

Building A Constitutional Approach To Competition Law, Regulation and Interpretation in Zimbabwe

By Ngonidzashe Jaure

Abstract

Zimbabwe's democratic transition created a unique mandate for its legal and economic systems. Unlike traditional market-centred jurisdictions, the country's competition regime is governed by the Competition Act [Chapter 14:28] and administered by the Competition and Tariff Commission (CTC). The Act was designed to dismantle entrenched monopolies and curb anti-competitive conduct. However, in *Ashram Investments (Private) Limited, Profeeds (Private) Limited, Produtrade (Private) Limited, Innscor Africa v Competition and Tariff Commission (2025)*, the Constitutional Court found that the merging parties were denied a fair hearing during the preliminary investigation due to inadequate disclosure and procedural irregularities, in violation of their constitutional right to a fair hearing. This ruling revealed crucial procedural defects in the CTC's investigative process. This study critically examines the constitutional approach to competition law in Zimbabwe. It explores the intersection between competition law and constitutional law, arguing that adjudicators must balance economic efficiency with broader socio-economic considerations, including fundamental rights and public-interest obligations. Key issues analysed include the right to administrative justice, observance of natural justice, and the short- and long-term public-interest effects of mergers and acquisitions. Drawing on primary and secondary sources, the study finds that fundamental rights must be integrated into both the substantive and procedural framework governing mergers and acquisitions. It further highlights the need to restructure the CTC's investigative operations in line with the *audi alteram partem* principle to guarantee a fair hearing at every stage. In addition, the study calls for broader consideration of the legal framework in the wide sense and its interpretation by the courts when determining competition within Zimbabwe's legal system. The study concludes that constitutional principles of statutory interpretation must inform both procedural and substantive analyses of competition issues, thereby serving the public interest and giving effect to the fundamental rights enshrined in the Constitution of Zimbabwe.

Keywords: *Audi alteram partem*, Competition Law, Constitutional Law, Mergers and Acquisitions, and Natural Justice.

1. Introduction

Competition law is a cornerstone of economic governance.¹ It fosters fair markets, curbs monopolistic abuses and promotes consumer welfare. Its development in Zimbabwe was due to a complex interplay among post-independence reforms, historical legacies, and the expanding influence of regional and global commitments.² The enactment of the Competition Act heralded an era of formal competition regulation in Zimbabwe.³ As is the case in most developing economies, this adoption was part of a broader market-based economic reform.⁴ The competition regulatory system became an integral component of the economic reforms adopted in response to both internal and external factors, particularly those affecting the country's economic performance and the resultant social challenges experienced during the first decade of independence.⁵

On 27 November 2025, the Constitutional Court handed down a judgment in the case of Ashram Investments (Private) Limited, Profeeds (Private) Limited, and Innscor Africa Limited v Competition and Tariff Commission (CTC), concerning a merger between companies engaged in the manufacture of stock feeds that had both horizontal and vertical elements. The court identified three fundamental procedural errors that, in its view, violated the applicants' right to a fair hearing, including the failure to disclose the basis for the intended prohibition. The Commission informed the applicants of its intention to prohibit the merger but failed to disclose the reasons for that intention. The determination of 21 May 2020 contained no reasons whatsoever. The court held that this was a clear breach of procedural fairness. A decision that affects fundamental rights, such as the right to hold property, must be accompanied by reasons, not only to enable meaningful appeal but also to ensure transparency and accountability. The absence of reasons meant that the applicants could not properly assess the merits of the decision or challenge it effectively. The Supreme Court failed

¹ Friedrich Hamadziripi, *Competition Law and Policy in Zimbabwe and Selected Sub-Saharan African Jurisdictions* (1st edn, University of Zimbabwe Press 2026) 68.

² Hamadziripi, *Competition Law and Policy in Zimbabwe* 68.

³ Hamadziripi, *Competition Law and Policy in Zimbabwe* 37.

⁴ Hamadziripi, *Competition Law and Policy in Zimbabwe* 37.

⁵ Hamadziripi, *Competition Law and Policy in Zimbabwe* 37.

to correct these errors. On appeal, the Supreme Court acknowledged the procedural history, but it erroneously concluded that no violation of the right to a fair hearing had occurred. The Constitutional Court found that the Supreme Court had misconstrued the facts. The Supreme Court appeared to treat the belated provision of reasons (on 3 June 2020) as sufficient to cure the earlier defects. The Constitutional Court rejected this reasoning. It held that the right to a fair hearing is not merely about the eventual receipt of reasons; it is about the timely and proper opportunity to be heard before a decision is taken. The decision had already been made without reasons, and the later provision of reasons could not retroactively cure the procedural unfairness that had already occurred. The Supreme Court should have set aside the Commission's decision and remitted the matter for a fresh hearing or at least addressed the procedural violation as a preliminary issue. Its failure to do so meant that the constitutional violation persisted. The case illustrates the principal problem that the paper addresses: the failure to give a fair hearing of natural justice during the investigation, which led to the infringement of the applicant's fundamental rights and hence did not promote the public interest concerns. The problem deserves attention today, given its impact on the wider context of the goal of competition regulation and on the economy of Zimbabwe. These reflections are fundamental, as competition law plays a constitutive role in designing socio-economic structure; it shapes social and economic reality rather than merely reacting to it.⁶

Against this backdrop, this article endeavours to examine the interconnections between the national constitution and the corresponding national competition law.⁷ The researcher used primary and secondary data, and it is a new area of study with limited literature, particularly in the Zimbabwean context. The report was divided into the following subtitles: the introduction to the study, competition law in Zimbabwe, the methodology, current perspective on competition law and the Constitution, the Ashram Investments, Produtrade (Private) Limited, Innscor Africa v Competition and Tariff Commission Case, Interpretation of statutes and the Competition Act, Zimbabwe's

⁶ Maciej Bernatt, *Competition law through the lenses of national constitutions: concerning competitive markets with socio-economic and environmental values*, Journal of Antitrust Enforcement, 2025 13 314: 286.

⁷ Bernatt, *Competition law through the lenses of national constitutions: concerning competitive markets with socio-economic and environmental values* 286.

Constitution and its interpretation to the Competition law, Key findings/observations from the Ashram Judgement, recommendations and a conclusion.

2. Competition law in Zimbabwe

The evolution of competition regulation in Zimbabwe dates back to colonial-era policies, with competition laws introduced in the early 20th century.⁸ Following Rhodesia's Unilateral Declaration of Independence in 1965, global backlash led to arms embargoes and economic sanctions.⁹ The isolation forced the Rhodesian economy toward self-reliance, market-driven large-scale import-substitution initiatives, and the establishment of entrenched monopolies, both domestically and internationally.¹⁰ This led to the establishment of foreign exchange controls and resource allocation policies that reinforced the dominance of monopolies and oligopolies. These entities wielded unchecked market dominance, stifling competition and harming the market.¹¹

At independence in 1980, the new state of Zimbabwe inherited one of the most advanced and diversified economies in all of Africa.¹² The backbone of the economy was the commercial farming and livestock sector, made up of some 6,000 European farmers and ranchers, that produced a wide range of crops and livestock products for both local consumption and for the export market.¹³ While agriculture contributed only about 12% of GDP, it provided employment to nearly 300,000 workers, produced over one-quarter of all exports, and enabled the country to maintain food self-sufficiency, and also inherited a diversified mining sector.¹⁴

Sanctions were lifted after independence in 1980.¹⁵ However, the economic framework remained essentially unchanged.¹⁶ It retained monopolistic traits and a command-oriented structure influenced by Marxist economic principles. However, the

⁸ Hamadziripi, *Competition Law and Policy in Zimbabwe* 69.

⁹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 69.

¹⁰ Hamadziripi, *Competition Law and Policy in Zimbabwe* 69.

¹¹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 69.

¹² Zimbabwe Monopolies Commission Study, *Study of Monopolies and Competition Policy in Zimbabwe* (Zimbabwe Monopolies Commission 1992) 1.

¹³ Zimbabwe Monopolies Commission Study, *Study of Monopolies and Competition Policy in Zimbabwe* 1.

¹⁴ Zimbabwe Monopolies Commission Study, *Study of Monopolies and Competition Policy in Zimbabwe* 1.

¹⁵ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

¹⁶ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

Government had long been cautious of monopolies and oligopolies engaging in restrictive practices and abusing market dominance.¹⁷ Before this, authorities employed various strategies to curb such behaviour, including price controls to prevent firms in dominant positions from imposing excessive prices on consumers and labour regulations setting minimum wages to protect workers from exploitation by large corporations.¹⁸ Additionally, the foreign exchange allocation system, designed to manage scarce currency reserves and prioritise their optimal use, was informally leveraged by the government to counter exploitative business practices.¹⁹ Furthermore, parastatal organisations were established as state-owned enterprises in key industrial and commercial sectors to mitigate the influence of dominant firms and restrict their ability to misuse market power.²⁰ These measures collectively aimed to balance economic control and protect public interests²¹ and limit anti-competitive conduct before the formal adoption of competition laws.²²

By 1991, Zimbabwe's economy was struggling with stagnation, outdated infrastructure, severe fiscal deficits, currency crises, state-backed monopolies, and systemic issues, including non-competitive markets, chronic shortages, erratic pricing, and subpar goods.²³ The manufacturing sector in Zimbabwe was highly concentrated; of the over 7,000 items produced, half were produced by only one producer, and approximately 80% of all items were produced by three or fewer firms.²⁴ Many major industrial groups had close relations with each other, either through direct equity holdings or through cross-directorships, indicating further concentration of ownership and control.²⁵ A large number of commercial and service sectors were dominated by

¹⁷ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

¹⁸ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

¹⁹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

²⁰ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

²¹ COMESA Competition and Consumer Protection Regulations (COMESA 2025) 38, "Public interest... to: (i) effect on employment, (ii) ability of small and medium sized businesses to be competitive, (iii) ability of industries in the Common Market to compete in international markets, (iv) environmental protection or sustainability considerations and (v) any other factors that bear upon public interest".

²² Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

²³ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

²⁴ UNCTAD, *Voluntary Review of Competition Law and Policy: A Tripartite on the United Republic of Tanzania-Zambia-Zimbabwe*, United Nations 2012) 171.

²⁵ UNCTAD, *Voluntary Review of Competition Law and Policy: A Tripartite on the United Republic of Tanzania-Zambia-Zimbabwe*, United Nations 2012) 171.

parastatal organisations, which were in monopoly or ‘privileged’ positions over private firms and significant barriers to entry served to increase or maintain high levels of industrial concentration, preclude entry by other firms, and further the creation of an uncompetitive market structure, which served to increase prices and restrain output to the detriment of consumers.²⁶ Entry barriers included: government-erected barriers (price controls, foreign exchange controls, labour regulations and state monopolies), industry-structure barriers (limited supplies of raw materials, economies of scale and scope, product differentiation and brand loyalty) and business practices (price fixing, collusive tendering, tied sales, and allocation of market and customers).²⁷

To address this, the Government launched the Economic Structural Adjustment Programme (ESAP) in 1990, backed by the IMF and World Bank. ESAP aimed to revitalise the economy by fostering external trade liberalisation and internal market reforms to stimulate competition.²⁸ ESAP was initiated by the growing concern within the business community that there was a lack of domestic competition and that the country’s industries were not competitive in the international market. The Programme prompted the establishment of the “Monopolies Commissioners” to monitor competitiveness and regulate restrictive business practices in the economy.²⁹

Following the concerted need for having a monopolistic commission, a study was carried out in 1992 whereby it was concluded that “while the combination of a high degree of industrial concentration and high barriers to entry does not automatically lead to abuse of market power by monopolists and oligopolists, the possibility for exercising market power existed and that there was some evidence and good reason to believe that Restrictive Business Practices (RBPs) were extensive in Zimbabwe”, which led to the adoption of the Competition Act in 1996.³⁰

²⁶ UNCTAD, *Voluntary Review of Competition Law and Policy: A Tripartite on the United Republic of Tanzania-Zambia-Zimbabwe*, United Nations 2012) 171.

²⁷ UNCTAD, *Voluntary Review of Competition Law and Policy: A Tripartite on the United Republic of Tanzania-Zambia-Zimbabwe*, United Nations 2012) 172.

²⁸ Hamadziripi, *Competition Law and Policy in Zimbabwe* 70.

²⁹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁰ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

The Competition Act is Zimbabwe's principal competition legislation.³¹ The Parliament passed the Competition Act in 1996.³² However, it came into force on February 9, 1998, through Statutory Instrument 21A of 1998, published in the Extraordinary Government Gazette on February 6, 1993.³³ This was when the institution was established to administer and enforce competition policy.³⁴ In 2000, the Government merged the Industry and Trade Competition Commission (ITCC) and Tariff Commission (TC). A new Competition Act became effective on June 1, 2002, to facilitate this merger.³⁵ The rationale for the combination was cost-saving for the Government by running one instead of two interconnected commissions.³⁶ In addition to merging the functions of the two Commissions, the Competition Act addresses deficiencies identified in the old Competition Act.³⁷ The Amendments also strengthened the Commission's handling of mergers and acquisitions. Moreover, it expanded the list of restrictive and unfair business practices.³⁸ It also granted the Commission additional functions, including price surveillance and monitoring.³⁹

3. Methodology

The study employed a mix of research methods, including desk research, quantitative analysis and qualitative analysis. The researcher used primary and secondary data. Primary data are those which are collected afresh and for the first time and thus happen to be original in character.⁴⁰ The researcher used the personal interview

³¹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³² Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³³ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁴ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁵ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁶ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁷ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁸ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

³⁹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 71.

⁴⁰ C R Kothari, *Research Methodology: Methods & Techniques* (1st edn New Age International (P) Limited Publishers 2002) 95.

method to collect data. This method requires a person known as the interviewer to ask questions, generally in face-to-face contact with the other person or persons.⁴¹ The chief merits of the interview method are; more information and that too in greater depth can be obtained; the interviewer, by his own skill, can overcome the resistance, if any, of the respondents; the interview method can be made to yield an almost perfect sample of the general population, there is greater flexibility under this method as the opportunity to restructure questions is always there, especially in case of unstructured interviews, observation method can as well be applied to recording verbal answers to various questions, personal information can as well be obtained easily under this method, samples can be controlled more effectively as there arises no difficulty of the missing returns; non-response generally remains very low, the interviewer can usually control which person(s) will answer the questions, the interviewer may catch the informant off-guard and thus may secure the most spontaneous reactions than would be the case if mailed questionnaire is used, the language of the interview can be adopted to the ability or educational level of the person interviewed and as such misinterpretations concerning questions can be avoided, the interviewer can collect supplementary information about the respondent's personal characteristics and environment which is often of great value in interpreting results.⁴²

But there are also certain weaknesses of the interview method which include the following, it is a very expensive method, especially when large and widely spread geographical sample is taken, there remains the possibility of the bias of interviewer as well as that of the respondent; there also remains the headache of supervision and control of interviewers, certain types of respondents such as important officials or executives or people in high income groups may not be easily approachable under this method and to that extent the data may prove inadequate, this method is relatively more-time-consuming, especially when the sample is large and recalls upon the respondents are necessary, the presence of the interviewer on the spot may over-stimulate the respondent, sometimes even to the extent that he may give imaginary information just to make the interview interesting, under the interview method the organisation required for selecting, training and supervising the field-staff is more complex with formidable problems, interviewing at times may also introduce

⁴¹ Kothari, *Research Methodology: Methods & Techniques* 97.

⁴² Kothari, *Research Methodology: Methods & Techniques* 98.

systematic errors, effective interview presupposes proper rapport with respondents that would facilitate free and frank responses.⁴³

Secondary data is raw data and published summaries, which are analysed once obtained to provide additional knowledge, interpreted and concluded.⁴⁴ This includes both qualitative and quantitative data, which are used primarily in both descriptive and explanatory research.⁴⁵ These included documentary secondary data, which are defined as data that, unlike the spoken word, include both text materials and non-text materials. Text materials include notices, correspondence such as emails, minutes of meetings, reports to shareholders, diaries, transcripts of speeches and conversations, administrative and public records, as well as the text of web pages. Text can also include books, journal articles, magazine articles and newspapers. Although books, articles, journals and reports are common storage media for compiled secondary data, the text can be important raw secondary data.⁴⁶

4. Current perspectives on competition law and the Constitution

Section 2(1) of the Constitution of Zimbabwe, 2013 provides that “this Constitution is the supreme law of Zimbabwe and any law, practice or conduct inconsistent with it is invalid to the extent of the inconsistency”.⁴⁷ All rules, including competition law found in legislation, judicial decisions, common law, and customary law, are subject to the Constitution.⁴⁸ The principle of constitutional supremacy holds that the Constitution is the supreme law and, in the event of any direct conflict with other legislation, the Constitution prevails.⁴⁹ Consequently, all competition legislation must align with the Constitution’s provisions.⁵⁰ Any competition law in effect when the Constitution

⁴³ Kothari, *Research Methodology: Methods & Techniques* 99.

⁴⁴ Mark Saunders, Philip Lewis and Adrian Thornhill, *Research Methods for Business Students* (7th edn, Pearson Education Limited 2016) 316.

⁴⁵ Saunders, Lewis and Thornhill, *Research Methods for Business Students*, 318.

⁴⁶ Saunders, Lewis and Thornhill, *Research Methods for Business Students*, 319.

⁴⁷ Hamadziripi, *Competition Law and Policy in Zimbabwe* 46.

⁴⁸ Hamadziripi, *Competition Law and Policy in Zimbabwe* 46.

⁴⁹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 46.

⁵⁰ Hamadziripi, *Competition Law and Policy in Zimbabwe* 46.

became operative remains valid only to the extent that it is consistent with the Constitution; any inconsistent parts must be amended accordingly.⁵¹

5. The Ashram Investments (Private) Limited, Profeeds (Private) Limited, Produtrade (Private) Limited, Innscor Africa v Competition and Tariff Commission Case

5.1 Background

The Competition Tariff Commission (CTC), Zimbabwe's regulator under the Competition Act, found itself at odds with a group of companies led by Ashram Investments, Profeeds, Produtrade, and Innscor Africa.⁵² The dispute began in 2013 when Ashram acquired a majority stake of 59% in Profeeds and Produtrade.⁵³ Concerned about the growing influence of Innscor, which wholly owned Ashram and already had interests in National Foods and Irvines, the CTC prohibited the merger in 2014.⁵⁴ It is feared that allowing Innscor's reach to extend further into the stock feeds industry would create a monopoly, undermining fair competition.⁵⁵

Undeterred, the respondents restructured their arrangement in May 2015, reducing Ashram's shareholding to 49%.⁵⁶ This new merger, however, was not reported to the CTC within the required 30 days.⁵⁷ Instead, the notification only came in 2019, nearly four years later, after the companies had engaged new legal counsel who advised

⁵¹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 46.

⁵² Ashram Investments (Private) Limited, Profeeds (Private) Limited, Produtrade (Private) Limited, Innscor Africa v Competition and Tariff Commission Judgement No. CCZ 20/25, Constitutional Appeal No. CCZ 58/24 (hereinafter Ashram) [6].

⁵³ Ashram [6].

⁵⁴ Ashram [6].

⁵⁵ Ashram [6].

⁵⁶ Ashram [7].

