



# **EVALUATION OF MERGERS ASSESSMENT AND IMPACT IN MALAWI- THE CASE OF TOYOTA-CFAO MERGER AND MSB-FDH MERGER**

**Presentation by Augustine Nyirenda - CFTC (Malawi)**

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# PRESENTATION OUTLINE



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- Introduction
- Toyota – CFAO Merger (Assessment and Decision; Post-Merger Analysis)
- FDH – MSB Merger (Assessment and Decision; Post-Merger Analysis)
- Conclusion & Recommendations

# INTRODUCTION



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- Section 38 of the Competition and Fair Trading Act mandates the Commission to evaluate and approve merger applications.
- Tests applied include: competition analysis (effect test), dominance test, efficiency gains test and public interest test.
- CFTC conducted an ex-post evaluation of its decisions on:
  - Acquisition of CFAO Malawi Limited by Toyota Tsusho Corporation (Toyota) - 2013.
  - Acquisition of Malawi Savings Bank Limited (MSB) by FDH Financial Holdings Limited (FDHFHL) - 2015;
- The study used quantitative analytic tools to assess: market power analysis and Consumer welfare analysis.
- The study also used qualitative analysis.



# ACQUISITION OF CFAO BY TOYOTA TSUSHO CORPORATION (TTC)



# Commission's Findings and Decision

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- Toyota Tsusho Corporation (TTC) acquiring CFAO's Malawian subsidiaries.
- Toyota Malawi franchises (Toyota and Hino brands) while CFAO franchises (Nissan, Ford, Suzuki, UD and Hyundai brands).
- **Findings:**
  - Competition test: likely to substantially lessen competition
  - Dominance test: creating a dominant player - could potentially abuse its dominant position.
  - Toyota likely to undermine CFAO in order to promote Toyota brand.
  - No demonstrable benefits as a result of the merger.
  - Third parties - expressed concerns about the effects on competition and public interest grounds.



# Commission's Findings and Decision

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- The Commission authorized the merger, subject to these undertakings:
  - Toyota Malawi and CFAO Malawi would be independent of each other at both the board and operational levels;
  - TTC would not take any decision that may undermine the operations of CFAO Malawi
  - TTC should ensure that at the minimum, Nissan and Ford brand would maintain their market shares.
  - TTC should release the franchise of Nissan and Ford Brands should it fail to meet the conditions (above)
- An MOU was signed between CFTC and TTC - to monitor the implementation of the undertakings.

# Post – Merger Dynamics



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Figure 7a: Annual Nissan Sales

