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COMPETITION AND TARIFF COMMISSION

Newsletter

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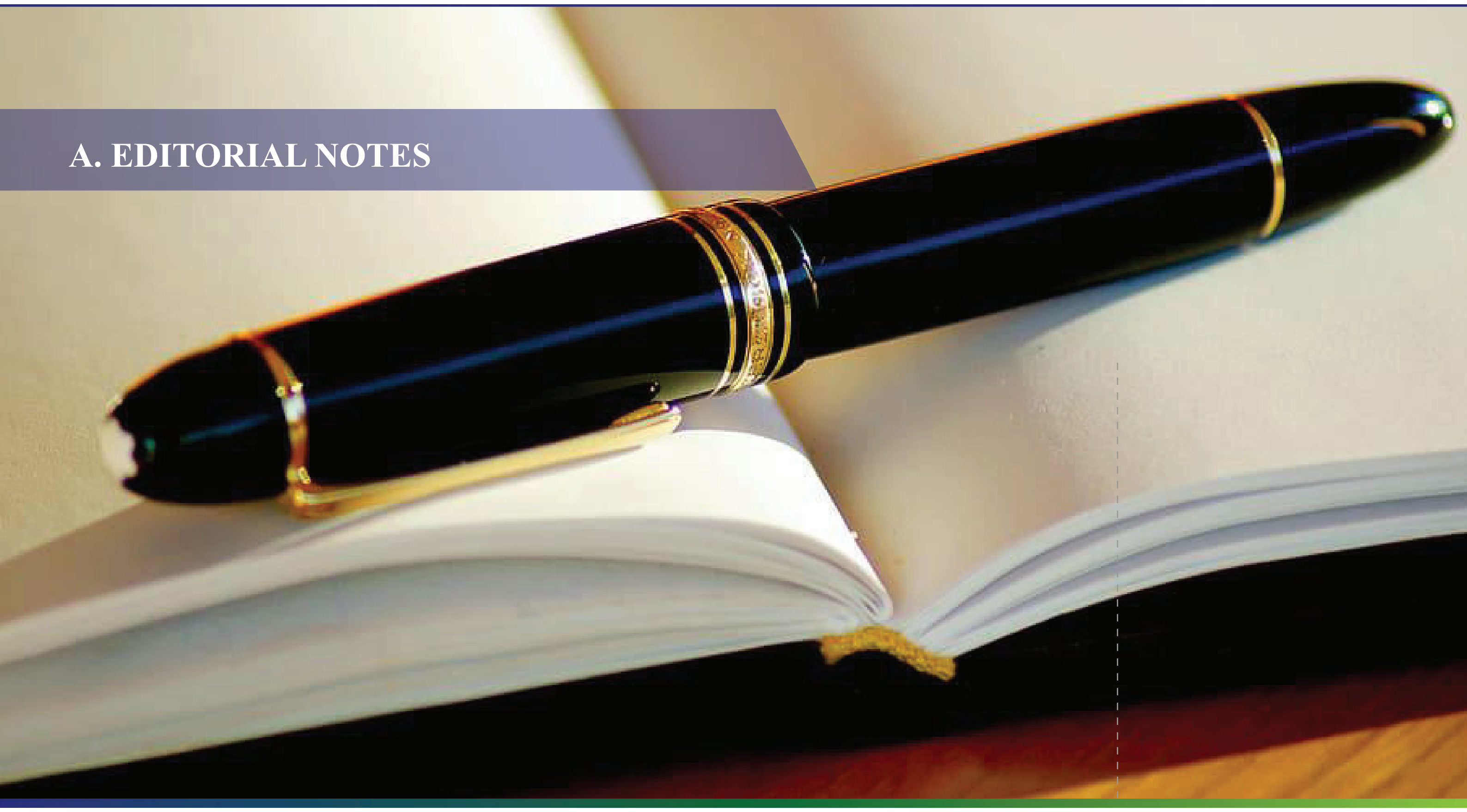


A. EDITORIAL NOTES

To all our esteemed stakeholders. The Competition and Tariff Commission (CTC or Commission) is delighted to share with you activities of the just ended third quarter (Q3) (July-September) of the year 2024.

The Q3 edition provides a summary of Mergers and Acquisitions cases undertaken during the period July to September 2024 which include i) Acquisition of the Entire Shareholding of Clover Leaf Panel Beaters (Pvt) Ltd by Yokama Investments (Pvt) Ltd and ii) Acquisition of the Entire Issued Shares in Zumbani Capital (Pvt) Ltd by Wealth Access Investments Managers (Pvt) Ltd. In the trade tariff space, the newsletter features an Awareness and Capacity Building Workshop for Border Agencies and the Private Sector held at the Victoria Falls and Kazungula Border Posts from September 9 to 13, 2024.

This edition consists of four analytical and informative articles namely (i) The impact of a new entrance on competition in the Telecommunication and Internet Service Provision Industry; (ii) Horizontal Mergers; (iii) Vertical Mergers; and (iv) Criteria for Assessing Tariff Adjustment requests. These articles demystify and unpack competition and trade tariff assistance issues to the Commission's stakeholders.

The last segment of this edition highlights recent internal activities which include a clean-up campaign and a grooming & etiquette workshop for employees which focused on cultivating a professional and polished workplace image. The Newsletter also covers the Commission's participation in the SADC Industrialization Week exhibition, details from the 5th Annual General Meeting and a congratulatory message to Ms. C. Mashava on her appointment to the COMESA Competition Commission board.

B. COMPETITION

B.1 Merger and Acquisition Activity for Q3 2024

Four (4) merger cases were received in the 2024 Q3 as shown in Table 1.

