

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

Case No MERG/25/07/2023/00039

BETWEEN

**M.F.B INVESTMENTS LIMITED AND
CHALIMBANA FRESH PRODUCE LIMITED**

APPLICANTS

AND

**COMPETITION AND CONSUMER RESPONDENT
PROTECTION COMMISSION**

BEFORE:

Commissioner Angela Kafunda	- Chairperson
Commissioner Stanford Mtamira	- Member
Commissioner Sikambala M. Musune	- Member
Commissioner Emmanuel M. Mwanakatwe	- Member
Commissioner Derrick Sikombe	- Member

DECISION

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 21st July 2023, received a merger application from Musa Dudhia and Company regarding the proposed merger involving M.F.B Investments Limited (“MFB”) and Chalimbana Fresh Produce (“Chalimbana”). The transaction was fully notified on 21st August 2023.
2. MFB is a private limited company that is incorporated under the laws of Zambia. MFB was recently incorporated for the purpose of implementing the proposed transaction.
3. Chalimbana is a private limited company that is incorporated under the laws of Zambia.

Legal Provisions and Assessment Tests

Legal Provisions

It was submitted that:

4. 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”.

5. 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

6. 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:

7. 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)*
8. 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)*
9. 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*
10. 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:

11. 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 possession of the Commission in the market. 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

M.F.B Investments Limited (“MFB”) – The Acquirer 1

It was submitted that:

12. The Acquirer, MFB is a private limited company that is incorporated under the laws of Zambia. MFB was recently incorporated for the purpose of implementing the proposed transaction. As such, MFB does not currently provide any goods or services in Zambia.

Joy Mabani – The Acquirer 2

It was submitted that:

13. Joy Mabani is a South African national that is resident in Zambia. Joy Mabani has no other business interests in Zambia or elsewhere.

The Sellers

It was submitted that:

14. Alastair Edward Sansom is a Zimbabwean national that is resident in Zambia, whereas Juri Van Zyl and Anthony Andrew Hamilton Barker are both Zambian nationals’ resident in Zambia.

Chalimbana Fresh Produce Limited (“Chalimbana”) - The Target

It was submitted that:

15. The Target, Chalimbana is a private limited company that is incorporated under the laws of Zambia. Chalimbana is involved in the business of farming and specifically grows various crops, which include potatoes; onions; seed maize; commercial maize; soyabeans; a plantation of 10 000 macadamia trees that are not yet in production; and +/- 1 000 herd of cattle.

Findings

Competition Analysis

Consideration of the Relevant Market

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

16. The relevant markets were found to be:
- i. The commercial farming of root vegetables such as potatoes and onions in Lusaka city and Chisamba town of Zambia
 - ii. The production and supply of Maize in Lusaka City and Chisamba Town of Zambia;
 - iii. The production and supply of Soya beans in Lusaka City and Chisamba Town of Zambia; and
 - iv. The rearing and supply of cattle in Lusaka City and Chisamba Town of Zambia.

Consideration of Substantial Lessening of Competition or “Effect” Test

Market Concentration

It was submitted by the TC that:

17. The Commission was unable to establish the CR3 for the production and supply of Maize as well as for the market for the rearing and supply of cattle. The Commission however found that the two identified markets were highly fragmented and as a result the markets were unlikely to highly concentrated.
18. The Commission found that the CR3 for the market for the commercial farming of root vegetables such as potatoes and onions as well as the market for the production and supply of soya beans were 8.7% and 12.54% respectively. This indicated that the markets were not concentrated.

Barriers to Entry

It was submitted by the TC that:

19. All the identified markets were not prohibitive to entry and as such if new commercial entrants in these markets were compliant with the relevant legislative requirements and had adequate capital, there were no measures in place to deter them from entering this market.

Import Competition

It was submitted by the TC that:

20. Imports were an option for consumers in all the relevant markets identified. However, there was little to no import competition in all the markets as the local market was sufficient to cater for customer needs.

Countervailing Power

It was submitted by the TC that:

21. To a certain extent countervailing power existed in all the relevant markets as customers had some power to negotiate discounts with their suppliers.

Removal of a vigorous competitor

It was submitted by the TC that:

22. The transaction was not likely to result in the removal of a vigorous competitor in any of the defined markets in Zambia. This was because Chalimbana would still be operational in the defined relevant markets but only under new ownership.

Consideration of Dominance

It was submitted by the TC that:

23. The transaction would not result in the abuse of dominant position. Further there would be no market share accretion post transaction.

Public Interest consideration

It was submitted by the TC that:

24. There were no public interest concerns arising from this transaction, it was further concluded that the transaction was an investment opportunity that would ultimately be beneficial to employees and the public in general. Further, third parties consulted had no objections on the proposed transaction

Board of Commissioners (the Board) Deliberations

Relevant market

25. The Board deliberated that the relevant markets were found to be:
- i. The commercial farming of root vegetables such as potatoes and onions in Lusaka city and Chisamba town of Zambia
 - ii. The production and supply of Maize in Lusaka City and Chisamba Town of Zambia;
 - iii. The production and supply of Soya beans in Lusaka City and Chisamba Town of Zambia; and
 - iv. The rearing and supply of cattle in Lusaka City and Chisamba Town of Zambia.

Substantial Lessening of Competition

26. The Board deliberated that the proposed transaction would not lead to substantial lessening of competition in the relevant market identified because the transaction did not involve the removal of a vigorous competitor nor the creation of a dominant player. Further the proposed transaction did not change the market structure.

Abuse of Dominance

27. 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

28. The Board deliberated that the transaction had no public interest concerns arising from this transaction. The Board further concluded that the transaction was an investment opportunity that would ultimately be beneficial to employees and the public in general. Further, third parties consulted had no objections on the proposed transaction

Board Decision

29. Given the foregoing analysis and conclusions, the Board decided that the transaction would not lead to substantial lessening of competition or abuse of dominance in the relevant market. Further the Board noted that the transaction was unlikely to raise any adverse public interest concerns. The Board of Commissioners hereby grants the parties **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 Act.

Dated 19th October 2023


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Chairperson

Competition and Consumer Protection Commission