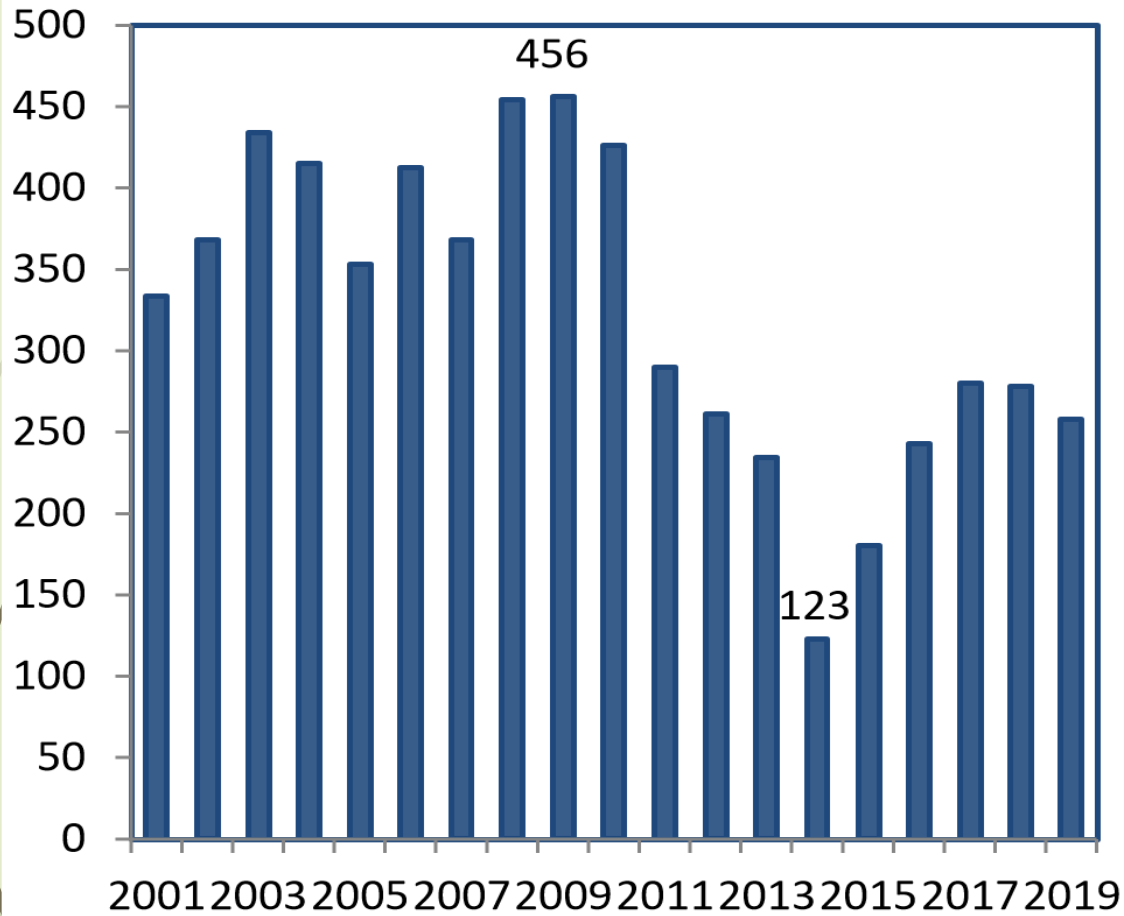
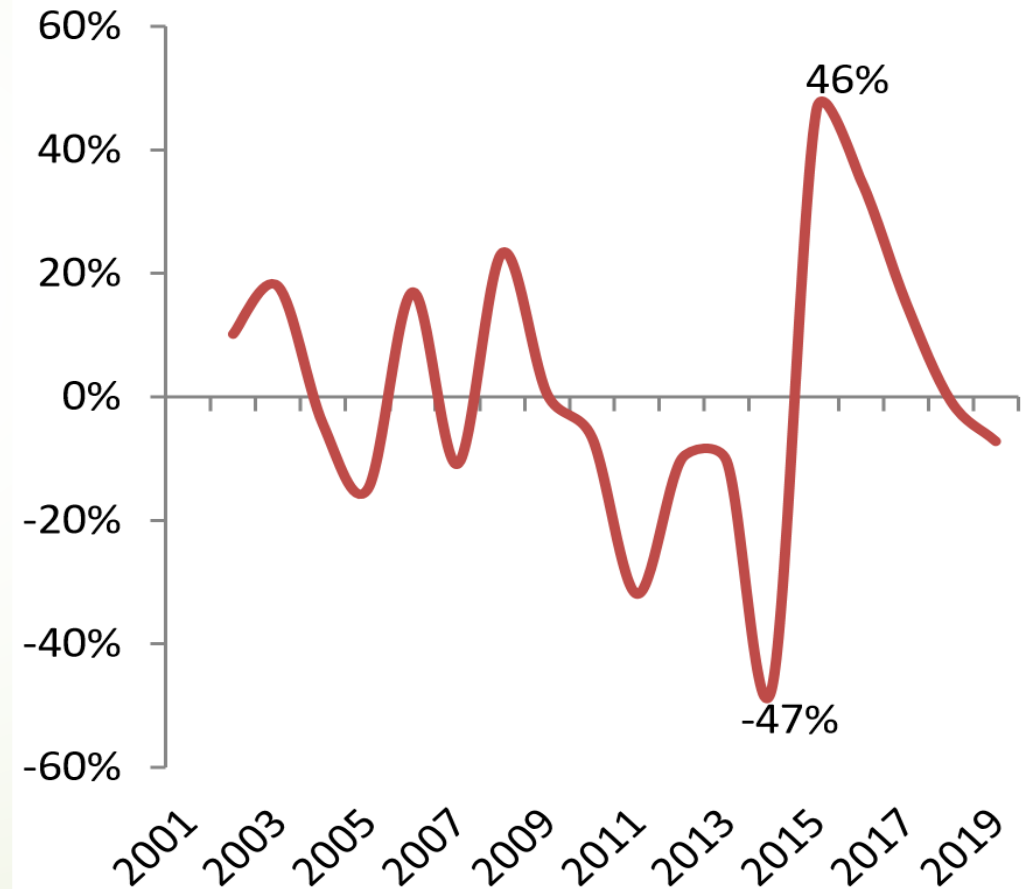


