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

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Competition and Fair Trading Commission

6th Floor, New Golden Peacock Office Complex

City Centre

Private Bag 332, Lilongwe 3.

competitioncommission@cftc.mw / consumer@cftc.mw

Telephone: +(265) 310001440; +(265) 310 001 441

Toll free: 2489

www.cftc.mw

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Abstract

Since its establishment in 2005, the Competition and Fair Trading Commission (CFTC) has assessed a number of merger and acquisition transactions with potential to affect competition and raised public interest concerns. However, merger authorisation decisions are inherently taken in conditions of uncertainty - based on the best available information - and actual enforcement involves a substantial experimental element. Therefore, it is prudent to carry out an ex-post evaluation to interrogate outcomes in light of underlying forecasts, assumptions and hypotheses upon which the decisions were based.

In view of the above, Competition and Fair Trading Commission conducted ex-post evaluation study, which focused on two case studies namely the 2013 CFAO- Toyota merger and the 2015 Malawi Savings Bank Limited (MSB)-Financial Holdings Limited (FDH), both of which were approved with conditions. The study employed quantitative modelling and qualitative methods to conduct competition analysis and welfare analysis associated with the mergers.

The study showed that CFTC's analysis and market prediction tools were valid and the analysis that CFTC made on respective markets' potential post-merger distribution of market power and concentration proved to be right. However, the study observed disregard for guidelines' objective criteria noting that although the identified disadvantages demonstrably outweighed advantages, CFTC proceeded to approve the mergers on basis of public interest.

Lastly, the study recommended for enhancement of capacity for routine surveillance and ex-post monitoring of approved transactions and for a comprehensive and credible consultative process during a merger review.

1.0. Introduction

1.1. Background

Section 38 of the Competition and Fair Trading Act mandates the Commission to evaluate merger applications and approve if and only if on balance the transaction's advantages outweigh its disadvantages. Disadvantages of a merger include reduction of competition and enhancement of market power while advantages include gains in efficiency, exports, employment, lower prices, acceleration in economic growth and technological advancement. CFTC's merger guidelines which operationalise Section 38 require the Commission to satisfy itself of the merits of the merger through a number of tests including the competition analysis (effect test), dominance test, efficiency gains test and public interest test.

Since its establishment in 2005, the Competition and Fair Trading Commission (CFTC) has reviewed and made decisions on a number of merger and acquisition transactions. In these transactions, authority to merge was granted upon the Commission satisfying itself that even if some of them had potential to affect competition and raised public interest concerns, the concerns were remedied through the implementation of undertakings by the parties. However, since authorisation decisions are inherently taken in conditions of uncertainty - based on the best available information - and actual enforcement involves a substantial experimental element, it is prudent to carry out an ex-post evaluation in order to interrogate outcomes in light of underlying forecasts, assumptions and hypotheses upon which the decisions were based.

It was in this context that, in 2019, the CFTC contracted the University of Malawi's Department of Economics (DOE) at Chancellor College to conduct such an ex-post evaluation of its decisions on two mergers and acquisitions that it had earlier authorised, namely: the acquisition of Malawi Savings Bank Limited (MSB) by FDH Financial Holdings Limited (FDHFHL); and the acquisition of CFAO Malawi Limited by Toyota Tsusho Corporation (Toyota).

1.2. Analytical Context

The literature gives guidance on critical dimensions that ought to be taken into account in the evaluation of mergers and acquisitions. The literature suggests a diversity of motives for mergers and acquisitions, and for each motive there are associated benefits and disadvantages of mergers and acquisitions (see for example, Scherer and Ross, 1990; Hay and Morris, 1981; Schnitzer, 1987). The literature identifies three main motives for mergers and acquisitions, namely (a) monopoly motives by foreclosing or reducing competition; (b) speculative motive, particularly where the market for corporate control is competitive through stock markets; and (c) normal business motives by taking over firms that are likely to fail, thereby improving efficiency (Scherer and Ross, 1990). This suggests that not all mergers and acquisitions are ex-ante harmful.

Although market power customarily entails an ability to raise prices above marginal costs profitably not all market power warrants anti-trust enforcement (Church and Ware, 2000). Mergers and acquisitions warrant anti-trust enforcement when it is deemed that such increased market power is sustainable in the medium- and long-term. Therefore, the negative effects of market power arising from mergers and takeovers can only be reflected in sustained supernormal profits (by say increasing barriers to entry or facilitating exit of competitors) and increased prices after the merger.

