

TITLE: A STUDY OF THE FACTORS THAT LEAD TO THE NON-NOTIFICATION OF  
NOTIFIABLE MERGERS IN ZAMBIA

By

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## DECLARATION

I hereby declare that this dissertation represents my own work and has not been presented either wholly or in part for a degree at the University of Zambia or at any other University.

Signed.....

Maikisa Ilukena

I have read this dissertation and recommend it for examination

Signed.....

Supervisor: Dr Taonaziso Chowa

## **DEDICATION**

This Research Paper is dedicated to my parents Maikisa and Mundia Ilukena who have inspired me with the fighting spirit and drive to handle any obstacles in life. May the almighty God continue blessing you both abundantly.

## **CERTIFICATE OF APPROVAL**

This dissertation of Maikisa Ilukena has been approved as fulfilling the requirements for the award of Master of Business Administration-General by the University of Zambia.

Name	Signature	Date
EXAMINER 1 _____	_____	_____
EXAMINER 2 _____	_____	_____
EXAMINER 3 _____	_____	_____

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I would like to thank my hardworking supervisor Dr Taonaziso Chowa who contributed massively during the time of my research, without whom this paper would not have been completed. May God continue to bless you together with your family.

## **ABSTRACT**

It has been recognized that in the absence of merger control regulation, society would see harm to business as suppliers become uncompetitive, inefficient, costly and not responsive to their competitive environment as well as harm consumers. The purpose of the study was to investigate the factors that lead to the non-notification of notifiable mergers. The research design used was that of a cross sectional survey. The researcher adopted both the qualitative (interview guide) and quantitative (closed ended questionnaire) research approaches. Quantitative data was analyzed using Statistical Package for the Social Sciences (SPSS) version 16.0 whereas qualitative data was analysed using Content Analysis. The sampling technique was purposive sampling, due to the fact that many companies fall below the notification threshold and the fact that only the Competition and Consumer Protection Commission is tasked by law to review and authorize mergers. The sample size for this study, in particular the administration of questionnaires was 60 whereas the sample size for the interviews was 14. The samples comprised of the Competition and Consumer Protection Commission, Private Companies, Law Firms and Accounting firms. The findings of the research show that the myriad of factors that lead to the non-notification of notifiable mergers in Zambia are high notification fees, longer merger review process, negligence of the law, ignorance of the law, notification process not being digital and lack of adequate sensitizations on mergers. The results show that the merger review process to a larger extent leads to the non-notification of notifiable mergers in Zambia particularly its duration. In conclusion, the research concludes legal, financial and informational factors have lead to the non-notification of notifiable mergers in Zambia. The findings of the research fills in the gaps in knowledge of the factors that lead to the non-notification of notifiable mergers in Zambia and provides a basis upon which to make recommendations. The research recommends that the Ministry of Commerce, Trade and Industry should come up with a Statutory Instrument (SI) that

aims at reducing the merger notification fees. A set of recommendations to the Competition and Consumer Protection Commission include the review the Competition and Consumer Protection Act ( the “Act”)with the aim of reducing the number of days it takes to review a merger; stiffening the penalties for implementing a notifiable merger without authority; increase sensitizations on mergers; make the merger notification process digital; decentralise the mergers department to other provinces and lastly work hand in hand with other regulators such so as to track notifiable mergers that have not been notified.

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## CHAPTER ONE - INTRODUCTION

### 1.1 Background to the study

It has been recognized that in the absence of merger control regulation, society would see harm to business as suppliers become uncompetitive, inefficient, costly and not responsive to their competitive environment as well as harm consumers (Kaira, 2009). Weak merger laws would lead to higher prices and higher public demand for direct regulation of the concentrated sectors of the economy (Kaira, 2009).

Merger control takes two approaches at the international level. The first approach which is predominantly practiced in developed countries is the post-merger notification process where parties merge when they are certain that their merger does not infringe on the merger control or competition provisions in a particular legislation (International Competition Network Merger Guidelines Workbook, 2006).

The second approach which is predominantly used in developing countries is the pre-merger notification process (mandatory) or system where no notifiable merger or takeover is permitted to be effected without the authorization of the Competition Authority (International Competition Network Merger Guidelines Workbook, 2006). In this system, parties are prohibited from consummating the merger without clearance from the competition authority failure to which sanctions or penalties are imposed on the parties (International Competition Network ICN Merger Guidelines, 2006). The results of the mandatory notification can be grouped as: Approve the merger without conditions; Approve the merger with conditions and Reject the merger (International Competition Network ICN Merger Guidelines, 2006).

A system of merger control came into operation in Zambia in 1997 and it is governed by Part IV of the Competition and Consumer Protection Act No.24 of 2010 and supplemented by the Competition and Consumer Protection (General) Regulations (CCPC Guidelines for Merger Regulations, 2015). The Competition and Consumer Protection Commission (the "Commission") which is a statutory body under the Ministry of Commerce, Trade and Industry is responsible for

conducting merger regulations as well as other aspects of competition and consumer protection legislation (CCPC Guidelines for Merger Regulations, 2015).

According to the CCPC Guidelines for Merger Regulations (2015), there are three determinants that make a merger to be notifiable with the Commission. Firstly, the merger must result in a change of control, meaning there must be a change of ownership of the companies; secondly, there must be local nexus meaning the merger must have effect on the Zambian economy; thirdly, it must meet the merger notification threshold. Parties to a merger that meets the prescribed notification threshold must notify the Commission. The threshold applies to the combined turnover or assets, whichever is higher in Zambia of the merging parties. Currently, the combined assets or turnover, whichever is higher must be at least fifty million fee units (K15,000,000) in their latest financial year, for which figures are available (CCPC Guidelines for Merger Regulations , 2015) .

According to Section 26 of the Competition and Consumer Protection Act No 24 of 2010, a merger that is implemented without the Commission's authority is null and void. Furthermore, according to Section 37 of the Competition and Consumer Protection Act No 24 of 2010, parties that implement a notifiable merger without authority from the Commission are liable to pay the Commission up to 10% of their annual turnover and the merger is still declared null and void till the parties regularize it by paying the fine and then paying the notification fee.

The Commission noted an increase in the number of mergers notified with it. The Commission reviewed a total number of 35 mergers in 2015, 49 in 2016 and 65 in 2017 respectively (CCPC Annual Reports 2015, 2016 and 2017). In 2015 no notifiable merger was implemented without authorization, 3 notifiable mergers were implemented without authorization in 2016 whereas a total number of 5 notifiable mergers were implemented without authorization from the Commission in 2017 (CCPC Mergers Internal Directory, 2016 and 2017) as well as other cases that the CCPC has not captured. The Commission noted that most of the mergers that were implemented without authorization were in Services (4), Mining (1), agriculture (1), Manufacturing (1) and Real Estate (1). The Commission noted that Most of the parties who implemented mergers without approval gave various reasons such as ignorance, negligent of merger laws and some expressed concern over the merger review process and its requirements etc (CCPC Mergers Internal Directory, 2016 and 2017).

## **1.2 Statement of the problem**

Despite having the Competition and Consumer Protection Act No 24 of 2010 which is the principal legislation for mergers and the establishment of the Competition and Consumer Protection Commission coupled with numerous sensitizations on the notification of notifiable mergers, the number of mergers that are not notified and should have been notified with the Competition and Consumer Protection Commission has been rising significantly and this can have negative consequences on competition as well as on consumers.

To date there has not been a study of the factors that lead to the non-notification of notifiable mergers in Zambia. As a result of the gaps in knowledge, the research aims to identify factors that lead to the non-notification of notifiable mergers and the possible solutions to this problem which can have negative effects on the economy of Zambia.

## **1.3 Objective of the research**

This section will look at the primary as well as secondary objective(s) of the research

### **1.3.1 Primary Objective**

The primary objective of the study was to investigate the factors that lead to the non-notification of notifiable mergers.

### **1.3.2 Secondary Objective**

In order to achieve the primary objective of the study, the following secondary objectives of the research were identified:

- 1) To profile factors that lead to the non-notification of notifiable mergers.
- 2) To establish the extent to which merger review process contributes to the non-notification of notifiable mergers
- 3) To come up with recommendations on how to deal with the problem of the non-notification of notifiable mergers

### **1.3.3 Research Questions**

- 1) What factors lead to the non-notification of notifiable mergers?
- 2) To what extent does the merger review process contribute to the non-notification of notifiable mergers in Zambia?
- 3) What improvements can be finalized to the merger review process so as to deal with the prevailing problem of non-notification of notifiable mergers?

### **1.3.5 Ethics Statements**

As with every other research, this research will probably raise some ethical issues such as some people might be disturbed from their daily work, chores and activities. Importantly to mention, the research will take into account all the ethical issues that might arise in order conform or to obey the standards of research. Furthermore, ethical clearance was gotten from the Directorate of Research and Graduate Studies (DRGS) at the University of Zambia of which the forms are attached in the appendix.

To begin with, prospective respondents will be told that that participation is not mandatory and it is on voluntary basis, meaning they can either agree to take part or not. The information gathered in this research will be highly confidential (strictly) and the identity of the respondents will not be revealed.

In addition, their names will not be indicated on the questionnaires. Furthermore, the respondents will be told that the purpose of this study is mainly for academic purposes. Lastly, this been a non-experiment research, the respondents will not be harmed any way either physical or mental.

### **1.4 Justification of the Study**

This study is significant for policy makers; Ministry of Commerce, Trade and Industry; the Competition and Consumer Protection Commission; companies as well as stakeholders as it will inform them of the factors that lead to the non-notification of notifiable mergers and the possible solutions to this problem which can have negative effect on the economy.

With regards policy making, the Government as well as the line Ministry, in this case the Ministry of Commerce, Trade and Industry with the help of this research will be informed of the factors leading to the non-notification of notifiable mergers and as such may come up with new laws governing merger regulations, new policies or amend the existing policies and laws regarding merger regulation in Zambia.

With regards the Competition and Consumer Protection Commission (Commission), the study will inform the Commission of the factors as to why companies do not notify mergers so as to well understand this phenomenon and address it by engaging Government in particular Ministry of Commerce, Trade and Industry of the possible policy changes or laws. With regards to stakeholders such as law firms and accounting firms which merge and on often times act on behalf of parties to merger transactions, the study will inform them of the factors that lead to the non-notification of mergers. Lastly but not the least, the study contributes to the gap that exists as to the reasons why companies that should essentially notify their transactions do not.

### **1.5 Scope of the Study**

The research will take a survey approach investigating the factors that lead to the non-notification of notifiable mergers in Zambia. The time delimitation of the study is over the three year period from 1st January 2015 to 31st December 2017 and the study location is Lusaka. A survey will be conducted using questionnaires administered to law firms, accounting firms, private companies and in depth interviews with the Competition and Consumer Protection Commission (CCPC), Law firms, Accounting firms and Private Companies.

Answered questionnaires will be collected, checked and coded to ensure that data is complete and accurate. The instruments of data analysis will be a computer software program called Statistical Package for the Social Sciences (SPSS) which is the most suitable instrument for analysis of quantitative data. Advantages of this data analysis instruments is that it is user friendly and allows for mathematical manipulation as it has inbuilt functions. A codebook will be constructed in which all possible responses for each question will be assigned numbers. The coded responses will be transformed onto the computer using SPSS. Graphs, tables and percentages will be used to aid interpretation of data.

As with regards responses from interview guides, in depth interviews are scheduled to be used when collecting information from CCPC, companies, law firms and accounting firms. These people will be asked questions while the researchers will be taking hand written notes and recording. The researcher will be required to read all the responses to the questions and arrange or group them. The researcher will be required to put similar responses into one category and those which are not similar into another category and then tallied and coded in tables. Lastly but not the least, the responses will be written in narrative form.

The chief advantages of using interviews as a data collection tool is that the researcher has a chance to ask other questions which may not be on the guide in order to get a full understanding of the topic. Moreover, in depth interviews promote privacy, and respondents are likely to be more truthful hence leading to the collection of accurate data. This is because for in-depth information to come out it requires the informants to open up and allows the interviewer to be responsive to individual differences and situational characteristics.

### **1.6 Limitations of the Study**

In carrying out this study, the researcher encountered a host of limitations among them client confidentiality, data collection methods, time and other resources limitation.

