

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

BETWEEN

**ZAMGREEN AGRICULTURE LIMITED (T/A
ZAMFRESH PRODUCE LIMITED),
MAXI BEEF LIMITED AND
SEAWORLD TRADERS LIMITED**

APPLICANTS

AND

**COMPETITION AND CONSUMER
PROTECTION COMMISSION**

RESPONDENT

BEFORE:

**Commissioner Angela Kafunda
Commissioner Sikambala M. Musune
Commissioner Derrick Sikombe
Commissioner Pelmel H. Bonda
Commissioner Onesmus Mudenda
Commissioner Bishiop Dr. Wilfred Chiyesu**

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

DECISION

Below is a summary of the facts and findings presented by the Competition and Consumer Protection Commission (“the Commission”) to the Board of the Commission following investigations it carried out in the aforementioned case:

Introduction and Relevant Background Information

It was submitted that:

1. On 3rd March 2022, the Commission instituted investigations against Zamgreen Agriculture Limited T/A Zamfresh Produce Limited (Zamfresh or 1st Respondent), Maxi Beef Limited (Maxi Beef or 2nd Respondent) and Seaworld Traders Limited (Seaworld or 3rd Respondent), collectively “the Respondents”, following a complaint received by the Commission from C. Daka Distributors on 17th February 2022. The specifics of the allegations were that:
 - i. Maxi Beef and Seaworld engaged in selling goods below marginal cost;
 - ii. Zamfresh engaged in applying dissimilar conditions to equivalent transactions and imposed unfair trading conditions.

Investigations Conducted

It was submitted that:

2. The Commission instituted investigations into this case by way of sending a Notice of Investigation (NoI) to Zamfresh, Maxi Beef and Seaworld. It was submitted that the Commission further held meetings with the Complainant and the Respondents; collected and reviewed agreements and receipts; conducted spot-checks in Kasumbalesa and Lusaka; and reviewed submissions from third parties, including Yalelo and Capital Fisheries.

Legal Provisions and Assessment Tests

It was submitted that:

3. The alleged conduct by Zamfresh appeared to be a breach of Section 8 and Section 16 (specifically Sections 16(2)(b) and 16(2)(c) as read together with Section 15 of the Competition and Consumer Protection Act No. 24 of 2010 as amended by Act. No 21 of 2023 (“the Act”). The alleged conduct by Maxi Beef and Seaworld appeared to be a breach of Section 8 and Section 16 (specifically Section 16(2)(b) and Section 16 (2)(g) as read together with Section 15 of the Act. The NoI sent to the Respondents only cited Section 8 and Section 16 without citing the specific provisions that appeared to have been breached.
4. Sections 8(1) of the Act states that: “*An enterprise, a group of enterprises or a trade association shall not enter into an agreement or undertake a concerted*

practice which has, as its objective or effect, the prevention, restriction or distortion of competition to an appreciable extent in the relevant market.”

5. Section 15 of the Act states that: “*A dominant position exists in relation to the supply of goods or services in Zambia, if—*
(a) thirty percent or more of those goods or services are supplied or acquired by one enterprise; or
(b) sixty percent or more of those goods or services are supplied or acquired by not more than three Enterprises.”
6. Sections 16(1) of the Act states that: “*An enterprise shall refrain from any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition or has or is likely to have adverse effect on trade or the economy in general.*”
7. Section 16(2)(b) of the Act states that: “*limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition.*”
8. Section 16(2)(c) of the Act states that: “*applying dissimilar conditions to equivalent transactions with other trading parties.*”
9. Section 16(2)(g) of the Act states that: “*selling goods below their marginal or variable cost.*”

Assessment Tests

10. In investigating and assessing the potential and/or likely violations of the competition provisions of the Act, the Commission takes a multiple assessment approach, that 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.
11. For the purpose of Section 8 the following assessments must be proved:
 - i. *Whether there was an agreement, decision or concerted practice by the parties;*
 - ii. *Whether the object or effect of the conduct was the prevention, restriction or distortion of competition; and*