1.3. Methodological Approach

The study employed a mix of research methods including desk research, quantitative analysis and qualitative analysis. The study used quantitative analytic tools to focus on two domains related to the relative effects of mergers and acquisitions: the effect of increasing market power on reduction in competition, and the potential welfare effects via increases in prices for goods and services. In this regard, the study conducted the market power analysis and the consumer welfare analysis. It must be mentioned, however, that due to data availability problems, for Toyota-CFAO case, the study only conducted the market power analysis.

1.3.1. Market Power Analysis:

The major focus of the market power analysis was to determine whether one of the economic tests for deciding on the rejection or approval of a merger held in the post-merger period. In order to respond to this objective, the study undertook market concentration trend analysis covering the period before and after the merger was approved. The study employed three approaches: market share analysis from which the study derived Concentration ratios for the top three players in a market and Hirschman-Herfindahl Index (HHI).[1]

1.3.2. Consumer Welfare Analysis:

This sought to establish whether and how the mergers or acquisitions led to reduction in consumer welfare through increases in prices especially via output restrictions. In the FDH acquisition of MSB, the study analysed the impact of the merger on money market prices namely the lending interest rates, savings deposit rates and interest rate spread in the

[1] HHI captures the proportion of industry output attributable to the top n firms in the industry. Its value lies between nearly zero and 1 where a value close to zero implies a perfect competitive market while a value equal to 1 implies a monopoly market. The HHI is derived from a sum of the squared firm shares and since it includes all firms in the industry it gives higher weight to larger firms.

banking industry. All else being equal, a higher deposit rate or lower lending rate reduced the interest spread and improves consumer welfare. For the consumer welfare analysis of the FDH-MSB merger, the study estimated two econometric models using time series and panel data. However, it was not possible to undertake similar exercise for the Toyota Malawi-CFAO merger because players in the automotive industry understandably treated vehicle prices information as highly confidential and were reticent to share them.

1.3.3. Qualitative Analysis

The aim of this element was to solicit stakeholder perspectives on changes in product or service quality, competition and anti-competitive tactics in the concerned industry, as well as the extent to which remedial measures were implemented and monitored by the CFTC. The qualitative interviews were also useful in assessing perceptions on the barriers to entry, and whether exits and entries have occurred in the industry of interest. Four categories of stakeholders were for qualitative survey i.e. consumers, industry competitors, industry association or regulators, and the acquired and acquiring firms.

2.0. An Evaluation of the FDH-MSB Merger

2.1. Background

2.1.1. The Merger Proposal

On October 7th 2015, CFTC received an application for authorization of the proposed acquisition of controlling interest over MSB by FDHF Holdings. The proposed transaction would not only result in the acquisition of controlling interest over MSB from the Malawi Government by FDHF Holdings, but would also lead to a horizontal overlap between the activities of FDH Bank, which was a subsidiary of FDH Financial Holdings and MSB. In the proposal, the FDH Financial Holdings sought to acquire 80% of the issued and paid up ordinary share capital of the Malawi Savings Bank held by the Malawi Government. The remaining 20% would be retained by the Malawi Government.

The transaction aimed at improving economic efficiencies and facilitating the growth of MSB by providing it with access to capital, technical and managerial expertise, and to ensure that MSB was in compliance with regulatory and prudential requirement. Specifically, MSB failed to satisfy some requirements including capital adequacy requirement under the Basel II and its sole shareholder, had neither the capacity nor interest to recapitalize the bank to satisfy the capital requirement.

2.1.2. CFTC's determination

Guided by Section 38(1) as read together with Section 2(5) of the Competition and Fair Trading Act (CFTA), the CFTC applied an economic framework for assessing the likely impact of a proposed merger on competition and the economy.

Accordingly, CFTC used the following tests: (1) the “effect” test, whose focus is to assess whether the conduct would likely prevent, restrict, or distort competition to an appreciable extent in the relevant market; (2) the “efficiency” test which assesses the likely impact of the merger on production and distributive efficiency and; (3) the Public interest test which seeks to establish if the proposed merger or takeover would create some conditions that would negatively or positively affect the general public and the economy in general.