The first limitation was that of data collection methods where the researcher relied on closed ended questionnaires as some respondents would have loved open ended questionnaires which they can write brief responses as opposed to ticking. Secondly, the limited availability of information and communication technologies was another limitation that was encountered. Thirdly, the research only included Lusaka based companies, law firms and accounting firms thus excluding those from other provinces. Fourthly, there was no literature review relating directly to the problem of the non-notification of notifiable mergers. Fifthly, some questionnaires were not fully completed by the respondents. Sixthly, the study did not show which of the companies actually implemented a merger without authority.



## **1.7 Adopted definitions**

**Merger-** where an enterprise, directly or indirectly, acquires or establishes, direct or indirect, control over the whole or part of the business of another enterprise, or when two or more enterprises mutually agree to adopt arrangements for common ownership or control over the whole or part of their respective businesses.

**Merger review process-** involves all the steps from filling a merger till a decision is made by the Competition and Consumer Protection Commission.

**Notification-** Notification entails the lodging in of all relevant documents with the Competition and Consumer Protection Commission and the payment of a statutory notification fee.

**Merger Notification Fee-** this is the money parties to a merger pay to the Competition and Consumer Protection Commission for processing of a merger.

## **1.8 Organization of the Study**

**First Chapter-**Introduction: contains the background of the of the study, statement of the problem, research objectives, research questions, ethics statement, justification of the study, scope of the study, limitations of the study and adopted definitions.

**Second Chapter-** Literature Review: explains both theoretical and empirical evidence of the study. It lays the foundation of the study by looking at what other researchers have discovered in their various studies on related subjects. It also looks at the theories that can be used to explain why there is the regulation of mergers i.e problem of the non-notification of notifiable mergers.

**Third Chapter-** Research Methodology: give details of the research design, research philosophies, and sources of data and instruments of data collection, sample size and sampling techniques that was used in the study to obtain all the results from the study.

**Fourth Chapter-** Data Presentation and Analysis: Presents all the data that was gathered from the research in the in form of tables, pie charts for analysis purposes.

**Fifth Chapter-** Summary of Findings, Conclusions and Recommendations: gives a summary of the research findings and conclusions for the data that was collected and analysed. It gives recommendations for policy, practice and suggestions for future study.

## **CHAPTER TWO-LITERATURE REVIEW**

### **2.0 Introduction**

This section lays the foundation of the study by looking at what other researchers have discovered in their various studies on related subjects. The researcher will formulate a working definition of a merger, notifiable merger, and non-notifiable merger. The researcher will also look at the types of mergers, motives as to why companies merge, look at pre-merger notification and look at experiences from other countries and lastly look at the theories that can be used to explain the problem of the non-notification of notifiable mergers.

### **2.1 Defining a Merger**

In its simplest terms, a merger is defined as a combination of two or more companies into one larger company. The Competition and Consumer Protection Act No 24 of 2010 defines a merger as where an enterprise, directly or indirectly, acquires or establishes, direct or indirect, control over the whole or part of the business of another enterprise, or when two or more enterprises mutually agree to adopt arrangements for common ownership or control over the whole or part of their respective businesses (CCPA, 2010).

According to the Competition and Consumer Protection Act No 24 of 2010 (CCPA), A merger contemplated in Zambia may be achieved in the following circumstances: (a) where an enterprise purchases shares or leases assets in, or acquires an interest in, any shares or assets belonging to another enterprise; (b) where an enterprise amalgamates or combines with another enterprise; or (c) where a joint venture occurs between two or more independent enterprises. It is important to recognize that in Zambia, there is no distinction between merger, acquisition, or joint venture as they are all mergers under the Competition and Consumer Protection Act No 24 of 2010. In this regard, a merger can happen through the acquisition of shares, assets or an agreement to work together in a joint venture (CCPA, 2010).

## **2.2 Definition of a Notifiable Merger**

According to the CCPC Guidelines for Merger Regulations (2015), a notifiable merger is a merger that meets three criteria, that is it must result in a change of control, have a local nexus and must meet the notification threshold.

### **2.2.1 Change of control**

Acquiring shares or otherwise exercising control of another enterprise is the most common route to creating a merger . However, a merger may also be consummated without one enterprise necessarily acquiring formal control over another but through the acquisition of part of the business assets of another enterprise or through common ownership arrangements between enterprises (CCPC Guidelines for Merger Regulations, 2015). Control has been categorized as de jure (by law) control and de facto (by fact) control (CCPC Guidelines for Merger Regulations, 2015). While de jure control is express, de facto control comes as a result of acquisition or establishment of material influence

With regards change of control ,the definition of a merger above means that the acquisition of control is not limited to the acquisition of outright voting control (i.e. direct control) but applies to situations that fall short of this (indirect control) (CCPC Guidelines for Merger Regulations, 2015). In particular “material influence” may sometimes be exercised when the acquiring enterprise owns only a small proportion of the shares but may nonetheless still be able to control the strategic direction of the target or merged enterprise (CCPC Guidelines for Merger Regulations, 2015) . Material influence can be exercised in various ways and its assessment requires a case-by case analysis of the overall relationship between the acquiring enterprise and the target enterprise (CCPC Guidelines for Merger Regulations, 2015) .

### **2.2.2 Local Nexus**

Local nexus meaning the merger must have effect on the Zambian economy. Mergers that occur outside Zambia but have a material bearing on the Zambian markets will be considered to

have a local connection (local nexus) and hence notifiable (CCPC Guidelines for Merger Regulations, 2015). In this regard, the Commission will only assert its jurisdiction if the transaction has an appropriate local nexus. For companies wholly domiciled outside Zambia, local nexus may come as a result of their presence in the Zambian markets either through export sales or the presence of their subsidiaries (CCPC Guidelines for Merger Regulations, 2015).

### **2.2.3 Threshold**

Parties to a merger that meets the prescribed notification threshold must notify the Commission. The threshold applies to the combined turnover or assets, whichever is higher in Zambia of the merging parties. Currently, the combined assets or turnover, whichever is higher must be at least fifty million fee units (K15,000,000) in their latest financial year, for which figures are available (CCPC Guidelines for Merger Regulations , 2015) .

## **2.3 Types of Mergers**

There are basically three types of mergers which are: Horizontal mergers, Vertical mergers and Conglomerate mergers.

### **2.3.1 Horizontal merger**

A horizontal merger is one between parties that are competitors at the same level of production and/or distribution of a good or service, it is the elimination of rivalry between the overlapping activities of the merging parties that may directly lead to harm to – or loss of – competition (Merger Guidelines Workbook, 2006). The focus of analysis in horizontal mergers is on evaluating how the competitive incentives of the merging parties and their rivals might change as a result of the merger (Merger Guidelines Workbook, 2006). The merging parties may 11 behavior efficiency gains and in some circumstances this may intensify rivalry and be beneficial for consumers. It is the competition authorities' task to ensure that the merger is not likely to enable firms to harm consumers or customers (where products or services are not sold directly to final

consumers), e.g., by profitably raising prices, reducing quality or restricting innovation (Merger Guidelines Workbook, 2006).

There are two mainstream theories of competitive harm. These are unilateral effects and coordinated effects (Merger Guidelines Workbook, 2006). Unilateral effects – also known as non-coordinated effects – arise where, as a result of the merger, competition between the products of the merging firms is eliminated, allowing the merged entity to unilaterally exercise market power, for instance by profitably raising the price of one or both merging parties' products, thus harming consumers (Merger Guidelines Workbook, 2006). In theory, all horizontal mergers involve firms active in the same relevant market and therefore remove some competitive constraint: the critical issue is how to distinguish economically 'important' competitive constraints from 'unimportant' ones (Merger Guidelines Workbook, 2006).

Coordinated effects arise where, under certain market conditions (e.g., market transparency, product homogeneity etc.), the merger increases the probability that, post-merger, merging parties and their competitors will successfully be able to coordinate their behavior in an anti-competitive way, for example, by raising prices (Merger Guidelines Workbook, 2006). The main issue, here, is not the market power of the merging parties resulting from the merger, but, instead, whether the merger will create or strengthen certain market conditions which allow firms in the market (not only the merged entity) to successfully coordinate their actions to the disadvantage of consumers (or customers) (Merger Guidelines Workbook, 2006).

### **2.3.2 Vertical mergers**

Vertical mergers are mergers between enterprise which operate at different levels of the production or supply chain of an industry (CCPC Guidelines for Merger Regulations, 2015). Competition authorities are mostly concerned with these types of mergers when one of the parties has a dominant position of market power in either market. Vertical mergers have significant potential to create efficiencies largely because the upstream and downstream products or services complement each other. Even so, vertical integration may sometimes give rise to competition concerns. A key question is whether the vertical merger is expected to force rivals from the market, raise their costs levels or raise barriers to entry in a manner that lessens

competition. In some jurisdictions, such effects are usually broadly referred to as ‘market foreclosure effects (CCPC Merger Guidelines, 2015).

### **2.3.3 Conglomerate mergers**

Conglomerate mergers involve firms that operate in different product markets, without a vertical relationship (Merger Guidelines Workbook, 2006). They may be product extension mergers, i.e., mergers between firms that produce different but related products or pure conglomerate mergers, i.e., mergers between firms operating in entirely different markets. In practice, the focus is on mergers between companies that are active in related or neighbouring markets, e.g., mergers involving suppliers of complementary products or of products belonging to a range of products that is generally sold to the same set of customers (Merger Guidelines Workbook, 2006).

## **2.4 Motives as to why companies merge**

There are three main motives as to why firms merge which are: (1) Mergers are undertaken by managers in order to utilize synergy gains (synergy motives); (2) Mergers are undertaken by managers to benefit themselves at the expense of their shareholders (agency motives); (3) Mergers are undertaken by managers because of valuation errors (hubris/behavioural motives).

### **2.4.1 Mergers are undertaken by managers in order to utilize synergy gains (synergy motives); Synergy Motive**

Under the synergy motive, it is argued that firms are likely to obtain synergistic gains by acquiring: poorly-run firms with the aim to improve efficiency by disciplining or eliminating inefficient managers (Manne, 1965; Palepu, 1986; and Bhagat et al., 1990). Secondly, under the synergy motives, mergers happen in response to various market phenomena, such as industry shocks and technological changes (Mitchell and Mulherin, 1996; and Jovanovic and Rousseau, 2002). Lastly but not the least under the synergic motives, mergers happen in response to financing opportunities (Lewellen, 1971; Myers and Majluf, 1984; and Fluck and Lynch, 1999).

### **2.4.2 Mergers are undertaken by managers to benefit themselves at the expense of their shareholders (agency motives)**

With regards the Agency motives, the agency motive is a fundamental building block of the modern corporate finance literature (Jensen, 1986; Tirole, 2005). A key assumption in the corporate finance literature is that managers pursue policies primarily to benefit themselves even if these policies lead to a reduction in the value of their firms (see Becht et al., 2003; Tirole, 2005). Unlike the synergy literature, the Mergers literature based on the agency theory suggests that the key driver of mergers is the self-interest of the acquirers' incumbent managers, which may diverge from the interests of their shareholders (Jensen, 1986).

### **2.4.3 Mergers are undertaken by managers because of valuation errors (hubris/behavioural motives)**

Under the behavioural motives, Roll (1986) argues that managers pursue Mergers because they are overconfident and/or over-optimistic in estimating the value of target firms and merger synergies. Moreover, due to their optimism, they may end up paying too much for their targets. As Roll (1986) notes, there may be fundamental reasons (e.g. synergy or agency) why a firm may want a merger. But those reasons alone may not be enough to spark an acquisition. What actually triggers an acquisition is the acquirers' managers' subjective estimate of the value of synergy gains (Roll, 1986).

## **2.5 Types of merger Control**

Merger control takes two approaches at the international level which are post-merger notification and pre-merger notification.

### **2.5.1 Post-merger notification**

The first approach which is predominantly practiced in developed countries is the post-merger notification process where parties merge when they are certain that their merger does not infringe on the merger control or competition provisions in a particular legislation (International Competition Network Merger Guidelines Workbook 2006).



### **2.5.2 Pre-merger notification**

The second approach which is predominantly used in developing countries is the pre-merger notification process (mandatory) or system where no notifiable merger or takeover is permitted to be effected without the authorization of the Competition Authority (International Competition Network Merger Guidelines Workbook, 2006). In this system, parties are prohibited from consummating the merger without clearance from the competition authority failure to which sanctions or penalties are imposed on the parties (International Competition Network Merger Guidelines Workbook (2006). The results of the mandatory notification can be grouped as: Approve the merger without conditions; Approve the merger with conditions and Reject the merger.

