

Issues In Market Dominance: Merger Control In Zimbabwe

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Introduction

Issues in market dominance are of crucial importance to developing countries at their early stages of the implementation of competition policy and law. Market dominance can be attained competitively through greater efficiencies and innovation. It can however also be abused through the engagement of anti-competitive practices of an exclusionary and/or exploitative nature. There is therefore need to consider market dominance issues using the ‘rule of reason’ approach in order to evaluate their pro-competitive features against their anti-competitive effects.

Mergers and acquisitions, particularly horizontal mergers, most likely lead to market dominance. It is therefore this area that I will concentrate my presentation on, and share the experience of Zimbabwe.

It is generally accepted that most mergers pose little or no serious threat to competition, with some mergers actually being pro-competitive. Such benevolent mergers have a number of economic advantages such as resultant economies of scale and scope, and gains of horizontal integration. The advantages could lead to consumer welfare through lower prices and greater choice of goods and services, which should be the ultimate objective of competition policy. Other mergers however seriously harm competition by increasing the probability of exercise of market power. In this regard, concerns about abuse of dominance or monopolisation arise. Mergers can also sometimes produce market structures that are anti-competitive in the sense of making it easier for a group of firms to cartelise a market.

The need for merger control in developing countries is therefore paramount in order to enable competition authorities to identify and prevent those mergers that are harmful to competition.

Merger Control In Zimbabwe

Zimbabwe’s competition law, enshrined in the Competition Act, 1996 (No.7 of 1996), was passed by Parliament in 1996, but only came into force in 1998. In adopting competition policy and law, Zimbabwe became the fifth country in southern and eastern Africa after South Africa, Kenya, Tanzania and Zambia to do so.

One of the objectives of Zimbabwe's competition law is to regulate mergers and to prevent and control monopoly situations. The Act (as amended by the Competition Amendment Act, 2001) defines the term 'merger' as to mean (section 2 of the Act):

“[T]he direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer of other person whether that controlling interest is achieved as a result of–

- (a) the purchase or lease of the shares or assets of a competitor, supplier, customer or other person;*
- (b) the amalgamation or combination with a competitor, supplier, customer or other person;*
or
- (c) any means other than as specified in paragraph (a) of (b)”.*

The Competition Amendment Act, 2001 also made pre-merger notification mandatory in Zimbabwe. Before that, merger notification was basically voluntary. The Commission could however publish notices in the *Government Gazette* requiring parties to any proposed merger to obtain the Commission's approval before concluding the merger if the Commission was satisfied that any class of merger, if carried out, was likely to reduce competition to a material extent in Zimbabwe. The following notices were accordingly *gazetted* by the Commission and were used to require merger notification before they were repealed by the Competition Amendment Act, 2001:

- Statutory Instrument 63A of 2000: Competition (Notification of Mergers) (Health Care Industry) Notice, 2000
- Statutory Instrument 177 of 2000: Competition (Notification of Mergers) (Financial Services) Notice, 2000
- Statutory Instrument 226 of 2000: Competition (Notification of Mergers) (Telecommunication Services) Notice, 2000
- Statutory Instrument 323 of 2001: Competition (Notification of Mergers) (Retail Chain Store Services) Notice, 2001
- Statutory Instrument 351 of 2001: Competition (Notification of Mergers) (Tourist Facility) Notice, 2001.

The Competition Amendment Act, 2001 provides for pre-merger notification of certain mergers with values at or above a prescribed threshold (currently Z\$500 million of the combined annual turnover or assets in Zimbabwe of the merging parties). It also provides for the payment of a merger notification fee (currently 0.05% of the combined annual turnover or combined value of assets in Zimbabwe of the merging parties). Failure to notify a notifiable merger attracts a penalty of up to 10% of either or both of the merging parties' annual turnover in Zimbabwe.