Having considered all the above processes, the Commission found that the proposed transaction would likely increase the market concentration of the banking and foreign exchange markets in Malawi. This notwithstanding, the Commission’s position was that while the transaction would likely increase market concentration as well as market power of the merged bank, those increases would be within safe harbours and unlikely to substantially lessen competition in the banking and forex markets.

The merger was also deemed to be in the in public interest given that MSB Limited was facing a statutory closure due to its failure to comply with the Basel II requirements. However, the Commission also noted potential negative effects of the merger including job losses and closure of some branches as the merger would inevitably result in duplication of some posts and branches for the merged bank, particularly those in rural areas and were critical to fostering financial inclusion in Malawi.

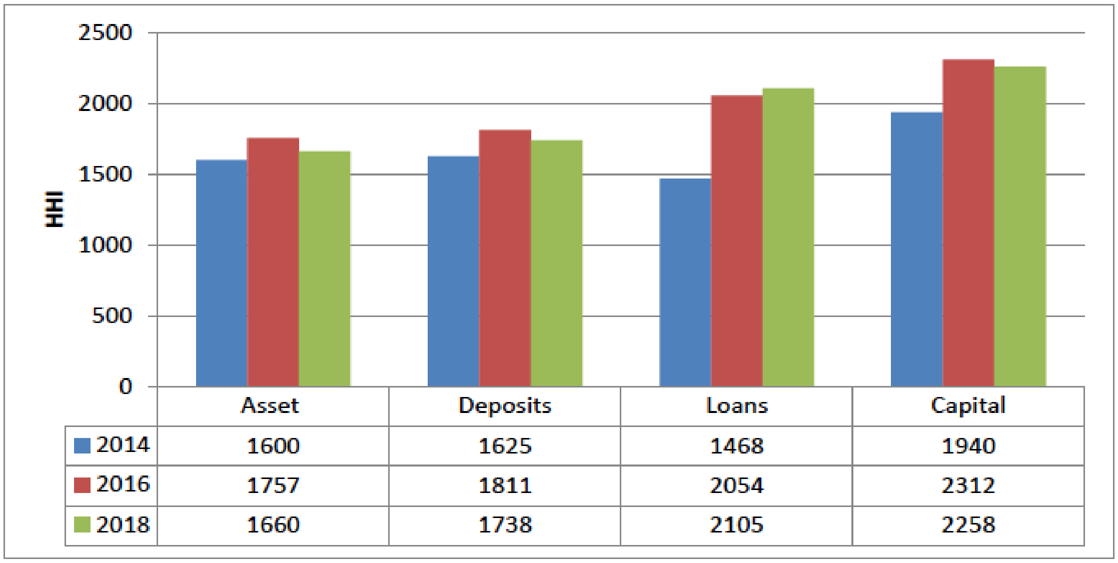
In light of these findings, on 12th February, 2016, the Commission resolved to approve the transaction subject to the parties complying with three following undertakings: (i) That the parties would not abuse the resultant post-merger increase in market power; (ii) That the parties would maintain the existing MSB staff at the same or improved terms and condition of service and, should there be need for retrenchment, all redundancy and termination costs would be paid accordingly. In addition, on its own volition, FDH Bank committed that it would maintain all existing branches of both MSB and FDH Bank.

2.2. A Market Power Analysis of the FDH-MSB Merger

Hirschman-Herfindahl Index

According to the Commission’s Merger Assessment Guideline, a merger is less likely be found to result in substantial lessening of competition if the post-merger HHI is between 1000 and 2000 and the difference between pre-merger HHI and post-merger HHI is below 250.

Figure 1: Trends in Hirschman-Herfindahl Index (2014-2018)



The evidence supports the preceding findings. In general, Malawi's banking sector was moderately concentrated before the merger and remains thus after the mergers. However, variations exist across different elements of the sector. In 2014, asset holding in the banking industry was moderately concentrated with an HHI of 1600 which falls between 1000 and 2000. However, as of 2018 the increase in HHI increase by only 60 by 2018 suggest that the level of concentration for assets has not changed significantly since the merger. Similarly the increase in HHI for ability to attract and mobilize deposits by 115 to 1738 suggests that the merger did not lead to a lessening of competition. In contrast there is evidence of lessening of competition for loan and equity. The increase in the HHI for loans by 637 supports the increase in concentration ratio for the top three banks from 54 to 70%. Similarly the increase in HHI for capital by 318 naturally arises from the increase in the share of the top three banks from72 % to77 %.