Table 1: Merger Cases Received in $Q^3$2024

#	Acquiring Firm	Target Firm	Sector
1	Inter Africa Civils P/L	Bitumen P/L	Construction
2	Simbisa Brands P/L	Oven Art (Pvt) Ltd	Manufacturing
3	KPMG Southern Africa LLP	KPMG Zimbabwe and KPMG Advisory	Financial Service
#	***Joint Venture***		***Sector***
4	Distribution Group Africa & Prodistribution P/L		Logistics

B.2 Merger Activity Under COMESA

The Commission provided information on five (5) merger transactions that were notified through the COMESA Competition Commission (CCC) in Q^3 2024 as shown below.

Table 2: COMESA Competition Commission Transactions

Transaction
1. Proposed acquisition of the sole control of Energean Capital Ltd by CIEP Spin BIDCO Ltd
2. Proposed acquisition of a controlling stake in Incorp Limited by African Drybulk Limited.
3. Proposed acquisition of a controlling stake in Chorus Aviation Leasing Inc, Chorus Aviation Investment Holdings LP and Chorus Aviation Holdings GP Inc by HPS Investment Partners LLC.
4. Proposed joint acquisition of Castlelake Group TopCo LP and Castlelake Group GP LLP by CL Holdings LLC and Castlelake Management Aggregator.
5. Proposed involving Wintershall NewCo, Habour Energy Plc and BASF SE.

i. Acquisition of the Entire Shareholding of Clover Leaf Panel Beaters (Pvt) Ltd by Yokama Investments (Pvt) Ltd

Introduction

In October 2023, the Commission received a notification of a proposed acquisition of the entire issued share capital of Clover Leaf Panel Beaters (Pvt) Ltd ("Clover Leaf") by Yokama Investments (Pvt) Ltd ("Yokama"). Clover Leaf is a motor body repairer that ceased operations in March 2023 after failing to meet shareholder's financial expectations in previous years. Yokama's primary business is in the provision of motor vehicle panel beating, repairs, maintenance, and spray-painting services. It intends to resuscitate the target's operations, and merge Clover Leaf with its existing business.

Clover Leaf
Panel Beaters
From bumps and dents to as good as new

Market Definition and Type of Merger

The Commission defined the relevant market as the provision of motor body repair services in Harare. Due to fact that merging parties are competitors, the merger was classified as a horizontal merger as both parties operate in the motor body repair industry.

Competition Analysis

The merger was assessed using theories of harm associated with horizontal mergers, namely unilateral and coordinated effects. Unilateral effects arise when the merged entity acts independently, without rivals adjusting their strategies, enabling the dominant firm to raise prices above competitive levels and negatively impact consumers. Coordinated effects occur as a result of the reduction of competition in a market making it easier for the remaining firms to coordinate their behaviour. Both unilateral and coordinated effects were dismissed on the notion that the merger is unlikely to result in anticompetitive behavior. Further, the merged entities market power will not be immediately enhanced, entry barriers are relatively low and the customized and specialized nature of services offered reduces the likelihood of the effects.

Conclusion

In light of the foregoing, the merger was approved without conditions as the merged entities will not substantially lessen competition or create a monopoly situation contrary to public interest.

ii. Acquisition of the Entire Issued Shares in Zumbani Capital (Pvt) Ltd by Wealth Access Investments Managers (Pvt) Ltd

Introduction

In January 2024, the Commission received a notification of the proposed acquisition of the entire issued share capital of Zumbani Capital (Pvt) Ltd ("Zumbani") by Wealth Access Investment Managers (Pvt) Ltd ("Wealth Access"). Wealth Access is an investment management entity providing asset management services in Zimbabwe. Zumbani is a wholly owned subsidiary of Capital Africa Investment Holdings Limited ("CAIHL"). CAIHL is an African-focused investment vehicle with investment interests in Zimbabwe. Zumbani is an investment holding company which does not trade, however, it owns 28.9% shares in Masimba Holdings Limited ("MHL") and 22.9% in ProPlastics Limited ("PPL") respectively. MHL provides civil engineering services whereas, PPL is a manufacturer of PVC & PE pipes and related plastic products.

Market Definition and Type of Merger

The Commission defined the relevant market as the provision of asset management services, civil engineering services and supply of PVC and PE pipes in Zimbabwe[1]. Given that the merging parties have neither a competitor nor a customer-supplier relationship, the merger was classified as a conglomerate merger. Both parties' product offering has no close relationship and are unrelated in that none is a competitor, supplier, or customer to the other. The acquirer provides asset management services, whereas the target[2] is involved in providing civil engineering services and manufacturing PVC and PE pipes.

Competition Analysis

The merger was assessed using theories of harm associated with conglomerate mergers, namely tying & bundling and deep pockets (also known as the entrenchment theory). Tying & bundling arises when customers who purchase one good (the tying good) are also required to purchase another good from the producer (the tied good). Entrenchment theory arises when a large and powerful company acquires another firm resulting in the stronger company transferring its financial power either directly or indirectly to its new line, thereby augmenting or entrenching the market position of the acquired company. Both tying & bundling and deep pockets were dismissed. Tying & bundling was dismissed on the basis that it is unrealistic for the acquirer to tie unrelated products (asset management services to civil engineering services or the selling of PVC and PE pipes). Alternatively, the entrenchment theory was dismissed due to the lack of ability by the acquirer since it is a new and small player with less than 1% market share.

Conclusion

In light of the analysis, the merger was approved without conditions as the merged entity will not harm competition or create a monopoly situation contrary to public interest.