## **2.6 Theoretical Formulation**

A number of theories can be used to explain why there is regulation of mergers and these include the following;

### **2.6.1 Public Interest Theory**

This theory holds that regulation is supplied in response to the demand of the public for the correction of inefficient or inequitable market practices (Posner, 1974). Advocates of the public interest theories of regulation see its purpose as achieving certain publicly desired results which, if left to the market, would not be obtained (Gaffikin, 2005). The regulation is provided in response to the demand from the public for corrections to inefficient and inequitable markets. Thus, regulation is pursued for public, as opposed to private, interest related objectives (Gaffikin, 2005).

According to public interest theory, government regulation is the instrument for overcoming the disadvantages of imperfect competition, unbalanced market operation, missing markets and undesirable market results (Domas, 2003). Regulation can improve the allocation by facilitating, maintaining, or imitating market operation. The exchange of goods and production factors in

markets assumes the definition, allocation and assertion of individual property rights and freedom to contract (Domas, 2003).

Public Interest Theory is a part of welfare economics and emphasizes that regulation should maximize social welfare and that regulation is the result of a cost/benefit analysis done to determine if the cost to improve the operation of the market outweighs the amount of increased social welfare (Domas, 2003).

### **2.6.2 Economic Regulation Theory**

Emerging from Chicago, Economic Regulation Theory is seen as a positive (economic) theory in which Stigler attempted to provide a theoretical foundation for an earlier notion of political theory (Stigler, 1971). As a positive theory it assumes that regulators (political actors) are utility maximisers. Although the utility is not specified it would seem to mean securing and maintaining political power (Majone, 1996:31).

The theory is based on two simple but important insights. The first is that since the coercive power of government can be used to give valuable benefits to particular individuals or groups, economic regulation, the expression of that power in the economic sphere can be viewed as a product whose allocation is governed by laws of supply and demand (Posner, 1974). The second insight is that the theory of cartels may help us locate the demand and supply curves (Posner, 1974).

In order to do this they need votes and money, resources able to be provided by groups positively affected by regulatory decisions (Posner, 1974). Thus, the regulators have been “captured” by such (special) interest groups who “seek to expropriate wealth or income. Income may take various forms, including a direct subsidy of money, restrictions on the entry to an industry of new rivals, suppression of substitute and competitive products, encouragement of complementary products, and price fixing” (Stigler, 1971:7)

This theory helps in viewing regulation as a product allocated in accordance with basic principles of supply and demand, and directs attention to factors bearing on the value of regulation to particular individuals or group, since, other things being equal, we can expect a product to be supplied to those who value it the most (Posner, 1974). It also directs our attention to the factors bearing on the cost of obtaining regulation. The theory of cartels illuminates both the benefit and the cost side (Posner, 1974). The value of cartelization is greater, the less elastic the demand for the industry's product and the more costly, or the slower, new entry into the industry (or cartelized markets within the industry) (Posner, 1974).

## **2.7 Empirical Evidence on Mergers**

### **2.7.1 A global survey**

In a significant number of jurisdictions around the world, pre-merger notification is considered essential to allow governments either to stop anticompetitive mergers or to negotiate remedies with the parties (Choe, 2006). The fundamental rationale for such notification provisions is to give the regulatory bodies time to challenge mergers, and seek modifications if necessary, before they are realized. It also avoids the costly and complicated process of seeking an order through the courts to unscramble a merger after it has been consummated. While a handful of countries such as Argentina, Japan, and Russia have post-merger notification regimes, various pre-merger review policies have proliferated recently around the world, notably in new democracies and developing economies (Choe, 2006).

According to Battistoni (2002), there are more than seventy jurisdictions around the world (excluding the U.S. and the E.U.) that have some form of pre-merger review, and the UNCTAD reports giving over 50 developing or transition economies technical assistance in the area of competition policy since 1980.

Furthermore, according to the Lex Mundi survey on Pre-Merger Notification Systems by Gonzalez and Benitez (2008), 41 out of 48 countries had a compulsory notification system, whereas the seven remaining countries have a voluntary system. Among the latter group of countries we have Australia, Chile, New Zealand, United Kingdom and Venezuela (Gonzalez

and Benitez, 2008). One of the characteristics of the mechanism denominated obligatory is that not all the transactions need to be reported. Generally, there are well-defined thresholds, in terms of the transaction and parties' size, above which firms are obliged to report the merger and wait until the Competition Authority makes a pronouncement that merger is approved. In contrast, all the transactions below the threshold can be consummated without a formal approval of the Competition Authority (Gonzalez and Benitez, 2008).

### **2.7.2 A case of Australia**

In view of the costs and complexities associated with compulsory or mandatory notification, a study was conducted by Choe (2006) in order to analyse a system of voluntary notification and to examine whether compulsory notification is necessary for consumer protection and the efficient functioning of an antitrust merger policy.

This was done by studying an existing voluntary merger notification regime, specifically Australia Trade Practices Act of 1974 which proscribes mergers that substantially lessen competition, but it does not compel pre-merger notification (Shekhar and Williams 2004). Instead, parties to a transaction are given the option of voluntary notification before they consummate the merger. The regulator however, can challenge a completed merger that was not notified. Shekhar and Williams (2004) compiled a sample of 850 mergers between January 1996 and June 2002 from the Australian Competition and Consumer Commission (ACCC) public register in order to conduct an event study to measure private benefits of mergers and also collected price data from for all sample companies that are publicly traded in Australia.

The proposals were classified according to the identity of the notifying party (Shekhar and Williams 2004). The companies proposing the merger must be one of the notifying parties for the transaction to be classified under "Initiated by Parties". If notification was received from sources other than the companies in question, the proposal was classified as "Initiated by others" (Shekhar and Williams 2004). Mergers are classified as Objected if the ACCC raised concerns, and Not Objected otherwise. Their results showed that out of 547 mergers initiated by parties, 499 (91.22%) were not objected, 48 (8.77%) were objected, 35 (6.39%) were renegotiated

whereas 13 (2.37%) were withdrawn. Of those initiated by others, there were a total of 303, of which 295 (97.35%) were not objected, 8 (2.64%) objected, 2 (0.66%) renegotiate and 6 (1.98%) were withdrawn (Shekhar and Williams 2004).

### **2.7.3 A case of the United States of America**

In the U.S., Coate, Higgins Mc Chesney (1990) analyzed the factors that influenced Federal Trade Commission (FTC) decisions on more problematic mergers, on a universe of seventy mergers that went to the second request phase, under the revision of the FTC. (Coate, Higgins and Mc Chesney, 1990) . The authors estimated the impact of four industry variables – level of Herfindahl-Hirschman index (HHI), change in HHI, entry barriers and likelihood of collusion- in the chance that the merger were rejected or approved with remedies by the FTC. The results show effectively that these four variables are positively correlated with the possibility that the commission either block the merger or ask for remedies (Coate, Higgins and Mc Chesney, 1990).

Similar analysis was done later by Coate and Ulrick (2006) for a set of second request cases analyzed by the FTC between 1996 and 2003. The results confirm the above findings on effects of the industry and merger parameters in the likelihood of enforcement action. Also, some industry specific effect mattered since mergers in oil, chemical or groceries sectors were more likely to demand action by the FTC (Coate and Ulrick, 2006). The statistics show that in the US, during the period 1997-2006, of the total of mergers notified (27,492 cases), a 67 percent of them received an approval through the early termination and only a 2.7 percent of the total cases passed to the second stage of investigation (ibid) (Coate and Ulrick, 2006).

Usually, the firms' turnover and their asset value are employed as proxy variables of the magnitude of the merger. In the US, if the transaction is above \$252 Millions, the merger must be notified. For lower transactions, the obligation to notify will depend on the size of both parties.

#### **2.7.4 A case of Canada**

On Canada, Khemani and Shapiro (1992) report that concentration and market shares of merging firms are the most important variables at the moment to predict whether a merger will be challenged by the Canadian CA. In addition, their results suggest that entry barriers and the existence of import competition also play a relevant role on the decision of the agency. Furthermore, in Canada, there is obligation to report the merger if the parties have annual sales above C\$ 400 Million (Gonzalez and Benitez, 2008).

#### **2.7.5 A case of the European Union**

Bergman, Jakobson and Razo (2005) found results in the same line for a sample of mergers submitted before the European Commission between 1990 and 2002. They obtain that ex-post-merger market shares, significance of entry barriers and easiness of collusion make more likely that a merger either goes to a second phase revision or to be blocked by the commission. In the European Union, of the 2,471 cases notified during the period 2000-2007, a 46.3% has been resolved through the simplified procedure and only a 4.1% passed to the second stage (Bergman, Jakobson and Razo (2005). In the EU the volume of sales of the involved firms are used to determine the notification threshold (Gonzalez and Benitez, 2008

#### **2.7.6 A case of New Zealand**

In New Zealand, Strong, Bollard and Pickford (2000) studied the determinants of market dominance, according to the assessment done by the competition agency on mergers cases. They obtained that merging firm joint market share and the height of entry barriers had a positive effect in the probability that dominance were found. In particular, when entry barriers were high, having a 75% of market share derives in a 50% of probability of finding dominance. That probability is increased to 95% when the market share rose to 87% Strong, Bollard and Pickford (2000).

## **2.8 Empirical Evidence on Mergers in Zambia**

### **2.8.1 A case of Zambia**

As with regards Zambia, the Competition and Consumer Protection Commission reviewed a total number of 35 mergers in 2015, 49 in 2016 and 65 in 2017 respectively (CCPC Annual Reports 2015, 2016 and 2017). In 2015 no notifiable merger was implemented without authorization, 3 notifiable mergers were implemented without authorization in 2016 whereas a total number of 5 notifiable mergers in 2017 were implemented without authorization from the Commission. The Commission noted that most of the mergers that were implemented without authorization were in the following sectors: Services (4), Mining (1), Agriculture (1), Manufacturing (1) and Real Estate (1) (CCPC Mergers Internal Directory, 2015-2017).

## **2.9 Summary and Conclusion**

However important the studies, reviews and surveys above maybe, they are deficient because most studies focus on the effects of actual regulatory actions, such as the decision of an antitrust enforcer (Competition Authority or Commission) to investigate a merger proposal more in depth or to impose conditions, by so doing they only look at the actual enforcement of the merger policy and law, and as such ignoring the substantial effects that the introduction or changes in the law or policy itself may have on the investors or companies planning to merge, especially in mandatory merger regimes. Furthermore, no study has been done to focus on the reasons as to why there is the non-notification of notifiable mergers especially in pre-merger regimes.

## **CHAPTER THREE-RESEARCH METHODOLOGY**

### **3.0 Introduction**

The purpose of this chapter is to highlight the various aspects of the approach to be used during the research and provides an insight into the methodology adopted in the collection, analysis and interpretation of the data collected for the study. It attempts to provide a detailed analysis of the research plan and tools utilized in the actualization of this study. The researcher will look at the research design, research philosophies, and sources of data and instruments of data collection, research instruments, sample size and sampling technique.

### **3.1 Research Philosophies**

It must be stated from the onset that the philosophy of social science is a notorious minefield, encompassing not only traditional philosophies of natural science but a variety of other ontological, epistemological, methodological and human nature positions (Cresswell, 2007). Many a time, research projects have been found to be inconsistent in theory, methodology and logic, as such an understanding of these is pivotal to any research work (Cresswell, 2007).

Ontology is the starting point and asks questions such like what is the nature of the social world of the researcher wants to study, what is there to know about it and what form of reality should be grasped (Creswell, 2007). Epistemology which follows from ontology asks questions such as what constitutes acceptable knowledge in a particular world view? And what is the basis of the knowledge?. (Creswell, 2007). Others relate to human nature and the methodology which asks questions like how can the inquirer go about finding out whatever can be known (Guba and Lincoln, 1994).