2.3. A Consumer Welfare Analysis of the FDH-MSB Merger

The Results were investigated whether the merger had any impact on prices in the banking sector (i.e. interest rates). When the merger was announced, the lending rate was 38.2 %, the deposit rate was 7.9 % and the spread was 30.3 %. In September 2015, banks reduced the lending rate by 5 % and left the deposit rate unchanged, so the spread fell by 5 % as well. However, a raise in the policy rate from 25 % to 27 % in October 2015, forced commercial banks to raise the lending rate to 36 % and so did the spread (see Figure 2). While the merger announcement coincided with the lending rate decline in 2015, the merger was consummated when the interest rates had risen, giving an impression of ambiguous impacts of the announcement and actualisation. In reality both impact were externally driven by monetary policy and independent of the merger.

2.4. A Qualitative Evaluation of the FDH-MSB Merger

The following issues emerge in line with the objectives of the assignment.

(i) The merger was necessary and in the public interest in the sense that it prevented MSB from failing.

(ii) The merger did not substantially lessen competition. Even though the market became more concentrated following the merger, the increase in concentration was not substantial enough to affect competition in the industry. Actually, the study get a sense that the merger, ironically, helped in increasing competition in the industry by somehow eating into the dominance of the top two players in the market.

(iii) The Tools Kit used by the CFTC is valid. The findings support the CFTC's earlier observation that though the merger would result in increased concentration, yet the increase in concentration would be in safe harbours implying that the merger would not necessarily lessen competition in the industry. This is because the merged bank was not big enough to change market dynamics in an industry that is predominantly oligopolistic.

(iv) Some voluntary undertakings on the part of the buyer endorsed by the CFTC were neither necessary nor economic untenable. The requirement that FDH had to maintain all employees at current or better levels of benefits, and if redundancy became necessary, it would be done in keeping with terms and conditions of employment was reasonable.

3.0. An Evaluation of the Toyota-CFAO Merger

3.1. Background

3.1.1. The Merger proposal

On 9th October 2012, the CFTC received an application by Toyota Tsusho Corporation (TTC) seeking authority for the acquisition of CFAO's Malawian subsidiaries. The application followed a global transaction undertaken two months prior in which TTC completed a public share bid for Pinault Printemps Redoute (PPR) which at the time was the largest shareholder in CFAO (France). In July and August of 2012, TTC acquired 29.8 and 12.19 % of the share capital of PPR, respectively, which effectively gave TTC majority shareholding in CFAO-F. In the Malawian context, this transaction would involve TTC's subsidiary, Toyota Malawi, as the acquiring firm and CFAO Malawi as the acquired firm.

3.1.2. CFTC Determination

In Malawi, there would be 100 % horizontal overlap as the business of the subsidiaries of the two companies were restricted to the distribution and repair service of new motor vehicles. At the time of the application, Toyota Malawi had a franchise in Toyota and Hino brands while CFAO had franchise in five brands: Nissan, Ford, Suzuki, UD and Hyundai brands (CFTC, 2013).

The dominance test suggested that by virtue of its larger market the merged firm could potentially abuse its dominant position. There was potential that Toyota could undermine the operation of CFAO in order to promote the distribution of Toyota branded cars in Malawi. In consideration of Public Interest, the requirement here is that a proposed merger should benefit the public and that the benefit would outweigh the detriment to the public. With respect to this, the Commission found that there was no demonstrable benefit that Malawi would realize as a result of the merger. The majority of third parties consulted, including competitors, industry associations and even the government expressed reservations about the proposed transaction on competition as well as public interest grounds.

On the 19th of April, 2013 the CFTC granted authorisation for the merger, subject to the receipt from the Parties of a number of formally executed undertakings (remedies). These included that Toyota Malawi and CFAO Malawi would be independent of each other at both the board and operational levels; that TCC would not take any decision that may undermine the operations of CFAO Malawi and TTC should ensure that at the minimum, Nissan and Ford brand would maintain their market shares. Alternatively, TCC should release the franchise of Nissan and Ford Brands should it fail to meet the conditions as in (i) and (ii) above. The parties to the transaction agreed to the undertakings/remedies required by CFTC. Accordingly, a Memorandum of Understanding was signed between CFTC and TTC on 20th July, 2013 so as to monitor the implementation of the undertakings. In order to monitor execution of terms of the MOU, it was agreed that for three years after the date of approving the merger, there would be a meeting among the parties to the MOU every six months.