Figure 7b: Growth Rate of Nissan Sales



# Post – Merger Dynamics



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## ➤ Pre-merger:

- Toyota Malawi (39 %) and CFAO Malawi (31%). Stansfield Motors (9%), Tata (6%) and HTD (5%); Others (10%).
- Toyota & CFAO were the dominant players at combined 70%

## ➤ Post Merger:

- Toyota (55%); Nissan withdraw from CFAO, and became independent.
- The combined share (Toyota & CFAO) declined from 70% in 2012 to 55% in 2016.
- Current (2020) combined share at 65%, it is largely driven by growth in Toyota sales
- The market share CFAO at 10%, displaced by Nissan Malawi from being the second largest player to being the third.



# Post – Merger Dynamics



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## ➤ Market Concentration

- The market was already concentrated pre-merger.
- The HHI jumped from 2925 in 2012 to 5431 in 2013.
- As Toyota's share of the market rose from 43 to 55 % between 2016 and 2019, the market has become even less competitive with HHI rising from 2862 to 4010.
- On the overall, concentration is higher in the post-merger than the pre-merger period.
- This seems to agree with the prediction of the Commission that the merger would increase concentration in the market.



# ACQUISITION OF MSB BY FDH FINANCIAL HOLDINGS

# Commission's Findings and Decision



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- Acquisition of controlling interest over MSB from the Malawi Government,
- Would also lead to a horizontal overlap between the FDH Bank, and MSB.
- **Findings**
  - Likely increase the market concentration in the banking and foreign exchange markets;
  - But those increases would be within safe harbours and unlikely to substantially lessen competition;
  - Merger was also deemed to be in the in public interest given that MSB Limited was facing a statutory closure;
  - Potential negative effects of the merger including job losses and closure of some branches

# Commission's Findings and Decision



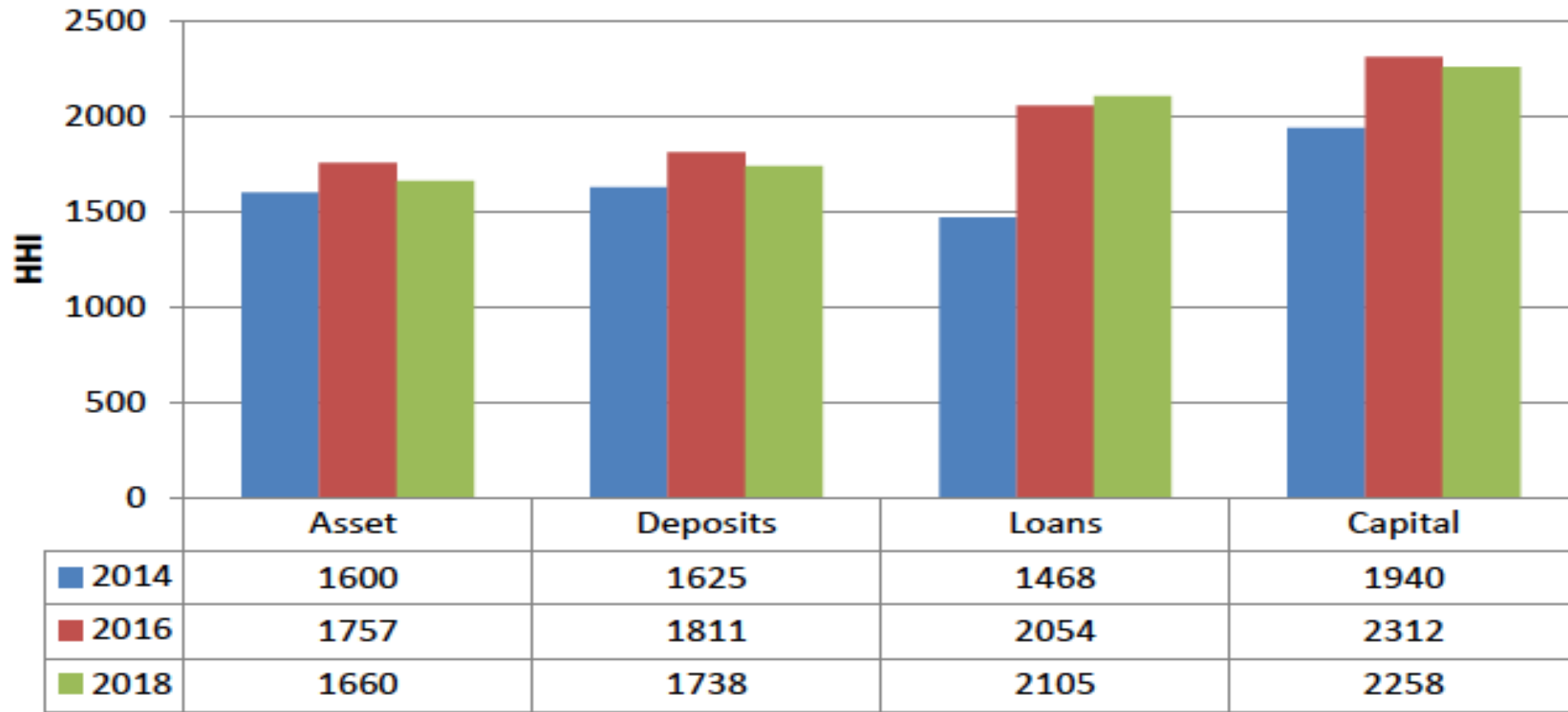
- The Commission approved the transaction; subject to 3 undertakings:
  - Not to abuse the resultant post-merger increase in market power;
  - To maintain the existing MSB staff; and all redundancy and termination costs would be paid accordingly.
  - FDH Bank would maintain all existing branches of both MSB and FDH Bank (FDH's own commitment)

