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Understanding Competition and Regulation across Borders

A Toyota Tsusho Case Study

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Introduction

An overview of competition and regulation

1. It is a known fact that competition between enterprises is important for any economy as it creates benefits for consumers and enterprises in the form of lower prices and quality products. Many countries around the world in general, and Africa in particular in efforts to ensure fair competition, have formulated competition policies and established competition authorities with the understanding that well-designed and effectively enforced competition rules are essential in promoting fair competition.

2. Competition law dates back from as far as the 19^{th} Century when the United States of America enacted the Sherman Act with aim of preventing large companies involved in fixing outputs with rivals, prices and market shares. The Sherman Act was later complemented by the Clayton Act which was enacted in 1914 and dealt with several restrictive agreements, price discrimination and mergers. In 1923 Germany enacted the anti cartel law. However, it was only after the Second World War when competition law become well established in Europe and Germany inclusive. Particularly the signing of the European Community (EC) treaty which saw the establishment of the European Economic Community (EEC), the EC Treaty established the enactment of competition law as one of the main aims of the EEC.

3. Competition law and regulation has evolved over the years and many countries have developed competition policies and set up competition authorities for the purpose of enforcing the law.

Proliferation of Competition Law and Regulation in Africa

4. In Africa, Kenya was one of the first countries to set up a competition authority and many other countries have seen the need for developing and enforcing competition in order to promote fair markets in their economies. There are now more than 20 countries with established competition authorities some which include Namibia, Egypt, Burundi, Rwanda, Tanzania, Botswana, South Africa, Malawi, Nigeria, Ethiopia, Cameroun, Swaziland, Uganda and Zambia.

Competition and Regulation across Borders

5. Understanding competition and regulation across borders involves taking a close look at the various laws and regulations on competition in different countries aimed at protecting the competition process. Competition Authorities mandated to enforce such laws can only do so in their jurisdictions as the laws only apply within a particular geographical location. In addition, competition laws differ in different countries. The difference in the laws maybe inevitable as countries structure the law to address their specific economic conditions which differ from country to country. For example, market structures differ in specific industries in different jurisdictions. The difference in market structures further leads to differences in effects of merger transactions and anti-competitive conduct.

6. This implies that mergers and anticompetitive trade practices are subjected to different laws. However, in most cases mergers and anti-competitive trade practices that occur in one jurisdiction may have an effect in one or more other jurisdictions. Then the question arises, how does a competition authority enforce competition law in one jurisdiction without affecting similar transactions in other jurisdictions?

Part II

The case of the acquisition of Mc Donnell Douglas Air Bus by Boeing from the United States America

7. This was a case that was notified with the Federal Trade Commission in the United States of America (U.S.A) and the European Competition Commission (ECC). The U.S.A and EU authorities reached different conclusions on the competitive effect of the merger. This was partly attributed to the differences in laws.

8. For example the FTC found that Mc Donnell Douglas (the commercial aircraft division) was competitively insignificant, hence concluding their investigations. It was particularly noted that in the U.S.A merger law is consumer oriented. The inquiry was whether the merger will make consumers worse off, as by raising the price of jets to the airlines. If McDonnell Douglas was not a competitive force to be reckoned with, there was no antitrust problem.

9. However, the EC law was concerned not only with consumers, but also with unfair competitive advantages of dominant firms. In some cases, where no competitor is threatened by a merger, the decision may focus on efficient market competition and consumer impact. In others, where competitors may be disadvantaged, the decision may postulate a predatory scenario with the prospect that the dominant firm will squeeze out its competitors and ultimately charge monopoly prices to consumers.

10. Further, prior to the notification of the transaction Boeing had entered into a 20-year exclusive contract with three big airlines. To the FTC, these contracts were a separate matter from the merger, though they could be anticompetitive since they fenced Airbus out of 11 percent of the market. To the EC, these contracts were an integral matter, since Boeing's already dominant market share would increase as a result of the merger, and the effect of the fencing out - the unfair competitive advantage - was accordingly magnified.