The Competition Commission of Zimbabwe has two operating arms involved in merger control – a Directorate of permanent staff headed by the Director, and a Board of Commissioners of part-time members appointed by the President. The examination of mergers and acquisitions is done by the Directorate, which makes recommendations to the Board of Commissioners for final determination.

In considering a merger, the Commission initially determines whether or not the merger is likely to substantially prevent or lessen competition in Zimbabwe or any part of Zimbabwe by assessing the following factors:

- the actual and potential level of import competition in the relevant market;
- the ease of entry into the market, including tariff and regulatory barriers;
- the level, trends of concentration and history of collusion in the market;
- the degree of countervailing power in the market;
- the likelihood that the merger would result in the merged party having market power;
- the dynamic characteristics of the market, including growth, innovation and product differentiation;
- the nature and extent of vertical integration in the market;
- whether the business or part of the business of a party to the merger or proposed merger has failed or likely to fail;
- whether the merger will result in the removal of efficient competition.

If it appears that the merger is likely to substantially prevent or lessen competition in Zimbabwe or any part of Zimbabwe, the Commission then determines whether the merger is likely to result in any technological efficiency or other pro-competitive gain which would be greater than and offset the effects of any prevention or lessening of competition that may result or is likely to result from the merger and would not likely be obtained if the merger is prevented. The Commission also determines whether the merger can or cannot be justified on public interest grounds.

In determining whether a merger is or will be contrary to the public interest, the Commission takes into account everything that it considers relevant in the circumstances and has regard to the desirability of:

- maintaining and promoting effective competition between persons producing or distributing commodities and services in Zimbabwe;
- promoting the interests of consumers, purchasers and other users in Zimbabwe in regard to the prices, quality and variety of commodities and services; and
- promoting through competition, the reduction of costs and the development of new commodities, and facilitating the entry of new competitors into existing markets.

From its examination of a proposed merger, the Commission may approve the merger either conditionally or unconditionally, or may prohibit the merger. The Commission's conditional approval of mergers include remedies aimed at removing or alleviating the identified competition or public interest concerns associated with the merger. The Commission may also make orders in respect of a merger providing for any of the following matters (section 31(3) of the Act):

- “(a) the transfer or vesting of property, rights, liabilities or obligations;*
- (b) the adjustment of contracts, whether by their discharge or the reduction of any liability or obligation or otherwise;*
- (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;*
- (d) the creation, allotment, surrender or cancellation of any shares, stocks or securities;*
- (e) the formation or winding up of any undertaking or the amendment of the memorandum or articles of association or any other instrument regulating the business of any undertaking”.*

Mergers and Acquisitions Cases

The Commission has handled over 80 different mergers and acquisitions since its effective coming into operation in 1998. Sectors and industries affected have included the financial services sector, the health care services sector, the retail/wholesaling services sector, the telecommunications services sector, the food and drink industry, the cement industry, the petroleum industry, the tobacco industry and the cotton ginning industry.

Of the many cases of mergers and acquisitions that the Commission has examined since its coming into operation, six have been selected for outlining in this paper because of their regional implications and/or clarity in showing how the provisions of the Competition Act were used in coming up with the relevant decisions.

Rothmans of Pall Mall/ British American Tobacco Merger

In January 1999, British American Tobacco Plc of the United Kingdom announced that it had reached an agreement with the shareholders of Rothmans International, Compagnie Financiere Richemont AG of Switzerland and Rembrandt Group Limited of South Africa to merge their international tobacco businesses. Subsequent to the completion of the international merger between British American Tobacco Plc and Rothmans International, Rothmans of Pall Mall (Zimbabwe) Limited in September 1999 applied to the Competition Commission for authorisation to acquire the entire issued share capital of British American Tobacco Zimbabwe Limited.

The merging parties gave as one of the reasons to merge the declining market for cigarettes in Zimbabwe. It was presented that the Zimbabwean manufactured cigarette market had declined to such an extent that it was no longer big enough for the continued viability of two manufacturers as evidenced by the poor performance of British American Tobacco Zimbabwe Limited in its financial year ended 31 December 1998.