However important the above four philosophical assumptions of research are, epistemology of the research is very vital as it guides the research and has two main positions which are positivism (quantitative research) and interpretivist (qualitative research). Positivism is based on the belief that the behavior in the social world follows certain laws that are discoverable using quantitative methods and as such facts are facts (Elliott & Lukes, 2008). As with regards



interpretivism, there is an acknowledgement that facts and values cannot be separated and that understanding is inevitably prejudiced because it is situated in terms of the individual and the event (Cousin, 2005; Elliott & Lukes, 2008). Researchers recognize that all participants involved, including the researcher, bring their own unique interpretations of the world or construction of the situation to the research and the researcher needs to be open to the attitudes and values of the participants or, more actively, suspend prior cultural assumptions (Mackenzie & Knipe, 2006).

From the above discussion on research philosophies the researcher will adopt both methods, the qualitative(interpretivism) and quantitative approaches (positivism). The researcher used a questionnaire with close ended questions (quantitative approach) and an interview guide (qualitative). The questionnaire survey method was used as it provides a standardized answers because data is numeric and originates from questions that are structured and the results can be summarized in numbers, percentages averages and so on and so forth, thereby facilitating easy analysis (Collins, 1996).

The interview guide was used for the chief advantage that it allows the researcher to have a chance to ask other questions which may not be on the guide in order to get a full understanding of the topic (Heaton, 2004). Moreover, in depth interviews promote privacy, and respondents are likely to be more truthful hence leading to the collection of accurate data (Kvale, 1996). This is because for in-depth information to come out it requires the informants to open up and allows the interviewer to be responsive to individual differences and situational characteristics (Kvale, 1996).

There are many research designs but the one to be used in this research is a cross sectional survey .Cross sectional research design has been chosen as it can be either qualitative or quantitative or mix method are used to gather information on a population at a single point in time.

The advantages of using a this method are that; Good source of ideas about behaviour and Good opportunity for innovation; Good method to study rare phenomena; Good method to challenge

theoretical assumptions (Hamel, Dufour and Fortin, 1993). With regards its weaknesses, it has the following weaknesses; Hard to draw definite cause-effect conclusions, Hard to generalize from a single case and Possible biases in data collection and interpretation (since single person gathers and analyses the information) (Hamel, Dufour and Fortin, 1993).

In a cross-sectional survey, data is collected at a point in time from a sample selected to describe some larger population. It is imperative to state here that the study is an empirical study of the factors that lead to the non-notification of notifiable mergers in Zambia.

### **3.2 Research Design**

Burns and Grove (2003:195) define a research design as “a blueprint for conducting a study with maximum control over factors that may interfere with the validity of the findings”.

According to Cresswell (2005), there are two different research styles and methods; quantitative or positivist researches and qualitative research or phenomenology research.

The qualitative research paradigm has been employed to investigate cultural and social phenomenon throughout the 20<sup>th</sup> century in many disciplines such as anthropology and education when researchers want to explore, describe and understand multiple realities on complex phenomenon within natural and authentic contexts (Cresswell, 2005). Quantitative research on the other hand is all about quantifying the links between variables and uses effect statistics such as correlation coefficient and differences between means of something in two groups that represent views (Cresswell, 2003).

### **3.3 Sources of Data and Instruments of Data Collection**

To ensure the reliability of the information resulting from the research, the researcher deployed the use of the two data types. The data used in this study was thus derived from both primary and secondary sources.

### **3.3.1 Primary Data**

Primary sources are the materials on a topic upon which subsequent interpretations or studies are based, anything from firsthand documents such as poems, diaries and interviews to research results generated by experiments, surveys, and others. The purpose of collecting primary data is that it is empirical, new data that has not been interpreted by anyone.

### **3.3.2 Secondary Data**

Secondary sources of data serve the purpose of giving context and background to the research and often purpose attempt to describe or explain primary sources.

A lot of materials were used in this research was obtained from textbooks, journals, magazines and newspapers as well as the internet. All these served as the secondary source of data.

## **3.4 Research Instruments**

The researcher employed the following instruments to collect primary research data:

*Questionnaires* - a structured questionnaire which contained a series of questions was used. A structured questionnaire has the advantage of presenting questions in sequence. It standardizes the research instruments and equally removes the chances of the respondent tele-guiding the researcher (Collins, 1996).

*Interview Guide*- an interview guide which contained open ended questions was used. The chief advantages of using this data collection tool is that researchers have a chance to ask other questions which may not be on the guide in order to get a full understanding of the topic (Hamel, Dufour and Fortin, 1993).

This study was designed to be facilitated using a survey format hence the use of a carefully designed and standardized questionnaire that allows respondents to answer certain collated questions as well as interview guides. Questioning involves using a questionnaire (data

collection instrument) to ask respondents questions to secure the desired information. The result of the questionnaire was combined with data collated from interviews, secondary sources as well as observations, to draw concluding inferences.

### 3.5 Sample Size (Research Population)

Sampling is the act, process, or technique of selecting a suitable sample, or a representative part of a population for the purpose of determining parameters or characteristics of the whole population (Webster, 1985).

The sample size for this study, in particular the administration of questionnaires is 60, comprising of companies, law firms and accounting firms. The rationale behind the adoption of this sample size is because; firstly, it is cheaper in terms of costs, Secondly, it is faster to deal with only a targeted population as it also saves on time. Lastly, it is also reductive as one is able to reduce the population to a manageable size and a greater scope of detailed information will be collected as the sample is representative of the population. The sample size for the interviews is 14 comprising of the Competition and Consumer Protection Commission, Private Companies, Law Firms and Accounting firms.

Table 1: Sample Size Distribution

<b>Group</b>	<b>Questionnaire Composition</b>	<b>Interviews</b>
CCPC employees		3- Interviews
Companies	30 -Questionnaires	5 Interviews
Law firms	15 Questionnaires	3-Interviews
accounting firms	15 Questionnaires	3-Interviews
<b>Total</b>	<b>60</b>	<b>14</b>

### **3.6 Sampling Techniques**

Due to the fact that Zambia has many companies most of which their turnover or assets falls below the notification threshold, the fact that only the Competition and Consumer Protection Commission is tasked by law to review and authorize mergers, for these above reasons purposive sampling will be used.

Purposive Sampling is a non-probability sampling technique that ensures that only people relevant to the study are chosen (Patton, 2002). The purposive sampling technique, also called judgment sampling, is the deliberate choice of a participant due to the qualities the participant possesses (Bernard, 2002). Simply put, the researcher decides what needs to be known and sets out to find people who can and are willing to provide the information by virtue of knowledge or experience (Patton, 2002). Lastly but not the least it is less expensive and time-consuming (Patton, 2002).

Therefore, the research will use the positivist (quantitative) and the interpretivist (qualitative) research philosophies.

### **3.7 Data Analysis**

Quantitative data collected through questionnaires was analyzed using Statistical Package for the Social Sciences (SPSS) version 16.0. As of qualitative data collected through interviews, data was analysed using Content Analysis where by the researcher wrote down all the responses (including those gotten through recordings) and arranged or group them. The researcher grouped those responses which are similar and put them into one category and those which are not similar into another category and then tallied and coded in tables. The responses were written in narrative form. Lastly, the results from the questionnaires were combined with data collected from interviews in order to draw inferences.

## CHAPTER FOUR - DATA ANALYSIS AND PRESENTATION

### 4.0 Introduction

This chapter focuses on the analysis and presentation of data gathered from the field research. The researcher used the circulated questionnaires and interview results as the source of data referred to in this analysis.

### 4.1 Response Rate

The questionnaire response rate was 100% as the researcher had to distribute more questionnaires than the target to ensure a 100% response rate. The response rate for the interviews was 100% as the researcher managed to meet all of the interviewees. All this was as a result of follow up on respondents to ensure that they participate in completing the questionnaires and take part in the interviews. The researcher had to be flexible in ensuring that the interviews are at the convenience of the interviewees. The response rates are presented on the table below.

**Table 2: Response Rate**

	Sample Size	Respondents	Percentage
Questionnaires	60	60	100%
Interviews	14	14	100%

*Source: Primary Data*

## 4.2 Profiles of the Respondents

### 4.2.1 Gender

A total of 39 males responded to the research and these accounts for 65% of the respondents where as a total of 21 females responded and accounted for 35% of the respondents to the research.

**Table 3: Profile of the Respondents**

	<b>Number</b>	<b>Percentage</b>
Male	39	65%
Female	21	35%
Total	60	100%

### 4.2.2 Places of work

A total of 15 respondents were from law firms which represented 25% of the respondents, a total of 15 respondents were from accounting firms and represents a total of 25% where as a total of 30 respondents were from private companies and represent 50% of the respondents to the research. Respondent's responses are to a large extent influenced by their work place.

**Table 4: Places of work of the respondents**

<b>Work Place</b>	<b>Number</b>
Law Firms	15
Accounting Firms	15
Private Company	30

### 4.2.3 Responses from the interview guides.

In order to have a deeper understanding of the factors that lead to the non-notification of notifiable mergers, the researcher used interviews of selected respondents. The profile of the respondents of interviewees was as follows:

**Table 5: Profile of the respondents in relation to interview guides**

	<b>Competition and Consumer Protection Commission (CCPC)</b>	<b>Law firms</b>	<b>Accounting Firms</b>	<b>Private Companies</b>
Interviewees	3	3	3	5

### 4.2.4 Cross Tabulation of Work Place and Gender

A cross tabulation of gender and work place showed that of the 15 respondents from law firms, 7 were male whereas 8 were female; 10 respondents of accounting firms were males whereas 5 were female and that 22 respondents from private companies were male as compared to 8 female respondents from private companies.

What is your gender? \* Where do you work? Cross tabulation

**Table 6: Cross Tabulation of Gender and Place of Work**

Count		Where do you work?			Total
		Law firm	Accounting Firm	Private Company	
What is your gender?	Male	7	10	22	39
	Female	8	5	8	21
Total		15	15	30	60



## **Objective 1**

### **4.3 Objective 1: To profile factors that lead to the non-notification of notifiable mergers in Zambia**

#### **Research Question 1: What factors lead to the non-notification of notifiable mergers in Zambia?**

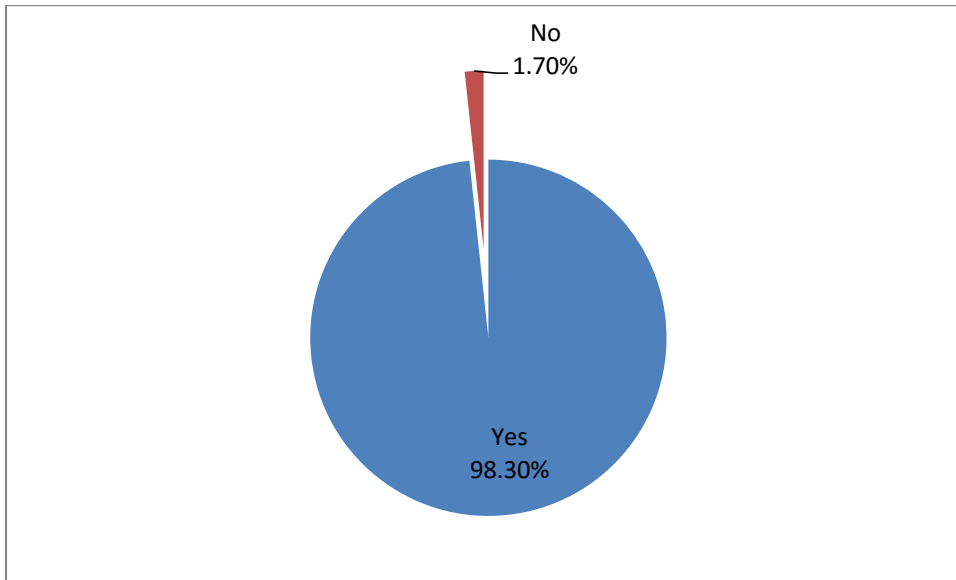
In order to get views from respondents on what they think the factors that lead to the non-notification of notifiable mergers in Zambia are, the researcher used a well-designed questionnaire as well as interview guide so as to profile the factors.

With regards the standardized questionnaire, the following were the responses:

#### **4.3.1 Ever heard of the Competition and Consumer Protection Commission-*Question 3***

59 of the respondents accounting for (98.3%) answered 'Yes' that they had ever hear of the Competition and Consumer Protection Commission whereas 1 (1.7%) answered 'No'.

Ever heard of the Competition and Consumer Protection Commission?