⁵⁷ Ashram [7].

them to comply.⁵⁸ By then, Profeeds had already expanded its operations, manufacturing stock feeds from Produtrade's factory and growing its retail presence.⁵⁹

When the CTC finally reviewed the belated notification, it maintained its earlier stance.⁶⁰ It declared the merger contrary to the public interest, ordered Ashram to divest from Profeeds, and imposed a hefty penalty of ZWL \$40,591,483.40 on Innscor, citing the prolonged failure to notify.⁶¹ The respondents, however, appealed to the Administrative Court a quo, arguing that the merger was not harmful but rather beneficial to Zimbabwe's economy.⁶² They claimed it strengthened Profeeds, created jobs, and enhanced the nation's economic fabric. They also challenged the penalty as excessive and inappropriate.⁶³

The court a quo carefully examined the matter. It agreed with the CTC that the merger was notifiable under the Act, but it reached a different conclusion about its impact.⁶⁴ Evidence showed that Profeeds had expanded from 19 to 40 shops, gained access to loans and services at favourable rates, and was operating profitably.⁶⁵ The Administrative Court noted that the stock feed market was no longer dominated by just Profeeds and National Foods; at least 20 other players were active, ensuring healthy competition.⁶⁶ It criticised the CTC for failing to invite the respondents to make representations before its decision, a procedural flaw that weakened the regulator's case.⁶⁷

⁵⁸ Ashram [7].

⁵⁹ Ashram [7].

⁶⁰ Ashram [8].

⁶¹ Ashram [8].

⁶² Ashram [8].

⁶³ Ashram [9].

⁶⁴ Ashram [9].

⁶⁵ Ashram [9].

⁶⁶ Ashram [10].

⁶⁷ Ashram [10].

On the issue of penalties, the court found that imposing such a large fine on Innscor was irregular, since Innscor comprised multiple companies, many of which were uninvolved in the merger.⁶⁸ Instead, it ruled that a caution and discharge were more appropriate, recognising the respondents' contravention but balancing it against the broader economic benefits.⁶⁹

In the end, the court allowed the merger to stand, cautioning the respondents but discharging them from the penalty.⁷⁰ It emphasised that competition law should not be wielded to stifle growth but to promote the welfare of citizens by encouraging fair competition and economic development.⁷¹ The case thus illustrates the delicate balance between regulatory vigilance against monopolies and judicial recognition of the positive role mergers can play in strengthening businesses and expanding markets.⁷²

5.2 The Competition and Tariff Commission's Decision

In February 2019, the Commission received notification in terms of section 34A of the Competition Act [Chapter 14:28] (*the "Act"*) of the acquisition of Produtrade (Private) Limited (*"Produtrade"*) and Profeeds (Private) Limited (*"Profeeds"*) by Ashram Investments (Private) Limited (*"Ashram"*). The notified transaction detailed the acquisition of a 49% stake in the issued share capital of Profeeds and Produtrade by Ashram as a single transaction. The transaction was consummated in May 2015.⁷³

Profeeds is a company incorporated under the laws of Zimbabwe, whose main business is the manufacturing of stock feeds. The company operates from the property

⁶⁸ Ashram [10].

⁶⁹ Ashram [10].

⁷⁰ Ashram [10].

⁷¹ Ashram [11].

⁷² Ashram [11].

⁷³ Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*.

owned by a sister company, Produtrade. Ashram is an investment holding company which is a subsidiary of Innscor Africa Limited (“IAL”). It was incorporated to own shares in Profeeds and Produtrade, and, other than that, it does not trade. The merger was therefore analysed considering the operations of Profeeds and IAL.⁷⁴

It was noted that IAL is a highly vertically integrated firm in the poultry value chain, which is into breeding of Day-Old Chicks (“DOCs”) through Irvine’s Zimbabwe (Private) Limited (“Irvines”). IAL also supplies maize & wheat bran and manufactures & distributes stock feeds through National Foods (Private) Limited (“NFL”). Profeeds competes with the NFL in the stock feed market, and it is a customer of DOCs in Irvine. In that regard, the relevant markets were identified as follows: the supply of maize & wheat bran; the supply of stock feeds; the supply of DOCs; and the retailing of DOCs in Zimbabwe.⁷⁵

The merger was classified as both a vertical and a horizontal merger. The analysis revealed that the transaction has substantially lessened competition in the market by removing Profeeds, an efficient competitor to the NFL. Following the acquisition, the merged entity has acquired market power; hence, it can engage in unilateral conduct to the detriment of both competitors and customers. The merger has also accorded the merged entity market power to engage in both input and customer foreclosure. The merger is therefore considered to be a threat to competition in the stock feeds and DOCs market.⁷⁶

It has also been noted that the merged entity violated the notification provisions of the Act by proceeding to implement the merger in 2015 without the approval of the Commission.⁷⁷ The Commission ordered that Ashram divest from Profeeds forthwith and imposed a penalty of \$40 591 483.40 on IAL for consummating the merger without the Commission’s approval.⁷⁸

5.3 The Administrative Court’s Decision

⁷⁴ Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*.

⁷⁵ Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*.

⁷⁶ Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*.

⁷⁷ Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*.

⁷⁸ Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*.

The Act provides for a right to appeal Commission decisions to the Administrative Court.⁷⁹ The Administrative Court is a specialised institution established by the Administrative Court Act, whose jurisdiction depends on conferment by specific statutes, and acts as a court of appeal for decisions of administrative tribunals, such as the Competition Commission.⁸⁰

In the Ashram case⁸¹ The appellants, Ashram and others, merged in May 2015, with CTC, the regulators, being the respondents. The appellants should have notified the respondents of their merger; their legal practitioners at the time did not advise them to notify the regulator of the merger. After they engaged new legal practitioners in December 2017, they were advised to notify the respondent of their merger. As a result, in February 2019, the appellants notified the respondent of their merger, and after examining the merger, the respondent prohibited the merger and ordered the divestiture of Ashram (Private) Limited and Profeeds (Private) Limited and penalised the appellants for the late notification of the merger. The appellants appealed to this court on four grounds of appeal, which set out the issues to be decided by the court. Ashram acquired a direct interest in the business of each of the second and third appellants by the purchase of shares of the second and third appellants; the court was satisfied that it was a merger. The centres for Profeeds increased as compared to before the merger, with the increased shops and certainly by the time it notified the respondent of the merger in February 2019, the three appellants were operating profitably. The appellant in this case acquired a controlling interest in Protrade (Private) Limited and Innscor Africa Limited. The acquisition of a shareholding in the second and third appellants by the first appellant constituted a notifiable merger as defined in s2 of the Competition Act.⁸²

The statistics alone suggest that the merger was economically beneficial; the first appellant rose from a struggling entity to a thriving enterprise. In this case, the

⁷⁹ Hamadziripi, *Competition Law and Policy in Zimbabwe* 57.

⁸⁰ Hamadziripi, *Competition Law and Policy in Zimbabwe* 57.

⁸¹ Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited versus Competition and Tariff Commission AC 11/21 ACC 43/20.

⁸² Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited versus Competition and Tariff Commission AC 11/21 ACC 43/20.

respondent did not invite the applicants to make representations to it about the shortcomings that the respondent alleged the appellants suffered from, which was not in accordance with the requirements that the respondent should have taken all reasonable steps to ensure that the appellants who were likely to be affected by the outcome of the investigation were allowed to make representations. This gross irregularity rendered the respondent's manner of investigating conduct irregular and wrong. This was not in accordance with s68 of the Constitution⁸³ nor s3(1) of the Administrative Justice Act. In addition, there are contradictory substantive indications that the merger has pro-competitive effects which are in the public interest. There are twenty other players in the stock-feeds market, whereas previously Profeeds and NFL were the dominant ones, and the former was able to reduce the price of its products to customers to introduce improved corporate governance practices, to reduce its costs of borrowing and to increase training to stock feed farmers, and the combined market share reduced despite the undisclosed merger that occurred in 2015.⁸⁴

Section 34A(3)(a) of the Competition Act requires that the first appellant notify the respondent of the merger within thirty (30) days, and this was not done by the first appellant because of legal advice obtained from its erstwhile legal practitioners. The first appellant contravened s34a(3)(a) of the Competition Act, and by proceeding to implement the merger in May 2015, the first appellant contravened s34A (3) (b) of the Act. CTC was correct in imposing a penalty on the merging parties, the first, second and third appellants. The appellants have been cooperating with the respondent, and an examination of the non-notification of the merger showed that there had been no harm to Zimbabwe's economy. Instead, companies which were ailing are now thriving and expanding their operations. Sufficient time had passed for one to observe that the merger, though not notified to the respondent, had been beneficial to society, and it was in the public interest. The court recommended a minimal penalty, such as a caution and discharge, which appears to suffice. The penalty imposed in this case is harsh and not called for in the case of subsidiaries of the fourth appellant who are not part of the first appellant.⁸⁵

⁸³ Constitution of Zimbabwe Amendment (No. 20) Act of 2013 (hereinafter Constitution).

⁸⁴ Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited versus Competition and Tariff Commission AC 11/21 ACC 43/20.

⁸⁵ Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited versus Competition and Tariff Commission AC 11/21 ACC 43/20.

5.4 The Supreme Court of Appeal's Decision

The dispute arises from a merger involving Ashram Investments, Profeeds, Produtrade, and Innscor Africa Ltd. Ashram, wholly owned by Innscor, acquired 49% of Profeeds (a stock feed manufacturer) and 49% of Produtrade (a property company leasing its factory to Profeeds). This merger was consummated in 2015 but was only notified to the Competition and Tariff Commission (CTC) in 2019, nearly four years late.

The CTC, acting under the Competition Act [Chapter 14:28], prohibited the merger, ordered Ashram to divest, and imposed a penalty of ZWL\$40 million on Innscor, citing risks of monopoly since Innscor already controlled National Foods and had interests in Irvines, major players in the livestock and feed industry.

The respondents appealed to the Administrative Court, which overturned the CTC's decision, allowed the merger, and reduced the penalty to a caution, reasoning that the merger had expanded Profeeds' operations, introduced farmer training, and coincided with the entry of 20 other competitors into the market.

The Supreme Court, however, cuts through the Administrative Court's optimism with a sharper lens. It declares that competition law is not about celebrating short-term growth but about guarding against long-term monopolistic harm.

