



COMPETITION AND CONSUMER PROTECTION COMMISSION

Press Release

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CCPC APPROVES MERGERS CITING ABSENCE OF COMPETITION EFFECTS ON ECONOMY, AS IT CRACKS WHIP ON ROOFING CARTEL TO PROTECT CONSUMERS

For Immediate Release

At their sixty-third (63rd) and 2nd Special Board of Commissioners' Meetings for Adjudication held on 11th and 18th August 2023 at the Competition and Consumer Protection Commission (CCPC) Head office in Lusaka, the Board of Commissioners of the Competition and Consumer Protection Commission ("the Board") made the following resolutions:

Proposed merger involving Sadot LLC and Cropit Farming Limited

The Board granted final unconditional authorisation to the merger involving the acquisition of 70% of the land in Cropit Farming Limited (Cropit) by Sadot LLC on grounds that the transaction had no competition concerns and was key to the saving of Cropit which was currently failing and subject to a notice of default from the Bank, which would have led to foreclosure on the assets.

In granting unconditional authorisation, the Board established that the transaction would not raise any competition concerns that would lead to the substantial lessening of competition. The Board further observed that the expected investment and scope for expansion post transaction would raise employment levels, benefitting the local community and raising living standards in the Mkushi farming block. Furthermore, the Board held that the ability of Sadot to develop the assets and infrastructure being taken over would expand the agricultural output and yield in the area leading to more skilled jobs being provided in the commercial farming sector to local people in Mkushi.

However, the unconditional authorisation of the transaction will not preclude the parties from obtaining any other relevant regulatory approvals pursuant to Section 36 of the Competition and Consumer Protection Act, No. 24 of 2010.

Sadot LLC is a Delaware incorporated company under the laws of the United States of America active in the supply chain of Agri-commodities, through trading, logistics and shipping and processing into value added-products for animal and human consumption but did not have presence in Zambia prior to the merger. On the other hand, Cropit is a private company engaged in commercial farming within the Mkushi farming block and supplies corn, wheat and soya beans to manufacturers in Zambia as a raw material.

Proposed Joint Venture Involving Anglo American Exploration BV, Unico Minerals Limited and Handa Resources Limited

The Board granted final unconditional authorisation to the acquisition of 100% shareholding in Handa Resources Limited by Anglo American Exploration BV and Unico Minerals Limited.

The approval was on grounds that the transaction was not likely to lessen or alter competition in the relevant markets of exploration of minerals such as cobalt, copper, gold, lead, molybdenum, nickel, silver, zinc, uranium, and platinum group metals and Mining and processing of minerals such as cobalt, copper, gold, silver, zinc in North-Western Province of Zambia.

However, the Board established that Handa Resources Minerals (Handa) and Zamsort Zambia Limited (Zamsort) in 2018 implemented a merger in which Handa relinquished its 86% shares in Zamsort to the existing shareholders without the Commission's authorization. The Board expressed concern at the failure by the parties to notify the transaction and directed that Handa and Zamsort regularise the transaction as legally required. The Board has further directed that Handa and Zamsort be fined one percent (1%) each, based on their latest Audited Financial Statements for being in violation of Section 37 of the Competition and Consumer Protection Act, No. 24 of 2010 within a stipulated time frame, during which time due notification of the transaction should be done.

Proposed Merger involving Chibuluma Mines PLC and Tigerfish Exploration

The Board also granted Final Conditional Authorisation to a merger involving Chibuluma Mines PLC and Tigerfish Exploration. Specifically, Chibuluma has permitted Tigerfish to explore a particular area covered by Chibuluma's mining license after which the two companies will form Chibuluma NewCo, a Joint

Venture in which Tigerfish will own 42% and Chibuluma Mines PLC, 58% interest. The Conditional approval was on grounds that the proposed transaction could lead to the substantial lessening of competition in the relevant markets for exploration and mining of minerals such as copper in the Copperbelt Province of Zambia arising from a cross shareholding that existed between Chibuluma Mines and Lubambe Copper Mines Limited. The Board established that with this relationship, it was possible for Chibuluma and Lubambe Copper Mines Limited to modify their economic incentives to compete effectively in that Chibuluma and Lubambe could compete less vigorously and adopt potentially collusive behaviour that is more conducive to joint profit maximization.

The authorisation was also granted on condition that KoBold Metals, a parent company for Tigerfish, should not participate in the independent operations of Chibuluma Mines and Lubambe Copper Mines Limited which could be used to influence the economic behaviors of Chibuluma and Lubambe. It was also the Board's considered position that there should be no anti-competitive information flows between Chibuluma Mines and Lubambe Copper Mines Limited.

The Board however established that the transaction would not raise any public interest concerns in Zambia.

Chibuluma Mines PLC is a company incorporated under the laws of the Republic of Zambia and having its registered office at Chibuluma South Mine (Lufwanyama) Kalulushi, Copperbelt Province of Zambia. Chibuluma's business activities are exploration and mining of non-ferrous metal ores, with the primary mineral being copper. Tigerfish is a company incorporated in the Cayman Islands whose registered office is at the offices of Maples Corporate Services Limited. Tigerfish is a newly incorporated mining exploration company.