**Figure 1: Knowledge of the Competition and Consumer Protection Commission**

**4.3.1.2 Have you ever heard of the Competition and Consumer Protection Commission\*  
Where do you work Cross tabulation**

**Have you ever heard of the Competition and Consumer Protection  
Commission? \* Where do you work? Crosstabulation**

**Table 7: Cross tabulation of ever hearing of the Competition and Consumer  
Protection Commission and Where do you work**

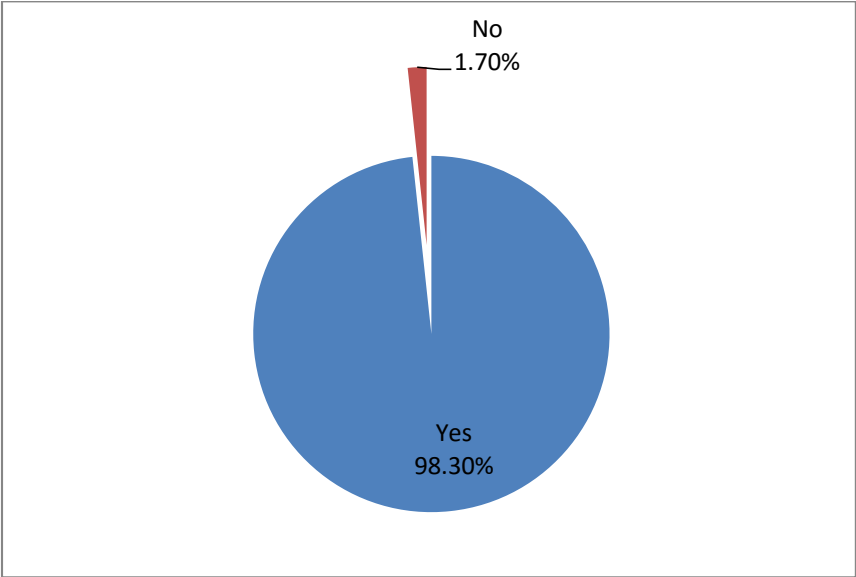
Count		Where do you work?			Total
		Law firm	Accounting Firm	Private Company	
Have you ever heard of the Competition and Consumer Protection Commission?	Yes	15	14	30	59
	No	0	1	0	1
Total		15	15	30	60

A cross tabulation of work place and if they had ever heard of the Competition and Consumer Protection Commission above showed that all respondents from law firms (100%) and Companies (100) have heard of the Competition and Consumer Protection Commission whereas one respondent from an accounting firm had never heard of the Competition and Consumer Protection Commission.

**4.3.2 Do you know what a merger is-Question 7?**

When asked if they knew what a merger is, 59 of the respondents which accounts for 98.3% responded that they knew what a merger is as opposed to 1 and accounting for 1.7% of the respondents.

Do you know what a merger?



**Figure 2: Knowledge of the term Merger**

**4.3.3 Is the merger regime in Zambia or regulation in Zambia mandatory or voluntary – Question 8**

Respondents to question 8 of the questionnaire which asked the question of whether or not the merger regime in Zambia is mandatory or voluntary showed that 39 (65%) were of the view that it is mandatory and 16 (26.7%) were of the view that it is voluntary while 5 (8.3%) were not

required to respond. The above results showed that a good number of the respondents (26.7%) who think notification of mergers is voluntary are ignorant of the fact that the merger regulation in Zambia is mandatory, and all notifiable mergers in Zambia should be notified.

Is the merger regime or regulation in Zambia mandatory or voluntary?

**Table 8: Merger Regime in Zambia**

Position	Percent %
Mandatory	65
Voluntary	26.7
Not applicable	8.3
Total	100

#### 4.4.4 Are all mergers supposed to be notified with the regulator? - *Question 9*

When quizzed further to find out if all mergers are supposed to be notified with the regulator, of the respondents that attempted this question, a total of 20 (33.3%) answered 'Yes' whereas 37 (61.7%) answered 'No' and 'No response' of 3 (5%). The results obtained showed that even though the merger regime in Zambia is mandatory (suspensory), good number of the respondents are aware of the fact that not all mergers are supposed to be notified with the regulator except those which are notifiable despite the country having a mandatory notification requirement.

Are all mergers supposed to be notified with the regulator of mergers?

**Table 9: Knowledge on whether all mergers are supposed to be notified**

Position	Percent %
Yes	33.3
No	61.7
No Response	5
Total	100

#### 4.4.5 Are there conditions that must be met for a merger to be notified?-Question 10

From table 11 below, 44 of the respondents accounting for (73.3%) answered ‘Yes’ that there are merger conditions that must be met for a merger to be notified with the regulator whereas 1 respondent answered ‘No’ accounting for 1.7% responded that there are no conditions that must be met whereas 15 (25%) were not required to respond . The results obtained with this question show that most respondents are aware that there are conditions that must be met in order for a merger to be deemed a notifiable merger.

If no to question 9, are there conditions that must be met for a merger to be notified?

**Table 10: Conditions for Notification**

<b>Position</b>	<b>Percent %</b>
Yes	73.3
No	1.7
Not applicable	25
Total	100

#### 4.4.6 Which of these transactions should be notified with the regulator?-Question 12

When asked as to which of the below transactions should be notified with the regulator, only 27 accounting for 45% answered correctly that only transactions involving parties with turnover or assets of 15 Million Kwacha and above should notify their transactions. The results indicates that although respondents are aware of the fact that notification is mandatory and that not all mergers are notifiable mergers, only 45% are aware of the conditions that make a merger notifiable and the remaining 55% have a poor understanding of the requirements for merger notification, thus contributing to the non-notification of notifiable mergers.

Which of these transactions should be notified with the regulator?

**Table 11: Threshold conditions for merger notification**

	Frequency	Percent
If turnover or assets of the parties is below 10 million	1	1.7
If turnover or assets of the parties is between 10 and 15 million	2	3.3
If turnover or assets of the parties is 15 million and above	27	45.0
If turnover or assets of the parties is 25 million and above	12	20.0
No Response	18	30.0
Total	60	100.0

**4.4.6.1 Crosstab which of these transactions should be notified with the regulator\* where do you work**

A cross tabulation of the questions of which of these transactions should be notified with the regulator and places of work showed that all the law firms that responded to the question are aware of the fact that only transactions involving parties with turnover or assets of 15 Million and above should notify their transactions, whereas 7/13 which accounts for 53.8% of respondents from accounting firms are aware and 10/19 of respondents accounting for 52.6% from private companies that attempted the question are aware of the fact that only transactions involving parties with turnover or assets of 15 Million and above should notify their transactions. The results show that a good number of accounting firms and private companies are not aware of the requirements that trigger merger notification or make a merger notifiable with the Competition and Consumer Protection Commission.

Which of these transactions should be notified with the regulator? \* Where do you work? Cross tabulation

**Table 12: Cross Tabulation of transactions that should be notified and where do you work**

Count		Where do you work?			Total
		Law firm	Accounting Firm	Private Company	
Which of these transactions should be notified with the regulator?	If turnover or assets of the parties is below 10 million	0	1	0	1
	If turnover or assets of the parties is between 10 and 15 million	0	0	2	2
	If turnover or assets of the parties is 15 million and above	10	7	10	27
	If turnover or assets of the parties is 25 million and above	0	5	7	12
Total		10	13	19	42

#### 4.4.7 Are you aware of the merger notification fees-Question 18

From the table below, when respondents were asked if they are aware of the merger notification fee, of the respondents that answered this question, 27 (45%) of them answered in the affirmative “Yes” whereas 32 which accounts for (53.3%) answered ‘No’ whereas 1 (1.7%) did not respond. The high percentage of those not aware of the merger notification fee shows that it contributes to the non-notification of notifiable mergers in Zambia since there is a notification fee that must be paid to the Competition and Consumer Protection Commission once a merger has been notified.

Are you aware of the merger notification fee?

**Table 13: Awareness of Merger Notification Fees**

Position	Percent %
Yes	45.
No	53.3
No response	1.7
Total	100

#### **4.4.8 What does the regulator take into consideration when calculating merger notification fees-Question 20**

When asked as to what the regulator takes into account when calculating merger notification fees, 11.7 % answered that the regulator takes into account assets and turnover, 1.7% that the regulator takes into account turnover, 1.7% answered that the regulator takes into account turnover or assets whichever is lower and 31.7% answered that the regulator takes into consideration assets or turnover whichever is higher and 53.3% were not required to respond.. The results show that the majority of the respondents are aware of the fact that the mergers regulator takes into consideration turnover or assets or whichever is higher when calculating the merger notification fees.



If yes, what does the regulator take into consideration when calculating merger fees?

**Table 14: Awareness of what the Regulator considers in Calculating Merger fees**

	Frequency	Percent
Assets and Turnover	7	11.7
Turnover	1	1.7
Turnover or Assets or whichever is lower	1	1.7
Turnover or assets which ever is higher	19	31.7
Not applicable	32	53.3
Total	60	100.0

**4.4.9 To what extent would you say the merger notification fees affect or would affect your notifying of your merger- Question 21**

When asked to what extent the merger notification fees affect or would affect their notifying of mergers, 15% of the respondents answered to a very low extent, 30% answered to a low extent, 30% answered to a high extent and 15% answered to a very high extent whereas 10% did not respond. An assessment of the continuum of very low extent-low extent to high extent –very extent shows that the results are tied at 50% each. Therefore, the importance of this result is that it shows that the merger notification fee to a high extent does contribute significantly to the non-notification of notifiable mergers in Zambia as it appears to be too high.

To what extent would you say the merger notification fees affect or would affect your notifying of a merger

**Table 15: Extent of merger fees affecting the notification of mergers**

<b>Position</b>	<b>Percent %</b>
<b>Very low extent</b>	<b>15</b>
<b>Low extent</b>	<b>30</b>
<b>High extent</b>	<b>30</b>
<b>Very high extent</b>	<b>15</b>
<b>No response</b>	<b>10</b>
<b>Total</b>	<b>100</b>

**4.4.10 In the event you were contemplating on implementing a merger within the shortest period of time, given the time it takes to be given approval, would you still notify your merger-Question 22**

Of those who attempted this question, 41 (68.3%) answered that they would notify their merger whereas 28.3% answered they would not whereas 2 (3.3%) did not respond. The results indicate that there is some compliance among most of the respondents with only a small proportion who are not compliant.

In the event you were contemplating on implementing a merger within the shortest period of time, given the time it takes to be given approval, would you still notify your merger

**Table 16: Negligence of the Law**

<b>Position</b>	<b>Percent %</b>
Yes	68.3
No	28.3
No response	3.3
Total	100

#### 4.4.11 Are you aware that there are penalties for implementing a notifiable merger without authority-Question 23

When asked if they are aware of the penalties for implementing a merger without authority, of the respondents that answered this question, 38.3% answered ‘Yes’ while 10.% answered ‘No’ whereas 31(51.7%) were not required to answer. The results show that most of them are aware that there are penalties or consequences for implementing a notifiable merger without authority.

Are you aware that there are penalties for implementing a notifiable merger without authority?

**Table 17 : Awareness of Penalties for implementing a merger without authority**

Position	Percent %
Yes	38.3
No	10
Not applicable	51.7
Total	100

#### 4.4.12 Would you still merge and pay the penalties later- Question 24

When asked if they would still merge knowing that there are penalties for implementing a merger and pay the penalties later, of the respondents that attempted this question, 48.3% answered ‘Yes’ that they would merge and pay the penalties later, 11.7% answered ‘No’ that they would not whereas 40% were not required to respond. These results show that respondents do not see the penalties for implementing a merger as too punitive as most would prefer to merge and pay the penalties later or better still not get caught by the CCPC.

**Table 18: Willingness to Disregard the Law**

Position	Percent %
Yes	48.3
No	11.7
Not applicable	40
Total	100

#### 4.4.13 In your opinion, what factors lead to the non-notification of mergers in Zambia or would lead you not to notify a merger?

##### 1) *The Merger notification fees are too high?*

From table 20, of the 41 respondents that responded to this question, 26 were of the view that the merger notification fees were too high representing 43.3% of the respondents were as 15 respondents (25%) answered no to the question that merger notification fees were too high whereas 19 (31.7%) did not respond. The results of those who responded show that the merger notification fees are regarded as too high and thus have a bearing on whether parties notify their transactions or not because they perceive notification fee to be a huge cost to their business.