Part III

Case study of Toyota Tsusho/CFAO merger

EC Consideration

11. Under case file number **COMP/M.6718**, the European Commission (EC) received a notification for the proposed merger between Toyota Tsusho and CFAO on 5 October 2012**.** The merger qualified for notification with the EC because the undertakings concerned had a combined aggregate world-wide turnover of more than EUR 5 000 million (TTC: EUR 53 887 million; CFAO: EUR 3 123 million). Each of them had an EU-wide turnover in excess of EUR 250 million but they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed transaction therefore had an EU dimension within the meaning of Article 1(2) of the EC Merger Regulations.

Market definition

12. In previous cases, the EC had made a distinction between the wholesale market and the retail market for the sale of vehicles[1]. Within the retail market, the Commission had considered a further distinction between the retail distribution of passenger cars and the retail distribution of commercial vehicles[2]. Within the commercial vehicles, the Commission had considered a distinction between Light Commercial Vehicles (LCVs) and heavy commercial vehicles[3]. In all these segments, the Commission had considered a distinction between used and new vehicles[4].

[1] Cases COMP/M.1825 Suzuki Motor/Suzuki KG/FAFIN; COMP/M.2831 General Motors/Daewoo Motors; COMP/M.3388 Ford Motor Company Ltd/Polar Motor Group Ltd.
[2] Cases IV/M.1031 Jardine/Appleyard; IV/M.1435 Ford/Jardine.
[3] COMP/M.3388 Ford Motor Company Ltd/Polar Motor Group Ltd.
[4] COMP/M.5347 Mapfre/Salvador Caetano/JV's

Summary of vehicles market

<table>
<tr><td colspan="3">New</td><td colspan="3">Used</td></tr>
<tr><td>Wholesale</td><td></td><td></td><td>Wholesale</td><td></td><td></td></tr>
<tr><td rowspan="3">Retail</td><td>Passenger</td><td></td><td rowspan="3">Retail</td><td>Passenger</td><td></td></tr>
<tr><td rowspan="2">Commercial</td><td>Light Commercial</td><td rowspan="2">Commercial</td><td>Light Commercial</td></tr>
<tr><td>Heavy Commercial</td><td>Heavy Commercial</td></tr>
</table>

13. Besides the vehicles, the EC also looked at the Automatic Spare Parts market as a separate product market. It distinguished the market levels of;

    1. The manufacture and supply,
    2. The wholesale distribution, and
    3. The retail distribution of spare parts.

14. In addition to this, the EC further distinguished between the markets for[5];

    1. Original Equipment (OE) spare parts manufactured and or sold under the car manufacturers' brands
    2. the Independent Aftermarket (IAM)

15. The geographical market for the case was left open because the EC felt that even under the narrowest possible market definition; the proposed

[5] Case COMP/M.3198 VW-Audi/VW-Audi Sales Centres,

transaction did not raise serious doubts as to its compatibility with the internal market.

Dominance and Abuse of Dominance

16. For the wider EC, the proposed transaction did not give rise to any horizontally affected markets, as the parties' combined market shares for sale of vehicles, whether new or used, passenger cars or Light Commercial Vehicles, at both wholesale and retail level, did not exceed [0-5]% both at national and at EU-wide level. Equally, the parties combined market shares for the proposed transaction for spares did not give rise to any horizontally or vertically affected markets, as the market shares at both wholesale and retail levels were well below 15%.