Proposed Merger Involving EMIF II Investment Proprietary Limited and Vector Logistics Proprietary Limited

The Board has also granted conditional authorization for the acquisition of shares in Vector Logistics Proprietary Limited by EMIF II Investment Proprietary Limited, a newly incorporated special purpose vehicle incorporated in the Republic of South Africa. The Proposed transaction concerns the proposed acquisition by EMIF II Investment, of sole control of Vector Logistics and as a result 85% of L&A Logistics. In their deliberations, the Board held that the acquisition was not likely to lessen or change competition in the defined relevant markets for the distribution of fast-moving consumer goods; and the provision of containerized freight and forwarding services in Zambia. The Board

determined that substitutes in the defined relevant markets existed, and that the transaction would not result in the removal of a vigorous competitor.

The Board noted that the parties were not dominant in the identified relevant markets as they only had a market share of 12% and in the provision of fast-moving consumer goods which was found to be negligent. As such, the merging parties were not likely to engage in any abuse of dominance, as the Board observed that other larger competitors in the defined relevant markets existed.

The Board also found that the acquisition of 85% shareholding in Vector Logistics Proprietary Limited by EMIF II Investment Proprietary Limited was not likely to threaten the exiting of any other competitors in the relevant market and that the market structure will not be changed as EMIF II Investment Proprietary Limited was not present in Zambia. With regard to public interest considerations, the Board was of the view that the acquisition was an investment opportunity to the parties that would ultimately be beneficial to employees and the Zambian public.

EMIF II Investment is a newly incorporated special purpose vehicle incorporated in the Republic of South Africa and established for the purposes of the proposed transaction. Vector Logistics is a private company limited by shares, incorporated in South Africa. In South Africa, Vector Logistic's principal activity is the provision of integrated cold chain logistics services. Specifically, Vector Logistics provides an end-to-end service to domestic business-to-business customers in South Africa through the transport, storage and distribution of frozen food and other related items. In Zambia Vector Logistics has operations through L&A Logistics.

The Board of Commissioners fines Longlihua Company Limited, Herocean Enterprises Limited and Building Dreams Limited for Cartel Conduct

The Board also fined Longlihua Company Limited, Herocean Enterprises Limited and Building Dreams Limited 8.5% each of their annual turnover for the year 2020 for engaging in a price fixing cartel contrary to Section 9 of the Competition and Consumer Protection Act, No. 24 of 2010. Facts of the matter are that from 2020 to 2021, Longlihua Company Limited, Herocean Enterprises Limited and Building Dreams Limited were engaged in price information sharing including coordinating on simultaneous increase of prices of roofing sheets and accessories, as well as consulting on how much particular types or profiles of various roofing sheets had increased. The communication was done through a messaging app called *WeChat* which showed that in certain instances, Herocean

Enterprises would increase the prices of their products when there was a price exchange between Long Lihua and Building Dreams and Herocean Enterprises (Dragon) to the detriment of consumers.

In determining the case, the Board established that the three roofing manufacturers had been communicating their prices, particularly increasing prices of roofing sheets and accessories, as well as consulting on how much certain types or profiles of various certain roofing sheets had increased. The Board further found that agreeing to fix the price of roofing sheets and roofing accessories eliminated competition among the three manufacturers and resulted in the setting of high prices for the roofing sheets and roofing sheet accessories with no incentive for innovation and producing high quality goods. The Board were of the view that competitors had different cost structures and it was therefore unreasonable to agree to set similar price increase margins at pre-determined intervals even when production costs were different. In addition, the Board held that consumers were unfairly subjected to high prices of roofing sheets and accessories, lower quality and had their choices reduced due to this cartel conduct.

The Board has since ordered the cessation of the conduct and has also ordered management of the three companies to undergo compliance training with the Commission.

Allegations of abuse of dominance against Productive Farming Limited and National Milling Corporation Limited

The Board also directed Productive Farming and National Milling Corporation Limited to cease and desist from engaging in the anti-competitive conduct of tying and bundling of independent poultry products. This is in a matter investigated by the Commission involving Productive Farming Limited (Productive Farming) and National Milling Corporation Limited (National Milling) in which the parties were allegedly tying and bundling Day-Old Chicks (DOC) to chicken feed in Ndola. The allegations were that the Respondents were refusing consumers from buying day old chicks (DOCs) only unless consumers purchased them in form of a bundle containing DOCs with chicken feed.

In their deliberations, the Board held that there were no significant differences in the various breeds of Day-Old Chicks which could make it difficult for customers to switch from one breed to another. The Board further established that there were no significant differences among various brands of chicken feed

that could sufficiently affect the purchasing decision of customers other than the price. The Board was of the view that the sale of DOCs had no connection to the sale of chicken feed because the two products could be sold separately.