C. TRADE TARIFF MATTERS

C.1 Awareness and Capacity Building Workshops of Border Agencies and Private Sector in Victoria Falls and Kazungula Border Posts from the 9th to the 13th of September 2024

Introduction

The United Nations Development Programme ("UNDP"), the Commission and Zimbabwe Revenue Authority ("ZIMRA") officials facilitated a border agencies training held from the 9th to the 13th of September 2024 in Victoria Falls and Kazungula Border Posts. The training focused on training border agencies including officials, from ZIMRA, Immigration, Environmental Management Authority ("EMA"), Zimbabwe Republic Police("ZRP"), Ministries of Lands, Agriculture, Fisheries, Water and Rural Development and Health & Child Care on the provisions of the African Continental Free Trade Area ("AfCFTA") highlighting mainly their role in trade facilitation.

The thrust of the training was to capacitate the private sector on leveraging trade agreements to their advantage. The success of the AfCFTA depends on tracking and removal of Non-Tariff Barriers ("NTBs"). Furthermore, border administration has a significant role in administering trade facilitation measures that are aimed at reducing and eliminating NTBs. If Border officials lack awareness of the relevant AfCFTA measures, their ignorance will act as a NTB by making the border clearance process cumbersome and costly.

Focus of the Capacitation Initiative

The training outline focused on trade in goods under the AfCFTA, SADC and COMESA regional trade agreements. The Commission unpacked the broad provisions of the AfCFTA Agreement and related it to other existing regional trade agreements; and highlighted the key features in the Protocol on Trade in Goods and its annexes on Rules of Origin and trade remedies.

The Commission also presented on the Tariff Offer submitted by Zimbabwe to the AfCFTA in respect of products in Category A. The training also covered the tariff phase downs and how some products will be affected during the phase down; and remedial measures that the Government can use in instances of unfair trade practices or surges in imports. Clearing agents were advised to be aware of the correct tariff codes to use in respect of products being cleared.

Conclusion

The training had a far-reaching impact on all participants. Key issues were discussed, challenges interrogated and recommendations on the way forward was made. All stakeholders using trade agreements have to be conversant with them to ensure their successful implementation. This will go a long way in fulfilling the objectives of trade facilitation.

i. The Impact of a New Entrant on Competition in the Telecommunication and Internet Service Provision(ISP) Industry

Introduction

The telecommunication and internet service provision ("ISP") industry plays a critical role in Zimbabwe's economic and social development. The ISP industry provides essential infrastructure for businesses to operate efficiently, enabling online transactions and digital marketing, amongst others. Ability to use digital tools like cloud 10 computing, enterprise resource planning systems, and customer relationship management systems is enhanced by quality internet services. Provision of reliable internet is also essential for growth of online education and remote working. Local educational institutions are increasingly relying on internet to access digital libraries, research databases and conduct remote learning especially for those working and studying; and during crisis periods as the recent Covid 19 pandemic.

The ISP space has witnessed the entrance of a new player intensifying competition and resultantly benefitting consumers. Starlink's entry in the ISP space is anticipated to usher in competition into the telecommunications and local ISP sectors. According to POTRAZ (2024)'s Press Statement on the Licensing of Starlink, "Starlink was issued a Telecommunications License for Network Services and the Internet Services Provider (National) License. The license stack authorises Starlink to provide internet services throughout Zimbabwe using Starlink Low Earth Orbit (LEO) Satellite Constellation". This article discusses the benefits of competition in the ISP sector and the impact of Starlink's entry into the ISP space.

Background on Data and Internet Services

According to POTRAZ 's Abridged Postal & Telecommunications Sector Performance Report (Q1 2024), internet penetration rate increased by 2.06% from 73.3% in 2023 Q4 to 75.36% in the Q1 of 2024. Table 3 below provides the composition of local active internet and data subscription.

Table 3: Active Internet & Data Subscription

Technology	Q1 2024	% of Total
Mobile Internet Subscriptions	11 275 921	97.6%
Fixed LTE	77 865	0.674%
Leased Lines	2805	0.024%
Digital Subscriber Line (DSL)	102 892	0.891%
Worldwide Interoperability for Microwave Access	9 975	0.086%
(WiMAX[3])		
Code Division Multiple Access (CDMA)	107	0.0009%
Very Small Aperture Terminal (VSAT[4])	5 600	0.048%
Active Fibre Subscriptions	77 763	0.67%
Total	**11 552 928**	**100%**

Source (POTRAZ, 2024)

The number of mobile internet subscriptions in Table 3 above indicates that mobile internet subscriptions have evolved to where mobile networks are more widely available than fixed line broadband or infrastructure and fibre or DSL5 options. Thus, the majority of Zimbabweans have been accessing the internet via mobile networks using cellular networks such as 3G, 4G or 5G, using mobile devices such as smartphones, tablets and laptops using portable modems. Econet has enjoyed a bigger market share in this space. Starlink's entry implies that Zimbabwe is likely to witness a surge in the percentage of users using the satellite technology to access internet services especially in areas that have not been well covered in terms of internet access. Suffice to say this will also be supported by other players who have also included satellite internet as part of their package e.g., Liquid Intelligent Technologies (Liquid) has partnered the Eutelsat Group in offering LEO satellite services. A game changer will also be realised when Starlink introduces its Direct to Cell system which allows access to text, voice and data.

Market Share on Equipped International Bandwidth Capacity

Equipped International Internet Bandwidth Capacity (EIIB) refers to the maximum amount of data that can be transmitted between a country (or a specific region within it) and the rest of the world through international internet connections. This capacity is typically measured in megabits per second (Mbps) or gigabits per second (Gbps) and represents the total bandwidth available for both incoming and outgoing internet traffic via submarine cables, satellite links, and cross-border fibre-optic networks.