- iii. *Whether the effect on competition is to an appreciable extent in Zambia or any substantial part of it*

12. With regards to Section 16(1);

- i. *Whether there is an enterprise which is in a dominant position;*
- ii. *Whether there is a conduct;*
- iii. *Whether the conduct is likely to limit access to markets or unduly restrains competition or have or is likely to have adverse effect on trade; or the economy in general;*

13. With regards to Section 16 (2)(b) of the Act.

- i. *Whether the enterprise is limiting or restricting production in a manner that affects competition;*
- ii. *Whether the enterprise is limiting or restricting market outlets or market access in a manner that affects competition;*
- iii. *Whether the enterprise is limiting or restricting investment in a manner that affects competition;*
- iv. *Whether the enterprise is limiting or restricting technical development or technological progress in a manner that affects competition*

14. With regards to Section 16 (2)(c) of the Act.

- i. *Whether the transactions are equivalent?*
- ii. *Whether the enterprise is applying dissimilar conditions to equivalent transactions?*

15. With regards to Section 16 (2)(g) of the Act.

- i. *Whether the enterprise is selling goods below their marginal or variable cost?*

Findings

The Parties

The Complainant

It was submitted that:

16. C. Daka Distributors was duly registered as a business name in 2021. C. Daka Distributors is registered under the Companies Act as a company involved in the sale and distribution of beverages, tobacco and food products such as fish.

The Respondent

First Respondent (Zamfresh)¹

It was submitted that:

12. Zamfresh was duly incorporated in 2010 under the Companies Act. It was noted that Zamfresh is registered as a company involved in mixed farming, and it was found that it is one of the biggest fish farmers operating along the shores of Lake Kariba.

Second Respondent (Maxi Beef)²

It was submitted that:

13. Maxi Beef was duly incorporated in 2018 under the Companies Act. It was noted that Maxi Beef is registered as a company involved in mixed farming, freshwater fishing and wholesale of food (other meat products), beverages and tobacco in Zambia.

Third Respondent (Seaworld)³

It was submitted that:

14. Seaworld was duly incorporated in 2020 registered under the Companies Act. It was submitted that Seaworld is involved in freshwater fishing and the sale and distribution of fish.⁴

Market Definition

The Relevant Market

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

¹ PACRA printout obtained 23/02/2022

³ PACRA printout obtained 09/04/2021

⁴ PACRA Printout dated 23/02/2022

14. The relevant product markets identified were:

- i. The production and supply of fresh Tilapia bream in Zambia.
- ii. The distribution of fresh Tilapia bream in Kasumbalesa Market.

Market shares and Market Power

The production and supply of fresh Tilapia bream in Zambia.

It was submitted by the TC that:

15. The Commission inferred from the spot-check statistics and resolved that the market shares for the production and supply of fresh Tilapia bream were as shown below:

Table 1: Market shares for the production and supply of fresh Tilapia bream⁵

Market Player	Market Share Percentage
Zamfresh Produce Limited	49%
Yalelo Zambia	27%
Lake Kariba Harvest Commercial Limited	8%
Others	16%
Total	100%

The distribution of fresh Tilapia bream in Kasumbalesa Market.

It was submitted by the TC that:

16. On average, Yalelo supplied about 4,000 kg of fish daily, while Maxi Beef distributed approximately 10,600 kg of fish every two days in Kasumbelesa. Furthermore, it was submitted that Maxi Beef leveraged Zamfresh's dominance in Tilapia production to strengthen its market influence, leading the Commission to consider Maxi Beef dominant in the distribution of fresh Tilapia bream in Kasumbalesa.

Competition Analysis and Relevant Observations

⁵ The Spot-Check conducted in Lusaka on 18/08/2022

Analysis with regards to Section 8 of the Act.