The court emphasises that the Competition Act's preamble and section 5 entrust the CTC with the duty to prevent restrictive practices and monopoly situations. By focusing only on immediate benefits, more shops, more competitors, more jobs, the Administrative Court ignored the potential future dangers. The flashpoint in the reasoning is clear: Innscor's control of both Profeeds and National Foods, the two largest stock feed producers, creates a dominant unit capable of squeezing out rivals, manipulating prices, and dictating terms to the market.

The court warns that monopolistic tendencies often masquerade as progress. They may initially appear to offer favourable expansion, efficiency, and consumer perks, but once dominance is entrenched, the market loses its freedom. Prices rise, quality falls, small businesses collapse, and consumers are left with no choice. This is the very harm the Act was designed to prevent.

On procedure, the Supreme Court dismantles the lower court's claim that the respondents were denied a hearing, pointing to clear evidence that the CTC had issued notices under section 31(5) and invited submissions. On penalties, the court insists that deterrence is essential: the respondents deliberately avoided notification for nearly four years, and the law requires consideration of all seven statutory factors, not just one. The Administrative Court's leniency, the Supreme Court concludes, undermined the very purpose of competition regulation.

In the end, the Supreme Court's judgment is not merely a technical ruling; it is a statement of principle about the very soul of competition law. The court restores the Commission's prohibition of the merger, orders Ashram to divest, and reinstates the ZWL\$40 million penalty. But beyond the orders, the reasoning carries a powerful message: corporate giants cannot be allowed to bend the rules, delay compliance, and then claim economic success as justification for their conduct.

The court underscores that the public interest is not measured by immediate profits or expansion of outlets, but by the preservation of a fair, competitive marketplace where consumers have genuine choice and smaller businesses can thrive. It warns that monopolistic structures, once entrenched, can suffocate competition, inflate prices, and erode quality, leaving the economy hostage to a single dominant player.

By rejecting the Administrative Court's leniency, the Supreme Court reaffirms that deterrence is essential. Penalties must bite, not merely caution, because without real consequences, corporations will treat the law as optional. The ruling insists that competition law is about foresight, about anticipating harm before it materialises — and about protecting the long-term welfare of citizens, not just the short-term gains of powerful companies.

Thus, the conclusion is both corrective and cautionary: the merger is prohibited, the penalty stands, and the authority of the Competition and Tariff Commission is upheld. The Supreme Court's voice resonates as a reminder that economic freedom depends on vigilance against monopolies, and that the law must always guard against the subtle but dangerous drift toward concentrated power.

The Supreme Court restores the CTC's decision in full:

- The merger is prohibited.

- Ashram must divest its interests.
- The ZWL\$40 million penalty stands.

The ruling crystallises the principle that competition law is about foresight, not hindsight. It is about protecting the market from the looming shadow of monopoly, ensuring that consumer welfare and fair competition are preserved long after the initial glow of expansion fades.⁸⁶

5.5 The Constitutional Court's Decision⁸⁷

This matter came before the Constitutional Court of Zimbabwe on an application for direct access under section 167(5) of the Constitution. The applicants sought to challenge a Supreme Court judgment (SC 91/24) that had upheld the Competition and Tariff Commission's decision to declare a merger null and void and impose a substantial penalty. The central question was whether the Supreme Court had violated the applicants' fundamental rights to a fair hearing (section 69(2)) and to acquire and hold property (section 71(2)).

In May 2015, Ashram Investments acquired a 49% stake in Profeeds and Protrade. The merger was only notified to the Competition Commission in February 2019—nearly four years late. The Commission investigated and, at a preliminary stage, informed the applicants of its intention to prohibit the merger, order divestiture, and impose a penalty, but it did not disclose the basis for that intention, despite a specific request from the applicants' legal practitioners. The applicants made written representations without knowing the precise case against them. On 21 May 2020, the Commission issued a determination declaring the merger null and void, ordering divestiture, and imposing a penalty of ZWL\$40,591,483.40 on Innscor. Critically, no reasons accompanied that determination. Only after the applicants' legal practitioners wrote again on 29 May 2020 did the Commission provide reasons on 3 June 2020,

⁸⁶ Competition and Tariff Commission v Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited SC 91/24 SC 569.23.

⁸⁷ Constitutional Court of Zimbabwe, (also referred hereinafter as Concourt).

explaining that the merger had substantially reduced competition in the stock feed and day-old-chick markets.

The applicants appealed to the Administrative Court, which set aside the Commission's decision and substituted a mere caution for the penalty. The Commission appealed to the Supreme Court, which reversed the Administrative Court's decision, reinstating the Commission's determination. The Supreme Court held that the Administrative Court had erred in failing to consider the merger's potential harmful effects and in interfering with the penalty, since Innscor's conduct warranted a more effective sanction. The applicants then sought direct access to the Constitutional Court.

Garwe JCC, delivering the unanimous judgment of the court, began by considering the test for direct access. The court noted that direct access is not automatic; it must be in the interests of justice, and the applicant must demonstrate that the matter raises a constitutional issue with reasonable prospects of success. The court then examined the underlying facts and the proceedings before the Commission, the Administrative Court, and the Supreme Court.

The court identified three fundamental procedural errors that, in its view, violated the applicants' right to a fair hearing:

- i. Failure to disclose the basis for intended prohibition: the Commission informed the applicants of its intention to prohibit the merger but refused or failed to disclose the reasons for that intention. The applicants requested these reasons but received no response. This deprived them of the opportunity to make meaningful representations and to know the case they had to meet. The court emphasised that the right to be heard includes the right to be informed of the allegations or concerns against one, especially when a regulatory body is contemplating a serious remedy such as prohibition and divestiture.
- ii. Issuance of a determination without reasons: the determination of 21 May 2020 contained no reasons whatsoever. The court held that this was a clear breach of procedural fairness. A decision that affects fundamental rights, such as the right to hold property, must be accompanied by reasons, not only to enable meaningful appeal but also to ensure transparency and accountability. The

absence of reasons meant that the applicants could not properly assess the merits of the decision or challenge it effectively.

- iii. The Supreme Court's failure to correct these errors: on appeal, the Supreme Court acknowledged the procedural history. Still, it erroneously concluded that no violation of the right to a fair hearing had occurred. The Constitutional Court found that the Supreme Court had misconstrued the facts. The Supreme Court appeared to treat the belated provision of reasons (on 3 June 2020) as sufficient to cure the earlier defects. The Constitutional Court rejected this reasoning. It held that the right to a fair hearing is not merely about the eventual receipt of reasons; it is about the timely and proper opportunity to be heard before a decision is taken. The decision had already been made without reasons, and the later provision of reasons could not retroactively cure the procedural unfairness that had already occurred. The Supreme Court should have set aside the Commission's decision and remitted the matter for a fresh hearing or at least addressed the procedural violation as a preliminary issue. Its failure to do so meant that the constitutional violation persisted.

5.5.1 The Constitutional Court's Ruling on Direct Access:

Having found that the application had prospects of success because the procedural errors were clear and the Supreme Court's judgment was arguably unconstitutional, the court granted direct access. The court also noted that the matter raised important constitutional questions about the intersection of economic regulation and fundamental rights, and that there was no other effective remedy available to the applicants, as the Supreme Court had already made a final determination. The court therefore held that it was in the interests of justice to allow the applicants to bring their constitutional challenge directly before the Constitutional Court.

5.5.2 Significance of the Reasoning:

The judgment underscores the constitutional imperative of procedural fairness in administrative and regulatory proceedings. The court made clear that even in the context of competition law, where the state has a legitimate interest in preventing anti-competitive mergers, the rights of parties to a fair hearing cannot be sacrificed. The

decision also serves as a check on the Supreme Court: superior courts must be vigilant to ensure that lower tribunals and administrative bodies respect fundamental rights, and where they fail to do so, the appellate court must correct the error, not compound it. The Constitutional Court, by granting direct access, signalled its willingness to intervene where a final court of appeal has misapplied constitutional standards.⁸⁸

6. Interpretation of statutes and the Competition Act

The interpretation of a statute is to arrive at a legal meaning of a statutory provision.⁸⁹ It is generally accepted that the object of statutory interpretation is to arrive at the intention of Parliament or the legislature; however, no rule or principle tells the court what rule or principle to apply.⁹⁰ Statutory (and constitutional) interpretation is about constructing enacted law texts with reference to and reliance on other law texts, concretising the text to be constructed to cater for the exigencies of an actual or hypothesised concrete situation.⁹¹

A court invokes whichever of the rules produces a result that satisfies its Sense of justice in the case before it. Although the literal rule is the one most frequently referred to in express terms, the courts treat all three as valid and refer to them as occasion demands, but, naturally enough, do not assign any Reasons for choosing one rather than another.⁹²

Generally, there are three rules of statutory interpretation, which are the literal rule, the golden rule and the mischief rule.⁹³ The Interpretation Act is also used to apply to every enactment except insofar as any such provisions are inconsistent with the

⁸⁸ Ashram Investments (Private) Limited, Profeeds (Private) Limited, Produtrade (Private) Limited, Insnskor Africa v Competition and Tariff Commission Judgement No. CCZ 20/25, Constitutional Appeal No. CCZ 58/24.

⁸⁹ Madhuku L, *An Introduction to Zimbabwean Law* (Weaver Press 2010) 144.

⁹⁰ Madhuku, *An Introduction to Zimbabwean Law* 144.

⁹¹ Christo Botha, *Statutory Interpretation: An Introduction for Students* (6th edn Juta 2012) 5.

⁹² Madhuku, *An Introduction to Zimbabwean Law* 145.