Liquid has been dominating this space with an EIIB market share of 81.8% followed by Telone with 15.9%. The new entrant will likely result in changes in market share and dynamics in many of these spaces.

Table 4: Market Share of EIBC

Operator	Q1 2024 (Mbps)	Market Share
Liquid	850,000	81.8%
TelOne	165,000	15.9%
Powertel	5,000	0.5%
Dandemutande	17,385	1.7%
Telecontract	1,700	0.2%
	620	0.1%
Total	**1,039,705**	**100%**

Source: (POTRAZ, 2024)

Benefits of Competition in ISP

There are various benefits arising from competition due to the entrance of Starlink in the provision of internet access in Zimbabwe for both businesses, Government and the general citizenry as explained below:-

a) Improved Quality of Service

Competition due to the entrance of Starlink in this industry can usher improved quality of service.

Businesses, Government and the citizenry stand to benefit from better internet speeds and reliability which reduces business downtime usually lost when internet is down, thereby affecting revenue generation. When multiple Internet Service Providers ("ISPs") compete for customers, they are incentivized to offer better service quality for their clients. This includes faster internet speeds, improved reliability and customer service. Competition also drives ISPs to adopt latest technology and innovations to differentiate their services, leading to better products such as fibre-optic connections, Long Term Evolution (LTE), 5G mobile networks and satellite services.

b) Lower Prices

The entry of a new player, Starlink ushers in competition in this sector likely to lower prices thus promoting overall ICT sector growth. Increased competition often leads to lower prices as ISPs strive to attract the patronage of customers. This is crucial in a country like Zimbabwe, where high internet costs tend to be a barrier to widespread access. ISPs can offer a variety of packages targeting different income groups, allowing more people to afford internet access, especially in underserved rural areas.

c) Increased Access to Services

The coming in of Starlink, through offering satellite internet services also increases access to internet services through expansion into underserved areas. It can push ISPs to expand their services to rural and remote areas to capture untapped markets. This reduces the digital divide between urban and rural populations. With more players in the market, ISPs tend to offer a wider range of services and bundles, including data plans and broadband providing consumers with more choices.

d) Improved Consumer Service Experience

Competition results in improved consumer welfare through improved customer service experience. ISPs competing for market share often focus on improving the customer service experience by providing a more responsive support, faster trouble-shooting and user-friendly self-service options.

e) Increased Technological Advancement

Competition also results in increased innovation and technological advancement. Starlink's entry encourages ISPs to continuously adopt new technologies to stay ahead of competition. This could include improvements in broadband infrastructure and introduction of cutting-edge services. ISPs will likely develop new business models to differentiate themselves from competitors, such as offering better data management tools, cloud storage solutions, or bundled services with entertainment, education, or health applications.

f) Aid Economic Growth

Lower prices and better internet services aide all businesses to operate more efficiently, boosting overall productivity. Competition in the ISP market stimulates the broader ICT sector by lowering internet access costs and stimulating e-commerce platforms and start up growth anchored on stable and affordable connectivity to reach customers. As more people gain internet access, digital literacy increases, and this has far-reaching economy wide benefits.

Impact of Starlink's Entrance

Starlink's entry through a licence issued on the 6th of September 2024, has implications of lowering ISPs unlimited packages prices from current levels. Table 5 below shows that Starlink is introducing stiff competition as its unlimited packages are way lower than those that were being charged by local ISPs. In addition to lower prices for data packages, consumers will also likely benefit from cheaper kits or infrastructure used to access internet services. Data provided in Table 5 indicates the importance of both local and international competition in the ISP industry in offering lower prices to consumers.

Table 5: Unlimited Data Price for Home Use

ISP	Unlimited Data Price for Home/ Month
Liquid[8]	US$89 – US$169
Telone	US$90
Starlink	US$30 – US$50

Source: Author's Compilation

Conclusion

In summary, Starlink's entry into Zimbabwe's ISP industry ushers in more benefits to consumers in the form of lower prices, better internet services and a wider coverage including remote areas. Affordability, quality, and access are critical in driving innovation and content creation and fostering more opportunities brought through the digital economy. Ultimately, enhanced competition in the ISP industry is a vital cog in realizing growth of the ICT sector as Zimbabwe strives towards becoming an upper middle-income society.

ii. HORIZONTAL MERGERS

Introduction

A merger occurs when one or more firms acquire direct or indirect control in the business of another entity. Such acquisition of control may be achieved through acquisition of shares or assets, the lease of assets or joint ventures between two or more independent enterprises. There are three types of mergers which are i) horizontal, ii) vertical and iii) conglomerate. In recent years, horizontal mergers—where two companies operating in the same industry combine forces—have become increasingly prevalent. While these mergers can bring about efficiencies and growth opportunities, they also pose significant challenges for market competition. As a competition authority, the role of this Commission is to scrutinize these transactions to ensure they do not stifle competition and harm consumers. This article explores horizontal mergers, their potential anticompetitive implications, and the Commission's approach to evaluating these transactions.

Definition of Horizontal Mergers

Horizontal mergers occur between firms that are direct competitors in the same market. The basic concept behind horizontal mergers is set out in the following example. Assume FreshMart - a grocery chain store merges with another grocery chain store SuperSave.

Both FreshMart and SuperSave are direct competitors i.e., they operate at the same level of the value chain or in the same industry. As a result of the merger, the competition that was being ushered by FreshMart to SuperSave, pre-merger, is eliminated as both companies merge into a single entity.