Whether there was an agreement, decision or concerted practice by the parties;

It was submitted by the TC that:

17. In order to ascertain whether there was an agreement, decision or concerted practice by the parties, it is imperative that this analysis begins by defining an agreement, a decision and concerted practice. Section 8 of the Act prohibits the intentional or negligent act or conduct whose object or effect is the prevention, restriction, or distortion of competition. Such conduct or acts can be through agreements, concerted practices or through decisions made by an enterprise. The distinction between restrictions by object and restrictions by effect is important as restrictions of competition by object are those that by their very nature have the potential of restricting competition.⁶ Once it has been established that an agreement has as its object the restriction of competition, there is no need to take account of its concrete effects.
18. Section 2 of the Act defines an 'agreement' as "*any form of agreement, whether or not legally enforceable, between Enterprises which is implemented or intended to be implemented in Zambia and includes an oral agreement or a decision by a trade association or an association of Enterprises.*"⁷
19. Thus, it follows from the preceding definition that the term 'agreement' has a broad meaning and scope under the Act as it encompasses "any form of agreement, whether or not legally enforceable between enterprises which is implemented or intended to be implemented in Zambia and includes oral agreements". It is imperative to recognise that the Act has a broader meaning of the term 'agreement', to also encompass decisions by a trade association or associations of trade enterprises without limiting it to just an agreement between ordinary enterprises.
20. According to the Oxford English Dictionary, a decision means "*a conclusion or resolution reached after consideration.*"⁸ On the other hand, Section 2 of the Act defines concerted practice as "*a practice which involves some form of*

⁶ The assessment of whether an agreement has as its object the restriction of competition is based on several factors. These factors include the content of the agreement and the objective aims pursued by it. It may also be necessary to consider the context to which it is (to be) applied and the actual conduct and behaviour of the parties on the market. The way in which an agreement is implemented may reveal a restriction by object even where the formal agreement does not contain an express provision to that effect. Evidence of subjective intent on the part of the parties to restrict competition is a relevant factor but not a necessary condition.

⁷ Competition and Consumer Protection Act, No. 24 of 2010; Page 319

⁸ <http://www.oxforddictionaries.com/definition/english/decision> retrieved 08/07/2015 at 09:00 hours

communication or coordination between competitors falling short of an actual agreement, but which replaces their independent action and restricts or lessens competition between them.”⁹

21. Zamfresh and Maxi Beef had a formal Distribution Agreement outlining pricing, areas of operation, and other trading conditions, thus qualifying as an “agreement” under the Act. It was submitted that the agreement required both parties to consult on price changes and restricted Maxi Beef’s operations to authorized areas. In addition, it was submitted that Zamfresh appointed Maxi Beef as its sole distributor in Kitwe, Kasumbalesa, Solwezi, and Makeni, leading to the exclusion of other potential distributors such as C. Daka Distributors Enterprises and Salim Ahmed Salim Enterprises. Further, it was submitted that Zamfresh prohibited Maxi Beef from selling competing fish products and from expanding without its approval, demonstrating unilateral control.

Whether the conduct had the object or effect of the prevention, restriction or distortion of competition;

It was submitted by the TC that:

22. According to the Black’s Law Dictionary¹⁰, object means “*something sought to be attained or accomplished; an end, goal or purpose.*” This definition when applied with respect to an agreement can be construed as the parties’ intention of entering into an agreement.

23. According to the Oxford Dictionary, effect is defined as “*a change which is a result or consequence of an action or other cause*”. This definition when applied with respect to an agreement or decisions of associations of undertakings can be construed as the parties’ result or consequence on competition of entering into an agreement. In the case of ***Insurance Association of Zambia and 15 Others V the Competition and Consumer Protection Commission***¹¹ it was held that restriction of competition by object refers to an agreement which by its very nature, can be injurious to normal competition conditions.¹²

24. The Commission found that the Distribution Agreement between Zamfresh and Maxi Beef, contained specific clauses such as 1.1, 2.1, 2.2 and 4.3 that were anti-competitive and restricted competition by object. Thus, the signed copies of the distribution agreement between Zamfresh and Maxi Beef clearly