Determination

17. The EC decided not to oppose the notified operation and to declare it compatible with the EU.

African Presence of Toyota and CFAO

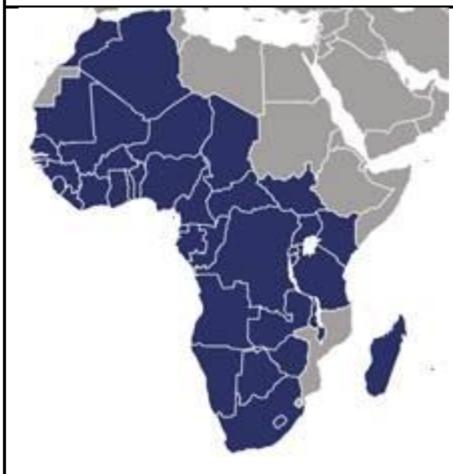
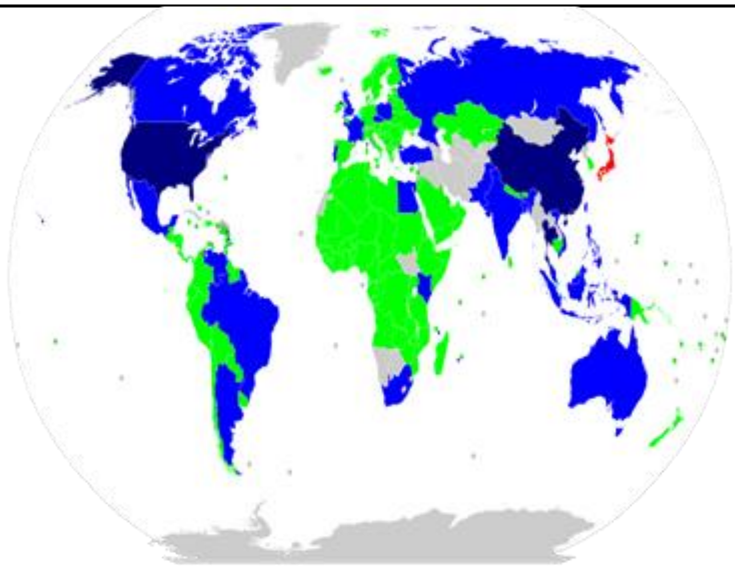
18. At the time of the merger, TTC was developing its automotive business in 25 African countries with a primary focus on Eastern and Southern Africa which included:

Eastern and Southern Africa	In COMESA	Sudan, South-Sudan, Ethiopia, Somalia, Eritrea, Djibouti, Kenya, Zambia, Zimbabwe, Tanzania, Madagascar, Seychelles, Comoros, Mauritius, Malawi, Uganda, Rwanda, Burundi, Angola, Mozambique

	Outside COMESA	South Africa Tunisia, Liberia, Sierra Leone and Mauritania.
Western and Northern Africa	In COMESA	Democratic Republic of Congo,
	Outside COMESA	Cameroon, Senegal, Ivory Coast, Congo, Mali, Bukina Faso, Equatorial Guinea, Chad, Niger, Benin, Togo, Central African Republic, Guinea Conakry, Guinea Bissau, Gabon, Sao Tome and Principe, Nigeria Ghana, Morocco and Algeria.

19. On the other hand CFAO (the target firm) had operations in 32 African countries which included countries from Western and Northern Africa i.e. In Eastern African CFAO was present in Kenya, Zambia, Zimbabwe, Tanzania, Madagascar, Malawi, Uganda and Angola.

Table 1: CFAO and Toyota presence in Africa

CFAO Presence in Africa	Toyota Presence in Africa
	

20. The transaction qualified for notification with COMESA as the parties operated in at least “two or more” COMESA Member States namely Kenya, Zambia, Zimbabwe and Tanzania e.t.c.

21. The merger however was not notified with COMESA because at the time of the transaction and despite the gazetting of the COMESA Regulations, the COMESA Competition Commission had not commenced operations. The Commission officially opened its doors to business on **14th January 2013**.

22. This meant that the transaction had to be cleared in all the COMESA Member States on a country by country level. Merger control in the COMESA is governed by Article 55 of the COMESA Treaty and Part 4 of the COMESA Regulations which were gazzeted in 20th November 2012. These provisions recognise that mergers consolidate the ownership and control of business assets, including physical assets (e.g. plants) and intangibles (e.g. brand reputation). Mergers can enhance corporate and wider economic performance by improving the efficiency with which business assets are used[7]. The Merger control provisions contain the main rules and regulations for the assessment of mergers[8] and outlines procedure for reviewing mergers and acquisitions.

Zambia

23. In Zambia the transaction was notified on 18th October 2012 and had the effect of indirectly resulting into the control by TTC of CFAO Zambia Limited and Vehicle Centre Zambia Limited which were Zambian subsidiaries of CFAO.

Relevant market

24. Having considered the facts of the transaction three relevant markets were defined which were as follows;

[7]ICN Merger Working Group: Analytical Framework Sub-group - The Analytical Framework for Merger Control - Final paper for ICN annual conference Office of Fair Trading London. http://www.internationalcompetitionnetwork.org/uploads/library/doc333.pdf, retrieved at
[8] http://ec.europa.eu/competition/mergers/legislation/legislation.html

1. New Saloon Vehicles and Spare parts market
2. New Sports Utility Vehicles (SUV) and Spare parts market
3. New Single & Double Cab (Light Commercial Vehicles) and Spare parts market

Competitors and Market shares[1]

25. The Commission further calculated the market shares of the merging parties in the relevant markets as shown in table 1 below:

Table 2; Market shares of players in the New Motor Vehicles Market in different vehicle categories in 2010.