The Commission has handled several horizontal mergers since its inception. A typical example of a horizontal merger is the transaction that took place between Intercape Mainliner Ferreira (Pvt) Ltd ("Intercape") and Pathfinder Luxury Coaches (Pvt) Ltd ("Pathfinder") which was approved by the Competition and Tariff Commission in 2018.

Both Pathfinder and Intercape were involved in the business of transportation of passengers and goods in Zimbabwe. The entities were direct competitors as they operated in the same market - provision of luxury coach services. Thus, Intercape acquired its direct competitor and therefore the transaction qualified as a horizontal merger. These transactions can potentially lead to cost savings, improved products, and increased innovation. Horizontal mergers reshape industries and influence the choices and prices available to consumers. However, they also raise serious concerns about reduced competition and higher prices for consumers.

Competition Concerns Associated with Horizontal Mergers

Of the three types of mergers highlighted earlier, horizontal mergers pose the greatest risks to competition as they lead to a reduction in the number of competitors in the market, causing increased market concentration.

Furthermore, a horizontal merger usually results in the merged entity gaining a larger market share, which may possibly result in a monopoly situation contrary to public interest. Owing to its larger combined market share and the reduced number of competitors in the market, the merged firm may have gained "market power", allowing it to unilaterally raise prices and restrict outputs (unilateral effects). The resultant increase in market concentration makes it easier for market players to co-ordinate and exercise "joint market power" by engaging in interdependent behaviour (coordinated effects). Horizontal mergers, more than other types of mergers, pose serious competition concerns, and have the potential to contribute most directly to concentration of economic power.

They may lead to a dominant position of a single player or to market collusions. Therefore, by examining these mergers, the Commission ensures that markets remain competitive, foster innovation and protect consumers from unfair prices and low-quality products.

Effects

As already highlighted, horizontal mergers result in the merged entity gainingsubstantial market power or it may significantly increase the market power enjoyed by a firm. Unilateral effects arise when the merged entity due to an increase in its market share, raises its prices above competitive levels, reduces output or quality of its products or services. Such anti-competitive behavior is engaged independently of the reaction of the entity's competitors. In addition, to the merged entity's large market power there must be high barriers to entry into that market to prevent new or existing firms from countervailing the anti-competitive effects. The Commission thus assesses the possibility of the merged entity to act unilaterally post-merger.

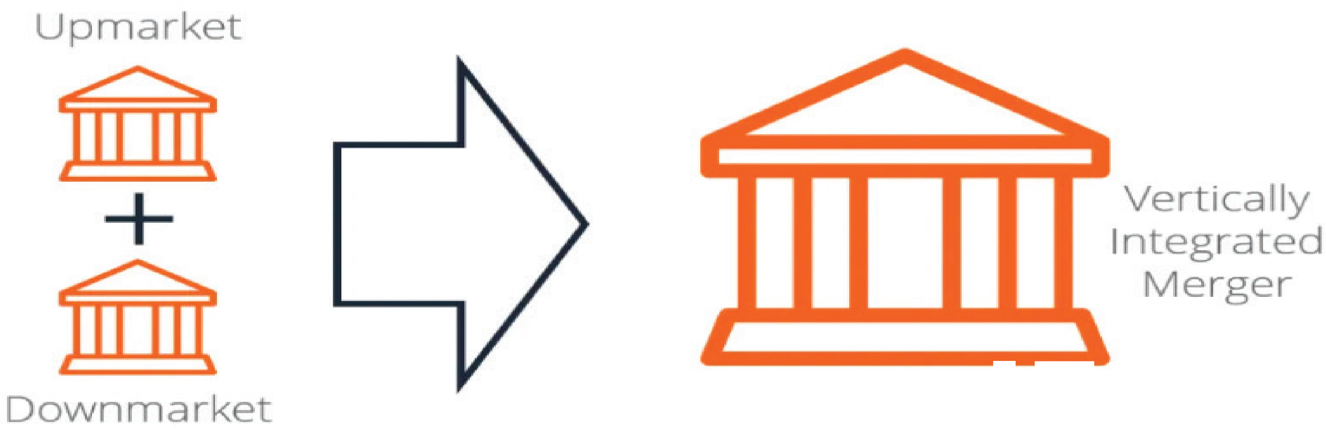
Co-ordinated Effects

Co-ordinated effects refer to the harm to competition that may arise post-merger, because of the remaining firms in that market coordinating and modifying their conduct to reduce competition amongst themselves. The key consideration in analyzing coordinated effects is whether the merger substantially increases the likelihood that firms in the market will successfully co-ordinate their behavior or strengthen existing co-ordination. Examples of such coordinated behavior include agreements on price tobe charged, customer allocation and geographic market division.

Conclusion

In conclusion, horizontal mergers are the most anticompetitive mergers out of the three different types of mergers. The Commission's primary focus is on the reduction in market players caused by horizontal mergers. This poses two main competition concerns: the merged entity's ability to act independently post-merger, and the potential for post-merger collusion, both of which can significantly harm competition.

iii. VERTICAL MERGERS



Vertical integration is a broader concept, referring to a business establishing control of multiple stages of the value chain. This can be achieved by either establishing a new business or gaining control of an existing independent business at a different level of the value chain. Vertical mergers are therefore a specific type of vertical integration. Examples of vertical mergers include a wholesaler acquiring a retailer of the same product; or a manufacturer of finished goods merging with a producer of raw materials used in the production process of finished good. This article discusses the benefits of vertical mergers, the Commission's approach to assessing vertical mergers and provides a practical case handled involving a vertical merger that raised competition concerns and how these were addressed.