⁹ Section 2 of the Competition and Consumer Protection Act, No. 24 of 2010

¹⁰ Black’s Law Dictionary 9th edition, published in 2009

¹¹ Tribunal Judgement on Insurance Association of Zambia and 15 Others V the Competition and Consumer Protection Commission cause N0.2018/CCPT/022/COM dated 21st April, 2021

¹² Tribunal Judgement on Insurance Association of Zambia and 15 Others V the Competition and Consumer Protection Commission cause N0.2018/CCPT/022/COM dated 21st April, 2021

showed that the object of the agreement was to prevent, restrict or distort competition through market allocation and prevention of Maxi Beef from distributing products of competitors. This was also evident in the Cooperation Agreement between Maxi Beef and African Boss in which African Boss was not allowed to purchase fresh and frozen fish and related fish products from competitors of Zamfresh.

Whether the conduct on competition is to an appreciable extent or any substantial part of it;

It was submitted by the TC that:

25. Both Zamfresh and Maxi Beef held dominant positions in their respective markets. It was submitted that this dominance conferred upon the Respondents substantial market power, enabling them to influence prices, control output levels, and determine market access for other players within the relevant markets. Consequently, it was submitted that the Respondents possessed sufficient economic strength and market leverage to operate independently of competitors, suppliers, and consumers. In view of this, it was submitted that any anti-competitive conduct undertaken by Zamfresh and Maxi Beef, whether through restrictive agreements, market allocation, or exclusionary practices, would likely have an appreciable effect on competition. This is because their collective market power amplified the potential impact of such conduct, resulting in significant distortion of competitive dynamics, barriers to entry for new players, and harm to consumer welfare.

Analysis regarding Section 16 of the Act

Consideration of Abuse of dominance

It was submitted by the TC that:

26. Section 16(1) of the Act defines abuse of dominance as engaging in, “*any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition or has or is likely to have adverse effect on trade or the economy in general.*” Therefore, in the analysis of the conduct, the following assessment tests were used:

Analysis with regards to Section 16 (1) of the Act

Whether Zamfresh and Maxi Beef are enterprises;

It was submitted by the TC that:

27. Section 2 of Act defines an enterprise as “a firm, partnership, joint venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them.”
28. The Commission established that both Zamfresh and Maxi Beef are enterprises within the ambit of Section 2 of the Act and that they were registered with the Patents and Companies Registration Agency. It was also established that both Zamfresh and Maxi Beef were engaged in commercial activities.

Whether Zamfresh and Maxi Beef have dominant positions in the Relevant Markets;

It was submitted the TC that:

29. The Act defines a dominant position as “*a situation where an enterprise or a group of enterprises possesses such economic strength in a market as to make it possible for it to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors*”. In addition, Section 15 (a) of the Act states that, “*A dominant position exists in relation to the supply of goods or services in Zambia, if-*
 - (a) *thirty percent or more of those goods or services are supplied or acquired by one enterprise.*
 - (b) *sixty percent or more of those goods or services are supplied or acquired by not more than three enterprises.”*
30. Further, a legal definition of a dominant position in EU law was given by the European Court of Justice (ECJ) in ***United Brands and Hoffmann-La Roche***¹³ which stated that, “*a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers*”.

¹³ Case 85/76 Hoffmann-La Roche & Co AG v Commission, [1979] ECR 461, para. 38, Case 2/76 United Brands v. EC Commission [1978] ECR 207, para. 65.

31. In defining market dominance, one must see to what extent a product, brand, or firm controls a product category in a given geographic area. There are several ways of **measuring market dominance**. According to CCPC Guidelines on Abuse of Dominance of 2018, the most direct way to measure dominance is by way of market shares based on sales of an enterprise or company's total cost of sales.
32. Zamfresh was dominant in the relevant market for the production and supply of fresh Tilapia bream in Zambia. It was further submitted that Maxi Beef was dominant in the relevant market for the distribution of fresh Tilapia bream in Kasumbalesa Market.