Accredited Dealer	MKT Share in Saloons in %	MKT Share in SUV's in %	MKT Share in Single and Double in %
Toyota Zambia	35.6	57.7	51.7
CFAO Zambia	15.6	8.9	19.7

Consideration of Concentration

26. In considering the concentration of the relevant markets with guidance from Section 15 of the CCPA which states: A dominant position exists in relation to the supply of goods or services in Zambia, if—

(a) thirty percent or more of those goods or services are supplied or acquired by one enterprise; or

(b) sixty percent or more of those goods or services are supplied or acquired by not more than three enterprises.

[1] Form 1 No. 12 submitted to the Commission by the parties.

Table 3: Estimated Market Shares according to the total sales of new saloon vehicles as at 2010.[1]

	Company	Market Share %
1.	TOYOTA	35.6
2.	CFAO	15.6
3.	Others	48.8

27. The market share estimates in the relevant market indicated an oligopolistic market structure as deciphered from the concentration ratio of the largest three market players (CR3) at **75.2 %.** The three largest firms in terms of market share in relation to the units of vehicles sold included Toyota Zambia, Action Auto and CFAO Zambia in the provision of new Saloon vehicles and spare parts market which indicated a dominant position as captured in Section 15 (b).

28. Therefore, the proposed transaction between TTC and CFAO was likely to make the market more concentrated. Post-merger the combined market share of Zambian subsidiaries Toyota Zambia, CFAO Zambia and Vehicle Centre would be **51.4%** thus the new CR3 would be **87.4%.**

[1] Estimated market shares from Southern Cross Motors (data was collected through telephone interview) and as submitted by CFAO and VCZL in (Staff Paper No. 408- Report of the Technical Committee of the Board to the Board of Commissioners on the proposed acquisition of 100% of the issued share capital of Vehicle Centre Zambia Limited by CFAO S.A. _ Case File No. ZCC/COII/ 366)

29. The difference between the firms in the relevant market pre-merger (75.2%) and post- merger (87.4%) was 12.2%. The CR3 of this market showed that the market was highly concentrated and the transaction was likely to significantly entrench the market concentration post-merger. Further, it was found that the transaction would also entrench the spare parts market. Therefore, the level of concentration in the sale of new saloon motor vehicles & motor vehicle parts under franchise and the servicing and maintenance of motor vehicles of the particular makes supplied under franchise was likely to change significantly as the market share held by the merging parties would increase to **51.4%.**

Sports Utility Vehicles (SUV) and Spare parts market

30 In the relevant market, the market share were calculated as shown in the table 4 below.

Table 4: Estimated market share according to total sales of New Sports Utility Vehicles as at 2010

	Company	**SUV Vehicles**	**Market Share %**
1	TOYOTA	293	57.7
2	CFAO Nissan and Vehicle Centre (Ford)	73	14.4
3	Others	142	27.9

31 In this case the three firm market concentration ratio was found to be concentrated with the CR3 at **94.1%.** The three biggest firms in terms

of market share in relation to the units of vehicles sold included Toyota Zambia, Southern Cross and CFAO Zambia.

32 Post-merger the transaction the market would become more concentrated as the combined market share of Toyota Zambia, CFAO Zambia and Vehicle Centre would be 72.1% thus the new CR3 would be **97.6%**.

33 The difference between the firms in the relevant market pre- merger (94.1%) and post- merger (97.6%) was 3.6%. Therefore, the CR3 of this market showed that the market was highly concentrated and the transaction would entrench the market concentration post-merger. It was concluded that the transaction would also entrench the spare parts market as these may not be readily available on the Zambian market. Therefore, the level of concentration in the sale of new SUV's & motor vehicle parts under franchise and the servicing and maintenance of motor vehicles of the particular makes supplied under franchise was going to change significantly as the market share held by the parties would increase to **72.1%.**

New Single & Double Cab (Light Commercial Vehicles) and Spare parts market.