Benefits of Vertical Mergers

The primary strategic objective of vertical mergers is to achieve operational synergies, reduce costs and exert greater control over the production process. By establishing control over multiple stages of production within a single organizational structure, firms can optimize resource allocation, eliminate redundancies and enhance overall efficiency. This consolidation streamlines operations, improve productivity and potentially increase profit margins. Despite these potential benefits, vertical mergers can pose competition risks. Controlling a downstream or upstream firm within the same value chain can lead to anticompetitive practices by the vertically integrated company, potentially harming competitors without such integration. The Commission thus becomes pivotal in safeguarding competition when such mergers are proposed.

Assessment of Vertical Mergers by the Commission

Unlike horizontal mergers, vertical mergers are less likely to immediately remove a competitor from the market. However, they can still lead to anti-competitive effects such as input and customer foreclosure, and monopolistic behaviors that may stifle competition. To address these concerns, the Commission assesses vertical mergers for potential foreclosure of rivals at various levels of the value chain and reduced competition which ultimately leads to diminished consumer welfare. While vertical mergers may offer efficiency gains as discussed earlier, these types of mergers can also concentrate market power and a company's control over multiple stages of production, potentially leading to reduced innovation, higher barriers to entry and decreased consumer choice. In practice, there are two types of foreclosures associated with vertical mergers namely input and customer foreclosure which the Commission assess.

Input Foreclosure

Input foreclosure arises when a vertically merged entity restricts access to or alters the supply terms and conditions of essential inputs or resources, thereby impeding competitors' ability to operate effectively in the market.

This type of foreclosure typically occurs when a supplier that is part of the integrated entity is a dominant firm and significant supplier in the market with considerable influence over the availability and pricing of essential inputs. There are two main types of input foreclosure: total input foreclosure where the upstream division of the merged entity completely ceases supplying inputs to its downstream rivals, and partial input foreclosure, where inputs are supplied to downstream competitors on less favorable terms than pre-merger. By foreclosing access to inputs, a dominant company can reduce competition, increase its market power, and lead to higher prices, reduced innovation, and higher barriers to entry for new entrants. Consequently, the Commission therefore assesses the ability of the merged entity to engage in input foreclosure post-merger.

Customer Foreclosure

Customer foreclosure occurs when a vertically merged entity's downstream division sources inputs exclusively or on preferential terms from its upstream division, thereby limiting rivals' access to customers. This can have detrimental effects, particularly when the firm is a significant or sole customer in the market, degrading competitors' ability or incentive to compete due to a reduced customer base. Two main types of customer foreclosure exist namely total customer foreclosure where the downstream division ceases purchasing inputs from upstream rivals; and partial customer foreclosure, where the vertically integrated firm acquires products from rival suppliers at a lower price or sells products incorporating the upstream competitor's input at less favorable terms to the final consumer. Consequently, customer foreclosure is a concern for the Commission, as it undermines firms' ability to compete and may ultimately lead to reduced competition in the market.

Vertical Merger Case Handled by the Commission

In July 2022, the Commission received a merger notification of a proposed acquisition of 100% issued share capital in Charles Stewart Day Old Chicks (Pvt) Ltd by Shanksville Farming (Pvt) Ltd. The market affected by this merger was identified as the productionand distribution of broiler chickens, as well as broiler and layer day-old chicks (DOC) in the whole of Zimbabwe.

The merger was categorized as vertical as the acquirer and target companies operate at different stages of the poultry value chain. Shanksville - the acquirer, is an investment holding company with interests in two subsidiaries namely Brand-Agro (Pvt) Ltd which manages a poultry out-grower scheme; and procures inputs such as broiler DOC on behalf of farmers; and Sable Park Estates (Pvt) Ltd, which packages and distributes chicken products to retailers across Zimbabwe. The target company - Charles Stewart, is engaged in farming broiler and layer DOC, representing an earlier stage in the value chain.

Analysis revealed that Charles Stewart is a dominant firm and market leader in the layer DOC market. It also showed that if the merged entity ventures into the business of rearing layer chickens to produce tables eggs post-merger, the merged entity will have access to layer DOCs that other players in the downstream market will not have. This will give an unfair competitive advantage to the merged entity thereby adversely affecting effective competition in the production of layer DOCs. Further, the proposed merger would limit access to layer

DOCs by customers and may lead to price enhancement, and this may prejudice consumer interests. In light of competition concerns that arose from that transaction, the Commission approved the transaction on the condition that Charles Stewart and its subsidiaries, shall continue to supply layer DOC to its customers on non-discriminatory terms and conditions that include inter-alia prices, quality, and delivery terms. This ensured that foreclosure concerns raised in the examination are remedied. While vertical mergers generally pose less anticompetitive risk than horizontal mergers, they can still raise competition concerns, particularly input and customer foreclosure. The example of the Charles Stewart Day Old Chicks (Pvt) Ltd and Shanksville Farming (Pvt) Ltd merger has shown that the Commission applied conditions to remedy anticompetitive effects identified during the analysis.

iv. CRITERIA FOR ASSESSING TARIFF ADJUSTMENT REQUESTS

The Competition and Tariff Commission plays a pivotal role in shaping industrial and trade policies by administering the trade tariff mandate outlined in the Competition Act [Chapter 14:28] . Through its Tariffs Investigations Unit, it conducts investigations into tariff (customs duty) charges to assist and protect local industries facing competitiveness challenges from import competition. It reviews tariff adjustment applications from local industry and makes recommendations to the Ministry of Industry and Commerce, which subsequently forwards these to the Ministry of Finance, Economic Development and Investment Promotion, for a final decision.