⁹³ Madhuku, *An Introduction to Zimbabwean Law* 145.

intention or object of such enactment; or would give to any word, expression or provision of any such enactment an interpretation inconsistent with the context; or are in such enactment declared not applicable thereto.⁹⁴ The interpretation of legislation involves more than analysing the particular provision in question, and interpreting a text includes the intra-textual context as well as the extra-textual context.⁹⁵ A comprehensive approach to contextualising legislative provisions, having regard to both the internal and external context of a legislative provision when interpreting it, with regard to the internal context of a legislative provision, requires that it be interpreted in light of the text of the legislation as a whole.⁹⁶ We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole, including its underlying values. We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole, including its underlying values.⁹⁷ About the external context of a particular legislative provision, ascribing meaning to it includes a consideration of, amongst others, the mischief which the legislation aims to address, and the social and historical background of the legislation.⁹⁸ The Commission is guided by the above principles in interpreting the Competition Act.

7. Zimbabwe's Constitution and its application to the Competition Law

7.1 Recognition of the Constitution⁹⁹

The Constitution is the supreme, prime or apex law of Zimbabwe, with no other law above it. Constitutional interpretation is the process of determining the meaning of a constitutional provision.¹⁰⁰ Interpretation aims to ascertain the meaning of a provision and to establish whether law or conduct is inconsistent with that provision.

⁹⁴ Interpretation Act [Chapter 1:01] s2.

⁹⁵ Botha, *Statutory Interpretation: An Introduction for Students* 128.

⁹⁶ Competition Commission of South Africa v Group Five Construction Ltd [2022] ZACC 36 [43].

⁹⁷ Competition Commission of South Africa v Group Five Construction Ltd [43].

⁹⁸ Competition Commission of South Africa v Group Five Construction Ltd [43].

⁹⁹ Constitution of Zimbabwe Amendment (No. 20) Act of 2013.

¹⁰⁰ Iain Currie and Johan de Waal, *The Bill of Rights Handbook* (6th edn Juta 2013) 133.

¹⁰¹Interpretation, therefore, involves two enquiries: first, the meaning or scope of a right must be determined, and then it must be determined whether the challenged law or conduct conflicts with the right,¹⁰² And the second enquiry, whether law or conduct conflicts with a right, involves the interpretation of the challenged law or a determination of what the challenged conduct amounts to or what its effects are.¹⁰³

The Constitution¹⁰⁴ states under section 2(1) that it is the supreme law of Zimbabwe and that any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.¹⁰⁵ It binds every person, natural or juristic, including the State and all executive, legislative and judicial institutions, as well as agencies of the government at every level, in terms of s2(2).¹⁰⁶ To uphold the principles of s2(1). What is implied by the dictates of this section at the starting point of any statute or legal document, which guides the interpretation of any provision of the Competition Act. The supremacy clause constitutes one of the founding values and principles of the Constitution, as set out in s3(1).¹⁰⁷

The Constitution places a duty to respect fundamental human rights and freedoms under s44, which states that the State and every person, including juristic persons and every institution and agency of the government at every level, must respect, promote and fulfil the rights and freedoms it sets out.¹⁰⁸

Furthermore, the following Constitutional sections must be taken note.

45 Application of Chapter 4

- (1) This Chapter binds the State and all executive, legislative and judicial institutions and agencies of government at every level.
- (2) This Chapter binds natural and juristic persons to the extent that it is applicable to them, taking into account the nature of the rights or freedoms concerned, and any duty imposed by it.
- (3) Juristic persons as well as natural persons are entitled to the rights and freedoms set out in this Chapter to the extent that those rights and freedoms can appropriately be extended to them.¹⁰⁹

¹⁰¹ Carrie and Waal, *The Bill of Rights Handbook* 133.

¹⁰² Carrie and Waal, *The Bill of Rights Handbook* 133.

¹⁰³ Carrie and Waal, *The Bill of Rights Handbook* 134.

¹⁰⁴ Constitution of Zimbabwe Amendment (No. 20) Act of 2013.

¹⁰⁵ Constitution s2(1).

¹⁰⁶ Constitution s2(2).

¹⁰⁷ Constitution s3(1)(a).

¹⁰⁸ Constitution s44.

¹⁰⁹ Constitution s45.

46 Interpretation of Chapter 4

- (1) When interpreting this Chapter, a court, tribunal, forum or body-
 - (a) Must give full effect to the rights and freedoms enshrined in this Chapter,
 - (b) Must promote the values and principles that underlie a democratic society based on openness, justice, human dignity, equity and freedom, and in particular, the values and principles set out in section 3
 - (c) Must take into account international law and all treaties and conventions to which Zimbabwe is a party,
 - (d) Must pay due regard to all the provisions of this Constitution, in particular the principles and objectives set out in Chapter 2 and
 - (e) May consider relevant foreign law.

In addition to considering all other relevant factors that are to be taken into account in the interpretation of a constitution.

- (2) ***When interpreting an enactment, and when developing the common law and customary law, every court, tribunal, forum or body must promote and be guided by the spirit and objectives of this chapter.***¹¹⁰

The application and interpretation of Chapter 4, set out above, set the tone of the Interpretation of the Competition Act, which is summarised by s46(2). When interpreting the Competition Act, the Commission must promote and be guided by the spirit and objective of this Chapter. This would have led the Commission to recognise the fundamental human right of the right to administrative justice under s68¹¹¹ which states that every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and substantively and procedurally fair,¹¹² and further says that any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct.¹¹³ Procedurally, the rules on natural justice would be respected, which include the right to be heard, which was brought out in this case, and which had not been violated in relation to s28(4)¹¹⁴ of the Act. The Constitutional Court is inclined to accept the finding made by the Administrative Court that Ashram is the applicant whose right to a fair hearing had been violated, in which it noted that what the court did thereafter only served to further

¹¹⁰ Constitution s46.

¹¹¹ Constitution s68.

¹¹² Constitution s68(1).

¹¹³ Constitution s68(2).

¹¹⁴ Competition Act [Chapter 14:28] s28(4), which states that; “*In any investigation under this section, the Commission shall have to ensure that the rules commonly known as the rules of natural justice are duly observed and, in particular, shall take all reasonable steps to ensure that every person whose interests are likely to be affected by the outcome of the investigation is given an adequate opportunity to make representations in the matter*”.

complicate the matter.¹¹⁵ The Con Court also stated that it was irregular on the part of the Administrative Court to proceed to deal with the merits of the case despite having found that the applicants had not been afforded an adequate or fair opportunity to make representations before the Commission, and the Supreme Court should have been alive to this irregularity, and everything that followed would have been avoided.¹¹⁶

There is only one system of law. It is shaped by the Constitution which is the supreme law, and all law, including the common law, derives its force from the Constitution and is subject to constitutional control.¹¹⁷

7.2 The *audi alterum partem* rule (“to hear the other side”)

The *audi alteram partem principle/rule* means, broadly speaking, that both sides to a dispute must be heard and some preconditions must be met under this principle.¹¹⁸

The *audi alteram partem principle/rule* consists of the following;

- The individual must be given an opportunity to be heard (i.e., the opportunity to put his or her case).¹¹⁹
- The individual must be informed of considerations which count against him or her.¹²⁰
- The administrator must provide reasons for any decision taken.¹²¹

7.2.1 The individual must be given an opportunity to be heard on the matter

The opportunity to be heard or the opportunity to put his or her case is a right that accrues to the individual who may be affected by any administrative action, and the

¹¹⁵ Ashram [59].

¹¹⁶ Ashram [60].

¹¹⁷ Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others [2000] ZACC 1 [44].

¹¹⁸ S B M Marume, R R Jebenkanda and C W Namusi, ‘The Principles of Natural Justice in Public Administration and Administrative Law’ (2016) International Journal of Business and Management Invention Volume 5 Issue 1 24:22.

¹¹⁹ UNISA, *Administrative Law: Only Study Guide for ADL2601* (UNISA2019) 146.

¹²⁰ UNISA, *Administrative Law: Only Study Guide for ADL2601* 146.

¹²¹ UNISA, *Administrative Law: Only Study Guide for ADL2601* 146.

way any administrative hearing, enquiry or investigation is conducted.¹²² Any individual affected by a decision must therefore be given the chance to be heard, a fair hearing by the administrator, before any decision is made.¹²³ Refinements to the rule concerning the opportunity to be heard are:

- proper notice of intended action
- reasonable and timely notice
- personal appearance
- legal representation
- evidence or cross-examination
- a public hearing or enquiry¹²⁴

(i) Proper notice of intended action

The individual must be given adequate notice of the forthcoming administrative action, whether this is required by statute or not. This notification must contain all the necessary details to assist the individual in his or her preparation for the hearing.¹²⁵

(ii) Reasonable and timely notice

The person must be given reasonable notice to enable him or her to collect the necessary information to prepare their case. What is reasonable will depend on the Circumstances of each case: the more involved the issue, the longer the time required.¹²⁶

(iii) Personal appearance

The person doesn't have to appear personally before the administrative body, unless, of course, a statute makes personal attendance compulsory. What is important,

¹²² UNISA, *Administrative Law: Only Study Guide for ADL2601* 147.

¹²³ UNISA, *Administrative Law: Only Study Guide for ADL2601* 147.

¹²⁴ UNISA, *Administrative Law: Only Study Guide for ADL2601* 147

¹²⁵ UNISA, *Administrative Law: Only Study Guide for ADL2601* 147.

¹²⁶ UNISA, *Administrative Law: Only Study Guide for ADL2601* 147.

though, is that the person be given a fair opportunity to present his or her case: either by appearing personally or by making written presentations.¹²⁷

(iv) Legal representation

The right to legal representation does not form part of the *audi alteram partem* rule and can be claimed only where it has been conferred by statute. The crucial question is whether the affected person has been given a proper opportunity to present his or her case.¹²⁸

(v) Evidence and cross-examination

The right to lead evidence and to cross-examine witnesses does not form an inherent part of the rules of natural justice. The criterion is whether, in all the circumstances, the individual has had a proper opportunity to put his or her case.¹²⁹

(vi) Public hearing or enquiry

There is no absolute right to a public hearing. The argument that publicity is an important method of controlling the exercise of any discretionary power is countered by the argument that, in some instances (disciplinary matters or matters dealing with the security of the state, for example), confidentiality may be essential. In these circumstances, fairness demands that the competing interests of openness and confidentiality be weighed against each other. When we consider the constitutional demands of openness, transparency and fairness, administrative hearings will generally have to be open to the public.¹³⁰

¹²⁷ UNISA, *Administrative Law: Only Study Guide for ADL2601* 148.