3.2. Market Power Analysis

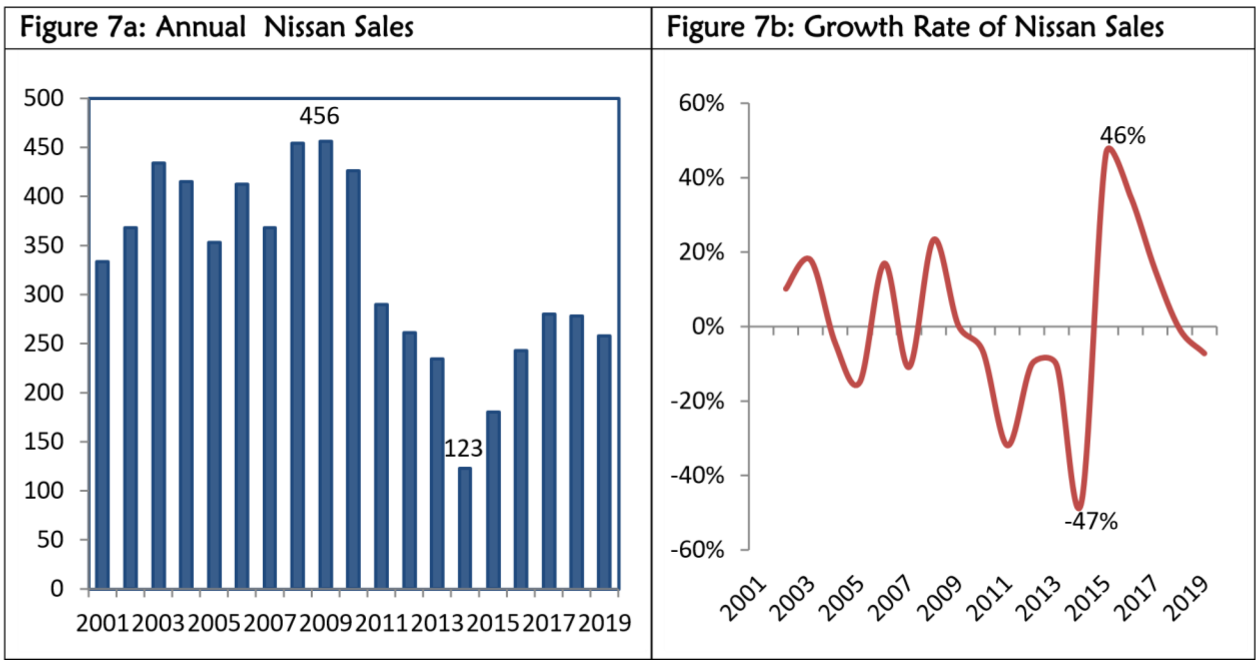
Consequential Market Developments

Barely one and a half years into the merger, Nissan terminated its franchise agreement with CFAO citing the latter's inability to meet annual sales targets as stipulated in their franchise agreement. *Prima facie*, the withdrawal of the franchise lent credence to fears expressed earlier by stakeholders that TTC would prioritise the promotion of the Toyota brand at the expense of Nissan[4]. The reality though is that Nissan sales had been in decline for three years prior to the merger. In reality, it was the fixed exchange rate system that

Malawi adopted in 2006 that cumulatively stymied CFAOS's ability to service foreign currency denominated obligations resulting in precipitous fall in sales from 456 vehicles in 2008 to 261 vehicles at the time of the merger and slipped further to 123 in 2014 when the franchise was withdrawn, which shows the growth rate of Nissan branded vehicles, further demonstrates the fall in sales.

From July, 2014 Nissan partnered with Imperial Motors (which henceforth trades as Nissan Malawi) to be its distributors. Following the withdrawal of franchise from CFAO to NissanMalawi sales rebounded, although they were yet to fully recover to pre-merger level such that the 2019 Nissan car sales were still 200 cars below sales numbers twelve years prior.