However, the Board found that the market shares for Productive Farming and National Milling were 16.38 and 12.49 respectively, which fell below the dominance threshold of 30% as stipulated by law. Further, collective dominance could not be established as the two entities' combined market share fell below the required threshold of 60% and there was no evidence to suggest that the two players had acted jointly. Notwithstanding the absence of dominance, it was the Board's determination that the conduct of tying and bundling by taking advantage of the seasons with high demand for DOCs and tying them to the chicken feed unduly restrained competition and was detrimental to consumers. As the nation approaches the high demand season for Day-Old Chicks, the Commission warns businesses that are in the habit of abusing consumers during the peak season to desist from the conduct as the Commission has heightened its monitoring system to prevent this practice which is detrimental to consumer welfare.

Consumer Protection Cases

During the Board meeting, the Board adjudicated a total of 288 cases involving 345 consumer protection provisions in different sectors of the economy which saw the Commission saving consumers a total of K803, 097.59 in refunds and K564, 374.37 in replacements. In total, the Commission recovered K1, 367, 471.96 representing the value of money which consumers would have lost if the Commission had not intervened. The Board has re-affirmed the Commission's commitment to ensuring that consumers get value for their money, thereby enhancing consumer welfare.

The Board fines Chibeka Express Limited

The Board also fined Chibeka Express Limited ("Chibeka Express") 0.5% of its annual turnover, for display of a disclaimer, contrary to Section 48(1) of the Competition and Consumer Protection Act No. 24 of 2010. This was in a matter reported to the Commission by a complainant, who was denied redress after he cancelled a journey, based on the displayed disclaimer that read: *"Once ticket is bought, there is no refund."* A disclaimer as defined by the Act, refers to *"any sign or notice that purports to disclaim any liability or deny any right that a consumer has under the Act or any other written law."*

In considering the case, the Board determined that regardless of Chibeka Express' intention, by endorsing the notice that read; *"Once ticket is bought there is no refund"*, violated Section 48(1) of the Act as the displayed notice unconditionally ruled out the possibility of refunding passengers and therefore deprived passengers of their right to redress in an event of unsuitable services, or failure to provide the service by Chibeka. The Board further ordered Chibeka Express to delete the notice displayed on their bus tickets within ten (10) days of receipt of the Board Decision and adopt a reasonable penalty policy for cancellations.

The Commission would therefore, like to urge all traders to desist from displaying disclaimers whether on walls or documentation to avoid being sanctioned by the Commission as this is contrary to the law.

The Board of Commissioners also dismissed a Case against **Mukalya Game Reserve** on grounds that there was no unfair trading. The Board dismissed allegations of unfair trading and claim for a refund against Mukalya Game Reserve ("Mukalya"). This is in a case where a Complainant paid for a three-day holiday stay but postponed her holiday on three separate occasions over the course of five months.

In considering the case, the Board analysed Mukalya's Cancellation policy which stated that, *"31 Days or more, full invoiced amount will be refunded less 5%; 21 Days – 30 Days – 50% of full invoiced amount refunded; and Cancellation within 21 days, no refund will be made"* and found that Mukalya acted reasonably by agreeing to postpone the dates on three occasions despite being inconvenienced in terms of room availability planning, food, and staff re-scheduling. It was established that at the time the Complainant requested for a refund, it was five (5) months past her initial booking dates which meant that she was not entitled to any refund as per the Respondent's terms and conditions which had been availed to the Complainant. The Board therefore determined that the Respondent was not in violation of Section 49(5) and 53(1) of the Act and closed the case.

However, the Board determined that the Complainant had the liberty to visit the Respondent's lodge to utilise her booking within reasonable time as the Respondent has left it open for her use. Further, that the Complainant must be willing to cover additional expenses in view of changes in prices from 2021 to date upon taking up the booking.

The Commission wishes to urge consumers to ensure that they read and understand terms and conditions as they sign contracts with enterprises. This is especially so for contracts that contain lawful qualified non-refund clauses such as holidays, venue hire, accommodation and others. Further, enterprises

are encouraged to voluntarily submit the contracts, refund and return policies, receipts, invoices, quotations that they issue to their clients for review by the Commission at no cost, to ensure that they are not in violation of the Act.

The Board of Commissioners closes the case of Lee Sicca Home Market

The Board also closed a case against Lee Sicca Home Market ("Lee Sicca") which was reported to the Commission concerning the purchase of a DSP Hair Cutting Kit whose price was displayed as K208.00, but the Complainant was charged K320.00 in violation of Section 51 of the Act.

In determining the case, the Board established that Lee Sicca Home Market was selling two distinct products, the DSP Hair Cutting Kit at K320.00 and the DSP Trimmer Set at K208.00. The Board further found that the product description on the price label on which the complainant based her purchasing decision was for a DSP Trimmer Set. Therefore, the K208.00 was the price for a DSP Hair Trimmer Set and not what the complainant purchased, that is, a DSP Hair Cutting Kit.

The Commission would like to encourage consumers to ensure that they check product descriptions on product labels in a case where they appear to be two different products displayed in one place on the shelf. Consumers are also advised to accept reasonable explanation that enterprises may provide before leaving their premises. Consumers are further advised to note that the Commission is a fair arbiter whose role is to dispense justice to both parties objectively.



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