The case was evaluated as a horizontal merger as defined in section 2 of the Competition Act. The examination of the proposed merger was based on information supplied by the merging parties, major stakeholders (customers, input suppliers and other tobacco manufacturers) and relevant business associations in the tobacco industry. A cigarette consumption survey was also conducted in both urban and rural areas of Zimbabwe and this was an important source of information on product substitutability, brand loyalty, consumption patterns and smoking habits in the country. The survey assisted the Commission in identifying the relevant product market under investigation as *manufactured cigarettes* (the merging parties had submitted that the relevant product market included all types of tobaccos including snuff and untreated tobacco leaf smoked as “roll-your-own” cigarettes).

The Commission noted that although the merger would result in a creation of a monopoly situation in the relevant market (i.e. the manufactured cigarette market), it had other public interest benefits provided for in the Competition Act, such as the creation of greater economies of scale resulting in more efficient use of resources, the generation of foreign currency through exports, and the stabilisation of product prices on the local market. The *failing firm* defense put forward by the merging parties was also considered a strong point in support of the merger.

The Commission therefore authorised the merger with certain conditions aimed at alleviating the adverse effects of the monopoly situation created. The conditions related to the disposal of surplus cigarette making equipment to third parties interested in entering the Zimbabwean

cigarette making industry, and surveillance by the Competition Commission of future cigarette price increases while the monopoly situation created remains in existence, with any price rises being justified to the Commission before being effected.

The above conditions were fully met. The merged party disposed of its surplus cigarette making equipment to a third party, Cut Rag Processors (Pvt) Limited, which proceeded to introduce a new *Remington Gold* cigarette brand in direct competition with the merged party. With the coming into operation of Cut Rag Processors (Pvt) Limited, the cigarette price surveillance condition imposed on the merged party fell away after only two price increase exercises.

It took the Commission three months to examine and make its determination on the merger.

Coca-Cola Company/ Cadbury-Schweppes Merger

In December 1998 Cadbury Schweppes Plc of the United Kingdom sold to The Coca Cola Company of the United States of America its commercial beverage brands outside the United States, Continental Western Europe and certain other territories worldwide. In December 2000 The Coca Cola Company submitted to the Competition Commission in terms of section 35 of the Competition Act a merger application for authorisation of its proposed acquisition in Zimbabwe of beverage brands owned by Cadbury Schweppes Plc.

The brands acquisition transaction was evaluated as a horizontal merger as defined in section 2 of the Competition Act. The examination of the transaction was largely based on information supplied by the merging parties themselves. Additional information was obtained from other stakeholders in the local beverage industry (franchised bottlers, competitors, raw material suppliers, etc). Other competition authorities that had also considered the transaction in terms of their countries' competition legislation (i.e., the Australian Competition & Consumer Commission, the Zambian Competition Commission and the Competition Commission of South Africa) were also consulted. A small beverage consumption survey covering some urban and rural centres of Zimbabwe was conducted in order to obtain information on product substitutability. The Commission also published notices in the *Government Gazette* and national newspapers inviting interested persons and parties to submit written representations on the proposed merger, and held Stakeholder Hearings into the matter.

The Commission identified from a consumer survey undertaken that the relevant product market as '*ready to drink*' soft drinks of a carbonated and non-carbonated nature (The Coca Cola Company had submitted that the relevant product was all beverages, including tea and coffee, and even bottled water). In that market the merging parties' pre-merger market shares were 76.9% (Coca Cola brands) and 12.5% (Cadbury Schweppes brands) resulting in a combined post-merger market share of 89.4%. It was however found that the proposed merger will not create a monopoly situation in the relevant market, which is highly contestable, nor will it lessen actual competition in the soft drinks bottling and distribution industry. It was also found that the proposed merger had considerable public interest benefits in the form of generation of foreign currency from the continued export of local beverage brands such as the *Mazoe* brand, creation of employment, more efficient use of resources and continued availability of Schweppes brands on the market. Stakeholder concerns were however expressed and noted on the fate of Cadbury Schweppes' bottling plant in Zimbabwe and its local beverage *Mazoe* and *Calypso* brands, as well as of the local suppliers of inputs into Schweppes' local beverage brands.