Figure 2 **Trends in Nissan Sales: 2001-2019**



Evolution of Market Power

At the time of the application for authorisation of the proposed merger, Toyota Malawi (39 %) and CFAO Malawi (31%) remained the two dominant players in the market for new vehicles combining for some 70% of the market. The rest of the market was led by Stansfield Motors, Tata and HTD who were distant third to fifth accounting for 9, 6 and 5% of the market, respectively. Other smaller dealers accounted for remaining 10%.

The impact of the merger on the market has been one of de-concentration. While the share of Toyota has increased to 55 %, owing to withdrawal of Nissan from CFAO the combined share of the two companies has actually declined from 70% in 2012 to 55% in 2016. Although the combined share currently stands at 65 %, it is more driven by growth in Toyota sales since CFAO sales continue to slide further. Subsequent to the merger, the market share CFAO now stands at 10%, displaced by Nissan Malawi from being the second largest player to being the third.

Market Concentration

The study constructed two series of HHI values. Based on the logic underlying a merger the study first computed an HHI assuming that post-merger Toyota Malawi and CFAO Malawi were de facto one entity. This HHI is designated HHI_1. However, based on TTC's submission and CFTC's authorisation that post-merger the operations of the parties would remain independent of each other, the study derived an alternative measure which treated Toyota and CFAO as separate entities (designated HHI_2).

Empirical evidence suggests that even before the merger, the vehicle market was already concentrated with an HHI of 2925[23]. Assuming the two dealerships were operated and managed as one entity there is evidence that the merger had an immediate and deleterious impact on competition in the vehicle market, with the HHI_1 jumping from 2925 in 2012 to 5431 in 2013. The concentration then decreased over the years till 2016 when it started rising again. The decrease in the concentration may be attributed to the pulling out of Nissan brands from CFAO which somehow intensified competition in the market. However, on the whole, concentration is higher in the post-merger period compared to the pre-merger period.

When the study assume that TTC abided by its commitment and the entities operated as separate entities, there is evidence that the market became less competitive, although less monopolised than it would have been in the absence of such independence. Postmerger, the HHI_2 remained stable and edged only up after two years. However, 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_2 rising from 2862 to 4010. While this seems to agree with the prediction of the Commission that the merger would increase concentration in the market, it has less to do with the merger per se since Nissan pulled out its franchise.

3.3. A Consumer Welfare Analysis of the Toyota-CFAO Merger

This was not done because the study were unable to secure price data from car dealers. It was not possible to undertake similar exercise for the Toyota Malawi-CFAO merger

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[2] The US Department of Justice classifies a market as competitive if the HHI $<$ 1500, moderately concentrated if 1500 $\leq$HHI$\leq$2500, and highly concentrated for HHI$>$ 2500

[3]

because players in the automotive industry understandably treated vehicle prices information as highly confidential and were reticent to share them.

3.4. Qualitative Evaluation of the Toyota-CFAO Merger

Consumer Perspectives

Mergers and resultant market concentration can potentially lessen competition and give monopoly power and result in price increases. The customer survey thus primarily sought to elicit customers' view of the impact of the merger on prices, their buying power and quality of service. Although it was assumed that Toyota and CFAO customers would be aware of the merger, the survey showed a good portion of the consumers was ignorant about the merger. An unintended but welcome consequence of the remedy of independence between CFAO and Toyota was to create a sense, among some customers, of continued legal independence between these two entities. To the extent that CFAO continued to operate under its pre-merger trading name, some customers were not aware that Toyota had acquired CFAO and these customers had no reason to attribute any market developments to the merger.

Among those who knew of the merger, one got a general sense that the merger had little to no effect on prices. Customers intimated that the price of Toyota and CFAO brands has not significantly risen on account of the merger. Neither did the merger deleteriously affect customers' bargaining power.

Regulatory Perspective

Five issues emerged with respect to the CFTC's role in the approval of the TMAL-CFAO transaction. First, CFTC's decision doesn't seem to have been wholly guided by section 38 of the CFTA which requires that the Commission to approve if only and if, on the balance, the advantages outweigh the disadvantages. The Commission, by its own admission, did not find any demonstrable benefit but clearly identified disadvantages in the analysis it carried. Yet it proceeded to authorize the merger on public interest ground to allay fears that in the absence of the approval, CFAO would probably close down resulting in massive job losses.

Secondly, the process leading to the approval was not adequately consultative. With the only consultation conducted through once off written communication, stakeholders felt that this was inadequate and the Commission did not adequately appreciate third party concerns on dynamics in the motor vehicle market. The Commission also conceded that it indeed needed a better understanding of the market dynamics (Determination, page 26).

