

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

Case No MERG/16/08/2023/00043

BETWEEN

**HANDYMAN'S LIME LIMITED AND ASTRO
QUARRIES LIMITED**

APPLICANTS

AND

**COMPETITION AND CONSUMER PROTECTION
COMMISSION** **RESPONDENT**

BEFORE:

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| 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 15th August, 2023 received a merger application from Chibesakunda and Company regarding a proposed merger involving Handyman's Lime Limited (“Handyman's”) and Astro Quarries Limited (“Astro”).
2. VDVI is a company incorporated in the Netherlands and has no business interests in Zambia.
3. Handyman's is a private company limited by shares and duly incorporated in Zambia.
4. Astro is a private company limited by shares and duly incorporated in Zambia.

Legal Provisions and Assessment Tests

Legal Provisions

It was submitted that:

5. Section 8 of the Act provides that:

“Any category of agreement, decision or concerted practice which has its object or effect, the prevention, restriction or distortion of competition at an appreciable extent in Zambia is anti-competitive and prohibited”.

6. Section 25 (1) of the Act states that a merger is subject to the provisions of this Part if it is reviewable by the Commission. Section 25(2) states that the Commission shall review a merger if-

(a) *The merger is subject to prior authorisation in accordance with Section twenty-six;*

or

(b) *The Commission elects or reviews the merger in accordance with Section twenty-seven*

7. Section 26(1) states that; *“Parties to a merger transaction that 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:

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

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

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

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

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

(iii) Public Interest Test - Section 31

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

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

- e) *the extent to which the proposed merger may enhance the competitiveness, or advance or protect the interests, of micro and small business enterprises in Zambia;*
- f) *the extent to which the proposed merger may affect the ability of national industries to compete in international markets;*
- g) *socio-economic factors as may be appropriate; and*
- h) *any other factor that bears upon the public interest.*

Investigations conducted

It was submitted that:

12. The report was based on information that was submitted by the parties in the CCPC Form 1 of Statutory Instrument No. 97 of 2011, literature reading obtained using reports submitted by the parties, desktop research and other information in the possession of the Commission 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

VDVI BV. ("VDVI") – The Acquirer¹

It was submitted that:

13. VDVI is a company incorporated in the Netherlands and has no business interests in Zambia. VDVI operates within the financial holding companies' industry. It was incorporated in 2014².

Handyman's Lime Limited ("Handyman's")- The Target 1³

It was submitted that:

14. Handyman's is a private company limited by shares and duly incorporated in Zambia. Handyman's owns a processing plant that produces quicklime as a product.

Astro Quarries Limited (Astro) – The Target 2

15. Astro is a private company limited by shares and duly incorporated in Zambia. Astro is a holder of a mining license. The enterprise mines limestone and supplies crushed Limestone.

¹ Form 1 as submitted by the Parties

² www.VDVI.com

³ Form 1 as submitted by the Parties

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 mining and supply of limestone on the Copperbelt province of Zambia;
 - ii. The supply of crushed limestone on the Copperbelt province of Zambia; and
 - iii. The processing and supply of quicklime in the Copperbelt and Northwestern provinces of Zambia.

Consideration of Substantial Lessening of Competition or “Effect” Test

Market Concentration

It was submitted by the TC that:

17. In all the identified relevant markets, supply exceeded the demand. The TC deliberated that the markets had several suppliers of limestone with several players offering competition to Astro Quarries Limited and Handyman's Lime Limited. On this basis, it was found that this market was unlikely to be concentrated.

Barriers to Entry

It was submitted by the TC that:

18. It was found that there were no measures in place to deter potential competitors from entering all the relevant markets identified.

Import Competition

It was submitted by the TC that:

19. It was found that 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 a more economical option for customers.

Countervailing Power

It was submitted by the TC that:

20. Zambia is self sufficient in the production of limestone and quicklime. The TC deliberated that in this market, supply exceeded demand which gave the buyer an upperhand to strike negotiations on terms and conditions. Further, based on customer-supplier relationships built over time, it was also possible for customers to negotiate flexible payment terms.

Removal of a vigorous competitor

It was submitted by the TC that:

21. The transaction would not lead to the removal of a vigorous competitor in any of the defined markets as neither Astro nor Handyman's were exiting the market. It was submitted that the transaction was an investment opportunity to relieve Astro of its financial debt position.

Consideration of Dominance

It was submitted by the TC that:

22. The Parties submitted that Handyman's estimated market share was approximately 35%. The TC hence found that this was above the dominance threshold of 30%. The TC however deliberated that despite Handyman's having an estimated market share above the dominance threshold, it was unlikely that Handyman's would abuse its dominant position because the market was characterized by supply in excess of demand and consumers had several sources of supply of limestone and quicklime. The TC further deliberated that there will be no market share accretion post transaction.

Public Interest consideration

It was submitted by the TC that:

23. There were no public interest concerns arising from this transaction, the Commission further concluded that the parties to the transaction were at risk of foreclosure and the transaction involved the saving of a failing firm that would ultimately be beneficial to employees and the public in general.

Board of Commissioners (the Board) Deliberations

Relevant market

24. The Board deliberated that the relevant markets were;
- i. The mining and supply of limestone on the Copperbelt province of Zambia;
 - ii. The supply of crushed limestone on the Copperbelt province of Zambia; and
 - iii. The processing and supply of quicklime in the Copperbelt and Northwestern provinces of Zambia.

Substantial Lessening of Competition

25. The Board deliberated that the proposed transaction will not lead to the substantial lessening of competition in the relevant markets identified because the identified markets were characterised by alternative sources of supply, ease of market entry and countervailing power. Further there were no horizontal or vertical overlaps and the proposed transaction did not involve the removal of a vigorous competitor in any of the identified relevant markets.

Abuse of Dominance

26. The Board deliberated that the transaction would not result in abuse of dominant position. Further there would be no change in the market structure, neither would there be any market share accretion post transaction.

Public Interest Consideration

27. The Board deliberated that the transaction had no public interest concerns but presented an investment opportunity for the parties that would ultimately be beneficial to employees and the public in general.

Board Decision

28. Given the foregoing analysis and conclusions, the Board decided that the transaction would not lead to the 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