The Commission therefore authorised the transaction subject to the following conditions:

- (i) that The Coca Cola Company, in addition to acquiring the Cadbury-Schweppes beverages brands, undertake to purchase Schweppes Zimbabwe Limited as a going concern and to establish an appropriate shareholding structure (to include indigenous shareholders) to oversee the operations of the new company to be formed;
- (ii) that The Coca Cola Company undertake to maintain the local *Mazoe* and *Calypso* brands on the Zimbabwean market and develop them into regional brands with wider circulation; and
- (iii) that The Coca Cola Company undertake to promote and develop Zimbabwean suppliers and supplies with respect to the raw materials necessary to produce the finished product brands.

An Undertaking to the above effect signed between the Competition Commission and The Coca Cola Company specifically provided, *inter alia*, for: (i) the acquisition and operation of Schweppes Zimbabwe Limited by The Coca Cola Company; (ii) the divestiture of The Coca Cola Company from Schweppes Zimbabwe Limited in favour of local indigenous investors; (iii) the maintenance and development of Schweppes Zimbabwe Limited's local *Mazoe* and *Calypso* beverage brands; and (iv) the promotion and development of Zimbabwean suppliers of raw materials used in the production of the local *Mazoe* and *Calypso* beverage brands.

In conformity with the conditional approval of the merger, The Coca Cola Company acquired and modernised the bottling plant of Schweppes Zimbabwe Limited before disposing it to an indigenous Zimbabwean company, Fidelity Life Asset Management Company (Pvt) Limited (FLAM).

The time taken from the notification of the proposed merger to the Commission's determination on the merger was four months.

Dairibord/ Lyons Zimbabwe Merger

In April 2001 Dairibord Zimbabwe Limited applied to the Competition Commission for the Commission's authorisation of its acquisition of the business and assets of Lyons Zimbabwe (Pvt) Limited, including the trade marks and other intellectual property rights used in that enterprise. The *failing firm argument* was put forward as the major reason for the merger since Lyons Zimbabwe had been losing money over the years. The other reasons given for the merger were increased efficiencies resulting from the merged company sharing costs by combining and consolidating their production and manufacturing bases and the strategic positioning of the merged enterprise as a stronger competitor in regional and international markets.

The case was examined as a conglomerate merger. The examination was largely based on the information contained in the relevant merger notification form and supplied by other stakeholders such as the merging parties' competitors and input suppliers.

The Commission identified *ice cream* and *non-alcoholic beverages* as the relevant product markets since it is in these areas that the products of the merging companies overlapped. It was found that the merger would not create a monopoly situation in the relevant markets because of the existence of other players in those markets. For example, the merged company's share of the hand-held ice cream market was found to be less than 65%. While it was found that the merger would create a dominant player in the ice cream market in the form of Dairibord/Lyons Maid, the Commission was of the opinion that dominance *per se* is not anti-competitive but its abuse, and

that neither Dairibord nor Lyons Zimbabwe had a recent history of having abused its dominant position in that market. The Commission also accepted the efficiency reasons given for the merger and found other public interest benefits arising from the merger in the form of employment creation, foreign currency generation and localisation of the control of Lyons Zimbabwe (Pvt) Limited, which will continue operating as a separate company after the merger.

The Commission therefore unconditionally authorised the merger. The examination of the proposed merger took the Commission two months.