¹²⁸ UNISA, *Administrative Law: Only Study Guide for ADL2601* 148.

¹²⁹ UNISA, *Administrative Law: Only Study Guide for ADL2601* 148.

¹³⁰ UNISA, *Administrative Law: Only Study Guide for ADL2601* 149.

8. Key Observations from the Ashram Constitutional Court Judgement

- The Administrative Court's finding that the applicant's (Ashram and others) right to a fair hearing had been violated.¹³¹ The Court remarked:

In this case, the respondent did not invite the appellants to make representations about the shortcomings that the respondent alleges the appellants suffered from. This was clearly not in accordance with the requirement that the respondent should take all reasonable steps to ensure that the appellants who were likely to be affected by the outcome of the investigation are given an adequate opportunity to make representations. This gross irregularity renders the respondent's manner of investigating the appellant's conduct irregular and wrong. The outcome cannot be said to be in accordance with s 68 of our Constitution, nor with s 3 (1) of the Administrative Justice Act.¹³²

- On 28 February 2019, the applicants voluntarily notified the Commission of the merger and explained the circumstances surrounding it, emphasising its positive impact on Profeeds and the stock-feeds industry generally. They contended that the merger had contributed to increased market participation, including the entry of other feed manufacturers and the revival of feed and breeding companies such as Agrifoods and Capital Foods. They further noted the resurgence of previously dormant players, including Novatek, Feedmix and Country Foods. According to the applicants, the combined market share of Profeeds and National Foods declined from 64% in 2013 to 41% in 2018, suggesting that the transaction had not weakened competition. They maintained that the merger had been beneficial not only to Profeeds, whose retail outlets increased from nineteen to forty-three, but also to consumers and competitors. In addition, several firms, including Veterinary Distributors, Feedmix, N Richards, Hyperfeeds, and Gain Cash & Carry, had become active in distributing day-old chicks, while training programmes had been extended to small-scale farmers, youth, and women.¹³³
- After receiving the merger notification, the respondent undertook preliminary investigations into the transaction and sought input from relevant market

¹³¹ Ashram [59].

¹³² Ashram [13].

¹³³ Ashram [49].

participants. In its notice of opposition, the respondent accepted that it relied on feedback from stakeholders, as well as its assessment of market share, the number of market players, barriers to entry and other relevant considerations. Based on those investigations, it was concluded that the merger was not in the public interest. Consequently, on 13 December 2019, it wrote to the first applicant advising of its intention to prohibit the merger between Ashram, Profeeds and Produtrade, to order Ashram to divest from Profeeds, and to impose a penalty of ZWL\$40,591,483.40 on the merged entity. The applicants were invited to make representations, if any, within fourteen days of receiving the letter. However, the respondent did not provide reasons for the proposed course of action, nor did it disclose the factual basis upon which its intended decision rested.¹³⁴

- The applicants responded, incorporating in part the earlier submissions made at the time of the merger notification. They complained, however, that they were being asked to respond without knowing the views and preliminary findings of fact made by the Commission. They stated that in the absence of a stated position by the Commission, any submissions made “were to be based on assumptions.” A request by the applicants for the reasons was not responded to. In the circumstances, they decided to respond, but without knowing the basis of the intended course of action. In the written response, they urged the Commission to reconsider its intended action. They submitted that the penalty was likely to cause massive losses to Profeeds, the parties and the market in general. On the penalty, they submitted that Innscor only had an indirect interest in the merging parties and should therefore not be penalised. They further submitted that the penalty should be based on the turnover of the merging parties for the year preceding the merger and not on the turnover of Innscor, whose turnover would have included that of other subsidiaries not involved in the dispute.¹³⁵
- On 21 May 2020, the Commission wrote to the first applicant communicating its final decision after considering the representations submitted by the applicants. It confirmed its earlier preliminary position to prohibit the merger,

¹³⁴ Ashram [50].
¹³⁵ Ashram [51].

order the immediate divestiture of Ashram from Profeeds, and impose a monetary penalty of ZWL\$40,591,483.40 on the merged entity, representing 6.43 per cent of Innscor's turnover for the year ended 2018. This determination was later confirmed by the Supreme Court following the Commission's appeal and became the basis of the present application for direct access. After receiving the final determination, the applicants requested written reasons for the decision, which the Commission provided on 3 June 2020. It was only then that the applicants became aware of the basis upon which the Commission had prohibited the merger and ordered divestiture.¹³⁶

- The Commission acknowledged that, during its preliminary investigation, it received representations from several third parties and entities. In apparent justification for withholding the information gathered during that enquiry, it relied on section 48 of the Act, which imposes a duty of confidentiality. However, that duty should not be understood as permitting the Commission to withhold the substance of its preliminary findings from an interested party before calling upon that party to respond to a proposed course of action. Properly interpreted, section 48 requires the Commission to protect the identity of its sources and any confidential information, but it does not relieve it of the obligation to disclose the essential factual basis of its preliminary conclusions. The core facts, figures and statistics relied upon to justify the prohibition of a merger must be disclosed to the affected party so that it can make meaningful representations. As this case illustrates, it is inconsistent with procedural fairness to expect an affected party to respond meaningfully without knowing the basis upon which the Commission proposes to prohibit the merger and order divestiture.¹³⁷
- The Commission, relying on the information it had gathered and the representations received from third parties, concluded that the merger was contrary to the public interest. Although it informed the applicants of the action it proposed to take, it failed to disclose the factual or legal basis upon which that proposed action rested. It then invited the applicants to make representations in response to a conclusion whose underlying basis had not been revealed. The applicants complied but expressly indicated that they were

¹³⁶ Ashram [52].
¹³⁷ Ashram [54].

unable to respond meaningfully because they did not know why the Commission had concluded that the merger was not in the public interest or why Ashram should divest from Profeeds. Their complaint, in essence, was that they had been required to respond in the dark and to speculate about the possible grounds for the intended prohibition. These facts were common cause throughout the proceedings.¹³⁸

- The Constitutional Court found that the applicants had not been afforded a proper and fair opportunity to challenge the Commission's preliminary findings. The Commission proceeded to make a final decision prohibiting the merger and ordering divestiture after receiving the applicants' representations, but without first disclosing the basis of its intended decision. It was only after the final determination had been made, and upon the applicants' request for purposes of noting an appeal, that the Commission provided reasons for its decision.¹³⁹
- The Constitutional Court further observed that the Commission's failure to inform the applicants of the nature of the information it had gathered, and of the basis upon which it intended to prohibit the merger, inevitably placed them in the invidious position of having to respond without knowing the case they were required to meet. In those circumstances, there was no compliance with section 28(4) of the Competition Act. The applicants were compelled to assume that certain conclusions had been reached and to frame their representations by relating their circumstances to the factors the Commission is required to consider under section 32 of the Act. It could not, therefore, be said that, in such circumstances, the Commission had afforded the applicants a fair hearing.¹⁴⁰
- The Concourt concurred with the Administrative Court's finding that the applicant's right to a fair hearing had been violated but complicated the matter by holding that "the record of proceedings" showed that the merger had pro-competitive effects in the public interest. By "record of the proceedings," the court referred to the applicants' submissions before the Commission and before the Court itself. It accepted, *inter alia*, the applicants' claims that the merged entity's market share had declined from sixty-four per cent to forty-one per cent, that at least twenty other players had entered the stock feeds market, and that

¹³⁸ Ashram [55].

¹³⁹ Ashram [56].

¹⁴⁰ Ashram [57].

Profeeds had reduced the prices of its products, thereby benefiting customers. These claims had been made by the applicants in their representation to the Commission and in submissions before the Administrative Court but were never independently verified.¹⁴¹

- The Supreme Court should have been alive to the irregularity that the applicant's right (Ashram and others) to a fair hearing had been violated.¹⁴²
- The Supreme Court was not alive to the fact that the submissions by the parties both before the Commission and the Administrative Court were that no facts had been proved by either party before these two courts.¹⁴³
- The Supreme Court held that the Administrative Court erred in substituting the penalty imposed on the fourth applicant.
- Ashram had failed to notify the Commission of the merger within the stipulated timeframe and of consummating the merger without approval. It was supposed to notify within thirty days, and hence, Innscor Africa was fined appropriately.¹⁴⁴
- The Constitutional Court confirmed that some procedural errors were made by the Commission and the Administrative Court, which violated the Ashram and others' right to a fair hearing and which should have been rectified by the Supreme Court.¹⁴⁵
- The Constitutional Court lacks jurisdiction to review the correctness of the decisions of the Supreme Court on non-constitutional matters, as such decisions are final and binding. Section 169 of the Constitution confirms the status of the Supreme Court as the final Court of appeal for Zimbabwe, except in matters over which the Constitutional Court has jurisdiction. The status of the Supreme Court as the final court of appeal is further reinforced by s 26(1) of the Supreme Court Act [Chapter 7:13], which states that there shall be no appeal from any judgment or order of the Supreme Court.¹⁴⁶
- The court observed that it was irregular on the part of the Administrative Court to proceed to deal with the merits of the dispute, having found that the applicants had not been afforded an adequate or fair opportunity to make

¹⁴¹ Ashram [59].

¹⁴² Ashram [60].

¹⁴³ Ashram [60].

¹⁴⁴ Ashram [3].

¹⁴⁵ Ashram [5].