##### *Merger notification fees are too high?*

**Table 19: Merger Fees are High**

<b>Position</b>	<b>Percent %</b>
Yes	43.3
No	25
No response	31.7
Total	100

##### 2) *The Merger review process is too long?*

From table 21, when asked on whether the merger review process was one of the factors that lead to the non-notification of notifiable mergers, 34 which represent 56.7% that answered this question were of the view that the merger review process was too long and thus contributes to the non-notification of notifiable mergers in Zambia whereas 10 which represents 16.7% were of the view that the merger review/ notification process was not too long and thus does not contribute to the non-notification of notifiable mergers in Zambia and 16 (26.6%) did not

respond. The results show that the majority of the respondents who can be regarded as major stakeholders view the major review process to be too long.

*The Merger review process is too long*

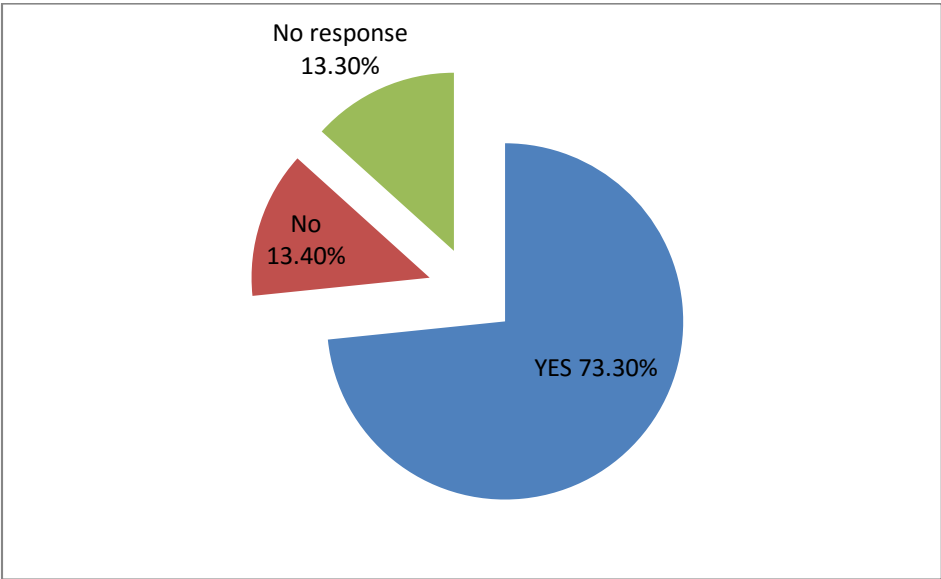
**Table 20: Merger process too long**

Position	Percent %
Yes	56.7
No	16.7
No response	26.6
Total	100

*3) Ignorance of the law?*

44 (73.3%) of the respondents that attempted this question were of the view that ignorance of the law is one of the factors that lead to the non-notification of notifiable mergers in Zambia whereas 8 (13.3%) were of the view that ignorance of the law was not a factor that leads to the non-notification of notifiable mergers in Zambia and 8 (13.3%) did not respond.

*In your opinion, there is ignorance of the law?*



**Figure 3: Ignorance of the Law**

#### 4) *Negligence of the law?*

30 (50%) of the respondents answered that negligence of the law is one of the factors that lead that lead to the non-notification of notifiable mergers in Zambia whereas as 16 (26.7%) of the respondents answered no with no response of 14 (23.3%). Hence negligence of the law can be regarded as one of the factors that lead to the non-notification of notifiable mergers in Zambia.

#### *Negligence of the Law?*

**Table 21: Negligence of the Law**

Position	Percent %
Yes	50
No	26.7
No response	23.3
Total	100

#### 5) *Other factors than the above*

Respondents were asked to if in their opinions there were other factors that lead to notification of mergers other than those in the questionnaire. 21 (35) were of the opinion that there are other factors that lead to the non-notification of notifiable mergers in Zambia other than the above listed, 6 (10%) were of the view that those were the only factors that lead to the non-notification of notifiable mergers in Zambia whereas 33 (45%) did not respond.

**Table 22: Other Factors that affect merger notification process**

Position	Percent %
Yes	35
No	10
No response	55
Total	100

The results from the interview guides with regards the objective of profiling factors that lead to the non-notification of notifiable mergers were as follows:

What factors contribute or lead to the non-notification of notifiable mergers in Zambia?

**Table 23: Profile of factors that lead to the non-notification of notifiable mergers in Zambia from Interviews**

Table 25 : frequency and percent distribution of respondents factors that lead to the non-notification of notifiable mergers in Zambia						
Group		Law Firms	Accounting Firms	Private Companies	Competition and Consumer Protection Commission (CCPC)	Total
High notification fees	Frequency	1	3	3	3	10
	Percentage	10%	30%	30%	30%	
Ignorance	Frequency	2	2	3	3	10
	Percentage	20%	20%	30%	30%	
Long notification process	Frequency	1		2	3	6
	Percentage	16.67%		33.3%	50%	
Lack of sensitizations	Frequency	2		1		3
	Percentage	66.7%		33.3%		
Negligence	Frequency	0	1	1	3	5
	Percentage		20%	20%	60%	
Merger Review process to long	Frequency			2		2
	Percentage			100%		

From the above table, it can be seen that there are many factors that lead to the non-notification of notifiable mergers in Zambia. One of the factors that lead to the non-notification of notifiable mergers is the high notification fee and this was given by 10% of the law firms interviewed, 30% of accounting firms, 30% private companies firms and 30% by CCPC. Of those who mentioned ignorance of the law, 20 percent were law firms, 20 % accounting firms, 30 % private companies and 30% from CCPC. Of those who mentioned long notification process, 16.67% were from law firms, 33.3% from private companies and 50 percent from CCPC. Lack of sensitizations of mergers was also identified as a factor and this came from 66.7% of the law firms and 33.3% from private companies. As with regards negligence, this came from 20% of accounting firms, 20% from private companies and 60 % from CCPC whereas those who mentioned the merger review process as one of the factors were from private companies (100).



## Objective 2

**4.5. Objective 2:** To establish the extent to which the merger review process contributes to the non-notification of notifiable mergers in Zambia.

**Research Question:** To what extent does the merger review process contribute to the non-notification of notifiable mergers in Zambia?

### Questions from the questionnaire

#### 4.5.1 Are you familiar with the merger review process in Zambia-Question 13?

From the table below, when respondents were asked if they were familiar with the merger review process in Zambia, 46.6% answered ‘Yes’ to being familiar with the merger review process whereas 51.7% answered ‘No’ and 1(1.7%) did not respond. The results show that the majority of the stakeholders are not familiar with the merger review process in Zambia and this is one of the major contributors to the non-notification of notifiable mergers in Zambia.

Are you familiar with the merger review process in Zambia?

**Table 24: Familiarity with the merger review process**

Position	Percent %
Yes	46.6
No	51.7
No response	1.7
Total	100

#### **4.5.2 How long does it take to be given a decision by the regulator of mergers in Zambia- Question 14**

When asked how long it takes to be given a decision by the merger regulator in Zambia, 1 (1.7%) answered 10 days, 2 (3.3%) answered 20 days, 2 (3.3%) 30 days and 26 (43.3%) answered 90 days and 29 (48.3%) were not required to respond. This result shows that the majority of the respondents that attempted this question are aware of the fact that the regulator takes 90 days to review a merger as stipulated by the law.

If yes to question 13, under the Competition law in Zambia, how long should it take for you to be given a decision by the mergers regulator?

**Table 25: Familiarity with the number of Days for merger review**

<b>Position</b>	<b>Percent %</b>
<b>10 Days</b>	<b>1.7</b>
<b>20 Days</b>	<b>3.3</b>
<b>30 Days</b>	<b>3.3</b>
<b>90 days</b>	<b>43.3</b>
<b>Not applicable</b>	<b>48.3</b>
<b>Total</b>	<b>100</b>

#### **4.5.3 Suppose you were merging, would the number of days it takes for the CCPC to give approval have an effect on your transaction-Question 15**

From the table below, respondents were further asked if the number of days it takes for the CCPC to give approval would have an effect on their merger transactions. Of the respondents that attempted this question, 48 (80%) answered ‘Yes’ to the number of days having an effect on their transactions whereas 9 (15%) answered ‘No’ and 3(5%) did not respond.

**Table 26: Effect of the number of days on transactions**

<b>Position</b>	<b>Percent %</b>
Yes	80
No	15
No response	5
Total	100

**4.5.4 What effect would the number of days have on your transactions-Question 16**

As a follow up to the question of the number of days having an effect on their transactions, the respondents were asked what kind of an effect the transaction would have on them. Of the respondents that attempted this question, 16 (26.7%) answered that the number of days has positive effect on their transactions whereas 32 (53.3%) answered that the number of days would have a negative effect on their transactions and 12(20%) were not required to respond. This result show that the majority of the respondents view the 90 days to be too long.

**Table 27: What effect the number of days of merger review has on transactions**

<b>Position</b>	<b>Percent %</b>
Positive Effect	26.7
Negative Effect	53.3
Not applicable	20
Total	100

**4.5.6 To what extent do you think the merger review process leads to mergers not being notified with the regulator-Question 17**

Of the respondents that attempted this question, 8 (13.3%) responded that the merger review process leads to mergers not being notified with the regulator to a very low extent, 19 (31.7%) to a low extent, 21 (35%) to a high extent and 5 (8.3%) to a very high extent whereas 7 (11.7%) did

not respond. The most frequent result is that of the merger review process leading to mergers not being notified with the regulator (35%), and this shows that the merger review process has a huge bearing on parties' notification of notifiable mergers.

To what extent do you think the merger review process leads to mergers not being notified with the regulator?

**Table 28 : Extent of the merger review process leading to the non-notification of notifiable mergers**

<b>Position</b>	<b>Percent %</b>
<b>Very low extent</b>	<b>13.3</b>
<b>Low extent</b>	<b>31.7</b>
<b>High extent</b>	<b>35</b>
<b>Very high extent</b>	<b>8.3</b>
<b>No response</b>	<b>11.7</b>
<b>Total</b>	<b>100</b>

### Objective 3

**4.6. Objective 3: To come up with recommendations on how to deal with the problem of the non-notification of notifiable mergers**

**Research Question: What improvements can be finalized to the merger review process so as to deal with the prevailing problem of non-notification of notifiable mergers?**

#### Questions from the questionnaire

**4.6 In your opinion, what do you suggest the Commission should do in order to reduce the non- notification of notifiable mergers?**

*4.6.1 Reduce the merger notification fees?*

When respondents were asked on whether or not the Commission should reduce the merger notification fees so as to deal with the non-notification of notifiable mergers, 55% of the respondents to this question responded ‘Yes’ compared to 13.3% of the respondents that answered ‘No’ whereas 31.7% did not respond. The huge percentage of the respondents that answered yes is evidence enough that merger notification fees are regarded as too high and thus should be reduced in order to curb the problem of the non-notification of notifiable mergers.

Reduce the merger notification fees?

**Table 29: Whether or not the Commission should reduce fees**

<b>POSITION</b>	<b>PERCENT %</b>
Yes	55
No	13.3
No response	31.7
Total	100

#### 4.6.2 Improve on the merger review process

From table 32, of the respondents that attempted this question, 36 (60%) responded 'Yes' that the merger review process should be improved so as to deal with the non-notification of notifiable mergers in Zambia whereas 6 (10%) answered 'No' and 18 (30%) did not respond. The results show that a high percentage of the respondents view the merger review process as a huge contributor to the non-notification of notifiable mergers in Zambia.

Improve on the merger review process?

**Table 30: Whether or not the Commission should improve the merger review process**

POSITION	PERCENT %
Yes	60
No	10.
No response	30
Total	100

#### 4.6.3 Increase on the penalties

When respondents were asked on whether or not the Commission should increase on the penalties for the non-notification of notifiable mergers in Zambia, of the respondents that attempted this question, 19(31.7%) answered yes, 19 (31.7%) answered no and 22 (36.6%) did not respond. These results show a tie between those who answered yes to an increment in penalties and to those who answered no.

Increase on the penalties?