# Post Merger Dynamics

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- Market Power Analysis:
- Applied the Hirschman-Herfindahl Index (HHI):



# Post Merger Dynamics

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- Market Analysis:
- The evidence supports the Commission's preceding findings.
  - Malawi's banking sector was moderately concentrated before and after the merger. The HHI largely remained moderate
  - Level of concentration for assets did not change significantly since the merger. The merger did not lead to a substantial lessening of competition.
  - There is, was however, evidence of lessening of competition for loan and equity. This resulted in the HHI increasing in 2018
  - Pre-merger: lending rate (38.2 %); deposit rate (7.9 %); spread (30.3 %).
  - September 2015, lending rate (33.2% - reduced by 5 %); deposit rate (7.9 %); spread (25% - fell by 5 %) as well.



# CONCLUSION – KEY LESSONS AND RECOMMENDATIONS

# Key Lessons



## Key Lessons

- (1) The model and toolkit used by CFTC was valid. Findings of ex-post evaluation validates the CFTC's earlier analysis regarding potential post-merger effects. The model and tool-kit is similar and consistent with other jurisdictions.
- (2) Although the CFTC has guidelines, decisions made to safe guard the public interest at times disregard the guidelines' objective criteria; and at times, seem arbitrary. In both transactions, although identified disadvantages demonstrably outweighed advantages, the Commission proceeded to approve the mergers.



# Key Lessons



- (3) The CFTC has neither a system nor capacity for routine surveillance and scheduled monitoring. In both transactions the major players have consolidated their hold on market, yet CFTC does not have this as part of its routine monitoring.
- (4) When some conditions attached to an approval are onerous or economically untenable, they will be disregarded by the parties.
- (5) The process leading to the approval of some mergers are not adequately consultative. For example, in the Toyota-CFAO merger, the Commission did not adequately consult and appreciate third party concerns on dynamics in the motor vehicle market.

# Recommendations



- CFTC to relook, revise and streamline its guidelines to remove any grey areas. This should include clarifying thresholds for making decisions.
- CFTC to institute a system for routine follow-up on the implementation of the conditions
- CFTC to stick to its legal provisions, particularly prioritizing the competition effect in assessment of proposed mergers.
- CFTC needs to set economically sensible conditions and remedies that give flexibility to both acquired and acquiring enterprises; e.g. maintaining employment levels.
- CFTC to conduct comprehensive and credible stakeholder consultations. Third party views should be properly considered.



# THANK YOU!!!

Augustine Nyirenda  
Chief Analyst – Consumer Affairs  
Competition and Fair Trading Commission.  
Private Bag 332, Lilongwe 3.  
Cell: 0999830855  
Email: [augustine.nyirenda@cftc.mw](mailto:augustine.nyirenda@cftc.mw) ;  
[apmnyirenda@gmail.com](mailto:apmnyirenda@gmail.com)  
CFTC – Just Competition, Fair Trading