Pretoria Portland Cement/ Unicem Merger

In August 2001, Pretoria Portland Cement Company Limited (PPC), a leading cement manufacturer incorporated in the Republic of South Africa, filed an application with the Commission for authorisation to acquire the entire issued share capital of Portland Holdings Limited (Porthold or Unicem), the leading cement manufacturer in Zimbabwe. Anglo American Corporation, the largest shareholder of Porthold, wanted to re-focus its operations on its core business activities (principally mining) and was disposing of its non-core investments. PPC on the other hand wanted to increase its cement investments in the Southern African region in the face of stiff competition from Lafarge S.A. of France, which had recently acquired Blue Circle Industries' cement plants in Zambia, Tanzania, Malawi and Zimbabwe.

The Commission examined the transaction as a horizontal merger as defined in the Competition Act. The analysis of the merger was largely based on information supplied by the merging parties themselves in the relevant application form and from a presentation made at the Commission's offices, as well as from interviews held with their officials. Porthold's cement plant in Bulawayo and limestone quarries in Colleen Bawn, where it makes its clinker, were also visited to get the feel of cement manufacturing operations. Views of other cement manufacturers in Zimbabwe were obtained, as well as those of other stakeholders such as construction companies and other major cement users. Consultations were also held with South Africa's competition authority.

It was found that the merger did not change the structure of the cement industry in Zimbabwe. Porthold remained the leading player with about 50% share of the market, followed by Circle Cement (28%), Sino-Zimbabwe (15%) and ZimCement (7%). The merger therefore did not create a monopoly situation nor did it lessen the degree of competition in Zimbabwe since PPC was then not a participant in the Zimbabwean cement market. PPC was only stepping into the shoes of Anglo American Corporation. The Commission also accepted the efficiency reasons given for the merger and found other public interest benefits arising from the transaction such as: (i) additional efficiencies in production; (ii) introduction of a wider range of cement products; (iii) significant inflows of foreign currency into Zimbabwe from PPC's plant modernisation programme; and (iv) promotion and maintenance of effective competition in Zimbabwe and the region.

One concern raised from stakeholder submissions however was the possibility that PPC, or any other company that could subsequently acquire Porthold from PPC, could close down the Zimbabwean plant and supply cement from South Africa given the surplus capacity existing in the South African cement market.

The Commission therefore authorised the merger on two conditions, that: (i) PPC should honour its commitment to maintain Porthold and continue the production of cement in Zimbabwe; and (ii) should PPC in future decide to dispose of Porthold by sale or otherwise, such disposal should

be subject to the condition that Porthold will be maintained and continue producing cement in Zimbabwe, and that PPC should inform and consult the Commission of any such disposal before proceeding.

The conditional authorisation of the merger was accepted by PPC and was embodied in an Undertaking signed between that company and the Commission. It took the Commission a month to examine and consider the proposed merger, thanks mainly to the easy availability and accessibility of relevant information.

Strategis Insurance Company/ Central African Insurance Brokers Merger

In May 2001, the Commission picked up from the newspapers that a company called Strategis Insurance Zimbabwe (Pvt) Limited was acquiring another existing company called Central African Insurance Brokers (Pvt) Limited. The Commission brought to the attention of the merging parties the existence of Statutory Instrument 177 of 2000 and advised that to proceed accordingly. Statutory Instrument 177 of 2000 provides that “parties to any merger of undertaking that provide financial services shall obtain the Commission’s approval before concluding the merger”. ‘Financial service’ is defined in the Statutory Instrument to include “the carrying on in Zimbabwe of insurance business as defined in the Insurance Act [*Chapter 24:07*]”.

This was the first time that the Commission used its investigative powers to examine a merger as a restrictive practice in the absence of a notification or application for authorisation from the merging parties. The reason was that the merging parties had disagreed with the Commission that the transaction was a merger and was therefore subject to the provisions of Statutory Instrument 177 of 2000 (Competition (Notification of Mergers) (Financial Services) Notice, 2000).