34 In the relevant market, the market share was calculated as follows;

Table 5: Estimated Market Share according to the Total Sales of New Single Cab and Double Cab Vehicles as at 2011.[5]

	Company	Single & Double Cab Vehicles	Market Share %
1.	Toyota Zambia	800	33.33
2.	CFAO Zambia (600) and Vehicle Centre (200)	800	33.33
3	Others	800	33.34

35 As shown in the table 5 above the CR-3 of the market would be very concentrated at 83.33%. The three firms in terms of market share in relation to the units of vehicles sold in 2010 included Toyota Zambia, CFAO Zambia and Southern Cross.

36 Post-merger the transaction the market would be more concentrated as the combined market share of Toyota Zambia, CFAO Zambia and Vehicle Centre would be **66.66%** thus the new CR3 would be 95.83%.

37 The difference between the firms in the relevant market pre- merger (83.33%) and post-merger (95.83%) was 12.5%. Therefore, the CR3 of this market showed that the market was highly concentrated and the transaction was likely to entrench the market concentration post-merger. Further, it was concluded that the transaction would also entrench the spare parts market as these were not readily available on the Zambian market. Therefore, the level of concentration in the sale

[5]Zambian market 2011 sales estimates for new vehicles sstatistics submitted to the Commission by Guardian Motors on Thursday 27th December 2012 Folio no File.

of New Single & Double Cab & motor vehicle parts under franchise and the servicing and maintenance of motor vehicles of the particular makes supplied under franchise would change significantly as the market would become very concentrated and the merging parties entrenching there dominant position in the relevant market.

Consideration of Dominance

New Saloon Vehicles and Spare parts market

30 Post-merger the merging parties would attain a market share of 51.4% which meets the 30% dominance threshold as stated under section 15 (a) of the Act. In addition, the transaction was likely to have an effect on the market concentration in the relevant market as the merging parties had presence in the relevant market. As the parties would be dominant, this increased their chances of abusing their dominance in the relevant market.

New Sports Utility Vehicles (SUV) and Spare parts market

31 Post-merger the parties would attain a market share of approximately 72.1% which met the 30% dominance threshold as stated under section 15 (a) of the Act. In addition, the transaction was likely to have an effect on the market concentration in the relevant market as both parties had presence in the relevant market. As the parties would be dominant, this increased their chances of abusing their dominance in the relevant market.

New Single & Double Cab (Light Commercial Vehicles) and Spare parts market

32 Post-merger the parties would attain a market share of 66.66% which met the 30% dominance threshold as stated under section 15 (a) of the Act. In addition, the transaction was likely to have an effect on the market concentration in the relevant market as the parties to the transaction had presence in the relevant market. As the parties would

be dominant, this increased their chances of abusing their dominance in the relevant market.

Determination

33 The Board of CCPC upon considering the facts of the merger rejected the transaction due to the following:

1. The new motor vehicle market post-merger would be highly concentrated and oligopolistic in nature with the merging parties holding a combined market share of approximately 75% in the relevant markets. The proposed merger was likely to enhance the oligopolistic structure of the market were decisions of one firm in the merged entity would influence the others as far as market dynamics i.e. pricing and product availability were concerned. The proposed merger was likely to enhance the merged parties' dominant position in the market, and hence the likelihood of the merging parties abusing that position by imposing unfair selling prices and trading conditions.

2. The relevant markets had high barriers to entry, i.e. the number of market entrants was restricted by the franchise agreements awarded by the manufacture to new motor vehicle dealers at a time. Hence the transaction was not likely to offer the public or consumers any added advantage or benefits.

3. Post- merger, the parties were likely to have a market share of approximately 75% of the total new motor vehicle market in Zambia and hence abuse of dominance by the parties was likely.

34 In 2014, the merger was approved by the Commission after Nissan Motors withdrew the franchise licence from CFAO Zambia. Therefore, the Nissan Brand of vehicles was going to be distributed by another distributor instead of CFAO Zambia.

