

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

Case No MERG/05/06/2023/0028

BETWEEN

LONRHO AFRICA HOLDINGS LIMITED

APPLICANTS

AND

**COMPETITION AND CONSUMER RESPONDENT
PROTECTION COMMISSION**

BEFORE:

Commissioner Angela Kafunda	- Chairperson
Commissioner Stanford Mtamira	- Member
Commissioner Sikambhala 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 31st May, 2023 received a merger application from Corpus Legal Practitioners regarding the acquisition of shares in Lonrho Africa Holdings Limited (Mauritius) (“LAH Mauritius” or the “Target”) by Evan David Edwards and Sean Christopher Walbridge (the “Acquirers”).
2. Evan David Edwards is a South African citizen with identification number: 8605205060088.
3. Sean Christopher Walbridge is an American citizen domiciled in Miami, United States of America.
4. LAH Mauritius, is a capital investment business that invests in, and seeks to grow, businesses across the African continent.
5. Brands Africa distributes a wide array of branded Fast-Moving Consumer Goods (“FMCG”).

Legal Provisions and Assessment Tests

Legal Provisions

It was submitted that:

6. 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”.

7. 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*

8. 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:

9. 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)

10. 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)

11. 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

12. 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:

13. 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

Evan David Edwards - The Acquirer 1¹

It was submitted that:

14. Evan David Edwards is a South African citizen with identification number: 8605205060088. Evan David Edwards has no business interests in Zambia or elsewhere.

Sean Walbridge- The Acquirer 2²

It was submitted that:

15. Sean Christopher Walbridge is an American citizen domiciled in Miami, United States of America. Sean Christopher owns a 25% stake in AA Tech Limited Mauritius, an investment holding company for an IT distribution and service company called Complete Enterprise Solutions Limited Mauritius which holds a 90% stake in Complete Enterprise Solutions Zambia Ltd in Zambia. As such Sean Christopher holds a 21.3% stake in Complete Enterprise Solutions Zambia Limited.

¹ Form 1 as submitted by the Parties As well as a PACRA search conducted on 5th July 2023

² Form 1 as submitted by the Parties

Lonrho Africa Holdings Limited (LAH Mauritius) - The Target³

It was submitted that:

16. The Target Enterprise LAH Mauritius, is a capital investment business that invests in, and seeks to grow, businesses across the African continent. Lonrho's operations in Zambia are through Brands Africa Zambia.

Brands Africa- Zambia⁴

It was submitted that:

17. Brands Africa distributes a wide array of branded Fast-Moving Consumer Goods ("FMCG"). Brands Africa has the right to represent several international companies with recognizable brands. Such brands include Afrique Pet Food, Bakesure, Bennett Brothers – Bennetts, Cairns –Willards, Sun Jam, Cape Olive, Coty, Dandy, among others.

Findings

Competition Analysis

Consideration of the Relevant Market

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

18. The relevant market was found to be the distribution of fast-moving consumer goods (FMCGs)⁵ in Zambia.

Consideration of Substantial Lessening of Competition or "Effect" Test

Market Concentration

It was submitted by the TC that:

19. The market concentration (using the CR-3) for the three (3) largest players; Trade Kings Limited, L&A Logistics and Brands Africa respectively was calculated to be 40% + 12% + 10% = 62%. This indicated that the market was concentrated.

³ ibid

⁴ Form 1 as submitted by the parties

⁵ FMCGs include personal care and cosmetics, homecare, beverages, alcohol and tobacco, food & confectionary

Barriers to Entry

It was submitted by the TC that:

20. It was found that this market had moderate barriers to entry which included, high levels of expertise required, a number of legislative requirements, foreign exchange and credit risks, large capital investment required in warehousing and systems, and intellectual property.

Import Competition

It was submitted by the TC that:

21. It was found that Brands Africa imported FMCGs from South Africa and in turn supplied the products to wholesalers and retailers in Zambia, including transporting those products to retail customers. As such there was import competition in the relevant market.

Countervailing Power

It was submitted by the TC that:

22. Pricing in the FMCGs sector was rigid and equitable by category or channel. However, it was found that to a certain degree, the customer had the power of negotiating power based on volumes, promotion drives, efficiencies offered and alternative suppliers.

Removal of a vigorous competitor

It was submitted by the TC that:

23. The transaction was not likely to result in the removal of a vigorous competitor in Zambia. This is because the target entity would continue to operate in the same relevant market post transaction but only under new ownership.

Consideration of Dominance

It was submitted by the TC that:

24. Brands Africa had a market share of 10%. This was below the dominance threshold of 30% as stipulated under Section 15(a) of the Act and as such Brands Africa was not dominant in the identified relevant market. As such there was no possibility of abuse of dominant position by Brands Africa. It was further found that there would be no market share accretion post transaction

as the structure of the market post transaction was not changing. As such there was no possibility of dominance or abuse of it thereof occurring as a result of this transaction.

Public Interest consideration

It was submitted by the TC that:

25. There were no public interest concerns arising from the transaction. It was found that the transaction presented an investment opportunity for the parties that would ultimately be beneficial to employees and the general public. Additionally, Third Parties contacted submitted that they had no concerns about the transaction.

Board of Commissioners (the Board) Deliberations

Relevant market

26. The Board deliberated that the relevant market was found to be the distribution of fast-moving consumer goods (FMCGs)⁶ in Zambia.

Substantial Lessening of Competition

27. The Board deliberated that the proposed transaction would not lead to substantial lessening of competition in the relevant market identified because the identified market was characterized by, alternative sources of supply, ease of market entry, moderate barriers to entry, import competition and countervailing power. Further the proposed transaction did not involve the removal of a vigorous competitor.

Abuse of Dominance

28. The Board deliberated that the proposed transaction was not likely to result in the creation of a dominant player in the identified relevant market and as such, abuse was unlikely.

Public Interest Consideration

29. 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

⁶ FMCGs include personal care and cosmetics, homecare, beverages, alcohol and tobacco, food & confectionary

30. 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

Alayanda
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Chairperson
Competition and Consumer Protection Commission