

Mergers and Acquisitions

Legal Provisions:

The Directorate of Mergers and Acquisitions is responsible for the enforcement of Section 8 of the Competition and Fair Trading Act. Section 8 concerns the regulation of Mergers and Acquisitions. The Merger control regulations under the Act applies to all mergers in the economy that involve the acquisition or the establishment of control over a significant interest in the whole or a part of a business of a competitor, supplier, customer or other person. Section 8 of the Act states:

Section 8() of the Competition and fair Trading Act calls for the notification for authorization by the Commission of all mergers or takeovers between two or more independent enterprises engaged in the manufacture or distribution of substantially similar goods or in providing substantially similar services. Without the Commission's authorization, Section 8(2) nullifies such mergers or takeovers. Further that such transactions shall not have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

Issues for Decision:

Firms are required to fulfill mandatory pre-merger/takeover requirements to the ZCC. The assessment of Mergers or takeovers by the Commission focuses on the question of whether a proposed transaction is likely to prevent, distort or lessen competition. In doing so the Commission works to ensure that any mergers, acquisitions or takeovers are not likely to have anti-competitive effects in the relevant markets;

The particular issues that govern the Commission's decision are:

- (i) whether the object of the takeover is to prevent, restrict or distort competition in the relevant market, hence in violation of Section 7(1) of the Act.
- (ii) Whether the object of the takeover is to create a dominant position of market power and likely abuse of such power in the relevant market hence in violation of Section 7(2) of the Act.