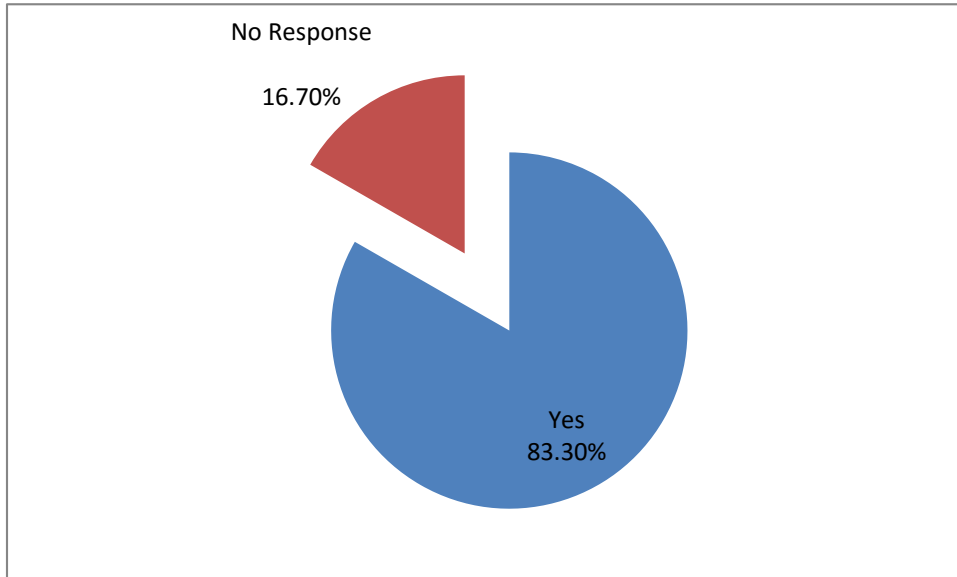
**Table 31: Whether or not the Commission should increase penalties**

POSITION	PERCENT %
Yes	31.7
No	31.7
No response	36.6
Total	100

#### 4.6.4 Increase on sensitizations on mergers

When respondents were asked as to whether or not the Commission should increase its sensitizations on mergers in Zambia, 50 (83.3%) answered ‘Yes’ that the Commission should increase on its sensitizations on mergers and 10 (16.7%) did not respond.

In your opinion, the Commission should increase sensitizations on mergers?



**Figure 4 : Whether or not the Commission should increase sensitizations on mergers**

#### 4.6.5 Digitalise the merger notification process

From Table 35, when respondents were asked as on whether or not the Commission should digitalise the merger notification process so as to deal with the problem of the non-notification notifiable mergers, 42 (70%) answered yes and 3 (5%) of the respondents answered no whereas 15(25%) did not respond.

**Table 32: Whether or not the Commission should digitalise the notification process**

POSITION	PERCENT %
Yes	70
No	5
No response	25
Total	100

#### 4.6.6 Decentralise the mergers department

When respondents were asked on whether the Commission should decentralize the mergers department to other provinces so as to deal with the non-notification of notifiable mergers, 35% answered 'Yes' while 20% answered 'No' and 45% did not respond.

**Table 33: Whether or not the Commission should decentralize the mergers department**

<b>POSITION</b>	<b>PERCENT %</b>
Yes	35
No	20
No response	45
Total	100

#### 4.6.7 Other factors than the above

When respondents were asked if there were other factors than the above on what the Commission should do in order to reduce the non-notification of notifiable mergers in Zambia, 23.3% answered yes where as 16.7% answered no and 60% did not respond.

**Table 34: Table Showing other factors than the above**

<b>POSITION</b>	<b>PERCENT %</b>
Yes	23.3
No	16.7
No response	60
Total	100



4.6.8 *How does the merger review process contribute to the non-notification of notifiable mergers from interviews?*

From table 38 below, of those who answered that in no ways does the merger review process lead to the non-notification of notifiable mergers in Zambia, 20% were law firms, 20% private companies and 60% CCPC. Of those who answered that the merger review process is too long and thus contributes to the non-notification of notifiable mergers, 18.18% were law firms, 27.27% accounting firms, 27.27% private companies and 27.27% CCPC. Of those who answered that the merger review process contributes to the non-notification of notifiable mergers as a result of the unskilled staff at the Competition and Consumer Protection Commission, 50% were law firms and the remaining 50% were accounting firms. With regards the merger notification process not being digital, this came from accounting firms (100%). As with regards CCPC not being protective of business secrets or information this came from private companies (100%) as one of the ways in which the merger review process contributes to the non-notification of notifiable mergers.

**Table 35: How the merger review process contributes to the non notification of mergers**

Table 38 : frequency and percent distribution of respondents factors of how the merger review process contributes to the non-notification of notifiable mergers in Zambia						
Group		Law Firms	Accounting Firms	Private Companies	Competition and Consumer Protection Commission	Totals
No ways	Frequency	1		1	3	5
	Percentage	20%		20%	60%	
It is too long	Frequency	2	3	3	3	11
	Percentage	18.18%	27.27%	27.27%	27.27%	
Unskilled CCPC Staff	Frequency	1	1			2
	Percentage	50%	50%			
The merger notification process not digital	Frequency		1			1
	Percentage		100%			

Parties not given adequate information	Frequency		1			1
	Percentage		100%			
CCPC not protective of parties business secrets or information	Frequency			2		2
	Percentage			100%		

4.6.9 What do you think should be done in order to reduce the non-notification of notifiable mergers? From interview guide

**Table 36: Frequency and percent distribution of respondents opinion on what the Competition and Consumer Protection Commission should do to reduce the non-notification of notifiable mergers in Zambia.**

Frequency and percent distribution of respondents opinion on what the Competition and Consumer Protection Commission should do to reduce the non-notification of notifiable mergers in Zambia.						
Group		Law Firms	Accounting Firms	Private Companies	Competition and Consumer Protection Commission	<b>Totals</b>
Develop systems of tracking un notified mergers	Frequency			1		1
	Percentage			100%		
Run courses for lawyers	Frequency	1				1
	Percentage	100%				

Work hand in hand with PACRA	Frequency	2				2
	Percentage	100%				
Reduce notification fees	Frequency	1	1	1	3	6
	Percentage	16.67%	16.67%	16.67%	50%	
Improve the merger review process	Frequency			4		4
	Percentage			100%		
Increase on penalties	Frequency		1	1	3	5
	Percentage		20%	20%	60%	
Increase on mergers sensitizations	Frequency	3	3	4	3	13
	Percentage	23.07%	23.07%	30.76	23.07%	
Digitalise the merger notification process	Frequency		2			2
	Percentage		100%			
Offer advisory services	Frequency		1			1
	Percentage		100%			

From table 36, respondents from interviews were asked as to what should be done in order to reduce the problem of the non-notification of notifiable mergers in zambia, of those who suggested that the CCPC should develop a system of tracking mergers that have not been notified were from private companies (100%), those who suggested running courses for lawyers were 100% from law firms; work hand in hand with Patents and Companies Registration Agency

(PACRA) were 100% law firms; with regards the reduction of the merger notification fee 16.67% were law firms, 16.67% were accounting firms, 16.67% were private companies and 50% CCPC; with regards the improving the merger review process this came 100% from private companies. As with regards the increase in penalties so as to deal with the problem of the non-notification of notifiable mergers, this result was recorded from 20% from accounting firms, 20% private companies and 60 % from CCPC.

As with regards the increase on sensitizations regarding mergers, 23.07% by law firms, 23.07% by accounting firms, 30.76% private companies and 23.07% by CCPC. With regards the digitalization of the merger notification process, this came 100% from accounting firms whereas the offering of advisory services was suggested 100% by accounting firms.

#### **4.7 Discussion of findings**

The findings of the research show that the factors that lead to the non-notification of notifiable mergers in Zambia are high merger notification fees, merger notification process not digital, longer merger review process, negligence of the law, ignorance of the law, lack of adequate sensitizations on mergers by the Competition and Consumer Protection Commission. Furthermore, the results show that the merger review process to a high extent contributes to the non-notification of notifiable mergers in Zambia.

Given the fact that Zambia has a mandatory notification (I,e Premerger notification system) (CCPC, Merger Guidelines,2015) where no notifiable merger is allowed to occur without authority from the Competition and Consumer Protection Commission and the fact that some mergers if not notified or regulated can have undesired market outcomes such as creation of monopolies and increase in prices , for these reasons, the Public Interest Theory holds (Gaffikin, 2005).

In addition, factors identified in the study that lead to the non –notification of notifiable mergers such as negligence of the law and the unwillingness to pay the notification fees to the Competition and Consumer Protection Commission further reveal that parties to mergers have self-seeking interests mainly, and if left unregulated, their pursuit of their self-serving interests

can have undesired market outcomes, hence the need for regulation of mergers which further confirms the holding of the Public interest theory.

Furthermore, from the literature review no study has been done which seeks to identify the factors that lead to the non- notification of notifiable mergers either in Zambia or in other countries as well as the possible solutions to this problem, as such the study fills in the gaps in knowledge of the factors that lead to the non-notification of notifiable mergers in Zambia and possible solutions to this problem which can have negative effects on competition as well as harm consumers.

#### **4.8 Conclusion**

This chapter provided a basis on which to draw conclusions and make recommendations from findings of the chapter. Data gathered from questionnaires was analyzed using SPSS 16.0 in form of tables, pie charts whereas data gathered from interviews was analysed using content analysis, by grouping according to how similar responses were, similar responses were put into one category and those which are not similar into another category and then tallied and coded in tables.

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **5.0 Introduction**

Preceding chapters sought to lay a basis upon which the researcher could draw conclusions and recommendations. This chapter briefly highlights the major findings of the research, concludes the research work and provides recommendations based on the responses obtained during the research and data analysis. At the beginning of the research, the following objectives of the research were:

- 1) To profile factors that lead to the non-notification of notifiable mergers
- 2) To establish the extent to which the merger review process contributes to the non-notification of notifiable mergers
- 3) To come up with recommendations on how to deal with the problem of the non-notification of notifiable mergers

#### **5.1 Summary of Findings**

The main purpose of this research was to study the factors that lead to the non-notification of notifiable mergers in Zambia. A survey through questionnaires was conducted as well as structured interviews. Data gathered through questionnaires was analysed using a Statistical Package for the Social Sciences (SPSS) whereas data gathered through interviews was analysed using content analysis and presented in tables.

The results of the study indicate that most respondents have heard of the Competition and Consumer Protection Commission and are aware of the term 'merger', are aware that the merger regime in Zambia is mandatory (suspensory) and also the fact that not all mergers should be notified with the Competition and Consumer Protection Commission. However, a good number of the respondents are not aware of the conditions that make a merger to be notified or conditions

that trigger merger notification. Furthermore, the results indicate that law firms have better understanding of mergers than accounting firms and private companies.

Most respondents are not aware of the merger notification fees (i.e how fees are calculated). However, a good number of the respondents are aware of the fact that the Competition and Consumer Protection Commission takes into consideration turnover or assets of the parties whichever is higher in the calculation of merger notification fees. The results further showed that the merger notifications fees are too high and does contribute significantly to the non-notification of notifiable mergers in Zambia.

The results show that most respondents are aware that there are sanctions or penalties for implementing a merger without authority from the Competition and Consumer Protection Commission. However, respondents would rather merge without authority and pay the penalties later. The results further indicate that most respondents are not aware of the merger review process. However most respondents are aware of the fact by law the Competition and Consumer protection Commission is mandated make a determination on a merger within 90 days. However, the merger review process would have a negative effect on most parties' transactions as it is regarded as being too long.

## **5.2 Conclusions**

In light of the research conducted, the findings of the research show that the factors that lead to the non-notification of notifiable mergers in Zambia are high merger notification fees, merger notification process not digital, longer merger review process, negligence of the law, ignorance of the law, lack of adequate sensitizations on mergers by the Competition and Consumer Protection Commission. Furthermore, the results show that the merger review process to a high extent contributes to the non-notification of notifiable mergers in Zambia.

Since Zambia has a mandatory notification (I,e Premerger notification system) where no notifiable merger is allowed to occur without authority from the Competition and Consumer Protection Commission and the fact that some mergers if not notified or regulated can have undesired market outcomes such as creation of monopolies and increase in prices , for these

reasons, the Public Interest Theory holds. In addition, factors identified in the study that lead to the non-notification of notifiable mergers such as negligence of the law and the unwillingness to pay the notification fees to the Competition and Consumer Protection Commission further reveal that parties to mergers have self-seeking interests mainly, and if left unregulated, their pursuit of their self-serving interests can have undesired market outcomes, hence the need for regulation of mergers which further confirms the holding of the Public interest theory.