Whether there was a conduct;

It was submitted by the TC that:

33. Abuse exists through a conduct; unilateral or collective. The Oxford Dictionary defines "conduct" as, "the manner in which a person behaves, especially in a particular place or situation." In addition, abuse will occur in the presence of dominance. Without having market shares of the Respondent, it is very difficult to ascertain if abuse exists. The Black's Law Dictionary, Eighth Edition, defines "conduct" as, "*the manner in which a person behaves*".

The conducts were that:

- i. Maxi Beef and Zamfresh violated Section 8 as they engaged in anti-competitive agreements which restricted competition; and
- ii. Maxi Beef violated Section 16(2)(a) by imposing unfair trading conditions; and Section 16(2)(b) by limiting market access and unduly restraining competition.

Whether the conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general;

It was submitted by the TC that:

34. The conduct of Maxi Beef and Zamfresh restricted competition through anti-competitive agreements, the imposition of unfair trading conditions, and the limitation of market access, thereby unduly restraining competition.

Analysis of the Conduct with Section 16(2)(b) of the Act

It was submitted by the TC that:

35. Section 16 (2) (b) of the Act provides that, “*limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition*” is prohibited. It was submitted that Maxi Beef Limited was engaging in a conduct of limiting access to markets involving the provision of fresh Tilapia bream in a manner that affected competition.

Is the enterprise limiting or restricting production in a manner that affects competition?

It was submitted by the TC that:

36. Zamfresh being the player in the upstream market did not restrict production in any way as noted from the evidence before the Commission. Notwithstanding, it was submitted that the agreement entered between Zamfresh and Maxi Beef in the upstream market restricted market outlets and market access.

Is the enterprise limiting or restricting market outlets or market access in a manner that affects competition?

It was submitted by the TC that:

37. Zamfresh and Maxi Beef restricted market access in the downstream market for the distribution of fresh Tilapia bream through an exclusive distribution agreement which prohibited Maxi Beef from selling competing fish products alongside those of Zamfresh. It was submitted that the agreement further restricted other distributors of Zamfresh fish from operating in Kasumbalesa, effectively confining them to alternative markets if they wished to continue sourcing fish from Zamfresh. It was submitted that this arrangement created a behavioural barrier to entry in the relevant market, as it prevented other players from competing effectively and led to the exit of several market participants. Additionally, it was submitted that price undercutting practices by Maxi Beef, supported by Zamfresh, further discouraged entry by making market participation financially unviable for potential competitors. It was submitted that the combined effect of these actions was the foreclosure of the downstream market, whereby Zamfresh and Maxi Beef’s conduct limited access to the market for the distribution of fresh Tilapia bream in

Kasumbalesa, ultimately undermining fair competition and reducing consumer choice.

Is the enterprise limiting or restricting investment in a manner that affects competition?

It was submitted by the TC that:

38. The exclusive agreement between Maxi Beef and Zamfresh restricted potential competitors of Maxi Beef from entering the Kasumbalesa Market. It was submitted that the conduct by Maxi Beef of selling fresh Tilapia bream below marginal cost made it difficult for existing competitors in the market to continue operating in the market. Therefore, it was submitted that Maxi Beef did engage in a conduct that was likely to limit or restrict investment in a manner that affected competition.

Is the enterprise limiting or restricting technical development or technological progress in a manner that affects competition?

It was submitted by the TC that:

39. Maxi Beef did not limit or restrict technical development or technological progress in a manner that affected competition as was seen from the investments Maxi Beef was making in the fresh Tilapia bream production line.

Analysis with regards to Section 16 (2)(c) of the Act

Are the transactions equivalent?