Recommendations therefrom influence implementation of measures by Government designed to shield domestic industries from import competition, with significant implications on industrial development and economic growth.

Types of Tariff Adjustments

The Commission oversees two types of tariff adjustments:-

i. Increases in Ordinary Customs Duties - this measure is employed to protect domestic producers from threatening import pressures. By raising customs duties, this provides local industries time to adjust and restructure, with the goal of achieving long-term international competitiveness. Duty increase is capped by World Trade Organization (WTO) bound rates, ensuring that these do not exceed internationally agreed limits. These increases are also governed by trade agreements that Zimbabwe is signatory to namely the Common Market for Eastern and Southern Africa ("COMESA"), SADC and iEPA.

ii. Reductions in Ordinary Customs Duties- these are considered when goods are not produced locally or when domestic production is unlikely to meet future demand. Lowering customs duty reduces prices for raw materials, intermediate or capital goods, fostering a more competitive market and promoting industrial growth.

The following assessment criteria are used in the analysis of requests/applications submitted by industry, forming the basis for recommendations made by the Commission: -

Product and Product Classification

o The product's description and tariff code should be identified using the World Customs Organization (WCO) Harmonized System (HS) of classification. Applicants must specify both the current applicable duty rate to the product and the new duty rate being requested.

Challenges Being Faced and Justification for Assistance

- o Applicant should clearly outline the challenges being faced and provide justification for the assistance being sought.

Local Production of the Product

- o A key consideration is whether the product is manufactured locally. If the product is a raw material or intermediate product not produced locally, the general rule is to reduce duty, as high duty increases costs for local industries, making them less competitive. Conversely, if the product is produced locally and is threatened by an imported equivalent, an increase in duty may be warranted. The imported product may also be a substitute for the local product, necessitating a duty increase to protect domestic producers.
- o Method of Production and Value Addition Estimation
- o The Commission operates within the framework of Zimbabwe's Industrial Development and Trade policies, which prioritize industrialization and job creation. Tariffs can protect high-value-added and labour-intensive industries, retaining and creating new jobs. Therefore, it is essential to establish whether the applicant employs labour or capital-intensive production methods and to measure the value addi tion of the product in question.
- o Market and Trade Analysis
- o For upward duty applications, the volume and rate of imports over a specified period (usually three years) must be determined to assess the industry's potential injury. The market share held by the applicant is compared to that of imports to evaluate, and whether imports are eroding the local market. Other factors considered include capacity utilization, export volumes and values, and employment figures.
- o Competitiveness
- o Assessing competitiveness of the industry is critical in deciding whether to grant a tariff adjustment. Key factors include price disadvantages against imports and productivi ty. A price disadvantage can indicate whether domestic industries are being undercut by imports and help determine the appropriate duty level. Productivity, measured by the ratio of output to production costs, indicates how efficiently the firm uses its resources to produce quality products.

Effective Rate of Protection (ERP)

- o Calculating the ERP, which considers value addition, is essential to determine the actual level of protection to be granted to the applicant. This goes beyond the nominal rate of duty applied to the imported product.

This criterion ensures a comprehensive evaluation of tariff adjustment requests, balancing industry protection with broader economic considerations.

Conditions for Customs Duty Support Customs duty adjustments, whether in the form of increases, or reductions, are contingent upon the beneficiaries' commitment to meeting government-set policy objectives. Reciprocity commitments must be submitted to the Commission at the time of application. Industries receiving tariff support must demonstrate progress in several key areas, including: -

Economic Performance: Beneficiaries are required to show measurable improvements in economic indicators such as production efficiency, competitiveness, and overall financial health.

Job Creation and Retention: One of the primary objectives of tariff support is to safeguard and create jobs. Beneficiaries must meet targets related to employment growth and job sustainability.

Adherence to Policy Goals : Support is aligned with broader Government policy goals, such as fostering industrial growth, enhancing technological innovation and improving global competitiveness.

Review and Adjustment

The aim of tariff support, in the form of increased duty, is to provide local industry with the opportunity to adjust their processes, enhance efficiency and become globally competitive. Consequently, industry must develop and implement a clear development plan and strategy to achieve these objectives. This plan should outline how the industry will adjust and improve its competitiveness. Over time, protective duties are reviewed to ensure they are no longer needed once the industry has achieved the desired level of competitiveness. The review process involves:-

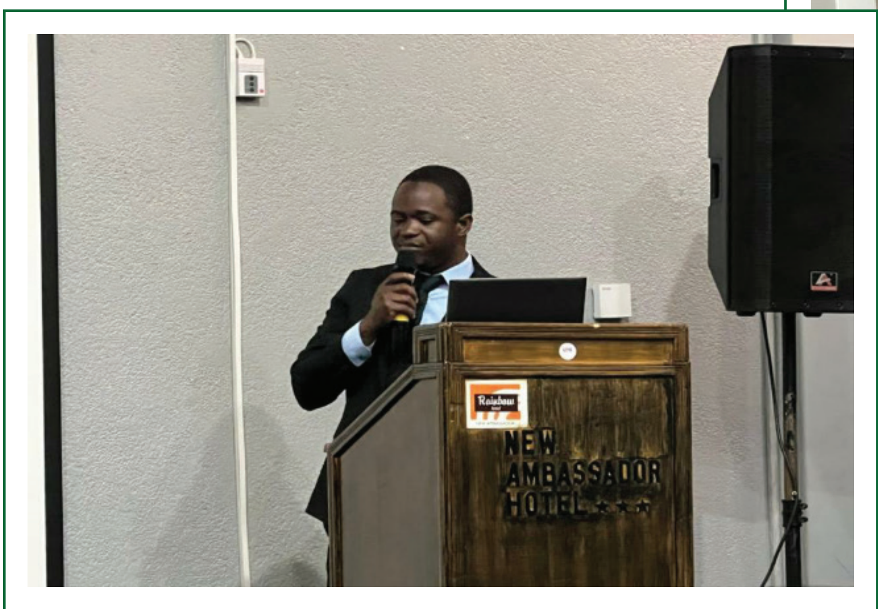
Performance Evaluation: Regular assessments are conducted to evaluate how well beneficiaries are meeting set objectives. This includes analyzing economic performance, job creation metrics and other relevant indicators.