Kenya

35 The Business Daily Africa newspaper[2] had the following quotation;

The said transaction was also notified in Kenya and the transaction raised mixed feelings among the stakeholders. Notably among them was Adil Popat, the CEO of Kenya's Simba Corporation that sells BMW cars, Mitsubishi trucks, and Mahindra pick-ups. Who stated the following; ***"If the auto dealers are merged then there will definitely be issues of business concentration that will hurt competition,"***

36 At the time of the application to the Kenyan Authorities, Toyota was the second largest car dealer with a market share of 24% having been replaced at the lead in 2010 by General Motors East Africa (GMEA) which had a market share of 27%.

37 Its line of business included the sale of its brands of saloon cars, pick-ups, Yamaha motorcycles and was set to venture into the heavy commercial trucks business with the Hino brand.

38 CFAO in Kenya had a subsidiary called DT Dobie and CICA. DT Dorbie was Kenya's third largest auto dealer with a 13 per cent market share selling brands such as Mercedes cars and trucks, Nissan pick-ups, Renault cars, and Jeep sports utility vehicles (SUVs). On the other hand, CICA Motors was one of the country's smaller dealers, selling Hyundai trucks and Chinese pick-ups and SUVs.

39 The Kenyan Competition Authority established that post-merger the parties would have a market share of 40% of the new car market[3] and

[2] http://www.businessdailyafrica.com/Corporate-News/Toyota-DT-Dobie-merger-plan-alarms-rival-dealers/-/539550/1681288/-/11fj1mrz/-/index.html
[3] http://www.businessdailyafrica.com/Corporate-News/Toyota-DT-Dobie-merger-plan-alarms-rival-dealers/-/539550/1681288/-/11fj1mrz/-/index.html

60% of new saloon cars. It was established that the market for saloon cars would exceed the 50% dominance threshold. The Kenyan Authority authorised the transaction with conditions that the conduct of DT Dobie Kenya Limited and Toyota Tsusho Corporation in the market of saloon cars with engine capacities of 1,800 cc or less and those of 1,800 cc and above does not infringe the provisions of the Act,"[4]

Malawi

40 In Malawi, the Competition and Fair Trading Commission (CFTC) of Malawi on 9th October, 2012 received an application an application for authorisation of acquisition of at least 41.99 percent shareholding in CFAO Malawi Limited and CICA Motors Limited by Toyota Tshusho Corporation.

Relevant market

41 The CFTC cclassified the relevant product market into the following segments:

- New passenger motor vehicles
- New light load pickups,
- Heavy load vehicles,
- Buses and associated maintenance services.

42 For the purposes of this transaction, the CFTC defined the relevant markets as;

1. Importation and distribution of new passenger motor vehicles (including station wagons) and spare parts and provision of repair services thereof;

[4] http://motors.n-soko.com/news/toyota-gets-nod-to-buy-dt-dobie-with-car-price-conditions/

2. Importation and distribution of new pick-up trucks (less than 2 tonnes including double cab pick-ups) and spare parts and provision of repair services thereof;
3. Importation and distribution of new commercial motor vehicles (more than 3 tonne) and spare parts and provision of repair services thereof;
4. Importation and distribution of new buses and spare parts and provision of repair services thereof;

Concentration

43 In the New Passenger vehicles (saloons and Station Wagons) and parts, the market concentration was 82.46% and post-merger, the concentration levels would move to 94.26% due to an increase in the market shares of Toyota to 68.2%.

44 In the New light goods motor vehicles (up to 2 tonnes including double cab pick-up) Toyota and CFAO had a dominant position. The top three dealers had a combined market share of 92.8% meaning that the market was highly concentrated.

45 In the New commercial trucks (3 tonnes and above) and spare parts, the concentration was 81.5% and the parties to the transaction were among the top three suppliers of new cars with a joint market share of 28.4%.

46 In the New Buses and spare parts markets, the concentration levels were at least 85%.

Dominance

47 The Competition and Fair Trading Act has not defined what dominant market power is. However, the Statutory Instrument defines dominance as having a market share of 50%. At a combined market share of 60%, the CFTC regarded the parties post-merger to be dominant. The possibility of substantially lessening competition and abusing the dominant position was high.

Board Decision

48 Despite the high possibility of substantially lessening competition and abuse of dominance, the CFTC approved the transactions with conditions and on condition that the parties gave Undertakings. The reason for approving the transaction was the need to maintain an uninterrupted supply of new motor vehicles in Malawi and at the same time ensuring that there was effective competition among players.