The merging parties submitted that Statutory Instrument 177 of 2000 did not apply to their transaction not only because the transaction was not a merger since “each company will retain its separate identity”, but also that “brokerage is a complimentary business to an insurance company as opposed to a competing business and there is therefore no question of any competition as between two such organisations”. It was also submitted that “Central African Insurance Brokers is a broker falling within the definition of ‘Insurance Broker’ in the Insurance Act as opposed to falling within the definition of the term ‘Insurance Business’ as contemplated in Statutory Instrument 177 of 2000 and defined in the Insurance Act”.

The Commission did not agree with the merging parties’ interpretation of both the Competition Act and Statutory Instrument 177 of 2000 but at that stage, the parties had already consummated the merger and the pre-merger examination requirements provided for in Statutory Instrument 177 of 2000 were no longer applicable. The Commission therefore had no option but to undertake a post-merger investigation of the transaction as a restrictive practice.

The examination of the merger itself was a simple and straightforward affair. Notices were published in the *Government Gazette* and national newspapers calling upon interested parties and persons to submit to the Commission written representations on the matter. Additional evidence was also collected from various stakeholders in the insurance business (mainly, the merged parties’ competitors, the relevant sector regulator and the relevant associations).

From the evidence collected, the relevant functional/service market was identified as *the provision of short-term insurance and insurance broking services*. In that market, the merged party only had a 1% share of the market in the short-term insurance portion and 2.5% in the insurance broking portion. None of the merged parties’ competitors felt threatened by the

merger. An analysis of the likely unilateral effects and coordinated interaction effects of the merger showed that the merged parties were not likely, nor was it in a position, to adversely competition in the relevant market because of their relatively small sizes in that market.

The Commission therefore closed the case on the grounds that the merger raised no serious competition concerns. The whole process, from the identification of the merger to the determination of its competitive effects, had taken the Commission ten months.

Proposed Merger of Colcom Holdings and Cattle Company Holdings Limited

In July 2003, Colcom Holdings Limited, a meat processing company, notified the Commission its proposed merger with the Cattle Company Holdings Limited to create a new holding company called CC Holdings.

Colcom Holdings controlled a number of subsidiary companies in the meat processing company, such as Colcom Foods (with abattoirs in Harare and Bulawayo, factor in Harare that produced fresh pork, bacons, fresh sausages, pies and canned meats, and wholesale distribution centres all over the country), Danmeats, a recent acquisition, (involved in the manufacture of hams, bacon and cooked sausages, and the processing of cold meats), Triple C Pigs (a joint venture with another company called CC Sales Auctions involved in breeding and rearing pigs) and Freddy Hirsch (a manufacturer and supplier of natural sausage casings). The Cattle Company Holdings also had a number of subsidiary companies, such as CC Sales Auctions (that handled cattle auctions throughout the country, and involved in semen sales), Montana Meats (involved in the slaughter of cattle and retailing of beef in Harare and Gweru), Livestock Trading (that operated cattle feedlots and supplied slaughter cattle to Montana Meats) and Savanna Leather (that processed hides to wet blue state for export, and also exported beef).

The relevant product and functional markets were identified as *the supply of pigs and cattle for slaughter* and *the supply and distribution of pork and beef*. In the slaughter pigs market, Colcom Holdings was found to be dominant with a 60% market share. The company was also dominant in the bacon (90%), hams (90%) and cooked meats/polonies (50%) markets. On the other hand, the Cattle Company Holdings was dominant in the slaughter cattle market, a dominance that was strengthened by its acquisition (not notified to the Commission because it was then not compulsory to notify mergers) of its main competitor, Zimstock Sales.

All the stakeholders approached by the Commission on the proposed merger expressed competition concerns over the merger. The Commission's own analysis of the merger also identified a number of competition concerns. The issue of joint dominance to be created by the merging parties in the supply of beasts for slaughter was of particular concern. Past attempts by both merging parties to eliminate effective competition in their respective relevant markets by acquiring their closest competitors were also noted with concern. It was therefore felt that there was a high likelihood that the merged entity could engage in the following anti-competitive practices:

- manipulating prices in the meat industry, and unilaterally raising them to levels not related to market forces;
- foreclosing the supply to cattle to competitors; and
- preventing new entrants or creating barriers to entry into the relevant markets.