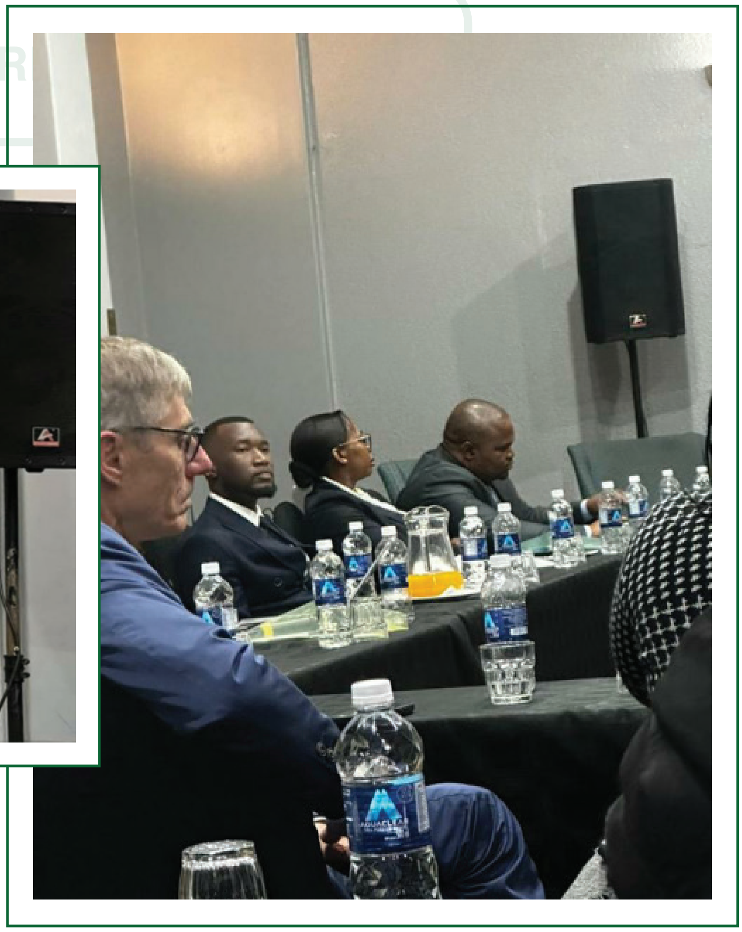
Conditional Adjustments: Based on performance reviews, tariff support may be adjusted. If beneficiaries do not meet the agreed conditions, the support may be reduced or withdrawn. Conversely, successful performance may lead to extended or enhanced support.

E. Capacitation Trainings

i. Zimbabwe Turnarounds, Business Rescue and Restructuring Forum -11 July 2024

The Commission was represented by the Mergers team that attended the Zimbabwe Turnarounds, Business Rescue and Restructuring Forum whose theme was "Innovative Growth and Transformative Solutions towards Vision 2030". The aim of this workshop was to educate the target audience on business turnarounds, rescue and restructuring and contribution of the Commission towards innovative growth and transformative solutions towards Vision 2030. The Commission's presentation focused on mergersand acquisitions as a key instrument in business rescue and restructuring.





F. Internal Activities

i. 5th Annual General Meeting

The Commission held its 5th AGM on the 2nd of September 2024 at the Hyatt Regency hotel and in attendance was the Honourable Minister of Industry and Commerce, the Deputy Minister and the Permanent Secretary and all the Commission's stakeholders. All critical stakeholders were well represented at the meeting.

ii. Clean up Campaign

As is the norm in the entire public service, the Commission participated in the monthly picking up of litter to ensure that its environs are kept clean. This is in response to the call by His Excellency President E. D. Mnangagwa of maintaining high level of cleanliness countrywide through embarking on monthly clean-up campaigns.

iii. Grooming and Etiquette on 13th September

The Commission engaged a grooming and etiquette consultant to capacitate its staff on hygiene practices as an individual and in the workplace. The session is expected to improve the Commission' staff's professional outlook when engaging with its stakeholders.

G. SADC Industrialization Week Exhibition

The Commission attended and exhibited during the recently held SADC Industrialization Week. This offered an opportunity for the Commission to interact with its stakeholders from all walks of life to share with them the services it can offer.

H. Appointment of Ms. C. Mashava to the COMESA Competition Commission (CCC) Board

During the 32nd COMESA Competition Commission (CCC) Board meeting held in Salima, Malawi from 29th to 31st August 2024, the CCC reconstituted its Board chaired by Ms. E. Ruparanganda, following the expiry of its 3 year tenure. The Competition and Tariff Commission's Assistant Director - Ms. C. Mashava was appointed as a Commissioner at the CCC, joining other twelve (12) Board members who were appointed9 from other COMESA Member States. The Commission congratulates Ms. C. Mashava on her appointment to the regional competition authority Board and wishes her success throughout her tenure.

COMPETITION & TARIFF COMMISSION

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