



ADMINISTRATIVE ACTION REGARDING ACQUISITION OF BELSIZE INDUSTRIES LIMITED BY INTERCONSUMER PRODUCTS LIMITED WITHOUT REGULATORY APPROVAL

1. The Competition Authority of Kenya (CAK) imposed a financial penalty of Ksh. 1.5 Million on Interconsumer Products Limited (Interconsumer) for acquiring 100% of the assets of Belsize Industries Limited (Belsize) without regulatory approval prior to implementation of the transaction.
2. Interconsumer is a private limited company incorporated in Kenya. The firm manufactures and distributes sanitary pads, baby diapers, shoe polish and tissue paper.
3. Belsize was a private company limited by shares incorporated on 2012 and was involved in the manufacture of three brands of tissue paper namely; Sawa, Tosha, and Fluffy.
4. However, after being in operation for just five months (May 2013 – November 2013), Interconsumer acquired ultimate control (100%) of Belsize's business through the purchase of its assets.
5. The Authority established this fact following an investigation triggered by a July 2015 inquiry by Interconsumer's lawyers as to whether the transaction required regulatory approval as per the provisions of the Competition Act No. 12 of 2010.
6. Section 42(2) of the Act provides that *"No person, either individually or jointly or in concert with any person may implement a proposed merger to which this part applies unless this merger is approved by the Authority"*.
7. Section 41 (2) of the Act provides that a merger may be achieved in any manner including *"The purchase or lease of shares, acquisition of an interest, or purchase of assets of the other undertaking in question..."*

8. Section 42(5) of the Act provides that *“Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both”*
9. Section 42(6) of the Act provides that *“The Authority may impose a financial penalty in an amount not exceeding ten percent of the preceding year’s gross annual turnover in Kenya of the undertaking or undertakings in question.”*
10. At the time of the infraction (2013), the Authority could only impose remedies after a Court of Law made a decision that an undertaking had committed an offense by implementing a merger without the Authority’s authorization.
11. Consequently, the Authority in November 2017 wrote to the Office of the Director of Public Prosecution (ODPP) and was granted leave to invoke its powers under section 42 (6) of Act and pursue penalties.
12. Interconsumer made written submissions highlighting several mitigating factors that it wished the Authority could consider and pardon them for the contravention.
13. These included:
 - i. By acquiring Belsize, which was almost going under, it was able to safeguard the employment of nine (9) staff;
 - ii. The firm noted that it had fully cooperated with the Authority during the course of the investigation and that it was them who, through their legal counsel, initiated the administrative process in July 2015.
 - iii. Interconsumer further argued that increased competition from cheap Chinese imports as well as local producers of toilet towels had hurt its business since 2014.
 - iv. The closure of several outlets of leading supermarkets in the country had also negatively impacted its revenues and cash flow, a situation which was further exacerbated by unhonored bills by these retailers.
14. Interconsumer noted that a high penalty by the Authority would hamper its operations.

15. It is the Authority's position that voluntary disclosure and an attempt to remedy an inadvertent contravention do not automatically exonerate the parties from being held liable for failure to abide by the law.
16. After consideration of the above mitigating factors, the Authority ordered Interconsumer to pay a financial penalty of Kshs. 1,500,000 for implementing a merger without authorization by the Authority contrary to Section 42(2) of the Competition Act.
17. However, in imposing the penalty, the Authority was guided by the Fining and Settlements Guidelines which took into consideration the following:

I. Public Interest

Interconsumer argued that by acquiring Belsize, which was almost going under, they were able to maintain employment of nine (9) of Belsize's employees.

II. Cooperation

It was noted that Interconsumer has shown full cooperation with the Authority towards settling the matter and that they had self-reported.

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