It was submitted by the TC that:

40. Factors to consider in determining whether one transaction is equivalent with another include the nature of the product supplied, the costs of supply and whether the customers are comparable.¹⁴ Comparable Customer means either (a) a wholesaler that purchases goods or services from a Seller for resale to end-user (consumers) in the Territory, or (b) a customer that enters into an agreement with the seller to purchase goods or services from the Seller.¹⁵

¹⁴ Richard Whish & David Bailey, (2018) Competition Law, 9th edition, page 779.

¹⁵ <https://www.lawinsider.com/dictionary/comparable-customer> accessed on 28/09/2023

41. It was submitted that Zamfresh produced and supplied fresh Tilapia bream to Maxi Beef and C. Daka Distributors among others, indicating that the product purchased by Maxi Beef and C. Daka Distributors was the same. It was submitted that Maxi Beef and C. Daka Distributors purchased fresh Tilapia bream from Zamfresh for resale. In addition, it was further submitted that Maxi Beef and C. Daka Distributors collected fresh Tilapia bream from Zamfresh's distribution points, which meant that the cost of supply incurred by Zamfresh to supply to Maxi Beef and C. Daka Distributors was the same.

42. However, it was submitted that a contract between Zamfresh and Maxi Beef existed regarding the supply of fresh Tilapia fish while Zamfresh did not have a contract with other customers such as C. Daka Distributors. Based on this, the TC deduced that the trading conditions applied to C. Daka Distributors and Maxi Beef were not equivalent. Based on the above, it was evident that despite the prices offered being the same to all customers of Zamfresh, Maxi Beef had been granted a distributorship contract hence making them different in terms of their relationship with Zamfresh, and therefore, the transactions not being equivalent.

Is the enterprise applying dissimilar conditions to equivalent transactions?

It was submitted by the TC that:

43. The transactions relating to Maxi Beef and C. Daka were not equivalent, thus Zamfresh did not apply dissimilar conditions to equivalent transactions.

Analysis with regards to Section 16 (2)(g) of the Act.

Is the enterprise selling goods below their marginal or variable cost?

It was submitted by the TC that:

44. In competition law, marginal cost refers to the additional cost of producing one more unit of a good or service. It plays a crucial role in pricing strategies, where firms might set prices close to or below marginal cost to either deter competitors or engage in predatory pricing, which is considered anti-competitive. Marginal cost is calculated as the change in total cost divided by the change in quantity produced.¹⁶ This concept is central to evaluating whether a firm's pricing practices are competitive or predatory.¹⁷ Variable

¹⁶ Pindyck, R.S., & Rubinfeld, D.L. (2017). Microeconomics (9th ed.). Pearson.

¹⁷ European Commission (2009). Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings. Official Journal of the European Union, C 45/7.

costs on the other hand are those costs that fluctuate with the level of production, such as raw materials and direct labor. Understanding variable costs is essential in assessing whether firms are pricing below their costs, which could indicate predatory pricing intended to eliminate competition. Competition authorities often compare a firm's prices to its variable costs to determine if pricing practices are anti-competitive, especially when prices are set below marginal or variable costs.¹⁸

Zamfresh

45. Marginal or variable cost could not be calculated due to insufficient information.

Maxi Beef

46. The Commission was unable to establish that Maxi Beef engaged in selling below marginal cost to the detriment of its competitors in Kasumbalesa, owing to insufficient information and data necessary for the computation of marginal or variable costs.

Board Deliberations

47. Based on the above findings and assessment, the Board deliberated that the relevant markets affected by the conduct were;
 - a. The production and supply of fresh Tilapia bream in Zambia; and
 - b. The distribution of fresh Tilapia bream in Kasumbalesa Market.
48. The Board deliberated that both Zamfresh and Maxi Beef were enterprises as envisaged by the Act.
49. The Board deliberated that there existed a distribution agreement between Zamfresh and Maxi Beef which had anti-competitive clauses, specifically that Maxi Beef was appointed as the sole distributor of Zamfresh's fresh Tilapia bream. It was deliberated that the agreement had its object the prevention, distortion, and restriction of competition to an appreciable extent at Kasumbalesa Market, thereby violating Section 8 of the Act.
50. The Board deliberated that the agreement between Zamfresh and Maxi Beef effectively meant that Zamfresh was also operating in the downstream market (the distribution of fresh Tilapia bream in Kasumbalesa Market) through Maxi Beef.