¹⁴⁶ Ashram [40].

representations before the Commission. Everything that followed would have been void. The Supreme Court should have been alive to this irregularity but clearly was not. The Supreme Court should also have been alive to the reality that, besides the submissions made by the parties both before the Commission and the Administrative Court, no facts had been proved by either party before these two fora.¹⁴⁷

- The Constitutional Court stated that decisions of the Supreme Court are, in select instances, reviewable and that such decisions are not always protected by S 169 of the Constitution, which designates such decisions as being final.¹⁴⁸
- An appeal to the Administrative Court of Zimbabwe is regulated by s 4 of the Administrative Court Act [Chapter 7:01] as read with s 40 of the Competition Act. In terms of s 40 of the Administrative Court Act, the power of the Court on appeal or review is limited to confirming, varying, reversing or setting aside the decision, order or action concerned. It may additionally refer the matter back to the authority concerned for further consideration.¹⁴⁹
- Contrary to the spirited submissions by counsel for the applicants that the Administrative Court has the power to rehear the appeal afresh, i.e. in the wide sense, the Court has no jurisdiction, in competition cases, to hear evidence from the parties for the first time on appeal. The decision of the Supreme Court cited by the applicants in *Remo Investments Brokers (Pvt) Ltd & Ors v the Security Commission of Zimbabwe SC 85/14* is patently inapplicable to the facts of this matter. The appeal in that matter was in terms of s 108 of the Securities and Exchange Act, [Chapter 24:25]. That section provides that an aggrieved person may appeal against the decision of the Minister to the Administrative Court and that in determining such an appeal, the Administrative Court may, inter alia, give such order, whether as to costs or otherwise, as it deems fit. It was in the context of that provision that the Supreme Court, relying on another previous decision of the Court in *Watch Tower Bible & Tract Society of Pennsylvania & Anor v Drum Investments (Private) Ltd & Anor 1993 (2) ZLR 67 (S)*, stated that an appeal to the Administrative Court was in the wide sense,

¹⁴⁷ Ashram [60].

¹⁴⁸ Ashram [42].

¹⁴⁹ Ashram [61].

that is to say, the Court decides the issues afresh after evidence is led for the first time and witnesses examined in accordance with the law.¹⁵⁰

- On a proper interpretation of s 40 of the Competition Act in an appeal from a decision of the Commission, the Administrative Court does not have the power to rehear the matter afresh. Its jurisdiction is limited to confirming, varying, setting aside, or reversing the action taken by the respondent, or remitting the matter to the Commission for further consideration. Simply put, the position seems to be that, unless another law authorises the Administrative Court to deal with an appeal before it in the wide sense, the Court must approach such an appeal in the strict or narrow sense stipulated in s 4 of the Act. It seems to me that the Court's role has been unduly attenuated. The Court should be endowed with the power, where necessary, to deal with appeals from lower tribunals in the wide sense. This would enable the Court to rectify any irregularities that may have pervaded earlier proceedings in those tribunals.¹⁵¹
- In these circumstances, it was impossible for the Administrative Court to have properly determined these disputes and yet it did, inevitably to the detriment of the Commission. As the Commission submitted in its heads of argument before the Supreme Court, the Administrative Court appeared to have acted on the "mere say-so" of the applicants as reflected in their papers filed with the Court. The suggestion that the merger had had a pro-competitive effect and that the combined share of National Foods and Profeeds had dropped to forty-one per cent was a submission made by the applicants before both the Commission and the Administrative Court, but which the Administrative Court accepted without any factual basis for doing so. No basis was given by the Court for rejecting the Commission's claim that the combined market share had risen to fifty seven percent. It even accepted the unsubstantiated claim of the applicants that prices of goods had been reduced following the merger.¹⁵²
- The proceedings that continued before the Administrative Court after it found that the applicants had not been given a fair hearing were irregular. Those proceedings should have been set aside by the Supreme Court. A further order could have been made remitting the matter to the Commission to conduct a

¹⁵⁰ Ashram [62].

¹⁵¹ Ashram [63].

¹⁵² Ashram [66].

fresh investigation in accordance with the provisions of s 28 (2) of the Act, read together with s 11 of the Commission of Inquiry Act [Chapter 10:07], which allows commissioners to summon witnesses, swear them in, examine them and call for the production of documents.¹⁵³

- The Supreme Court proceeded as if the proceedings before the Administrative Court relating to the merits had been properly conducted. It proceeded to impugn the reasoning process of the Administrative Court on the merits. There was, however, a failure to appreciate that no facts had been proved before both the Commission and the Administrative Court and that, in any event, there were disputes of fact arising from the written submissions made by both parties which were not capable of resolution by that Court. It proceeded to make its own findings based on that flawed process in the Administrative Court.¹⁵⁴
- The Supreme Court set aside the decision of the Administrative Court made in the circumstances described above and reinstated the determination of the Commission, which, as already found, was made secretly in circumstances where the applicant had not been afforded a fair hearing. Once it was determined that the applicants had not been given a fair hearing, everything else that followed would have been a nullity. The Supreme Court, however, appeared oblivious to that violation. It proceeded to sanitise proceedings that were irregular from the beginning. It seems to me that, given the foregoing, the court a quo failed to act in accordance with the law, which required that the factual and legal basis of the respondent's intention to prohibit the merger should have been disclosed to enable the applicants to make meaningful representations. The Court also failed to appreciate that there were no proven facts before either the Commission itself or the Administrative Court on which it could make definitive findings on appeal. The Court should have set aside the Administrative Court's decision. In its place, it could have substituted another order setting aside the determination made by the Commission and remitting the matter for a proper investigation before the Commission. Given these circumstances, it cannot be said that the applicants received a fair hearing.¹⁵⁵

¹⁵³ Ashram [68].

¹⁵⁴ Ashram [69].

¹⁵⁵ Ashram [71].

- The common cause facts clearly show that the applicants did not receive a fair hearing before the Commission and that serious errors were made during all three hearings that took place. In the circumstances, it is my finding that the applicants enjoy reasonable prospects of success should access be granted. It is therefore in the interests of justice that direct access to this Court be granted.
- The Constitutional Court did not give an opinion on whether there was substance to the suggestion that the applicant's rights under s71(2) of the Constitution were also violated, and opined that it was unnecessary to decide whether the Supreme Court failed to determine all the issues raised before it.¹⁵⁶

9. Recommendations

- The Commission should promote the *audi alterum partem* principle throughout all stages of its investigations. Particularly considering the provisions of s28 (2) & (3), using its powers conferred under s28(2), which was given powers by the Commission of Inquiry Act [Chapter 10:07].¹⁵⁷ Precedential law should be given as much weight as the substantive matters, as they are in line with the fundamental rights and constitutional master as well. The Supreme Court of Zimbabwe emphasised the importance of adhering to the principles of natural justice when exercising any power or discretion conferred by law.¹⁵⁸ It states that:

Insofar as concerns the exercise of any power or discretion conferred by any enactment, it is axiomatic that the functionary invested with the power to act or decide must comply with such rules of natural justice as are appropriate to the function to be performed as well as the time and circumstance in question. The two basic requirements in this regard enjoin the functionary concerned to decide without bias and to allow representations to be made before the decision is reached or any consequential action is taken. These basic tenets, as derived from the common law and embodied in the maxims *nemo debet esse iudex in sua aut propria causa* and *audi alteram partem*, are now codified in s 3 of the

¹⁵⁶ Ashram [72]

¹⁵⁷ **Commissions of Inquiry Act Chapter [10:07],** "AN ACT to provide for the appointment of commissioners to inquire into and report on matters referred to them by the President; to prescribe their functions and to provide for matters incidental to or connected with the foregoing.

¹⁵⁸ Ashram [45].

- The Commission should consider the impact of a merger or acquisition post-merger, particularly after the parties have consummated their transaction, violating the requirement to notify the Commission of the merger. The Ashram case is an example of there being a positive impact of the merger, which is pro-competition effects and satisfies the public interest concerns in the short and long term.
- CTC should be structured using either the bifurcated agency mode, where the authority has investigative powers and brings its enforcement actions before a specialised competition adjudicative authority with the rights of appeal to a further specialised appellate body or to general appellate courts, or the integrated agency model, where the authority is empowered with both investigative and adjudicative functions, with rights of appeal to general or specialised appellate bodies”.¹⁶⁰ This would enhance platforms where parties would have access to be heard, and competition law would be developed further with more jurists/ legal experts/judges interpreting it more frequently with diverse interpretations and scrutiny, and perhaps more constitutional cases handled, taking advantage of the adversary system. This would promote the principles of natural justice. The principles of natural justice embody fundamental notions of procedural fairness and justice. As applied to administrative decisions, these principles seek to ensure that such decisions are only taken after fair and equitable procedures have been adhered to. In essence, natural justice tries to guarantee that the parties who will be affected by the decisions receive a fair and unbiased hearing before the administrative tribunals reach their decisions. By requiring adherence to standards of procedural fairness, not only is justice seen to be done, but these principles also assist tribunals in reaching substantively correct decisions. If the principles are observed, decisions are reached only after the tribunals have been

¹⁵⁹ City of Harare v Mushoriwa SC 54-18 p15.

