed that the transaction will not raise any competition concerns that may lead to substantial lessening of competition or abuse of dominant position of market power in the economy of Zambia. The authorisation of this transaction does not preclude the parties from obtaining any other relevant regulatory approvals pursuant to Section 36 of the Act.

**Dated 4<sup>th</sup> September 2023**

  
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**Chairperson**  
**Competition and Consumer Protection Commission**