49 Other countries that looked at the merger in Africa included Tanzania, Swaziland and Mauritius.

Summary

Country	**Post-merger Scenario**	**Decision of Authority**	**Reasons for Decision**
Zambia	75% of the new car market. Dominance threshold 30%	Rejected. Decision Appealed	Investigation showed that the proposed transaction was likely to prevent, restrict or distort competition to an appreciable extent in the relevant product market and that it was likely to have a detrimental effect on the economy of Zambia in general.

Kenya	40% of the new car market[5] and 60% of new saloon cars	Approved with conditions[6] because saloon cars market exceeds 50% dominance threshold	"The Competition Authority authorises the acquisition of DT Dobie Kenya Limited by Toyota Tsusho Corporation, provided that the conduct of DT Dobie Kenya Limited and Toyota Tsusho Corporation in the market of saloon cars with engine capacities of 1,800 cc or less and those of 1,800 cc and above does not infringe the provisions of the Act,"[7]
Malawi		Approved with Conditions[8]	The merger had potential to raise competition concerns. Authorized the transaction based on public interest considerations including avoidance of disruption of the supply of certain brands of motor vehicles into the Malawi. Approval was granted on condition that Toyota Malawi and CFAO Malawi/ CICA Motors would operate as independent companies and TTC would not engage in conduct that would undermine their operations. Undertakings given by Toyota[9]
The EU	Market shares post-merger in the wider EU market 0-5%	Approved without conditions	The proposed transaction did not give rise to any horizontally affected markets, as the parties' combined market shares for sale of vehicles, whether new or used, passenger cars or LCVs, at both wholesale and retail

[5] http://www.businessdailyafrica.com/Corporate-News/Toyota-DT-Dobie-merger-plan-alarms-rival-dealers/-/539550/1681288/-/11fj1mrz/-/index.html
[6] http://www.businessdailyafrica.com/Corporate-News/Toyota-gets-nod-to-buy-DT-Dobie-with-car-price-conditions/-/539550/1907938/-/ck4d39/-/index.html
[7] http://motors.n-soko.com/news/toyota-gets-nod-to-buy-dt-dobie-with-car-price-conditions/
[8] http://www.cftc.mw/index.php/2013-12-16-09-56-37/board-decisions-over-cases/mergers-and-acquisitions/53-acquisition-of-at-least-41-99-shareholding-in-cfao-subsidiaries-cfao-malawi-and-cica-motors-ltd-by-toyota-tsusho-corporation
[9] http://www.cftc.mw/index.php/2013-12-16-09-56-37/board-decisions-over-cases/mergers-and-acquisitions/53-acquisition-of-at-least-41-99-shareholding-in-cfao-subsidiaries-cfao-malawi-and-cica-motors-ltd-by-toyota-tsusho-corporation

			level, did not exceed [0-5]% both at national and at EEA-wide level[10].

Conclusion

30 It is then clear that the differences in market structures and economic conditions possess challenges when looking at competition and regulation across borders. However, countries could make efforts in addressing these challenges.

31 In efforts to address such challenges the Competition and Consumer Protection Act No 24 of 2010, under Section 65 of the said Act allows for cooperation between the Competition and Consumer Protection Commission (CCPC) and other competition authorities. Such cooperation allows for a foreign competition authority, which has reasonable grounds to believe that anti-competitive practices in Zambia are damaging competition in the country of the authority, may request the CCPC to investigate and make an appropriate determination. Therefore, having specific legislation that supports corporation between competition authorities with different jurisdictions is one way a competition authority can be go around the enforcement of competition law across borders.

32 Alternatively, entering into Memorandum of Understandings (MOUs) with other competition authorities is another way. For example, the CCPC in Zambia recently signed an MOU with the Competition and Fair Trade Commission of Malawi. The purpose of which was to establish among other things the manner in which the parties will cooperate in the enforcement of their respective competition and consumer protection laws, facilitate information sharing that will facilitate the

[10] *Case No COMP/M.6718 - TOYOTA TSUSHO CORPORATION/ CFAO*

effective application of competition and consumer protection laws, Promote better understanding of the Parties' competition enforcement regimes, consumer policies and activities and Promote cooperation, including both enforcement and technical cooperation between the Parties.

Competition and Consumer Protection Commission Zambia