¹⁶⁰ United Nations Conference on Trade and Development, *Model Law on Competition* (2019), revised chapter IX 2019 3.

informed of facts relevant to their determinations and decisions are reached on an objective evaluation of the evidence.¹⁶¹

- Only one court should have jurisdiction over competition cases, and specialised judges should hear them.¹⁶²
- The Competition Act should be read and interpreted through the lens of the Constitution of Zimbabwe, from the preamble through the national objectives and fundamental rights, which are in line with the public interest concerns.
- The Competition Act should be amended to include a provision which states that an aggrieved party can appeal to the administrative court, so that the Court can decide on issues afresh after evidence has been led for the first time and witnesses examined in accordance with the law. As was the case in the *Remo Investments Brokers (Pvt) Ltd & Ors v the Security Commission of Zimbabwe* SC 85/14 and in the *Watch Tower Bible & Tract Society of Pennsylvania & Anor v Drum Investments (Private) Ltd & Anor* 1993 (2) ZLR 67 (S), stated that an appeal to the Administrative Court was in the wide sense, that is to say, the Court decides the issues afresh after evidence is led for the first time and witnesses examined in accordance with the law.¹⁶³
- The Commission should come up with regulations that define public interest concerns, which would be in line with the fundamental rights and national objectives of the Constitution.
- There is a need for the Administrative Court Act to be amended to enable the Court, where necessary, to hear appeals that come before it in the wide sense. This would enable the Court to hear evidence afresh and correct, if necessary, any irregularities that may have taken place before the tribunal or authority whose decision is sought to be impugned on appeal. As the facts of this case show, the Court has the authority to hear an appeal in the wide sense only where another enactment so allows. It is suggested that the Administrative Court Act itself should be amended to allow that Court to intervene where necessary rather than confine the exercise of such power to those instances where individual statutes provide for appeals to the Court in the wide sense.

¹⁶¹ G Feltoe in *A Guide to Zimbabwean Administrative Law*, Third Edition 23.

¹⁶² United Nations Conference on Trade and Development, *The INCTAD Model Law on Competition after 30 years: Some Reflections* (United Nations Publications 2024) 49.

¹⁶³ Ashram [62].

The authority whose decision is sought to be impugned on appeal. As the facts of this case show, the Court has the authority to hear an appeal in the wide sense only where another enactment so allows. It is suggested that the Administrative Court Act itself should be amended to allow that Court to intervene where necessary rather than confine the exercise of such power to those instances where individual statutes provide for appeals to the Court in the wide sense.¹⁶⁴

- The Supreme Court should be alive to irregularities that would have been committed by the administrative court. In this case, the irregularity that had been noted by the Administrative Court, the applicant not having been given a right to a fair hearing, should have been dismissed in the case in its early stages, which would have given the case timeously to be referred for a relook.
- The Constitutional Court should be given the jurisdiction to review the correctness of the decisions of the Supreme Court on non-constitutional matters; the need has been demonstrated in this case.

10. Conclusion

The analysis presented in this article aimed to examine the intertwining and linkages between Competition law and its Constitutional dimension, shedding light on important findings and contributing to the existing body of knowledge. It presented an analysis of competition law through the lens of constitutional law in the eyes of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013. The Administrative Court found that the applicant's (Ashram and others) right to a fair hearing had been violated. The Constitutional Court found that the applicants had not been afforded a proper and fair opportunity to challenge the Commission's preliminary findings. The Commission proceeded to make a final decision prohibiting the merger and ordering divestiture after receiving the applicants' representations, but without first disclosing the basis of its intended decision. It was only after the final determination had been made, and upon the applicants' request for purposes of noting an appeal, that the Commission

¹⁶⁴ Ashram [74].

provided reasons for its decision. The Supreme Court proceeded as if the proceedings before the Administrative Court relating to the merits had been properly conducted. It proceeded to impugn the reasoning process of the Administrative Court on the merits. There was, however, a failure to appreciate that no facts had been proved before both the Commission and the Administrative Court and that, in any event, there were disputes of fact arising from the written submissions made by both parties which were not capable of resolution by that Court. It proceeded to make its own findings based on that flawed process in the Administrative Court. The Supreme Court set aside the decision of the Administrative Court made in the circumstances described above and reinstated the determination of the Commission, which, as already found, was made secretly in circumstances where the applicant had not been afforded a fair hearing. Once it was determined that the applicants had not been given a fair hearing, everything else that followed would have been a nullity. The Supreme Court, however, appeared oblivious to that violation. It proceeded to sanitise proceedings that were irregular from the beginning. It seems to me that, given the foregoing, the court a quo failed to act in accordance with the law, which required that the factual and legal basis of the respondent's intention to prohibit the merger should have been disclosed to enable the applicants to make meaningful representations. The Court also failed to appreciate that there were no proven facts before either the Commission itself or the Administrative Court on which it could make definitive findings on appeal. The Court should have set aside the Administrative Court's decision. In its place, it could have substituted another order setting aside the determination made by the Commission and remitting the matter for a proper investigation before the Commission. Given these circumstances, it cannot be said that the applicants received a fair hearing. The court, taking all the facts into account, found it unnecessary to decide whether there was substance to suggest that s71(2) of the Constitution was violated and whether the Supreme Court failed to determine all the raised issues before it. There are areas in the legal structure which require improvement. The insights gained from the study may be of assistance to other researchers who want to develop this area. It is a new area of study with limited literature, particularly in the Zimbabwean context, which is a limitation of the study.

The following recommendations are made the Commission should promote the *audi alterm partem* principle throughout its investigations, which include its organisational

structure to either a bifurcated agency mode or the integrated agency model, during its investigations it should consider the impact of a merger or acquisition post-merger taking into account either the positive or negative impact of the merger which might be pro-competition effects that satisfies the public interest concerns, the Competition Act should be amended to include a provision which states that an aggrieved party can appeal to the administrative court, so that the Court can decide on issues afresh after evidence has been led for the first time and witnesses examined in accordance with the law, there should be one court which should adjudicate over competition cases with specialised judges, interpretation of the Competition should be read from the lens of the Constitution of Zimbabwe, the administrative court should be amended to enable it to hear evidence afresh which would be heard in the wide sense, the supreme court should be alive to irregularities that would have been dismissed from the court below and the constitutional court should be given the jurisdiction to review the correctness of the decision of the Supreme court on non-constitutional matters. The findings of this study demonstrate the potential impact of this topic, highlighting the need for further investigation and further potential avenues for future research. Overall, this paper contributes to the current knowledge base by providing insight into the subject matter and its implications. It offers valuable insights that can guide future studies and inspire further exploration in this area. I hope this work will stimulate fruitful discussions, inspire new ideas, and ultimately lead to advances in the interrelation between competition and constitutional law discourses.

11. Area of further studies

Further studies should go beyond the constitutional lens on procedural issues and include substantial considerations. It could also go further to look at individual fundamental rights and the impact of competition law and the Sustainable Development Goals. The research could be done on a comparative basis of national constitutions and competition law amongst different legislations.

12. Acknowledgement

First, I would like to express my gratitude to my Lord and Saviour, Jesus Christ, for granting me the opportunity to draft this article. Secondly, I would like to express my sincere gratitude to my family and friends for their support and guidance throughout the compilation of this article. Finally, I extend my gratitude to all for your invaluable contributions that significantly enhanced the quality of the paper.

13. Bibliography

Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited versus Competition and Tariff Commission AC 11/21 ACC 43/20

Ashram Investments (Private) Limited, Profeeds (Private) Limited, Protrade (Private) Limited, Innscor Africa v Competition and Tariff Commission Judgement No. CCZ 20/25, Constitutional Appeal No. CCZ 58/24

Ashram Investments (Private) Limited, Profeeds (Private) Limited, Protrade (Private) Limited, Innscor Africa Limited v Competition and Tariff Commission AC 11/21 ACC 43/20

Bernatt Maciej, *Competition law through the lenses of national constitutions: concerning competitive markets with socio-economic and environmental values*, Journal of Antitrust Enforcement, 2025 13 314

Botha Christo, *Statutory Interpretation: An Introduction for Students* (6th edn, Juta 2012)

City of Harare v Mushoriwa SC 54-18

COMESA Competition and Consumer Protection Regulations (COMESA 2025)

Competition and Tariff Commission v Ashram Investment (Private) Limited, Protrade (Private) Limited and Innscor Africa Limited SC 91/24 SC 569/23

Competition and Tariff Commission v Ashram Investments (Private) Limited, Profeeds (Private) Limited, Protrade (Private) Limited, Innscor Africa Limited SC 91/24 SC 569/23 Saunders Mark, Lewis Philip and Thornhill Adrian, *Research Methods for Business Students* (7th edn, Pearson Education Limited 2016)

Competition and Tariff Commission, *Newsletter 2nd Quarter 2020*

Competition Commission of South Africa v Group Five Construction Ltd [2022] ZACC 36

Constitution of Zimbabwe Amendment (No. 20) Act of 2013

Currie Iain and de Waal Johan, *The Bill of Rights Handbook* (6th edn Juta 2013)

G Feltoe in *A Guide to Zimbabwean Administrative Law*, Third Edition

Hamadziripi F, *Competition Law and Policy in Zimbabwe and Selected Sub-Saharan African Jurisdictions* (1st edn, University of Zimbabwe Press 2026)

Kothari C R, *Research Methodology: Methods & Techniques* (1st edn New Age International (P) Limited Publishers 2002)

Madhuku L, *An Introduction to Zimbabwean Law* (Weaver Press 2010)

Marume S B M, Jebenkanda R R and Namusi C W, 'The Principles of Natural Justice in Public Administration and Administrative Law' (2016) *International Journal of Business and Management Invention* Volume 5 Issue 1 24

Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others [2000] ZACC 1

Remo Investments Brokers (Pvt) Ltd & Ors v the Security Commission of Zimbabwe SC 85/14

The Competition Act [Chapter 14:28]

The Interpretation Act [Chapter 1:01]

UNCTAD, *Voluntary Review of Competition Law and Policy: A Tripartite on the United Republic of Tanzania-Zambia-Zimbabwe*, United Nations 2012)

UNISA, *Administrative Law: Only Study Guide for ADL2601* (UNISA2019)

United Nations Conference on Trade and Development, *Model Law on Competition* (United Nations Publications 2019), *revised chapter IX* 2019

United Nations Conference on Trade and Development, *The INCTAD Model Law on Competition after 30 years: Some Reflections* (United Nations Publications 2024)

Watch Tower Bible & Tract Society of Pennsylvania & Anor v Drum Investments (Private) Ltd & Anor 1993 (2) ZLR 67 (S)

Zimbabwe Monopolies Commission Study, *Study of Monopolies and Competition Policy in Zimbabwe* (Zimbabwe Monopolies Commission 1992)