¹⁸ Areeda, P., & Turner, D. (1975). Predatory Pricing and Related Practices Under Section 2 of the Sherman Act. Harvard Law Review, 88(4), 697-733.

51. The Board deliberated that Zamfresh was dominant in the relevant market for the production and supply of fresh Tilapia bream in Zambia with an estimated national market share of 49%. In addition, it was deliberated that Zamfresh influenced the downstream market through its exclusive agreement with Maxi Beef whom it had appointed as its sole approved distributor for the distribution of Zamfresh fish in Kasumbalesa. In this regard, it was deliberated that Zamfresh used its dominance in the upstream market to influence the downstream market where Maxi Beef operated. The Board regarded Maxi Beef to be dominant in the downstream market for the distribution of fresh Tilapia bream at Kasumbalesa Market.
52. The Board deliberated that Zamfresh and Maxi Beef being dominant in their respective markets, possessed market power and had the ability to set market conditions without effective restraint from competitors operating in the markets for the production and supply of fresh Tilapia bream in Zambia; and the distribution of fresh Tilapia bream at Kasumbalesa Market.
53. The Board deliberated that Zamfresh was using its dominance in the market for production and supply of fresh Tilapia bream in Zambia to impose, directly or indirectly, unfair trading conditions in the relevant market for the distribution of fresh Tilapia bream at Kasumbalesa Market through Maxi Beef to the detriment of Maxi Beef's competitors such as C. Daka Distributors, thereby violating Section 16(2)(a) of the Act.
54. The Board deliberated that the conduct by Zamfresh and Maxi Beef limited access to markets and unduly restrained competition, thereby violating Section 16(2)(b) of the Act.
55. The Board deliberated that at the time of investigations, the Complainant was regarded as a walk-in customer in comparison to Maxi Beef who had a written Agreement with Zamfresh. Therefore, the Board concluded that Zamfresh did not apply dissimilar conditions to equivalent transactions, and hence did not violate Section 16(2)(c) of the Act.
56. The Board deliberated that the assertion by Maxi Beef that prices were only reduced to clear old stock was not justified. However, the conduct of selling fresh Tilapia bream below marginal variable cost could not prove due to lack of adequate information, and therefore the violation under Section 16(2)(g) of the Act could not be proved.
57. Based on the above analysis the Board deliberated that there was a violation of Sections 8 and 16(1), 16 (2)(a) and (b) of the Act.

Board Decision

58. The Board hereby directs that the following actions be taken: -

- (i) Maxi Beef Limited and Zamfresh Produce Limited each be penalised 2% of their 2021 Annual Turnover for violating Section 8 of the Act;
- (ii) Maxi Beef Limited be penalised 3% of 2021 Annual Turnover for violating Section 16 (2)(a) and Section 16(2)(b) of the Act;
- (iii) Zamfresh Produce Limited be directed to notify all its Agreements with its distributors in line with Section 14(1) of the Act;
- (iv) Both Maxi Beef Limited and Zamfresh Produce Limited submit their 2021 Audited Financial Statements to the Commission, upon receipt of the Board Decision for the calculation of their respective payable penalties, and;
- (v) The Commission engages the Ministry of Local Government and Rural Development, the Ministry of Fisheries and Livestock and the Business Regulatory Review Agency in relation to the perceived overlaps in relation to legal requirements for fish traders under the Local Government Act and the Fisheries Act.

Note: Any party aggrieved with this order or directive may, within thirty (30) days of receiving the order to direction, appeal to the Competition and Consumer Protection Tribunal.

Dated this 10th October, 2025

Alatundu

Chairperson

Competition and Consumer Protection Commission