The Public Interest theory states that government regulation is the instrument for overcoming the disadvantages of imperfect competition, unbalanced market operation, missing markets and undesirable market results and this supplied in response to the demand of the public for the correction of inefficient or inequitable market practices.

Furthermore, from the literature review no study has been done which seeks to identify the factors that lead to the non-notification of notifiable mergers either in Zambia or in other countries as well as the possible solutions to this problem, as such the study fills in the gaps in knowledge of the factors that lead to the non-notification of notifiable mergers in Zambia and possible solutions to this problem which can have negative effects on competition as well as harm consumers. The results of the study are useful in that they show the specific factors that lead to the non-notification of notifiable mergers in Zambia and hence help in coming up with appropriate measures as to deal within this problem.

### **5.3 Recommendations**

After a detailed analysis on the factors that lead to the non-notification of notifiable mergers in Zambia, the following recommendations can be put forth: with regards policy making, There is need for the Mother Ministry of the Competition and Consumer Protection Commission, in this case the Ministry of Commerce, Trade and Industry to come up with a Statutory Instrument (SI) that aims at reducing the merger notification fees; there is need for the Competition and Consumer Protection Commission to review the Competition and Consumer Protection Act with the aim of reducing the number of days a merger it takes to review a merger and lastly there is need for the Competition and Consumer Protection Commission to review the Competition and Consumer Protection Act with the aim of stiffening the penalties for implementing a notifiable merger without authority. With regards recommendations for practice, The Competition and



Consumer Protection Commission should increase its sensitizations on mergers; there is need for the Competition and Consumer Protection Commission to make the merger notification process digital; There is need for the Competition and Consumer Protection Commission to decentralize the mergers department to other provinces and lastly there is need for the Competition and Consumer Protection Commission to work hand in hand with other regulators such as Patents and Companies Registration Agency (PACRA) so as to track notifiable mergers that have not been notified.

#### **5.4 Recommendations for further research**

As a result of the findings and other limitations arising from the study, further research will need to be made touching specifically on the following:

1. Further research should only concentrate on parties that have actually implemented notifiable mergers without authority.
2. Further research should also concentrate on the impact of notification fees on companies on the company's resources.
3. Further research should concentrate on the actual competition impact that non -notified mergers have had on the economy.

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## Appendix 1

Questionnaire number.....



**THE UNIVERSITY OF ZAMBIA**

**Graduate School of Business**

**QUESTIONNAIRE**

**Dear Respondent,**

I am a post graduate student at the Graduate School of Business at the University of Zambia conducting a research on non-notification of notifiable mergers.

It is my earnest hope that you will answer the questions enclosed herein faithfully and truthfully.

I assure you that the information you shall give will be treated with maximum confidentiality and shall be used for academic purposes only.

### **INSTRUCTIONS**

Tick your options in the provided space(s) [ ].

**I thank you in advance**

NO.	QUESTION DESCRIPTION AND RESPONSE.	FOR OFFICIAL USE ONLY.
1.	What is your gender?  1] Male [ ]  2] Female [ ]	<input data-bbox="1235 621 1312 695" type="checkbox"/>
2.	Where do you work?  1] Law Firm [ ]  2] Accounting Firm [ ]  3] Private Company [ ]	<input data-bbox="1235 852 1312 915" type="checkbox"/>
3.	Have you ever heard of the Competition and Consumer Protection Commission?  1] Yes [ ]  2] No [ ]	<input data-bbox="1235 1125 1312 1188" type="checkbox"/>
4.	If yes to the above question, are you aware of its role in Zambia?  1] Yes [ ]  2] No [ ]	<input data-bbox="1247 1608 1341 1671" type="checkbox"/>



<p><b>5.</b></p>	<p>Are you aware of the law governing merger regulations in Zambia?</p> <p>1] Yes            [ ]</p> <p>2] No             [ ]</p>	<p><input type="checkbox"/></p>
<p><b>6.</b></p>	<p>Have you ever heard of the term merger?</p> <p>1] Yes            [ ]</p> <p>2] No             [ ]</p>	<p><input type="checkbox"/></p>
<p><b>7.</b></p>	<p>If yes to question 6, do you know what a merger is?</p> <p>1] Yes            [ ]</p> <p>2] No             [ ]</p>	<p><input type="checkbox"/></p>
<p><b>8.</b></p>	<p>If yes to question 7, is the merger regime or regulation in Zambia mandatory or voluntary?</p> <p>1] Mandatory    [ ]</p> <p>2] Voluntary     [ ]</p>	<p><input type="checkbox"/></p>
<p><b>9.</b></p>	<p>Are all mergers supposed to be notified with the regulator of mergers?</p> <p>1] Yes            [ ]</p> <p>2] No             [ ]</p>	<p><input type="checkbox"/></p>

<p><b>10.</b></p>	<p>If no to question 9, are there conditions that must be met for a merger to be notified?</p> <p>1] Yes      [ ]</p> <p>2] No      [ ]</p>	<p><input type="checkbox"/></p>
<p><b>11.</b></p>	<p>If yes to question 10, are you aware of those conditions?</p> <p>1] Yes      [ ]</p> <p>2] No      [ ]</p>	<p><input type="checkbox"/></p>
<p><b>12.</b></p>	<p>Which of these merger transactions should be notified with the regulator?</p> <p>1] If turnover or assets of the parties is below 10 million [ ]</p> <p>2] If turnover or assets of the parties is between 10 and 15 Million [ ]</p> <p>3] If turnover or assets of the parties is 15 Million and above [ ]</p> <p>4] If turnover or assets of the parties is 25 Million and above [ ]</p>	<p><input type="checkbox"/></p>
<p><b>13.</b></p>	<p>Are you familiar with the merger review process in Zambia?</p> <p>1] Yes      [ ]</p> <p>2] No      [ ]</p>	<p><input type="checkbox"/></p>

<b>14.</b>	<p>If yes to question 13, Under the competition law in Zambia, how long should it take for you to be given a decision by the mergers regulator?</p> <p>1] 10 Days                    [ ]</p> <p>2] 20 Days                    [ ]</p> <p>3] 30 Days                    [ ]</p> <p>4] 90 Days                    [ ]</p> <p>5] 150 Days                   [ ]</p>	<input type="checkbox"/>
<b>15.</b>	<p>Suppose you were merging, would the number of days it takes for the CCPC to give approval have an effect on your transactions?</p> <p>1] Yes                         [ ]</p> <p>2] No                            [ ]</p>	<input type="checkbox"/>
<b>16.</b>	<p>If yes to question 15, what effect?</p> <p>1] Positive Effect        [ ]</p> <p>2] Negative Effect        [ ]</p>	<input type="checkbox"/>

<p><b>17.</b></p>	<p>To what extent do you think the merger review process leads to mergers not been notified with the regulator?</p> <p>1] Very Low extent    [ ]</p> <p>2] Low extent            [ ]</p> <p>3] High extent            [ ]</p> <p>4] Very high extent    [ ]</p>	<input type="checkbox"/>
<p><b>18.</b></p>	<p>Are you aware of the merger notification fee?</p> <p>1] Yes                    [ ]</p> <p>2] No                      [ ]</p>	<input type="checkbox"/>
<p><b>19.</b></p>	<p>If yes, do you know how the regulator calculates the fees?</p> <p>1] Yes    [ ]</p> <p>2] No    [ ]</p>	<input type="checkbox"/>
<p><b>20.</b></p>	<p>If yes, What does the regulator take into consideration when calculating merger fees?</p> <p>1] Assets and Turnover                    [ ]</p> <p>2] Assets                                        [ ]</p> <p>3] Turnover                                    [ ]</p> <p>4] Turn over or assets or whichever is lower    [ ]</p> <p>5] Turn over or assets or whichever is higher    [ ]</p>	<input type="checkbox"/>

<b>21.</b>	<p>To what extent would you say the merger notification fees affect or would affect your notifying of a merger?</p> <p>1] Very Low extent    [ ]</p> <p>2] Low extent        [ ]</p> <p>3] High extent        [ ]</p> <p>4] Very high extent    [ ]</p>	<input type="checkbox"/>
<b>22.</b>	<p>In the event you were contemplating on implementing a merger with promising returns within the shortest period of time, Given the time it takes to be given approval, would you notify your merger?</p> <p>1] Yes    [ ]</p> <p>2] No    [ ]</p>	<input type="checkbox"/>
<b>23.</b>	<p>If no to the above, are you aware that there are penalties for implementing a notifiable merger without authority?</p> <p>1] Yes    [ ]</p> <p>2] No    [ ]</p>	<input type="checkbox"/>

<p><b>24.</b></p>	<p>If yes, would you still merge and pay the penalties later?</p> <p>1] Yes    [ ]</p> <p>2] No    [ ]</p>	<p><input type="checkbox"/></p>																		
<p><b>25</b></p>	<p>In your opinion, what factors lead to the non-notification of mergers in Zambia or would lead you not to notify a merger?</p> <p><b>TICK YES OR NO AGAINST THE RESPONSES BELOW</b></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="width: 10%; text-align: center;">YES</th> <th style="width: 10%; text-align: center;">NO</th> </tr> </thead> <tbody> <tr> <td>1] the merger notification fees are too high</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>2] The merger review process is too long</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>3] Ignorance of the law</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>4] Negligence of the law</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>5] Other Factors other than the above</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> </tbody> </table>		YES	NO	1] the merger notification fees are too high	[ ]	[ ]	2] The merger review process is too long	[ ]	[ ]	3] Ignorance of the law	[ ]	[ ]	4] Negligence of the law	[ ]	[ ]	5] Other Factors other than the above	[ ]	[ ]	
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4] Negligence of the law	[ ]	[ ]																		
5] Other Factors other than the above	[ ]	[ ]																		
<p><b>26.</b></p>	<p>In your opinion, what do you suggest the Commission should do in order to reduce the non- notification of notifiable mergers?</p> <p><b>TICK YES OR NO AGAINST THE RESPONSES BELOW</b></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="width: 10%; text-align: center;">YES</th> <th style="width: 10%; text-align: center;">NO</th> </tr> </thead> <tbody> <tr> <td>1] Reduce the merger notification fees</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>2] Improve on the merger review process</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>3] Increase on the penalties</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> <tr> <td>4] Increase on sensitizations on mergers</td> <td style="text-align: center;">[ ]</td> <td style="text-align: center;">[ ]</td> </tr> </tbody> </table>		YES	NO	1] Reduce the merger notification fees	[ ]	[ ]	2] Improve on the merger review process	[ ]	[ ]	3] Increase on the penalties	[ ]	[ ]	4] Increase on sensitizations on mergers	[ ]	[ ]	<p><input type="checkbox"/></p>			
	YES	NO																		
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3] Increase on the penalties	[ ]	[ ]																		
4] Increase on sensitizations on mergers	[ ]	[ ]																		

	<p>5] Digitalize the merger notification process      [ ]      [ ]</p> <p>6] Decentralize mergers department to provinces      [ ]      [ ]</p> <p>6] Other Factors other than above      [ ]      [ ]</p> <p><b>THANK YOU FOR YOUR COOPERATION.</b></p>	<input data-bbox="1203 296 1284 348" type="checkbox"/>

**APPENDIX 2: INTERVIEW GUIDE**

Number .....



**THE UNIVERSITY OF ZAMBIA**

**Graduate School of Business**

**Interview Guide**

**Dear Respondent,**

My name is Maikisa Ilukena, a post graduate student at the Graduate School of Business at the University of Zambia (Student Number GSB 150929) conducting a research on non-notification of notifiable mergers., The information will be used by me to complete my research, in part-fulfilment of the requirement of Master of Business Administration (MBA-General) at the University of Zambia .I assure you that the information you shall give will be treated with maximum confidentiality and shall be used for academic purposes only.

**1. Date of interview.....**

**2. Name of Institution.....**

**3. Job title of the interviewee.....**

**INTERVIEW QUESTIONS**

- 1) What factors contribute or lead to the non-notification of notifiable mergers in Zambia?
- 2) In what ways do you think the merger review process contributes to the non-notification of notifiable mergers in Zambia?
- 3) In your own opinion, what do you think should be done in order to reduce the non-notification of notifiable mergers?