Thirdly, the investigations and analysis of the commission were not well documented. The determination keeps referring to some analysis that does not appear in the determination.

One would think that there is separate documentation of that analysis. Yet our engagement with the Commission has unearthed no such documentation.

Fourthly, the guidelines on mergers and acquisition should have requisite technical detail. In their current state, the guidelines lack specific technical details. A case in point is the effect test, for which the guidelines do not provide specific tests/indices/approaches to be used. Neither do the guidelines offer thresholds (or cut-offs) for considering a merger anti-competitive.

The merger was approved subject to two key undertakings by the parties in order to address competition concerns. The Memorandum of Understanding between the Commission and the parties to the transaction required that there would be semi-annual meetings for three years in order for the Commission to monitor the implementation of the remedies. Five years on, the study find no evidence that any such meeting has ever taken place.

4.0. Key Evaluation Lessons and Recommendations

4.1. Cross-Cutting Lessons and Recommendations

4.1.1. The model and toolkit used by CFTC was valid. Quantitative analysis in this report lends support, and thus validates, the CFTC's earlier analysis regarding potential post-merger distribution of market power and concentration. In fact the model and tool-kit is consistent with those used in other jurisdictions for similar assignments.

4.1.2. 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.

4.1.3. 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. Biennial meetings stipulated in the conditions to the parties were never done.

4.1.4. *Recommendation:* The CFTC should create a baseline and institute a system for routine surveillance of industries identified as being at risk of monopolistic tendencies.

4.1.5. *Recommendation:* The CTFC should relook, revise and streamline its guidelines to remove any grey areas. This should include clarifying thresholds for making decisions.

4.2. Key Lessons and Recommendations from the FDH-MSB Merger

4.2.1. In specialised industries the notion of market power demands a more nuanced treatment than mere consideration of shares of assets. In the banking industry, more than assets, market power was demonstrated more by ability to mobilise deposits and extend loans.

4.2.2. When some conditions attached to an approval are onerous or economically untenable, they will be disregarded by the parties. The conditions imposed by CFTC designed to protect jobs were reasonable and in the public interest. However, the voluntary undertakings made by FDHFHL flew in the face of economic reality and were not adhered to during implementation.

4.2.3. *Recommendation.* The CFTC needs to set economically sensible conditions and remedies that give flexibility to both acquired and acquiring enterprises.

4.2.4. *Recommendation.* Although prudence demands it, the merger of parties with a potential post-merger combined market share below 15 % should hardly raise competition and welfare concerns.

4.3. Key Lessons and Recommendations from the Toyota-CFAO Merger

4.3.1. The process leading to the approval of the merger was not adequately consultative. Neither did the Commission adequately appreciate third party concerns on dynamics in the motor vehicle market.

4.3.2. The Commission did not document and archive both the investigations and analysis to the extent that some decisions are not amenable to review, follow up and validation.

4.3.3. The MoU between CFTC and the parties to the transaction stipulated that there would be semi-annual meetings for 3 years in order for the Commission to monitor the implementation of the remedies. Five years on, the study found no evidence that any such meeting has ever taken place.

4.3.4. *Recommendation:* In future stakeholder consultations need to be comprehensive and credible and the decision fed back to the stakeholders.

4.3.5. *Recommendation:* It is imperative that the CFTC ensure that any and all future approval process are documented and archived for future reference and validation.

5.0. Conclusion

The acquisition of Malawi Savings Bank by FDH Financial Holdings Limited and of CFAO by Toyota Thuso Corporation raised legitimate competition concerns given the size of the market and existing dominance of some players in the relevant markets.

The study found that the CFTC had correctly anticipated the post-merger developments and to a large extent, the Commission’s decisions were consistent with the goals that it sought to achieve.

Similarly, the Commission’s conclusion that both transactions were likely to lead to market concentration, although it would not be substantial enough to lessen competition in the relevant markets was justified. However, some of remedies imposed on the merging parties were not as effective and the CFTC made little to no follow up to ensure compliance.

The market for new automobiles remains in infancy and faces external competition from the used car segment. Over the years this market has become more concentrated and the acquisition of CFAO by TTC raised genuine anti-trust concerns as it paired the markets two leading brands under single control.