The Commission therefore made it a condition that the merging parties should divest from the cattle auctioneering business if the merger was to be approved.

The merging parties challenged the factual basis upon which the Commission reached its decision to conditionally approve the merger. Accordingly, the Commission decided to undertake a full-scale investigation into the matter and accordingly published notices in the *Government Gazette* and national newspapers announcing the commencement of the investigation and inviting interested persons and parties to submit written representations on the matter. It was at that point that the merging parties decided to abandon the transaction.

A period of three months had lapsed from the time the proposed merger was notified to the Commission to the time it was abandoned.

Comments and Conclusion

Before the coming into force in July 2002 of the Competition Amendment Act, 2001, merger notification in Zimbabwe was basically voluntary, even though the Commission could by publishing notices in the *Government Gazette* require parties to any proposed merger to obtain the Commission's approval before concluding the merger. That arrangement proved unsatisfactory in controlling mergers for a number of reasons. Firstly, the Commission lacked the necessary resources to monitor all business transactions that led to mergers. As a result, a number of harmful mergers were consummated without the knowledge of the Commission. Secondly, the publication of the requisite *Gazette* notices was a long and cumbersome process involving a number of Government departments. The bureaucratic delays in publishing such notices also led to many potentially harmful mergers escaping the Commission's net.

The mandatory pre-merger notification provisions of the Competition Amendment Act, 2001 have therefore covered a serious loophole in the Commission's merger control activities.

An analysis of the determinations on mergers and acquisitions made so far by the Commission show that the Commission is not so much concerned over the existence of dominance itself but rather over the abuse of dominant positions or exercise of market power. The Commission has allowed certain mergers such as the Rothmans/BAT merger and the Coca-Cola/ Cadbury-Schweppes merger which created dominant companies that were not seen as potentially abusing their acquired dominant positions. On the other hand, it ordered divestiture of a key operation in the proposed Colcom Holdings/ Cattle Company Holdings merger on high probability that the merged party could abuse its dominance in that operation, based on the merging parties' propensity of acquiring and removing key competitors in their respective relevant markets.

While tolerating dominant companies, the Commission has also been conscious of the need to encourage and facilitate new entrants in concentrated industries, and to prevent exits from markets. Again the Rothmans/BAT merger is a point in case in which the Commission facilitated the entry of Cut Rag Processors (Pvt) Limited into the cigarette manufacturing industry by making it a condition of its approval of that merger that the merged party should dispose of its surplus cigarette making equipment to an independent third party. The Commission's conditional approval of the Coca-Cola/Cadbury-Schweppes merger also prevented exit from the beverages industry of Schweppes Zimbabwe Limited and facilitated FLAM's entry into that industry.

The Commission has allowed certain mergers with substantial pro-competition elements and public interests to proceed even though such combinations increased concentration in the relevant markets. For example, it authorised the Dairibord/ Lyons Zimbabwe merger in the highly

concentrated ice cream market largely because of the merger's many efficiency elements and the localisation of the control of Lyons Zimbabwe (Pvt) Limited.

The treatment of multinational mergers by the Commission is also worth noting. The problems of developing countries like Zimbabwe with relatively small markets influencing large multinational mergers such as the Rothmans/BAT merger and Coca-Cola/Cadbury-Schweppes merger are well documented. The question is whether developing countries can effectively control such mergers. The Commission's position has been to examine the competitive effects on the Zimbabwean market of such mergers, and take the necessary corrective measures, the same way it examines any other domestic mergers. The Commission has also taken the opportunity of its examination of multinational mergers to promote direct foreign investment and other pro-competitive practices through its conditional approval of the mergers.

Harare. Zimbabwe

22nd April 2004.